COPY X-6137

September 13, 1928.

Mr. Thomas B. Paton, Jr.,
Assistant General Counsel,
American Bankers' Association,
110 E. 42nd Street,
New York City.

Dear Mr. Paton:

Some time ago Mr. H. F. Strater, Cashier of the Federal Reserve Bank of Cleveland and Chairman of the Standing Committee on Collections of the Conference of Governors of Federal Reserve Banks, forwarded to me a copy of a letter which you had addressed to him under date of May 18th, requesting the views of his committee on the proposed Uniform Bank Collection Code which your office is preparing for the American Bankers' Association. Mr. Strater called my attention to your statement that it has been the policy to encourage as much constructive criticism as possible and suggested that I might transmit copies of the revised draft of the Code to Counsel for the various Federal reserve banks and obtain their comments on the same. I have done so and am taking the liberty of enclosing for your information such comments as I have received.

Mr. Parker, Counsel to the Federal Reserve Bank of Atlanta, asked me to advise you that since writing the enclosed letter he has reached the conclusion that the constitutional question raised in discussing Section 11 is probably not well founded.

Due to the fact that you had invited Counsel of some of the Federal reserve banks to submit their views with reference to the first tentative draft of your Code, this matter was brought up for discussion at a conference of Counsel for all Federal reserve banks which was held in Washington last winter to consider other legal questions of interest to the entire Federal reserve system, and at that time it was agreed that Counsel for all Federal reserve banks should furnish this office with copies of their comments respecting this Code in order that I might transmit them to you in a body. Before I received all of their comments I learned that you had already prepared a revised draft of the Code for submission to the Executive Council of the American Bankers' Association at a meeting held in Augusta, Georgia, sometime in April, and hence I did not transmit those comments to you.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

In order that you may have a complete statement of the views of Counsel for the various Federal reserve banks I am now enclosing copies of their comments on the first tentative draft. You undoubtedly already have some of these, but I do not think you have all of them.

In authorizing me to furnish you with copies of their letters, Counsel for the Federal reserve banks have asked me to make it clear that the statements contained therein are merely expressions of their own personal opinions and do not represent the views of the Federal reserve banks or the Federal reserve system. Moreover, they do not desire to have their views quoted in this connection but would prefer to have you treat their letters as being intended only for your confidential information.

I trust that you will receive this information in the spirit in which it is offered - that of helpful and constructive criticism - and that if there is anything else that I can do to be of assistance to you, you will not hesitate to call upon me.

Very truly yours,

Walter Wyatt,
General Counsel.

Enclosures.

WW:vdb

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

FEDERAL RESERVE BANK
OF
KANSAS CITY

H. G. LEEDY, Counsel
1503 Federal Reserve Bank Bldg.,
Kansas City, Missouri.

X-6137-a

September 11, 1928.

Hon. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Wyatt:

Upon my return to the office after an absence of two weeks I find your telegram in which you request my comments on the proposed uniform bank collection code prepared by Judge Paton of the American Bankers' Association.

After reading the comments of the counsel to the several Federal Reserve Banks on the first draft of the proposed code, I feel that all questions have been raised which might be raised concerning the new draft. Accordingly, I have nothing new to add.

In my letter concerning the first draft of the code I questioned the provisions in the latter part of the section which appears in the revised draft as Section 10. This section relates to the continued liability of the parties to an instrument for which payment has not been made in finally collected paper. I am still unable to see that this section as drafted would be workable in all cases.

The terms to which I have reference are those which provide that when items are exchanged through the clearings and a draft is given for the difference between the items exchanged, which draft is not paid on account of the issuing bank failing, the makers, drawers and endorsers of the items drawn on or payable at the failed bank, shall remain liable on the items for the proportionate part thereof which the total amount of the draft so issued bears to the total amount of such items. I see no objection to this where an exchange of items is made between only two banks, or where each bank clearing items makes an exchange with each other bank, and a settlement is made between each, which is the same, of course, as if only two banks were involved. I am unable to see how it would work, however, where there are a number of banks involved which make their clearings through the ordinary clearing house arrangement, where a net debit or credit is cast up against each clearing bank, and the debtor banks settle with the creditor banks without regard to whether the paying banks,

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

or any of them, owe balances to the banks to which payments are made, on account of items which those banks, as between themselves, held against each other. To illustrate: Assume that there are eight banks which clear their items through the clearing house. The eighth bank is insolvent. The amount of items which each of the banks holds against the insolvent bank varies greatly, as do the items which the insolvent bank holds against the other seven banks. As to some of the seven banks, the items which the insolvent bank holds against them, exceeds the amount of the items which they hold against the insolvent bank. No balance is struck as between the insolvent bank and the other banks, but the total of all of the items held against the insolvent bank is taken, which, of course, represents the gross debt of that bank on account of the clearings. There is then totalled the amount of all items which the insolvent bank holds against all of the other banks, which is its gross credit in the clearings. The same thing is done as to each of the other banks, and in each instance the difference between the gross indebtedness of the bank and its gross credit is the amount which it is required to pay, or is entitled to receive, according to whether its debits or its credits are the larger. The amount a debtor bank is required to pay, (and a bank about to suspend is almost invariably a debtor bank,) bears no relation whatever to any indebtedness owing to the bank or banks to which payment is made on account of exchange of items between them, but on the contrary, the creditor bank or banks so paid, may have actually been indebted to the debtor bank, as between themselves, on account of their exchange of items.

