

Service Bureaus versus Banks

The Comptroller of the Currency's duties are described on page 107 of the US Government Organization Manual, and one sentence in that description has become a source of consternation for computer service bureaus. The sentence reads: "In accordance with statutory direction, the Comptroller of the Currency promulgates regulations governing the operations of national banks in several important fields of activity."

On June 9, 1959 a new regulation by Comptroller Raymond Gidney allowed the Waterbury (Conn.) Bank to set up a data processing center for its own needs and for serving other banks, industries, and businesses in the Waterbury area. This regulation ushered national banks into the competitive field of contract data processing. In the succeeding eight years, the service bureaus have failed to adopt these banks as true brethren, and they are trying now to get the banks removed from the field entirely.

In the first legal action taken against the banks, ADAPSO (the Association for Data Processing Service Organizations) and Data Systems, Inc., Minneapolis, Minn., have filed a lawsuit in the US District Court of Minnesota to have the 1959 ruling declared unlawful. The lawsuit was brought against the Comptroller of the Currency and the American National Bank and Trust Company, of St. Paul.

ADAPSO's lawsuit cites two specific cases in which it claims American National took business away from Data Systems. The customers involved—State Capitol Credit Union and Carlen Industries—had their data processed by the service bureau, then switched to the bank early in 1967. The legal complaint would have the bank stop offering data processing services and would award at least \$100,000 in damages to Data Systems.

Since the service bureaus filed the complaint in June, the ranks of their legal adversaries have been swelled by the Justice Department, acting as council for the Comptroller, and the American Bankers Association, which plans to file an *amicus curiae* (friend of the court) brief. This is the first time in ABA's

history that it has asked to submit such a brief.

"The Association reluctantly decided to take this unprecedented action," said Jack T. Conn, ABA president, "because the suit poses a serious threat to the ability of the commercial banking system to serve the government, industry, commerce, agriculture, and the public, and to make its full contribution to the growth and development of the American economy. We are only in the first stages of the automation revolution, and banks must be able to use the most effective automation equipment during the crucial period in the development of an automated payments mechanism. The ABA feels it should make known to the court its opposition to any action which would handicap or cripple the banking system just when we are entering into this critical period."

When he heard of ABA's action, ADAPSO President Frank Lautenberg said, "We are looking forward to confronting ABA." The ADAPSO president may rejoice over one other thing. His association has been unsuccessful in trying to discover just how much data processing national banks offer to others and how much income they derive from these services. ABA said it will provide statistics on the present activities of the data processing field in its brief. If bank statistics are included, it will be the first time ADAPSO has had a clear look at its competition.

In its complaint to the court, ADAPSO said: "Because of the enormous financial power of national banks and their banking relationships with existing and potential customers for such services, the marketing of such services by national banks threatens ultimately to exclude all ADAPSO members and other independent service organizations from all or a very substantial part of the market for the sale of data processing services."

ADAPSO is now conducting a survey of its own industry that may negate the above claim. Two years ago, an economist hired by one of the larger service bureaus estimated there were more than 2,000 bureaus in this country, but he threw

up his hands at trying to find out the exact number; the industry is too dynamic to measure. A year later a service bureau president said the number of bureaus could double in five years. Then he said they were having their biggest year in 1966, and customers were coming so fast that bureau operators were almost forgetting how to sell their services. These two incidents point to a healthy, growing industry that may not need relief from bank competition, and ADAPSO's own survey may verify the predictions of a rosy future.

But competition may not be the deciding factor in this case. The National Bank Act authorizes banks to exercise "all such incidental powers" necessary to carry on the business of banking. In interpreting "incidental powers" the Comptroller of the Currency has said there is nothing the banks should be prevented from doing as long as it is reasonably related to banking and is not forbidden them by law. Thus, banks act as travel agents, issue credit cards, and process other people's business data. The fact that business is taken away from travel agents, credit bureaus, and service bureaus does not bother the Comptroller, because he feels that it is healthy for the economy to encourage competition.

Against this ADAPSO argues that offering computer services to others is not within a bank's rights. "Although the use and ownership of data processing equipment by a national bank may be incidental to the carrying on of its banking business," ADAPSO said, "making such equipment available to others, or performing data processing services for its customers is nonbanking business, not within the statutory grant of powers, and unlawful."

It is now up to the court to rule on these incidental powers or decide if Data Systems has been injured by the competition of American National. ADAPSO's lawyer hopes that the trial will come up this fall, but several preliminary hearings will probably delay it. If the Minnesota court decides in favor of the service bureaus, a long, legal hassle can be expected. The banks have a lot that

(Continued on page 745)

1966 CR Index Available

The "Comprehensive Bibliography of Computing Literature—Permuted and Subject Index to Computing Reviews, 1966" is now available. Copies have been distributed to all ACM members. The new index is the third volume in the *CR* index series.

