



California Corporate & Securities Law

Don't Talk Trash About A California Bank

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A bank run can start with a rumor. Once a run has begun, it can be very hard to stop, as was described in this 1986 *Los Angeles Times* [article](#) .

The Department of Financial Institutions has observed that some California banks recently have been victimized by rumors. As a result, the Department issued a warning in its September Monthly Bulletin that it would take action against rumormongers. The Department noted that California Financial Code § 756 provides in relevant part:

(a) Any person who willfully and knowingly makes, circulates, or transmits to another or others, any statement or rumor, written, printed, or by word of mouth, which is untrue in fact and is directly or by inference derogatory to the financial condition or affects the solvency or financial standing of any bank doing business in this state . . . is guilty of a misdemeanor punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment for not more than one year, or both.

The Department further noted that a virtually identical provision of law applies to false statements regarding credit unions. Cal. Fin. Code § 14051. Laws against spreading rumors about banks appear to have been around for some time, as evidenced by this 1907 *New York Times* [article](#).

I'm not aware of anyone who has actually been convicted pursuant to either California statute. Moreover, it seems that prosecution would invite a claim that the statute violates the First Amendment of the U.S. Constitution and Article I, § 2(a) of the California Constitution. That is what happened with a similar Nevada statute, NRS 668.105.

When members of the Culinary Workers Union Local 226 began circulating handbills critical of Commercial Bank of Nevada, the Nevada Attorney General sent a warning letter to the union. The union stopped distributing the handbill and filed suit, arguing that NRS 668.105 was unconstitutional on its face and as applied to the union. The District Court granted a temporary restraining order and the Attorney General successfully moved to dismiss on the basis of the lack of any case or controversy. On appeal, the Ninth Circuit Court of Appeals concluded that the District Court had erred in dismissing the suit. *Culinary Workers Union Local 226 v. Frankie Sue Del Pappa*, 200 F.3d 614 (1999). Apparently, the suit was then dropped after the Attorney General assured the union that there would be no enforcement of the statute. See [Minutes of the](#)

Please contact [Keith Paul Bishop](#) at Allen Matkins for more information kbishop@allenmatkins.com

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Nevada Senate Committee on Commerce and Labor. Two years later, the Legislature repealed the statute at the urging of the union's attorney. *Id.*

While there are similarities between the Nevada statute and the California statutes, there is at least one important difference. California's statutes criminalize only statements that are untrue in fact. Thus, they reach false rumors but not rumors that are true. As Winston Churchill once said "There are a terrible lot of lies going about the world, and the worst of it is that half of them are true."

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