



REGULATORY AGENCY ACTION

Psychiatric Workers' New Union. Judge Blubaugh, an administrative law judge, ruled that psychiatric technicians in state mental hospitals may be represented by a newly-formed independent public employees union. The new union, California Association of Psychiatric Technicians, replaces the Communication Workers of America.

LEGISLATION:

SB 1638 (Greene) is scheduled for

reintroduction this session, and would create a Certified Nurse Assistant program. The bill would prohibit people from holding themselves out as certified nurse assistants unless they have a certificate from the Board. The proposed effective date is June 30, 1987.

FUTURE MEETINGS:

To be announced.

BANKING DEPARTMENT

Superintendent: Louis Carter
(415) 557-3232

The State Banking Department administers all laws applicable to corporations engaging in the commercial banking or trust business, including the establishment of state banks and trust companies; the establishment, operation, relocation and discontinuance of various types of offices of these entities; and the establishment, operation, relocation and discontinuance of various types of offices of foreign banks. The superintendent, the chief officer of the Department, is appointed by and holds office at the pleasure of the Governor.

The superintendent approves applications for authority to organize and establish a corporation to engage in the commercial banking or trust business. In acting upon the application, the superintendent must consider:

(1) the character, reputation and financial standing of the organizers or incorporators and their motives in seeking to organize the proposed bank or trust company;

(2) the need for banking or trust facilities in the proposed community;

(3) the ability of the community to support the proposed bank or trust company, considering the competition offered by existing banks or trust companies; the previous banking history of the community; opportunities for profitable use of bank funds as indicated by the average demand for credit; the number of potential depositors; the volume of bank transactions; and the stability, diversity and size of the businesses and industries of the community. For trust companies, the opportunities for profitable employment of fiduciary services are also considered;

(4) the character, financial responsibility, banking or trust experience and business qualifications of the proposed officers; and

(5) the character, financial responsibility, business experience and standing of the proposed stockholders and directors.

The superintendent may not approve any application unless he/she determines that the public convenience and advantage will be promoted by the establishment of the proposed bank or trust company; conditions in the locality of the proposed bank or trust company afford reasonable promise of successful operation; the bank is being formed for legitimate purposes; the proposed name does not so closely resemble as to cause confusion the name of any other bank or



BUSINESS AND TRANSPORTATION AGENCY

DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL

Director: Jay Stroh
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The Department of Alcoholic Beverage Control (ABC) is a constitutionally-authorized state department. The Alcoholic Beverage Control Act vests the Department with the exclusive right and power to license and regulate the manufacture, sale, purchase, possession, and transportation of alcoholic beverages within the state. In addition, the Act vests the Department with authority, subject to certain federal laws, to regulate the importation and exportation of alcoholic beverages across state lines. ABC issues liquor licenses and investigates violations of the Business and Professions Code and other criminal acts which occur on premises where alcohol is sold. Many of the disciplinary actions taken by ABC, along with other information concerning the Department, are printed in the liquor industry trade publications "Beverage Bulletin" and "Beverage Industry News."

ABC divides the state into two divisions with assistant directors in charge of each division. The state is further subdivided into 21 districts, with two districts maintaining branch offices.

MAJOR PROJECTS:

Alcohol Abuse Programs. ABC has recently formulated several strategies to fight alcohol abuse. One such strategy involves limitations on promotions sponsored by breweries aimed at college campuses. Another major focus will be on increased training programs for servers of alcoholic beverages. ABC has supported enforcement teams consisting of ABC officials and local police, a

method which ABC plans to continue and expand.

Aside from public health and welfare matters, ABC is also involved in economic regulation. ABC, along with the U.S. Bureau of Alcohol, Tobacco, and Firearms, has developed a coordinated program to enforce regulations which ban wholesaling of alcoholic beverages by retailers.

