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X-6910

FEDERAL RESERVE BANK

OF NEW YORK

April 1, 1931.

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

Dear Walter:

I have your letter of March 31 and am very much obliged to you both for your comments on the question I raised concerning the handling of items covered by dishonored remittance drafts of closed national banks and for discussing the matter with the Comptroller's office and asking for an expression of views from counsel of other Federal Reserve Banks.

I shall of course be very much interested to hear from you again whenever you have anything further to report regarding the position of the office of the Comptroller of the Currency on this question. I have given considerable thought to it since I telephoned you on March 30, and I believe that the provisions of the Bank Collection Code, giving the collecting bank the option to treat as dishonored any items covered by a dishonored remittance draft, clearly do apply to items drawn on national banks as well as to items drawn on state banks. It seems to me and to the other officers in the bank with whom I have discussed the matter that this procedure not only is the most practicable way by which a Federal Reserve Bank may protect itself in these very difficult situations, but also that it will operate justly upon the rights of all parties. We hope very much, of course, that the Comptroller's office will take the same view of the matter.

Thanking you again for your help, I am

Yours faithfully,

(Signed) Walter S. Logan

Walter S. Logan,
General Counsel.

COPY

X-6910-a

UELAND & UELAND
ATTORNEYS AND COUNSELORS

800 Security Building
Minneapolis

April 8, 1931.

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

Dear Mr. Wyatt:-

We have read your letter of April 1, 1931 with enclosures, with reference to Section 11 of the Bank Collection Code, with interest.

The effect of Section 11 appears to be that a check forwarded by mail to the drawee bank is not finally paid until the remittance draft is paid. This statutory rule would apply both to the drawer of the check and the bank on which it was drawn. Hence regardless of whether or not the check was stamped "paid" and charged against the account of the drawer, the drawee bank would remain liable to its depositor until the time of final payment of the draft.

Where the drawee bank suspends payment between the time when the check was stamped "paid" and charged to the account of the drawer and the time when the remittance draft is dishonored, and the collecting bank elects to treat the check as dishonored, the effect would appear to be that the insolvent bank's liability to its depositor is thereby made absolute, and it ceases to be liable on the dishonored remittance draft.

Supposing the insolvent institution to be a national bank, we agree with you that this would not involve any con-

flict with the provisions of the National Bank Act. The liabilities of the insolvent are not increased, nor can we see that there is any preference effected.

We may suppose that the depositor was indebted to the insolvent bank. But it is doubtful whether he would have a right of set-off, as such right would arise subsequent to the suspension. See Richard Insurance Co., et al., vs. Litteer, 1 Fed. (2d) 311 (C. C. A. 8).

Very truly yours,

UELAND & UELAND,

By Sigurd Ueland

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X-6910-b

FEDERAL RESERVE BANK OF ST. LOUIS

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

April 8, 1931.

Dear Mr. Logan:

Upon my return to the office after rather an extended absence in Mississippi and Arkansas on account of litigation growing out of numerous bank failures, I found a letter from Mr. Wyatt enclosing copy of your letter of March 26, 1931 to him, and, his reply, under date of March 31st, together with Mr. Wyatt's request that I write you direct any comments or suggestions I may care to make on the subject therein referred to.

Prior to the adoption of the Uniform Collection Code, MISSOURI and ARKANSAS, under decisions of the highest Courts of the respective States - and following the PETERS case - allowed a preference on transit items handled under circumstances similar to those outlined in the Code. In INDIANA and KENTUCKY liquidating agents of State banks followed the Missouri and Arkansas decisions. These States adopted the Uniform Collection Code in 1929.

MISSOURI adopted the Uniform Collection Code in 1927; but, for some reason left out Sec. 11 (your section 350-j Neg. Instr. Act.); consequently, I have had no occasion to examine this section in its relation to the liquidation of National Banks.

Receivers of National banks refused to adopt the decisions laid down by the State Courts covering the right to preference, and, after the Code had been adopted, I made a rather extended study of it to see if, perchance, the Code might be claimed to be controlling in the liquidation of National banks, and, notwithstanding what the Court said in the case of ELMIRA SAVINGS BANK vs. DAVIS, 161 U. S. 375, I became convinced that - in so far as the preference rights given under the Code were different from the preference rights given by the Federal Courts in construing the Federal Statutes - that the relevant provisions of the Code were not binding on national banks.

Section 11, however, approaches the subject from an entirely different angle. The primary purpose is to deal with the respective rights, duties, and, liabilities of the parties to the paper, viz., the holders, endorsers, drawers, and, drawee, all of whom are subject to and controlled by the Negotiable Instrument Act, and followed alike both by the State and Federal courts; consequently, I cannot see how Sec. 11 conflicts with the National Bank Act in this respect.

Mr. Logan.

On account of some urgent matters claiming my attention since my return, I have had to make a rather hurried investigation of the questions involved. I will, as soon as I can, get some of the more urgent matters out of the way, go into the question further, and, if a further investigation produces anything of assistance, I will write to you.

With kindest personal regards,

Very truly yours,

Jas. G. Mc Conkey,
General Counsel.

CC to Mr. Wyatt.

SQUIRE, SANDERS & DEMPSEY

COPY

April 9, 1931.

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

Dear Sir:-

I am in receipt of a letter from Mr. Walter Wyatt enclosing copies of your letter to him of March 26th and his reply thereto of March 31st, with respect to the application of Section 11 of the Uniform Bank Collection Code to national banks. He has requested me to write you my views on this question, with citations to any pertinent authorities of which I may know.

The first question which presents itself is whether the Uniform Bank Collection Code is applicable to national Banks. The definition of "banks" in Section 1 of the Code appears to be broad enough to include within its terms "national banks", and to the extent that provisions of the Code are not in conflict with any provisions of the National Banking Act relating to national banks, I see no reason why they should not be held applicable to national banks. Of course, insofar as Congress has legislated its jurisdiction is exclusive, but I do not find that Congress has enacted any provision with respect to national banks which might be said to be in conflict with this particular provision of the Uniform Collection Code.

Furthermore I do not see how the position of a national bank would be altered in applying the uniform collection Code in this respect,

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as depositors in a national bank are not preferred over other creditors, and the transfer of the claim as against the bank from the holder of a check drawn upon it to the maker of the check who is a depositor in the bank, would not seem to in any wise alter the liability of the bank, or change the classification of the claim against the bank.

The only possible exception which occurs to me is the case in which the maker or depositor might be indebted to the bank in an amount greater than the amount of his account if the check were charged to his account. In such an instance, if the owner of the check elected to treat it as dishonored on the closing of the bank, and recovered against the maker of the check, the maker would, through the right of set-off of his own indebtedness to the bank, be enabled to secure a preference to the extent of his indebtedness to the bank. See Ardleigh v. Clothier, 51 Fed. 106, Scott v. Armstrong, 146 U. S. 499. However, as preferences resulting from the right of set-off appear to have been sustained as not contrary to the provisions of Section 5236, it seems logical that the preference which might be obtained in a case such as that instanced through the assertion of the right of set-off would not be contrary to Section 5236 of the National Banking Act.

Very truly yours,

cc- Mr. Wyatt.

(Signed) Sterling Newell

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X-6910-d

699

FEDERAL RESERVE BANK

OF NEW YORK

April 9, 1931.

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

Dear Walter:

I am enclosing a copy of a letter which I am sending out tonight giving notice that we elect, pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York, to treat a certain item as dishonored by nonpayment which was covered by an unpaid remittance draft of The First National Bank, Macedon, New York, which was closed yesterday. I tried to reach you on the telephone late this afternoon to give you this latest information in regard to this matter.

I am sending one of the originals of the letter to the Comptroller of the Currency, and I assume that the Receiver or Examiner in Charge will request the instructions of the Comptroller's office as to whether or not to comply with our request that the item be protested and returned. I am confident that our interpretation of the law is correct and that the item should, therefore, be returned, and I hope that the Comptroller's office will take this view also.

Yours faithfully,

(Signed) Walter S. Logan

Walter S. Logan,
General Counsel.

Encl.

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X-6910-e

FEDERAL RESERVE BANK OF NEW YORK

700

April 9, 1931.

To

The First National Bank,
Macedon, New York.

Comptroller of the Currency,
Washington, D. C.

Receiver or Examiner in Charge,
The First National Bank,
Macedon, New York.

Gentlemen:

The draft of The First National Bank, Macedon, New York, dated April 7, 1931, drawn on Central Hanover Bank and Trust Company, New York, N. Y., for $7,541.06, received by us in remittance for the items drawn on said The First National Bank, Macedon, New York, which we presented to it by mail and which were listed in our cash letters dated April 6, 1931, was not paid in due course but was dishonored upon presentation for payment due to the closing of said The First National Bank, Macedon, New York. Included among the said items in remittance for which we received said draft, was an item dated April 1, 1931 for $4,481.25 drawn by Edith C. Wallace, Treasurer, Macedon High School, on The First National Bank, Macedon, New York, to the order of Comptroller of State of New York and endorsed by the latter and by The New York State National Bank, Albany, New York, from which bank we had received the item for collection. Upon the instructions of The New York State National Bank, Albany, New York, we hereby elect, pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York, to treat said item of $4,481.25 as dishonored by nonpayment; and we hereby request The First National Bank, Macedon, New York, and the Comptroller of the Currency and the Receiver or Examiner in charge of the assets of said bank to cause said item of $4,481.25 to be duly protested and returned to us immediately.

Kindly acknowledge receipt of this letter.

Very truly yours,

FEDERAL RESERVE BANK OF NEW YORK,

By_____
Deputy Governor and General Counsel.

WSL:GSR(MAR)

COPY

X-6910-f

MAYER, MEYER, AUSTRIAN & PLATT

CONTINENTAL ILLINOIS BANK BUILDING

CHICAGO

April 10, 1931.

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

Dear Mr. Wyatt:

I am in receipt of your letter of April 1st, 1931, relative to the application of Section 11 of the Uniform Bank Collection Code to checks drawn on national banks.

While it is my opinion that the Bank Collection Code, which has been adopted in toto by the states of Indiana and Wisconsin in this District, insofar as it attempts to give a preference to the owners of checks in certain instances, is not applicable to national banks, I am inclined to agree with both you and Mr. Logan in your conclusion that this code is applicable insofar as it gives the collecting agent bank the option to treat an item as dishonored where the drawee's remitting draft is not paid in due course. There appears to be nothing in the latter provision of the Bank Collection Code which is in conflict with the federal law and therefore I believe it to be equally controlling in the case of national banks as well as state banks. Insofar as I have been able to ascertain, there have been no decisions passing upon this question.

I am very much interested in this question and would appreciate your advising me in the event either you or Mr. Logan should change your opinions on the same.

Yours very truly,

(Signed) Carl Meyer
D

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FEDERAL RESERVE BANK OF RICHMOND

April 14, 1931

Mr. Walter S. Logan, General Counsel,
Federal Reserve Bank of New York,
New York, N. Y.

Dear Mr. Logan:

I received from Mr. Wyatt a copy of your letter of March 31st but have been prevented from replying because of the pressure of business. The Uniform Check Collection Code is in force in two states in this district, South Carolina and Maryland, but we have had since the adoption of the Code no instance of a failure of a national bank in those states, which was indebted to us for an unpaid cash letter. Sometime ago I endeavored to find authorities which might guide me to a decision as to whether or not Section 11 of the Code would apply to national banks. I found no authorities, however, which appeared to me to settle the question.

Several capable lawyers have suggested that the entire Code was applicable to national banks, saying that the provisions which created a trust in favor of the forwarding bank amounted to a regulation of the title to property, and that a state statute upon this point was binding upon national banks upon the same principle that a statute regulating the assignment or negotiation of warehouse receipts, bills-of-lading, or other such instruments would be binding upon a national bank. This has, I think, something to commend it, but I am rather inclined to think that the Supreme Court of the United States would not hold that a state statute might in effect give priority to a claim against a national bank merely by declaring that the bank should be deemed a trustee in a situation in which the federal courts had held that the real relationship was that of a debtor. It therefore seems to me that the Code would be inapplicable to national banks under the rule established in Davis v. Elmira Savings Bank, 161 U. S. 275, in so far as the Code undertakes to establish a preference.

I can see no good reason, however, why Section 11 should not apply to national banks. As you say, it would not disturb equality among any claimants because under the present rule the holder of a check which has been cancelled is a general creditor, and under Section 11 the drawer would, as you say, be the general creditor. It seems to me, therefore, that Section 11 is merely a definition of what constitutes the discharge of a negotiable instrument and regulates the rights and liabilities of the drawer and holder without substantially affecting the interest of the drawee bank. If, for example, some state should alter the usual rule of the law of negotiable instruments and enact that a certification of a check, even if made without the knowledge and consent of the drawer, should nevertheless not release the drawer, I can see no reason why this enactment, which merely affects the rights of the holder of the check and the drawer, should not be applicable to checks on national banks as well as to other instruments. Section 11 does little more than enact the same rule limited to cases in which the drawee fails.

FEDERAL RESERVE BANK OF RICHMOND

Mr. Walter S. Logan, General Counsel,
Federal Reserve Bank of New York,
New York, N. Y. -2- April 14, 1931

The Supreme Court of the United States in Farmers and Merchants Bank v. Federal Reserve Bank, 262 U. S. 649, held in effect that any person receiving a check was obliged to take notice of the law in force at the place of payment regulating the discharge or payment of the instrument, and it seems to me that the reasoning of the court in this case is sufficiently broad to sustain the proposition that any person drawing a check on a national bank would be obliged to take notice that under the law of the state where that bank was located the cancellation of the check by the bank would not constitute an absolute but only a conditional payment.

This question is one of great interest to Federal reserve banks, and, as you see, it is one which is likely to be of practical importance to me at any time. If you have received letters on this subject from the Counsel for other Federal reserve banks I would greatly appreciate it if you would send me copies of the letters as I should like to know their views. If you have any correspondence with the office of the Comptroller of the Currency, of course, it would be of great interest to me to know the views of that office. Like you, I once discussed the matter informally with Mr. Barse and Mr. Awalt, but they, of course, were not willing to indicate an opinion.

The question is scarcely of sufficient importance to justify a conference of Counsel of Federal reserve banks, but it does seem to me highly desirable that some definite understanding be reached with the Comptroller of the Currency as soon as possible. For example, if the Comptroller of the Currency would agree to recognize our right to demand the return of the checks, the Federal reserve banks might adopt the general policy of electing to demand the return of the checks, making no effort to establish any claim which they might have to a preference.

I am taking the liberty of suggesting that you might continue your correspondence with the Comptroller and if the Comptroller is willing to make any tentative commitment you might communicate with all the Federal reserve banks and we might agree by correspondence upon some definite plan of action.

Very truly yours,

M. G. Wallace,
Counsel.

NGW R

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

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T E L E G R A M

FEDERAL RESERVE SYSTEM

(LEASED WIRE SERVICE)

RECEIVED AT WASHINGTON, D. C.

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San Francisco Apl 21 922 am

Wyatt

Washington.

Reply to your letter april first referring to logans of march sixth regarding section eleven bank collection code delayed by absence on business trip to hawaii stop I have today advised Logan by wire that in my opinion this section is applicable to national banks comma does not conflict with provisions of national bank act and comes within the category of state legislation referred to in seven corpus juris page seven sixty note five eighty five and cases cited

Agnew

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C
O
P
Y

April 24, 1931.

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

Dear Mr. Logan:-

We have not replied sooner to Mr. Wyatt's letter of April 1st enclosing copy of correspondence passing between you with reference to the provisions of section 11 of the bank collection code, due to the fact that our Mr. Stroud has been out of the city quite a good deal since the receipt of this letter.

We have not made an investigation of the decisions with reference to the matter, but it is our off-hand opinion that the statute would apply to national banks as well as state banks.

The principles of agency applying to the collection of checks in the absence of statute are merely common law principles. We see no reason why these principles cannot be regulated by statute. You are, of course, familiar with the so-called New York and Massachusetts rules applying to the collection of checks, and we are of the opinion that the statutory provisions of any particular state may affect these common law rules.

It seems to us that the statute in question is nothing more than a modern recognition of the fact that it is not practical for an agent collecting checks to always collect in cash. As pointed out to you in Mr. Wyatt's letter, the status of the insolvent national bank in so far as its assets or liabilities are concerned are in no wise affected by this statute.

It seems to us that, there being a state statute covering this situation, the federal courts would, under well defined principles, follow such statutes, and the decisions of the state courts construing the same in any litigation which might come before the federal courts, even though a national bank were a party thereto.

We are very much interested in the question, and as soon as we have an opportunity we will make a further study of the matter, and write you again.

In the meantime we shall appreciate your letting us know about any further conclusions which you may reach.

Yours very truly,

(Signed) Locke Locke Strand & Randolph

EBS: g
CC to Mr. Walter Wyatt,
Federal Reserve Board,
Washington, D. C.