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THE BRANCH BANKING QUESTION



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THE BRANCH BANKING QUESTION

BY
CHARLES WALLACE COLLINS

AUTHOR OF "THE NATIONAL BUDGET SYSTEM
AND AMERICAN FINANCE."

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PREFACE

The design of this volume is to bring together in readable form the various aspects of the branch banking question in the United States. During the past four years no other subject has so engaged the attention of bankers and of students of finance. It is one of the unsettled problems of banking with reference to which there is much recent State legislation as well as legislative proposals in Congress. But as is the case with questions in which there are involved historical, legal, and statistical data, much of the discussion has shown a lack of adequate information. It is hoped that this general survey may serve as a contribution to a more intelligent consideration of this very vital subject. While intended primarily for those having a direct interest in banking policy, the information here brought together may also prove of interest to the general reader.

CHARLES WALLACE COLLINS.

Washington, D. C.,
December, 1925.

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THE BRANCH BANKING QUESTION

THE BRANCH BANKING QUESTION

CHAPTER I

INTRODUCTION

PERHAPS the most important question of domestic banking policy before the country today is that of branch banking. To what extent, if any, should banks be permitted to carry on their business through the means of branches located at a distance from the parent bank? Around this question for several years past discussion has proceeded with increasing volume and intensity. Since under our system of banking all charter powers of banks are the subject of legislative grant, this discussion has not been confined to economists and bankers but has become the subject of deliberation from the standpoint of governmental policy in nearly all of the States and in the committees and halls of Congress. A satisfactory solution has not yet been enacted into law.

Branch banking is here amongst us flourishing with varying degrees of vitality in several States. Nearly one-half of the States permit branch banking

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in some form, and under certain limited and restrictive conditions national banks may operate branches. The difficulty of arriving at an harmonious legislative solution is due to the existence of forty-eight State systems of banking, each operating under an independent banking law; to the existence of the Federal Reserve System which embraces in its membership important State banks from every State, which banks are required to operate subject to the provisions of the Federal Reserve Act and to the regulations of the Federal Reserve Board; and to the existence of a system of national banks which derive their charter powers solely from Congress and which are, by compulsion, members of the Federal Reserve System.

As an outgrowth of the consideration of this question for the past four years or more there have been developed three rather distinct groups of opinion—of those who favor branch banking in its widest application; of those who are opposed to branch banking but who do not object to or are in favor of a bank having more than one office in the city in which the bank is located; and of those who are not only opposed to branch banking proper but also to the extension of banking services by means of additional offices, agencies, or branches by a bank within the corporate limits of a single city.

Branch banking is favored in this country by a

small but strongly influential minority. It has been advocated by many students of banking as an economic and efficient system. Many of these have been engaged in the profession of teaching or journalism and have been free to approach the subject from the standpoint of banking theory without having to bear the responsibility of the management of a bank or the supervision of a system of operating banks. The proponents of branch banking are however by no means confined to university professors and editors but have strong advocates among bankers already engaged in that practice in certain States. These recognize the impracticability, however, under our system of government, of banks in one State extending their branches beyond the State borders into another State. As a consequence, branch banking as advocated for the United States would in its widest application be limited, as to each system of State banks, to the geographical area of the respective States. While the economic arguments for branch banking would logically lead to nation-wide branch banking as it exists abroad, political considerations render the discussion of such an extension purely theoretical at this time:

A system of nation-wide branch banks could be developed in the United States only through the national bank system. Congress could grant the national banks the power to establish branches any-

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where they might see fit. There does not, however, appear to be the least public sentiment in favor of such a grant of powers to the national banks.

Proponents of branch banking point to its many advantages over the independent unit system. It would be in line with the experience of every other commercial nation in the world, where branch banking has been the universal practice for many years. It has proven a success in the British Isles and in the self-governing British dominions under economic and social conditions very similar to our own. In Canada, with an agricultural population no different from ours and subject to the same economic and climatic conditions, they point to the numerous bank failures in our Northwest while just across the border where the entire community of Western Canada is served by branches of banks located in Toronto and Montreal no bank failures occurred.¹

Advocates of branch banking view the more than two thousand bank failures in the United States since 1920 as evidence of a fundamental weakness in our banking system which can be remedied only by the elimination of the small country bank, with its insignificant resources and inefficient management and its complete dependency on local eco-

¹ The failure of the Home Bank of Canada in 1923, with its numerous branches, was not caused by economic conditions in Western Canada but by dishonesty of the management.

conomic conditions, and the substitution therefor of branches of the large city banks. This would insure safety to the public by virtue of the strength of the resources of the parent bank and the training and experience of its managing personnel. It would also, on account of its power to make larger loans, be able to accommodate through the service of its branches the legitimate borrowing needs of any customer. Should it become unprofitable to continue the operation of a branch in a community it could be closed without loss to any depositor, whereas the small neighborhood bank is at the mercy of a local economic depression, having of necessity all of its eggs in one basket. A branch is but an arm of the parent bank which has spread its credit risks over a wide variety of industries and avocations in various localities and is not dependent upon any one group for its resources.

Branch banking therefore, it is contended, would give the rural communities a superior banking service unattended by the dangers which face the small country bank, and would at the same time increase the liquidity of the financial resources of the State through the transfer of idle funds from one community for the purpose of financing the needs of another community as the occasion arose. Funds received on deposit from an industry as a result of the seasonal marketing of its products could be

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loaned to another industry to finance marketing operations just begun.

The friends of branch banking feel that it is a normal evolution of our banking system and is proceeding in accord with basic economic laws. That any attempt to stifle it by prohibitory legislation will cause it to break out in other and less desirable forms. The most formidable of these is chain banking where one person or group secretly controls, directly or indirectly through stock ownership, a large number of banks. These banks may be located in more than one State. Many opportunities are thus afforded to circumvent the spirit of the banking laws by making it difficult, if not impossible, to ascertain the true condition of the group of banks. Here it is pointed out, will be the evils which the opponents of branch banking attribute to it with none of the advantages claimed by the branch bankers.