Public Hearings. Senate Concurrent Resolution 65 (Russell) requested that ABC conduct hearings on the elimination of specified marketing practices which promote the overconsumption of alcoholic beverages. The Resolution asked that ABC consider the adoption of rules to prohibit these practices and report to the legislature on the results of any action taken. Pursuant to this resolution, ABC conducted its first hearing on December 17 in Sacramento. ABC will schedule the next hearing in Los Angeles and a third hearing in San Francisco, if necessary.

LEGISLATION:

SB 1546 (Beverly), now law, provides that no license or permit is required for the serving of alcoholic beverages in a limousine by any person operating a limousine service regulated by the Public Utilities Commission, provide there is no extra charge or fee for the alcoholic beverages.

SB 124 (Mello), introduced December 30, would prohibit any person licensed by ABC from importing wine into California that was produced outside the United States unless that person certifies that each shipment of wine meets the requirements of the Sherman Food, Drug and Cosmetic Law.



trust company transacting or which has previously transacted business in the state; and the applicant has complied with all applicable laws.

If the superintendent finds that the proposed bank or trust company has fulfilled all conditions precedent to commencing business, a certificate of authorization to transact business as a bank or trust company will be issued.

The superintendent must also approve all changes in the location of a head office, the establishment or relocation of branch offices and the establishment or relocation of other places of business. A foreign corporation must obtain a license from the superintendent to engage in the banking or trust business in this state. No one may receive money for transmission to foreign countries or issue travelers checks unless licensed. The superintendent also regulates the safe-deposit business.

The superintendent examines the condition of all licensees. However, as the result of the increasing number of banks and trust companies within the state and the reduced number of examiners following passage of Proposition 13, the superintendent now conducts examinations only when necessary, but at least once every two years. The Department is coordinating its examinations with the FDIC so that every other year each agency examines certain licensees. New and problem banks and trust companies are examined each year by both agencies.

The superintendent administers the Small Business Loan Program, designed to provide long-term capital to rapidly growing small businesses whose growth exceeds their ability to generate internal earnings. Under the traditional standards used by banks, these small businesses cannot provide adequate security to qualify for regular bank loans.

The superintendent licenses Business and Industrial Development Corporations which provide financial and management assistance to business firms in California.

Acting as Administrator of Local Agency Security, the superintendent oversees all deposits of money belonging to a local governmental agency in any state or national bank or savings and loan association. All such deposits must be secured by the depository.

MAJOR PROJECTS:

Emergency Regulations. As reported in Volume 6, No. 4 of the CRLR, the superintendent filed an emergency order with the Secretary of State. The order, effective May 5, 1986, amends Chapter 1 of Title 10 of California Administrative

Code sections 10.14800-10.14802. The amendment requires subject institutions to comply with Regulation Q of the Federal Reserve System, 12 C.F.R. part 217, as amended in April 1986. The amendment prohibits payment of interest on demand deposits, and enforcement of the order remains a significant priority of the superintendent and the Banking Department.

Problems of competitive advantage arose for California banks because the new regulations do not restrict suspect institutions from paying interest on demand deposits. (See CRLR Vol. 6, No. 4 (Fall 1986) for complete background information.) Suspect institutions are banks outside the nation with total worldwide assets of one billion or less. The superintendent believes that an unfair competitive advantage will result if the new amendments to Regulation Q are not applied to suspect institutions.

Assets and Liabilities as of September 30, 1986. At the close of business on September 30, 1986, the 286 state chartered banks of deposit with 1,678 branches had total assets of \$87.5 billion, an increase of \$7.6 billion, of 9.6%, over September 30 a year ago. During this period, there was a net decrease of two banks and a net increase of three branches.

New Banks. Two applications for new banks were filed with the superintendent by Bank Audi, Los Angeles, and Bank of Petaluma, Sonoma. Certificates of authority were issued to two banks that opened for business: Bank of Encino, Los Angeles, and First Citizens Bank, Sherman Oaks.

Mergers. National Intercity Bank, Santa Clara, merged with and into Silicon Valley Bank, San Jose. Silicon Valley Bank will operate all existing offices of National Intercity Bank as branch offices of Silicon Valley Bank.

