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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242

February 28, 1991

Ms. Mary M. Sjoquist, Esq.
Muldoon, Murphy & Faucette
5101 Wisconsin Avenue, N.W.
Washington, D.C. 20016

RE: Dakota Bancorp, Inc.; A.R.S. § 44-1844(A)(6)

Dear Ms. Sjoquist:

On the basis of the facts set forth in your letter of January 14, 1991 and in reliance upon your opinion as counsel, the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. This position is consistent with prior no-action letters issued to your clients and others. However, the Division is currently analyzing the breadth of the exemption found in A.R.S. § 44-1844(A)(6) and may take a different position on similar facts in the future.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:sw

Enclosure

MULDOON, MURPHY & FAUCETT

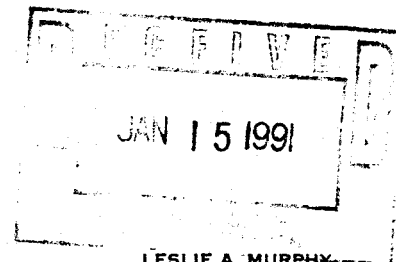
Attorneys at Law

5101 WISCONSIN AVENUE, N.W.

WASHINGTON, D. C. 20016

TELEPHONE (202) 362-0840

TELECOPIER (202) 966-9409



JOSEPH A. MULDOON, JR.
GEORGE W. MURPHY, JR.
DOUGLAS P. FAUCETTE
CHARLES E. SLOANE
JOHN R. HALL
THOMAS J. HAGGERTY*
RICHARD V. FITZGERALD
JOSEPH G. PASSAIC, JR.
JOHN J. GORMAN
RALPH E. FRABLE
JOSEPH P. DALY

OF COUNSEL

MARY V. HARCAR
LEWIS F. MORSE

LESLIE A. MURPHY
ALTHEA R. DAY
LORI M. BERESFORD
JOHN BRUNO
MARY M. SJOQUIST
CHRISTINA M. GATTUSO*
ANN E. COX
CYNTHIA M. KRUS*
WILLIAM E. DONNELLY
BROC M. ROMANEK*

*NOT ADMITTED IN THE
DISTRICT OF COLUMBIA

January 14, 1991

Ms. Dee R. Harris
Director of Securities
1200 West Washington Street
Phoenix, Arizona 85007

FEDERAL EXPRESS

Re: Dakota Bancorp, Inc.
Request for Interpretive or No-Action Letter
concerning the Availability of the Exempt Transaction
found at Section 44-1844 A.6. of the Arizona Revised
Statutes, as amended

Dear Ms. Harris:

This request for an Interpretive or No-Action Letter is filed on behalf of Dakota Bancorp, Inc. ("Holding Company"), located at 109 First Avenue Southeast, Watertown, South Dakota 57201, a newly formed Delaware chartered holding company for First Federal Savings Bank ("First Federal") or the ("Bank"), in connection with a proposed offer and sale of the Holding Company's common stock ("Common Stock"), par value \$.01 per share. The Common Stock is expected to be issued upon the conversion of the Bank from a federally-chartered mutual savings bank to a federally-chartered stock savings bank and upon the issuance of all the Bank's outstanding stock to the Holding Company (the "Conversion") pursuant to the Bank's plan of conversion ("Plan of Conversion").

On September 30, 1990, the Bank (headquartered in Watertown, South Dakota) had assets of approximately \$144 million, deposits of \$129 million and retained earnings of \$12 million. The Bank, a member of the Federal Home Loan Bank System, has its deposits insured by the Federal Deposit Insurance Corporation (the "FDIC") and is subject to extensive regulation by the Office of Thrift Supervision (the "OTS").

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Under its present charter as a mutual savings institution, the Bank has no authority to issue capital stock. The OTS's regulations require the Bank's members (it's depositors and certain borrowers) to approve the Conversion from mutual form to stock charter by a majority vote at a meeting of the members. See 12. C.F.R. Section 563b.6. The Bank will send each member, as of the record date for the meeting, a proxy statement disclosing the effects of the Conversion and soliciting the member's vote. The simultaneous conversion of the Bank to stock form, issuance of the Bank's stock to the Holding Company and offer and sale of Common Stock by the Holding Company are expected to result in the issuance of between 584,375 and 790,625 shares of Common Stock by the Holding Company. The offering price for the Common Stock is \$8.00 per share for an aggregate maximum offering of \$6,325,000.

The shares will be offered in a Subscription Offering to tax-qualified employee plans of the Bank and Holding Company, to the Bank's depositors as of June 30, 1990, to certain other members of the Bank and to officers, directors and employees of the Bank ("Subscription Holders"). Concurrently and subject to the prior rights of Subscription Holders, members of the public, with a preference to natural persons residing in the counties in which the Bank maintains an office, will be offered the opportunity to buy the stock in a Community Offering. The Bank has engaged Capital Resources, Inc. ("Capital Resources"), a broker-dealer registered under the Securities Exchange Act of 1934, to consult with and advise the Holding Company with respect to the Subscription and Community Offering and to solicit subscriptions for shares of Common Stock in the Subscription and Community Offering. Shares may also be offered in the Community Offering by a select group of broker-dealers to be managed by Capital Resources pursuant to a Selected Dealers' Agreement.

