

Report on Deposit Insurance in NEBRASKA 1958 July



DEPOSIT INSURANCE IN NEBRASKA

By

Clark Warburton  
Federal Deposit Insurance Corporation



DEPOSIT INSURANCE IN NEBRASKA

Prepared by

Clark Warburton, Chief  
Banking and Business Section  
Division of Research and Statistics  
Federal Deposit Insurance Corporation

Division of Research and Statistics  
Federal Deposit Insurance Corporation  
July 1958



# DEPOSIT INSURANCE IN NEBRASKA

## TABLE OF CONTENTS

	<u>Page</u>
<u>Origin and constitutionality of the deposit guaranty law</u>	1
Background of the guaranty legislation	1
Constitutionality of the deposit guaranty law	2
Decision of the United States Circuit Court	2
Decision of the United States Supreme Court	3
<u>Character of the guaranty legislation</u>	4
Admission of banks	4
Deposits insured	4
Assessments	7
Administration and custody of the fund	9
Indebtedness of the guaranty fund	10
Method of paying depositors and of liquidating failed banks	11
Bankers conservation fund	15
Expenses of administration	15
<u>Supervision and regulation of guaranteed banks</u>	16
Supervisory authority	16
Supervisory powers	17
Supervisory experience	18
Statutory limitations on bank operations	25
<u>Closing of the guaranty fund</u>	25
<u>Number, deposits, and failures of participating banks</u>	35
Number of participating banks	35
Deposits of participating and nonparticipating banks	35
Concentration of banks deposits	37
Failures of participating banks	37
Failures by size of bank	40
Comparison of failures with those in other States	44
Causes of bank failures	46
Procedures in handling failed banks	51
<u>Financial history of the guaranty fund</u>	57
Sources and adequacy of information	57
Income and obligations of the guaranty fund	59
Comparison of assessments and losses	67
Bankers conservation fund	74
Administrative cost of the depositors' guaranty fund	76
Settlement of the affairs of the guaranty fund	76
<u>Appraisal of the Nebraska depositors' guaranty fund</u>	79



DEPOSIT INSURANCE IN NEBRASKA

TABLE OF CONTENTS

	<u>Page</u>
<u>Origin and constitutionality of the deposit guaranty law</u>	1
Background of the guaranty legislation	1
Constitutionality of the deposit guaranty law	2
Decision of the United States Circuit Court	2
Decision of the United States Supreme Court	3
<u>Character of the guaranty legislation</u>	4
Admission of banks	4
Deposits insured	4
Assessments	7
Administration and custody of the fund	9
Indebtedness of the guaranty fund	10
Method of paying depositors and of liquidating failed banks	11
Bankers conservation fund	15
Expenses of administration	15
<u>Supervision and regulation of guaranteed banks</u>	16
Supervisory authority	16
Supervisory powers	17
Supervisory experience	18
Statutory limitations on bank operations	25
<u>Closing of the guaranty fund</u>	25
<u>Number, deposits, and failures of participating banks</u>	35
Number of participating banks	35
Deposits of participating and nonparticipating banks	35
Concentration of banks deposits	37
Failures of participating banks	37
Failures by size of bank	40
Comparison of failures with those in other States	44
Causes of bank failures	46
Procedures in handling failed banks	51
<u>Financial history of the guaranty fund</u>	57
Sources and adequacy of information	57
Income and obligations of the guaranty fund	59
Comparison of assessments and losses	67
Bankers conservation fund	74
Administrative cost of the depositors' guaranty fund	76
Settlement of the affairs of the guaranty fund	76
<u>Appraisal of the Nebraska depositors' guaranty fund</u>	79



LIST OF TABLES

<u>Table</u>	<u>Page</u>
1. Supervisory powers of state banking board, and of department of trade and commerce, in Nebraska, 1911-1929	19
2. Statutory limitations on bank operations in Nebraska, 1911-1929	26
3. Number of operating banks in Nebraska participating and not participating in the deposit guaranty system, 1912-1930, by years	36
4. Deposits in operating banks in Nebraska participating and not participating in the deposit guaranty system, 1912-1930, by years	38
5. Number and deposits of state banks in Nebraska, October 31, 1914, and June 30, 1927	39
6. Number of state banks in Nebraska closed because of financial difficulties, July 1, 1911, to March 18, 1930, by years	41
7. Deposits of state banks in Nebraska closed because of financial difficulties, July 1, 1911, to March 18, 1930, by years	42
8. Size distribution of failed banks in Nebraska entailing obligations on the guaranty fund compared with average size distribution of operating banks	43
9. Annual bank failure rates in Nebraska, 1912-1929, compared with rates in contiguous states and in the United States	45
10. Causes of bank failures in Nebraska, 1921-1930, reported on schedules prepared for the federal reserve committee on branch, group and chain banking	50
11. Banks closed in Nebraska during the life of the guaranty fund commission	53
12. Receipts, expenditures, and deficit of the Nebraska depositors' guaranty fund	60
13. Rates and amount of assessments, Nebraska depositors' guaranty fund	62
14. Receipts, expenditures, and balance, Nebraska depositors' guaranty fund, by years	64
15. Total deposits, insured deposits and obligations to depositors of failed banks, Nebraska depositors' guaranty fund, by years	66
16. Percentage of deposits insured, and percentage of insured deposits paid by guaranty fund and recovered from liquidation of assets, bank failures under the Nebraska depositors' guaranty fund, by years	68



LIST OF TABLES - continued

<u>Table</u>	<u>Page</u>
17. Annual assessments levied, liability for deposits in failed banks, and cumulative deficiency, Nebraska depositors' guaranty fund	69
18. Comparison of annual rates of assessments levied with rates required to meet deposit obligations in failed banks, Nebraska depositors' guaranty fund, by years, 1911-1930	72
19. Balance, bankers conservation fund, Nebraska, midyear and year-end call dates, 1923-1929	75
20. Receipts and expenses for administrative purposes, Nebraska depositors' guaranty fund, May 1, 1923, to Dec. 31, 1929	77



## DEPOSIT INSURANCE IN NEBRASKA

The Nebraska law for guaranty of bank deposits was enacted April 25, 1909. At that time the deposit insurance system of Oklahoma was in operation and the Kansas law had been enacted. The effective date of the Nebraska law was postponed for nearly two years pending litigation regarding its constitutionality. An amending act in 1911 provided that assessments were to begin on July 1 of that year. The insurance became effective when the first assessment had been paid.

The guaranty law in Nebraska continued in operation for 19 years. By 1930 the liabilities of the guaranty fund far exceeded the amounts which were available to the fund; and on March 18 of that year applicability of the guaranty to future failures was repealed, with assessments to be continued at a reduced rate for ten years. However, under a decision of the State Supreme Court rendered in 1932 all assessments under this act and those under the old act subsequent to 1928 were declared, because of changed conditions, to have become confiscatory and hence unconstitutional. In the next year the entire deposit insurance law was repealed, and final settlement of the affairs of the fund was completed in 1934.

### ORIGIN AND CONSTITUTIONALITY OF THE DEPOSIT GUARANTY LAW

Background of the guaranty legislation.<sup>1/</sup> State banks in Nebraska had been subject to supervision, with regular examinations, for over twenty years prior to the adoption of deposit guaranty. In the 1890's, poor crops and the depressed economic conditions of the nation resulted in numerous

---

<sup>1/</sup> An account of the origin of deposit guaranty legislation in Nebraska is given by Z. Clark Dickenson, in Bank Deposit Guaranty in Nebraska, Bulletin No. 6, Nebraska Legislative Reference Bureau (1914).



bank failures and a contraction, within a period of four years, by about one-half in the total deposits of the incorporated banks in the State. In 1893, William Jennings Bryan, representative in the Federal Congress from Nebraska, introduced a bill proposing deposit insurance for national banks; and in 1897 and again in 1899 bills were introduced in the Nebraska legislature to establish a deposit insurance system for State banks. Such bills were also introduced in the legislatures of 1905 and 1907 with the approval of the Banking and Currency Committee, but failed of passage.

In 1908, both the Democratic national convention, which met in July, and the Nebraska Democratic State convention, which met in September, adopted planks favoring deposit guaranty. Early in January 1909, the new Governor recommended deposit guaranty to the legislature; and a bill embodying his suggestions and approved by William Jennings Bryan was introduced in March and enacted in the following month. Enactment of the law, it may be noted, was not the consequence of another wave of bank failures. In fact, during the six years just prior to 1909, there had been only three failures of State banks, one each in 1903, 1904, and 1907.

Constitutionality of the deposit guaranty law. The deposit guaranty law was attacked immediately after its enactment in 1909 with the claim that it was unconstitutional. The basis for claiming that deposit guaranty was unconstitutional was essentially the same as in Oklahoma and in Kansas.<sup>1/</sup>

Decision of the United States Circuit Court. A few days before the Nebraska deposit guaranty law was to go into effect a temporary injunction

---

<sup>1/</sup> For summaries of the arguments that the deposit guaranty laws of Oklahoma and Kansas were unconstitutional, see the reports Deposit Guaranty in Oklahoma and Deposit Guaranty in Kansas.



was granted by members of the Circuit Court of the United States for the District of Nebraska restraining the State Banking Board from putting the law into operation. Shortly afterward the court declared the law to be unconstitutional and made the injunction permanent. This decision was based on the contention that the law appropriated the assets of one bank to meet the obligations of another bank, resulting in taking the property of one person without compensation to pay the debts of another, and thus was contrary to the Fourteenth Amendment to the Constitution of the United States and article 1 of the Constitution of Nebraska.<sup>1/</sup>

Decision of the United States Supreme Court. The decision of the Circuit Court made the deposit guaranty law in Nebraska ineffective pending appeal to the United States Supreme Court. In Oklahoma and Kansas, where deposit guaranty laws had also been challenged, the constitutionality of the legislation had been upheld, respectively, by the Supreme Court of Oklahoma and the United States Circuit Court of the District of Kansas; and the laws were therefore placed in operation pending the results of appeal to the United States Supreme Court.

Arguments regarding the constitutionality of the deposit guaranty laws in the three States were heard by the United States Supreme Court at its fall term in 1909. On January 3, 1911, the United States Supreme Court rendered a unanimous decision upholding the constitutionality of the Oklahoma law, and

---

<sup>1/</sup> First State Bank of Holstein, Neb. v. Shallenberger (1909), 172 F. 999.



made the same decision applicable to the Kansas and Nebraska laws.<sup>1/</sup>

#### CHARACTER OF THE GUARANTY LEGISLATION

Admission of banks. Participation in the deposit guaranty plan in Nebraska was made compulsory for all State banks. No special examination was required for admission to the guaranty plan. At the time the law went into effect approximately 650 banks were operating under State law and became participants in the system. In 1919, an amendment provided that new banks could operate for two years before being required to participate. Two years later this provision was removed.

In 1921 provision was made for a separate fund, to be known as the "Co-operative Bank Protective Fund," for co-operative banks. However, no mention is made of such banks nor of the Co-operative Bank Protective Fund in reports of the State banking department or reports of investigations of the depositors' guaranty fund.

Deposits insured. The guaranty protected all deposits (modified in 1925 to deposits not otherwise secured), including claims of holders of exchange. Payment of interest on a deposit, directly or indirectly, at a rate higher than 5 percent per year, reduced in 1926 to 4 percent, was prohibited; and payment of a higher rate was to be taken as evidence that the transaction was a loan and not protected by the guaranty. Under an amendment in 1917 any evidence of indebtedness issued to a stockholder, officer or employee representing money obtained for the benefit of the

---

<sup>1/</sup> Noble State Bank v. Haskell (1911), 219 U.S. 112; and Shallenberger v. First State Bank of Holstein (1911), 31 S. Ct. 189, 219 U.S. 114, 55 L. Ed. 117. The decision of the United States Supreme Court in the Oklahoma case is described in more detail in the report Deposit Guaranty in Oklahoma.



bank was to be construed as a loan to the bank and not protected by the guaranty. In the original law no special provision was made regarding public funds, but an amendment of 1911 provided that no security other than the guaranty was necessary for such funds, thus superseding the previous requirement that depository banks furnish bonds covering deposits of public funds. In 1923 an amendment provided that receipt of deposits upon any collateral agreement or condition other than an agreement for rate of interest and length of time to maturity was prohibited, and that any money deposited under such an agreement was excluded from guaranty: this was repealed two years later.

In connection with the payment of deposits of failed banks, numerous cases arose of interpretation of the law regarding insurance coverage. The lines of demarcation resulting from these decisions are indicated by the cases referred to here. Accrued interest on a certificate of deposit to date of payment, or date of maturity if paid subsequently, was protected along with the principal.<sup>1/</sup> Money paid to a bank for purchase of a Federal Government bond, with the bond not delivered or the money diverted to the use of the bank, did not constitute a deposit within the meaning of the guaranty act.<sup>2/</sup> A credit to a checking account or a certificate of deposit issued in exchange for negotiable paper, such as a promissory note or Government bond, was a valid deposit protected by the guaranty, because such negotiable paper

---

<sup>1/</sup> State v. Nebraska State Bank of Milligan (1923), 196 N.W. 679, 111 Neb. 360; State v. Farmers' State Bank of Culbertson (1925), 204 N.W. 795, 113 Neb. 679.

<sup>2/</sup> In re Cronk, State v. Farmers Bank of Page (1923), 194 N.W. 865, 110 Neb. 676; State v. Atlas Bank of Neligh (1926), 209 N.W. 334, 114 Neb. 650.



was the equivalent of money.<sup>1/</sup> But a certificate of deposit issued for paper that had no real value, such as a third mortgage on real estate with prior liens equalling the value of the property, or in circumstances indicating an attempt to defraud the bank, was not protected.<sup>2/</sup> A correspondent bank, which in the ordinary course of business had honored drafts of a bank that failed in excess of its balance, was protected on the overdraft by subrogation to the rights of the original holder of exchange.<sup>3/</sup>

In various cases, certificates of deposit were found to represent funds procured for the benefit of the bank, or in the interest of the owners or stockholders, and thus to represent loans rather than deposits protected by the guaranty.<sup>4/</sup> A certificate of deposit issued at the maximum permissible rate of interest, but with a bonus of 1 percent, or with interest for a longer period than the duration of deposit, was held to be a loan and excluded from guaranty.<sup>5/</sup> A cashier's check, payable at a future date, issued in payment of a loan, and including interest in excess of 5 percent, was also held to be excluded on the same ground.<sup>6/</sup> However, payment of a bonus to a depositor by an officer of a bank, even though charged to the bank but this fact unknown to the depositor, did not remove the protection of the guaranty.<sup>7/</sup> Similarly,

---

<sup>1/</sup> State v. American State Bank, Lincoln (1924), 199 N.W. 21, 112 Neb. 182; State v. American State Bank of Aurora (1924), 199 N.W. 501, 112 Neb. 272; State v. Newcastle State Bank (1926), 207 N.W. 683, 114 Neb. 389.

<sup>2/</sup> State v. Kilgore State Bank (1925), 205 N.W. 297, 113 Neb. 772.  
<sup>3/</sup> Nebraska National Bank of Hastings v. Bruning (1926), 209 N.W. 510, 114 Neb. 719.

<sup>4/</sup> E.g., State v. Farmers State Bank of Winside (1924), 199 N.W. 812, 112 Neb. 380; State v. Gross State Bank of Gross, 202 N.W. 460, 113 Neb. 119; State v. Farmers State Bank of Bayard, 203 N.W. 572, 113 Neb. 348.

<sup>5/</sup> Inas v. Farmers' State Bank of Decatur (1917), 165 N.W. 145, 101 Neb. 778; State v. Security State Bank of Eddyville (1927), 216 N.W. 169, 116 Neb. 165.

<sup>6/</sup> State v. Banking House of A. Castetter, Blair (1923), 194 N.W. 784, 110 Neb. 564.

<sup>7/</sup> State v. Kolling (1924), 199 N.W. 839, 112 Neb. 474; State v. Wayne County Bank of Sholes (1924), 201 N.W. 907, 112 Neb. 792.



a deposit made with a collateral agreement with a third party, unknown to the depositor, was protected by the guaranty fund, but a deposit with a collateral agreement for the benefit of the depositor was not so protected.<sup>1/</sup> Also, clearance of checks at par by a correspondent bank against an account on which it paid interest at the maximum legal rate did not constitute additional interest nor deprive the deposit of protection by the guaranty fund.<sup>2/</sup>

Where a county treasurer had deposited funds in excess of the amount permitted in a single bank (50 percent of the paid-up capital of the bank),<sup>3/</sup> the court held that the entire deposit was protected by the guaranty fund. In another case the court held that a surety company which had paid its liability on a bond covering deposits of a county treasurer in excess of the limitation, taking an assignment of the rights and remedies of the treasurer, was entitled to payment out of the guaranty fund.<sup>4/</sup> Unpaid taxes of a failed bank that were not settled by the receiver were ordered paid from the guaranty fund, inasmuch as the tax lien had priority over depositors' claims.<sup>5/</sup>

Assessments. Assessments for meeting the cost of deposit guaranty were levied upon the banks on the basis of total average daily deposits exclusive of public money otherwise secured. Semi-annual reports of such

---

<sup>1/</sup> State v. Citizens' State Bank of Chadron (1928), 219 N.W. 188, 116 Neb. 852; State v. Farmers' State Bank, Erickson (1929), 226 N.W. 332, 118 Neb. 743.