The superintendent also approved and effected the merger application of Lloyd's Bank California, Los Angeles, to be merged with and into Golden State Sanwa Bank, San Francisco.

Bank Closings. On November 15, 1986, all deposits of the Bank of Northern California (BNC), San Jose, were assumed by Pacific Valley Bank (PVB), San Jose. PVB opened a branch office at the location of the head office of BNC on the next business day, November 17, 1986.

At the close of business on November 14, 1986, the superintendent took possession of BNC and ordered that BNC be liquidated. The superintendent then tendered to the Federal Deposit Insurance

Corporation (FDIC) the appointment as receiver of BNC, and the FDIC accepted the appointment. The FDIC, as receiver of BNC, accepted the bid of PVB to acquire all the deposits and certain assets of BNC in a purchase and assumption transaction. The purchase and assumption transaction was approved by the superintendent and the Santa Clara Superior Court on November 15, 1986.

In connection with the approval of the purchase and assumption transaction, the superintendent approved a certificate of authorization permitting PVB to open and operate the branch office of BNC. All depositors of BNC became depositors of PVB, and an orderly transition of banking services occurred, without financial loss or delay to the public.

On October 9, 1986, the insured deposits of Independent National Bank (Independent), Covina, were transferred to Chino Valley Bank, Chino. The Comptroller of the Currency declared Independent insolvent and appointed the Federal Deposit Insurance Corporation as receiver. The FDIC then entered into a Deposit Insurance Transfer and Asset Purchase Agreement with Chino Valley. Under the agreement, the insured deposits and any secured public deposits of Independent were transferred to Chino Valley, and Chino Valley purchased certain assets of Independent.

On October 9, 1986, the superintendent took the following actions regarding the agreement between the FDIC and Chino Valley: Chino Valley's purchase of part of the business of Independent was approved; Chino Valley's application for authority to establish and maintain a branch office at the location of the former head office of Independent was filed and approved; and a certificate of authorization permitting Chino Valley to open and operate the branch office was issued.

On November 20, 1986, all deposits of First National Bank, Willows, were assumed by First Interstate Central Bank, Willows. First Interstate Central Bank, a new bank organized by First Interstate Bancorp, is providing continued banking services at the locations of the head office and branch offices of First National Bank. The Comptroller of the Currency appointed the FDIC as receiver. The FDIC accepted the bid of First Interstate Bancorp for First Interstate Central Bank to acquire all the deposits, certain other liabilities, and certain assets of First National Bank in a purchase and assumption transaction.

The superintendent took the following actions on November 20, 1986 in connec-



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tion with the organization of First Interstate Central Bank and the purchase and assumption transaction: an application by First Interstate Bancorp for authority to organize the bank with capital of \$4 million was filed and approved; a certificate of authorization permitting the bank to transact commercial banking at the location of the head office of First National Bank was issued; and First Interstate Central Bank's purchase of part of the business of First National Bank under the purchase and assumption transaction was approved.

All depositors of First National Bank became depositors of First Interstate Central Bank, and there was an orderly transition of banking services without financial loss or delay to the public.

Counterfeiting. The superintendent warned all bankers that counterfeit cashier's checks drawn on Imperial Bank are being used to obtain property by fraudulent means. The perpetrator of the scheme answers newspaper ads for expensive cars and visits the seller to inspect the car and set the price. He then returns with the counterfeit check, usually after the close of business. The checks, numbered 090589, are green with a basket weave background. The photocopied amount does not say "Imperial Bank." There are outstanding warrants. For further information, please call Imperial Bank at (213) 417-5747.

LEGISLATION:

AB 2 (Reyes) calls for a ceiling on credit card interest rates on all credit cards issued by California banks. If enacted, the ceiling will be five points above the current six-month treasury bill rate.

AB 4 (Brown) will allow out-of-state banks to acquire any California bank with assets of \$50 billion or more.