The Bank's Application for Approval of Conversion on Form AC and the Holding Company's Registration Statement on Form S-1 (the "Registration Statement") were filed with the OTS and the Securities and Exchange Commission ("SEC"), respectively, on January 2, 1991. The acquisition of the Bank by the Holding Company also requires the approval of the OTS. The Holding Company has filed a Holding Company Application with the OTS seeking such approval. The Bank's Form AC and the Holding Company Application presently are being reviewed by the OTS. The Prospectus to be used in connection with the Subscription and Community Offering (a copy of which is enclosed) is currently being reviewed by the Corporate and Securities Division of the OTS and the Division of Corporation Finance of

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the SEC. All advertising materials to be used in connection with the Offering are subject to approval by the OTS. We anticipate that the Registration Statement will become effective February 12, 1991.

The Proposed Offering in Arizona

The Plan of Conversion of the Bank from a mutual to a stock charter provides for the grant of subscription rights to the Bank's depositors as of June 30, 1990 and certain other borrower members. The non-transferable subscription rights permit the members to purchase shares of Common Stock on a preferential basis over purchasers in the Community Offering. This provision of the Plan of Conversion granting such subscription rights is required under the OTS's conversion regulations. See 12 C.F.R. Section 563b.3(c)(2). Approximately 32 of the Bank's members, with \$336,700 in total deposits, resided in Arizona as of June 30, 1990. The Holding Company desires to offer Common Stock to such members pursuant to their subscription rights. The Bank and Holding Company propose to send directly to each member in Arizona a proxy statement soliciting the member's vote on the Conversion and a prospectus for the Holding Company Common Stock. The Holding Company does not intend to offer Common Stock to residents of Arizona other than such members.

Availability of Section 44-1844 A.6. and Analysis

Section 44-1844 A.6. of the Arizona Revised Statutes, as amended, exempts from the provisions of Sections 44.1841 and 44.1842:

Any transaction or series of transactions incident to a statutory or judicially approved reorganization, merger, triangular member, consolidation, or sale of assets, incident to a vote by securities holders pursuant to the articles of incorporation, the applicable corporate statute or other controlling statute, partnership agreement or the controlling agreement among securities holders.

We believe that the Holding Company's offering in Arizona pursuant to the subscription rights would meet the elements of this exemption.

The Bank as a federally-chartered mutual savings bank must comply with federal law and OTS regulations in effecting the Conversion. Pursuant thereto, the members of the Bank are required to approve the Conversion by majority vote and to

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provide such members with the right to purchase the Holding Company Common Stock in the Conversion. The issuance of the Common Stock will occur concurrently with the Conversion of the Bank to stock form and will be an essential element of the Conversion transaction because net proceeds from the sale of the Holding Company Common Stock will be used to purchase the Bank's newly-issued capital stock.

We believe members of the Bank should be considered security holders within the meaning of that term in Section 44-1844 A.6. Members of the Bank hold certain rights similar to those held by holders of common stock. For example, members vote annually on the Bank's Board of Directors and, in the event of a complete liquidation, each holder of a deposit account in the Bank would receive his or her pro rata shares of any assets in the Bank remaining after payment of claims of all creditors (including the claims of all depositors in the amount of the withdrawal value of their accounts).

The Conversion transaction would satisfy the remaining element of the exemption, i.e., the type of transaction, because the Conversion would constitute a tax-free reorganization under Section 368(a)(1)(F) of the Internal Revenue Code of 1986, as amended, in the opinion of counsel for the Holding Company.

Request

Based on the above reasons, we believe that the Holding Company qualifies to rely on the provision of an exempt transaction provided by Section 44-1844 A.6. On behalf of the Holding Company we respectfully request the issuance of an interpretive letter concluding that the exemption found at Section 44-1844 A.6. may be relied upon by the Holding Company for the offering of Common Stock in Arizona. In lieu thereof, we request a no-action letter from the Division stating that the Division would not recommend enforcement action against the Holding Company should it rely on Section 44-1844 A.6.

Enclosed are ten copies of this letter and a cashier's check in the amount of \$200 payable to the Securities Division Arizona Corporation Commission for the applicable fee, pursuant to Section 44-1861 L.

Although this matter has not been discussed with the Arizona Securities Division, a similar request on behalf of Magna Bancorp, Inc., a transaction identical to the transaction described herein, was filed by John D. Reynolds of this firm on

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November 5, 1990. The Securities Division issued a no-action letter dated December 7, 1990 regarding the request of Magna Bancorp, Inc. indicating that it would not recommend enforcement action if Magna Bancorp, Inc. relied upon Section 44-1844 A.6. of the Arizona Revised Statutes in the offer and sale of its securities to its members located in Arizona. We hereby request the same result on behalf of Dakota Bancorp, Inc.

If I may answer any questions or provide additional information with respect to this request, please contact me, collect, at (202) 362-0840.

Sincerely,

MULDOON, MURPHY & FAUCETTE



Mary M. Sjoquist

MMS/pap

Enclosures

cc: Catherine K. Rochester
Dean D. Gackstetter
Dave M. Muchnikoff