I realize, of course, that for the purpose of determining the extent of the release of each maker, drawer or endorser of an item so handled, it would be possible for the proportion that such parties should be held liable for could be arrived at by reference to the total amount of the net debit balance owing by the insolvent bank, after the exchange of all items, and the aggregate amount of all items cleared against it, but the dilemma is in adjusting the rights as between the clearing banks, and as between their customers, so as to pass back to the ultimate owners of the items the right to enforce the items for the proportionate amounts the parties remain liable for thereon, and so that no clearing bank may retain a greater proportion of any settlement had from the clearings than it is entitled to, after the proportionate liability of drawers, makers and endorsers has been determined, and passed on to the parties entitled to enforce the same. For instance, assume that four of the banks in the above theoretical case are creditor banks in the clearings, and that the remaining four, including the insolvent bank, are debtors. Three of the creditor banks receive settlement from the debtor banks other than the insolvent bank. The fourth creditor bank receives settlement from the insolvent bank, in the form of its draft. On the suspension of the insolvent bank,

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

before payment of the draft, only the bank with which it made settlement has any balance owing on account of the items held against the insolvent bank, and all of the other banks, each of which may have held a larger number of such items, have been paid in full. If their items are to be treated as only partially paid, notwithstanding the settlement, there obviously must be some adjustment between them and the bank holding the unpaid draft, and as already indicated, there appears to be no provision in the proposed code by which this may be accomplished.

What I have said I assume may already have received the consideration of Judge Paton, but I again refer to it for whatever additional consideration he may think it warrants.

With best personal regards, I am

Yours very truly,

(S) H. G. Leedy.

HGL:CR

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

WILLIAMS AND SINKLER
ATTORNEYS AT LAW
601 Commercial Trust Building
PHILADELPHIA

X-6137-b

September 10, 1928

Walter Wyatt, Esq., General Counsel,

Federal Reserve Board,

Washington, D. C.

Dear Mr. Wyatt:

The matter of the proposed Uniform Check Collection Code is only another instance in which I have not been able to afford any practical assistance.

When I had an opportunity to consider the draft submitted I found that other counsel of Federal Reserve banks had between them apparently made every comment and suggestion that seemed to me to be pertinent. I should also say that the matter being in the hands of Judge Paton in the first instance as counsel for the American Bankers' Association, and having very promptly received the consideration and study which Mr. Agnew was able to give it, I should not have been inclined to expect that further suggestions of "alterations or repairs" would be capable of strengthening or improving it. I have taken occasion to make sure that the officers of the Federal Reserve Bank of Philadelphia had considered the proposed Code and have had an opportunity to comment on it from a practical standpoint. They have been in communication with certain of our member banks but have advised me that they have no comments to make at this time.

My own experience with respect to the enactment of

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Williams and Sinkler

Sheet Number 2

Walter Wyatt, Esq.
September 10, 1928

legislation in Pennsylvania during the past fifteen or twenty years has made me rather skeptical as to the chances of enactment for any such comprehensive code as compared with the chance of getting through one or more statutes to effect those specific changes which bankers would recognize as conforming to good banking custom and which under the decisions have not been definitely established, as, e. g., the direct transmittal of checks to banks on which they are drawn, the right to accept bank drafts in lieu of cash, the limitation of the responsibility of the bank of deposit to due care in the selection of sub-agents, and the clarification of the law as to preferences in the liquidation of insolvent banks. This I note is also the view of other counsel. The whole matter, however, is primarily for the American Bankers' Association to consider and to press. Certainly in this district while the members of that Association know of our readiness to co-operate, the best results could not in my judgment be expected from any action on the part of representatives of the Federal Reserve Bank in appearing to take the initiative in an effort to secure the enactment of such legislation.

I shall, of course, wish to keep in touch with the matter and hope it may be possible at some stage to render some aid. This would be preferable from my standpoint to writing in the way of apology for not having any practical assistance to offer, as up to this date.

Very truly yours,
(S) Parker S. Williams.

E MS.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

HERRICK, SMITH, DONALD & FARLEY

First National Building
1 Federal Street

BOSTON

X-6137-c

September 6, 1928.

Mr. Walter Wyatt, General Counsel
Federal Reserve Board
Washington, D. C.

Dear Mr. Wyatt:

You have submitted to me the <u>second</u> tentative draft of a Uniform Bank Collection Code prepared by Mr. Thomas B. Paton and have asked for my comments.

Several months ago you submitted a copy of Mr. Paton's first draft of the code with a similar request. Under date of March 22 I wrote you a letter giving certain limited comments relative to Mr. Paton's first draft. I have reviewed my own comments made at that time and I have also read over the various letters written by counsel of other Federal Reserve Banks relative to that first draft.

Here are my comments concerning the second draft:

I should like to make reference to my letter of March 22 in which I made the following statement:

"We have never had a single case in court growing out of the collection of checks or other items. Mr. Carrick tells me that there has never been any collection case involving any loss to the Reserve Bank of Boston except in connection with one small item where we misrouted a check and paid up the loss as soon as our negligence became apparent.

"Thus, at least so far as our practical experience is concerned, there is nothing in existing conditions to

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

indicate the necessity of formulating any code. Perhaps your committee will take under advisement as to whether a new code is necessary. I think it might be borne in mind that all new legislation, however carefully prepared, turns out almost inevitably to be defective or ambiguous in some respect."