In the above presentation of the view of those favoring branch banking no mention has been made of branches where the parent bank and all of its branches are confined to the limits of a single large city. It is quite generally agreed that this type of home-city branch is not involved in the branch bank question but that it is simply a means of furnishing a convenient service to customers who on account of modern traffic conditions and expansion

of city limits find it inconvenient to come down town to the bank. The principal reasons advanced for or against branch banking do not apply to these branches. There is, however, a large group strongly opposed to home-city branches and who advance independent objections thereto. These will be deferred for subsequent consideration.

State-wide branch banking is opposed by many who see no objection to, and by many who favor home-city branches, as well as by the extreme anti-branch bankers. These groups unite in the view that the small towns and rural communities should continue to be served by independent unit banks. The objections to branch banking therefore which will now be enumerated are those advanced in opposition to State-wide branch banking. These are here mentioned briefly and in outline only.²

In the first place it is urged that the question is not simply a matter of rendering a banking service to the rural communities because where there is more than one large city in a State, banking resources in one city may be controlled by a bank in another city through a system of branches. In

² For a full presentation of the opposition to branch banking see Annual Reports to Congress of the Comptroller of the Currency for the years 1923 and 1924; Statement of Comptroller Dawes before the Joint Congressional Committee of Inquiry into the Membership in the Federal Reserve System, October 3, 1923; and Hearings before the House Committee on Banking and Currency on H. R. 6855, 68th Congress, First Session, April, 1924.

Canada for example there are no banks outside of the two cities of Toronto and Montreal, the population of every other city being served by branches of the banks in these two Eastern cities.

While opponents of branch banking admit the possibility of the branch system adding elements of strength to the particular parent bank, they feel that the price which the community must pay for this efficiency is too great. The objections to branch banking therefore are chiefly those of public policy. It is contended for example that its inevitable tendency is toward a monopolistic control over the financial resources of the State. As striking illustrations of the impossibility of the unit system of banking existing side by side with branch banking it is shown that in the British Isles during the past few decades the number of independent unit banks has gradually decreased while the branches have increased until today there are left only about forty banks, with over ten thousand branches. Similarly in Canada in 1885 there were forty-one banks, in 1905 the number was reduced to thirty-five, and today there are only eleven, but with upward of five thousand branches. A system of branch banking therefore as a natural consequence of its logical development ultimately puts into the hands of a small group of powerful bankers the entire credit facilities of a State. This is socially unsound, detrimental to

the free development of business enterprise, and dangerous to the public welfare. These few bankers being in the banking business primarily for personal profit would have it within their power to control the development of the industries of the entire population and could be restrictive here and liberal there, not as the general welfare might require but to suit their private policies. Human nature being what it is no other point of view can be expected.

This development toward centralized control is out of harmony with the traditional American principle of local autonomy under which our vast national resources have been developed. It has been the small unit bank, in the wake of the pioneer frontiersmen, which has furnished the financial service so essential to the spread of our civilization westward to the Pacific Coast. They became objects of community pride; they were controlled by a local board of directors; and they had an intimate personal knowledge of the character, ability, and resources of their customers. Here, it is pointed out, is the essential difference between unit and branch banking. The one is a local institution, and the other is what has been called "absentee banking." The branch is managed by an agent or employee of the parent bank. He takes instructions from his employers who reside elsewhere. He has no discretion to act but must follow rigid formulas im-

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posed upon him by his absent superiors. His branch is not a part of the locality in which he operates. As a natural consequence he cannot make a loan the security of which is primarily the character of the borrower. This is urged as one of the fundamental weaknesses of the branch system. It is a restriction of credit which is detrimental to the development of a new country because it eliminates the moral credit risk involved in a man's native ability and character—often the only security a young man has to offer. Absentee banking as represented by the local branch of a distant city bank puts the future economic life of a community in the hands of a nonresident board of directors, who may develop or retard its resources as their interests may demand.

Again, it is pointed out that branch banking is incompatible with the Federal Reserve System in that it would eventually substitute a system of privately controlled reserves for the present coördination of reserves in the Federal Reserve Banks. A well-developed branch system has in ordinary times no need of the assistance of the local Federal Reserve Bank but this substitution of private control over banking credit reestablishes the very situation which the Federal Reserve System is designed to correct and does correct. On the other hand in times of stress a single great branch system, having

gotten into difficulty, could make so great a demand upon the Federal Reserve Bank as to render it ineffective to protect the public interest.⁸

Finally it is contended that it is impossible to make a simultaneous examination of a large branch system since a small army of trained examiners would be required. Nevertheless in no other way can the Government know the true condition of the bank and thus be in a position to be assured of the bank's solvency.

In the foregoing has been set forth in brief the chief points urged in favor of and against State-wide branch banking—that is to say branch banking proper. There is a third group, of no inconsiderable proportions and influence, which while in agreement with the considerations urged against State-wide branch banking is also strongly opposed to home-city branch banking. They see in the home-city branch the doom of the small neighborhood city bank and the ultimate control of all banking in a given city by a very small number of powerful downtown banks. The neighborhood or community center bank would eventually be absorbed and the branch operated in its stead. Furthermore they see in the city branch the entering wedge of ultimate State-wide branch banking—"the nose of the camel under the tent."

⁸ See Annual Report, Comptroller of the Currency, 1923, page 9.

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The intensive campaign against all forms of branch banking which has been waged in this country during recent years has emanated largely from this group, many of the leaders of which are themselves interested in small neighborhood city banks. Much of the State legislation prohibiting branch banking in any form has been due to their organized and concentrated effort.

