FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-7008

November 6, 1931.

SUBJECT: Legal and Practical Problems arising Under the Bank Collection Code.

Dear Sir :

On April 1, 1931, I sent you copies of correspondence (X-6851) between Mr. Walter S. Logan, Deputy Governor and General Counsel of the Federal Reserve Bank of New York, and the undersigned with reference to the above subject and on June 11, 1931, I sent you copies of letters (X-6910) written by Counsel of the various Federal reserve banks on the same subject. On July 24, 1931, I sent you copies of an opinion of the Supreme Court of New York in the case of In re Jayne & Mason, Private Bankers, and a copy of Mr. Logan's memorandum of authorities in that case, which also dealt with the Bank Collection Code.

I now enclose for your information copies of the following correspondence on the same subject:

1. Undated memorandum addressed to me by Mr. F. G. Awalt, Deputy Comptroller of the Currency, enclosing copies of telegraphic correspondence dated May 27 to June 5, 1931, inclusive, between him and the Federal Reserve Bank of San Fran-

cisco with reference to the applicability of the bank collection code to checks drawn on insolvent national banks.

2. Letter with enclosures addressed to me under date of June 11, 1931, by Mr. Walter S. Logan, Deputy Governor and General Counsel of the Federal Reserve Bank of New York.

3. Letter addressed to me under date of June 15, 1931, by Mr. Albert C. Agnew, Counsel to the Federal Reserve Bank of San Francisco.

4. Letter addressed to me by Mr. M. G. Wallace, Counsel to the Federal Reserve Bank of Richmond, June 17, 1931, enclosing copy of a letter addressed to Mr. Logan on the same date with reference to a recent decision of the Supreme Court of South Carolina in the case of Ex Partie Wachovia Bank and Trust Company 158 S. E. 214.

5. Letter addressed to me by Mr. M. G. Wallace, Counsel to the Federal Reserve Bank of Richmond, of July 17, 1931, enclosing copy of a memorandum to the Executive Committee of the Federal Reserve Bank of Richmond re method to be used when checks sent to a national bank are charged to the drawers but remittance is not received by the Federal Reserve Bank.

6. Letter addressed to me by Mr. Walter S. Logan, September 30, 1931, enclosing a copy of a letter addressed to the Comptroller of the Currency re Checks on Insolvent National Banks treated as dishonored under Section 11 of the Bank Collection Code.

7. Letter addressed to me by Mr. Logan, October 6, 1931,

enclosing copy of letter to the Comptroller of the Currency re Checks on Peoples National Bank of Pulaski, New York.

I regret exceedingly that the great pressure of matters upon which it has been necessary for me to advise the Federal Reserve Board has made it impossible for me to give this subject sufficient study to enable me to answer the above letters in detail, and I fear that it will be impossible for me to give this subject the study which it deserves at any time in the near future. The subject is one of such interest and importance to all Federal reserve banks, however, that I feel that I should not delay longer in transmitting to Counsel for all the Federal reserve banks the information and views contained in the attached correspondence, in the belief that an interchange of views on this subject between the Counsel for the various Federal reserve banks would be helpful.

If Counsel for any Federal reserve bank sends me an expression of his views on any of the questions discussed in the enclosed correspondence, I shall send copies to Counsel for all of the other Federal reserve banks for their information as promptly as possible, without waiting until I have an opportunity to discuss the subject, in order that an interchange of views between Counsel for all of the Federal reserve banks may proceed without further delay.

I understand that the Comptroller of the Currency still has under advisement the question presented in Mr. Logan's letter of September 30th, 1931; but, as soon as he takes a definite position

in the matter, I shall advise Counsel for all Federal reserve banks.

I hope that Counsel for each of the Federal reserve banks who has written to me on this subject will consider this communication an acknowledgment of his letter, and will excuse my failure to acknowledge it more promptly, and to discuss the questions which he has raised. Whenever I can find time to do so, I shall study this subject carefully and attempt to answer each of these letters in detail; but, from the present outlook, I fear that it will be many months before I can find such an opportunity.

It has occurred to me that it might be advisable to arrange for a conference of counsel for all Federal reserve banks to discuss this subject; but the counsel with whom I have discussed the matter seem to feel that this problem has not developed to such a point that a conference would be very profitable. Moreover, the present conditions are such that it might be difficult for Counsel to spare the time to come to Washington for a conference. If Counsel for a number of the Federal reserve banks feel that such a conference should be arranged, however, I shall be glad to do everything in my power to arrange it.

Very truly yours,

Walter Wyatt,
General Counsel.

TO COUNSEL FOR ALL FEDERAL RESERVE BANKS.

COPY

X-7008-a

TREASURY DEPARTMENT

WASHINGTON

COMPTROLLER OF THE CURRENCY

Memorandum for Mr. Wyatt,
Counsel, Federal Reserve Board.

Pursuant to your request there are attached hereto copies of the communications between this office and the Federal Reserve Bank of San Francisco concerning the application of certain provisions of the Uniform Collection Code to checks sent the Farmers National Bank of Pomeroy, Washington, for collection and remittances, the insolvent bank's remittances therefor having failed to clear prior to its suspension.

(Signed) F. G. A.

F. G. AWALT
Deputy Comptroller.

Enc.

COPY

X-7008-a-1

COPY

Sanfrancisco 1037 May 27

Comptroller of the Currency
Washington

Farmers national bank Pomeroy Washn closed May 16th. On May 13th and 14th our cash letters of these dates were forwarded aggregating $4,548.16 for which on May 16th we received two drafts of closed bank drawn on its correspondent first national trust and savings bank spokane. These were presented May 16th and payment refused account bank closed. Washington adopted American bankers association uniform collection code 1929. See chapter 203 laws of Washington 1929 under the provisions thereof the assets of the payer bank are impressed with a trust in favor of the owners of the items included in the cash letter irrespective of whether the fund representing such items can be traced into and identified as part of the assets of the closed bank. Attorneys for one of the banks for which we handled items and to which we have charged back the items embraced in the unpaid drafts without the return of the items themselves have advised their client that collection code applies to national banks and that owners are entitled to preference. This situation is similar to that which recently arose in connection with federal reserve Newyork except that in that case the collecting bank elected to Treat the items as dishonored under another section of the code and reclaimed the same with the consent of your office. See letter awalt to Logan april 15, 1931 re first national bank Macedon. Kindly advise by wire as to your opinion regarding the applicability of the preference section of the code to national banks doing business in washington.

Hale, Federal reserve bank Sanfrancisco

COPY

X-7008-a-2

COPY

May 28, 1931.

Federal Reserve Bank,
San Francisco, California.

Your telegram 27th. National Bank Act provides for winding up affairs of an insolvent National Bank as in a code by itself. Uniform Collection Code and all other State statutes wholly inapplicable to insolvent National Banks where they conflict with the mandate of Congress requiring pro rata distribution of bank's assets among all creditors. Cook County National Bank v. United States 107 U. S. 445; Davis v. Elmira Savings Bank 161 U. S. 275; Easton v. Iowa 188 U. S. 220. To establish a preferred claim against Pomeroy no augmentation and tracing possible. Unless all three essentials are affirmatively established to Comptroller's satisfaction without reference to the Uniform Collection Code Receiver will vigorously defend suite to establish same in Federal Court which has cognizance independent of amount involved, hence Federal rule controlling. Macedon case you refer to did not involve preferred claim. The collowing cases discuss controlling preferred claim principles. Empire State Surety Co. v. Carroll County 194 Fed. 593; Studebaker Corp. v. Bank 10 Fed. (2nd) 590; Larabee Mills v. Bank 13 Fed. (2nd) 330, certiorari denied 273 U. S. 727; Farmers National Bank v. Prible 15 Fed. (2nd) 175; Ellerbe v. Studebaker Corp. 21 Fed. (2nd) 993; Burns National Bank v. Spurway 28 Fed. (2nd) 40.