When I made the above statement I felt more strongly than I expressed a grave doubt as to the wisdom of formulating any comprehensive code relative to collections.

I note with interest the letter of Mr. Parker, counsel for the Reserve Bank of Atlanta, in which he makes the following statement:

"We might remark at the outset that we rather doubt both the feasibility and advisability of securing the enactment of anything which might properly be termed a Uniform Collection Code. We believe that it would be very helpful were the several States to enact legislation designed to accomplish certain specific things, namely: (a) the right to send checks direct to drawee or payor banks; (b) the right to accept/bank drafts in lieu of cash; (c) exemption from liability on account of the default or omissions of subagents; and (d) the clarification of the law on the subject of preferences in insolvent bank liquidation. We believe, however, that it would be better to limit the activities of the Association to the accomplishment of these particular ends rather than to attempt to have enacted a somewhat ambitious code which runs counter to the common law in a number of respects, and which experience might demonstrate to be defective if not dangerous."

It seems to me that Mr. Parker's points are well taken. I am not prepared to state whether I should recommend legislation covering the same specific things as he does, but I do think the general idea he enunciates is sound.

Now with respect to the second draft of the code I can only say that I have read it over carefully together with the explanatory remarks which accompany the draft. It certainly seems

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

To W.W.

Folio 3 September 6, 1928

to be an improvement over the first draft and on the whole would seem to be a fairly clear enunciation of the principles which should govern bank collections. Based on such experience as I have had in this district I observe no particular provision in the code which I would consider to be objectionable. However, as I have heretofore stated to you several times, we have had no experience in this district in the matter of litigation.

These are my personal views and do not necessarily reflect the views of the officers of the Boston Bank.

Very truly yours,

(S) Arthur H. Weed.

AHW:M
CC-Mr. Carrick
Mr. Parker

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Law Office Of
LOCKE, LOCKE, STROUD & RANDOLPH,
American Exchange Building,
Dallas, Texas.

X-6137-d

September 6, 1928.

Federal Reserve Board,
Washington, D. C.

Gentlemen: Attention Walter Wyatt, General Counsel.

Pursuant to the telegraphic communications that have passed between our Mr. Dreibelbis and Mr. Wyatt, we have to advise that we have reviewed the second draft of the proposed Uniform Bank Collection Code prepared by Mr. Thomas B. Paton, General Counsel of American Bankers' Association.

We do not find this draft substantially different from the first draft, upon which we made detailed comments some time ago. We enclose a copy of our notes of comparison of the second draft with the first draft.

As a concrete whole, we doubt the advisability of the adoption of this code.

We incline to the opinion that it will cause more troubles than it will solve and will produce more litigation than it will avoid.

Yours very truly,

(S) Locke, Locke, Stroud & Randolph.

HPD-h.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Notes made in connection with
second tentative draft of
Proposed Uniform Collection Code.

-o-

SECTION 1 - is subject to the same criticism made in our criticism of first tentative draft.

SECTION 2 - is subject to same criticism made in our criticism of Section 2 of first tentative draft, except, however, that it appears to give the depository bank broader rights than were given under section 2 of first tentative draft, which would seem to make it even more subject to our criticism.

SECTION 3 - appears to have been materially changed from section 3 of the first tentative draft, by merely giving the depositary right to revoke the credit without requiring that checks be paid in the order of their receipt.

SECTION 4 - does not appear to have been changed from section 4 of the first tentative draft, with the exception of the omission of the word "missing" from the last sentence of the same, and is subject to the same criticism as was originally made.

SECTION 5 - does not appear to have been changed.

SECTION 6 - appears to have been changed, omitting the objected provisos which were made the subject of criticism and, also, by the omission of sub-section (c), which we criticized.

SECTION 7 - merely states the rule of law now followed in this state, with the exception of the use of the words "solvent drawee or payor bank". This might lead to a question of fact as to when a check is paid, the answer to such question being dependent upon the solvency of the drawee or payor bank.

SECTION 8 - has been stricken out.

SECTION 9 - The redraft of section 9 appears to meet our criticism of the same. Subsection (b) appears to have been broadened to give the right to the drawee bank to pay the check with a cashier's check. There is some doubt in our mind of the wisdom of sponsoring legislation which would permit a bank to pay a check upon itself with its own cashier's check.

(SECTION 10 - of the original draft appears to have been omitted.)

SECTION 10 - of the second draft does not appear to have been materially changed from section 11 of the first tentative draft with the exception of the inclusion of the words "indorsers" along with drawers and makers of items.

There appears to us to be some question as to whether or not section 7 does not conflict with this section in view of the fact that section 7 provides that under certain conditions the items shall be deemed to be paid, whereas this section provides

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

for a continued liability even after payment as outlined in section 7.

SECTION 11 - This appears to only broaden section 12 of the first tentative draft, and it likewise appears to us to be in conflict with section 7.

SECTION 12 - This section is subject to the original criticism of section 13 of the first tentative draft.

SECTION 13 - This section does not appear to have been changed from section 14 of the first tentative draft and is subject to the same criticism as made of that section.

-o-

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

FEDERAL RESERVE BANK OF CHICAGO

CHAS. L. POWELL, Counsel
Continental and Commercial Bank Bldg.

X-6137-e

CHICAGO September 4, 1928

Mr. Walter Wyatt,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Re Uniform Bank Collection Code

Your wire of the 29th ult., called my attention to Mr. Vest's letter of July 10th with reference to the above matter. I was out of town when your wire reached my office, as you were advised by Mr. McKay. I have not overlooked Mr. Vest's letter, but I had let other more important matters push it to one side.

