

NATIONAL BANKS HAVING BRANCHES - AGGREGATE  
LOANS.

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There is no restriction of law prohibiting the Comptroller of the Currency from permitting a national bank having a lawfully established branch to make loans at either place, based on the total amount of the capitalization and surplus of the corporation.

The only restriction in law in this respect is that the aggregate loans made by the mother bank and all its branches shall not at any one time exceed the limitations expressed in section 5200, Revised Statutes, as amended by the act of June 22, 1906 (34 Stat. 451).

DEPARTMENT OF JUSTICE,

September 15, 1909.

Sir:

I am in receipt of your request of 14th ultimo for an "opinion as to the construction of section 5200 of the Revised Statutes, with regard to its application to a branch of a State bank entering the national system by conversion; that is, whether the limit of loans of a branch bank is one-tenth part of the capital and surplus assigned to it or of the joint capital and surplus of the corporation. If the former is the limit, is the basis of loans of the parent bank the total capital and surplus, less the amount assigned to the branch?" and whether the Comptroller of the Currency "can legally permit a national bank having a lawfully established branch to make loans at either place

based on the total amount of capital and surplus of the corporation."

The facts are that the Bank of California, located at San Francisco, has applied, on behalf of itself and branches, for admission to the national-banking system by conversion. The parent bank was incorporated in 1864 as a State bank with a capital of \$4,000,000, and established branches in 1905 with assigned capital as follows:

Seattle, Wash.-----	\$250,000.
Tacoma, Wash. -----	200,000.
Portland, Oreg.-----	250,000.

The branches are called upon during the grain-shipping season for large individual loans greatly in excess of 10 per cent of the assigned capital of the branch, but at no time in excess of 10 per cent of the capital and surplus of the parent bank. The branch banks have no separate corporate existence. They are known individually as "Bank of California, Branch." The parent bank with its branches is one association, as contemplated in these laws, with one set of directors and stockholders, and all transactions are regarded as those of one corporation or institution.

Section 5200, Revised Statutes, as amended by the act of June 22, 1906 (34 Stat. 451, Compilation of Banking Laws, Treas. Dept., '908, p. 59), provides:

"The total liabilities to any association, of any person, or of any company, corporation, or firm for money borrowed, including in the liabilities of a company or firm the liabilities of the several members thereof, 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: Provided, however, That the total of such liabilities shall in no event exceed thirty per centum of the capital stock of the association. 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."

Section 5202, Revised Statutes, enacts:

"No association shall at any time be indebted, or in any way liable, to an amount exceeding the amount of its capital stock at such time actually paid in and remaining undiminished by losses or otherwise, except on account of demands of the nature following:

"First. Notes of circulation.

"Second. Moneys deposited with or collected by the association.

"Third. Bills of exchange or drafts drawn against money actually on deposit to the credit of the association, or due thereto.

"Fourth. Liabilities to the stockholders of the association for dividends and reserve profits."

The admission of State banks to the national-bank system is provided for in section 5154, Revised Statutes, in part as follows:

"Any bank incorporated by special law, or any banking institution organized under a general law of any State, may become a national association under this title by the name prescribed in its organization certificate; \* \* \*  
When the Comptroller of the Currency has given to such association a certificate, under his hand and official seal, that the provisions of this title have been complied with, and that it is authorized to commence the business of banking, the association shall have the same powers and privileges, and shall be subject to the same duties, responsibilities, and rules, in all respects, as are prescribed for other associations originally organized as national banking associations, and shall be

held and regarded as such an association. But no such association shall have a less capital than the amount prescribed for associations organized under this title."

State banks with branches may be admitted under Section 5155,

Revised Statutes, providing:

"It shall be lawful for any bank or banking association organized under State laws, and having branches, the capital being joint and assigned to and used by the mother bank and branches in definite proportions, to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain; the amount of the circulation redeemable at the mother bank, and each branch, to be regulated by the amount of capital assigned to and used by each."

The branch banks issue no circulating notes of their own, the notes of the mother bank being all that are issued by the association. This section is the only law throwing any light on the intention of Congress as to government of banking operations in branch banks. As to the application of Section 5200, Revised Statutes, with respect to loans of branch banks, the law is entirely silent.

No matter how many branches the State bank may have, upon compliance with the provisions of Section 5154, Revised Statutes, it becomes "a national banking association" with "the same powers and privileges \* \* \* as are prescribed for other associations originally organized as national banking association." As such it possesses the powers expressly conferred in Section 5136, Revised Statutes:

"To exercise \* \* \* all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidences of debt \* \* \* by loaning money on personal security, \* \* \* ."

"Subject to the same duties, responsibilities, and rules, in all respects, as are prescribed for other associations," etc.

And the only rule so prescribed affecting the amount of money which may be loaned is that contained in Section 5200 as amended, above quoted, which limits the amount which may be loaned by the association to a proportion of the capital stock and surplus fund of the association, and not distributively by the mother bank and the branches in proportion to the capital assigned to and used by each. Inasmuch as depositors, including the United States, in any of the branch banks have the protection of the whole capital, surplus, and undivided profits of the mother bank, irrespective of how it may be divided, there is no question of public policy involved in the construction of the law as here expressed.

I express no opinion on the points that might be raised bearing on this question as one of practical banking with respect to the means employed to minimize the chances of loans in excess of the amount limited by Section 5200, Revised Statutes.

Answering the specific inquiry whether the Comptroller can legally permit the mother bank and branches to make loans at either place based on the total amount of capitalization and surplus of the corporation, I am of the opinion that the only restriction in the law with respect thereto is that the aggregate loans made by the mother bank and all branches shall not at any one time exceed the limitations expressed in Section 5200, Revised Statutes, as amended by the Act of June 22, 1906 (34 Stats. 451).

Respectfully,

GEORGE W. WICKERSHAM.

The Secretary of the Treasury.