<sup>2/</sup> State v. Nebraska State Bank of Harvard (1929), 225 N.W. 778, 118 Neb. 660.

<sup>3/</sup> State v. Peoples State Bank of Anselmo (1924), 198 N.W. 1018, 112 Neb. 126. This was a reversal, upon rehearing, of the original opinion of the court.

<sup>4/</sup> State v. State Bank of Gering (1925), 206 N.W. 758, 114 Neb. 213.

<sup>5/</sup> State v. American State Bank of Lincoln, 209 N.W. 621, 114 Neb. 740.



deposits were required on the first of June and the first of December of each year, with assessments levied on July 1 and January 1. The first four semi-annual assessments were at the rate of one-fourth of 1 percent.<sup>1/</sup> The succeeding regular semi-annual assessments were at the rate of one-twentieth of 1 percent. New banks were to pay 4 percent of their capital stock into a credit fund, together with a further assessment to a "just and equitable sum", arranged so that the first two semi-annual assessments, plus the credit fund, would amount to not less than 1 percent of average daily deposits.<sup>2/</sup> The 1911 amendments provided that the regular semi-annual assessments of one-twentieth of 1 percent of the average daily deposits should cease when the fund reached 1 1/2 percent of such deposits, to be renewed when the fund became depleted below 1 percent.

Special assessments were authorized if the fund should be reduced below 1 percent of total average daily deposits (one-half of 1 percent during the first year of operation of the fund). The special assessments were not to exceed 1 percent of average daily deposits in any one year. In 1923 an amendment provided that special assessments subsequent to that year should not exceed one-half of 1 percent of average daily deposits in any one year. No provision was made for the deposit of bonds or other security as a guaranty for the payment of assessments.

---

<sup>1/</sup> Under the amended law of 1911, these were levied in July 1911, January and June 1912, and January 1913.

<sup>2/</sup> From April 4, 1919, to February 25, 1921, a different provision was in force. This required a new bank, within two years after it had opened for business, to pay 1 percent of its average daily deposits, as shown by its last two semi-annual statements.



Administration and custody of the fund. The administration of the guaranty fund was placed in the hands of a State Banking Board, composed of the Governor as chairman, the Auditor of Public Accounts, and the Attorney General. The State Banking Board was also responsible for the examination of banks and other aspects of bank supervision. In 1919 a Department of Trade and Commerce was organized, with a Secretary appointed by the Governor. Administration of the banking laws was placed in that department, and handled as a Bureau of Banking under the Secretary of the department.

Dissatisfaction with the administration of the guaranty fund resulted in the creation in 1923 of a Guarantee Fund Commission, composed of the Secretary of the Department of Trade and Commerce as chairman, and seven other members appointed by the Governor from among panels of three persons each, recommended by representatives of the banks in seven regions of the State. Each person nominated on the panels was required to have been an executive officer of a State bank for five years. Another change in the administration of the fund was made in 1929 when the Guarantee Fund Commission was abolished, administration of the fund reverted to the Department of Trade and Commerce, and the position of Bank Commissioner was created.

No part of the assessments was collected at the time they were levied. The assessments were kept in the banks assessed and credited to the account of the Secretary of the State Banking Board (in 1919, the Department of Trade and Commerce; and in 1923, the Guarantee Fund Commission) in the form of deposits subject to call by draft. The law also provided that funds received by the State Banking Board (or Department of Trade and



Commerce or Guarantee Fund Commission) from the liquidation of banks which had failed and the deposit liabilities of which had been paid by the guaranty fund should be deposited in solvent banks in proportion to the guaranty fund assessments levied on those banks.

Banks going into voluntary liquidation or changing to a national bank charter were required to pay to the Secretary of the State Banking Board any assessments which had been levied upon them but had not been called for by the Board. These funds were to be deposited in any bank designated by the Secretary of the State Banking Board. In 1919 such funds were ordered held in a special reserve of the guaranty fund which could not be used until the fund itself was depleted but were to be used before a special assessment was levied; and the State Treasurer was authorized to invest the special reserve in certain types of bonds, the interest being added to the special reserve. Two years later an amendment provided that the special reserve should be drawn against along with calls upon the operating banks for payments from their parts of the guaranty fund, with any balance remaining after three years from date of surrender of authority to transact a banking business to be refunded to the stockholders of the bank or their representatives.

Indebtedness of the guaranty fund. The original law contained no provision against the contingency that the regular and special assessments authorized by the law might be inadequate to pay all of the deposits in closed banks. In 1923 an indirect method was devised by which funds could be borrowed. The receiver of a failed bank could borrow money on a "receiver's certificate" at a rate of interest to be fixed by the court supervising the



receivership. In the case of a failed bank the depositors of which had been paid from the proceeds of a draft on the guaranty fund, the amount of the receiver's certificate could not exceed the estimated market value of the assets remaining in the receivership and the money thus borrowed was paid over to the guaranty fund. In the case of a failed bank the depositors of which had not yet been paid by the guaranty fund, the amount of the receiver's certificate could not exceed the amount needed (in addition to available cash) to pay the depositors. In either case the debt thus incurred was to be paid so far as possible from the proceeds of liquidation of the assets of the bank, and the guaranty fund was responsible for the payment of any such certificates still unpaid upon completion of liquidation of the bank. All receivers' certificates were to be registered by the Secretary of the Department of Trade and Commerce and were required to be paid by the guaranty fund in the order of registration.

Method of paying depositors and of liquidating failed banks. The State Banking Board, or Department of Trade and Commerce, was authorized to take possession of any bank for a sufficient length of time to make a thorough examination of its affairs, and if found insolvent, until a receiver was appointed. The insolvency of a bank was reported by the State Banking Board to the Attorney General, who applied to the district court of the county in which the bank was located for appointment of a receiver or, in the absence of judge or judges thereof, to any judge of the State Supreme Court. The district court held jurisdiction over the receivership.

The depositors in a bank placed in receivership were to be paid



promptly. The amount necessary to pay the depositors, in addition to available cash from the assets of the bank, was determined by the court having jurisdiction over the receivership, collected from the guaranteed banks by the State Banking Board, or Department of Trade and Commerce, and paid to the receiver of the failed bank for distribution to depositors. An amendment in 1923 provided that holders of certificates of deposit were not to be paid until their maturity.

The law provided that depositors' claims in a failed bank were to have priority over all other claims, except taxes, and that the guaranty fund was to be subrogated to the rights of depositors paid from the fund. After 1923 receivers' certificates representing borrowings by the receiver underwritten by the guaranty fund, had priority over the guaranty fund with respect to payments from the proceeds of liquidation of the assets of the bank.

Stockholders of an insolvent bank had the right, while a bank was in charge of an examiner or of a receiver, to restore the bank's credit, capital, and reserves, to repay any advances made by the guaranty fund, and to reopen the bank with the permission of the Department of Trade and Commerce. In 1923 an amendment to the law provided that the officers, stockholders, or owners of an insolvent bank could furnish to the Department of Trade and Commerce a bond sufficient to assure full settlement of all the liabilities of the bank within a stated time, and then proceed with the liquidation of the bank. This made it possible for the owners to reduce the cost of a receivership and thus to reduce the amount of assessment on account of double liability, in cases where collection of double liability from stock-



holders provided sufficient funds to pay all of the liabilities of the bank.

The 1923 amendments also provided alternative methods of handling closed banks, designed to permit prompt reopening and to keep as many banks operating as possible. One of these alternatives was sale by the receiver of all the assets of the bank to new stockholders, with the approval of the Guarantee Fund Commission and under the direction of the court, with the receiver authorized to draw on the guaranty fund to meet any deficiency after the sale to meet claims payable from the guaranty fund. This procedure was prohibited in case the majority owners of the capital stock, whose acts did not show criminal liability, objected and showed the court that the bank could be made solvent within one year. In 1925, sale of assets in this manner to new stockholders was permitted without actual payment of the deficiency by the guaranty fund by permitting the reorganized bank to hold receivers' certificates as bills receivable in an amount approved by the Department of Trade and Commerce.

The second method for handling closed banks, adopted in 1923, was a provision that the Department of Trade and Commerce, after taking possession of a bank, could turn it over to the Guarantee Fund Commission to operate as a going concern, with the consent and assignment of the owners of a majority of the capital stock. A "bankers conservation fund," described below, was established to make loans to banks operated by the Commission. A bank operated by the Guarantee Fund Commission could be closed at any time either by the Commission or by the Department of Trade and Commerce.



The 1923 law placed the liquidation of closed banks which could not be reopened in any of these ways in the hands of the Guarantee Fund Commission. This was done by a provision that the Department of Trade and Commerce should ask the Attorney General to apply to the District Court for an order directing the Department to take charge of the bank and wind up its affairs, and that the bank should then be liquidated by a receiver appointed by the Guarantee Fund Commission. The same act provided that receiverships pending at the time the act became effective should, after four months, be handled in the same way. Supervision of the receiverships remained under the District Court.

One more provision of the 1923 amendments designed to provide more efficient liquidation should be noted. At the request of the Department of Trade and Commerce, the court with jurisdiction over the liquidation could order all or part of the assets to be sold, with the Department of Trade and Commerce permitted to bid. In case the Department was the highest bidder, the assets of the bank were turned over to the Guarantee Fund Commission for liquidation, the proceeds thereof being used to reimburse the guaranty fund for the payments it made to the depositors. This procedure made it possible to eliminate the maintenance of liquidating agents for each of the various closed banks until all assets were disposed of, and enabled the Guarantee Fund Commission to consolidate the process of disposition of the assets of the various closed banks.

In 1929, when the Guarantee Fund Commission was abolished, the District Courts were required to appoint the Secretary of the Department



of Trade and Commerce as receiver for all failed banks, thus concentrating the handling of the affairs of closed banks in that Department.

Bankers conservation fund. The amendments in 1923 provided for a "bankers conservation fund" for use in preventing the closing of banks and conserving the guaranty fund. Assessments for this fund were authorized at not more than one-fourth of 1 percent of average daily deposits in any year with a maximum fund at any time of one-third of 1 percent of average daily deposits. The bankers conservation fund was used by the Guarantee Fund Commission to make "deposit" in banks operated by the Commission. The fund remained the property of the contributing banks, to be carried on their books as an asset until repaid or charged off. When a bank operated by the Commission was placed in receivership a deposit from the bankers conservation fund had the same priority as other deposits.

Expenses of administration. No provision was made in the original deposit guaranty law regarding the expense of administering the law. Such expenses were part of the cost of administering the general banking code by the State Banking Board, and were met by appropriations from the general fund of the State. Operating banks were assessed examination fees designed to meet the cost of bank supervision.

In 1923, when the Guarantee Fund Commission was created, provision was made for an administrative fund not exceeding \$15,000 in any one year, to be collected by an assessment on all State banks on the basis of average daily deposits at the time of the last semi-annual statement of the banks. This assessment for the administrative fund was collected through drafts drawn on the banks by the Secretary of the Department of Trade and Commerce, and was then transmitted to the Secretary of the Guarantee Fund Commission.



Closed banks were assessed by the State Banking Board, or Department of Trade and Commerce, to meet the cost of receivership, with minimum and maximum amounts per day specified by the law.

#### SUPERVISION AND REGULATION OF GUARANTEED BANKS

State banks in Nebraska had been operating under the supervision of a State Banking Board and a State Bank Examiner for approximately twenty years prior to enactment of the deposit guaranty law. At the time of enactment of the deposit guaranty law the banking code was revised.

Supervisory authority. General supervision and control of banks and banking under the laws of the State was entrusted to the State Banking Board, composed of the Governor as ex officio chairman, the Auditor of Public Accounts, and the Attorney General. The Governor appointed a Secretary of the State Banking Board, who must have had at least three years' practical experience in actual banking. A suitable number of bank examiners, who were also required to have three years' experience in banking, were appointed by the Governor. No member of the examining force was permitted to examine the affairs of a bank in which he had a personal interest, or of which he had been an officer or employee within one year of his appointment as examiner.

In 1919 supervision of banks was transferred to the Department of Trade and Commerce, with a Secretary appointed by the Governor with the advice and consent of the Senate as executive officer of the Department. Examination and supervision of operating banks remained directly in charge of the Secretary of the Department of Trade and Commerce until 1929, when



the office of Bank Commissioner was created. The Bank Commissioner, under the executive direction of the Secretary of the Department, was placed in charge of administration of the banking laws pertaining to operating banks.

The Guarantee Fund Commission, which was created in 1923 and abolished in 1929, had no duties with respect to examination and supervision of regularly operating banks. The duties of the Guarantee Fund Commission were confined to the handling of suspended banks, including operation of banks taken over by the Commission, disbursements from the guaranty fund, and liquidation of assets of failed banks placed in receivership.

Supervisory powers. The supervisory powers of the State Banking Board, at the time of adoption of deposit guaranty, related chiefly to bank examinations, and to requests for appointment of a receiver. Two examinations each year were required, and additional examinations could be made at any time. Fees for examinations were specified in the law, ranging from \$15 to \$50 for each examination, but not more than two fees in a year, payable into the general fund of the State. Fees were increased in 1919 and 1921. In the latter year the minimum fee for each examination was \$25, and the maximum \$125 plus one cent per thousand dollars of resources in excess of five million dollars.

No bank could open without the authorization of the State Banking Board, but the Board was required to issue such authorization if the bank had been organized in the prescribed manner. The State Banking Board was authorized to require any bank to restore impaired capital or reserves; it was not given power to order removal of undesirable or illegal assets, or the removal of officers, employees, or directors.



Additional powers were conferred on the supervisory authority by later amendments, particularly in 1919 and 1921. All executive officers of banks were required to be licensed by the Department of Trade and Commerce. Such officers were required to be of good moral character, known integrity, business experience and responsibility, and capable of conducting a bank on sound banking principles. Bank officers at the time this provision went into effect were deemed to have a three months' license subject to revocation by the Department. In the same year the Legislature and Governor approved a law making the promotion of public necessity, convenience, and advantage a condition for the granting of a bank charter. However, this provision was suspended by a referendum petition and later defeated by a vote of the people.<sup>1/</sup>

The Supervisory powers of the State Banking Board from 1911 to 1919, and of the Department of Trade and Commerce from 1919 to 1929, are summarized in Table 1.

Supervisory experience. The Secretary of the State Banking Board when the deposit guaranty law went into effect, Edward Royse, had already held that office for several years, and remained until his death in 1917. Contemporary commentators regarded his administration of the office highly and considered this to have been an important factor in the small number of failures during that time.<sup>2/</sup> Thornton Cooke, in one of his articles

---

<sup>1/</sup> Compiled Statutes of Nebraska, 1922, section 7997, and Final Report of the Banking Investigation, p. 7. The Final Report of the Banking Investigation also indicates that the licensing provision was reversed by referendum, but this is not supported by other sources of information.

<sup>2/</sup> From 1903 to 1917, inclusive, there were five State banks placed in receivership, one each in 1903, 1904, 1907, 1914, and 1916.



Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF DEPARTMENT OF TRADE AND COMMERCE, IN NEBRASKA, 1911-1929

<u>Item</u>	<u>Powers 1/</u>
<u>Organization of banks:</u>	
Opening of new banks	Board (in 1919, Department) to issue certificate and charter upon approval of bank's organization statement and certification of paid-in capital, if satisfied that the applicants are of integrity and responsibility; and in 1921 that public necessity, convenience and advantage will be promoted.
Consolidation of banks	To be approved by Board, or Department.
<u>Examinations and reports of condition:</u>	
Frequency of examinations <u>2/</u>	Twice a year, and any additional deemed necessary or proper by Board. In 1919, at discretion of Department.
Scope of examinations	A thorough examination.
Reports of condition	Reports of assets and liabilities at least four times a year, in 1919 on form prescribed by Department; and any special reports requested or required.
<u>Bank management:</u>	
Removal of undesirable assets or discontinuance of undesirable practices	No specific provision.
Impairment or deficiency of capital or reserves	Board (in 1919, Department) to require impairment of capital or reserves below legal minimum to be made good within a specified time.
Removal of bank officers, directors, or employees	No specific provision. In 1921, executive officers to be persons of good moral character, known integrity, business experience and responsibility, and capable of conducting affairs of a bank on sound banking principles; and all executive officers to be licensed by the Department of Trade and Commerce, with existing officers to have a 3-months license subject to revocation. Department empowered to revoke license of an executive officer of a bank conducting its business in an unsafe or unauthorized manner or endangering the interests of the stockholders or depositors.