DEPARTMENT OF CORPORATIONS

Commissioner: Franklin Tom
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The Department of Corporations is a part of the cabinet-level Business and Transportation Agency. A Commissioner of Corporations, appointed by the Governor, oversees the Department.

The Department administers several major statutes. The most important is the Corporate Securities Act of 1968, which requires the "qualification" of all

securities sold in California. "Securities" are defined quite broadly, and may include business opportunities in addition to the traditional stocks and bonds. Many securities may be "qualified" through compliance with the Federal Securities Acts of 1933, 1934 and 1940. If the securities are not under federal qualification, the commissioner must issue a "permit" for their sale in California.

The commissioner may issue a "stop order" regarding sales or revoke or suspend permits if in the "public interest" or if the plan of business underlying the securities is not "fair, just or equitable."

The commissioner may refuse to grant a permit unless the securities are properly and publicly offered under the federal securities statutes. A suspension or stop order gives rise to Administrative Procedure Act notice and hearing rights. The commissioner may require that records be kept by all securities issuers, may inspect those records, and may require that a prospectus or proxy statement be given to each potential buyer unless the seller is proceeding under federal law.

The commissioner also licenses agents, broker-dealers and investment advisors. Those brokers and advisors without a place of business in the state and operating under federal law are exempt. Deception, fraud or violation of any regulation of the commissioner is cause for license suspension of up to one year or revocation.

The commissioner also has the authority to suspend trading in any securities by summary proceeding and to require securities distributors or underwriters to file all advertising for sale of securities with the Department before publication. The commissioner has particularly broad civil investigative discovery powers; he/she can compel the deposition of witnesses and require production of documents. Witnesses so compelled may be granted automatic immunity from criminal prosecution.

The commissioner can also issue "desist and refrain" orders to halt unlicensed activity or the improper sale of securities. A willful violation of the securities law is a felony, as is securities fraud. These criminal violations are referred by the Department to local district attorneys for prosecution.

The commissioner also enforces a group of more specific statutes involving similar kinds of powers: Franchise Investment Statute, Credit Union Statute, Industrial Loan Law, Personal

Property Brokers Law, Health Care Service Plan Law, Escrow Law, Check Sellers and Cashiers Law, Securities Depositor Law, California Finance Lenders Law and Security Owners Protection Law.

A Consumer Lenders Advising Committee advises the commissioner on policy matters affecting regulation of consumer lending companies licensed by the Department of Corporations. The committee is composed of leading executives, attorneys and accountants in consumer finance.

MAJOR PROJECTS:

Proposed Exemption. On March 10, 1986, Commissioner Tom published a notice of proposed changes concerning the adoption of section 260.105.37 of Title 10 of the California Administrative Code.

Section 260.105.37 was proposed to exempt transactions in certain securities included in the NASO's National Market System from the registration requirements of the law. A significant feature of the proposed exemption required that the outstanding voting securities of an issuer eligible for the exemption meet specified voting rights standards. As indicated in the Initial Statement of Reasons, the proposal arose as a result of a request for regulatory parity between National Market System securities and securities listed on the American Stock Exchange and the New York Stock Exchange. The voting rights standards of the proposed exemption were patterned after the voting rights rules of the New York and American Stock Exchanges. Subsequent to the public notice of the proposed exemption, however, the New York Stock Exchange announced an important amendment to its voting rights standards.

In view of this substantial change, the commissioner solicited additional comments on the concept of the voting rights standards included in proposed rule 260.105.37. The comment period ended on November 28, 1986. Presently, section 260.105.37 is undergoing in-house drafting by the Department.

Proposed Changes to California Credit Union Law Regulations. A public hearing was held by Commissioner Tom on the proposed amendments to section 922, regarding investments, as well as proposed new section 932, regarding investments in fixed assets and service corporations, under the California Credit Union Law (Financial Code section 14000 *et seq.*) (see CRLR Vol. 6,