F. G. AWALT
Deputy Comptroller.

COPY

X-7008-a-3

COPY

Sanfrancisco 239p June 2

Comptroller of the Currency
Washington

Re Farmers National Bank Pomeroy Washington See our telegram May 27th and your reply May 28th relative to claim for preference on items embraced within unpaid remittance draft involved in our cash letters of May 13th and 14th. In view of your refusal to grant preference as stated in your telegram of May 28th in behalf of our endorsers we hereby elect to treat the items embraced in our cash letters of May 13th and 14th agregating $4,548.16 as dishonored by non payment and request the return of said items to us duly protested. This pursuant to the provisions of section 137 subdivision 2 chapter 203 laws of Washington 1929. We are advised by Eckerson examiner in charge of pomeroy bank that cancelled items are still in his possession and will be held pending drains arrival. We have made similar demand upon Eckerson who has suspended action until Drains arrival. Kindly acknowledge receipt of this telegram and advise us of your decision.

Hale F. R Bank of Sanfrancisco.

C O P Y

X-7008-a-4

C O P Y

June 4, 1931.

Federal Reserve Bank,
San Francisco, California.

Reference your telegram June 2nd advising of your election under the Washington statute to treat as dishonored items included in your cash letters dated May 13th and 14th to Farmers National Bank Pomeroy. As we understand it the Washington statute you refer to is intended to continue the liability of the drawers and indorsers independent of the item itself and without recourse on the failed bank under the circumstances here presented. Accordingly we fail to see why the Receiver is interested or has any duty to return the cancelled items although he has been instructed by telegraph to forward to you photostatic copies of the cancelled items unprotested for use as evidence. As we view it notice of your election to treat the items as dishonored should be directed not to the Receiver but to the drawers or indorsers based upon the photostatic copies such drawers or indorsers when making payment of the amounts of the items to thereby become owners of a proportionate share of the claim against the Receiver based upon the case letter remittances.

F. G. AWALT
Acting Comptroller.

COPY

X-7008-a-5

COPY

San Francisco June 4 504p

Awalt

Acting Comptroller Washington

Your wire today replying to ours of June second Farmers National Bank Pomeroy stop Washington Statute referred to is identical with section three fifty J of New York negotiable instruments law stop In this connection see your letter April fifteenth addressed to Logan general counsel Federal Reserve New York relative First National Bank Macedon stop the situation presented there and the one presented by our demand for the return of the items are identical except that we are demanding return of all items embraced in our cash letters May thirteenth and fourteenth instead of only one stop Return of items will not create any preference will leave assets of involvent bank in same condition as at present giving drawers of checks claims predicated upon deposits rather than payees thereof predicated upon unpaid remittance draft stop Notice of our election to treat items as dishonored is properly addressed to Receiver inasmuch as if items have not been returned to makers we are entitled to possession thereof duly protested as evidence of dishonor through nonpayment stop Ultimate liability will then rest upon drawees of items who are undoubtedly entitled to possession of unpaid checks stop The statute clearly contemplates that upon return of items as dishonored entries charging same to drawees accounts will be reversed and owners thereof restored to their original position stop Position taken your wire June fourth seems to us contrary to intent of statute and certainly contrary to position taken by you in Macedon case Kindly consider further and wire decision

Hale.

COPY

X-7008-a-6

COPY

June 5, 1931.

Federal Reserve Bank,
San Francisco, California.

Your telegram fourth. Macedon case was first presentation of this question and action taken therein was with express understanding it was not to be considered a precedent. Since that time the matter has been given further consideration and the position adopted outlined in our telegram of fourth. We believe this position sound from both an administrative and legal viewpoint. We deny that your bank is entitled to have the items protested or delivered and assert that the placing of the unprotested photostatic copies in your hands by the Receiver permits you to obtain for your customers all the relief the statute affords. Statute provides quote where the item is received by mail by a solvent drawee or payor bank it shall be deemed paid when the amount is finally charged to the account of the maker or drawer unquote. National banks become insolvent when their affairs are taken over by the Comptroller. The rights of all parties against such banks are fixed by suspension. Scott versus Armstrong one hundred forty six United States four hundred ninetynine. The state statute cannot change this rule and we do not believe it was intended to do so. Accordingly if as we understand was the case the items were charged to the Pomeroy depositors accounts and cancelled before the banks affairs were taken over by the Comptroller the Washington Statute not providing for protest by insolvent bank or return of the items the Receiver is without authority to reverse entries protest the items or deliver them to your bank.

F. G. AWALT,
Acting Comptroller.

COPY

X-7008-b

FEDERAL RESERVE BANK

OF NEW YORK

June 11, 1931.

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

Dear Walter:

You will recall that some time ago I had some correspondence with you regarding the exercise of the election to treat items as dishonored, pursuant to Section 350-j of the Negotiable Instruments Law of New York (Section 11 of the Uniform Bank Collection Code), when a remittance draft received by a Federal Reserve Bank from a national bank is dishonored due to the closing of the national bank; and that in one instance this bank exercised that election, the office of the Comptroller of the Currency authorizing the return of the dishonored item but explaining in a letter to me, dated April 15, 1931, that this should not be regarded as a precedent in future cases.

We have been considering this subject since that time, and have about made up our minds that, if at some future time we should again find ourselves holding an unpaid remittance draft of a closed national bank in New York or New Jersey (in both of which states the Bank Collection Code has been adopted), we would ask our endorsing banks to instruct us whether or not to treat the items which we received from them as dishonored in accordance with this section. I am enclosing a memorandum, dated June 8, 1931, addressed by me to Mr. Sailer and Mr. Gilbart, which discusses the matter and to which are attached suggested forms of letters and debit advice. It occurs to me that these might be of some interest to you, and I shall of course be glad of any comments you may care to make regarding them.

I think the only legal question involved is whether, if the suggested program were followed, it might possibly be contended that the election to dishonor had not been "exercised with reasonable diligence". Personally, it seems to me that the collecting bank would be acting with "reasonable diligence" if it delayed the exercise of the election while it communicated with its endorsers for the purpose of obtaining instructions from them. The owners of the items and not the collecting bank are the interested parties and should have the opportunity to decide whether they prefer to preserve the liability of the makers of the checks or to have a claim against the closed bank, and I think a construction of the law which would necessarily deprive them of this opportunity would be unreasonable.

Yours faithfully,

(Signed) Walter S. Logan

Encls.

Walter S. Logan,
Deputy Governor and General Counsel.

COPY

X-7008-b-1

FEDERAL RESERVE BANK OF NEW YORK

OFFICE CORRESPONDENCE DATE June 8, 1931.

TO Mr. Sailer and Mr. Gilbart

FROM Walter S. Logan

When a national bank closes with its unpaid remittance draft in our possession the owners of the items covered by the remittance draft probably do not have preferred claims. Under the Bank Collection Code, however, we as the collecting bank apparently have the right to treat the items covered by the remittance draft as dishonored, the effect of which is that the owner's right of recourse is preserved and that the maker instead of the owner is the creditor of the closed bank. In most cases I assume that the owner would prefer to have his recourse against the maker preserved, rather than to have a claim against the closed bank which may not realize 100 cents on the dollar and payment of which will in any event be delayed. In some cases, however, the claim against the closed bank may be more valuable than recourse against the maker.

In view of these considerations we might -

(1) Ask our endorsing banks for instructions as to whether or not to treat their items as dishonored.

(2) Notify the Receiver or Examiner and the Comptroller of the Currency that we have asked for such instructions.

(3) Immediately upon receipt of instructions from endorsing banks give notice to the Receiver or Examiner and to the Comptroller of the Currency of election to treat particular items as dishonored.