It is an unfortunate circumstance that in the prevailing discussion of the subject of branch banking a clear distinction is not made between home-city branch banking and branch banking proper. The former does not change the fundamental nature of our unit banking system while the latter would substitute a new system of banking for the one we now have. The motive for the establishment of the home-city branch arises from natural economic causes which have changed the conditions under which business must be conducted in a modern large city. The invention and almost universal use of the automobile as a means of locomotion has caused a congestion of downtown traffic which makes the old-fashioned visits of the customer to the bank an impossibility. New forms of city life due to the rapid increase of city populations have been developed, such as the decentralization of industries around which semi-independent communities spring up. The outlying customer, therefore, of the down-

town bank finds it inconvenient and difficult to go back and forth. He may not wish to be forced to give up his old connections and to do business with a small neighborhood bank. The downtown bank, to meet this need, is led to the natural desire to extend its banking service to the customer. The motive is primarily one of self-preservation. Once the branch or office is established, the bank not only hopes to retain its old customers but also to acquire what new business may be developed in the neighborhood. This is not absentee banking. If necessary the customer can within an hour or two see his banker face to face. The bank with such home-city branches is a part of the community in which it does business and is confined to that community. Its directors are local men. This type of branch banking introduces no new element into our banking system as a whole, but it must be recognized that it does involve the possible elimination of the small independent neighborhood city bank. It changes the form of the city banking service.

Former Comptroller Henry M. Dawes, who has given the most complete and the ablest expression of the opposition to State-wide branch banking, was at pains to distinguish it from what he called "intracity banking." In his first report to Congress he said, "In giving consideration to the question of branch banking, intracity banking practices should

be regarded as a local issue. It is not logically a part of the branch-bank movement. The operation of additional offices by a bank within the limits of the city of the bank contains no elements of danger to the banking system of the country. Branch banking, properly speaking, is State-wide branch banking under which a single bank may operate a number of branches anywhere outside of the city of the parent bank. In this alone is the danger of monopolistic control of banking facilities of a community, and it will ultimately result in the extinction of the unit banks in rural districts."

Again in his second report he said, "In using the term 'branch banking,' reference is made to a form of banking by which a parent institution owns, controls, and operates subsidiary institutions, called branches, in other municipalities than that of the parent institution. The elemental difference between unit banking and branch banking is based on the fact that in unit banking the residents of a community are afforded banking facilities by residents of the same community, while in the case of branch banking nonresidents control the banking. In the one case it is local control, and in the other absentee control."

Further, in his statement before the House Committee on Banking and Currency, Comptroller Dawes said:

“At the outset it should be stated that while the question of extending outside facilities in the form of offices or branches beyond the limits of the parent institution but confined to municipal limits is one that might be properly controversial, it does not, to my mind, involve the fundamental principle of branch banking. So long as such an operation is confined strictly to municipal limits, it remains in its essence a community operation conducted for the benefit of residents by residents.

“I will not discuss the necessity or develop the arguments which have induced State legislatures to permit this form of operation. It seems to me it is sufficient to say that these intracity activities do not run parallel at all to the operations which are involved in the extension of banking influence by direct control in the form of branches covering a whole State or limits beyond the municipality. If the principle of local control over banking facilities within city limits is recognized and such an operation is forbidden in one and permitted in another State, it would not be a real concession to any branch banking principle, since intracity banking is, after all, community banking as distinguished from State, district, or national branch banking.

“The city is the natural unit under which all concentrated districts of population naturally operate.

“Where branch banks become State-wide in their

operation the problem assumes an entirely different aspect. They cease then to be institutions operated by residents for the benefit of residents. The principle of absentee control of finance and of the monopolistic aggregation of capital into huge units is involved. The balance of the Federal Reserve System is materially affected. I have dilated upon the results of such developments, and nothing would seem to me to be more undesirable than to attempt to protect the national banking system by an unnecessary surrender to an unsound principle. This, in my opinion, would be the effect of granting State-wide branch banking privileges to the national banks." (Hearings, pp. 14, 15, and 16.)

The discussion relative to branch banking has been precipitated by an attempt on the part of the national banks to secure legislation from Congress to enable them, in those localities where State laws permit State institutions to engage in branch banking, to compete on terms of equality with such State institutions so far as the home-city branches are concerned, and to be protected from State-wide branch banking by State bank members of the Federal Reserve System. Proposed legislation failed of passage at the last session of the Sixty-eighth Congress, but a similar bill has been introduced in the Sixty-ninth Congress.*

* See Chapter VIII and Appendix D.

CHAPTER II

THE DEVELOPMENT OF BRANCH BANKING IN THE UNITED STATES ¹

BRANCH banking may be said to have made as yet relatively little headway in the United States. This can readily be seen by a reference to a few figures. There are nearly 30,000 State chartered and national banks in this country and only 310 of these have in operation one or more branches outside of the home city of the bank, that is to say only about one per cent of our banks are engaged in branch banking. The largest system operated by a single bank has about eighty such branches.² By way of comparison it may be said that in foreign countries some banks operate considerably more than a thousand branches. The total number of outside or extra-home-city branches of all banks in the United States is less than 800 or about one-half of the number of branches of a single well-known branch system in England.

¹ See Federal Reserve Bulletin, December, 1924, pp. 925-940; an exhaustive statistical study of branch banking in the United States.

² The term "branches," as used in this chapter, refers only to branches outside of the home city of the parent bank.

About forty years ago there were only about half a dozen branches in the United States, but each succeeding decade has seen a gradual increase. By 1895 there were thirty branches, in 1905 the number had increased to eighty-six, in 1915 to two hundred fifty-nine and in 1925 to nearly eight hundred. It is, therefore, not the total number but the rate of increase that deserves attention.

Branch banking in the United States did not have its inception in the desire of banks in the large cities for domination. On the contrary, none of the banks in the important Eastern financial centers have established branches. There are no outside branches of the great banking institutions of New York City, Philadelphia, Boston, Chicago, St. Louis, Detroit, Cleveland (except a few home-city branches in the suburbs of Cleveland), Baltimore, or any other large city in the East or Middle West. State laws prohibit outside branches in nearly all of the States in which large cities are located. Most of these laws are comparatively recent, and it is worthy of note that these large banks did not, when the prohibition was absent, undertake to engage in outside branch banking.