In the first place, I do not believe that there is any general call for the enactment of this proposed collection code. We already have, in most of the States, the uniform negotiable instrument act, and I doubt the propriety of enacting this proposed code, which in some respects will interfere with that act.

I am not averse, however, to expressing my views on several of the sections of the proposed code:

Sec. 2. The word "items" in next to the last line should be changed to "item".

Sec. 3. Insert a comma after the word "hours" in the fifth line, and a comma after the word "day" in the sixth line; and omit the last sentence in said section; and if the last sentence is not omitted insert the word "next" before the word "following" in the last line.

I can see no reason whatever for the last sentence because it is a repetition of what is above.

Sec. 5. Change the word "collection" to the word "collecting" in the second line of this section.

Sec. 9. Sub-paragraph (b) is not clear. It might mean that an agent for collection could accept in payment of an item

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

a cashier's check on the collection bank. This should never be permitted. If the words "upon itself" could be clarified so as to make it clear that they meant a check upon the bank which sent the item for collection it would be satisfactory.

Sec. 10. The word "or", being the first word in the sixth line of this section, should be changed to "and". The last sentence in this section needs clarifying; and in fact, the whole section is of doubtful propriety in that it attempts to deal with the rights of the drawers or makers of the items and not with the rights of the endorsers alone. From a banker's standpoint, it would be highly desirable to deal with these rights, but I do not believe it is practical, and I do not believe it can ever be enacted into law.

Sec. 11. The last sentence is entirely impractical. How could a receiver or other official return evidence which would enable the owners to hold the drawers, makers or endorsers? He certainly could not determine what the court would accept as evidence. He might well furnish information as to the exact situation.

Sec. 12. This section does not go far enough. I think it should include, and be so re-drafted as to include, items held for collection, even though such items are drawn on the agent bank, as the whole theory of the collection code recognizes a drawee bank as a proper agent for collection, as appears in Section 6; and I can see no reason to make the distinction here made in regard to establishment of a preference under the trust fund theory.

I am very sorry that I have so long delayed replying to Mr. Vest's letter; the facts are that I deemed the matter of so little importance that I did not give it my usual prompt attention.

With kind regards, I am

Yours truly,

(S) CHAS. L. POWELL,
COUNSEL.

CLP

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY X-6137-f

FEDERAL RESERVE BANK
OF
ST. LOUIS

August 30, 1928.

Mr. Walter Wyatt,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Referring to your telegram of 8/29/28 relative to the Second Tentative draft of the Uniform Collection Code prepared by Mr. Paton.

Prior to the receipt of Mr. Vest's letter of 7/10/28, forwarding Mr. Paton's Second Tentative Draft of the Uniform Bank Collection Code to-gether with suggestions made by Counsel, of the several Federal Reserve Banks, on the First Tentative draft, Mr. Attebery, our Deputy Governor and a member of the Standing Committee on Collections, had received from Mr. Strater, Chairman of the Committee, a copy of the Second Tentative draft which had been forwarded direct by Mr. Paton to Mr. Strater. Upon examination of the Second Tentative draft submitted by Mr. Strater, I found that the changes suggested in my letter to you under date of 2/29/28 had been satisfactorily taken care of and so advised Mr. Attebery.

When Mr. Vest's letter of 7/10/28 was received, I routed it together with the suggestions of Counsel, of the Federal Reserve Banks, on to Mr. Attebery for his use in answering Mr. Strater's letter, intending to answer Mr. Vest's letter as soon as Mr. Atterbery had had sufficient time to go over the comments of Counsel, answer Mr. Strater's letter, and, return Mr. Vest's letter to my files. After Mr. Attebery had finished with the letter and suggestions of Counsel and answered Mr. Strater's letter (copy of which I enclose) through some error the letter and suggestions were routed on/to the General Files of the bank instead of being returned for the legal files. Therefore, it was overlooked until your telegram came in.

Having in mind the objections raised by Counsel to the First Tentative draft, I have compared the first tentative draft with the second tentative draft, and, whilst not all the suggestions of Counsel have been followed, I believe that the draft, as amended, is not objectionable from a Federal Reserve Bank's standpoint.

Section 5, which adopts the Massachusetts rule, is well adapted to the Eighth Federal Reserve District where we have, in several States, the direct sending Statute, and, wherein some questions have been raised, under this direct sending Statute, whether under the Massachusetts rule the drawee or payer bank is the agent of the owner of the item, or, whether the Federal Reserve Bank

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

forwarding the item to the drawee or payor bank is the last agent of the owner of the item.

I have always taken the position that under the direct sending act the drawee or payor bank is the agent of the owner-but, have never had to test it out in Court.

The last three lines of Section 5 settles this question, and will be very advantageous to the Federal Reserve Bank of St. Louis since we have had so many non-member bank failures - in nearly every one of which we were caught with outstanding unpaid cash letters.

After going over the Second Tentative Draft with the operating officers of our Bank, we cannot find any serious objections to its form.

I take it that as Counsel for the American Bankers Association, Mr. Paton is preparing this Code not from a Federal Reserve Bank standpoint but rather from a commercial bank standpoint, and, that some of the changes suggested would not meet with the commercial banks' desires in the matter.

Very truly yours,

(S)

Jas. G. McConkey
Counsel.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

St. Louis, Mo. July 14, 1928.

