

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
Ericson State Bank)	FINDINGS OF FACT
427 Central Avenue)	
Ericson, Nebraska, and)	CONCLUSIONS OF LAW
Its Officers and Directors;)	
)	AND
Wheeler County Bancshares, Inc.)	
427 Central Avenue)	CONSENT ORDER
Ericson, Nebraska, and)	
Its Officers and Directors)	

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Nebraska Banking Act, Neb. Rev. Stat. §§ 8-101.02 to 8-1,140 (Reissue 2012; Cum. Supp. 2018; LB 258 (2019)) (“the Act”).

The Department has investigated matters surrounding Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, and Wheeler County Bancshares, Inc. As a result of such investigation, and being duly advised and informed in the matter, the Director of the Department, Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, and Wheeler County Bancshares, Inc. enter into the following Findings of Fact, Conclusions of Law, and Consent Order.

FINDINGS OF FACT

1. Ericson State Bank, 427 Central Avenue, Ericson, Nebraska (“Ericson”), is a Nebraska state-chartered bank. Ericson is under the supervision of the Department.
2. Wheeler County Bancshares, Inc., 427 Central Avenue, Ericson, Nebraska (“Wheeler”), is the majority shareholder of Ericson. Wheeler is a one-bank holding company,

subject to the Nebraska Bank Holding Company Act of 1995 (Neb. Rev. Stat. §§ 8-908 to 8-918 (Reissue 2012; Cum. Supp. 2018)).

3. Wheeler, as the holding company of Ericson, is registered with the Department pursuant to Neb. Rev. Stat. § 8-913 (Reissue 2012).

4. Jack L. Poulsen is the President of Ericson, and is a member of the Board of Directors of Ericson. Jack L. Poulsen holds an Executive Officer's License from the Department. Jack L. Poulsen is policy dominant of Ericson.

5. Debra L. Poulsen is the Information Technology Officer and Loan Secretary of Ericson, and is a member of the Board of Directors of Ericson.

6. Jack L. Poulsen and Debra L. Poulsen each own fifty percent (50%) of the stock of Wheeler, and are officers of Wheeler and members of the Board of Directors of Wheeler.

7. The Federal Deposit Insurance Corporation ("FDIC") is Ericson's primary federal regulator.

8. An examination of Ericson commenced on April 29, 2019, to determine the condition of Ericson as of March 31, 2019 ("2019 Examination").

9. A previous examination of Ericson was conducted by the Department in October 2017 ("2017 Examination").

10. The 2019 Examination revealed that Ericson's condition had significantly deteriorated since the 2017 Examination, due in large part to Ericson being operated without regard for laws, regulations, prudent banking policies, and practices.

11. The Department attended a meeting with the Ericson Board of Directors on May 29, 2019, regarding findings from the 2019 Examination. Ericson was represented by counsel at the meeting. The Department learned that there were significant violations of the statutory lending

limits contained in Neb. Rev. Stat. § 8-141 (Cum. Supp. 2018); that Jack L. Poulsen had personally made, or was directly responsible for, many of the loans, lines of credit, and overdrafts that were in violation of the law, and which were adversely affecting the safety and soundness of Ericson. A substantial number of the violations involve a relative of Jack L. Poulsen and Debra L. Poulsen, and the relative's business interests (hereinafter referred to as "insider-related"). Department representatives at the meeting recall that Jack L. Poulsen stated during the meeting that he was aware that his actions, when taken, with respect to certain borrowers were, or would be, in violation of the lending limits. Department representatives at the meeting also recall that the Ericson Board of Directors was warned that no further advances of credit were to be made to borrowers whose loans were in excess of the lending limit.

12. On August 26, 2019, Department Examiners served a document production subpoena on Ericson, and a document production subpoena on Wheeler.

13. Based on the information obtained through the subpoenas, Department Examiners determined that Ericson had significant lending limit violations. Department Examiners discovered that some lending limit violations had substantially increased in size through increases in operating lines of credit, additional advances, and/or payment of overdrafts since the May 29, 2019 meeting detailed in Finding of Fact No. 11.

