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SECURITY OF NATIONAL BANKS FOR DEPOSITS OF  
PUBLIC MONEYS

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L E T T E R

FROM

THE SECRETARY OF THE TREASURY

TRANSMITTING

A DRAFT OF A BILL TO AMEND SECTION 5153 OF THE REVISED  
STATUTES, DESIGNED TO CLARIFY THE SITUATION WITH RE-  
SPECT TO THE GIVING OF SECURITY BY NATIONAL BANKS FOR  
DEPOSITS OF PUBLIC MONEYS

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APRIL 26 (calendar day, APRIL 28), 1934.—Referred to the Committee on  
Banking and Currency and ordered to be printed

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APRIL 27, 1934.

MY DEAR MR. PRESIDENT: I have the honor to forward herewith  
a draft of a bill to amend section 5153 of the Revised Statutes, de-  
signed to clarify the situation with respect to the giving of security  
by national banks for deposits of public moneys.

This matter has been the subject of an exhaustive study, and the  
enactment of the proposed legislation is recommended by the Compt-  
roller of the Currency. I am forwarding herewith a copy of excerpts  
from a memorandum forwarded to me by him.

If you deem it advisable, it will be appreciated if these proposals  
can be submitted for consideration through the appropriate channels.

Respectfully yours,

H. MORGENTHAU, JR.,  
*Secretary of the Treasury.*

Hon. JOHN N. GARNER,  
*President United States Senate.*

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Attached hereto is text of proposed amendment to section 5153 of  
the Revised Statutes, as amended (U.S.C., title 12, sec. 90), which  
amendment relates to the designation of depositaries of public money

by the Secretary of the Treasury and the giving of security by national banking associations for deposits of public money of the United States and for various other types of deposits made by public officials, consisting of money for which they are accountable under the law by virtue of their official capacity. The essential respects in which this amendment changes the present law is in that it eliminates doubt under recent decisions as to the power of national banks to give security for the protection of deposits of public money belonging to various Government agencies or of money deposited thereby where they are accountable for such money by reason of the official capacity in which held.

The amendment operates with similar effect as to deposits by officers, agents, or employees of the States, Territories, or insular possessions or any public instrumentality or agency thereof, where the depositing official is charged with the custody of and is accountable for such money by virtue of his official position. Provision is made that security heretofore given for the various types of deposits referred to shall be deemed validly given except where heretofore determined to be in violation of the act of June 25, 1930.

There is urgent necessity for the prompt enactment of this legislation, due to recent decisions of the Supreme Court of the United States, particularly two decisions rendered February 5, 1934, in *City of Marion, Illinois, v. Sneeden, Receiver*, and *Texas and Pacific Railway Company v. Pottorff, Receiver*, in which the Court took the position that national banks have no implied power to give security for deposits of public money, notwithstanding the fact that for more than 60 years national banks have been giving such security with the approval of the Comptroller of the Currency, in conformance to the views expressed by the Attorney General of the United States (in 30 Ops. Atty. Gen. 341), to the effect that the section being amended "is more reasonably construed as a recognition of the existence of the power on the part of national banks to give security for deposits than as a grant by implication or authority to give security for Government deposits alone." A large number of national banks have been placed in the hands of receivers in the past 3 years. Almost all of these banks held deposits of public money for which security had been pledged. Millions of dollars in such deposits belonging to the Philippine Islands, the United States Shipping Board, Emergency Fleet Corporation, United States Housing Corporation, and similar entities were on deposit in these banks under a contract, whereby the bank had pledged collateral security therefor. These pledges were considered valid by this office and these agencies permitted to avoid loss of such deposits through realization upon the collateral held. Unless curative legislation is enacted to cover this situation, it may be the duty of this office as a matter of law to require these various agencies to restore these funds to the receivers of the various banks in which they were on deposit. Creditors of some of the banks are insisting upon such action being taken at this time. If such restoration must be made, then in most cases a substantial loss will be suffered by the depositing unit, which loss will in many instances ultimately fall upon the Treasury. The situation is also urgent from the standpoint of the going national bank, inasmuch as the various depositing units are now on notice as to the possible lack of power in the banks to give security for their deposits, with

the result that these banks are threatened with the withdrawal of hundreds of millions of dollars, which no doubt will be deposited in State banks which do under the State law possess power to give collateral security therefor.

