January 25, 1915.

My dear Governor:

I have your letter of the ninth instant enclosing, as stated, copy of letter from Mr. Alfred L. Ripley, First Vice President of the Merchants National Bank of Boston, asking for an opinion as to whether acceptances of a national bank under Section 13 of the Federal Reserve Act should be construed as borrowed money within the meaning of Section 5200 of the Revised Statutes.

Section 5200 reads as follows:

> "The total liabilities to any association, of any person ..... for money borrowed .....shall at no time exceed one-tenth part of the amount of the capital stock of such associations, actually paid in and unimpaired, and one-tenth part of its unimpaired surplus fund. . . But the discount of bills of exchange drawn in good faith against actually existing values, and the discount of commercial or business paper actually owned by the person negotiating the same shall not be considered as money borrowed."

When this Act was passed, national banks were not permitted to accept drafts or bills of exchange drawn against them, but Section 13 of the Federal Reserve Act provides that -

> "Any member bank may accept drafts or bills of exchange drawn upon it and growing out of transactions involving the importation or exportation of goods having not more than six months sight to run; but no bank shall accept such bills to an amount equal at any time in the aggregate to more than one-half its paid-up capital stock ans surplus."

It is, of course, assumed that where a member bank accepts a draft or bill of exchange for a customer, the acceptance is discounted by a third party and not by the accepting bank. The legal effect of such an acceptance is

for the bank to become primarily liable and to obligate itself to pay the draft or bill of exchange at maturity. The acceptance is, therefore, a loan of the bank's credit rather than a loan of money by the bank. The liability of the drawer is contingent and not direct.

In an opinion rendered to the Secretary of the Treasury by Attorney General Benjamin Harris Brewster, this subject was treated by analogy in dealing with the question of the certification of checks by national banks. In that opinion the Attorney General, quoting from the case of Security Bank vs. National Bank (67 N. Y., 462), said:

> "The manifest object of the certification is to indicate the assent of the certifying bank to the request of the drawer of the check that the drawee will pay to the holder the sum mentioned; and this is what an acceptor does by his acceptance of a bill."

In the opinion referred to the Attorney General considers three questions, the second of which is as follows:

> "(2) If a national bank has the power to make such an acceptance, would such acceptance at a time when the money was not on deposit to the credit of the drawer by a liability to it for money borrowed, and as such be required to be limited to one-tenth of the paid-in capital of the bank, as provided by Section 5200, Revised Statutes?"

In dealing with this question the Attorney General says:

> "The case presented in the second question is not, in my opinion, covered by the provisions of section 5200, Revised Statutes.
>
> "The restriction there applies only to liabilities 'for money borrowed'. The acceptance of a check, where the drawer has no funds on deposit, would be a loan of the credit of the bank rather than loan of money, and, if otherwise unobjectionable, it could not properly be regarded as within the terms of the restriction adverted to".

As stated, the certification of a check where the depositor has no funds to his credit, is prohibited by statute, but the acceptance of a bill of exchange drawn upon

a member bank which grows out of transactions involving the importation or exportation of goods, is, under the conditions prescribed in Section 13, now permitted; and, following the reasoning adopted by the Attorney General in the case referred to, it would seem that such acceptance does not come within the limitations of Section 5200.

The transaction must, however, be entered into in good faith, and the acceptance by the member bank must comply in all respects with the provisions of Section 13.

Respectfully,

Honorable C. S. Hamlin,
Governor.