14. Department Examiners determined that as of August 26, 2019, maturity dates on loans had been extended multiple times without formal documentation; borrowers' financial information was inadequate; collateral for loans was either non-existent or poorly documented and managed, and deposit accounts, including those held by insider-related parties, are frequently and substantially overdrawn.

15. Department Examiners determined that a loan to an insider-related party has continuously been in excess of the statutory lending limit since November 2017, or approximately one month after the 2017 Examination. Department Examiners further determined that since May 29, 2019, Jack L. Poulsen made multiple advances to the insider-related party and charged off a portion of the insider-related borrowings.

16. Department Examiners determined that Jack L. Poulsen and Debra L. Poulsen have personally, or through Wheeler, made payments on at least one loan Ericson made to an insider-related party.

17. The minutes of the meetings of the Ericson Board of Directors show that the statutory lending limit applicable to Ericson at the time of each meeting was noted. The minutes further show that the Board of Directors were provided a corresponding report titled “Loan Aggregate Indebtedness Report” at each meeting which listed balances in excess of the legal lending limit. The minutes showed the Board of Directors of Ericson took no action to address the violations or to prohibit and prevent further violations, and has taken no action since May 29, 2019, to address new violations or to prohibit and prevent further violations despite the warning referenced in Finding of Fact No. 11.

18. Counsel for Ericson has presented information and legal arguments to the Department indicating the lending limit violations are fewer in number and less in dollar volume than that shown in the 2019 Examination Report. In response, the Department indicated only that it would consider counsel’s comments, but that the Department does not comment on pending examinations in which the Department is not jointly a participant.

19. The Department incurred a minimum of Twenty Thousand Dollars (\$20,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. The Nebraska Banking Act and the Nebraska Bank Holding Company Act of 1995 provide the Department with regulatory authority over state-chartered banks, state-registered bank holding companies, and officers and directors of those entities.

2. Neb. Rev. Stat. § 8-139 (Cum. Supp. 2018) provides that executive officers of banks “shall be persons of good moral character, known integrity, business experience and responsibility, and be capable of conducting the affairs of a bank on sound banking principles.” Section 8-139 further provides that the Director of the Department may revoke or suspend the license of an executive officer upon determining that the officer is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors of the bank.

3. Based on the Findings of Fact set forth above, the Director could conclude Jack L. Poulsen no longer meets the standards of Section 8-139 to hold an executive officer’s license. The Director could further conclude that Jack L. Poulsen is conducting the business of Ericson in an unsafe or unauthorized manner and/or is endangering the interests of the stockholders or depositors of the bank. The Director could therefore conclude that the executive officer’s license held by Jack L. Poulsen should be revoked or suspended.

4. Neb. Rev. Stat. § 8-126 (Cum. Supp. 2018) provides that directors of banks “shall be persons of good moral character, known integrity, business experience, and responsibility,” and must be approved by the Department. Section 8-126 further provides that the Department has the right to revoke its approval for any person to act as a member of a bank’s board of directors, if, after notice and opportunity for hearing, the Department determines that said director of a

bank is conducting the business of the bank in an unsafe or unauthorized manner or is endangering the interests of the stockholders or depositors.

5. Based on the Findings of Fact set forth above, the Director could conclude Jack L. Poulsen no longer meets the standards of Section 8-126 to act as a director of a bank. The Director could further conclude that Jack L. Poulsen is conducting the business of Ericson in an unsafe or unauthorized manner and/or is endangering the interests of the stockholders or depositors of Ericson. The Director could therefore conclude that he should commence proceedings to revoke the Department's approval of Jack L. Poulsen to act as a member of the Board of Directors of Ericson.

6. Based on the Findings of Fact set forth above, the Director could conclude Debra L. Poulsen no longer meets the standards of Section 8-126 to act as a director of a bank. The Director could further conclude that Debra L. Poulsen is conducting the business of Ericson in an unsafe or unauthorized manner and/or is endangering the interests of the stockholders or depositors of Ericson. The Director could therefore conclude that he should commence proceedings to revoke the Department's approval of Debra L. Poulsen to act as a member of the Board of Directors of Ericson.