With the 1966 Permuted and Subject Index, the scope of coverage is extended. This volume is, in effect, a comprehensive bibliography of pertinent and substantive computing literature that appeared during 1966. (The bibliographic portion contains more than 3300 titles.) At the same time, the Index retains its former annotated quality by having citations keyed to reviews that have appeared in *CR*.

Included for immediate referencing were 1000 titles of items published late in 1966, for which reviews appeared during 1967. Another *CR* service initiated

in this volume is the Reviewer Index, which makes it possible to trace a desired reference if only the reviewer's name is recalled. Further, the editors of *Computing Reviews* are pleased to acknowledge, by means of the Reviewer Index, the faithful work done by all volunteer reviewers.

The 1966 Index to Computing Reviews is available from ACM at \$20. per copy. All orders must be prepaid, with *CR* 1966 Index specified on the orders, and sent to ACM, 211 East 43 st., New York, N.Y. 10017. British Computer Society members who subscribe to other ACM publications are granted a special price of \$7.50

The Permuted and Subject Index to Computing Reviews, I. 1960-1963 and II. 1964-1965, are still available at \$15 each (\$5 to British Computer Society members who subscribe to ACM publications).

Washington Commentary—cont'd

would be at stake—computer capacity that would become excessive if used only for bank business; employees that would not be needed; business that would be lost; even separately incorporated subsidiaries doing considerable nonbanking business that would have to be dropped or cut back. The American Bankers Association is a powerful organization that could marshal strong forces for such a fight.

If the service bureaus lose this court battle, they may well decide to attack the problem through another channel—Congress. Rep. Abraham Multer, of New York, a member of the House Banking Committee, is a staunch believer in banks sticking to bank business. In past years he has held hearings on legislation that would force banks out of the service bureau business, and both ADAPSO and a public accountants' association testified in favor of the bill. If ADAPSO could rally more support for the bill, which has been reintroduced in this Congress as HR 948, the service bureaus might clear the field of competition from banks.

But the bankers have known the ways of Washington for decades, and they carry scars from previous battles. ADAPSO would need lots of stamina to tackle the bankers on Capitol Hill.

ACM Participating in Information Processing Personnel Survey

Questionnaires will be mailed during November to the approximately 70,000 members of eight professional societies that are collaborating on an information processing personnel survey.

According to the survey director, Isaac Nehama, "The lack of information about the number of computers and the types of work they do, our inadequate definition of the skills required for work in the field, and incomplete data on the costs associated with using computers in various applications is a serious deficiency for the orderly advance of the information processing field. This survey is being undertaken as a start toward building a data base for the computing community and the computing industry."

The personnel survey is the first part of a two-part project. The second part will be devoted to defining the elements of a larger data base about computers and computing.

Funding for the project has been obtained from the Advanced Research Projects Agency. AFIPS will serve as executive agent for the project.

The participating societies include the ACM, ADI, AMTCL, DPMA, Computer Group of the IEEE, Numerical Control Society, SCI, and the SLA.

Diesen to Head New Ad Hoc Committee on Public Information

Carl Diesen of the Geological Survey, US Department of the Interior, has been appointed Chairman of a new ACM Ad Hoc Committee on Public Information by A. G. Oettinger, ACM President.

The objective of the Committee is to determine what should be communicated to people who are not ACM members and with what priority, also by what means and by whom.

Weindling New Chairman of ACM Awards Committee

ACM President A. G. Oettinger has appointed Morton Weindling as chairman of the ACM Awards Committee.

At present, ACM's only award activity is the annual naming of a distinguished individual for the Turing Lectureship. The Awards Committee will consider whether ACM should establish additional awards, such as student fellowships in the information sciences area, certificates of merit to members for outstanding services to the Association, etc. The committee will also consider to what extent such a program should relate to or be independent of the AFIPS program.

The ACM Forum to be Repeated

During the Twentieth Anniversary Conference in Washington, a session called the ACM Forum was held. The ACM Executive Committee met with interested members to discuss ACM and to answer questions about the Association's activities and policies. The mutually useful discussion covered a wide range of questions from "How can we make our meetings more effective?" to "What do we get for our \$25.00?"

The ACM Executive Committee has agreed to participate in another ACM Forum during the forthcoming Fall Joint Computer Conference in Anaheim, California. It is scheduled to be held in the Magnolia "B" Room of the Disneyland Hotel at 7:30 P.M. on Thursday evening, November 16th. This meeting is being sponsored by the Southern California Region, with the Orange County Chapter responsible for local arrangements.

Any member who wishes to find out why ACM is as it is, to criticize or compliment ACM and its activities, or to generally air his views, is welcome to attend.