Historically, branch banking as we have it originated with the relatively small country bank, many of them being located in the Southern States. Of the 310 banks with branches, 118 have resources of

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less than \$1,000,000 each; 145 have resources of less than \$10,000,000; and only about 45 have total resources each of more than \$10,000,000. A majority of the banks with branches are not members of the Federal Reserve System, and many of them operate only a single branch.

Nearly all of these banks are located in the States named below, as follows: Georgia, 16; Maryland, 15; North Carolina, 38; South Carolina, 5; Tennessee, 15; Virginia, 19; Louisiana, 26; Mississippi, 10; Alabama, 5; New Jersey, 9; Maine, 23; and California, 63. These figures give the number of banks. The aggregate number of branches which they operate is about 800.

One of these Alabama banks has 15 branches with the head office at Decatur; one in Mississippi has 14 branches with the head office at Grenada; one in Georgia has 7 branches with the head office in Savannah; one in North Carolina has 7 branches with the head office in Aberdeen; one in Maryland has 18 branches with the head office in Cambridge; and one in South Carolina has 9 branches with the head office in Barnwell.*

* See statement of Vice Governor Platt of the Federal Reserve Board before the House Committee on Banking and Currency. Hearings on H. R. 6855, 68th Congress, First Session, April, 1924. See also his address before the National Association of Credit Men, June 9, 1924: "Cause and Remedy for Bank Failures." Printed in Trust Companies Magazine, June, 1925.

Of the 310 banks operating outside branches, only 43 are located in cities having a population above 100,000; while 129 are in towns of less than 2500, and 27 in villages of less than 500 population. Of the 800 odd outside branches in the United States, 490 are in towns of population under 2500, and only about 80 in cities with population of more than 25,000.

The foregoing survey is possessed of a scientific and historical value for the student of the branch banking movement, but it does not present a basis for an adequate explanation of the present-day agitation over branch banking in the United States. These rural or small-town branch systems have attracted no public notice. Their existence even has not been generally known. Their influence has been purely local in scope. The total of the resources of all of these little out-of-the-way banks with branches is comparatively insignificant.

Interest in the branch banking question is centered on the developments in the State of California during the past decade and in the potential possibilities of similar developments in other States having a policy favorable to this form of banking. The California banking law of 1909 legalized and permitted branch banking for State chartered banks to the extent that any such banks could, with the approval of the State Banking Department, estab-

lish or operate a branch anywhere in the State. As a condition precedent to the opening of such a branch the Superintendent must find that the public convenience and advantage would be promoted thereby.⁴ This law which is in force today appears favorable to the development of branch systems as they are known abroad.

There was little development of branch banking in California for the first ten years after the enactment of this law, but from 1920 to 1923 numerous branches were established. During these three years one of these branch systems opened 52 branches. Other branch systems became equally active. This gave rise to severe competition between several branch banking groups, and to open hostility on the part of the smaller independent unit banks who saw the possibility of their eventual and complete elimination. The branch systems in California have within recent years absorbed by purchase for branch sites about 175 independent unit banks.⁵

It appears that on or about November 1, 1921, Mr. Jonathan S. Dodge, then Superintendent of Banks, promulgated what has been commonly called

⁴ Sec. 9, Stats. Cal., 1917; ch. 501, p. 601.

⁵ See data on branch banking in California, in *Petition for Writ of Mandate in Bank of Italy vs. Johnson*, Superintendent, filed in the Supreme Court of California, June 18, 1925. S. F. No. 11,654.

the *de novo* rule which was designed to establish a policy of his office restrictive of the extension of branch banking. This rule was to the effect that no *de novo* branches shall be established outside of the city of the parent bank unless the Superintendent shall find that "the public convenience and advantage require it." * It may be here noted that Section 9 of the California Bank Act uses the expression "will be promoted" while the rule uses the word "require." Under this rule the normal development of branch banking in California would be through the purchase of existing institutions rather than the establishment of branches in locations where no banks theretofore existed.

There was organized in 1922 the California League of Independent Bankers, composed principally of small unit banks. An attempt by them, which proved unsuccessful, was made to secure the enactment of an amendment by the legislature, the purpose of which was to restrict the further spread of branch banking in that State. This League, however, has not ceased its efforts to preserve the existence of the independent unit banks.

About the same time there was organized a national Association Opposed to Branch Banking, with headquarters in Chicago. This organization, through local representatives in various States, carried on

* See Petition of Bank of Italy, *ante*.

an active and to a considerable extent successful campaign to secure the enactment of State legislation prohibitory of branch banking. During the two or three years of its independent existence it was influential in the Middle West and to a lesser extent in New England and the South, in focussing public attention upon the branch banking question.

Agitation against branch banking had become widespread among bankers by 1921, and group resolutions were adopted here and there in various States. When the American Bankers Association met in its annual convention in 1922, the opponents of branch banking were able to secure the adoption of a resolution which put the Association on record in disapproval of and in opposition to branch banking in any form.⁷ During the next two years further discussion and negotiation led to a clarification of the issue, and the Association at its 1924 convention adopted a resolution which in effect endorsed the McFadden National Bank Bill,⁸ which would give to national banks the power to have branches in those cities in which the State banks are permitted to have them, but otherwise prohibiting branch banking to national banks; prohibiting the further extension of outside branches to State member banks of the Federal Reserve System; and

⁷ See Proceedings American Bankers Association, 1922.

⁸ See H. R. 8887, 68th Congress, Second Session.

preserving, so far as State member and national banks are concerned, the *status quo* of anti-branch banking legislation or regulations in those States in which it is at present prohibited.⁹

Returning to the California situation, on February 1, 1923, Mr. John Franklin Johnson became Superintendent of Banks and declared his adherence to the *de novo* rule. On March 7th there was a conference between the Executive Committee of the California League of Independent Bankers, the State Superintendent of Banks, and the Legislative Committee of the California Bankers Association. The purpose of this meeting was to discuss in the presence of the Superintendent the question of amplifying the *de novo* rule by making it more difficult for branch banks to be established.