7. Neb. Rev. Stat. § 8-918 (Reissue 2012) provides that if the Department determines that an officer or director of a bank holding company owning or controlling a state-chartered bank is conducting the business of the holding company or the business of its subsidiary state-chartered bank in an unsafe or unauthorized manner or is endangering the interest of the holding company or the interest of its subsidiary bank, the Department has the right, after notice and opportunity for hearing, to remove such officer or director of the bank holding company from

acting in such capacities for the holding company, and the further right to impose fines and order any other corrective action pursuant to Neb. Rev. Stat. §§ 8-1,134 to 8-1,139 (Cum. Supp. 2018).

8. Based on the Findings of Fact set forth above, the Director could conclude Jack L. Poulsen is conducting the business of Wheeler and/or the business of its subsidiary, Ericson, in an unsafe or unauthorized manner and/or is endangering the interest of Wheeler and/or the interest of Ericson. The Director could therefore conclude that he should commence proceedings to remove Jack L. Poulsen from acting as an officer or as a member of the Board of Directors of Wheeler pursuant to Neb. Rev. Stat. § 8-918 (Reissue 2012).

9. Based on the Findings of Fact set forth above, the Director could conclude Debra L. Poulsen is conducting the business of Wheeler and/or the business of its subsidiary, Ericson, in an unsafe or unauthorized manner and/or is endangering the interest of Wheeler and/or the interest of Ericson. The Director could therefore conclude that he should commence proceedings to remove Debra L. Poulsen from acting as an officer or as a member of the Board of Directors of Wheeler pursuant to Neb. Rev. Stat. § 8-918 (Reissue 2012).

10. Neb. Rev. Stat. § 8-1,134 (3) (Cum. Supp. 2018) provides that if the Director of the Department finds that an emergency exists requiring immediate action to protect the safety and soundness of a financial institution chartered by the Department, the Director may, without notice or hearing, issue an emergency order requiring that such action be taken as the Director deems necessary to meet the emergency. Such an emergency order would be effective immediately, and any person to whom it is directed must comply immediately. Section 8-1,134 provides the opportunity for a post-order hearing.

11. Based on the information obtained and discovered by Department Examiners as set forth in Findings of Fact Nos. 12 through 17, above, the Director of the Department could

conclude that an emergency exists requiring immediate action to protect the safety and soundness of Ericson, and that an emergency order should be issued in this matter requiring immediate action as the Director deems necessary.

12. Neb. Rev. Stat. § 8-1,134 (Cum. Supp. 2018) sets forth actions the Director of the Department may take if he has reason to believe a violation of Chapter 8 of the Nebraska Statutes, or a violation of the rules, regulations, or orders of the Director has occurred. Section 8-1,134(2) authorizes the Director to impose a fine up to ten thousand dollars per violation for the first offense, and up to twenty-five thousand dollars per violation for a second or subsequent violation of the same provision of Chapter 8, or of the rules, regulations, or order of the Director.

13. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that Jack L. Poulsen has violated the provisions of Chapter 8 of the Nebraska Statutes, and that an administrative fine for each separate violation plus costs of investigation could be imposed on him personally in accordance with Neb. Rev. Stat. § 8-1,134 (Cum. Supp. 2018).

14. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that Debra L. Poulsen has violated the provisions of Chapter 8 of the Nebraska Statutes, and that an administrative fine for each separate violation plus costs of investigation could be imposed on her personally in accordance with Neb. Rev. Stat. § 8-1,134 (Cum. Supp. 2018).

15. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that Ericson, by and through its officers, managers, and Board of Directors, has violated the provisions of Chapter 8 of the Nebraska Statutes, and that an

administrative fine for each separate violation plus costs of investigation could be imposed on Ericson in accordance with Neb. Rev. Stat. § 8-1,134 (Cum. Supp. 2018).

16. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that Wheeler, by and through its officers and Board of Directors, has violated the provisions of Chapter 8 of the Nebraska Statutes and that an administrative fine for each separate violation plus costs of investigation could be imposed on Wheeler in accordance with Neb. Rev. Stat. § 8-1,134 (Cum. Supp. 2018).

17. Jack L. Poulsen, Debra L. Poulsen, Ericson, and Wheeler have due process rights, including, but not limited to, those discussed above in these Conclusions of Law, as well as procedural and substantive rights set forth in the Nebraska Administrative Procedure Act.

18. Under the statutory framework of the Nebraska Banking Act and the Nebraska Bank Holding Company Act of 1995, the Director has the legal and equitable authority to fashion significant remedies.

19. It is in the best interest of Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, Wheeler County Bancshares, Inc., and in the best interest of the public for Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, Wheeler County Bancshares, Inc., and the Department to resolve the issues included herein.

STIPULATIONS

In connection with this Consent Order, Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, Wheeler County Bancshares, Inc., and the Director stipulate to the following:

1. The Department has jurisdiction as to all matters herein.
2. This Consent Order shall resolve all matters between Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, Wheeler County Bancshares, Inc., and the Department, in

connection with the Findings of Fact set forth above except as specifically referenced in this Consent Order. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action or actions that the Department deems reasonable and necessary.

3. This Consent Order shall be in lieu of all other proceedings available to the Department except as specifically referenced in this Consent Order.

4. Jack L. Poulsen, Debra L. Poulsen, Ericson, and Wheeler acknowledge that the Department will make an administrative determination regarding the actions of Jack L. Poulsen, Debra L. Poulsen, and any other officer or director of Ericson or Wheeler, pursuant to Neb. Rev. Stat. § 8-142 (Reissue 2012), and further acknowledge that the Department will refer any and all matters relating to lending limit violations to the Attorney General for the State of Nebraska. The Section 8-142 administrative determination is not stayed, stopped, or foregone due to this Consent Order.

5. If, at any time, the Department determines that Jack L. Poulsen, Debra L. Poulsen, Ericson, or Wheeler, either individually or collectively, has committed any other violation of the Nebraska Banking Act, the Nebraska Bank Holding Company Act of 1995, or any other law, rule, regulation, or order applicable to Ericson's business or Wheeler's business, the Department may take any action available to it under the law.

Jack L. Poulsen, Debra L. Poulsen, Ericson, and Wheeler further represent as follows:

1. Each of the named parties is aware of his, her, or its right to a hearing on these matters at which he, she, or it may be represented by counsel, present evidence, and cross-examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. Each of the named parties is acting free from any duress or coercion of any kind or nature.

3. This Consent Order is executed to avoid further administrative proceedings by the Department and does not constitute an admission of a violation or violations of the Nebraska Banking Act or the Nebraska Bank Holding Company Act of 1995.

4. Jack L. Poulsen, Debra L. Poulsen, Ericson State Bank, and Wheeler County Bancshares, Inc., by their signatures below, agree to the issuance of the following Consent Order.

CONSENT ORDER

IT IS THEREFORE ORDERED:

1. Jack L. Poulsen will resign from, and leave, his officer positions with Ericson no later than October 1, 2019. On the date Jack L. Poulsen ends his employment with Ericson, except as otherwise agreed by the Department, he will surrender all Ericson equipment, keys, access codes, access cards, devices to any bank related facility, building, or any and all computer accounts, and all other tangible and intangible property that belongs to Ericson that is in his possession.

2. Following Jack L. Poulsen's termination of employment from Ericson, he will not influence or attempt to influence Ericson operations or activities, except as otherwise provided in this Consent Order or as otherwise agreed by the Department. After his departure date, the successor President or Chief Executive Officer of Ericson will accompany him at all times while he is in the offices of Ericson or Wheeler, except as otherwise agreed by the Department.

3. Jack L. Poulsen will surrender his Executive Officer's License to the Department for cancellation with prejudice on or before October 1, 2019.