Table 1. SUPERVISORY POWERS OF STATE BANKING BOARD, AND OF DEPARTMENT OF TRADE AND COMMERCE, IN NEBRASKA, 1911-1929 - continued

<u>Item</u>	<u>Powers</u>
<u>Taking possession or closing a bank:</u> Take possession for examination	Examiner on direction of Board (in 1919, Department) authorized to take possession of any bank, and if found insolvent, or conducting business in an unsafe or unauthorized manner, or endangering the interests of depositors, to retain possession until appointment of receiver.
Request court to appoint receiver	Whenever from an examination or report it appears that capital is impaired, bank is conducting business in an unsafe or unauthorized manner, or endangering the interests of depositors, or (in 1919) fails to make required reports or statements or to comply with all provisions of the banking law. Also, if affairs placed by bank in hands of Board (or Department).
Take possession and place bank in charge of Guarantee Fund Commission	In 1923 Department to take possession under any of foregoing conditions, or if officers or employees refuse to submit books or affairs to an examiner, or an officer refuses to be examined under oath, or neglects or refuses to observe any order of the Department, or it is considered unsafe and inexpedient for bank to continue business. After taking possession, bank to be placed in charge of Guarantee Fund Commission.
<u>Handling of closed banks: 3/</u> Return to owners	Upon investigation and finding by Board (or Department) that bank's credit and funds are in all respects restored, law has been complied with, and any indebtedness to Guaranty Fund repaid with interest.
Liquidation	Unless returned to owners, to be liquidated by receiver appointed by Court; assets to be sold on terms approved by Court. In 1923, Court to direct the Guarantee Fund Commission to name receiver. In 1919, Department of Trade and Commerce may turn bank over to owners for liquidation upon presentation of satisfactory bond by an incorporated surety company, with such liquidation process subject to review by Department and if not satisfactory appointment of receiver.



Footnotes to Table 1.

1/ As at the beginning of the deposit guaranty system (i.e., as given in the 1909 law or amendment in 1911) with amendments during the period of operation of the system, except those adopted less than a year prior to the termination of deposit guaranty on March 18, 1930. The supervisory authority until 1919, was the State Banking Board, referred to as the Board; from then until 1929, the Department of Trade and Commerce, referred to as the Department, with its Secretary as executive officer.

2/ In 1915, examination by Federal Reserve of State member banks acceptable at discretion of State Banking Board in lieu of State requirements.

3/ Excluding the handling of closed banks by the Guarantee Fund Commission after its creation in 1923.



on deposit guaranty, commented as follows, quoting first from a resident of Nebraska:

"In Nebraska," writes Mr. E. R. Gurney of Fremont, a keen observer "...we have had a capable and vigorous administration of our State Banking Department for something like fifteen years past. Our banks, therefore, are sound from the standpoint of assets and also from the influence of supervision." ...

What Mr. Gurney says of the Nebraska Banking Department is ... true. The Secretary of the Board, Mr. Royse, has done such excellent work that the changing state administrations of ten years have wisely kept him continuously in office. 1/

It is to be observed ... that under the administration of the Nebraska banking department the promise to pay depositors immediately on failure seems not to have caused reckless banking. 2/

Subsequent to 1917, there was less continuity in the headship of the supervisory office. Five persons held the office during the 13 years, serving from two to four years each. 3/ There was also less continuity in the services of bank examiners. When the State Banking Board was abolished, and the Department of Trade and Commerce established, there was a complete turnover of examiners. 4/

As in other States with deposit insurance, the examining load was heavy. For a number of years, this was an increasingly serious situation in Nebraska because of a large increase in the number of banks with no expansion of the examining force. In 1911 the Board had nine examiners and this number remained unchanged until 1919, while the number of banks

---

1/ Thornton Cooke, "Four More Years of Deposit Guaranty," Quarterly Journal of Economics, XVIII (Nov. 1913), pp. 99-100.

2/ Ibid., p. 104.

3/ As indicated by the names of persons signing the biennial reports of the department.

4/ None of the names of examiners in the last report of the Secretary of the State Banking Board (for 1918) appears in the first report of the Department of Trade and Commerce (for 1919-1920).



increased by 40 percent. With two examinations a year of each bank, each examiner was apparently required to make about 150 examinations a year at the beginning of deposit guaranty, and over 200 a year by the end of the decade. In 1919 the requirement of two examinations a year was removed, and during the succeeding years the number of examiners was increased to 14 in 1927, while the number of banks reached a peak in 1920. Consequently, the number of banks per examiner declined from over 100 to about 60.

The salary of the Secretary of the State Banking Board from 1909 to 1919 was \$3,000 and that of examiners \$2,000. Appropriations for the banking department for this period were about \$30,000 per year, or from about \$50 to about \$30 per bank. With establishment of the Department of Trade and Commerce in 1919, the salary of the Secretary was \$5,000. Salaries of examiners, which were fixed by the Governor, are not available. Members of the Guarantee Fund Commission, from 1923 to 1929, were on a per diem basis for time spent on the work of the Commission. Appropriations for the Department of Trade and Commerce increased from about \$60,000 in 1921 to about \$95,000 in 1928; in addition from 1923 to 1928 appropriations for expenses of the Guarantee Fund Commission were \$15,000 per year.

In addition to enlarged appropriations after establishment of the Department of Trade and Commerce, more powerful supervisory tools were available. The requirement, in 1921, for the licensing of executive officers of banks was of great potential importance and helped to strengthen supervision for a time.

The so-called license law passed by the legislature of 1921, has done much to remedy the situation. Prior to that time the department had no authority to remove a bank official. The only



remedy was to close the bank if it could be shown to be insolvent. With this licensing law the department can, and has in many instances, removed an executive officer of a bank who was not properly qualified to perform his duties. 1/

Nevertheless, the quality of bank supervision appears to have continued to decline. The retiring Governor of the State in 1929 stated that two weeks after he assumed office in 1925 the Secretary of Trade and Commerce gave him a list of 123 banks that were hopelessly insolvent and should have been closed long before, and an additional list of 92 banks with the report that nothing short of a miracle could save them. 2/ Shortly after repeal of the applicability of deposit guaranty in 1930, the Bank Commissioner commented as follows:

A supervision which permits banks to operate as going institutions until their accumulated losses exceed their capital stocks by 400 to 600 percent can not be defended. It must be replaced by something better if Nebraska is to maintain a system of State banks...

The banking department has been charged with suddenly shifting from one extreme policy of slackness in its supervision, to an opposite extreme of rigid severity. This charge is not denied...3/

The Bank Commissioner attributed this change in the rigors of supervision to the revision of the banking laws made in April 1929, but this explanation does not appear to be adequate. The previous powers with respect to capital impairment, illegal actions of bank officials (for which there were criminal penalties, fines, and imprisonment, specified in the banking code), and revocation of licenses of executive officers, were adequate, if properly enforced, to have prevented the deterioration described by the Commissioner.

---

1/ C. H. Randall, "Facts and Fallacies on the Guaranty Law," address as retiring president before the 1922 convention of the Nebraska Bankers' Association, The Northwestern Banker, Vol. 27 (November 1922), p. 72.

2/ Message of the retiring Governor, Nebraska House Journal, Forty-fifth Session, 1929, p. 47.

3/ Talk by George W. Woods, Bank Commissioner, before Group I of the Nebraska Bankers' Association at Lincoln, May 18, 1930, as reported in the Commercial and Financial Chronicle, May 31, 1930.



Statutory limitations on bank operations. The principal statutory limitations on banking operations, under the banking law at the time the insurance system went into effect and during its operation up to 1929, are summarized in Table 2. Some of the statutory limitations on bank operations which have been found helpful in other States were not a part of the banking code of Nebraska during this period. While loans to officers and employees were prohibited, until 1925 no provision covered loans to corporations controlled by an officer of a bank. No maximum limit was placed on loans secured by real estate. There was no limitation on the amount of deposits relative to capital, as was the case in some of the other States with systems of deposit insurance. In general, penalties and sanctions other than closing a bank, or prosecution of individual bank officials through the offices of district and state attorneys, were not available to the State Banking Board (or Secretary of the Department of Trade and Commerce). As in other States, the drastic procedure of closing a bank was used sparingly, and prosecution of bank officials under criminal proceedings for irregularities disclosed by bank examinations was not in practice an effective procedure.

#### CLOSING OF THE GUARANTY FUND

From the beginning of deposit insurance in Nebraska in 1911 to the end of 1919 only two State banks failed. In 1920 there were five failures. With the depression of 1921 and continued adverse conditions in agriculture, failures became more numerous, with 25 placed in receivership in 1921 and 22 in the following year. By the end of 1927 about 155 other insolvent banks had been taken over for operation by the Guaranty Fund Commission or had been placed in receivership. About the middle of the 1920's, after the maximum assessment rate had been reduced in 1923, it became necessary to make use of



Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929

<u>Item</u>	<u>Provision of law 1/</u>
<u>Responsibility of officers, directors, and stockholders:</u> Examination of bank	Directors to make at least twice each year a thorough examination of the books, records, funds and securities to be recorded in detail and copy forwarded to Secretary of State Banking Board (in 1919, Department of Trade and Commerce).
Losses resulting from loans made in violation of legal limitations	Officer or employee knowingly violating such limitations liable (in 1919, under his bond) for any resulting loss. In 1923 every director participating in or knowingly assenting to such violation to be liable for damages sustained by the bank, shareholders, or any other person.
Liability of stockholders	Usual double liability.
Bonding of officers and employees	Board of directors may require cashier and other officers handling funds to give bond.
<u>Limitations on loans and investments:</u> Loans to bank examiners	In 1925 loan to a person connected with Bureau of Banking or an employee of Guarantee Fund Commission prohibited.
Loans to officers and employees	Prohibited. In 1925, loan to a corporation of which an officer of the bank is a member to be approved by Board of Directors.
Loans to directors	Must be approved by Board of Directors.
Loans to stockholders	Aggregate amount limited to 50 percent of paid-up capital and surplus.
Maximum to single borrowers (not applicable to discount of bills of exchange or of commercial paper owned by negotiator)	Twenty percent of paid-up capital and surplus.
Maximum secured by real estate	No provision.
When reserve is deficient	New loans or discounts prohibited.



Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929 -  
continued

<u>Item</u>	<u>Provision of law</u>
<u>Limitations on loans and investments - continued:</u>	
Maximum total loans and investments	Eight times, amended in 1913 to ten times and in 1919 to fifteen times, capital and surplus.
Secured by own capital stock	Prohibited unless necessary to prevent loss on debt previously contracted.
<u>Limitations on ownership of real estate and stocks:</u>	
Maximum in banking house and equipment	One-third, amended in 1919 to one-half, of paid-up capital.
Other real estate	Prohibited, except acquisition for collection of debt, with maximum of 50 percent of paid-up capital (in 1919, 75 percent).
Corporate stocks	Prohibited, except to prevent loss on debt previously contracted, with maximum of 10 percent of paid-up capital. In 1915 ownership of stock in Federal Reserve bank permitted.
Time limit on ownership of assets acquired by collection of debt	Five years for real estate, six months for corporate stock.
<u>Limitations relating to deposits:</u>	
Maximum amount of deposits	No provision.
Maximum rate of interest on deposits	Five percent; in 1925 (effective April 1, 1926), 4 percent.
Receipt of deposits when insolvent	Prohibited.
<u>Required reserves:</u>	
Total required	15 percent of deposits for banks in places under 25,000 population; 20 percent for banks in cities over 25,000 population. <u>2/</u> In 1921, on savings deposits payable on presentation of passbooks, 5 percent.
In cash <u>3/</u>	For banks with 15 percent total reserve, one-third; for banks with 20 percent total reserve, two-fifths.



Table 2. STATUTORY LIMITATIONS ON BANK OPERATIONS IN NEBRASKA, 1911-1929 -  
continued

<u>Item</u>	<u>Provision of law</u>
<u>Required reserves - continued:</u>	
Permissible character of remainder	1911, balances due from other solvent banks.
<u>Limitation on borrowing:</u>	
Maximum	Two-thirds of paid-up capital (modified in 1915 to full amount of paid-up capital and surplus) except borrowing for payment of depositors. Additional borrowing permitted after 1923 with written consent of Secretary of Department of Trade and Commerce.
Power of supervising authority to require reduction	No provision.
Maximum value of assets pledgeable as security	No provision to 1923, when limited to 1 1/2 times amount of obligation except with consent of Secretary of Department of Trade and Commerce.
<u>Limitations on payment of dividends:</u>	
Earnings to be carried to surplus prior to dividend	One-fifth of earnings until surplus reaches 20 percent of paid-up capital.
When losses exceed or equal undivided profits	Prohibited.
When reserve impaired	Prohibited.
When capital impaired	Prohibited.
Maximum	Net profits on hand less the losses and bad debts.
<u>Minimum capital stock:</u>	
New banks	Graduated by population of village, town or city: 100 or less population - \$10,000 100 to 500 population - 15,000 500 to 1,000 population - 20,000 1,000 to 2,000 population - 25,000 2,000 to 5,000 population - 35,000 5,000 to 25,000 population - 50,000 25,000 to 100,000 population - 100,000 100,000 to more population - 200,000
Other banks	No reduction below above amounts, and any reduction to be approved by State Banking Board (or Department of Trade and Commerce).



Footnotes to Table 2.

1/ As of the beginning of the deposit guaranty system, with amendments during the period of operation of the system, except those adopted less than a year prior to termination of deposit guaranty on March 18, 1930. Special provisions for savings banks, or for cooperative banks, are omitted.

2/ Not applicable after 1915 to banks complying with reserve requirements of the Federal Reserve Act.

3/ In 1919, two-fifths of the cash reserve was permitted to be in United States Government bonds, reduced in 1925 to one-fifth.

4/ In 1923, effective until Jan. 1, 1925, in places of less than 1,000 inhabitants, if no other bank was available, \$15,000.



the borrowing procedure established at that time. By 1927 difficulties were encountered in marketing the receivers' certificates, which were guaranteed by the Guarantee Fund Commission, because of the prospective insolvency of the guaranty fund, and their issue was halted.

Under the changed condition of the guaranty fund, the attitude of bankers toward the system rapidly altered, and they attempted to have the law repealed or declared unconstitutional. Late in 1928 a suit was instituted to enjoin collection of the special assessment of December 15 of that year, renewing the contention that the guaranty law was unconstitutional, and asking for a review and reversal of the decision made in 1911. In April 1929 a district court acted favorably and granted an injunction prohibiting collection of the assessment. This made the law temporarily inoperative, pending an appeal to the State Supreme Court. The decision of that Court, rendered in December 1929, dismissed the complaint of the bankers, held the law constitutional, and dissolved the injunction.<sup>1/</sup> The bankers then appealed to the United States Supreme Court which heard the appeal early in 1931.

In the meantime, more banks had failed, the law had been extensively revised and the Guarantee Fund Commission abolished in April 1929, and all the banks it had been operating were placed in receivership except a few that were reorganized and reopened. At the same time another act authorized the Governor to make a thorough investigation and audit of the business transactions and activities since the beginning of 1919 of the Department of Trade and

---

<sup>1/</sup> Abie State Bank v. Weaver (1929), 227 N.W. 922, 119 Neb. 153.



Commerce and the Bureau of Banking, the Guarantee Fund Commission, and receivers of State banks. In the next month the Legislature had voted to repeal the deposit guaranty law, but the repeal act failed to receive the Governor's approval.

In the Spring of 1930 a special session of the Legislature was held to deal with the guaranty fund. A preliminary report of the banking investigation was prepared and submitted by the Governor in his message to the special session. On March 18, 1930, the legislature repealed the law so far as it related to future failures. To aid in paying existing claims against the fund, the same act established a Depositors' Final Settlement Fund consisting of the remaining balance of the guaranty fund and of receipts from annual assessments upon the banks for ten years of one-fifth of 1 percent of average daily deposits. An appropriation was made by the Legislature for the reimbursement of deposits lost in the banks which had been operated by the Guarantee Fund Commission, and a constitutional amendment was submitted to the people providing for an appropriation of \$8,000,000 to discharge the obligations of the deposit guaranty fund. It was hoped that collection of the assessments for 1928 and 1929 which had been held up by the injunction, the appropriation to be authorized by constitutional amendment, and the assessments to be levied for the Depositors' Final Settlement Fund would be sufficient to pay all claims in full.

In February 1931 the United States Supreme Court rendered its decision on the appeal from the State Supreme Court decision of 1929 upholding the constitutionality of the guaranty fund law. In this decision, the United States Supreme Court upheld its former decision of 1911 and the 1929 decision of the Nebraska Supreme Court that the guaranty law was constitutional.