The same situation exists with respect to deposits of funds by the States and their various agencies. Generally speaking, there has been a preference given national banks by the depositing officials thereof. The State treasurer of Illinois within the past 10 days has indicated he feels that he must withdraw approximately \$54,000,000 from national banks in Illinois, \$26,000,000 of which is in two Chicago banks. The legal representatives of various drainage and irrigation districts in California have indicated that unless the law is clarified, they must withdraw some \$50,000,000 from national banks in California. When one considers the total amount of such deposits in national banks all over the United States which may thus be suddenly withdrawn, and the consequent forced liquidation of assets which may be required of such banks in order to meet such withdrawals with resulting ill effect upon market conditions, it becomes imperative to avoid such result by having appropriate legislation promptly enacted eliminating the difficulty.

I accordingly recommend that appropriate action be taken to have this amendment enacted into law.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 5153 of the Revised Statutes, as amended (U.S.C., title 12, sec. 90; U.S.C., supp. VII, title 12, sec. 90), is amended to read as follows:*

"SEC. 5153 (a). All national banking associations, designated for that purpose by the Secretary of the Treasury, shall be depositaries of public money, under such regulations as may be prescribed by the Secretary; and they may also be employed as financial agents of the Government; and they shall perform all such reasonable duties, as depositaries of public money and financial agents of the Government, as may be required of them. The Secretary of the Treasury shall require the associations thus designated to give satisfactory security, by the deposit of United States bonds and otherwise, for the safe keeping and prompt payment of the public money deposited with them, and for the faithful performance of their duties as financial agents of the Government: *Provided*, That the Secretary shall, on or before the 1st of January of each year, make a public statement of the securities required during that year for such deposits. And every association so designated as receiver or depositary of the public money shall take and receive at par all of the national currency bills, by whatever association issued, which have been paid into the Government for internal revenue, or for loans or stocks: *Provided*, That the Secretary of the Treasury shall distribute the deposits herein provided for, as far as practicable, equitably between the different States and sections. Notwithstanding the extent, if any, to which the same may not heretofore have been applicable thereto, the provisions of this paragraph, of section 3621 of the Revised Statutes, as amended (U.S.C., title 31, sec. 495), and of the thirteenth paragraph of section 9 of the Federal Reserve Act, as amended (U.S.C., supp. VII, title 12, sec. 332), shall apply to any and all money held by any instrumentality or agency of the United States, or by any officer, employee, or agent of the United States, or of any such instrumentality or agency, in his official capacity, and shall, to the extent designated by the Secretary of the Treasury, apply to any money held by any corporation in which, or in the funds of which, the United States has an interest, or by any officer, employee, or agent of any such corporation, in his official capacity. Nothing in this paragraph shall be construed to affect any powers conferred by section 17 of the Act of March 3, 1911 (U.S.C., title 25, sec. 156), section 28 of the Act of May 25, 1918 (U.S.C., title 25, sec. 162), section 1 of the Act of August 24, 1912, as amended (U.S.C., title 39, sec. 759), section 61 of the Act of July 1, 1898, as amended (U.S.C., title 11, sec. 101), section 3 of the Act of March 3, 1933 (U.S.C., supp. VII, title 11, sec. 101a), and section 5234 of the Revised Statutes, as amended (U.S.C., title 12, sec. 192).

“(b) Any association, upon the deposit with it of any money by any State, or by any political subdivision of any State, or by any officer, employee, or agent of any such State or subdivision, in his official capacity, may give security for the safe keeping and prompt payment of the money so deposited; and, upon such deposit by any public instrumentality or agency of one or more States, or of one or more political subdivisions of any State, or by any officer, employee, or agent of any such instrumentality or agency, in his official capacity, may, with the consent of the Comptroller of the Currency, give such security; but no security shall be given under this paragraph with respect to any deposit if, under the statute law of the State in which such association is located, the giving of security for such deposit by other banking institutions in such State is prohibited. As used in this paragraph the term “State” means any State, territory, District, or possession (including the Philippine Islands) of the United States.

“(c) All security for any deposits described in this section heretofore given by any association shall be deemed to have been validly given except where the enforcement of such security has been denied by the Comptroller of the Currency as in violation of the second paragraph of this section (U.S.C., supp. VII, title 12, sec. 90), as in force after June 25, 1930, and prior to the enactment of this paragraph, and no such security, enforcement of which was so denied, shall be deemed to have been validly given.”