4. The Ericson Board of Directors will hire a temporary or permanent replacement for the officer positions held by Jack L. Poulsen no later than October 1, 2019.

5. Debra L. Poulsen will resign from, and leave, her employment positions with Ericson no later than October 15, 2019. On the date Debra L. Poulsen ends her employment with Ericson, except as otherwise agreed by the Department, she will surrender all bank equipment, keys, access cards, access codes, devices to bank related facility, building, or any and all computer accounts, and all other tangible and intangible property that belongs to Ericson that is in her possession.

6. Following Debra L. Poulsen's termination of employment with Ericson, she will not influence or attempt to influence Ericson operations or activities, except as otherwise provided in this Consent Order or as otherwise agreed by the Department. After her departure, the successor President or Chief Executive Officer of Ericson will accompany her at all times while she is in the offices of Ericson or Wheeler, except as otherwise provided in this Consent Order or as otherwise agreed by the Department.

7. The Ericson Board of Directors will find a temporary or permanent replacement for Debra L. Poulsen's employment position no later than October 15, 2019.

8. The Ericson Board of Directors will find permanent employee/officer replacements for the positions held by Jack L. Poulsen and Debra L. Poulsen, and shall do so no later than December 1, 2019.

9. The Department must approve all temporary and permanent officer and employee hires for Ericson, whether or not such positions were held by Jack L. Poulsen or Debra L. Poulsen.

10. Neither Jack L. Poulsen nor Debra L. Poulsen will receive any compensation, including expense reimbursements, after their respective departure dates, unless the Department gives prior written approval of any such payment.

11. Any end of employment paychecks for Jack L. Poulsen and/or Debra L. Poulsen shall be no greater than the amount of salary that was paid to each, respectively, on August 31, 2019, plus any additional amounts that are required to be paid pursuant to the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. §§ 48-1228 to 48-1234 (Reissue 2010; Cum. Supp. 2018; LB 359 (2019)), unless the Department gives prior written approval of such other compensation amount.

12. Neither Jack L. Poulsen nor Debra L. Poulsen shall remove any personal property from Ericson unless accompanied by Ericson's new President or Chief Executive Officer who must witness all personal property removed. A detailed written inventory of all items removed shall be kept by Ericson and be available for Department Examiner review.

13. Jack L. Poulsen will resign from the Ericson Board of Directors by October 1, 2019.

14. The Ericson Board of Directors will find a permanent replacement for Jack L. Poulsen on the Ericson Board of Directors no later than January 1, 2020.

15. Debra L. Poulsen will resign from the Ericson Board of Directors by October 15, 2019.

16. The Ericson Board of Directors will find a permanent replacement for Debra L. Poulsen on the Ericson Board of Directors no later than January 1, 2020.

17. Ericson will submit the name of each candidate for temporary and/or permanent membership on the Ericson Board of Directors to the Department for approval. Ericson

acknowledges that no person may act as a member of the board of directors of a bank prior to receiving Department approval.

18. Ericson shall make written monthly Status Reports to the Department until directed otherwise by the Department. The Status Reports shall include actions taken to resolve the violations of laws and regulations listed in the 2019 Examination Report, and shall further include the name and address of each individual contacted to fill positions on the Board of Directors. The first Status Report shall be due October 10, 2019, and then monthly thereafter.

19. This Consent Order does not change ownership interests of any shareholder of Ericson or Wheeler.

20. No dividends may be paid by Ericson or Wheeler without the prior written consent of the Department.

21. Jack L. Poulsen and Debra L. Poulsen will establish a trust or trusts to hold all of their voting stock of Ericson and/or Wheeler. The Department will approve any such trust or trusts. Neither Jack L. Poulsen nor Debra L. Poulsen may vote shares of stock in the voting stock trust or trusts, except as otherwise provided in this Consent Order. In the alternative to establishing a voting stock trust, Jack L. Poulsen and/or Debra L. Poulsen may issue an irrevocable proxy or proxies for all of their voting stock of Ericson and/or Wheeler. The Department must give written prior approval of any trustee selected or proxy designation. The provisions of this Paragraph No. 21 must be completed no later than November 1, 2019; provided, however, that if the implementation of this Paragraph 21 requires approval of the Board of Governors of the Federal Reserve System and/or the Federal Reserve Bank of Kansas City (together, the "Federal Reserve"), then the deadline for implementing this Paragraph No. 21 shall be extended until such

time as the approval of the Federal Reserve is obtained, so long as all necessary notices and applications are filed with the Federal Reserve by October 15, 2019.

