FEDERAL RESERVE BOARD

WASHINGTON

February 24, 1915.

Subject: Statute of the State of California prohibiting soliciting of savings accounts.

My dear Governor:

The action of Mr. W. R. Williams, Superintendent of Banks of the State of California, in serving notice on certain national banks that he will seek to have imposed the penalties imposed by the California law for soliciting savings accounts, has been referred to this office for attention.

It appears that Section 49 of the Bank Act of the State of California provides as follows:

> "It shall not be lawful for any commercial bank, individual, trust company, association, firm, stock company, copartnership or corporation, to advertise or put forth a sign as a savings bank, either directly or indirectly or in any way to solicit or receive deposits or to transact business in the way or manner of a savings bank, or advertise that he or it is receiving or accepting savings, or in any way which might lead the public to believe that such deposits are received or invested under the same conditions or in the same manner as deposits in savings banks, except in the case of savings banks or banks having savings departments, subject to the provisions of this act. Any commercial bank, individual, trust company, association, firm, stock company, copartnership or corporation, violating any provision of this section shall forfeit to this state one hundred dollars a day for every day during which such violation continues."

The question arises whether or not the provisions of this Act can be made to apply to national banks doing business within the State of California.

It does not appear that Mr. Williams contends, that Congress is without power to authorize national banks to pay interest on deposits. It is conceded by him that this has been and can be done. The right is expressly given in Section 24 of the Federal Reserve Act, which, in terms referring to national banks, provides that -

"such banks may continue hereafter as heretofore to receive time deposits and to pay interest on the same".

Section 19 provides in part that -

"Demand deposits within the meaning of this Act shall comprise all deposits payable within thirty days, and time deposits shall comprise all deposits payable after thirty days, and all savings accounts and certificates of deposits which are subject to not less than thirty days' notice before payment.

Inasmuch as Congress has the right to authorize the payment of interest on deposits as an incident to the business of banking and has exercised this right, the question arises whether or not a state law prohibiting banking associations not organized as Savings Banks under the laws of that State from advertising that it will receive savings accounts, can be held to prevent national banks from publishing such advertisement and from soliciting such accounts.

It is true, as stated by Mr Williams, that in the original House bill provision was made for the creation of separate savings departments and that this provision was eliminated by the Senate and agreed to by the conferees. In its stead the provisions above quoted, authorizing banks to pay interest on deposits and including savings accounts in the interest-bearing deposits, were incorporated. The question, therefore, of whether or not the State of California has the right to prohibit national banks from soliciting savings accounts would seem to depend upon whether such prohibition can be said to be an exercise of police power by the State and whether it is necessary for the protection of property within its limits.

The limitation of State legislation passed in the exercise of police power is fully discussed in the case of Railroad Co. v. Husen, 95, U. S., 470, where the Court says -

"We are thus brought to the question whether the Missouri statute is a lawful exercise of the police power of the State. We admit that the deposit in Congress of the power to regulate foreign commerce among the States was not a surrender of that which may properly be denominated police power. What that power is, it is difficult to define with sharp precision. It is generally said to extend to making

regulations promotive of domestic order, morals, health, and safety. As was said in Thorp v. The Rutland & Burlington Railroad Co., 27 Vt. 149, 'it extends to the protection of the lives, limbs, health, comfort, and quiet of all persons, and the protection of all property within the State. *** ' ***

"But whatever may be the nature and reach of the police power of a State, it cannot be exercised over a subject confided exclusively to Congress by the Federal Constitution. It cannot invade the domain of the national government."

In the later case of Reid v. Colorado, 187, U. S., 137-147, the question is also considered in detail. The Court in that case, in discussing the right of the State of Colorado to enforce certain laws which were passed in the exercise of the police power of the State, says -

"It is quite true, as urged on behalf of the defendant, that the transportation of live stock from State to State is a branch of interstate commerce and that any specified rule or regulation in respect of such transportation, which Congress may lawfully prescribe or authorize and which may properly be deemed a regulation of such commerce, is paramount throughout the Union. So that when the entire subject of the transporation of live stock from one State to another is taken under direct national supervision and a system devised by which diseased stock may be excluded from interstate commerce, all local or State regulations in respect of such matters and covering the same ground will cease to have any force, whether formally abrogated or not; and such rules and regulations as Congress may lawfully prescribe or authorize will alone control. Gibbons v. Ogden, 9 Wheat. 1,210; Morgan v. Louisiana, 118 U. S. 455,464; Hennington v. Georgia, 163 U. S. 299,317; N. Y., N. H. & H. R. R. Co. v. New York, 165 U. S. 628,631; Missouri, Kansas & Texas Railway Co. v. Haber, 169, U. S. 613,626; Rasmussen v. Idaho, 181 U. S. 198,200. The power which the States might thus exercise may in this way be suspended until national control is abandoned and the subject be thereby left under the police power of the States.

Inasmuch, therefore, as Congress has the right to authorize national banks to charge interest on acounts and to include in such accounts what are generally known as "savings accounts", and since it has exercised this right, it would seem that the California statute referred to can not properly be so construed as to defeat this right.

C. S. H. No. 4.

I cannot agree with Mr. Williams that depositors would necessarily be led to assume that savings acounts received by national banks would be subject to investment according to State laws, and while national banks should not be permitted to advertise themselves as "savings banks", since they are not so designated in the Act, power is specifically granted to member banks to receive interest-bearing accounts, including "savings accounts", and since they possess this power, the right to advertise for such accounts would seem to be a necessary incident to its exercise.

It is not believed, therefore, that the penalties prescribed by Section 49 of the Bank Act of the State of California could be legally enforced against a national bank which advertises that it will receive and pay interest on savings accounts.

Respectfully,

(Signed) M. C. ELLIOTT,

Counsel,

Honorable C. S. Hamlin,
Governor.