It appears that a resolution was drafted which restated the *de novo* rule in a more restrictive form. This it seems was agreed to by the groups represented. The Superintendent, thereupon, on March 8, 1923, as a result of this conference promulgated three new rulings. The first of these prohibited any bank from acquiring an outside branch through purchase or merger with an independent bank unless both of such banks shall have been open for business for at least three years prior to such purchase or consolidation. The second laid down the rule

⁹ See *post*, p. 98 ff.

that no bank would be permitted to establish more than one branch outside of the home city of the bank; but in cases of consolidation, purchase, or merger, all branches which have been in operation for three years of each institution may be retained. The third ruling prohibited any bank from establishing any outside *de novo* branches, that is to say, branches in places where no bank or branch hitherto existed. To each of these rulings the Superintendent reserved the right under the discretionary authority given him by law to make exceptions where in his opinion the public convenience and advantage required.¹⁰

The statement has often been made that at the conference, to which reference has been made above, not only was there an unanimous agreement upon the redraft of the *de novo* rule but that in addition a gentlemen's agreement was entered into whereby the branch banking systems in northern California, that is, in San Francisco, would not attempt to acquire additional branches in southern California; and the branch banking systems in southern California, that is, in Los Angeles, would refrain from acquiring branches in northern California. The pioneer branch banking institution in California and the largest in resources and in number of branches—namely the Bank of Italy in San Francisco—how-

¹⁰ See *The Independent Banker*, March April, 1925, p. 4.

ever, protested against the new rulings and publicly announced that it did not consider itself bound by the so-called gentlemen's agreement. It appears that one of its officers was present at the conference and was an active participant in it, but the bank contends he was there not as a representative of the bank but as a member of the Legislative Committee of the California Bankers Association. The position of the Bank of Italy with reference to the *de novo* rule is set forth at length in a petition for a writ of mandate against the Superintendent of Banks, filed in the Supreme Court of California on June 18, 1925, and pending at this writing.¹¹ The purpose of this suit is to test the legal validity of the *de novo* rule upon the application of the Bank of Italy for three *de novo* branches in Los Angeles. The Bank contends that it is entitled under the California Bank Act to have branches anywhere in the State, the sole criterion being the promotion of the public convenience and advantage at the particular location for which application is made.

The spread of branch banking in California, in which several prominent members of the Federal Reserve System have extensively participated, early engaged the attention of the Federal Reserve Board at Washington.¹² The Board began to consider

¹¹ See *ante*, p. 21 n.

¹² See Chapter VII.

ways and means to limit the State member banks in their establishment of outside branches. On September 13, 1923, the Board held a formal hearing on branch banking at which were heard several members of the California League of Independent Bankers and of the Association Opposed to Branch Banking, and one official of each of the two leading branch banking institutions in California. These same groups again presented their views to the Federal Government in April, 1924, at the hearings when the Banking and Currency Committee of the House had under consideration a proposal to restrict the establishment of outside branches by State member banks by national legislation.¹³

The Board adopted a resolution on November 7, 1923, which (as amended April 7, 1924) provides in effect that no member bank of the Federal Reserve System shall be permitted to establish or acquire a branch outside of the home city of the bank and the territory immediately contiguous thereto, except in those cases where the State banking authorities and the Board agree that public necessity and advantage require an exception to be made.

As a consequence of these restrictive rulings, branch banking in California may be said to have been held in abeyance since 1923, notwithstanding the broad provisions of the State law which might

¹³ See Chapter VIII.

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under the administration of officials favorable to branch banking be used as an instrument to create great State-wide branch systems. During the year ending May 30, 1925, only about a dozen outside branches were established in that State.

There are today five banks in California which have in operation more than eight outside branches. Three of these have head offices in San Francisco and two have head offices in Los Angeles. The largest of the group has about 80 branches, the next largest about 50, and the other three 26, 17, and 17, respectively. The total of all other outside branches in California is about 104, operated by banks having from one to eight branches each.¹⁴

The total resources of the largest of these institutions are about \$360,000,000,¹⁵ which is about one-tenth of the total resources of all banks in California, State and national. Two other of these branch systems have resources of around \$200,000,000 each, and another of about \$162,000,000. The total resources of the ten leading banks with branches are about \$1,145,000,000, being about one-third of the entire banking resources of the State and more than one-third of the entire resources of all member banks in the Twelfth Federal Reserve District. Three of these

¹⁴ See *The Independent Banker*, March-April, 1925. See also *Federal Reserve Bulletin*, December, 1924, p. 939.

¹⁵ The published statement of the Bank of Italy as of December 30, 1925 shows total resources of about \$423,000,000.

banks with aggregate resources of about \$165,000,000 are not members of the Federal Reserve System. (The aggregate resources of all banks, State and national, in California are about \$3,400,000,000 and of all member banks of the Twelfth Federal Reserve District are about \$3,200,000,000.)

Outside the State of California there are less than 500 outside branches of banks, and in no other State has the development in branch banking reached the point where it has attracted any considerable public attention. In North Carolina there are about 60 such branches, in each of the States of Georgia, Maryland, Louisiana, and Maine there are something over 40, and a scattering few in about twenty other States, several of which now prohibit any further branch banking.

