

N.D.A.G. Letter to Lundberg (March 6, 1986)

March 6, 1986

Honorable Jane M. Lundberg
Commissioner
Department of Banking and Financial Institutions
State Capitol
Bismarck, ND 58505

Dear Commissioner Lundberg:

Thank you for your letter of December 30, 1985, in which you inquire as to the constitutionality of applying N.D.C.C. § 6-03-59, regarding loan limitations to one borrower or concern, to preexisting contracts.

The police power of a state extends to the regulation of banks chartered under state law. Noble State Bank v. Haskell, 219 U.S. 104, 111 (1911). The constitutional test for regulatory legislation is "whether the legislation is addressed to a legitimate end and the measures taken are reasonable and appropriate to that end." Home Bldg. & Loan Assn. v. Blaisdell, 290 U.S. 398, 438 (1934).

Where the protective power of the state is exercised in a manner otherwise appropriate in the regulation of a business, it is no objection that the performance of existing contracts may be frustrated. Blaisdell at 438 (citing Rast v. Van Deman & Lewis Co., 240 U.S. 342, 363 (1916)); St. Louis Poster Adv. Co. v. St. Louis, 249 U.S. 269, 274 (1919). See also, Sproles v. Binford, 286 U.S. 374, 390 (1932); Manigault v. Springs, 199 U.S. 473, 480 (1905)).

In Manigault v. Springs, the Supreme Court stated as follows:

It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. This power, which in its various ramifications is known as the police power, is an exercise of the sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people, and is paramount to any rights under contracts between individuals.

Id. at 480.

It is my opinion, therefore, that the application of N.D.C.C. § 6-03-59, regarding loan limitations to one borrower or concern, to preexisting contracts is constitutional.

Sincerely,

Nicholas J. Spaeth

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