Dear Mr. Strater:

I refer to your letters of May 24th and June 10th, relative to uniform bank collection code, received from the General Counsel of the American Bankers Ass'n.

I have carefully gone over the code and the comments made by Federal Reserve counsel. The proposed code contemplates meeting present day practices on the part of many banks, but it seems to me that in quite a few instances, it relieves banks - that is, collecting banks - of responsibilities which, probably due to the manner in which I have been accustomed to handling items, I do not feel is desirable. On the other hand, from a Federal Reserve standpoint, there does not appear to be anything particularly objectionable in the code, as now presented. It does clarify quite a few things, but, if adopted, will undoubtedly require many legal decisions before its meaning is well established.

I am not attempting to make any specific suggestions or criticisms, primarily for the reason that this is clearly a legal subject, and experience of recent years has convinced me that the intricacies of present day law are too much for me. I am obliged to agree with Mr. Walden's suggestions as contained in his letter of June 15th, copy of which you forwarded to me.

Yours very truly,

O.M.Attebery,
Deputy Governor.

Mr. H. F. Strater, Chairman,
Standing Committee on Collections,
Federal Reserve Bank of Cleveland,
Cleveland, Ohio.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

Law Offices
UELAND & UELAND
401 New York Life Building
MINNEAPOLIS

August 30, 1928

Mr. Walter Wyatt, Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Upon receipt of your wire of yesterday, we have gone over the second tentative draft of the UNIFORM BANK COLLECTION CODE prepared by Thomas B. Paton, General Counsel of the American Bankers Association.

We make the following criticisms of the second tentative draft:

Section 4. We question the use of the words "in blank or in full" in this section. The words "by unrestricted endorsement" should be substituted.

Section 5. It is not expressly stated in this section, or elsewhere in the second tentative draft, that any intermediate bank in the chain of collection is the agent of the owner of the item. This should be made express so as to settle the question whether the owner of the paper can maintain a suit against the intermediate collecting bank.

Section 7. We believe that the omission of this section would constitute an improvement.

Section 12. We believe this section should be omitted altogether. The question of preferred claims is so intricate that we believe that section 12 would add to the confusion rather than simplify matters.

Section 13. The last clause reading "but such lien may be acquired upon any such item or proceeds for an indebtedness of the real owner thereof." ought to be omitted. On principle a collecting bank should not have a lien on items coming into its possession without the consent of its debtor.

Yours very truly,

(S) A. Ueland,
Sigurd Ueland.

SU:ME

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

FEDERAL RESERVE BANK

OF SAN FRANCISCO

August 30, 1928.

Walter Wyatt, Esq.,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Responding to your suggestion for further comments on the Uniform Bank Collection Code prepared by Judge Paton, General Counsel to the American Bankers Association, and referring to the redraft of the code, I have today wired you per enclosed copy.

Supplementing my wire, I beg leave to submit the following;

You will recall that on December 23, 1927, I wrote to Judge Paton, commenting in detail on the original draft of the code. This letter is embodied in the compilation of correspondence between your office and Counsel for the various Federal reserve banks and is designated X-6085-h.

Without intending to be egotistical, I must say that the comparison of the original code with the revised one indicates that Judge Paton has adopted almost in entirety the suggestions contained in my letter of December 23, 1927. The only suggestion made which was not adopted is in regard to the use of "solvent" in section 1(b), defining solvent credit. In view of the subsequent provisions contained in paragraphs 9 and 11, I am inclined to believe that the use of the word "solvent" is necessary.

I suggest that in Section 4, after the word "banker" in line 7, page 2, the words "or other similar phrase" be added so that the line as amended will read: "An indorsement 'pay any bank or banker' or other similar phrase shall be deemed a restrictive indorsement etc." I make this suggestion for the reason that many banks use this type of indorsement with a slightly different wording, some of them being, "pay to any bank, banker or trust company." To confine the indorsement to the exact words set forth in the proposed statute to one particular wording might, under a strict construction, exclude any other wording having similar import but slightly different phraseology.

I suggest that in section 6(a) after the word "receipt" in line 4, the word "either" be added, and that in line 5 of the same section after the word "bank" there be added the words, " or at the discretion of the collecting bank;" these additions being for the purpose of making it entirely clear that the collecting bank has the absolute option of sending the item direct to the drawee or payor or to another bank.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Walter Wyatt, Esq., August 30, 1928

I also suggest that in section 6, paragraph (b), after the word "or", being the first word in the eighth line of that paragraph, there be added the words "in any other manner."

In Seattle, Los Angeles and Portland there are a number of small outlying banks within the corporate limits of the cities mentioned, which are not members of the clearing house and in relation to which presentation by messenger would consume the major portion of the business day in making the round trip. I have no doubt that this situation exists in many other large cities. In these cases we have followed the practice of sending the items direct to the drawee by mail and accepting the drawee's draft in settlement through the mail. I believe the code should make it clear that such method of collection, if necessary, and in accordance with local custom, constitutes ordinary care. We have pending now a suit against us arising from pursuing this method of collection in Portland, the drawee bank being located within the city limits of Portland but at a great distance from the center of population. The addition suggested would clarify our right to pursue the course indicated.

I cannot see that section 7 is necessary or that it adds anything to the strength of the code. I believe it should be left out.

