

FEDERAL DEPOSIT INSURANCE CORPORATION

Governor Eccles:

Mr. Crowley stated  
that I sent you  
the enclosed copies  
of correspondence.

B. Roberts,  
Secretary.

C o p y

December 20, 1934

Dear Senator Glass:

Thank you very much for sending me copy of letter which you sent to Mr. C. S. Hamlin, Federal Reserve Board, Washington, D. C. As I explained to you over the telephone when you called me with reference to the question of interest rate fixed by the Federal Deposit Insurance Corporation and the authority of the Board to do this, I was one of the first to advocate fixing the rate of interest on deposits in state non-member banks. Mr. Walter J. Cummings, the Chairman, and Mr. E. G. Bennett, I am sure had the same question in mind and in December of 1933 the Board unanimously passed a regulation fixing the rate of interest, following the regulations of the Federal Reserve Board.

It is true, as I told you very frankly, that there is no specific provision in the law giving the Corporation the right to fix the rate of interest, but my general understanding is that there are certain implied powers which are necessary to carry out the purposes of an Act of Congress. You will recall I mentioned that it was unthinkable that a national bank would be limited to 3%, which was the rate in December 1933, and that across the street a state bank could pay 6%, or more, on deposits and both hold out to the public the fact that the deposits were insured. Regulations to this effect were published and were known generally by Members of Congress, and no objections either from state banks or members of Congress have ever been received by me questioning or challenging the exercise of this authority.

You are such an excellent Constitutional lawyer that I am sure you will appreciate one of the outstanding contributions of Chief Justice Marshall to Constitutional Government when he held that the Constitution contained certain implied powers besides the expressed powers, which were necessary to carry out the intention of the framers, and on this ground gave us a liberal interpretation of the Constitution which has permitted it to grow and expand with the development of the Nation. It seems to me that the most important implied power would be the fixing of the rate of interest to protect the Insurance Fund. The recent action of the Board, with reference to fixing the rate of interest, was also unanimously passed; Mr. Leo T. Crowley, Chairman, presided, and present were Mr. E. G. Bennett and myself.

I have always admired the bold way in which you attack problems and present your views, and particularly your tolerance of the views of others even when you are not in accord.

I trust you will have a Happy Christmas, such as you so richly deserve because of your fine service to the Nation and that the coming year will bring you even greater accomplishments.

Very cordially yours,

J. F. T. O'CONNOR  
Comptroller

Honorable Carter Glass  
United States Senate  
Washington, D. C.

December 20, 1934.

My dear Senator:

I appreciate your courtesy in sending me a copy of your letter of December 18th to Mr. C. S. Hamlin of the Federal Reserve Board, concerning the legal authority for interest regulations as applied to insured non-member banks.

The interest regulations of this Corporation were adopted by its board in January, 1934. Although I was not a member at that time, the records show that Mr. Cummings, Mr. O'Connor and Mr. Bennett, who then constituted the board, had an opinion from our legal department that it had authority to adopt such regulations, and they were adopted by unanimous vote.

At the recent meeting of our board when the interest rate was reduced to  $2\frac{1}{2}$  per centum, our General Counsel, Judge L. E. Birdzell, stated that the board had implied authority to regulate interest. His view is that this authority arises out of the necessity of preventing discrimination between member and non-member banks and of providing all banks with the same opportunity of enjoying the benefits of insurance, in accordance with the expressly declared purpose of Congress found in the last paragraph of the Deposit Insurance law. The action of the board at this meeting was likewise unanimous.

I understand from Judge Birdzell that the board clearly has no authority to regulate interest otherwise than to the extent necessary to prevent any discrimination arising from the regulations of the Federal Reserve Board and that any power not expressly delegated is open to question. The board's action in each instance was taken in connection with a similar action taken by the Federal Reserve Board in order that all banks might be placed on an equal footing. If our action should not have proper legal sanction, the entire responsibility rests upon this Corporation as the Federal Reserve Board had no part in the adoption of our regulations.

I have requested Judge Birdzell to review the entire question in the light of your comments. We are striving to carry out the wishes of Congress and welcome your criticisms as well as your counsel and advice which has been of great assistance to the Corporation.

With kindest personal regards and the season's greetings,  
I am

Sincerely yours,

(signed) Leo T. Crowley

Chairman.

Honorable Carter Glass,  
Lynchburg, Virginia