CHAPTER III

THE LEGAL STATUS OF BRANCH BANKING IN THE SEVERAL STATES ¹

IN foreign countries the authority to formulate operating policies for banks is vested to a large extent in the board of directors of the particular bank. The government does not concern itself with these details. In the United States, however, the business of banking is in every respect under close governmental supervision and control. The charter powers of each bank are derived from a general banking law and the bank as a corporation can perform no act beyond those which are authorized by the act either in express terms or by implication. Under our system, therefore, there are forty-eight separate and distinct banking laws in addition to the National Bank Act and the Federal Reserve Act, and in each State there is an executive official whose duty it is to supervise the banks in his State for the

¹ See Digest of State Banking Statutes on branch banking within the United States, April, 1924, compiled by Counsel for the American Bankers Association. See also a comprehensive digest of State laws relating to branch banking, compiled by the Law Department of the Federal Reserve Board, in Federal Reserve Bulletin, March, 1925, pp. 182-187.

purpose of seeing that there is a proper observance of the banking law. The question, therefore, of branch banking leads directly to a study of the various legislative enactments of the respective States and of the national government and the regulations of the executive officials thereunder made.

Every form of branch banking is now expressly prohibited by law (except as to branches in existence at the time of the enactment of the law), in the following seventeen States: Alabama, Arkansas, Colorado, Connecticut, Florida, Idaho, Illinois, Indiana, Minnesota, Missouri, Nevada, New Mexico, Oregon, Texas, Utah, Washington, and Wisconsin. Five of these States formerly permitted branch banking either by law or official sanction or usage and such branches are permitted to remain in operation.

In the following eleven States, namely, Iowa, Kansas, Montana, New Hampshire, North Dakota, Oklahoma, South Dakota, Vermont, West Virginia, Nebraska, and New Jersey, branch banking is not expressly prohibited by statute but is not allowed to exist by the State officials upon the ground that the banks under their jurisdiction possess no implied or incidental powers to establish or operate branches. For practical purposes, therefore, branch banking is prohibited in twenty-eight States. These include every State west of Michigan, Ohio, Ken-

tucky, Tennessee, Mississippi, and Louisiana, except the States of Wyoming, California, and Arizona.

States in which branch banking is permitted may also be divided into two classes, those which specifically authorize branch banking by law and those in which the State authorities in the exercise of their discretionary powers permit some form of branch banking to be carried on. The following seventeen States authorize branch banking in some form by statutory enactment: Arizona, California, Delaware, Georgia, Louisiana, Maine, Massachusetts, Mississippi, Nevada, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wyoming.

In the State of Kentucky, Maryland, and Michigan some form of branch banking is permitted to commercial banks and trust companies under the authority of opinions of the Attorneys-General of the States.

Only eight of these States expressly permit the establishment of branches outside of the home city of the bank on a State-wide basis: namely, Arizona, California, Delaware, Georgia, North Carolina, South Carolina, Rhode Island, and Virginia; and the three additional States, Louisiana, Maine, and Tennessee, permit outside branches in the county only in which the parent bank is located. In the State of Maryland branches outside of the home

city have been established by official sanction but without express statutory authority.

Arizona permits commercial banks, savings banks, and trust companies to have branches without any restriction as to location within the State, provided that for each branch there shall be an increase of \$15,000 capital and surplus in excess of \$50,000. The approval of the State Banking Department is required for each branch.

California permits commercial banks, savings banks, and trust companies to have branches within the State without legal restriction as to location. Increase of capital is required upon the establishment of each branch, as well as a fee of \$50 to be paid to the State. No branch can be established except with the approval of the State Banking Department which may in its discretion deny the branch upon the broad ground that the public convenience and advantage would not be served thereby. The practical operation of the California law is now definitely limited by formal rules and regulations issued by the Superintendent of Banks.² No branch can be discontinued without the approval of the Superintendent.

In the State of Delaware any corporation engaged in the business of banking may by express statutory authority upon the payment of a fee of

² See Chapter II.

\$50 and upon approval by the State Banking Department establish branches anywhere in the State. An increase of the capital stock of the bank to the extent of \$25,000 for each branch is required.

The State of Georgia permits all corporations engaged in the banking business, upon approval of the State Banking Department, to establish branches in "cities in which they are located or elsewhere." It would appear, therefore, that a bank in Georgia can establish a branch in another State so far as the Georgia law is concerned. The parent bank is required to apportion capital and surplus to the respective branches and each branch must have the minimum capital required for a bank in the place where it is located.

Any bank in the State of North Carolina which receives money on deposit as a business may with the approval of the State Banking Department establish branches within the city in which the bank is located "or elsewhere." Increase of capital of the parent bank to an amount required for the establishment of a new bank in the place where the branch is, is necessary for each branch.

Under the laws of Rhode Island any commercial bank, trust company, or savings bank may be permitted to establish a branch on the approval of the State Banking Department anywhere within the State.

The statutes of South Carolina do not expressly permit the establishment of branches but recognize their existence. No limitation is made upon the location of such branches and apparently no approval of the State Banking Department is required for the establishment of branches by any banking institution. Published statements of the assets and liabilities of each branch are required to be made in the county in which the branch is located.

Any bank or trust company in the State of Virginia may establish a branch anywhere within the State upon approval by the State Banking Department. The parent bank is required to have capital of not less than \$25,000. The penalty for operating an unauthorized branch is \$1,000.

The State of Mississippi permits any bank within a city of not less than 10,000 population, upon the approval of the Superintendent of Banks, and upon setting aside \$10,000 of capital for each branch, to establish a branch within the limits of the city in which the bank is located. But since such a bank is permitted to move the home office or the branches to another municipality, the law indirectly sanctions the operation of branches outside of the home city of the bank.

In the State of Wyoming there are no branches of banks, although a provision of the banking law

apparently gives any corporation organized for the purpose of carrying on a general banking, savings bank or trust company business the right to have offices anywhere within the State.

The Louisiana banking law permits banks, savings banks of capital of not less than \$50,000, and trust companies, upon approval by the State Bank Examiner to have branches or "offices of discount and deposit" anywhere within the confines of the parish—*i.e.*, county—in which the parent bank is located.

In the State of Maine any banking institution is permitted, with the approval of the banking department, and upon the payment of a fee of \$50, to have branches within "its own or an adjoining county." The capital of the bank is required to be adjusted to the aggregate population of the places in which the home office and the branches are located.