In regard to section 9, I have suggested that the words "itself or" at the end of line 3 be eliminated. I do not believe that a collecting bank should be granted the right of accepting in settlement of cash items the check of the drawee bank drawn upon itself. To permit this, legalizes the acceptance of one obligation of the drawee in substitution for another. It creates the relation of debtor and creditor as between the drawee bank or payor bank and the collecting agent andif pursued to the point permitted by the code, would enable the drawee to substitute one cashier's check after another in purported settlement of cash items. While it is true that in the collection of local items a collecting bank sometimes accepts a cashier's check from the drawee in purported settlement, I believe that when this is done, the collecting bank should recognize and accept the risk entailed in such procedure.

In my opinion section 13 of the proposed code constitutes merely an attempt to state the general law of bankers' liens. The wording of the section as drafted is somewhat involved and I believe that the code would be stronger and more readily adopted if this section were omitted. I observe that Judge Paton evidently entertains some such views inasmuch as he suggests that the section could be omitted without much loss.

I have recently been preparing a brief on our Portland case and attempting to get something helpful for Mr. Logan in connection with the Raichle suit, which accounts for my delay in taking up the code matter.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Walter Wyatt, Esq., August 30, 1928

I trust that my telegram and this letter will reach you in time to be of some service.

Yours very truly,

(S) Albert C. Agnew
Counsel.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY

FEDERAL RESERVE BANK OF SAN FRANCISCO

TELEGRAM

TO WYATT

FEDERAL RESERVE BOARD August 30, 1928

PRONTO

Referring redraft Uniform Bank Collection Code Paton has adopted practically all of our suggestions contained in X-6985 h, our letter December 23, 1927, and we consider redraft of code generally satisfactory. Suggest however, following minor changes.

Add after word "banker" seventh line page 2 "or other similar phrase."

In Section 6 paragraph A add after word "receipt" in line 4 word "either".

After word "bank" section 6-a line 5 add "or at the discretion of the collecting bank."

in section 6-b line 8 after word "or" first word of that line, add "in any other manner."

Advise elimination of section 7.

Section 9 page 3 line 3 advise elimination of "itself or" at the end of that line.

Also advise elimination Section 13.

Referring to suggestion for elimination of words "itself or" being last words line 3 section 9 page 3 we do not believe that collecting bank is justified in accepting in settlement check of drawee bank or payor bank upon itself. This of course includes cashier's checks the acceptance of which inevitably creates relation of debtor and creditor between collecting bank and payor bank. Such method of settlement cannot be construed as final payment and if adopted by law might result in grave abuses. While acceptance of cashiers checks in settlement of collection items is common practice on local items we consider that collecting bank should recognize and accept risk involved. Letter follows.

AGNEW

AC

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

COPY X-6137-i

FEDERAL RESERVE BANK

OF RICHMOND

August 29, 1928

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Sir:

I have your telegram of August 29th. I have not had an opportunity to give the revised form of the Uniform Bank Collection Code thorough study, but I have read it over and have no suggestions to offer which are not contained in the letters from the Counsel of other Federal Reserve banks.

Very truly yours,

(S) M. G. Wallace,
Counsel.

MGW L

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

SQUIRE, SANDERS & DEMPSEY
COUNSELLORS AT LAW
THE UNION TRUST BUILDING
CLEVELAND

August 22, 1928.

Mr. Walter Wyatt,
General Counsel,
FEDERAL RESERVE BOARD,
Washington, D. C.

Dear Sir: In re: Uniform Bank Collection Code

We duly received your letter of July 10 enclosing copy of second tentative draft of the Uniform Bank Collection Code and have made a careful review of the proposed code in its present form as requested by you.

The following suggestions as to form have occurred to us in reviewing the proposed draft of the code:

Section 3. Item on same bank. The last sentence in section three appears to be a repetition of the provision expressed in the latter part of the first sentence of this section and is apparently superfluous and should be omitted. We also think there is a chance of confusion in interpreting the language of this section. We take it that the intention is to restrict the right of revocation to such reasons only as may exist at the time the initial credit is made and not to extend the right to reasons developing before the end of the day on which the item is deposited or the following business day in the case of deposits after banking hours. As expressed, we think there is danger of a court interpreting the right of revocation to extend to any reason arising within the time limits for revocation (which would

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

make the item not payable). For instance, if a stop order is received by the bank on the same day that the item is deposited but subsequent to the deposit of the item and the credit of the item to the account of the depositor, the language as at present expressed might be construed to permit the bank to revoke the credit previously given. This we assume was not the intention. To clarify the section in this respect, we would suggest that it be changed to read as follows:

> "Any credit allowed by any bank for any item drawn on or payable at the same bank in which it is deposited, shall be provisional subject to revocation at or before the end of the day on which the item was deposited whenever such deposit has been made during banking hours or at or before the end of the next following business day when such deposit has been made after banking hours in any case in which the item is found not to have been payable for any reason existing at the time credit was made to the depositor's account. The bank shall be required to give due notice of such revocation to its depositor."

Aside from the matters of form commented on above we feel that the code should be so designed as not to make the drawer of a check a guarantor of the solvency of the bank upon which his check is drawn as is the effect of section ten. It seems to us that it would be more equitable and at the same time be a provision more easily administered if this section of the code were drafted along the lines of the Ohio code which creates a trust fund in the insolvent bank's assets where an item drawn on it by its depositor has been presented for payment and charged against the depositor's account prior to insolvency of the bank.