However, in the course of the opinion, the United States Supreme Court noted that the law was sustained as a police regulation, and that a police regulation, though valid when made, may become, by reason of later events, arbitrary and confiscatory in operation, and that the decision upholding the constitutionality of the act would not preclude a subsequent suit for the purpose of testing, in the light of later actual experience, the validity of assessments made thereunder, alleged to be unreasonable and confiscatory, and hence repugnant to the due process clause of the Fourteenth Amendment. The Court also took judicial notice of the legislation of March 1930 which had altered the situation by transferring the December 1928 and subsequent assessments under the former guaranty law to the use of a Depositors' Final Settlement Fund, and by limiting future assessments. Considering this reduction in the extent of the obligation for future assessments, the Court declared itself unable to say that the modified statute was confiscatory or other than a reasonable method of liquidating the guaranty plan.<sup>1/</sup>

The legislation of March 1930 for settling the claims on the deposit guaranty fund was not successful. The State Supreme Court held that the appropriation for the reimbursement of deposits lost in banks which had been operated by the Guarantee Fund Commission was unconstitutional.<sup>2/</sup> The proposed constitutional amendment authorizing an appropriation for payment of the general obligations of the fund was rejected at the polls. Further, in the light of the opinion of the United States Supreme Court about the possibility

---

<sup>1/</sup> *Able State Bank v. Bryan* (1931), 51 S. Ct. 252, 282 U.S. 765, 75 L. Ed. 690. The opinion of the Court was delivered by Chief Justice Hughes. However, it is perhaps worthy of note that Willis Van Devanter, who was one of the judges of the United States Circuit Court which declared the original Nebraska law unconstitutional, was a Justice of the United States Supreme Court at the time of this decision, having been appointed after the hearings by that court on the constitutionality of deposit guaranty laws in Oklahoma, Kansas, and Nebraska.

<sup>2/</sup> *Weaver v. Koehn* (1930), 231 N.W. 703, 120 Neb. 114.



that assessment under a law originally constitutional might become unreasonable and confiscatory under changed conditions, the bankers brought another suit contesting the validity of the assessment provisions of the March 1930 law. This suit, after a favorable decision by a district court, was appealed and heard by the State Supreme Court in 1932. The State Supreme Court, in its decision rendered in November of that year, held that the part of the 1930 law repealing the application of the guaranty to future failures was constitutional, but that the part of the act establishing the Depositors' Final Settlement Fund lacked the public purpose necessary to support it as an exercise of the police power, and that it took the property of one person and gave it to another, thus depriving the one of his property without due process of law. Recognizing that this would make the assessments from December 1928 to March 1930 valid under the original act, the court ruled also on the contention that changed conditions made those assessments confiscatory, noting that the failure of the United States Supreme Court to find them so was because that court had been unable, in view of the new legislation, to determine whether the assessments were confiscatory. The reasoning and opinion of the State Supreme Court on this point is given below.

The public purpose sufficient to support the constitutionality of the depositors' guaranty fund was the stabilization of commerce and the creation of public confidence in the banks. It had a public purpose. It was within the reasonable exercise of the police power...

...state banks ... challenge the constitutionality of the assessments levied under the provisions of the Depositors' Guaranty Fund Law beginning with the special assessment of December 15, 1928... for that by reason of changed conditions the regulatory act in its operations has become confiscatory...

If under the facts it is confiscatory it is violative of the Fourteenth Amendment to the Federal Constitution. If it is confiscatory, then it can no longer be sustained as a constitutional legislative enactment under the police power for a public purpose. If confiscatory,



the public advantage does not justify taking of private property for what, in its purpose, is a private use.

In addition to the changed condition relating to changed statutory enactments, there are facts and circumstances inherent in the conditions of the banking business in this state since December, 1928. These facts are established by the record. It was a fact determined in 1928 that, due to the unprecedented number of failures of state banks, the depositors' guaranty fund was faced with a deficit of millions, and that it was impossible to restore the solvency of the fund. The comparatively small regular assessments had been levied and collected. In addition, the larger and more oppressive special assessments have been levied regularly for years, in the vain hope of restoring the solvency of the fund. The banks were faced with an indefinite continuance of these regular and special assessments. At the same time, the public purpose which this legislation undoubtedly had in the beginning was no longer served. From the condition of the fund itself, instead of a stabilizer of the state banks, it became a menace and a threat, sufficient to cause a great loss of public confidence in the banks with subsequent loss of business and earning power...

From any viewpoint from which we consider these assessments, it is apparent that all public purpose has been abandoned in relation thereto and that it now amounts to taking the property of one class of citizens to pay another class in contravention of the constitutional rights of the plaintiffs. 1/

This decision stated in effect that the deposit guaranty plan was constitutional as long as depositors were protected. It became unconstitutional when it had been clearly demonstrated that this public purpose was not fulfilled. This decision was not specifically confirmed by the United States Supreme Court, but was in effect approved by that Court by declining to review the case. 2/

---

1/ Hubbell Bank v. Charles W. Bryan, Governor (1932), 245 N.W. 20, 124 Neb. 51.

2/ Bryan v. Hubbell Bank of Hubbell (1933), 53 S. Ct. 785, 289 U.S. 753, 77 L. Ed. 1498.



The action of the United States Supreme Court, announced in May 1933, made impossible any collection by the guaranty fund of the disputed assessments. In the same month the Legislature of Nebraska repealed all remaining portions of the deposit guaranty law. The Department of Trade and Commerce then proceeded to wind up the affairs of the fund. Final payments to depositors from the small remaining balance in the fund were made in July 1934.

#### NUMBER, DEPOSITS, AND FAILURES OF PARTICIPATING BANKS

Number of participating banks. The number of State banks in Nebraska, all of which participated in the deposit guaranty system, and the number of national banks in the State, which did not participate, are given in Table 3 for each year of operation of the deposit guaranty fund.

At the time the guaranty law went into effect, about 73 percent of the banks operating in the State were operating under State law and therefore became participants in the guaranty system. During the next eight years, this proportion steadily increased, due primarily to the conversion of national banks to State banks, and reached 84 percent in 1919. This percentage remained stable for the next eight years. During the remaining two years of the guaranty system, the proportion operating under State law declined, falling to 80 percent of the total number of operating banks at the end of 1929.

Deposits of participating and nonparticipating banks. The proportion of total deposits in all operating banks held by the State banks was much smaller, throughout the period of deposit guaranty, than the percentage of number of banks. The national banks were, on the average, considerably larger banks than the State banks.



Table 3. NUMBER OF OPERATING BANKS IN NEBRASKA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1912-1930, BY YEARS

Year end <u>1/</u>	All banks operating in Nebraska	Participating in deposit guaranty <u>2/</u>	Not participating in deposit guaranty <u>3/</u>	Percentage Participating
1911	916	669	247	73.0
1912	935	694	241	74.2
1913	965	728	237	75.4
1914	983	765	218	77.8
1915	1,007	803	204	79.7
1916	1,031	839	192	81.4
1917	1,110	920	190	82.9
1918	1,133	942	191	83.1
1919	1,188	999	189	84.1
1920	1,196	1,009	187	84.4
1921	1,170	986	184	84.3
1922	1,137	955	182	84.0
1923	1,118	938	180	83.9
1924	1,101	928	173	84.3
1925	1,072	903	169	84.2
1926	1,043	883	160	84.7
1927	1,012	855	157	84.5
1928	882	726	156	82.3
1929	804	647	157	80.5

1/ Dec. 31, or nearest available date. Call dates for State and national banks are not identical in several years.

2/ All State banks, from annual reports of the Bureau of Banking. For 1919, 1920, and 1921, some of these banks may not have been participants, because of the provision of the 1919 law (removed in 1921) that new banks were not required to participate until they had been operating two years. The only information regarding nonparticipants is for Nov. 13, 1920, when 40 banks did not show the item, "Depositors Guaranty Fund" in their statement as published in the report of the Bureau of Banking. Two years later no bank omitted this item.

3/ National banks, from annual reports of the Comptroller of the Currency.

669	247	73.0
694	241	74.2
728	237	75.4



At the beginning of deposit guaranty, about 40 percent of the bank deposits in the State were held by State banks. For a number of years this percentage increased, reaching 59 percent in 1921, and remaining between 55 and 59 percent until 1928. During the last two years of deposit guaranty, the deposits in State banks declined relative to those in national banks, so that by the end of 1929 only 47 percent of the deposits in the State were in banks participating in the deposit guaranty system. The deposits of participating banks, all of which were insured, and those of nonparticipating banks are given in Table 4 for each year of operation of the guaranty system.

Concentration of bank deposits. Table 5 shows the amounts of deposits held on October 31, 1914, and June 30, 1927, by the State banks in Nebraska grouped according to their deposits. These years are chosen as representative of the earlier and later parts of the period during which the deposit guaranty system was in operation.

In 1914 the largest State bank in Nebraska held 1.1 percent, and in 1927 the largest bank held 2.3 percent, of the deposits in all State banks. The largest 10 banks held, on these dates, respectively, 7 and 9 percent of the deposits in all State banks. The concentration of deposits in a few of the largest banks was not so great in Nebraska as in Kansas and in Oklahoma during periods of operation of guaranty deposit plans.

Failures of participating banks. During the 19 years of operation of the deposit guaranty system in Nebraska, 360 participating banks closed because of financial difficulties. Only seven of these failures occurred during the first half of the period of operation of the fund. One of the banks which closed was a bank which had previously <sup>sus</sup>suspended and had been



Table 4. DEPOSITS IN OPERATING BANKS IN NEBRASKA PARTICIPATING AND NOT PARTICIPATING IN THE DEPOSIT GUARANTY SYSTEM, 1912-1930, BY YEARS.  
(In thousands of dollars)

Year end <u>1/</u>	All banks operating in Nebraska	Banks participating in deposit guaranty <u>2/</u>	Banks not participating in deposit guaranty <u>3/</u>	Percentage of deposits in all banks held by participating banks
1911	193,591	73,890	119,701	38.2
1912	204,925	82,528	122,397	40.3
1913	213,726	92,747	120,979	43.4
1914	216,796	100,812	115,984	46.5
1915	240,870	114,488	126,382	47.5
1916	342,671	165,528	177,143	48.3
1917	419,232	223,499	195,733	53.3
1918	477,761	259,875	217,886	54.4
1919	513,211	278,769	234,442	54.3
1920	432,113	255,067	177,046	59.0
1921	387,641	216,478	171,163	55.8
1922	433,992	238,754	195,238	55.0
1923	430,220	239,985	190,235	55.8
1924	484,897	271,529	213,368	56.0
1925	487,291	281,547	205,744	57.8
1926	470,090	275,552	194,538	58.6
1927	474,300	274,525	199,775	57.9
1928	461,646	252,460	209,186	54.7
1929	406,850	191,658	215,192	47.1

1/ Dec. 31, or nearest available date. Call dates for State and national banks are not identical in several years.

2/ Deposits in all State banks, from annual reports of the Bureau of Banking. Includes dividends unpaid. See note 2 to Table 3 regarding banks that may not have been participants in 1919, 1920, and 1921. The 40 banks omitting the item "Depositors Guaranty Fund" from their statements as of Nov. 13, 1920, had deposits on that date of \$3,336,000.

3/ Deposits in national banks, from annual reports of the Comptroller of the Currency.



Table 5. NUMBER AND DEPOSITS OF STATE BANKS IN NEBRASKA,  
OCTOBER 31, 1914, AND JUNE 30, 1927

Banks grouped by amount of deposits

	Number of banks	Amount of deposits (thousands of dollars)	Percentage of number of banks	Percentage of aggregate deposits
<u>All State banks, October 31, 1914</u>	<u>760</u>	<u>93,420</u>	<u>100.0</u>	<u>100.0</u>
<u>Banks with deposits of --</u>				
\$100,000 or less	387	22,684	50.9	24.3
\$100,000 to \$250,000	303	45,783	39.9	49.0
\$250,000 to \$500,000	64	20,451	8.4	21.9
\$500,000 to \$1,000,000	5	3,479	.7	3.7
\$1,000,000 to \$2,000,000	1	1,023	.1	1.1
Largest bank		1,023		1.1
Largest 5 banks		3,991		4.3
Largest 10 banks		6,418		6.9
<u>All State banks, June 30, 1927</u>	<u>872</u>	<u>275,038</u>	<u>100.0</u>	<u>100.0</u>
<u>Banks with deposits of --</u>				
\$100,000 or less	100	7,380	11.5	2.7
\$100,000 to \$250,000	348	60,511	39.9	22.0
\$250,000 to \$500,000	300	102,826	34.4	37.4
\$500,000 to \$1,000,000	102	65,362	11.7	23.7
\$1,000,000 to \$2,000,000	17	22,301	1.9	8.1
\$2,000,000 to \$5,000,000	4	10,398	4.5	3.9
Over \$5,000,000	1	6,260	.1	2.3
Largest bank		6,260		2.3
Largest 5 banks		16,658		6.1
Largest 10 banks		24,855		9.0



reopened. Of the closed banks, 317 entailed obligations on the guaranty fund. The other 43 were reopened without obligations on the fund. The deposits in the guaranteed banks closed because of financial difficulties amounted to \$85 million, of which \$74 million were deposits in the cases entailing obligations on the guaranty fund.

The number and deposits of the banks closed each year, with ratios to the number and deposits of operating banks at the beginning of the year, are given in Tables 6 and 7. The average annual rate of failure, computed at the number of banks which failed per 100 operating at the beginning of each year, was 2.2. However, as has been mentioned, nearly all of the failures occurred during the latter half of the period of operation of the fund. For the 9½ years that the fund was in operation prior to 1921, the average annual rate of failure was 0.1 per 100 operating banks, and the deposits in the closed banks averaged \$0.09 per \$100 in operating banks. For the remaining 9 years of the system, the average annual rate of failure was 4.2 per 100 banks. The deposits of the closed banks, for this period, averaged \$3.57 per year for each \$100 of deposits in operating banks. The latter rate, for the entire period of operation of the fund, was \$2.25 per year for each \$100 in operating banks.

Failures by size of bank. In Table 8 the size distribution of the failed banks which entailed obligations on the guaranty fund is compared with the average size distribution of operating banks. The failures show very little correlation with size of bank, except for a low failure rate among the largest-sized banks. The largest bank among the failures was the Security State Bank,



Table 6. NUMBER OF STATE BANKS IN NEBRASKA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JULY 1, 1911, TO MARCH 18, 1930, BY YEARS

Year or period <u>1/</u>	Total closed		Reopened or affairs closed without obligation on the guaranty fund <u>3/</u>	Placed directly in receivership <u>4/</u>	Number <u>2/</u> Taken over for operation by Guaranty Fund Commission <u>5/</u>	Commission operated banks placed in receivership <u>6/</u>	Total entailing obligations on the guaranty fund <u>7/</u>
	Number	Per 100 active banks					
<u>Total</u>	<u>360</u>	2.2 <u>8/</u>	<u>43</u>	<u>135</u>	<u>182</u>	<u>182</u>	<u>317</u>
<u>Subtotals</u>							
July 1, 1911 to Dec. 31, 1920	7	.1	--	7	--	--	7
Jan. 1, 1921 to March 18, 1930	353	4.2	43	128	182	182	310
1914	1	.1	--	1	--	--	1
1916	1	.1	--	1	--	--	1
1920	5	.5	--	5	--	--	5
1921	26	2.6	1	25	--	--	25
1922	23	2.3	1	22	--	--	22
1923	22	2.3	--	12	10	3	15
1924	18	1.9	1	7	10	6	13
1925	39	4.2	--	8	31	12	20
1926	36	4.0	--	7	29	15	22
1927	41	4.6	--	1	40	21	22
1928	58	6.8	4	--	54	46	46
1929	79	10.9	34	37	8	79	116
1930	11	8.1 <u>8/</u>	2	9	--	--	9

1/ No failures occurred in 1911-1913, 1915, or 1917-1919.

2/ Tabulated from information regarding the individual banks in the biennial reports of the Department (Bureau) of Banking, reports of special investigations ordered by the Legislature, schedules prepared for the Federal Reserve Committee on Branch, Group, and Chain Banking, surviving records in the Department of Banking, and receivership records in custody of the library of Nebraska State University.

3/ Reopened, taken over, or liquidated. Includes 10 banks (2 in 1928 and 8 in 1929) which had been taken over by the Guaranty Fund Commission. Of the 43 banks, 33 were reopened subsequent to April 30, 1929, when the Secretary of the Department of Trade and Commerce was authorized to approve a reorganization plan of a failed bank to which owners of 85 percent of the deposits and unsecured liabilities had agreed.

4/ Three of these banks (1 placed in receiverships in 1923, 1 in 1924, and 1 in 1926) were later reopened or taken over with a payment from the guaranty fund.

5/ Excluding the 10 banks mentioned in note 3.

6/ In 1925 includes one bank reopened and another taken over with a payment from the guaranty fund.

7/ Banks placed in receivership directly plus Commission operated banks placed in receivership.

8/ Annual rates.