For many years past the banks in the State of Tennessee have by official sanction or usage been able to establish branches anywhere within the State. By way of restriction the State has now by the Act of April 6, 1925, prohibited any bank from establishing branches beyond the boundaries of the county in which the bank is located.

In Massachusetts, trust companies and mutual savings banks are permitted to have branches within

the limits of the city in which the parent institution is located. Mutual savings banks may also have a branch in a town not more than fifteen miles from the parent bank provided no savings bank is located there. The approval of the State Banking Department is required in each instance. Such trust companies are limited to one *de novo* branch but may acquire other branches through the purchase of other banks, the banking house of the bank absorbed being permitted to be operated as a branch.

New York permits commercial banks, trust companies, and mutual savings banks to have branches, but only within the limits of the city of the parent bank. Commercial banks and trust companies in order to be permitted to have branches must be located in a city of more than 50,000 population, must obtain the approval of the Superintendent of Banks for each branch and increase the capital by \$100,000 for each branch. Operation of an unauthorized branch may subject the offending bank to a penalty of \$1,000 a week.

The laws of Ohio permit any bank to have branches within the corporate limits of the home city of the bank and within cities or villages contiguous thereto. The approval of the Superintendent of Banks is required in each instance. Any bank which has been refused permission by the Superintendent to establish a branch may appeal

to a board composed of the Governor, the Attorney-General, and the Superintendent of Banks.

In the State of Kentucky there are no statutory provisions authorizing branch banking, but under a judicial decision in 1909^{*} it was held in effect that banks may establish agencies within the home city of the bank for the receipt of deposits and transacting routine business. Only one State bank has established such agencies. These are located in the city of Louisville and are five in number.

Likewise in the State of Michigan, branch banking is not permitted by statutory enactment (except to so-called "industrial banks"), but under the authority of opinions of the Attorney-General banks may establish agencies within the corporate limits of the home city of the bank for the receipt of deposits and for the payment of checks. A large number of such agencies have been established in the two cities of Lansing and Detroit.

In Maryland, while there is no specific statutory provision authorizing branches, there is a statute regulating the capital requirements for branches of banks and trust companies "hereafter established." This has been construed as a sanction for existing and future branches wherever established in the State. The approval of the State Banking Department is not required.

^{*} Bruner v. Bank 134, Ky. 283.

In the State of Pennsylvania statutory authority appears to exist for a commercial bank to establish "sub-offices or sub-agencies" and under an opinion of the Attorney-General, trust companies, it appears, may establish additional offices. It seems that no permission of the State Banking Department is required in either case, but that the institution may not establish an office outside of its home city. As to commercial banks the law requires the transfer of all banking assets to the parent bank at the close of each day's business. There appears to be a controversy over the interpretation of the Pennsylvania statutes on this subject and the opinions of the Attorney-General thereon. It is not clear that any definite authority for any sort of branches exists in Pennsylvania.

From the foregoing survey it is readily seen that there is a great diversity in the State laws permitting and regulating branch banking. In practically all of them there appears the element of restriction and control. Banks in none of these States are free to establish branches solely at the discretion of their boards of directors, except perhaps in the State of South Carolina.

In the District of Columbia—which is practically coterminous with the City of Washington—a curious branch banking situation existed. It will be remembered that this territory is under the jurisdiction

solely of Congress. Certain banks in the States had established branches in the District and were operating them there. In 1922 Congress enacted the so-called Millspaugh Act which provided that in the future no branch of any bank shall be established in the District of Columbia except with the approval of the Comptroller of the Currency. The effect of this law was apparently to give to all banks in the District of Columbia—national or otherwise—the right, upon approval by the Comptroller of the Currency, to have branches.

CHAPTER IV

STATUTORY BRANCHES OF NATIONAL BANKS

THE national banking laws do not expressly permit a national bank to establish a branch, and the Supreme Court of the United States in a recent case,¹ decided that a national bank was without power, express or implied, to establish *de novo* a branch bank. This decision was in effect a confirmation of the interpretation of the National Bank Act to which the Comptroller of the Currency has consistently adhered for many years. In the face of the fact that national banks cannot establish branches it is a source of surprise to many to discover that there are a number of national banks with many full-fledged branches in active operation.

These branches, however, have a specific statutory sanction by virtue of the Act of March 3, 1865. This amendment was made to the National Bank Act during the first year after that Act went into effect and now appears on the statute books as Section 5155 of the Revised Statutes of the United

¹ See The St. Louis Case, Chapter VI.

States. It follows the provision which authorizes any state bank, upon complying with the terms and the procedure required, to convert into a national bank without loss of the continuity of its corporate existence, and provides in effect that any such converting State bank which has branches with capital assigned to the parent bank and the branches in definite proportions, may, at the time of conversion, elect to retain any of such branches.

No restrictions as to location are made as to such branches and no formal approval of the Comptroller of the Currency is required. Such branches may be brought into the national system even though they may be located beyond the boundaries of the State in which the parent bank is located. It appears that the election to retain the branch here provided for is a matter of right not subject to restrictive regulations by either the State or Federal banking departments.

It is a well-known fact that at the time this law was enacted branch banking was practically unknown in the United States, there being only one or two banks with branches. Furthermore the term "branches" as used in the Act seems clearly to refer to branch banks proper and not to additional offices or agencies as a part of the operating equipment of a single bank in a city. The statute not only requires a definite assignment of capital to be made

to and used by each branch but intended that each branch should have its own circulating notes or national bank currency, for it is definitely provided that the redemption of such currency at the parent bank and at each branch shall be regulated by the amount of capital assigned to and used by each. The Act therefore appears to have in contemplation quasi-independent branch banks conducting a complete banking business but controlled by the same board of directors which controlled the operations of the parent bank. This type of a branch would be coördinate as to functions with the parent bank, rather than operating as a subordinate unit under the direct supervision of the officers of the parent bank.