We believe that the provisions of the proposed code should go as far as possible in providing a stable basis for commercial paper in course of collection and that the trust fund theory with its attendant preference as found in the Ohio code attains that objective more nearly than the provisions of the proposed code.

Yours very truly,

PEH:HIE

(S) Squire, Sanders & Dempsey.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

FEDERAL RESERVE BANK

OF ATLANTA

July 21, 1928.

Mr. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Since the receipt of your letter of July 10, addressed to my firm, I have made such study as I could of the second tentative draft of the "Uniform Bank Collection Code" as prepared by Mr. Paton, and, pursuant to your request, I am submitting herein my views with respect thereto.

The second tentative draft eliminates many of the objectionable features which were in the original draft: however, in my opinion, the proposed code still contains provisions which I believe would prove dangerous and, in fact, since my further study of the question, I am more firmly convinced than I was when I wrote you in March, with reference to the first draft, that the effort to secure this legislation would be of doubtful advisability. Legislation designed to accomplish (a) the right to send items direct to drawee or payor bank; (b) the right to accept bank drafts in lieu of cash; and (c) exemption from liability on account of the defaults or omissions of subagents, would be helpful, but I believe that the proposed code "covers too much territory."

My comments with reference to the code, considered section by section, are as follows:

Sec. 1:- The definitions contained in this section seem to be accurate, regarded in the abstract. If, however, the term "solvent credit" is to be used in the code, it should be given a different definition for reasons which I shall try to make plain in subsequent comments.

Sec. 2:- I doubt the advisability of a statutory provision to the effect that a bank receiving an item payable at another bank shall, in the absence of an express agreement to the contrary, become an agent of the depositor for the collection of such item and not debtor to its depositor therefor, until it has received the proceeds in actual money or a solvent credit. I know, of course, that most banks provide by contract with their customers for a status having virtually the same legal concomitants as would appertain to the agency relationship set up in this section; but it is quite a different thing, particularly when the interests of third persons are involved, for a bank

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

and its depositor to enter by private agreement into the relationship of principal and agent, quoad items placed on deposit with the bank, and for a statute to create this relationship in all cases where there is no agreement to the contrary.

It seems to me, furthermore, that the effect of this section would be to make any endorsement of a negotiable instrument, although in blank or without any restrictions or qualifications, to all intents and purposes a restrictive endorsement, since the effect of the same would be to "constitute the endorsee the agent of the endorser." The fiduciary character of the endorsee would be established by statute, and I doubt whether the objections which would be inherent in this situation would be removed by that part of Section 4 which purports to give to "subsequent holders ----- the right to rely on the presumption that the bank of deposit is the owner of the item." In other words, the "presumption" as to the relationship between the depositor and the bank is directly contrary to the actual status as fixed by statute.

The effect of Section 2 of the Code, considered in the light of Sections 36 and 37 of the Negotiable Instruments Law, involves the further serious question as to whether the initial bank, or other banks handling such items, would take the same subject to all equities existing between prior parties. I have noted, of course, that Section 2 undertakes to confer upon a collecting bank the right to enjoy "all the rights of a holder in due course against prior parties." Is it possible, however, by legislative enactment to create the anomalous situation of a mere collection agent, having all the rights of a holder in due course, without at least repealing by implication one or more sections of N. I. L.? Again, might not the provision that the bank should be regarded as a holder in due course be construed by the courts as permitting at most a recovery by the bank only to the extent of withdrawals that might have been made by the depositor against his uncollected balance ? In such latter event the bank would be put to the necessity, in suing upon any instrument which it had received on deposit, of proving its actual loss in the premises.

A further complication might arise from the fact that the principal and agent relationship, touching any item received on deposit, would exist until the bank had received the proceeds in "actual money or a solvent credit." A solvent credit is defined in the Act to mean an unconditional credit of money on the books of a solvent bank to the account of another bank, etc. If this definition be taken literally, the question of whether or not a bank had, in fact, received a "solvent credit" would be

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Mr. Walter Wyatt, 7/21/28.

determinable by the solvency of the bank, upon the books of which the credit appears, as of the time the credit was entered. It follows that the collecting agent might discover, sometime after it was given credit on the books of a supposedly solvent bank, that the latter was in fact insolvent at the time of the credit. In such event it might, if the Code is to be taken literally, charge back an item to a depositor who had supposed the same to have been finally paid, since the bank of initial deposit had, in fact, received an insolvent credit, although all parties supposed the same to have been a solvent credit. While it is doubtless true that the courts would not permit any such happening, the definition of "solvent credit" should be changed. Mr. Agnew has thoroughly discussed this particular question in his former letter and I shall not enlarge on the same.

Sec. 3:- I have no comments to make with reference to Section 3, except that the first sentence of the same is involved and a redraft would doubtless make for clarity.

Sec. 4:- That portion of this section creating a presumption of ownership in an endorsee, despite the statutory creation, by the provisions of Section 2, of a relationship which is incompatible with such presumption, has already been discussed. I have also discussed what I regard as the inadvisability of undertaking to change the present law regarding the legal effect of an endorsement in blank or in full as applied to the deposit of a check or other item in a bank. There are always advantages accruing from the removal by statute of a conflict in judicial holdings. Therefore, a settlement of the much mooted question as to whether an endorsement "to any bank" or banker" is restrictive or unrestrictive might be of something more than academic interest. It would seem, however, that the matter is of little practical importance.

Sec. 5:- I have no criticism to make of this section.