Table 7. DEPOSITS OF STATE BANKS IN NEBRASKA CLOSED BECAUSE OF FINANCIAL DIFFICULTIES, JULY 1, 1911, TO MARCH 18, 1930, BY YEARS

Year or period	All banks closed		Banks reopened or affairs closed without obligation on the guaranty fund <sup>2/</sup>	Banks placed directly in receivership	Deposits of -- <sup>1/</sup>		
	Amount (at date closed or taken over by Guaranty Fund Commission)	Per \$100 of deposits in active banks			Banks taken over for operation by Guaranty Fund Commission	Commission operated banks placed in receivership	Banks entailing obligations on the guaranty fund (at date placed in receivership)
<b>Total</b>	<b>\$84,959,817</b>	<b>\$2.25 <sup>3/</sup></b>	<b>\$10,699,746</b>	<b>\$25,556,804</b>	<b>\$48,703,267 <sup>4/</sup></b>	<b>\$35,932,301 <sup>4/</sup></b>	<b>\$61,489,105</b>
<b>Subtotals</b>							
July 1, 1911 to Dec. 31, 1920	1,258,257	.09	--	1,258,257	--	--	1,258,257
Jan. 1, 1921, to March 18, 1930	83,701,560	3.97	10,699,746	24,298,547	48,703,267	35,932,301	60,230,848
1914	122,418	.13	--	122,418	--	--	122,418
1916	110,244	.10	--	110,244	--	--	110,244
1920	1,025,595	.37	--	1,025,595	--	--	1,025,595
1921	6,090,037	2.39	48,621	6,041,416	--	--	6,041,416
1922	4,957,906	2.29	200,344	4,757,562	--	--	4,757,562
1923	4,134,588	1.73	--	1,574,124	2,560,464	843,425	2,417,549
1924	4,886,130	2.04	197,519	525,919	4,162,692	1,019,893	1,545,812
1925	11,244,134	4.14	--	2,058,026	9,186,108	3,095,825	5,153,851
1926	8,468,402	3.01	--	1,024,406	7,443,996	4,822,674	5,847,080
1927	11,825,928	4.29	--	43,122	11,782,806	5,586,104	5,629,226
1928	13,367,757	4.87	823,472	--	12,544,285	7,724,723	7,724,723
1929	17,075,467	6.76	9,056,824	6,995,727	1,022,916	12,839,657	19,835,384
1930	1,651,211	4.10 <sup>3/</sup>	372,966	1,278,245	--	--	1,278,245

<sup>1/</sup> For number of banks in each group, and sources of data, see Table 6 and notes thereto.

<sup>2/</sup> Of the total deposits of these banks, \$8,812,583 were in 33 banks reopened after April 30, 1929 (see note 3 to Table 6).

<sup>3/</sup> Annual rate.

<sup>4/</sup> The difference between these aggregates represents deposits paid in excess of those received while the 182 banks were operated by the Guaranty Fund Commission.



Table 8. SIZE DISTRIBUTION OF FAILED BANKS IN NEBRASKA ENTAILING OBLIGATIONS ON THE GUARANTEE FUND COMPARED WITH AVERAGE SIZE DISTRIBUTION OF OPERATING BANKS

	Number of banks			Deposits		
	Average number of operating banks	Failed banks	Average annual number of failed banks per 100 active banks <sup>1/</sup>	Average deposits of operating banks (in thousands)	Failed banks (in thousands) <sup>2/</sup>	Average annual amount of deposits in failed banks per \$100 deposits in operating banks <sup>1/</sup>
<u>Total</u>	<u>852</u>	<u>317</u>	<u>2.0</u>	<u>\$206,611</u>	<u>\$74,262</u>	<u>\$1.92</u>
<u>Banks with deposits of--</u>						
\$100,000 or less	200	74	2.0	12,873	4,769	1.98
\$100,000 to \$250,000	366	142	2.1	61,979	23,462	2.02
\$250,000 to \$500,000	214	73	1.8	73,280	25,050	1.83
\$500,000 to \$1,000,000	61	27	2.3	39,435	19,354	2.62
\$1,000,000 to \$2,000,000	9	1	.6	11,287	1,627	.77
\$2,000,000 or more	2	--	--	7,757	--	--

<sup>1/</sup> Computed from data in the foregoing columns and the length of time the deposit guaranty system was in operation (18.7 years).

<sup>2/</sup> For banks operated as "going concerns", deposits are as of the date taken over by the Guarantee Fund Commission.



Omaha, with deposits of approximately \$1,500,000. No other bank with deposits of more than \$1,000,000 failed during the life of the guaranty fund. The Security State Bank was the seventh largest bank operating under State law. Deposits of this bank constituted 2 percent of the deposits of all guaranteed banks which failed prior to repeal of the applicability of the law. Concentration of risk in large banks, and failure of these banks, does not appear to have been an important factor in the insolvency of the Nebraska guaranty fund. However, there is evidence that the majority of the large banks in the fund were not in good condition. Of the six banks larger than the Security State Bank, Omaha, three failed within eighteen months after the repeal of the guaranty provisions of the law, and one was absorbed prior to the close of deposit guaranty under conditions indicating that the bank was about to fail. The other two consolidated and converted to a national bank at about the time the guaranty law was repealed.

Comparison of failures with those in other States. In Table 9 bank failure rates, for both number and deposits, are shown for Nebraska, for banks in contiguous States, and for the entire United States. The table covers the years 1912-1929, which includes the period of operation of the Nebraska deposit guaranty system except for the last half of 1911 and the early part of 1930. The failure rates in Nebraska were substantially higher, both for national banks and State banks, than for the entire United States.

For number of failures, the rate for State banks in Nebraska was higher than in three, lower than in two, and the same as one of the contiguous



Table 9. ANNUAL BANK FAILURE RATES IN NEBRASKA, 1912-1929, COMPARED WITH RATES IN CONTIGUOUS STATES AND IN THE UNITED STATES <sup>1/</sup>

	Failures per year per 100 operating banks			Deposits per year in failed banks per \$100 in operating banks		
	State and nat'l banks	State banks	National banks	State and nat'l banks	State banks	National banks
<u>Nebraska</u>	<u>2.0</u>	<u>2.3</u>	<u>0.9</u>	<u>\$1.40</u>	<u>\$2.25</u>	<u>\$0.41</u>
<u>Six contiguous States</u>	<u>1.8</u>	<u>1.9</u>	<u>1.1</u>	<u>.92</u>	<u>1.29</u>	<u>.44</u>
South Dakota	3.9	4.2	2.5	3.49	4.48	1.86
Iowa	2.0	2.1	1.5	1.38	1.63	.92
Missouri	1.1	1.2	.3	.31	.52	.02
Kansas	1.1	1.3	.3	.70	1.13	.15
Colorado	1.8	2.3	.9	.54	.95	.38
Wyoming	3.1	3.7	1.7	1.72	2.27	1.41
<u>Entire United States</u>	<u>1.3</u>	<u>1.6</u>	<u>.6</u>	<u>.30</u>	<u>.43</u>	<u>.15</u>

<sup>1/</sup> Tabulated from data from the following sources: reports of bank commissioners in the various States; Willis, Banking Inquiry of 1925; annual reports of the Comptroller of the Currency; Federal Reserve Committee on Branch, Chain and Group Banking, "Changes in the Number and Size of Banks in the United States, 1934-1941;" and Federal Reserve Bulletin, September and November, 1937.



States; in terms of deposits, the rate for Nebraska was higher than in four, and lower than in two of the contiguous States. Deposit guaranty systems were in operation in two of the contiguous States, Kansas and South Dakota, during most of the period covered by this table. The failure rates in Nebraska were higher than in Kansas, but lower than in South Dakota.

Causes of bank failures. In 1930 the legislature of Nebraska ordered a special investigation and audit of failed banks in the State. The report of this investigation contains a discussion of the causes of failure without making an attempt to estimate the number due to specific causes.<sup>1/</sup> An analysis of the evidence collected by the investigation which was made by Mr. T. Bruce Robb for the Department of Business Research of the University of Nebraska is also without an estimate of the number of failures due to the various causes mentioned.<sup>2/</sup>

Relatively little is said in the report of the Banking Investigation about theft, embezzlement, or defalcation on the part of bank officials. Such overt acts were apparently not regarded as a major cause of failure in many of the banks which failed during the period of operation of the guaranty fund. More attention is given to dishonesty by the study of the Department of Business Research of the University of Nebraska. A number of cases are cited of dishonesty on the part of bank officials, shortages due to the abstractions of cashiers, forged notes, and loans obtained on worthless paper, to which the following statement is added:

---

<sup>1/</sup> A. C. Challenberger, Final Report of the Banking Investigation, pp. 6-9.

<sup>2/</sup> T. Bruce Robb, State Bank Failures in Nebraska (1934), pp. 27-28.



If space permitted the recital of such sordid banking transactions, it would unfortunately be greatly extended. The first impression one gets from this record is the complete lack of any feeling of public responsibility for their actions on the part of these bank managers.

Both the banking investigation and the Department of Business Research placed great stress on speculation, loans to interests with which bank officials were associated, and loans in excess of the legal limits. The report of the Banking Investigation described the influence of these elements as follows:

The World War inflated prices, both of land and other property, to such an extent that a business boom developed which swept many bankers, business men and even farmers into a maelstrom of speculation. Standards of values and normal basis of credit were completely lost sight of and sound business principles were forgotten...Land speculation, a most dangerous economic disease for bankers to contract, became epidemic either through loans on lands or by indirect purchases by bank officers...

Millions of dollars of worthless loans encumbered the note cases of the banks audited by this office. Very often more than half of the notes in failed banks were found worthless because the officers making them were speculators, not bankers.

The same aspect of the situation was described by Mr. Robb, in the report of the Department of Business Research, as follows:

One of the great weaknesses of a decentralized system of unit banks as developed in this country is the opportunity it affords to men of affairs to enter the banking business and use the community's deposits to lubricate their private ventures. No man can successfully serve two masters, and the spectacle of a banker in the role of a credit man making loans to his own enterprises is grotesque. The period of rapid growth in the number of banks was especially productive of this type of banker. It was a period of rising prices and speculative excesses, and the banking business was disgraced by bankers who were using their institutions to finance their own



mercantile operations, or the tenants on their own farms, or as a dumping ground for the paper collected by their automobile agencies or that growing out of their cattle transactions. Almost without exception, the losses following in the train of this kind of banking were appalling.

An excessive number of banks, inadequate earnings, and management by incompetent officials are also emphasized as important joint factors in the widespread collapse of banks in Nebraska. Incompetence may wreck a bank with good earning power. However, incompetent management appears most frequently when new banks are opened freely; and an excessive number of banks in a locality in relation to the volume of business available in the locality is a major factor in inadequate earnings. The report of the Banking Investigation describes the influence of these factors in Nebraska as follows:

...hundreds of banks were chartered for which there was no economic use and men permitted to operate them who, for want of ability and honesty, have disgraced the business of banking. Too many banks and too few bankers bred bankruptcy in the banking business.

...The unsafe and unnecessary expansion in banking during the boom period because of no limiting of charters led to an extraordinary and dangerous increase in loans and credits. Where too many banks make competition ruinous, bad loans become common because there are not enough safe borrowers to absorb the funds that must be loaned to make a show of profit.

Mr. Robb, in reviewing the evidence collected by the banking investigation makes similar statements regarding incompetent management and an excessive number of banks.

It is not out purpose...in this section to consider cases where, more often than not, bank officers were honest and well meaning, but where either through indolence or stark ignorance of sound banking practice they showed themselves grossly incompetent to operate a bank. It would only be expected that where banks were organized with such feverish haste as occurred between 1910 and 1920, many cases would come to light of men permitted to operate banks who were utterly unfit to receive and loan other people's money.



Economic circumstances and rapid economic changes, particularly the sharp reversal in prices of agricultural products after the close of the World War and the renewed decline in those prices which set in about 1926, were also important elements in the large number of bank failures in Nebraska. Nevertheless, the report of the banking investigation and the analysis by the Department of Business Research of the University of Nebraska give only a moderate stress to the decline in agricultural prices. This decline is considered to be the occasion for bank failures, but speculation, loans to bank officials and their interest, incompetent management, and an excessive number of banks are emphasized as more fundamental causes.

A similar emphasis is indicated in the causes of failure of banks which closed during the period 1921-1930, as reported in the schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking.<sup>1/</sup> Out of 380 failures for which a primary cause of failure is mentioned, only 34 are attributed to the decline in real estate values or to losses due to unforeseen agricultural or industrial disaster, while 38 are attributed to defalcation and 264 to incompetent management. However, land values and agricultural conditions are stressed as an important contributing factor in a great majority of the failures. A classification of the primary and contributing causes of failure reported on these schedules is given in Table 10.

---

<sup>1/</sup> Schedules prepared in 1931 in the office of the Bureau of Banking of Nebraska, for the Federal Reserve Committee on Branch, Group and Chain Banking.



Table 10. CAUSES OF BANK FAILURES IN NEBRASKA, 1921-1930, REPORTED ON SCHEDULES PREPARED FOR THE FEDERAL RESERVE COMMITTEE ON BRANCH, GROUP AND CHAIN BANKING

Item <sup>1/</sup>	Number of cases	
	Primary cause	Contributing cause
<u>Dishonesty of officers--total</u>	39	17
Defalcation	38	13
Officer's irregularities or shortages	--	3
Inside bank robbery	1	--
Dishonesty of former management	--	1
<u>Misuse of bank funds, excessive loans, irregularities--total</u>	29	37
Misuse or misapplication of bank funds	27	11
Excess loans, or overloaning	--	21
Excessive and illegal loans	--	1
Loans to stockholders and relatives	--	1
Failure of large debtor	2	--
Violation of State banking laws	--	3
<u>Reversal of prosperous conditions, decline in values--total</u>	85	227
Unforeseen agricultural or industrial disaster, such as flood, drought, etc.	4	36
General deflation, or general depression	28	16
Decline in value of farm products, or deflation of agricultural prices	23	32
Decline in real estate values	30	143
<u>Incompetent or poor management--total</u>	281	96
Incompetent management	264	70
Insufficient diversification	16	14
Long-term loans on real estate	1	--
Excessive operating cost	--	2
<u>Other causes--total</u>	81	86
Heavy withdrawals	40	27
Failure of other banking institutions	11	4
Insufficient operating income	1	11
Lack of business	21	4
Lax enforcement of State banking laws	2	37
Miscellaneous	6	3

<sup>1/</sup> Specific items are from schedules collected by the Federal Reserve Committee on Branch, Group and Chain Banking, the grouping by the author of this report. The tabulation was made by the author of this report from the schedules, which were made available through the courtesy of the Board of Governors of the Federal Reserve System.



Procedures in handling failed banks. Until organization of the Guarantee Fund Commission in 1923 almost all the banks closed because of financial difficulties were placed directly in receivership, with the receiver appointed by the district court and the affairs of the bank closed under jurisdiction of the court. In only two cases had banks been reopened without a receivership. In the receivership cases the procedure was for the guaranty fund to pay the receiver an amount which, together with the proceeds of the readily liquidated assets of the bank, enabled him to pay all the deposit claims. However, when failures became numerous in 1921 the amount that was required to be drawn from the guaranty fund was reduced by a device for receivers' borrowings developed by a group of banks participating in the deposit guaranty system. This was later described as follows in a message of the Governor to the Legislature and in court testimony by one of the bankers associated with it.

"...state bankers...organized the State Agricultural Loan Association and sold stock and association notes to member banks to the amount of two million dollars. The proceeds of the stock and note sales were used in paying off depositors in failed banks. The assets of the failed banks then became the property of the association." <sup>1/</sup>

"...I served with the Agriculture Loan Association... With the consent of the various District Courts we issued receiver certificates which were endorsed and guaranteed by the Agriculture Loan Association then sold to solvent banks and the proceeds used to pay off depositors immediately. In fact, the only difference between what we did and what has been done since by the Guarantee Fund Commission was that it, the latter, was legalized by the law. This was more or less voluntary; no legal provision had been made for it. Stockholders were all voluntary stockholders and the Agriculture Loan Association assumed responsibility of endorsing receivers certificates and the banks who bought them assumed the responsibility of their being paid

---

<sup>1/</sup> Farewell message of Governor Adam McMullen to the Nebraska Legislature, Jan. 3, 1929, Nebraska House Journal, Forty-fifth Session, 1929, p. 50.



but the depositors got their money and the object was to keep the Guarantee Fund from breaking down. The failures at that time, occurred so rapidly and with such large liabilities that the assessments were not bringing in enough money to pay the depositors." <sup>1/</sup>

After establishment of the Guarantee Fund Commission in 1923 banks in difficulty were turned over to that Commission for operation as a "going concern" or appointment of a receiver; and a few months later existing receiverships were transferred to the Commission for appointment of a new receiver to complete the process of liquidation. Members of the Guarantee Fund Commission served as the receivers, with the receivership process supervised, as previously, by the district courts. The Commission organized two departments, one for going banks and one for those in receivership, with the Secretary of the Commission as an executive officer. The Commission inherited 58 receiverships, and handled the affairs of 226 other banks before it went out of existence in 1929.<sup>2/</sup>

The hope that banks could be rehabilitated by operation as going concerns proved futile. Of 228 banks closed because of financial difficulties between May 4, 1923, and May 1, 1929--the establishment and termination dates of the Commission--about 200 were treated as "going concerns" for varying lengths of time ranging from a portion of a month to more than three years. Table 11 gives a distribution of 192 banks according to the length of time they were operated by the Commission, and also the number operated as going

---

<sup>1/</sup> Testimony of George W. Woods in District Court of Lancaster County, in *Abie State Bank v. Bryan*, from records of the United States Supreme Court, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, Case No. 63, pp. 240-41.

