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## (INTERPRETATION OF BANKING ACT OF 1933)

Copies to be sent to all Federal Reserve Banks.

July 22, 1933

Mr. J. F. T. O'Connor,  
Comptroller of the Currency,  
Washington, D. C.

Dear Mr. Comptroller:

In a memorandum dated June 29, 1933, Mr. F. G. Awalt, Deputy Comptroller of the Currency, requested a ruling on the question whether a member bank, which has purchased certain assets from a conservator or receiver of a national bank, may lawfully pay interest on a deposit of funds representing the unexpended portion of the purchase price credited in a lump sum to the account of such conservator or receiver by the purchasing bank, pursuant to a provision in the contract, reading as follows:

"From and after the expiration of sixty days from date of delivery of assets hereunder, Purchaser will pay to the Conservator interest upon the unexpended balance remaining in said lump sum credit account at the rate of  $1\frac{1}{2}\%$  per annum upon the daily balance thereof, computed in the same manner in which interest is now computed upon depository accounts of the Comptroller of the Currency, said interest payments, if any so made, to be treated and considered as part of the 'Class B Assets' for all purposes of this contract, and Purchaser will furnish adequate security for such remaining unexpended balance to the satisfaction of the Conservator."

Since the exact effect of such a provision can not be determined without reference to the other provisions of the contract in which it is incorporated, the Board must consider each such case with reference to the provisions of the particular contract, and cannot undertake to express an opinion which could be considered as applicable to all cases

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involving contracts containing such a provision. However, it is understood that Mr. Awalt has particular reference to a certain contract between (a national bank) and Mr. \_\_\_\_\_, Conservator of the \_\_\_\_\_, which contract was approved by the Supreme Court of \_\_\_\_\_ on \_\_\_\_\_, and became effective on such date in accordance with the terms thereof. Under such contract, the national bank purchased certain assets from the conservator of the savings bank, and, in consideration of the transfer of such assets to it, the national bank credited to the conservator, upon its books, a lump sum equal to the amount of the assets purchased, and agreed to pay interest thereon in accordance with the provision quoted.

Section 19 of the Federal Reserve Act, as amended by Section 11(b) of the Banking Act of 1933, does not prohibit the payment of interest on deposits payable on demand in accordance with the terms of a contract which was entered into in good faith and was in force on June 16, 1933. However, it forbids renewal or extension of any contract which includes a provision for the payment of interest on deposits payable on demand which are not within a class excepted by the statute, unless such contract is modified so as to eliminate the provision for the payment of interest, and it requires member banks to take such action as may be necessary to eliminate payment of interest on such deposits as soon as possible consistently with their contractual obligations.

In the instant caso, it appears that the contract for the payment of interest by the (national bank) on the "unexpended balance

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remaining in said lump sum credit" was entered into in good faith and was in force on June 16, 1933; that it is the valid obligation of the (national bank); that it is not subject to cancellation or modification at the option of the said national bank; and, accordingly, that interest may be paid on such deposit in accordance with the terms of such contract for the period provided for therein.

Very truly yours,

Chester Morrill,  
Secretary.