22. Notwithstanding any restrictions to the voting of stock set forth in this Consent Order, Jack L. Poulsen and/or Debra L. Poulsen may vote stock which they own individually or jointly in regards to the sale of Ericson.

23. Jack L. Poulsen and/or Debra L. Poulsen may attend Ericson Board of Director meetings in an observer capacity only, provided that a majority of the members of the Board of Directors, at each meeting, votes to approve Jack L. Poulsen's and/or Debra L. Poulsen's presence at the meeting, and such votes are recorded in the minutes of each meeting of the Board of Directors.

24. Neither Jack L. Poulsen nor Debra L. Poulsen shall, from the effective date of this Consent Order until they leave employment with Ericson, directly or indirectly, make any loan over \$25,000.00 without the prior written approval of the Department.

25. Neither Jack L. Poulsen nor Debra L. Poulsen shall, from the date of this Consent Order until they leave employment with Ericson, directly or indirectly, approve or pay any overdraft over \$5,000.00 without the prior written approval of the Department.

26. Neither Jack L. Poulsen nor Debra L. Poulsen shall, from the date of this Consent Order until they leave employment with Ericson, directly or indirectly, make any advance over \$25,000.00 on any line of credit without the prior written approval of the Department.

27. As of the Effective Date of this Order, Ericson shall make no loan, approve any overdraft, advance funds on any line of credit, or renew or extend any loan or line of credit, to any Poulsen family member or any business interest of any Poulsen family member without the prior written approval of the Department.

28. Ericson shall make no loan, approve or pay any overdraft, advance funds on any line of credit, or renew or extend any loan or line of credit, to or for any person whose loan or line of credit was adversely classified during the 2019 Examination without the prior written approval of the Department.

29. Employees of Ericson shall be informed of the actions listed in this Consent Order. Employees shall be specifically notified of the restrictions placed on Jack L. Poulsen and Debra L. Poulsen regarding their access to the bank building and to accounts.

30. Ericson shall submit reports and matters requiring Department approval under this Consent Order to its assigned Departmental Review Examiner, and may make such submissions electronically, unless otherwise instructed by the Department.

31. Ericson shall pay the Department's costs of investigation in the amount of Twenty Thousand Dollars (\$20,000.00) by check or money order, payable to the Nebraska Department of Banking and Finance, and shall do so within seven (7) business days of the effective date of this Consent Order.

32. The effective date of this Consent Order will be the date of the Director's signature.

DATED this 23 day of September, 2019.



**STATE OF NEBRASKA
DEPARTMENT OF BANKING AND FINANCE**

By: Mark Quandahl
Mark Quandahl, Director

1526 K Street, Suite 300
Lincoln, Nebraska 68508
(402) 471-2171

AGREED TO BY:

Dated this 23rd day of September, 2019.

JACK L. POULSEN


By: 
Jack L. Poulsen, Individually

722 Michigan Avenue
Ericson, Nebraska 68637

AGREED TO BY:

Dated this 23rd day of September, 2019.

DEBRA L. POULSEN


By: 
Debra L. Poulsen, Individually

722 Michigan Avenue
Ericson, Nebraska 68637

AGREED TO BY:

Dated this 23rd day of September, 2019.

ERICSON STATE BANK

By: 
Jack L. Poulsen
President

427 Central Avenue
Ericson, Nebraska 68367

AGREED TO BY:

Dated this 23rd day of September, 2019.

WHEELER COUNTY BANCSHARES, INC.

By: 

Jack L. Poulsen
Chairman and President

427 Central Avenue
Ericson, Nebraska 68367