X-7742

INTERPRETATION OF BANKING ACT OF 1933

(Copies to be sent to all Federal Reserve Banks)

January 4, 1934

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

Dear Mr. O'Connor:

This refers to your letter of August 15, 1933, regarding the payment of interest by member banks of the Federal Reserve System on deposits of receivers of insolvent State or national banks which are payable on demand.

You stated that it has been the custom of your office to permit national banks to pledge assets as collateral security for deposits of receivers of State banks in certain States, on the theory that such deposits are "public money of a State or any political subdivision thereof" within the intent of U.S.C., Title 12, Section 90, as amended June 25, 1930, which authorizes national banks to give security for the safekeeping and prompt payment of such money; and you called attention to the fact that footnote 2 of the tentative draft of Regulation Q, then pending before the Federal Reserve Board, provided that deposits of receivers of insolvent State or national banks are not deposits of "public funds" made by or on behalf of any State, county, school district or other subdivision or municipality within the meaning of the provision of Section 19 of the Federal Reserve Act which excepts deposits of such public funds from the prohibition upon the payment of

interest on deposits payable on demand. You suggested that to hold that a national bank may pledge collateral security for deposits of a receiver of a State bank on the theory that his deposits are public money and at the same time to hold that the bank may not pay interest on such deposits because they are not public funds may be inconsistent.

Upon receipt of your letter expressing your views on this subject and since it referred only to a provision of a footnote containing an interpretation of the law, the above-mentioned provision in the tentative draft of Regulation Q with regard to deposits of receivers of insolvent State or national banks was eliminated therefrom and does not appear in the regulation as it was approved and became effective on August 29, 1933; but the Board felt, and after further consideration of the subject still feels, that the statement on this subject which was contained in the tentative draft of the Regulation correctly interpreted the provisions of Section 19 of the Federal Reserve Act.

It is to be observed that the provision of the National Bank Act relating to the securing of deposits in national banks and the provision of Section 19 of the Federal Reserve Act in question were enacted at different times and for different purposes, and, accordingly, it would seem that similar phrases in the two statutes are not necessarily intended to be given precisely the same meaning. As you know, the courts have held that national banks had authority to pledge their assets to secure public deposits before the enactment of the amendment of

June 25, 1930, and the decision in the case of Royall v. Griffin, in the District Court of the United States, excerpts from which you inclosed with your letter, indicates that a national bank would have had authority to pledge assets to secure a deposit of the receiver of a State bank before the enactment of this amendment. In such circumstances, it may well be that national banks have authority to give security for deposits of funds which would not constitute public funds within the meaning of other provisions of the law. The provision of Section 19 of the Federal Reserve Act in question, however, is an exception to a comprehensive prohibition upon the payment of interest on deposits payable on demand and, in accordance with established rules of statutory construction, it would seem that the exception may not be liberally construed.

Consideration has been given to the legal authorities cited in your letter with regard to the meaning of the words "public funds". Several of these cases involve the question whether certain funds held by a public officer should be entitled to the protection against loss which is afforded by the bond required of him and such cases are not believed to be determinative of the question what are public funds within the meaning of the exception to the prohibition upon the payment of interest on deposits payable on demand in Section 19 of the Federal Reserve Act. In this connection, however, the Board invites your attention to the following cases which indicate that funds held by a public officer in his official capacity are not for that reason necessarily public funds: Kiernan v. Cleland, 47 Idaho 200, 273 Pac.

938 (1929); Sturtevant Company v. O'Brien, 186 Wis. 10, 202 N.W. 324 (1925); Austin v. Fox, 1 S.W. (2d) 601 (Texas 1928) and 297 S.W. 341.

It is important to note in this connection also that, in order that deposits may come within the exception in question in Section 19 of the Federal Reserve Act, they must not only be deposits of public funds, but must be made by or on behalf of a State, county, school district or other subdivision or municipality; and it is seriously questionable whether deposits of funds of receivers of State banks could properly be said to be made by or on behalf of any State, county, school district or other subdivision or municipality within the meaning and intention of the statute.

After carefully considering this subject again, therefore, in the light of the comments contained in your letter, it is the view of the Board that deposits of receivers of insolvent State or national banks which are payable on demand are not excepted from the prohibition of Section 19 of the Federal Reserve Act upon the payment of interest on deposits payable on demand.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.