(4) Communicate again with endorsing banks from which we do not receive prompt instructions, and possibly advise them that unless we receive instructions to the contrary we will on a specified date (say, one week after the closing) elect to treat their items as dishonored by giving appropriate notice to the Receiver or Examiner and to the Comptroller of the Currency.

The attached forms of debit advice and letter to endorsing banks, and letter to the Receiver or Examiner, might be used to carry out steps (1) and (2) of this procedure. What would you think of sending such debit advices and letters if another national bank should close with its unpaid remittance draft in our possession? The possible objection to this course, as I see it, is that it might be confusing to our endorsing banks and to the owners of the items; and that by raising the question we might make more work and trouble for ourselves and possibly increase the likelihood of controversies as to whether or not we have handled the matter properly.

Encls.
WSL:GSR

COPY

X-7008-b-2

FEDERAL RESERVE BANK OF NEW YORK

DEBIT ADVICE

BOOKKEEPING DIVISION
ADJUSTMENT SECTION

MAIL TO

DATE

YOUR ACCOUNT HAS BEEN DEBITED today $ _____ for an item of this amount drawn on _____ National Bank, _____, New York, included in your cash letter to us dated _____, totaling $_____, sheet $_____. We presented said item by mail to said bank in our cash letter dated _____ and received a draft of said bank on another bank in remittance for said item and other items included in our said cash letter, which draft was not paid in due course but was dishonored upon presentation for payment. We have been advised that said _____ National Bank, _____, New York, has been closed.

FEDERAL RESERVE BANK OF NEW YORK

BY _____

COPY

X-7008-b-3

Form of letter to endorsing banks

_____
(Date)

_____
(Name of bank)

_____
(Address)

SUBJECT: Enclosed advice of debit of $_____

for items of $_____

drawn on Blankville National Bank & Trust Co., Blankville, N. Y., included in your cash letter to us

dated _____, totaling $_____, sheet $_____ .

Gentlemen:

We enclose our advice of debit in the above amount made today to your account for items drawn on Blankville National Bank & Trust Co., Blankville, N. Y., and which became involved in the closing of that bank. We presented said items by mail to said bank in our cash letter dated _____ and received a draft of said bank on another bank in remittance for said items and other items included in our said cash letter, which draft was not paid in due course but was dishonored upon presentation for payment, due to the closing of said Blankville National Bank & Trust Co., Blankville, New York.

Section 350-j of the Negotiable Instruments Law of New York provides as follows:

> "Sec. 350-j. 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, exercised with reasonable diligence, treat such item as dishonored by nonpayment 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;
>
> * * * * * "

It is our opinion that this provision of law applies to items

drawn on national banks located in New York as well as to New York State banks and trust companies; and that under its terms we, as the agent collecting bank, may, by giving proper notice to said Blankville National Bank & Trust Company or to the Receiver or Examiner in charge thereof, elect to treat the items remitted for by said unpaid draft of said bank as dishonored by nonpayment; and that if said items are treated as dishonored pursuant to the terms of this provision the owners of said items will be entitled to have said items returned to them and will have recourse against the makers or drawers of said items but will have no claims against said Blankville National Bank & Trust Co., whereas if said items are not treated as dishonored the owners will have claims against said Blankville National Bank & Trust Co. for the amounts of the respective items but the liability of the makers or drawers on said items will be discharged.

Please instruct us whether or not to treat as dishonored the items above referred to, drawn on said Blankville National Bank & Trust Co., which we received from you. Such instructions should be forwarded to us just as soon as possible, as you will note that the election to treat items as dishonored pursuant to the above quoted provision should be "exercised with reasonable diligence."

Very truly yours,

Encl.

COPY X-7008-b-4

To

_____National Bank,

_____, New York.

and

Receiver or Examiner in Charge,

_____ National Bank,

_____, New York.

Gentlemen:

The draft of _____ National Bank, _____ , New York, dated _____ drawn on _____, New York, N. Y., to the order of Federal Reserve Bank of New York for $ _____, received by us in remittance for certain items drawn on said _____ National Bank, _____, New York, which we had presented to it by mail, was not paid in due course but was dishonored upon presentation for payment, due to the closing of _____ National Bank, _____, New York. We therefore charged the items, for which remittance was made by said draft, back to the banks from which we had received them for collection. For your information we enclose a copy of the form of letter we have written today to each of these banks.

In these letters we refer to section 350-j of the Negotiable Instruments Law of New York and request our endorsing banks to instruct us whether or not to treat as dishonored by nonpayment under the terms of this section the items which we received from such banks and which were remitted for by the draft of _____ National Bank for $_____. We expect to receive such instructions shortly and to send appropriate notice to the _____ National Bank, and to the Receiver or Examiner in charge thereof, to the effect that we elect to treat some or all of these items as dishonored, and that we request the return of such items. In the meantime, we request _____ National Bank and the Receiver or Examiner in charge to keep possession of all of these items and, of course, not to return them to the makers or drawers.

Very truly yours,

Encl.
WSL:GSR(MAR)

(Copy to Comptroller of the Currency)

COPY X-7008-c

FEDERAL RESERVE BANK OF SAN FRANCISCO

June 15, 1931.

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

Dear Mr. Wyatt:

A situation has recently arisen with regard to check collections in this district, which I think I should call to your attention.

The 1929 Session of the Legislature of the State of Washington adopted the Uniform Check Collection Code proposed by the American Bankers Association. The same statute has been recently adopted by the 1931 Legislature in the States of Idaho and Oregon. In the latter state, the Uniform Code was adopted with some slight amendments which are not material to the matter here under discussion.

In the State of Washington, prior to the adoption of this code, when a member bank failed and we were left with an unpaid remittance draft in our hands, we were required to file for the entire amount of the unpaid draft and were given a classification as a general creditor.

In Oregon a different method of procedure was followed prior to the adoption of the code. The Superintendent of Banks, acting under an opinion of the Attorney-General of the State of Oregon but apparently without any direct warrant of law, pursued the practice of reversing the entries on the records of the failed bank, marking the checks "Paid in Error" or with other appropriate symbol and returning the checks themselves to us. We, in turn, delivered them to our endorsers and the parties were restored to their original position.

In Idaho, prior to the adoption of the code, we were given a classification as a general creditor of an insolvent member bank.

Since the adoption of the code in Washington, we have had occasion to file claims against two or three

insolvent state banks predicated upon unpaid remittance drafts. Action has been taken in only one of these cases, and in that one, we have been accorded a preferred status. We have recently had one insolvency in Oregon, in which the same question is involved, and we are informed by our Portland Branch that the state banking authorities of Oregon intend to give us a preferred status.

We have not yet had any experience under the new code in the State of Idaho.

You are, of course, familiar with the Uniform Check Collection Code proposed by the American Bankers Association and are conversant with the fact that under the provisions of Section 11 thereof, the agent collecting bank presenting the checks may, at its election, exercised with reasonable diligence, treat the items as dishonored by non-payment, with recourse against prior parties in all cases where the draft of the drawee or payor bank upon another bank, received in settlement, shall not be paid in due course.

Under the provisions of Section 13 of the same code, except in those cases where the item or items are treated as dishonored by non-payment under the provisions of Section 11, the assets of the drawee or payor bank are impressed with a trust in favor of the owner of the items involved in the unpaid remittance draft.

Heretofore, under our Failed Bank Manual, it has been our uniform practice immediately upon the insolvency of a member bank to demand the return of any check involved in an unpaid remittance draft.