<sup>2/</sup> Final Report of the Banking Investigation. The difference between the figure of 226 and that of 228 in the next paragraph is probably due to banks reopened without being handled by the Commission. The letter figure is derived from information collected regarding the individual closed banks, from the sources used in preparing Table 6.



Table 11. BANKS CLOSED IN NEBRASKA DURING THE LIFE OF THE GUARANTY FUND COMMISSION

Banks failed May 4, 1923, to May 1, 1929		Number of banks operated as "going concerns" <sup>1/</sup>	
<u>Total number</u> <sup>2/</sup>	<u>228</u>	1925 - midyear	33
		1925 - year-end	30
<u>Operated as "going concerns"</u> <sup>3/</sup>	<u>192</u>	1926 - midyear	36
For less than 6 months	38	1926 - year-end	44
6 to 11 months	24	1927 - midyear	57
12 to 17 months	71	1927 - year-end	62
18 to 23 months	35	1928 - midyear	75
24 to 29 months	15	1928 - year-end	72
30 to 35 months	7	1929 - Feb. 5	67
Over 3 years	2		
<u>Other failed banks</u> <sup>4/</sup>	<u>36</u>		

<sup>1/</sup> For midyear 1925 and 1927 from reports of the Bureau of Banking for those years; for year-ends 1927 and 1928 from United States Supreme Court records, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, pp. 46 and 60; Feb. 5, 1929, from Report of House Sub-Committee on Guarantee Fund Commission, 1929; for other dates, tabulated from information pertaining to the individual banks.

<sup>2/</sup> Tabulated from a list of the banks. The Guarantee Fund Commission took over 227 banks, according to information in "Exhibit A, Statement by Governor Weaver on Bank Situation," submitted with the message of Arthur J. Weaver, Governor, to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary), 1930, p. 26.

<sup>3/</sup> Tabulated from information relating to the individual banks, from the sources used in preparing Tables 6 and 7, and lists of banks operated as "going concerns" at various dates. The total number operated as "going concerns" for various periods was 201, according to Governor Weaver's statement (see note 2).

<sup>4/</sup> Includes 31 banks placed in receivership and 5 taken over, with no evidence found in published reports or surviving records that they were operated as "going concerns." However, five of those placed in receivership and four of those taken over must have been operated as "going concerns" for a short period, in view of the figures in Governor Weaver's statement (see notes 2 and 3).



concerns on several dates. Only ten of these were reopened without being placed in receivership, and those were banks that closed after the guaranty fund was exhausted. Operation of failed banks as "going concerns" resulted in greater, rather than smaller, losses on deposits. "Every bank so operated," according to the report of the special investigation ordered by the Legislature when the Guaranty Fund Commission was abolished, "showed a continual monthly operating loss and few reorganizations and sale of closed banks resulted from this policy."<sup>1/</sup> The total operating loss in 167 banks operated as "going concerns", according to the Governor's report to the 1930 special session of the Legislature, was \$1,322,728.<sup>2/</sup>

Many of the banks taken over by the Commission and later placed in receivership, particularly those taken over during the last two years of the life of the Commission, after it became difficult or impossible to sell receivers' certificates, were in fact in the process of liquidation while they were officially operated as "going concerns". The reason for this procedure was to reduce the amount of interest on deposits to be paid from the guaranty fund. In receivership cases the deposit claims approved by the court became a judgment against the guaranty fund and bore interest at the rate of 7 percent until paid. In the banks operated by the Commission no old deposits were paid and no time certificates renewed, and assets were liquidated as rapidly as possible. When most of the assets were sold, a dividend on the old deposits was paid and the bank placed in receivership.<sup>3/</sup>

---

<sup>1/</sup> Final Report of the Banking Investigation, p. 9.  
<sup>2/</sup> As reported in Commercial West, Vol. 59 (March 22, 1930).  
<sup>3/</sup> C. M. Skiles, general counsel of the Guarantee Fund Commission, in an article, "How I Would Change Nebraska's Guarantee Law," The Northwestern Banker, Vol. 33 (March 1928), pp. 17-18 and 144-146.



For about four years after sale of receivers' certificates was authorized in 1923, such certificates were issued as the banks were placed in receivership, and the depositors were paid at once. In 1923 the amount was \$1.7 million and the next year \$2.4 million.<sup>1/</sup> The receivers' certificates were repaid from the proceeds of liquidation and from receipts of the guaranty fund from the next assessment on participating banks. The receivers' certificates were issued at a rate of interest set by the court, usually for a term of one year, and until 1927 it was possible to pay them before or when due.<sup>2/</sup> By 1928, when there was more than a million dollars of such certificates outstanding, bearing 7 percent interest, it became impossible to sell any more to the banks that had been investing in them.<sup>3/</sup> Thereafter the depositors held the judgments, and received dividends on them from the liquidation of the assets of the bank. With the assessments on participating banks subsequent to 1928 withheld from use by court injunction and eventually declared unconstitutional, additional payments from the guaranty fund were limited to comparatively small amounts. Such payments were made as partial dividends to the depositors of 25 banks from the Depositors' Final Settlement Fund, before its establishment was held unconstitutional by the State Supreme Court, and to those of 3 banks upon final settlement of the affairs of the fund.

---

<sup>1/</sup> Testimony of Payson D. Marshall, United States Supreme Court, Transcripts of Records and File Copy of Briefs, 1930, Vol. 38, Case No. 63.

<sup>2/</sup> To 1926, receivers' certificates were issued with maturities of one year or less, bore interest at 6 percent, and had always been paid before maturity, according to statement by Kirk Griggs, Secretary of the Department of Trade and Commerce and Chairman of the Guaranty Fund Commission, in The Northwestern Banker, Vol. 31 (September 1926), p. 15. A report the next year of a talk by the Governor also stated that receivers' certificates had always been paid before maturity, The Northwestern Banker, Vol. 32 (August 1927), p. 81.

<sup>3/</sup> C. M. Skiles, in statement as reported in the Wall Street Journal, Feb. 7, 1928.



Relatively little use appears to have been made of the authority given in 1923 to a receiver of a failed bank to sell all its assets to new stockholders, with the approval of the Guarantee Fund Commission and the court, with the receiver drawing on the guaranty fund to meet any deficiency in the amount needed to meet depositors' claims payable from the guaranty fund. Only five banks placed in receivership during the life of the Guarantee Fund Commission were reported to have been reopened or taken over, with a payment from the guaranty fund, after having been placed in receivership.

More use was made of the power given in 1923 to the Department of Trade and Commerce to request the court with jurisdiction over a receivership to sell its assets and to bid for the assets at such sale. This process was used in 74 cases. However, the amounts were comparatively small, representing remaining assets after the receiver had liquidated most of the assets and repaid as much as possible to the guaranty fund.

When the Guarantee Fund Commission was abolished, existing receiverships were transferred to the Department of Trade and Commerce, and that Department took charge of the banks that were being operated by the Commission. The Department also took charge of other banks closed because of financial difficulties prior to the termination, about ten months later, of the applicability of the guaranty to future failures. No payments were made from the guaranty fund nor from the Depositors' Final Settlement Fund in any of these banks, most of which were placed in receivership, with the Secretary of the Department as receiver and the receivership process supervised



by the district court.<sup>1/</sup> However, some were reorganized, under a provision of the 1929 law, with depositors reducing their claims in a sufficient amount to absorb the losses.

#### FINANCIAL HISTORY OF THE GUARANTY FUND

Sources and adequacy of information. The balance of the depositors' guaranty fund held by the participating banks at each call date, but very little additional information regarding the operation of the depositors' guaranty fund, is given in the periodic reports of the Bureau of Banking. The amount held by the State Treasurer on June 30 of each year is given in the reports of the Auditor of Public Accounts. Considerable information regarding the financial history of the fund is available from special investigations ordered by the Nebraska legislature. Early in 1929 the House of Representatives requested its Banks and Banking Committee to make a thorough investigation of the books and records of the Guarantee Fund Commission. The report of this investigation, which was published as a document of the Legislature, gives a statement of the guaranty fund and of each closed bank as of February 5, 1929.<sup>2/</sup> In April of the same year,

---

<sup>1/</sup> In 1933, the judicialship procedure in handling bank receiverships was terminated, and the Department of Banking became an administrative receiver for future failures. However, former receiverships not yet terminated, including some banks that had failed while the guaranty fund system was in operation, and the records relating to closed receiverships, were retained by Mr. E. E. Luikart, the last Secretary of the Department (and Superintendent of Banks for the next two years) until all of such receiverships were finally closed. The records of these receiverships were removed from the Department of Banking (which had succeeded the Department of Trade and Commerce), and eventually transferred to the custody of the University of Nebraska. The author of this report was provided access to the remaining records in November 1955 through the courtesy of the library of the University.

<sup>2/</sup> Legislature of Nebraska, Forty-fifth session, 1929, Report of House Sub-Committee on Guarantee Fund Commission.



the Legislature ordered an examination and audit of failed banks and of the departments charged with responsibility for the banking laws. This was conducted from May 1929 to July 1930 by A. C. Shallenberger, who was appointed by the Governor as Chief Examiner for this purpose.<sup>1/</sup> The reports of this investigation give a summary of the assessments and disbursements of the fund, and also the disbursements to depositors and recoveries from assets of each of the failed banks, to January 2, 1930. Annual data for assessments, recoveries, and drafts on the guaranty fund were submitted at the State Supreme Court hearings in 1929 on the constitutionality of the December 1928 and subsequent assessments, and are available in the United States Supreme Court record of the case.

In the case of guaranteed banks which failed subsequent to January 1, 1921, payments to depositors by the guaranty fund and repayments to the fund from the liquidation of assets, are given in schedules prepared in 1931 for the Federal Reserve Committee on Branch, Group and Chain Banking; these figures differ only slightly from those given in the reports of the special investigation of the previous year. For most of the banks that failed subsequent to April 1927, when payments from the fund ceased, the percentages and amounts of dividends paid from the liquidation of assets and small amounts in 25 cases from the Depositors' Final Settlement Fund, have been obtained from surviving receivership records, or from

---

<sup>1/</sup> The results of this investigation are given in three documents, as follows: (1) The Associated Certified Public Accountant of Nebraska, "Report on Depositors' Guaranty Fund," submitted to Mr. Shallenberger, dated August 1, 1930; (2) A.C. Shallenberger, "Report of Bank Investigation," dated March 3, 1930 (preliminary report submitted to the Governor); and (3) A. C. Shallenberger, Chief Examiner, Final Report of the Banking Investigation.



schedules at the Department of Banking prepared from those records.<sup>1/</sup>  
Very little additional information regarding the financial operation of the Nebraska fund has been found in pamphlets on the history of the Nebraska system or special surveys of deposit guaranty systems in operation in various States.<sup>2/</sup>

Income and obligations of the guaranty fund. A summary statement of the income and obligations of the Nebraska depositors' guaranty fund, for the entire period of its existence, is given in Table 12. The figures take into account receipts and disbursements subsequent to the repeal of the applicability of the guaranty to future failures, including the final disposition of the fund in 1934. The estimates in this table exclude indirect borrowings of the fund in the form of receivers' certificates. Payments to depositors in failed banks which were made directly by receivers from the cash and immediately available assets of the banks are also excluded.

The total receipts of the guaranty fund, excluding the assessments declared unconstitutional by the State Supreme Court, are estimated at \$19.0 million, of which \$16.5 million was derived from assessments and \$2.5 million from the liquidation of the banks in which depositors' claims were paid by the guaranty fund. The total obligations incurred by the guaranty fund, after allowance for depositors' recoveries directly or indirectly from liquidation of the assets of the failed banks, are

---

<sup>1/</sup> These records were examined by the writer of this report in November and December 1955.

<sup>2/</sup> No information about receipts or disbursements of the fund were found at the Department of Banking at the time of the writer's visit in 1955.



Table 12. RECEIPTS, EXPENDITURES, AND DEFICIT OF THE NEBRASKA DEPOSITORS' GUARANTY FUND

<u>Receipts</u>	
Assessments levied (excluding those revoked by court decision) <sup>1/</sup>	\$16,832,432
Less: miscellaneous credits (\$28,908) and uncollected (estimated at \$298,997) <sup>2/</sup>	<u>327,905</u>
Assessments collected	\$16,504,527
Recoveries from liquidation of assets of failed banks <sup>3/</sup>	<u>2,455,589</u>
Total receipts <sup>4/</sup>	\$18,960,116
<u>Expenditures</u>	
Total payments by fund to receivers for distribution to depositors <sup>5/</sup>	19,106,009
<u>Unpaid obligations</u>	
To depositors of failed participating banks <sup>6/</sup>	\$23,305,772

<sup>1/</sup> From Table 13.

<sup>2/</sup> Table 14, note 5.

<sup>3/</sup> Tabulated from data for the individual banks, including estimated interest of \$42,040 in two banks (Table 15, note 4). Of this recovery \$2,211,259 was received by April 29, 1929, and deposited in the participating banks, Final Report of the Banking Investigation, p. 33 (see Table 14); this amount, together with the assessments collected, totals \$18,715,786, which equals the drafts paid (Table 14). Of the subsequent recoveries estimated at \$244,330, \$42,077 had been received between April 29, 1929, and January 2, 1930 (Final Report of the Banking Investigation, p. 29). The remainder of approximately \$200,000 represents recoveries from some banks subsequent to January 2, 1930, the date to which the Banking Investigation total refers, as indicated by data to June 30, 1930, shown on schedules prepared for the Federal Reserve Committee, in Branch, Group and Chain Banking.

<sup>4/</sup> The difference of \$145,893 between this figure for receipts and the total expenditures of the fund presumably largely represents errors in the data for individual banks (for which some estimation is involved in some cases), either for payments or recoveries, but may in part represent collections on unpaid assessments subsequent to May 28, 1930, particularly from failed banks, or interest on the remaining balance of the fund between that date and the final settlement of the affairs of the fund in 1934.

<sup>5/</sup> Tabulated from data for the individual banks (Table 15), including interest (note 4 to that Table). Of this amount, \$18,717,021 was paid prior to January 2, 1930 (Final Report of the Banking Investigation, p. 30). The balance represents payments from the Depositors' Final Settlement Fund between March 18 and June 30, 1930 (given as \$243,995 in the Final Report of the Banking Investigation, p. 16) the final distribution of \$134,008 from the fund upon settlement of its affairs in 1934 and a small difference between the sum of these amounts and the total tabulated from information for the individual banks.

<sup>6/</sup> Tabulated from data for the <sup>in</sup> individual banks (Table 15). The total losses to depositors in banks that failed while the deposit guaranty was legally effective was about \$2.6 million larger than this figure (see note 5 to Table 15).



estimated at \$40 million to the date of repeal of the law. The final deficit of the fund, representing the loss to depositors, is estimated at approximately \$23 million.

Annual data for assessments levied are given in Table 13. Special assessments were levied in 1916, and each year from 1919 to the termination of the insurance in 1930. The highest rate for the special assessments was eight-tenths of 1 percent in 1921 and in 1922, which was less than the maximum of 1 percent permitted by the law until 1924. As previously indicated, the special assessments in the latter part of 1928 and both the special and regular assessments in 1929 and 1930, amounting to nearly \$3 million, were revoked by the decision of the State Supreme Court on the ground that they no longer served a public purpose and had become unconstitutional. Excluding these, the total assessments levied were \$16.8 million, of which \$16.5 were collected.

Table 14 shows the annual receipts of the guaranty fund from assessments and recoveries from failed banks, and the annual disbursements as measured by the drafts drawn on the balances with the various banks and paid. The table also shows the balance in the fund each year as computed from the receipts and disbursements, and as shown in the call reports of the participating banks. The call report figures exclude balances due from banks that had failed, become national banks, or gone into voluntary liquidation.

