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The Constitution and the Legislature

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Two-thirds Majority Vote to Enact General Banking Laws

Since its adoption in 1857, the Minnesota Constitution has provided that "general banking laws" may only be enacted upon a two-thirds majority vote by the legislature. Minn. Const. art. IV § 26. Based on the language of the original constitution and decisions of the Minnesota Supreme Court, it is clear that this supermajority requirement only applies to laws for "banks of issue"—i.e., laws that authorize banks to issue notes that circulate as money. The legislature has not, by all accounts, considered a bill to enact such a law since some time in the 19th century.

The original constitutional provision authorized the legislature to pass general banking laws by a two-thirds majority vote, but only if the law met five specified conditions. Minn. Const. art. 9 § 13 (1857). Four of these conditions related to notes or bills (money) issued by the bank, while the fifth was a disclosure provision. These conditions clearly imply that "general banking laws" as used in the constitution related only to banks with the power to issue their own circulating notes.

The Minnesota Supreme Court confirmed this interpretation in two cases. *Palmer v. Bank of Zumbrota* stated that the constitutional "provision applies only to a law for organizing banks of issue." 75 N.W.380, 382 (Minn. 1898). Earlier the court had made it clear that "banks of issue" are banks with the power to issue their own notes or currency:

> [W]hile banks of issue may have the power to do all these things, the only franchise or privilege which they possess, aside from the mere right to exist and act as a corporation, is that of issuing their notes for the purpose of circulation as money. It was this right and this class of corporations that the framers of the constitution evidently had in mind in using the term "banking privileges." *International Trust Co. v. American Loan & Trust Co.*, 65 N.W.78, 80 (Minn. 1895).

When the Constitution was adopted in 1857, America was in the "free banking" period during which there was neither a central bank to issue currency nor a national banking act authorizing national banks to issue notes. As a result, state bank notes were typically used as money. Thus, it made sense for Minnesota to authorize chartering of banks with the power to issue notes to be used as money and because of the gravity of this power to subject it to supermajority approval.

This situation changed in the Civil War when Congress authorized national banks to issue notes and provided a strong incentive for state banks to convert to national charters, if they wished to issue notes. To further cement this, Congress in 1865 imposed a 10 percent tax on state bank notes, effectively making them economically impractical. As a result, state banks generally ceased to issue notes. In 1895, the legislature repealed the authority for Minnesota state banks to issue circulating notes. In upholding the constitutionality of this law (for banks chartered under prior law but that had not used the power), the Minnesota Supreme Court observed that it was "a matter of common knowledge" that no "bank in this state has issued bank notes since the establishment of the national banking system." *Seymour v. Greve*, 81 N.W. 1059, 1060 (Minn. 1900).

Enactment of the Federal Reserve Act in 1913 effectively transferred the function of creating money to a true central bank. That act imposed a tax on notes issued by national banks and restricted available collateral for them, which started a process that made those notes obsolete (other than for collectors) as well.

In 1974, the Minnesota Constitution was restructured by the legislature and the voters. This restructuring dropped the five conditions imposed on general banking laws, while retaining the two-thirds majority requirement. 1974 Minn. Laws 795, 810, ch. 409 § 1. The drafters of the 1974 constitutional amendment likely considered the five conditions to be obsolete, since no state bank had issued circulating notes in over 100 years and the authorizing laws had long been repealed. (One might wonder if the two-thirds vote requirement could not also have been deleted from the constitution by the 1974 amendment. Two years later Congress repealed the 1865 federal tax on state bank notes, likely on the theory that no notes would ever be issued again. Pub. L. 94-455, § 1904(a)(18).) In any case, the 1974 amendment did not change the limitation of the supermajority requirement to laws organizing banks of issue, since by its terms it did not make "consequential changes" in the constitution. *Id.* at 819, § 3.

Because private American banks have not issued circulating notes for over a century and the Minnesota legislature is unlikely to consider reauthorizing banks to do so, the two-thirds majority vote requirement has little practical application.