Since the adoption of the Uniform Code in the states mentioned, instructions have been issued to our branches not to demand from the agent in charge of an insolvent state bank the return of the items. We have taken this position fearing that if we demanded the return of the items themselves, such demand would be construed as an election on our part to proceed under the provisions of Paragraph 11 of the Uniform Code, and that it might be held that we had elected to treat the items as dishonored by non-payment, thereby preventing us from getting a preference in behalf of our endorsers.

Recently, we have had some correspondence by telegraph with Mr. Logan, Counsel to the Federal Reserve Bank of New York, relative to this matter. Mr. Logan informs us that in New York all claims for preference have to be submitted to a court for determination prior to the granting of the preference. He states that the attorneys for the Superintendent of Banks of the State of New York take the position that if the Federal Reserve Bank charges the items involved in an unpaid remittance draft back to their endorsers, such charge-back constitutes in itself an election on the part of the Federal Reserve Bank to treat the items as dishonored, thereby foreclosing any right under Section 13 of the code which would otherwise grant a preference. We have had no such contention raised in any of the states of this district which have adopted the Uniform Code. I stated to Mr. Logan that I could not possibly see how the act of the Federal Reserve Bank in charging back the checks involved in an unpaid remittance draft constituted an election on its part to accept the relief granted under Section 11 of the code rather than that under Section 13. It seems to me that the act of charging the items back to our endorsers is essentially a matter between the Federal Reserve Bank and its endorsers and in no way involves the right of the Federal Reserve Bank or its endorsers as a claimant against the insolvent bank. If you agree with me in this contention, we will continue to charge the items back as soon as we are notified of the insolvency of a state member bank in all cases where we hold an unpaid remittance draft.

To do otherwise than charge back would seem to me to be extremely dangerous for the Federal Reserve Bank. If we do not notify our endorsers that the items which they have sent to us for collection remain unpaid and that the credit given them under the immediate availability schedule has been reversed, it may very easily occur that our endorsers will claim that their rights were prejudiced by not having been notified of the fate of their items.

Another complication arises on account of the following facts. Two distinct rights are granted to our endorsers - that of treating the items as dishonored under the provisions of Paragraph 11, and that of obtaining a preferred claim against the insolvent bank under the provisions of Paragraph 13. In nearly every state, we are not permitted to file for less than the amount of the unpaid remittance draft; in other words, we are not entitled under our general procedure

to predicate our claim upon anything other than the unpaid remittance draft. It may well occur that some of our endorsers would prefer to have their original checks back, treated as dishonored by non-payment, so that they might have recourse against the makersof the checks, while others of our endorsers would prefer to obtain a preference against the insolvent bank. In such event, we will be placed in a dilemma, arising from one set of instructions from one set of endorsers and other instructions from other endorsers.

For the present, however, we intend to pursue our rights under Paragraph 13 of the Uniform Code and obtain preferred claims for our endorsers in every case where this may be done.

You will doubtless recall some correspondence had fairly recently between your office and the Federal Reserve Bank of New York, involving the question of the return of items drawn on an insolvent national bank, the name of which now escapes me. In that case, if my memory serves me correctly, Mr. Logan requested the receiver of the insolvent national bank to return the items to him as dishonored. The matter was referred to the Office of the Comptroller of the Currency, and after some correspondence, and I believe after negotiations on your part, the Comptroller agreed to return the items as dishonored by non-payment, stating, however, that his act in so doing was not to be considered as a precedent for future cases.

Recently, we had an insolvency in a national bank in Washington. Having in mind the experience of Mr. Logan in obtaining the return of the items involved in his matter, we demanded of the receiver that he return to us the items involved in our unpaid cash letter. We also transmitted this demand to the Office of the Comptroller of the Currency. The Comptroller's Office very promptly advised us that they would not permit their receiver to return the items to us. The New York case was cited as a precedent, but they stated that they had reversed their previous position and would not now consent to the return of the items. We argued the matter at some length by correspondence, but obtained only a flat refusal. The Comptroller did, however, authorize the agent in charge to furnish us with photostat copies of the checks in question.

Having obtained this refusal, we informed the Comptroller's Office that we elected to proceed under the provisions of Paragraph 13 of the Uniform Code in Washington and that we would ask for a preference. We were equally promptly advised by the Comptroller's Office that he would instruct his receivers not to grant a preference, inasmuch as this would be a violation of the provisions of the National Bank Act.

I refer to these matters merely as a matter of interest. I think the Comptroller is undoubtedly right in refusing to allow his receivers to proceed under the provisions of Paragraph 13, but I cannot, for the life of me, see why he should refuse to allow his receivers to proceed under the provisions of Paragraph 11. The return of the checks involved in an unpaid remittance draft, marked "Paid in Error", or with other similar designation, the reversal of the entries on the books of the failed bank and the cancellation of the obligation arising out of the issuance of the unpaid remittance draft, it seems to me places the drawee or payor bank exactly in the position it was in before the transaction took place and does not in any way involve a preference to anyone. I took this position in the case which Mr. Logan referred to me sometime ago and still believe that the provisions of Paragraph 11 of the Uniform Check Collection Code are applicable to national banks and are binding upon the receivers of insolvent national banks. However, we shall, unless otherwise advised, continue to file claims against insolvent national banks, asking for and accepting a general claim.

This brings me to the discussion of another phase of this check collection question in which I am interested and in relation to which I would like your advice.

I have observed that some of the other Federal Reserve Banks have, in the past, indulged in litigation involving unpaid remittance drafts. In such cases, an attempt has been made under the theory of the Peters case to obtain preference in behalf of the endorsers. It has been and is my opinion that it is not a part of the duty of a Federal Reserve Bank to indulge in litigation as a plaintiff in a case involving the fate of an unpaid remittance draft. I have always taken the position, and have so advised the officers of this bank, that the Federal Reserve Bank of San Francisco, acting in its capacity as a gratuitous collection agent, is under no duty other than that of exercising ordinary care and diligence in the collection of checks. I have also taken the position

that where a member bank fails with a cash letter outstanding, we should advise our endorsers of the fate of the items in which they are interested and await their instructions as to the filing of claims. I do not believe it is the duty of a Federal Reserve Bank to enter litigation in an effort to obtain in behalf of its endorsers any specific kind of right against an insolvent bank. In the case of the insolvent national bank in Washington, to which I referred previously, one of our endorsers had been advised by its attorneys that Section 13 of the Uniform Code was applicable to national banks and that it was entitled to a preference. Therefore, when we were advised by the Office of the Comptroller of the Currency that no preference would be granted, we merely transmitted this information back to our endorsers, with the statement that if they desired to litigate the matter we would be glad to assign the claim represented by the unpaid remittance draft for such action as our endorsers might see fit to take.

This policy has, no doubt, saved us a great deal of litigation and, possibly, has saved us the establishment of some precedents which would have proved embarrassing to this and other Federal Reserve Banks. We have been made defendant in a number of check collection suits, all predicated upon the old theory of the Molloy case, but we have won them all and in some cases have obtained opinions which have been of advantage rather than disadvantage.

I am not attempting to criticise the action heretofore taken by other Federal Reserve Banks or the counsel thereof, but I do believe that a uniform policy of "Hands Off" should be adopted by all Federal Reserve Banks in all cases involving unpaid checks and unpaid remittance drafts. I would like very much to have your opinion on this subject.

I have wandered about considerably in this letter, but I thought you would be interested in knowing of the new conditions which have been created by the adoption of the Uniform Check Collection Code in the three states which I have mentioned.

If anything which I have said herein does not agree with your opinion, I should like very much to have your observations.

With kindest personal regards, I am

Very truly yours,

(Signed) Albert C. Agnew
Counsel.

ACA:MA

COPY X-7008-d

FEDERAL RESERVE BANK

OF RICHMOND

June 17, 1931

Federal Reserve Board,
Washington, D. C.

