

C O P Y

X-6851

March 31,
1931.

Mr. Walter S. Logan,
Counsel and Deputy Governor,
Federal Reserve Bank of New York,
New York City.

My dear Walter :

I have received your letter of March 26th requesting my views on the question whether Section 11 of the Uniform Bank Collection Code (Section 350j of the New York Negotiable Instruments Law), giving the collecting bank the option to treat a check as dishonored when the drawee's remittance draft therefor drawn on another bank is not paid in due course, would be held to be applicable to national as well as State banks.

As I told you over the telephone yesterday afternoon, I am inclined to agree with your view that this section does not conflict in any way with any provisions of the National Bank Act and that it would be applicable to checks drawn on national banks. It seems to me that it deals only with the respective rights, duties and liabilities of the drawer, drawee, endorsers and holders of such check and is not intended to interfere with the ratable distribution of the assets of an insolvent national bank which is required by the provisions of the National Bank Act. It is true that it contemplates that, where such a check has been charged to the drawer's account, the entries will be reversed thus increasing the amount of the drawer's claim against the insolvent bank. This, however, merely has the effect of transferring the claim of the holder of the check back to the drawer, where it belongs; it does not diminish the assets of the bank nor increase its liability; and it does not give any one a preferred claim against the bank. Off hand, the only way in which I can see that it will effect the liquidation of the bank will be by increasing the offset of the drawer of the check against any indebtedness he has to the bank.

I have discussed this subject briefly with Mr. Awalt and Mr. Barse; but this question was entirely new to them and they were unwilling to express any opinion on it until they had had time to give it careful study. As soon as I hear from them, I shall communicate with you.

Mr. Walter S. Logan.

In the meantime, I am sending a copy of your letter to Counsel for each of the other Federal reserve banks with a request for an expression of their views on the question which you have raised and for a citation of any authorities they may know of which may have a bearing on this question. I am asking them to write direct to you, sending me copies of their letters.

If I can be of any further assistance to you, please do not hesitate to call upon me.

Cordially yours,

Walter Wyatt
General Counsel

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FEDERAL RESERVE BANK

OF NEW YORK

March 26, 1931.

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

Dear Walter:

You will recall that a short time ago we exchanged letters on the question of whether the provisions of the Bank Collection Code granting preferences against closed banks were applicable to national banks. The information you gave me at that time and our own examination of some of the authorities convinced me that the provisions were not applicable to closed national banks.

It seems to me, however, that the provisions of Section 11 of the Bank Collection Code (which is Section 350-j of the New York Negotiable Instruments Law), giving the collecting bank the option to treat an item as dishonored when the drawee's remittance draft therefor drawn on another bank is not paid in due course, would be held to be applicable to national as well as state banks. For your convenience I quote below a part of the section in question:

"§11. Election to treat as dishonored items presented by mail. Where an item is duly presented by mail to the drawee or payor, whether or not the same has been charged to the account of the maker or drawer thereof or returned to such maker or drawer, the agent collecting bank so presenting may, at its election, exercise with reasonable diligence, treat such item as dishonored by non-payment and recourse may be had upon prior parties thereto in any of the following cases:

- (1) Where the check or draft of the drawee or payor bank upon another bank received in payment therefor shall not be paid in due course;

"

This section does not conflict with any provision of the National Bank Act so far as I know; and the exercise of the option would not in any way harm the general creditors of a closed national bank, but would merely operate to transfer to the maker of the check the general claim which the owner of the check would otherwise have against the closed bank. On the other hand, the exercise of the option would prevent any loss to the owner (unless the drawer of the check were also insolvent), and would result in the loss being transferred to the maker of the check where in fairness it belongs. Moreover, and this is of course the reason

FEDERAL RESERVE BANK OF NEW YORK 2 Walter Wyatt, Esq. March 26, 1931.

that the Federal Reserve Banks are particularly interested in this question, by the exercise of the option a collecting bank could in most cases protect itself against liability to the owners of the items who might claim that the collecting bank had been negligent in forwarding the items direct to the drawee bank in view of the drawee bank's condition.

I am sorry to bother you again, but I would greatly appreciate any information or expression of opinion on this point. I would have telephoned to you about this, instead of writing, except that I thought it would be more satisfactory from your standpoint to have a definite statement of the question I have in mind. I shall, of course, be delighted to talk to you about it on the telephone, and so far as I am concerned any information you can give me by telephone will be just as useful and satisfactory as if conveyed by letter.

With best regards and thanking you for any help you can give me, I am

Yours faithfully,

(Signed) Walter S. Logan,

Walter S. Logan,
General Counsel.