Table 15 gives the amount of insured obligations of the banks that failed each year while participating in the insurance system, the recoveries from liquidation of assets, the amounts paid from the guaranty fund and the recoveries of the fund, and the losses to depositors in the banks for which the fund was unable to meet its obligations. The estimated loss to other



Table 13. RATES AND AMOUNT OF ASSESSMENTS, NEBRASKA DEPOSITORS' GUARANTY FUND

Year	Assessment rate (percent of deposits)		Amount of assessments		
	Regular	Special	Total	Regular	Special
<u>Total levied 1/</u>			<u>\$19,811,379</u>	<u>\$4,943,343</u>	<u>\$14,868,036</u>
<u>Total collectible 2/</u>			<u>16,832,432</u>	<u>4,729,161</u>	<u>12,103,271</u>
1911	.25	--	176,863	176,863	--
1912	.50	--	406,858	406,858	--
192	.30	--	271,807	271,807	--
1914	.10	--	140,647	140,647	--
1915	.10	--	144,684	144,684	--
1916	.10	.10	421,472	196,837	224,635
1917	.10	--	219,904	219,904	--
1918	.10	--	318,029	318,029	--
1919	.10	.20	802,477	290,869	511,608
1920	.10	.20	639,244	292,463	346,781
1921	.10	.80	2,317,808	302,693	2,015,115
1922	.10	.80	1,971,580	228,345	1,743,235
1923	.10	.70	2,046,320	245,341	1,800,979
1924	.10	.30	1,004,860	249,259	755,601
1925	.10	.50	1,616,330	281,973	1,334,357
1926	.10	.50	1,672,339	290,244	1,382,095
1927	.10	.50	1,653,207	285,818	1,367,389
1928	.10	.25	885,413	263,937	621,476
1929	.05	--	122,590	122,590	--
<u>Revoked by court 3/</u>			<u>2,978,947</u>	<u>214,182</u>	<u>2,764,765</u>
1928	--	.25	622,948	--	622,948
1929	.05	.50)	2,355,999	214,182	2,141,817
1930	.05	.50)			



Footnotes to Table 13.

1/ Total levied from Final Report of the Banking Investigation, p. 17. Total regular and total special, sum of annual data: in the Final Report of the Banking Investigation the former is shown as \$4,680,337 and the latter, as \$15,131,042. A somewhat larger figure for total assessments levied, \$19,926,531, was given in Governor Weaver's message to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary) 1930, p. 30.

2/ All assessments levied except those deemed unconstitutional by decision of the State Supreme Court (Hubbell Bank v. Bryan, 1932). Data for 1911-1928 from Exhibit No. 44, received in evidence by District Court of Lancaster County (submitted by Secretary of the Department of Trade and Commerce) in Abie State Bank v. Weaver, obtained from record at United States Supreme Court, Abie State Bank v. Bryan, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, Case No. 63; for 1929, assessment due Jan. 1, estimated at one-fifth the special assessment of Dec. 15, 1928, on assumption that the assessment base covered the same period.

3/ Assessments declared unconstitutional by State Supreme Court in Hubbell Bank v. Bryan (1932). Rates from evidence in this case, obtained from record at United States Supreme Court in Bryan v. Hubbell Bank of Hubbell, 1932, Case 861. Amount for special assessment in 1928 from transcript described in note 1: total for 1929 and 1930 estimated as residual from total levied, with 1/11 assumed to be the regular assessment, and the balance the special assessment.



Table 14. RECEIPTS, EXPENDITURES, AND BALANCE, NEBRASKA  
DEPOSITORS' GUARANTY FUND, BY YEARS

Year	Assessments 1/	Recoveries 2/	Drafts 2/	Balance at year-end	
				Computed 3/	Reported 4/
<u>Total</u>	<u>\$16,832,432</u>	<u>\$2,211,259</u>	<u>\$18,715,786</u>		
1911	176,863	--	--	\$176,863	\$176,646
1912	406,858	--	--	583,721	573,275
1913	271,807	--	--	855,528	814,228
1914	140,647	--	54,526	941,649	889,552
1915	144,684	--	--	1,086,333	1,020,104
1916	421,472	--	79,052	1,428,753	1,193,924
1917	219,904	--	--	1,648,657	1,601,375
1918	318,029	23,715	--	1,990,401	1,841,125
1919	802,477	--	--	2,792,878	2,174,257
1920	639,244	--	737,709	2,694,413	2,230,769
1921	2,317,808	35,550	2,697,222	2,350,549	1,990,818
1922	1,971,580	370,927	2,172,766	2,520,290	2,015,587
1923	2,046,320	182,659	2,061,962	2,687,307	2,082,915
1924	1,004,860	193,287	1,010,026	2,875,428	2,529,729
1925	1,616,330	533,700	3,586,093	1,439,365	1,238,402
1926	1,672,339	427,283	2,625,757	913,230	621,954
1927	1,653,207	157,220	2,270,436	453,221	201,814
1928	885,413	257,717	1,256,910	339,441	30,427
1929	122,590	29,201	142,210	349,022	135,851
1930	--	--	21,117	327,905	5/ 193,278



Footnotes to Table 14.

1/ See Table 13.

2/ Totals for 1911-1929 and amount of drafts paid in 1930 from Final Report of the Banking Investigation, p. 17. Annual amounts for 1911-1928 from transcript described in note 2 to Table 13; for 1929, difference between total for those years and that for 1911-1929 (recoveries are described in these sources as refunds). Under the 1919 law, amounts due the depositors' guaranty fund by banks placed in voluntary liquidation (to cease business or become national banks) were paid to the State Treasurer. The biennial reports of the Auditor of Public Accounts show receipts for the depositors' guaranty fund of \$32,873 during the years 1920-1929, and disbursements of the same amount. No mention is made of these transactions in the Final Report of the Banking Investigation, and it is assumed that the amount involved is included in "drafts paid."

3/ Assessments plus recoveries minus drafts paid.

4/ In call reports of participating banks (prior to 1921 at last call date in the year). The amount for 1930 is described as Depositors' Final Settlement Fund.

5/ If miscellaneous credits of \$28,908 (shown in Final Report of the Banking Investigation, p. 17, are deducted, this balance is reduced to \$298,997. That amount, plus the assessments revoked, as estimated in Table 13, totals \$3,277,944. This is the amount shown as unpaid assessments (\$3,299,061 on Jan. 2, 1930, less \$21,117 of drafts paid in May 1930) in the Final Report of the Banking Investigation, p. 7.



Table 15. TOTAL DEPOSITS, INSURED DEPOSITS AND OBLIGATIONS TO DEPOSITORS OF FAILED BANKS,  
NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS

Year	Insured deposits <sup>1/</sup>	Paid directly from liquidation of assets	Insured deposit obligations paid and unpaid <sup>2/</sup>			Unpaid (loss to depositors <sup>5/</sup> )	Loss on general claims (not deposits) <sup>3/</sup>
			Total <sup>4/</sup>	Paid by fund	Not recovered from liquidation of assets (loss to fund)		
<b>Total</b>	<b>\$61,790,168</b>	<b>\$19,420,427</b>	<b>\$19,063,969</b>	<b>\$2,455,589</b>	<b>\$16,608,380</b>	<b>\$23,305,772</b>	<b>\$1,703,577</b>
1914	122,021	67,495	54,526	35,870	18,656	--	--
1916	111,051	32,003	79,048	35,131	43,917	--	--
1920	967,699	230,079	737,620	88,255	649,365	--	--
1921	6,303,409	2,076,241	4,227,168	1,244,204	2,982,964	--	278,087
1922	4,916,188	1,282,953	3,633,235	412,244	3,220,991	--	59,821
1923	2,648,370	404,480	2,243,890	175,838	2,068,052	--	90,945
1924	1,470,497	276,342	1,194,155	72,883	1,121,272	--	134,157
1925	5,004,559	1,881,794	3,122,765	295,127	2,827,638	--	31,383
1926	5,963,027	2,942,269	3,020,738	83,502	2,937,236	--	74,479
1927	5,940,839	1,054,547	579,836	12,535	567,301	4,306,456	47,977
1928	7,873,634	1,482,471	153,964	--	153,964	6,237,199	141,589
1929	19,306,863	7,045,188	17,024	--	17,024	12,244,651	779,976
1930	1,162,011	644,545	--	--	--	517,466	65,163

<sup>1/</sup> For 1911-1920, and first failure in 1921, total deposits. For 1921-1930 (except first failure in 1921) preferred claims as reported on schedules prepared for Federal Reserve Committee on Branch, Group and Chain Banking. For 1911-1927 includes banks reopened or taken over if there was a payment from the guaranty fund. The figure for total insured deposits shown here is about one-half of 1 percent larger than that for total deposits in the failed banks shown in Table 7. Differences between total deposits and insured deposits arise from deposit claims allowed that were not on the books or not included in those tabulated as of date of failure, or to deposits on the books for which claims were not filed or which were disallowed on the ground that they were not deposit liabilities. In addition, an unknown amount of interest on deposit claims, mostly accruals from the dates claims had been approved and judgment entered against the guaranty fund to their payment by the fund, may be included in the figure for "preferred claims" on the schedules prepared for the Federal Reserve Committee. However, accumulated interest paid from the guaranty fund to depositors of two banks at time of final settlement of the affairs of the fund (see Note 4) is not included.

<sup>2/</sup> Tabulated from data for the individual banks from the following sources: (a) Exhibits B, C, and D accompanying the Final Report of the Banking Investigation, which are referred to on pages 29-31 of that report, and furnished to the Federal Deposit Insurance Corporation by Ashton C. Shallenberger, who conducted the investigation (data from these exhibits are as of January 2, 1930); (b) schedules prepared for the Federal Reserve Committee on Branch, Group and Chain Banking, made available by the Board of Governors of the Federal Reserve System; and (c) surviving receivership records at the library of the University of Nebraska and schedules at the Department of Banking prepared from receivership records (data from these records, which pertain chiefly to banks closed in 1927 and subsequent years, are as of the closing of receiverships).

<sup>3/</sup> For 1914, 1916, and 1920, negligible because the reported proved claims are identical for most of the banks with the reported deposits at time of failure. For 1921-1930, tabulated from data for the individual banks from the schedules and surviving receivership records mentioned in note 2.

<sup>4/</sup> In addition, accumulated interest at 7 percent per year was paid to depositors of two banks in which the remaining deposits were paid in full by the guaranty fund at final settlement of its affairs in 1934. This interest is estimated at \$42,040.

<sup>5/</sup> In addition to these losses, depositors of 33 banks that failed prior to March 14, 1930, and were reorganized under the law of April 30, 1929, which are not covered by this table (see note 3 to Table 6 and note 2 to Table 7), had losses estimated at about \$2.6 million. This is based on an estimate of a 30 percent loss in 22 of the banks (message of Governor Weaver to the Legislature, March 4, 1930, Nebraska Senate and House Journals, Forty-sixth session (extraordinary), 1930, p. 27).



creditors is also given in the table. Table 16 shows for each year the insured obligations relative to the total deposits of the closed banks as reported for the date placed in receivership, and the percentages of the insured deposits recovered from liquidation of assets, paid by the guaranty fund, or lost by the depositors.

For all the failed banks as a group, the insured obligations were about one-half of 1 percent greater than the deposits of the banks when they were placed in receivership. This is due in part to deposit claims allowed that were not on the books or not included in those tabulated as of date of receivership. However, in part it may be due to interest on claims that went to judgment when the guaranty fund was unable to pay depositors immediately. But this does not include interest on receivers' certificates issued to permit payment of depositors in advance of payments from the guaranty fund: such interest was charged to the receivership as an expense item.

For the entire period, 35 percent of the insured obligations was paid from the liquidation of assets. The remainder was paid from the fund, for banks which were placed in receivership to May 1927, and lost to the depositors for the remaining failures before the repeal of the guaranty as of March 18, 1930. If the deposits paid off by banks operated as going concerns are included, as measured by the net change in their deposits while in the hands of the Guarantee Fund Commission, and the deposits at time of closing, rather than those shown in the receivership records, are used for all failed banks, the amount realized from liquidation of assets is raised to 41 percent.

Comparison of assessments and losses. Table 17 compares the assessments levied, including those revoked by court decision, with the



Table 16. PERCENTAGE OF DEPOSITS INSURED, AND PERCENTAGE OF INSURED DEPOSITS PAID BY GUARANTY FUND AND RECOVERED FROM LIQUIDATION OF ASSETS, BANK FAILURES UNDER THE NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS

Year of failure	Percentage of total deposits insured	Percentage of insured deposits				Unpaid (loss to depositors)
		Total	Paid directly from liquidation of assets	Paid by guaranty fund	Unpaid (loss to depositors)	
				Recov- ered from assets and on "sale assets"	Not re- covered; i.e., loss to fund	
<u>Total</u>	<u>100.5</u>	<u>100.0</u>	<u>31.4</u>	<u>4.0</u>	<u>26.9</u>	<u>37.7</u>
1914	99.7	100.0	55.3	29.4	15.3	--
1916	100.7	100.0	28.8	31.6	39.5	--
1920	94.3	100.0	23.8	9.1	67.1	--
1921	104.3	100.0	32.9	19.7	47.3	--
1922	103.3	100.0	26.1	8.4	65.5	--
1923	109.5	100.0	15.3	6.6	78.1	--
1924	95.1	100.0	18.8	5.0	76.3	--
1925	97.1	100.0	37.6	5.9	56.5	--
1926	102.0	100.0	49.3	1.4	49.3	--
1927	105.5	100.0	17.8	.2	9.5	72.5
1928	101.9	100.0	18.8	--	2.0	79.2
1929	97.3	100.0	36.5	--	.1	63.4
1930	90.9	100.0	55.5	--	--	44.5



Table 17. ANNUAL ASSESSMENTS LEVIED, LIABILITY FOR DEPOSITS IN FAILED BANKS, AND CUMULATIVE DEFICIENCY, NEBRASKA DEPOSITORS' GUARANTY FUND

Year	Assessments levied <u>1/</u>	Deposit liability of the fund <u>2/</u>	Assessments levied	Deposit liability of the fund	Cumulative	
					Excess of assessments levied	Deficiency (excess liability)
<b>Total</b>	<b>\$19,811,379</b>	<b>\$39,914,152</b>				
1911	176,863	--	176,863	--	176,863	--
1912	406,858	--	583,721	--	583,721	--
1913	271,807	--	855,528	--	855,528	--
1914	140,647	18,656	996,175	18,656	977,519	--
1915	144,684	--	1,140,859	18,656	1,122,203	--
1916	421,472	43,917	1,562,331	62,573	1,499,758	--
1917	219,904	--	1,782,235	62,573	1,719,662	--
1918	318,029	--	2,100,264	62,573	2,037,691	--
1919	802,477	--	2,902,741	62,573	2,840,168	--
1920	639,244	649,365	3,541,985	711,938	2,830,047	--
1921	2,317,808	2,982,964	5,859,793	3,694,902	2,164,891	--
1922	1,971,580	3,220,991	7,831,373	6,915,893	915,480	--
1923	2,046,320	2,068,052	9,877,693	8,983,945	893,748	--
1924	1,004,860	1,121,272	10,882,553	10,105,217	777,336	--
1925	1,616,330	2,827,638	12,498,883	12,932,855	--	433,972
1926	1,672,339	2,937,236	14,171,222	15,870,091	--	1,698,869
1927	1,653,207	4,873,757	15,824,429	20,743,848	--	4,919,419
1928	1,508,361	6,391,163	17,332,790	27,135,011	--	9,802,221
1929	1,375,981	12,261,675	18,708,771	39,396,686	--	20,687,915
1930	1,102,608	517,466	19,811,379	39,914,152	--	20,102,773 <sup>3/</sup>

1/ From Table 13 with the revoked assessments for 1929 and 1930, estimated in that table as a residual, divided between the two years on the basis of deposits in participating banks at the beginning of the years.

2/ Deposits paid from the fund, adjusted for recoveries by the fund including that on "sale assets", and deposits unpaid (loss to depositors) in the banks placed in receivership. Including the loss to depositors in banks reopened under the law of April 30, 1929, the total deposit liability of the fund is estimated at \$42.5 million.

3/ If the loss in reorganized banks is taken into consideration, and the deficiency figure computed from assessments collected (instead of those levied), the final deficiency figure becomes \$25.7 million.



liability of the fund on account of failures. The data are given for each year, and cumulatively, with the cumulative excess or deficiency. This excess or deficiency, it should be noted, is a different concept from the accumulated surplus or deficit of the fund. What the deficiency figures show is the additional assessment that would have been necessary, in addition to those levied, to have paid all the insured deposits, after taking account of recoveries from the liquidation of the assets of the failed banks. It does not include any allowance for interest or other expenses, or for funds needed to pay depositors at once the amounts eventually recovered from liquidation of assets.

By the end of 1919, with only two failures, the assessments levied had accumulated to nearly \$3 million, or about 1.0 percent of the deposits of the participating banks. This amount, together with the additional regular and special assessments, provided a cumulative excess of assessments for another five year, or until 1925. During these years the fund was rapidly declining, and though it fell far below 1 percent of deposits, the maximum special assessment was not levied in any year. Had the maximum assessments been levied, an additional \$2.2 million would have been collected, extending the net cumulative excess of assessments for another two years.<sup>1/</sup> During the remainder of the period of applicability of the insurance, with the maximum annual assessment reduced to three-fifths of 1 percent of deposits, assessment receipts were far below the losses, and would have been insufficient to meet them had none of the assessments been revoked by court decision.

---

<sup>1/</sup> According to testimony in the District Court in *Abie State Bank v. Bryan*, levy of the maximum assessment would have yielded the following additional amounts: \$503,778 in 1921, \$435,809 in 1922, \$777,848 in 1923, and \$503,734 in 1924, or a total of \$2,221,169 (from records of the United States Supreme Court, Transcripts of Records and File Copies of Briefs, 1930, Vol. 38, Case No. 63 p. 656).



For the entire period, aggregate assessments of \$42.5 million would have been necessary to have met the claims of depositors in excess of the recovery from the assets of the failed banks.<sup>1/</sup> The assessments collected provided 39 percent of this amount, but had all the assessments levied been collected, they would have provided 46 percent.

In Table 18 the rate of assessment each year, and the amount levied per \$100 of deposits in participating banks, and also per \$100 of the banks' total capital accounts, are compared with the rate that would have been necessary to have met the eventual losses from the failures in that year. For the entire period the assessments levied averaged one-half of 1 percent per year of deposits in participating banks, while the losses in failed banks, including those in the banks reorganized under the 1929 law, averaged over 1.1 percent of such deposits. The maximum annual assessment under the original law was 1.1 percent, or just enough to have covered the full net cost of deposit guaranty during the time the insurance was applicable, had it been possible to have levied this maximum each year throughout the period. This was not possible during the first half of the period because failures were few, and only the initial assessment and the very small regular assessment could be levied. It was not possible during the latter part of the period because of the reduction of the maximum to six-tenths of 1 percent which was made in 1923.

The assessments levied on the banks averaged about 3 percent per

---

<sup>1/</sup> This includes the loss in banks reorganized under the law of April 30, 1929.



Table 18. COMPARISON OF ANNUAL RATES OF ASSESSMENTS LEVIED WITH RATES REQUIRED TO MEET DEPOSIT OBLIGATIONS IN FAILED BANKS, NEBRASKA DEPOSITORS' GUARANTY FUND, BY YEARS, 1911-1930

Year	Assessment rate per \$100 of deposits <u>1/</u>	Per \$100 of deposits in participating banks at beginning of year		Per \$100 of total capital accounts in participating banks at beginning of year	
		Assessments levied <u>2/</u>	Losses on deposits in failed banks <u>3/</u>	Assessments levied <u>4/</u>	Losses on deposits in failed banks <u>4/</u>
<u>1911-1930 average</u>	--	<u>\$0.50</u>	<u>\$1.06</u> <u>5/</u>	<u>\$3.24</u>	<u>\$6.85</u>
1911-1920	--	.24	.05	1.33	.28
1921-1930	--	.65	1.67	4.71	12.06
1911	.25	.25	--	1.00	--
1912	.50	.55	--	2.18	--
1913	.30	.33	--	1.35	--
1914	.10	.15	.02	.67	.09
1915	.10	.14	--	.62	--
1916	.20	.37	.04	1.61	.17
1917	.10	.13	--	.77	--
1918	.10	.14	--	.97	--
1919	.30	.31	--	2.27	--
1920	.30	.23	.23	1.51	1.53
1921	.90	.91	1.17	5.00	6.44
1922	.90	.91	1.49	4.64	7.59
1923	.80	.86	.87	5.02	5.08
1924	.40	.42	.47	3.02	3.37
1925	.60	.60	1.04	4.85	8.49
1926	.60	.59	1.04	5.18	9.10
1927	.60	.60	1.77	5.16	15.23
1928	.60	.55	2.33	4.81	20.38
1929	.60	.55	4.86	4.92	43.87
1930	.55	.58	1.29 <u>6/</u>	4.26	9.51 <u>6/</u>

*Nebraska Guaranty Fund*



*and 1930 become 0.32, 0.05, and none, respectively, and the general average 0.42.*

Footnotes to Table 18.

- 1/ From Table 13.
- 2/ From assessments levied (Tables 13 and 17), and deposits in participating banks (Table 14). *3/ computed from assessments collected, the rates for 1928, 1929,*
- 3/ From deposit liability of the fund (Table 17), and deposits in participating banks (Table 4).
- 4/ From assessments levied and deposit liability of the fund (Table 17), and capital accounts of State banks as given in call reports for dates nearest the beginning of the year.
- 5/ If the losses in reorganized banks are included, this figure becomes \$1.13.
- 6/ Annual rate for failures to March 18.



year of their capital investment, as measured by their reported total capital accounts. During the 1921-1930 period, this average was nearly 5 percent. Had assessments sufficient to cover losses been levied, they would have averaged over 12 percent of total capital accounts during the 1921-1930 period, and nearly 7 percent for the entire period of the deposit insurance system.

Bankers Conservation Fund. Table 19 shows the amounts reported each year by the participating banks as investments in the Bankers Conservation Fund, authorized by the 1923 amendments to the deposit guaranty law. Assessments for this fund, in the form of drafts by the Secretary of the Department of Trade and Commerce, could be levied up to one-fourth of 1 percent of the average daily deposits in the participating banks, with a maximum fund at any time of one-third of 1 percent of such deposits. The proceeds of these assessments were used as "deposits" or loans to the banks operated by the Guarantee Fund Commission. The remittances by the banks on the drafts were carried on their books as an asset until repaid or charged off.

In the case of liquidation of a bank with a loan or "deposit" from the Bankers Conservation Fund, such deposit was given the same status as other deposits. It appears likely, therefore, that a part of these deposits in the banks closed in 1927, 1928, and 1929, which had been operated by the Guarantee Fund Commission, were lost. Such losses were a cost of the guaranty system to the State banks in Nebraska in addition to the assessments levied for the guaranty fund. However, no information is available regarding the recoveries and losses by the participating banks on their assessments for the Bankers Conservation Fund.



Table 19. BALANCE, BANKERS CONSERVATION FUND, NEBRASKA,  
MIDYEAR AND YEAR-END CALL DATES, 1923-1929

Date	Bankers Conservation Fund	Per \$100 of deposits on same date
1923-June 30	\$78,776	\$0.03
1923-Dec. 31	533,393	.22
1924-July 21	548,255	.22
1924-Dec. 31	374,591	.14
1925-June 30	375,613	.13
1925-Dec. 31	628,945	.22
1926-June 30	629,546	.22
1926-Dec. 31	639,473	.23
1927-June 30	634,009	.23
1927-Dec. 31	613,656	.22
1928-June 30	541,046	.21
1928-Dec. 31	442,387	.18
1929-June 30	none	--



Administrative cost of the depositors' guaranty fund. The administrative cost of the depositors' guaranty fund is also excluded from the figures of the fund given in preceding tables. From the beginning of deposit guaranty to the creation of the Guarantee Fund Commission in 1923, the fund was administered by the State Banking Board, and the cost of its operation was not segregated from other expenses of the Board. The expenses of the State Banking Board were met by legislative appropriations, but the State Treasury received the proceeds of the examination fees levied on State banks.

From the time of establishment of the Guaranty Fund Commission in 1923 to the end of 1929 the Guarantee Fund Commission and its successor, the receivership division of the Department of Trade and Commerce, spent an average of about \$100,000 a year. The greater part of this was obtained from assessments on the banks in charge of the Commission or the receivership division, but some of it came from legislative appropriations, and a small part from an assessment on the banks participating in deposit guaranty, interest, and miscellaneous sources. The receipts from these sources during the period, the expenses met therefrom and the unexpended balances at the end of 1929 are shown in Table 20. In addition, an appropriation of \$150,000 was made in 1929 to conduct the banking investigation, of which \$99,000 had been spent by August 1, 1930, when the investigation was completed.

Settlement of the affairs of the guaranty fund. Under the law of March 18, 1930, which repealed the applicability of the guaranty to future failures, the remaining assets of the guaranty fund, including claims for unpaid assessments and further recoveries from the failed participating banks, were transferred to the Depositors' Final Settlement Fund, administered



Table 20. RECEIPTS AND EXPENSES FOR ADMINISTRATIVE PURPOSES, NEBRASKA  
DEPOSITORS' GUARANTY FUND, May 1, 1923 to Dec. 31, 1929

Receipts, expenses, or balance	Total	Guarantee Fund Commission -- May 1, 1923 to April 30, 1929 <u>1/</u>	Department of Trade and Commerce, Receivership Div- ision -- May 1 to Dec. 31, 1929 <u>1/</u>
Legislative appropriations	\$190,000	\$90,000	\$100,000
Assessments on participating banks	4,538	4,538	--
Assessments on banks operated as going concerns	164,213	164,213	--
Assessments on banks in receivership	267,464	212,040	55,424
Interest and miscellaneous	7,701	7,547	154
Total receipts	633,916	478,338	155,578
Transferred <u>2/</u>	--	- 23,829	+ 23,829
Adjusted receipts	633,916	454,509	179,407
Administrative expense -- total	534,505	454,138	80,367
From appropriated funds	99,618	89,628	9,990
From assessments and miscellaneous receipts	434,887	364,510	70,377
Unexpended funds	99,412	372 <u>3/</u>	99,040 <u>4/</u>

1/ From Final Report of the Banking Investigation. Does not include appropriations for the Bureau of Banking which supervised operating banks, nor for the office of the Secretary of the Department of Trade and Commerce.

2/ From the Commission to the Department.

3/ Returned.

4/ Includes \$90,010 unexpended legislature appropriation, and \$9,030 unexpended other receipts. Available for expenditures in 1930.



by the Department of Trade and Commerce. The previous priority of payment of depositors' claims in order of the dates of receivership of the failed banks was eliminated. All unpaid claims certified to the Department, including unpaid deposits of banks reorganized under the law of April 30, 1929, and also including unpaid claims for refund of assessments made to the Bankers Conservation Fund, were given equal status, subject to the qualification that payments should be made first to claimants whose claims had been allowed and certified for at least a year and had been paid the smallest percentage of their respective claims.

Under this act, the Department of Trade and Commerce paid dividends on depositors' claims ranging from 1 percent to 8 percent in 31 banks, in an aggregate amount of approximately \$271,000.<sup>1/</sup> When the assessment and settlement provisions of this act were challenged by the bankers and were declared unconstitutional by the District Court, further payments were held in abeyance until the decision of the State Supreme Court and denial of a review, announced in May 1933, by the United States Supreme Court.

The result of the decision, which nullified the settlement provisions of the 1930 act, was to restore the priority of payments to holders of receivers' certificates under the law of 1923 and to prevent collection of the disputed assessments. The only remaining resources from which further payments to depositors could be made were additional collections from liquidation of assets of failed banks whose depositors had been paid from the fund or from

---

<sup>1/</sup> Tabulated from data for the individual banks, and included as payments from the guaranty fund in Tables 12 and 15. The Final Report of the Banking Investigation, p. 16, shows \$243,995 as paid from the Depositors' Final Settlement Fund to June 30, 1930.



unpaid assessments on the participating banks other than those revoked by the court decision, and any interest thereon while awaiting the final court decision. <sup>1/</sup> In 1934, the funds available from these sources, amounting to \$134,000, were used to complete payments to depositors holding receivers' certificates in two banks that had been placed in receivership in 1927, with accumulated interest at 7 percent per year, and to make a partial payment on the remaining deposit claims in another bank. <sup>2/</sup>

#### APPRAISAL OF THE NEBRASKA DEPOSITORS' GUARANTY SYSTEM

The deposit insurance system of Nebraska maintained full payment of all the obligations falling upon it for nearly sixteen years, a longer period than that of any of the other systems of deposit guaranty during the 1908-1930 period, except for Texas. The protection it afforded was greater than that of Texas, covering all deposits in comparison with only noninterest-bearing deposits in Texas, and the aggregate amount of deposits paid from the fund, adjusted for recoveries from liquidation of the assets of failed banks, was roughly 50 percent more than in Texas. Its burden on the banks in terms of the average annual rate of assessments paid, was substantially higher than that in any of the other systems. However, its unpaid obligations were very large, though less than in South Dakota, as a consequence of a high failure rate and a low rate of recovery on the assets of failed banks, relative to the other States with deposit guaranty.

---

<sup>1/</sup> The surviving receivership records of the banks that failed prior to cessation in 1927 of payments to depositors from the guaranty fund show dividends subsequent to mid-1930 of only \$3,000. No record has been found of any collection of unpaid assessments subsequent to January 2, 1930, except the small amount in May of that year shown in Table 14.

<sup>2/</sup> The American Banker, July 18, 1934, and The Northwestern Banker, Vol. 39 (August 1934), p. 42. The portion of this amount representing unpaid deposits is included as payments from the guaranty fund in Tables 12 and 15, and the interest is shown in note 4 to Table 15.



The operations of the Nebraska deposit insurance system were also subjected to a more searching investigation of its weaknesses, at about the time it ceased to function, than any of the other systems.

The report of this investigation summarized the defects of the system as follows:

Three sound banking principles were essential to the success of the Guaranty Law, if the insurance plan was to prove sound and safe.

First--Limitation of bank charters to the requirements of business and safe credit of the community served.

Second--Bank earnings of sufficient amount to insure a fair return and the charging out of losses that come in periods of business depression. No bank that can honestly show a fair profit ever fails.

Third--Competent and efficient supervision and examination by the department in charge of the administration of banking laws and requiring from all officers and managers of banks a state license certifying as to their honesty, ability and character. Failure to observe and enforce these essentials undermined and wrecked the Guaranty Fund.

The Guaranty Law brought prosperity and strength to the state banks and saved depositors from losses of millions of dollars. It has been discredited and destroyed by those who should have been its staunchest defenders. Betrayal of their trust by faithless bankers and inefficient supervision nullified the law and destroyed the confidence it had established.

The Department of Banking Administration is required by law to close banks shown insolvent by its examiners. It is a felony for officers of a bank to receive deposits after it is insolvent. If an insolvent bank is permitted to operate, the depositor is grossly deceived and his supposed security becomes a state swindle. In case of failure stockholders are liable for an additional amount equal to their capital investment. Under careful supervision the double liability should insure liquidation with little loss to depositors.

A former Governor stated in a message to the Legislature that early in his administration his Banking Commissioner



reported to him that there were 125 State banks hopelessly insolvent. A Banking Commissioner of another administration stated to me that a few months after he took office he made a written report that 150 banks were at that date insolvent. Permitting broken banks to run only delayed the deluge. Lax law enforcement did not save the banks. It did cost depositors large losses and piled up a mountain of bank failures when conditions could no longer be concealed. The greatest blot on our State and national governments is failure to enforce laws enacted for the protection of property and the punishment of crime. 1/

Mr. T. Bruce Robb, Chairman, Committee on Business Research, University of Nebraska, has made the following comments on the facts revealed by the banking investigation:

Probably the most bitter complaint made by the auditors in connection with the bank examination was that relating to the enforcement of the banking laws. In practically every bank audited the accountants went out of their way to emphasize how the depositors' money had been put in jeopardy through the lack of enforcement of the banking laws. In preceding sections it was pointed out how banks officers used the bank's funds to finance their own private ventures, how the law in respect to excess loans and excess real estate was flagrantly violated, and how the embezzlement of bank funds by officers was extensive and carried on over long periods of time. Throughout this sordid story surely the reader must have wondered about the matter of law enforcement.

In this section, however, a different aspect of this question will be considered. Banks were examined periodically. It has often been assumed that the weak place in the supervision of State banks was in the matter of bank examinations. The mushroom growth of the State banking system in the decade preceding the banking debacle naturally placed a heavy strain on the machinery for examining banks. Bank examiners were poorly paid, and as soon as a young examiner of promise acquired proficiency he usually left the service and went into banking. But a careful study of the audits of the failed banks indicates that the trouble was not primarily with the examinations. No doubt bank examinations were too infrequent and often made by men with little experience, yet the fact remains that if the information disclosed by bank examinations had been acted upon aggressively much less to depositors would have been avoided. 2/

---

1/ Final Report of the Banking Investigation, pp. 8-9.

2/ T. Bruce Robb, State Bank Failures in Nebraska, pp. 42-43.



An additional comment may be made on one of the problems mentioned in these quotations, because it was much more serious than in most of the other States with deposit guaranty systems. The excessive number of banks operating in Nebraska is indicated by the fact that in 1920 a bank was in operation for each 1,100 of the population. The maximum average clientele, computed by assuming that every family in the State had a bank account, was thus about 275 families. Since a considerable proportion of the banks must have had fewer customers than the average, it is apparent that some of the banks were dependent for their business upon a relatively small number of families in agricultural areas populated by people in the low and medium income groups. The inability of the State Banking Board to check the birthrate of banks was thus a serious deficiency in supervisory powers. The excessive number of banks was also doubtless one of the conditions conducive to the making of illegal or unduly risky loans, and to the low general level of competency among bankers. A thousand good bankers cannot be found as readily as a third of that number.