Attention Mr. Walter Wyatt,
General Counsel

Dear Mr. Wyatt:

I enclose a carbon copy of my letter today to Mr. Logan upon the subject of the decision of the Supreme Court of South Carolina which may be applicable to the Uniform Bank Collection Code.

I remain

Very truly yours,

(SIGNED) M. G. Wallace

M. G. Wallace,
Counsel.

MGW:EC

enclosure

COPY

X-7008-d-1

FEDERAL RESERVE BANK OF RICHMOND

June 17, 1931

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

Dear Mr. Logan:

I have received from the Federal Reserve Board an interesting file of correspondence upon the subject of the application of Section 11 of the Uniform Bank Collection Code to National banks. In connection with this general subject I am calling your attention to the decision of the Supreme Court of South Carolina in a case entitled Ex parte Wachovia Bank and Trust Co., 158 S. E. 214.

That particular case dealt with the constitutionality of an act of the Legislature of South Carolina which gave priority to claims for collection items including checks on a failed bank. The Supreme Court of the state has filed three different opinions in the case. In the first two it held the statute unconstitutional because its title referred only to the liability of banks in the state sending checks for collection directly to the drawee, while the second section of the act attempted to define the priority of claims against banks in the state. After reargument, the second opinion of the court indicated that the act might be unconstitutional upon other grounds, as making arbitrary distinction between the rights of banks within the state and banks without the state. The third opinion held the act unconstitutional upon the grounds set out in the opinion. The court does not state specifically whether or not it refers to the Federal or state constitution, but its statements appear to refer to the fourteenth Amendment, and the court holds that the distinction made between checks forwarded by one bank to another and checks presented or forwarded by individuals to a bank is repugnant to the constitutional provision securing due process of law. The court probably intended to say "the equal protection of the law."

The court refers in its opinion to the Act of 1930, 36 Statutes 1368, which is the Uniform Bank Collection Code, and states that it is not retroactive, so, of course, the decision cannot be taken as referring to the Collection Code, but some parts of the reasoning of the court would be applicable to the code, as it apparently makes a distinction between checks presented by mail and those deposited or presented at the counter of the drawee bank, and apparently refers only to checks presented through the mails by one bank to another.

X-7008-d-1

FEDERAL RESERVE BANK OR RICHMOND

Mr. Walter S. Logan,
Counsel and Deputy Governor,
Federal Reserve Bank of New York Page 2 June 17, 1931.

It seems to me that the distinction between checks handled through banking channels and those presented by individuals is a reasonable distinction and that the statutory rule might be applicable to the payment of one class without offending the constitutional guarantee of the equal protection of the law.

I have been endeavoring to adjust a claim of this character with the attorney for the receiver of a failed state bank in South Carolina and he has suggested that the Act of 1930 may be unconstitutional upon the grounds suggested in the opinion to which I refer. He has, however, taken no definite stand as yet. It occurred to me that inasmuch as you have been investigating this question somewhat fully you would be interested in examining the opinion in the case mentioned above.

With kindest regards, I am

Very truly yours,

M. G. Wallace,
Counsel.

MGW:EC

COPY

X-7008-e

FEDERAL RESERVE BANK

OF RICHMOND

July 17, 1931

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I enclose a copy of a memorandum dated July 8th from myself to the Executive Committee of this bank recommending a method to be used when checks sent to a national bank are charged to the drawers but remittance is not received by a Federal reserve bank.

The plan suggested in the memorandum has been approved by the Executive Committee and will be followed by this bank in cases of the failure of national banks in the states of South Carolina, West Virginia, and Maryland.

We have acted in accordance with this system in the case of the First National Bank of Federalsburg, Md., which closed while we were discussing the inauguration of the method outlined in the memorandum. I have not, however, received definite advice as to whether or not the receiver will return the checks which we may request him to return.

You will notice that the system outlined in the memorandum is in all material respects the same as that suggested by Mr. Logan in a similar case. I am merely sending you copies of the memorandum and our forms in order that your office may be advised of the course that we are following. For your information, I also enclose a list of the states which have adopted the Bank Collection Code. I believe that this list is correct to July 1st.

Very truly yours,

(Signed) M. G. Wallace,

M. G. Wallace,
Counsel.

MGW R

COPY

X-7008-e-1

July 8, 1931

Executive Committee

M. G. Wallace, Counsel.

Handling of Checks Sent to National Banks which are Charged to the Drawers but for which No Remittance is Made Before Suspension of the Drawee Bank.

Dear Sirs:

The Uniform Bank Collection Code has been adopted in three states of this district; that is to say, Maryland, South Carolina, and West Virginia, which appears as Section 93, Article 11, of the Code of Maryland, Laws of 1929, Page 1147, and as Section 11, Chapter 822, Statutes of South Carolina of 1930, Page 1371. In West Virginia the act has just become effective and has not been officially printed, but I am informed that it will appear in the Acts of the Legislature for 1931.

Under Section 11 of this code it is provided that if any check be sent to a drawee bank for remittance and the drawee bank failed to remit in solvent credits the forwarding bank may at its election treat such check as dishonored and proceed as in the case of a check actually returned dishonored, or at its election establish a claim against the failed bank. While the Act recognizes that the forwarding bank is in most cases an agent for the depositor, it apparently gives to the forwarding bank the right of election, and provides that no claim shall be made against the forwarding bank because of its act in making either election if it has acted in good faith.

Section 13 of the Code provides that claims for checks and other instruments sent to a bank for collection and remittance shall constitute a prior lien on the assets of the failed bank.

The Uniform Code by its terms is applicable to all banks in the state; consequently, I think it clear that both of the sections mentioned above are applicable to state banks.

I am inclined to think that the section providing that such claims shall be prior liens is not applicable to national banks. Claims against national banks are determined by the National Bank law as interpreted by the federal courts, and these courts have consistently held that the collection of a check on a failed bank by the mere cancellation of it and charging of it to the drawer does not create a trust fund but results in a mere transfer of liability from the drawer of the check to the holder, so that such a claim is merely a general claim. The National Banking Act provides that all creditors of national banks shall be paid equally and ratably, and I do not think that a state statute could give priority to a claim against a national bank merely by declaring that the obligation of a national bank should be deemed that of a trustee rather than that of a debtor, when the federal courts had decided that the relationship was that of a debtor. In other words, Section 13 appears to me to be a law providing for the priority of claims against insolvent estates and therefore inapplicable to national banks.

X-7008-e-1

July 8, 1931

Executive Committee

M. G. Wallace, Counsel.

Handling of Checks Sent to National Banks which are Charged to the Drawers but for which No Remittance is Made Before Suspension of the Drawee Bank.

I think, however, that Section 11, which gives to the forwarding bank an option to treat the check as dishonored and hold the drawer and prior endorsers, is not a statute granting priority to any particular claim, for its only effect is to provide that the claim which in the absence of the statute the holder has against the failed bank shall, if the holder elects to proceed on the drawer, be transferred to the drawer. It seems to me, therefore, that this section of the statute is merely a law of what constitutes the payment of a debt and therefore one which operates upon national banks as upon all other persons within the jurisdiction of the state.

It seems to me that the above conclusions will necessitate a slight modification of the course which we have been pursuing with respect to claims arising out of unpaid cash letters to failed banks in the states mentioned. We have heretofore been charging the amount of checks in such letters to our endorsing banks, notifying them that unless instructed to the contrary we would prove a claim for their benefit. I think we could lawfully continue such course under the statute, as we could in every case elect to hold the failed bank and prove a claim for the benefit of the owners or holders of checks, as the statute expressly provides that we shall not be liable for our act in making such election.