Sec. 6:- I have no criticism to make of this section.

Sec. 7:- I am inclined to believe that this section should be omitted.

Sec. 9:- I see no objection to the first sentence in Section 9. I think that the word "solvent" should be stricken from the second sentence of this section. In any case where a bank <u>accepts</u> in payment of an item a credit on the books of another bank, it should be estopped to assert that it has not received returns should the bank, the credit of which it had so accepted, prove to be insolvent.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Mr. Walter Wyatt, 7/21/28.

Sec. 10:- I do not believe that this section could be enacted without entailing dangerous possibilities. Even were the questions which arise out of the use of the phrase "a solvent credit" eliminated, other puzzling questions present themselves. Ordinarily, payment upon presentation by the drawee or payor bank discharges makers, drawers and endorsers. By Section 10 it is provided that there shall be no discharge until the drawee or payor has made actual payment in money or a solvent credit. I assume that a failure on the part of the drawee or payor to make payment as prescribed in this section would/amount to a dishonor of the item, which, under the Code, would remain unpaid although the same had been actually charged to the account of some party liable thereon. It has been held that the drawer of a check is discharged by a failure to give notice of dishonor, the bank having refused to pay because it was short of funds and subsequently became insolvent. What would be the situation, touching protest and notice of dishonor, in a case where a bank charged items to the accounts of drawers or makers, remitting therefor by bank draft which was never paid because of the insolvency of the remitting bank? Would it not be very difficult, if not impossible, for the "holders" of the items which had been charged to customers' accounts, or perhaps delivered to such customers, to procure, under these conditions, a protest of such items and to effect notice of dishonor to parties entitled thereto? In many cases parties entitled to notice of protest might be released and the owners of the items would not even have a claim against the closed bank because of the provisions of Section 11 of the Code.

I am not entirely certain of my ground in raising this objection to Section 10, but I believe that the questions are worthy of close study.

I do not believe that the second sentence of Section 10 would be appropriate for enactment in any event. The practical effect of its provisions would be to leave the owner of an item, which had been "paid" through a clearing house, with an unsatisfied claim against the maker, drawer, or endorser of the item for a portion of the same and against the failed bank for the balance. The difficulties and confusion which would result are obvious.

Sec. 11:- Assuming for the moment the constitutionality of Section 11 of the Code, there are questions of policy involved which should be given consideration. Ordinarily an insolvent bank receives from other banks, up to the time of closing, items drawn on it and enclosed with "cash letters." It pays such items and remits therefor in exchange, by a transfer of credits, or in some other way. Each owner of such items has an equitable, and

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

sometimes a legal, interest in the "remittance" which has been obtained for his benefit by an agent acting in his behalf. It is contemplated in Section 11 that upon the appointment of a receiver all items drawn upon or payable by or at such insolvent bank which have not been paid in money or solvent credit, whether or not the draft of the insolvent bank has been issued therefor, shall be returned to the presenter of such items. Is it not conceivable that the owners of the items would prefer to have, in many cases, a claim against the insolvent bank rather than one against a still more insolvent maker or drawer? In Georgia, and perhaps in other States, an unpaid remittance draft is made a lien upon the assets of an insolvent bank and the amount thereof is entitled to preferential payment. By judicial interpretation of the common law in other States, the same rule has been established. In any jurisdiction he would have some kind of a claim. Where parties liable on an instrument remain solvent despite the closing of a bank, it would doubtless be to the advantage of the owner of such item to be able to enforce the same against parties liable thereon; but there are probably just as many cases where there is more change of a recovery against the bank than against the parties liable on the instrument. I doubt whether it would be feasible to give the holder of an item the option of reclaiming the same or of proving against the bank for the amount thereof, but, unless the Code conferred such option, its constitutionality would be subject to serious question. If the agent of the owner of an item has obtained for him a remittance draft, or an interest therein, upon which a claim against the bank may be made by him or for his account, it would seem to be contrary to the Constitution to deprive him of the property, in which he has a legal or equitable interest, by the requirement that the receiver of the closed bank "cancel" such property, returning to him a check or other instrument which he may not wish to accept.

Sec. 12: - I have no criticism of Section 12.

Sec. 13: - I think that this section should be omitted from the Code. If there were any need for the enactment of a uniform statute concerning bankers' liens, such need would be occasioned largely by the provisions of Section 2 of the Code, touching the relationship of a bank to paper which it has received from another bank and with respect to which it is merely the agent of the original depositor. This consideration, to my mind, emphasizes the dangers which, as I see it, are inherent in Section 2.

I apologize for the length of this letter, but the im-

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

Mr. Walter Wyatt, 7/21/28.

portance of the subject has seemed to justify a complete discussion. I do not wish to be understood as being unduly critical of a paper which is the careful, scholarly work of a very able lawyer. It may be that some of the objections stated are without merit and, if so, I am open to conviction. Every lawyer feels a distrust of enactments which run counter to the common law and which will upset decisions and precedents with which he is familiar and it is possible that I have conjured up eventualities which would not in fact follow an enactment into law of the Code.

I have not undertaken to suggest substitutes for those portions of the Code which I have criticized. If I were to undertake to formulate a code I could not do nearly so well as has Mr. Paton. My feeling is that any collection code, prepared to cover anything except the few important subjects mentioned at the outset of this letter, would be subject to criticism and to objections.

With kind personal regards, I am,

Cordially yours,

(S) Robt. S. Parker.

RSP/w.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis