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The Federal Reserve is a Private Financial Institution

Text of court ruling and analysis

By Global Research
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Court Rules Federal Reserve is Privately Owned

Case Reveals Fed's Status as a Private Institution

Below are excerpts from a court case proving the Federal Reserve system's status. As you will see, the court ruled that the Federal Reserve Banks are "independent, privately owned and locally controlled corporations", and there is not sufficient "federal government control over 'detailed physical performance' and 'day to day operation'" of the Federal Reserve Bank for it to be considered a federal agency:

Lewis v. United States, 680 F.2d 1239 (1982)

John L. Lewis, Plaintiff/Appellant,
v.
United States of America, Defendant/Appellee.

No. 80-5905
United States Court of Appeals, Ninth Circuit.
Submitted March 2, 1982.
Decided April 19, 1982.
As Amended June 24, 1982.

Plaintiff, who was injured by vehicle owned and operated by a federal reserve bank, brought action alleging jurisdiction under the Federal Tort Claims Act. The United States District Court for the Central District of California, David W. Williams, J., dismissed holding that federal reserve bank was not a federal agency within meaning of Act and that the court therefore lacked subject-matter jurisdiction. Appeal was taken. The Court of Appeals, Poole, Circuit Judge, held that federal reserve banks are not federal instrumentalities for purposes of the Act, but are independent, privately owned and locally controlled corporations.

Affirmed.

1. United States

There are no sharp criteria for determining whether an entity is a federal agency within

meaning of the Federal Tort Claims Act, but critical factor is existence of federal government control over “detailed physical performance” and “day to day operation” of an entity. . . .

2. United States

Federal reserve banks are not federal instrumentalities for purposes of a Federal Tort Claims Act, but are independent, privately owned and locally controlled corporations in light of fact that direct supervision and control of each bank is exercised by board of directors, federal reserve banks, though heavily regulated, are locally controlled by their member banks, banks are listed neither as “wholly owned” government corporations nor as “mixed ownership” corporations; federal reserve banks receive no appropriated funds from Congress and the banks are empowered to sue and be sued in their own names. . . .

3. United States

Under the Federal Tort Claims Act, federal liability is narrowly based on traditional agency principles and does not necessarily lie when a tortfeasor simply works for an entity, like the Reserve Bank, which performs important activities for the government. . . .

4. Taxation

The Reserve Banks are deemed to be federal instrumentalities for purposes of immunity from state taxation.

5. States Taxation

Tests for determining whether an entity is federal instrumentality for purposes of protection from state or local action or taxation, is very broad: whether entity performs important governmental function.

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Lafayette L. Blair, Compton, Cal., for plaintiff/appellant.

James R. Sullivan, Asst. U.S. Atty., Los Angeles, Cal., argued, for defendant/appellee; Andrea Sheridan Ordin, U.S. Atty., Los Angeles, Cal., on brief.

Appeal from the United States District Court for the Central District of California.

Before Poole and Boochever, Circuit Judges, and Soloman, District Judge. (The Honorable Gus J. Solomon, Senior District Judge for the District of Oregon, sitting by designation)

Poole, Circuit Judge:

On July 27, 1979, appellant John Lewis was injured by a vehicle owned and operated by the Los Angeles branch of the Federal Reserve Bank of San Francisco. Lewis brought this action in district court alleging jurisdiction under the Federal Tort Clains Act (the Act), 28 U.S.C. Sect. 1346(b). The United States moved to dismiss for lack of subject matter jurisdiction. The district court dismissed, holding that the Federal Reserve Bank is not a federal agency within the meaning of the Act and that the court therefore lacked subject matter jurisdiction. We affirm.

In enacting the Federal Tort Claims Act, Congress provided a limited waiver of the sovereign

immunity of the United States for certain torts of federal employees. . . . Specifically, the Act creates liability for injuries "caused by the negligent or wrongful act or omission" of an employee of any federal agency acting within the scope of his office or employment. . . . "Federal agency" is defined as:

> the executive departments, the military departments, independent establishments of the United States, and corporations acting primarily as instrumentalities of the United States, but does not include any contractors with the United States.

28 U.S.C. Sect. 2671. The liability of the United States for the negligence of a Federal Reserve Bank employee depends, therefore, on whether the Bank is a federal agency under Sect. 2671.

[1,2] There are no sharp criteria for determining whether an entity is a federal agency within the meaning of the Act, but the critical factor is the existence of federal government control over the "detailed physical performance" and "day to day operation" of that entity. . . . Other factors courts have considered include whether the entity is an independent corporation . . ., whether the government is involved in the entity's finances. . . ., and whether the mission of the entity furthers the policy of the United States, . . . Examining the organization and function of the Federal Reserve Banks, and applying the relevant factors, we conclude that the Reserve Banks are not federal instrumentalities for purpose of the FTCA, but are independent, privately owned and locally controlled corporations.

Each Federal Reserve Bank is a separate corporation owned by commercial banks in its region. The stockholding commercial banks elect two thirds of each Bank's nine member board of directors. The remaining three directors are appointed by the Federal Reserve Board. The Federal Reserve Board regulates the Reserve Banks, but direct supervision and control of each Bank is exercised by its board of directors. 12 U.S.C. Sect. 301. The directors enact by-laws regulating the manner of conducting general Bank business, 12 U.S.C. Sect. 341, and appoint officers to implement and supervise daily Bank activities. These activites include collecting and clearing checks, making advances to private and commercial entities, holding reserves for member banks, discounting the notes of member banks, and buying and selling securities on the open market. See 12 U.S.C. Sub-Sect. 341-361.

Each Bank is statutorily empowered to conduct these activites without day to day direction from the federal government. Thus, for example, the interest rates on advances to member banks, individuals, partnerships, and corporations are set by each Reserve Bank and their decisions regarding the purchase and sale of securities are likewise independently made.

It is evident from the legislative history of the Federal Reserve Act that Congress did not intend to give the federal government direction over the daily operation of the Reserve Banks:

> It is proposed that the Government shall retain sufficient power over the reserve banks to enable it to exercise a direct authority when necessary to do so, but that it shall in no way attempt to carry on through its own mechanism the routine operations and banking which require detailed knowledge of local and individual credit and which determine the funds of the community in any given instance. In other

words, the reserve-bank plan retains to the Government power over the exercise of the broader banking functions, while it leaves to individuals and privately owned institutions the actual direction of routine.

H.R. Report No. 69 Cong. 1st Sess. 18-19 (1913).

The fact that the Federal Reserve Board regulates the Reserve Banks does not make them federal agencies under the Act. In United States v. Orleans, 425 U.S. 807, 96 S.Ct. 1971, 48 L.Ed.2d 390 (1976), the Supreme Court held that a community action agency was not a federal agency or instrumentality for purposes of the Act, even though the agency was organized under federal regulations and heavily funded by the federal government. Because the agency's day to day operation was not supervised by the federal government, but by local officials, the Court refused to extend federal tort liability for the negligence of the agency's employees. Similarly, the Federal Reserve Banks, though heavily regulated, are locally controlled by their member banks. Unlike typical federal agencies, each bank is empowered to hire and fire employees at will. Bank employees do not participate in the Civil Service Retirement System. They are covered by worker's compensation insurance, purchased by the Bank, rather than the Federal Employees Compensation Act. Employees travelling on Bank business are not subject to federal travel regulations and do not receive government employee discounts on lodging and services.

The Banks are listed neither as "wholly owned" government corporations under 31 U.S.C. Sect. 846 nor as "mixed ownership" corporations under 31 U.S.C. Sect. 856, a factor considered is Pearl v. United States, 230 F.2d 243 (10th Cir. 1956), which held that the Civil Air Patrol is not a federal agency under the Act. Closely resembling the status of the Federal Reserve Bank, the Civil Air Patrol is a non-profit, federally chartered corporation organized to serve the public welfare. But because Congress' control over the Civil Air Patrol is limited and the corporation is not designated as a wholly owned or mixed ownership government corporation under 31 U.S.C. Sub-Sect. 846 and 856, the court concluded that the corporation is a non-governmental, independent entity, not covered under the Act.

Additionally, Reserve Banks, as privately owned entities, receive no appropriated funds from Congress. . . .

Finally, the Banks are empowered to sue and be sued in their own name. 12 U.S.C. Sect. 341. They carry their own liability insurance and typically process and handle their own claims. In the past, the Banks have defended against tort claims directly, through private counsel, not government attorneys . . ., and they have never been required to settle tort claims under the administrative procedure of 28 U.S.C. Sect. 2672. The waiver of sovereign immunity contained in the Act would therefore appear to be inapposite to the Banks who have not historically claimed or received general immunity from judicial process.

[3] The Reserve Banks have properly been held to be federal instrumentalities for some purposes. In United States v. Hollingshead, 672 F.2d 751 (9th Cir. 1982), this court held that a Federal Reserve Bank employee who was responsible for recommending expenditure of federal funds was a "public official" under the Federal Bribery Statute. That statute broadly defines public official to include any person acting "for or on behalf of the Government." . . . The test for determining status as a public official turns on whether there is "substantial federal involvement" in the defendant's activities. United States v. Hollingshead, 672 F.2d at 754. In contrast, under the FTCA, federal liability is narrowly based on traditional agency

principles and does not necessarily lie when the tortfeasor simply works for an entity, like the Reserve Banks, which perform important activities for the government.

[4, 5] The Reserve Banks are deemed to be federal instrumentalities for purposes of immunity from state taxation. . . . The test for determining whether an entity is a federal instrumentality for purposes of protection from state or local action or taxation, however, is very broad: whether the entity performs an important governmental function. . . . The Reserve Banks, which further the nation's fiscal policy, clearly perform an important governmental function.

Performance of an important governmental function, however, is but a single factor and not determinative in tort claims actions. . . . State taxation has traditionally been viewed as a greater obstacle to an entity's ability to perform federal functions than exposure to judicial process; therefore tax immunity is liberally applied. . . . Federal tort liability, however, is based on traditional agency principles and thus depends upon the principal's ability to control the actions of his agent, and not simply upon whether the entity performs an important governmental function. . . .

Brinks Inc. v. Board of Governors of the Federal Reserve System, 466 F.Supp. 116 (D.D.C.1979), held that a Federal Reserve Bank is a federal instrumentality for purposes of the Service Contract Act, 41 U.S.C. Sect. 351. Citing Federal Reserve Bank of Boston and Federal Reserve Bank of Minneapolis, the court applied the "important governmental function" test and concluded that the term "Federal Government" in the Service Contract Act must be "liberally construed to effectuate the Act's humanitarian purpose of providing minimum wage and fringe benefit protection to individuals performing contracts with the federal government." Id. 288 Mich. at 120, 284 N.W.2d 667.

Such a liberal construction of the term "federal agency" for purposes of the Act is unwarranted. Unlike in Brinks, plaintiffs are not without a forum in which to seek a remedy, for they may bring an appropriate state tort claim directly against the Bank; and if successful, their prospects of recovery are bright since the institutions are both highly solvent and amply insured.

For these reasons we hold that the Reserve Banks are not federal agencies for purposes of the Federal Tort Claims Act and we affirm the judgement of the district court.

AFFIRMED.

It is clear from this that in some circumstances, the Federal Reserve Bank can be considered a government "instrumentality", but cannot be considered a "federal agency", because the term carries with it the assumption that the federal government has direct oversight over what the Fed does. Of course it does not, because most people who know about this subject know that the Fed is "politically independent."

The only area where one might disagree with the judge's decision is where he states that the Fed furthers the federal government's fiscal policy, and therefore performs an important governmental function. While we would like to think that the federal government and the Fed work cooperatively with each other, and they may on occasion, the Fed is by no means required to do so. One example is where Rep. Wright Patman, Chairman of the House Banking Committee, said in the Congressional Record back in the '60s, that depending on

the temperament of the Fed's Chairman, sometimes the Fed worked with the government's fiscal policy, and other times either went in the complete opposite direction, or threatens to do so in order to influence policy.

The common claim that the Fed is accountable to the government, because it is required to report to Congress on its activities annually, is incorrect. The reports to Congress mean little unless what the Chairman reports can be verified by complete records. From its founding to this day, the Fed has never undergone a complete independent audit. Congress time after time has requested that the Fed voluntarily submit to a complete audit, and every time, it refuses.

Those in the know about the Fed, realize that it does keep certain records secret. The soon-to-be-former Chairman of the House Banking Committee, Henry Gonzales, has spoken on record repeatedly about how the Fed at one point says it does not have certain requested records, and then it is found through investigation that it in fact does have those records, or at least used to. It would appear that the Fed Chairman can say anything he wants to to Congress, and they'll have to accept what he says, because verification of what he says is not always possible.