In the case of state banks, member and non-member, it seems to me wise to continue this course, as in almost all cases the holders of the checks will prefer to establish a claim against the failed bank if this claim is entitled to priority. In the case of national banks, however, since the claim would not be entitled to priority, most check holders will probably prefer to proceed upon the drawers, and while we are under no legal obligation to advise the holders of their rights in the premises, it seems to me that our position as agents for the holders is such that it would be most proper to advise them of the situation before making a final election, especially as by the terms of the statute we are allowed a reasonable time in which to make the election.

I am therefore submitting for your consideration a tentative draft of three form letters. Letter No. 1 is a form for a letter which with appropriate changes to meet the individual case we can use in advising our endorsing banks of the failure of a national bank to which checks have been sent but from which we have not obtained final payment. Letter No. 2 is a form letter to be enclosed with letter No. 1 for use by our endorsing banks in giving us instructions. Letter No. 3 is a form letter to be used as a suggestion in writing to the examiner in charge or the receiver of the bank notifying him of our action.

X-7008-e-1

July 8, 1931

Executive Committee

M. G. Wallace, Counsel.

Handling of Checks Sent to National Banks which are Charged to the Drawers but for which No Remittance is Made Before Suspension of the Drawee Bank.

I had intended submitting these letters to you with the suggestion that I might forward them to our Baltimore Branch and our Charlotte Branch with instructions to use them in any future case; but before I was able to submit them for your approval we were advised of the failure of the First National Bank of Federalsburg, Md., and, therefore, after discussing the matter with Mr. Peple and Mr. Seay, and also discussing the matter by telephone with Mr. Dudley, I sent to Mr. Dudley a draft of letters substantially in the form attached for use in that specific case.

This particular question has received some consideration from counsel for other Federal reserve banks, particularly by Mr. Logan, General Counsel and Deputy Governor of the Federal Reserve Bank of New York. All counsel for Federal reserve banks who considered the question hold substantially the same views as those expressed above as to the effect of the statute and its application to national banks. I might add that the statute is in force in sixteen states and so is in force in at least one state of almost every Federal reserve district. No definite opinions were expressed by counsel for the other Federal reserve banks as to whether it would be wiser for a Federal reserve bank to elect to treat checks as dishonored without referring the matter to endorsing banks or whether it would be wiser to first refer the matter to endorsing banks. In a single case the Federal Reserve Bank of New York elected to treat all checks in an unpaid cash letter as dishonored and the Comptroller of the Currency therefore returned the checks, but in doing so stated that the Comptroller's Office would not commit itself as to its actions in future cases. Mr. Logan did not state in his correspondence whether the election was made without reference to his endorsing banks or not, but I gathered from the correspondence that the number of checks in the cash letter were few and that he seemed to be confident that his endorsing banks desired to have them returned.

Very truly yours,

M. G. Wallace,
Counsel.

MGW R

COPY

X-7008-e-2

1.

Letter Giving Notice of Failure of a National Bank in West Virginia, Maryland, or South Carolina, which has not Paid for Checks Drawn on Such Bank Sent to It.

TO THE MEMBER BANK ADDRESSED:

The checks received from you in your cash letter as shown below were sent by us to the _____ National Bank, on which they were drawn, in our cash letter of _____. In settlement for checks in this cash letter the drawee bank sent us (an authorization to charge its reserve account) (a draft) covering the amount of checks (but before this authorization was acted on or honored by us we were advised that the _____ National Bank was closed) (but before this draft was paid the _____ National Bank was closed.)

Since all checks are credited subject to final payment, we have charged the amount of these checks to your account.

We are advised that under the Bank Collection Code which is in force in (West Virginia, South Carolina, or Maryland, as the case may be) we have an option to treat such checks as dishonored or to file a claim against the failed bank, which claim we are advised will probably be classified under the national banking act as a general claim.

If you desire to treat the check as dishonored, you should give notice of dishonor to all prior endorsers and the drawer and look to them for payment and we will demand and endeavor to obtain the return of the check. If you file a claim against the failed bank, you will release the drawer from further liability and will receive dividends on the amount of the check from the failed bank.

As we must notify the Receiver promptly whether we elect to prove a claim against the failed bank or to treat the checks as dishonored, please advise us as soon as possible, using the enclosed form, and giving the name of the drawer of the check, if obtainable.

Very truly yours,

Federal Reserve Bank of Richmond.

COPY

X-7008-e-3

Reply Letter to be Enclosed with Letter No. 1 Giving Directions as to Proving Claim.

Federal Reserve Bank of Richmond

Dear Sirs:

Referring to your letter of _____ upon the subject of items drawn on the _____ National Bank, we elect to prove a claim against the failed bank on the following items, and instruct you to file a claim for our benefit.

Date and Total of Our Letter	Drawer	Amount of Item

We elect to treat the following items as dishonored and confirm your charge to our account. Please demand a return of them from the receiver of the drawee bank:

Date and Total of Our Letter	Drawer	Amount of Item

Very truly yours,

COPY

X-7008-c-4

3.

Letter to be sent to Receiver or Examiner in Charge as soon as Possible after Failure.

Dear Sir:

We call your attention to the checks contained in our cash letter sent to the _____ National Bank on _____ .

In settlement for this letter the failed bank sent us (an authorization to charge its reserve account for the sum of $_____) (a draft No. _____ drawn on _____ for $_____).

(Before this draft was paid the _____ National Bank closed) (Before this authorization was acted on by us we received notice of the closing of the _____ National Bank.)

In pursuance of our collection circulars and the Regulations of the Federal Reserve Board we have charged the amount of these checks to our endorsing banks.

We wish to call your attention to the Bank Collection Code (Section 93, Article 11, Code of Maryland, Laws 1929, Page 1147; Section 11, Chapter 822, Statutes of South Carolina 1930, Page 1371; Section 11, Act 1931, West Virginia, as the case may be.) Under this Statute we have the right at our election to treat such items as dishonored or to prove a claim against the failed bank.

We have written to our endorsing banks for whom we acted as agent for instructions. As soon as we receive such instructions we shall advise you further. In the meantime we notify you not to cancel any of the items in our unpaid cash letter if not previously cancelled and not to surrender any of such checks to the drawers, but to hold them pending further advice from us.

Very truly yours,

COPY

Idaho,
Chapter 60, Laws 1931, Page 98.

Indiana,
Chapter 164, Act 1929, Page 514.

Kentucky,
Chapter 13, Act 1930, Page 49.

Maryland,
Chapter 454, Laws 1929, Page 1143.

Michigan,
#240 Acts 1931, not published.

Missouri,
Laws 1929, Page 205 (Section 11 omitted).

Nebraska,
Chapter 4, Laws 1929, Page 177.

New Jersey,
Chapter 270, Laws 1929, Page 644.

New Mexico,
Chapter 138, Laws 1929, Page 324.

New York
Chapter 589, Laws 1929, Page 1267.

Oregon,
Chapter 138, Laws 1931, Page 189.

South Carolina,
Chapter 822, Statutes 1930, Page 1368.

Washington,
Chapter 203, Laws 1929, not published.

West Virginia,
Chapter 15, Act 1931, not published.

Wisconsin,
Chapter 354, Laws 1929, Page 642.

Wyoming,
Chapter 74, Laws 1931, not published.

COPY

X-7008-f

FEDERAL RESERVE BANK

OF NEW YORK

September 30, 1931.

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

Dear Mr. Wyatt:

I am enclosing a copy of letter which I have just written to the office of the Comptroller of the Currency for the attention of Mr. Barse in an effort to persuade that office to permit the return of items involved in national bank closings and treated as dishonored under Section 350-j of the Negotiable Instruments Law of New York (Section 11 of the Uniform Bank Collection Code). If you can do anything to help I shall greatly appreciate it. I am convinced that as a matter of law the owners are entitled to have their items returned to them and that the policy which the Comptroller's office has followed recently of not permitting the return of the original items results in much inconvenience and hardship.

