

Bank Snoop

Legislation

Ruled Illegal

SFChronicle

By William Cooney

Congress went too far in requiring banks to report all financial transactions of their customers to the government, a three-judge federal court ruled here yesterday.

But while holding the reporting of domestic transactions unconstitutional, the judges also ruled that banks must report foreign money transactions and also that banks must keep comprehensive, detailed records of all money transactions.

The preliminary injunction they issued barring reporting of domestic banking transactions is effective nationwide.

EFFECT

The decision, written by U.S. District Judge William T. Sweigert, narrows his temporary restraining order, which had prohibited reporting of foreign money transactions, also.

Both orders require the bank to keep the voluminous records called for in the so-

See Back Page

SURY

BANK SNOOP RULING

From Page 1

called Bank Secrecy Act which was effective in July — including the micro-filming of all checks and currency transactions whenever ordered by the Secretary of the Treasury.

“... We are of the opinion,” said the decision, “that the Act in question, insofar as it authorizes the Secretary (of the Treasury) to require virtually unlimited reporting from banks and their customers of domestic financial transactions as a surveillance device for the alleged purpose of discovering possible, but unspecified, wrongdoing among the citizenry, so far transcends the constitutional limits . . . as to unreasonably invade the right of privacy protected by the Bill of Rights. . . .”

RIGHTS

Particularly violated, the judges said, is the Fourth Amendment, protecting “the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures.”

Sweigert was joined in the decision by U.S. District Judge William G. East. The

third jurist, U.S. Court of Appeals Judge O. D. Hamlin, dissented to the part of the decision holding unconstitutional the domestic reporting of records by banks.

“As I see it, there is no essential difference between the statutes covering domestic and those covering foreign banking requirements,” Judge Hamlin wrote.

He added that “any person or organization using banks for their own purposes does so knowing that the Code sections in question permit access to bank records by the government and reports by the banks concerning those records.

“Courts should be slow in finding a Congressional enactment unconstitutional.”

ACCORD

All three jurists agreed there is a distinct difference between foreign and domestic banking transaction reporting, and found the requirement concerning foreign banking to be constitutional.

The act was challenged by the American Civil Liberties Union, the California Bankers' Association and by individual depositors.

Bankers objected to the burden of the additional record keeping and to being forced to disclose information about their customers' private transactions.

The ACLU said the Act would allow government agents to get information about groups and individuals which has been barred from obtaining, such as who donates how much to organizations and who are the members of organizations.

BANKER

East Bay banker Fortney H. (Pete) Stark, now a candidate for Congress from the Eighth District, joined the ACLU in the action.

Of the decision, Stark said yesterday: “I think that in their zeal to catch criminals, the government simply overlooked how much it was trampling on the democratic process.

“I would hope that credit would be given to (Chronicle reporter) Mike Harris, because he's the one who first brought this action to public attention.”

ASSOCIATION

Andrew J. Shepard, president of the California Bankers Association, said his group “believed that the record keeping and reporting requirements would have been a gigantic first step in turning on the electronic eye of 1984.”

He believes his group will now try to eliminate the record keeping requirements, he said.

“As to the foreign provisions of the act,” Shepard said, “we agree that measures are necessary to eliminate the illegal flow of funds overseas.”