Yours faithfully,

(Signed) Walter S. Logan

Walter S. Logan,
Deputy Governor and General Counsel.

Encl.

COPY

X-7008-f-1

FEDERAL RESERVE BANK

OF NEW YORK

September 30, 1931.

Honorable J. W. Pole,
Comptroller of the Currency,
Washington, D. C.

Attention: Mr. George P. Barse

Dear Sir:

I enclose a copy of letter dated September 29, 1931, which we have addressed to The Peoples National Bank of Pulaski, Pulaski, New York, (notice of the closing of which we received on that date), advising that we have requested instructions from our forwarding banks as to whether to treat the items involved in that closing as dishonored by nonpayment pursuant to Section 350-j of the Negotiable Instruments Law of New York (Section 11 of the Uniform Bank Collection Code). When Mr. Barse was in New York about two weeks ago I urged upon him the advisability of your office permitting receivers of closed national banks to return items which we elect to treat as dishonored pursuant to Section 350-j, in the same way that the Banking Departments of New York and New Jersey have permitted the return of such original items by closed state banks.

Mr. Barse suggested at that time that I write to your office and set forth at length the reasons and authorities in support of our position that the original items which are thus dishonored should be returned by the receivers of national banks. Due to the pressure of other work I have been unable to do this, but nevertheless we want to urge your office to reconsider this question in

connection with the closing of the Peoples National Bank of Pulaski, Pulaski, New York, and permit the return of such of the items involved in the closing of that bank as we may elect to treat as dishonored pursuant to the provisions of Section 350-j. I believe there is no doubt that the return of such original items by national bank receivers is authorized by law and our experience has demonstrated that the refusal to return them causes much inconvenience and results in denying the benefits of this section of the Bank Collection Code to the owners of such dishonored items.

I will attempt briefly to outline in this letter the reasons which seem to me to make it clear that the owners of items involved in the closing of national banks are entitled to the return of the items when they are treated as dishonored pursuant to the provisions of Section 350-j.

1. There is no question of preference involved. We agree with the position taken by your office that the provisions of subdivision 2 of Section 350-1 of the Negotiable Instruments Law of New York (Section 13 of the Uniform Bank Collection Code) in regard to preferences in favor of owners of items involved in bank closings do not apply to national banks, because they are in conflict with the provisions of the National Bank Act providing for ratable distribution among all creditors. We have advised our forwarding banks accordingly whenever the question has been raised.

2. The present question relates only to another section

of the Bank Collection Code, Section 350-j, which has nothing to do with preferences, or with claims against closed institutions as such, and which is not in any way in conflict with the National Bank Act. This section provides that when a remittance draft is dishonored the agent collecting bank which has presented the items so remitted for may, at its election, treat any of such items as dishonored by nonpayment and thereby preserve the recourse of the owners of the items against prior parties. It also permits the exercise of the same election in certain other specified circumstances. These circumstances are not at all confined to cases of bank closings, and in fact the section makes no reference whatever to the subject of bank suspensions or insolvencies. For example, under the terms of Section 350-j the option to treat an item as dishonored arises whenever a drawee bank's remittance draft is dishonored irrespective of whether the reason for such dishonor is the closing of the remitting bank or some other reason.

According to the weight of authority, in the absence of any statutory provision, the drawer of a check is discharged when the bank on which the check is drawn issues its remittance draft therefor, and charges the check against the maker's account; so that if the remittance draft is not paid the owner of the item has only the obligation of the remitting bank. In some states, however, the law is otherwise, and the drawer of the check is not discharged until the remittance draft is actually paid. The effect of this section of the Bank Collection Code is to amend and settle the law on this point, by

creating an option so that the owner of the item may choose whichever he prefers, i.e., to keep alive his rights against prior parties including the maker, or to rely only on the obligation of the remitting bank. This section is, therefore, merely an amendment of the local law relating to negotiable instruments and, as it does not conflict with any provision of the National Bank Act, it seems to me that there can be no doubt that it applies to cases in which national bank depositors issue checks to their creditors in settlement of obligations.

The incidental effect of the exercise of the option to treat a check as dishonored in accordance with the provisions of Section 350-j is also, of course, to constitute the maker of the check, instead of the owner, the creditor of the drawee bank. This does not, however, prevent the application of the section to checks drawn on national banks, for the general principle of law is well established that the contracts and legal relationships between national banks and the parties with whom they deal are governed by local law if such local law does not conflict with any provision of the National Bank Act.

For your convenience I quote Section 350-j of the Negotiable Instruments Law of New York, (Section 11 of the Uniform Bank Collection Code), in full:

> "Sec. 350-j. 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, exercised with reasonable diligence, treat such item as dishonored by nonpayment 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;

(2) Where the drawee or payor bank shall without request or authority tender as payment its own check or draft upon itself or other instrument upon which it is primarily liable;

(3) Where the drawee or payor bank shall give an unrequested or unauthorized credit therefor on its books or the books of another bank; or

(4) Where the drawee or payor shall retain such item without remitting therefor on the day of receipt or on the day of maturity if payable otherwise then on demand and received by it prior to or on such day of maturity.

Provided, however, that in any case where the drawee or payor bank shall return any such item unpaid not later than the day of receipt or of maturity as aforesaid in the exercise of its right to make payment only at its own counter, such item cannot be treated as dishonored by nonpayment and the delay caused thereby shall not relieve prior parties from liability.

Provided further that no agent collecting bank shall be liable to the owner of an item where, in the exercise of ordinary care in the interest of such owner, it makes or does not make the election above provided or takes such steps as it may deem necessary in cases (2), (3) and (4) above."

3. In cases in which the election to dishonor an item is exercised pursuant to Section 350-j, the owner of the item continues to have recourse against the prior parties including the maker, and the owner has title to and right to possession of the item, just as he would have to any bond or other security belonging to him which the bank had in its possession for safekeeping. It is a great inconvenience, and a real hardship and injustice, to the owner to deny him possession of the dishonored item which is his property. To be sure,

it may be theoretically possible for the owner of the item to bring suit on a copy of it against the maker and other prior parties, but this theoretical ability to sue is not an adequate remedy. He wants to get his money without suit and as a practical matter the fact that he can not return the original item very often prevents him from accomplishing this. This has been brought out in a number of instances in connection with the closed national banks in this district. That the inability to obtain the original item often resultsin denying to the owner the rights which it was intended he should acquire under this provision of law is shown by the fact that we are instructed to treat as dishonored a much smaller proportion of the items involved in national bank closings than of items involved in state bank closings. In the case of the Queensboro National Bank, Corona, New York, the last national bank to close in this district prior to The Peoples National Bank of Pulaski, Pulaski, New York, we have received instructions to treat as dishonored only 31 per cent of the items concerning which we have heard to date (65 out of a total of 212); whereas in the case of the last state bank closing, The Capitol Trust Company, Schenectady, New York, we have received instructions to treat as dishonored 78 per cent of the items concerning which we have heard to date (71 out of a total of 91).

4. It does not seem to me that it is possible for the Comptroller's office to avoid taking a definite stand on the question of whether Section 350-j applies to national banks. When the Federal Reserve Bank, acting under instructions from the owners of items,

treats the items as dishonored and demands the return of them by the receiver on the ground that they are the property of such owners, I do not see how, in the absence of an adverse claim on the part of some third party, that demand can be refused, unless the Comptroller's office takes the affirmative position that Section 350-j does not apply to national banks.

5. If the receivers of closed national banks will comply with our demand for the return of the original items which we elect to treat as dishonored under Section 350-j, we will be glad to make photostatic copies of such items at our own expense and send such copies to the receivers, so that the records of the closed bank will be complete.

I am sorry that I have not had time to supplement this letter with the citation of legal decisions in support of our position, but, frankly, it does not seem to me that the citation of authorities is necessary or would be particularly helpful. I know of no court decision on the precise point, and I feel sure that there is none; so that it would only be possible to cite authorities for the general principles of law involved, and I believe these principles are all well established and will be conceded by your office without the citation of any authorities to support them.

We hope your office will give this matter careful consideration, and will permit the receiver of The Peoples National Bank of Pulaski, Pulaski, New York, to return the items involved in the closing of that bank which we may elect to treat as dishonored under Section

350-j of the Negotiable Instruments Law of New York. We feel very strongly that both as a matter of principle and as a matter of practical justice the owners of such items are entitled to have their property returned to them. The Federal Reserve Banks, as you know, act only as collecting agents and this bank has no interest in the matter except to fulfill its duty as such agent and to work out a procedure which will be as effective and convenient as possible to all concerned.

We shall appreciate it if you will let us have your reply as soon as possible.

Very truly yours,

Walter S. Logan,
Deputy Governor and General Counsel.

Encl.

WSL:JMC

C O P Y

X-7008-f-2

COPY

FEDERAL RESERVE BANK

OF NEW YORK

September 29, 1931.

Registered Mail

The Peoples National Bank of Pulaski,
Pulaski, New York.

and

Receiver or Examiner in charge of
The Peoples National Bank of Pulaski,
Pulaski, New York.

Gentlemen:

The draft No. 12041 of The Peoples National Bank of Pulaski, Pulaski, New York, dated September 28, 1931, drawn on the Federal Reserve Bank of New York to the order of Federal Reserve Bank for $3,192.28, received by us in remittance for certain items drawn on said The Peoples National Bank of Pulaski, Pulaski, New York, which we had presented to it by mail, was not paid due to notice of the closing of said The Peoples National Bank of Pulaski, Pulaski, New York. We have therefore charged said items back to the forwarding banks from which we received them for collection, and have requested such banks to instruct us whether or not to treat such items as dishonored by nonpayment pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York (Section 11 of the so-called Uniform Bank Collection Code). If in reply to such requests we are instructed to treat some or all of said items as dishonored, we will send appropriate notice or notices to said The Peoples National Bank of Pulaski, Pulaski, New York, and to the receiver or examiner in charge thereof, in accordance with such instructions. In such notice or notices we will of course demand the return of any items which we may be instructed to treat as dishonored. In the meantime, we request said The Peoples National Bank of Pulaski, Pulaski, New York, and the receiver or examiner in charge thereof to retain possession of all said items and, of course, not to cancel any of said items nor return any of said items to the makers or drawers.

Very truly yours,

Walter S. Logan,
Deputy Governor and General Counsel.

WSL:GSR

(Copy to the Comptroller of the Currency, Washington, D. C.)

COPY

X-7008-g

FEDERAL RESERVE BANK

OF NEW YORK

October 6, 1931.

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

Dear Mr. Wyatt:

I enclose a copy of a letter and its enclosure which I have sent today to the office of the Comptroller of the Currency for the attention of Mr. Barse, supplementing my letter of September 30, concerning The Peoples National Bank of Pulaski, Pulaski, New York, copy of which was forwarded to you on that day.

Yours faithfully,

(Signed) Walter S. Logan

Walter S. Logan,
Deputy Governor and General Counsel.

Encs.

C O P Y

X-7008-g-1

C O P Y

FEDERAL RESERVE BANK

OF NEW YORK

October 6, 1931.

Honorable J. W. Pole,
Comptroller of the Currency,
Washington, D. C.

Attention: Mr. George P. Barse

Dear Sir:

In our letter of September 30, 1931, we requested you to permit the receiver or examiner in charge of The Peoples National Bank of Pulaski, Pulaski, New York, to return such of the items involved in the closing of that bank as we might elect to dishonor pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York. I now enclose a copy of letter dated October 5, 1931, which we have written The Peoples National Bank of Pulaski, Pulaski, New York, and to the receiver or examiner in charge thereof, advising that, in accordance with the instructions we have received to date, we elect to treat certain items as dishonored.

We will be glad to receive your reply to our letter of September 30, 1931, as soon as it is possible for you to let us have it.

Yours very truly,

Walter S. Logan,
Deputy Governor and General Counsel.

Enc.

WSL:JMC

C O P Y

X-7008-g-2

COPY

FEDERAL RESERVE BANK

OF NEW YORK

October 5, 1931.

The Peoples National Bank of Pulaski,
Pulaski, New York.

and

Receiver or Examiner in charge of
The Peoples National Bank of Pulaski,
Pulaski, New York.

Gentlemen:

We refer to our letter dated September 29, 1931, in which we advised you that the draft #12041 of Peoples National Bank of Pulaski, Pulaski, New York, dated September 28 drawn on the Federal Reserve Bank of New York to the order of Federal Reserve Bank for $3,092.28, received by us in remittance for certain items drawn on Peoples National Bank of Pulaski, Pulaski, New York, which items we had presented to it by mail, was not paid due to the closing of said Peoples National Bank of Pulaski, Pulaski, New York.

As we also advised you in that letter, we have requested our forwarding banks to instruct us whether or not to treat such items as dishonored by nonpayment, pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York. We have now received instructions with reference to some but not all of such items, and in accordance with the instructions already received, we hereby elect, pursuant to the provisions of Section 350-j of the Negotiable Instruments Law of New York, to treat as dishonored by nonpayment the items described below which were among those in remittance for which we received the dishonored draft above referred to; and we hereby request the Peoples National Bank of Pulaski, Pulaski, New York, and the Receiver or Examiner in charge of the assets of said bank, to cause said items described below to be protested (except those opposite which we have written "Do not protest") and any others on which appears the A.B.A. no protest symbol of a bank indorser) and to cause all said items described below to be returned to us as soon as possible. As we receive additional instructions from our forwarding banks to treat other items as dishonored by nonpayment we will send you appropriate notice in accordance with such instructions.

Kindly acknowledge receipt of this letter.

Very truly yours,

J. M. Rice,
Assistant Deputy Governor.

Copy to: Peoples National Bank of Pulaski,
Pulaski, N. Y. sent via Registered Mail.

C O P Y

X-7008-g-2

Peoples National Bank, Pulaski, N. Y.
and
Receiver or Examiner in charge of
Peoples National Bank, Pulaski, N. Y.
October 5, 1931.

Description of items referred to in above letter which we hereby elect to treat as dishonored.

	Amount of Items	Names of Drawers	Names of our Forwarding Banks
	$ 30.00	Ada Stowell	N. Y. State National Bank, Albany, N.Y.
Do not protest	2.00	Lina C. Williams	" " " " " "
Do not protest	2.00	" " "	" " " " " "
	10.68	C. H. Williams	" " " " " "
Do not protest	10.00	" "	" " " " " "
	12.50	Everett Eastman	" " " " " "
	38.23	Dairymen's League Corp. Assoc.	First National Bank, Lacona, N. Y.
	93.14	Parish or Rarish	" " " " "
Do not protest	4.25	Stowell	" " " " "
Do not protest	12.00	Ida Dinnie	Merchants Natl. Bank & Tr. Co., Syracuse, N. Y.
	40.80	Acker & Murray	Watertown National Bank, Watertown, N. Y.
	14.13	H. A. Broome	" " " "
Do not protest	6.12	C. H. Williams	" " " "
Do not protest	.98	Charmaphone Co.	Central Penn Natl. Bank, Philadelphia, Pa.
	37.01	Unknown	Corn Exchange Natl. Bank & Tr. Co. Philadelphia
	67.08	"	First Tr. & Deposit Co., Syracuse, N.Y.
	18.00	"	" " " " " " "
	200.00	"	" " " " " " "

HS:CK