However, the law does not require the branch to exercise all of these powers. Like the national banks in general its functions may be limited to those which are in accord with the policies of the board of directors. Since the enactment of this amendment in 1865 only four State banks have converted with branches outside of the home city of the bank. One of these national banks has three branches in two different States outside of the State of the parent bank. These were originally pioneer branches of a British bank operating on the Pacific Coast in the early days of the Republic. It would be difficult to imagine the duplication of this situation under

present conditions. Another national bank with outside branches has eight branches, each located in a small town in the same county of the parent bank. The two other banks referred to have only one outside branch each. All of the other branches brought into the national system through the conversion of State banks are located within the corporate limits of the city of the parent bank. The total number of these branches is one hundred and three.

Modern banking practice long ago rendered obsolete the conception of a branch bank as outlined in Section 5155 Revised Statutes, and such branches as have been brought into the national system by conversion have been reduced to the status of home-city branches. Sound banking administration has required this evolution. The fiction of the assignment of capital is still complied with, but it is nothing more than a bookkeeping entry. The branch is not limited in its loans to an amount which the capital assigned to it would require upon the theory that it was operating upon such capital alone, but the parent bank may make loans at such a branch up to its own full lending power. These branches now have no independent status and have no national bank notes outstanding but have become by force of custom and usage simply instrumentalities of the parent bank through which it can carry on

its ordinary banking business at more than one location within the same city.³

These statutory branches of national banks may be divided into two general groups, namely, those which are branches of the identical parent bank which converted into the national system and those which are branches of a parent bank which has consolidated with one or more other national banks.

Under the National Bank Consolidation Act of November 7, 1918, two or more national banks may consolidate into a single bank under the charter of any one of the banks entering the consolidation. The consolidated bank, under specific statutory authority, is permitted to hold and enjoy "all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed" by those national banks entering into the consolidation whose charters expired upon the selection of the charter of the consolidated bank. In other words although the consolidated bank must choose to operate under only one of the charters of the banks represented in the consolidation, yet all of the essential rights or franchises acquired by any of the other banks prior to the consolidation inhere in the consolidated bank.

The right, therefore, to maintain a branch or

³ For a complete list of all statutory branches of national banks see Annual Report, Comptroller of the Currency, 1924, pp. 24-26.

branches under the provisions of the Act of March 3, 1865, of any one of the banks entering into the consolidation is a franchise which the consolidated bank acquires. All branches of the constituent banks automatically become branches of the consolidated bank by the simple operation of the Act of November 7, 1918, and no approval by the Comptroller of the Currency is required for the continued maintenance of such branches. Since, however, all national banks thus consolidating must be located in the same county a national bank cannot acquire State-wide branches through consolidation unless it consolidates with a local bank which already has State-wide branches originally established under the State law.

The impression has sometimes prevailed that not only may each of the branches be retained upon consolidation but also that the consolidated bank acquires the right to operate as a branch each of the locations respectively occupied by the constituent banks as their main banking houses. It has been said that the right to carry on a banking business at each one of the bank locations is one of the franchises preserved to the consolidated bank by the Consolidation Act.

The Comptroller of the Currency has consistently interpreted the Act to the contrary. He has held that the right to conduct business at the old bank-

ing houses of these banks which gave up their charters upon entering into the consolidation was necessarily extinguished, *ipso facto* in the act of consolidation. The consolidation creates one bank in the place of two or three preëxisting and the only thing left of such old banking locations is the property right in the real estate which may be involved in the ownership of such banking houses. The right to operate a branch is a special privilege specifically conferred by statute and cannot be acquired by indirection in this manner through consolidation.

Of the 103 statutory branches of national banks 66 are now operated by consolidated national banks and 37 by national banks which originally had them before conversion into national banks. They are located in 15 different States as follows: 7 in Georgia; 8 in Louisiana; 17 in Massachusetts; 11 in Michigan; 1 in Mississippi; 2 in New Jersey; 44 in New York; 2 in North Carolina; 2 in Oregon; 2 in South Carolina; 1 in Tennessee; 3 in Virginia; 4 in Washington; 2 in Wisconsin; and 3 in the District of Columbia. All of these branches are operated by 33 parent banks.

CHAPTER V

ADDITIONAL OFFICES OF NATIONAL BANKS

FOR a number of years State banks and trust companies engaged in the business of commercial banking have been permitted in many of the largest cities to establish and maintain offices outside of the regular banking house—ordinarily designated the head office—but within the corporate limits of the city in which the head office is located. This is variously called intracity banking, community banking, home-city branch banking and city-service banking. The locations themselves are called offices, agencies, branches, suboffices, additional offices, or tellers' windows.

The primary reasons for permitting this form of banking service are economic and social. The last quarter of a century has witnessed a revolutionary development in the basic conditions of American urban life. The chief contributory causes are the rapid increase in city populations causing repeated territorial expansions of the city limits; the growth of semi-independent business communities in out-

lying sections of large cities through the absorption of suburban towns or through independent decentralized development; the almost universal use of the automobile as a means of passenger transportation resulting in congestion in downtown areas but in the quickening of the processes of business; and the widespread use of the telephone as a means of communication.

A bank doing business in a modern large city frequently has both commercial and residential customers who find it increasingly inconvenient to visit the banking house downtown. In order to hold these customers and to secure what new business may be in prospect many State legislatures have permitted the banks under their jurisdiction to meet this situation by establishing outlying offices or agencies for the convenience of the public and to insure the continued strength, efficiency, and growth of the downtown banks. In the city of New York, for example, the old-established financial center, where the leading commercial banks are still located, is lower Broadway—popularly known as the Wall Street district. Here is where the business men of the city were wont to come to do their banking business. Within recent years, however, there has been a steady movement of business houses to the uptown district and today it is a great commercial center far removed from and difficult of access to

the downtown banks. Yet these business houses are customers of these banks. To meet what appeared to be an economic necessity the State permitted the State banks to reach these customers by establishing home-city branches.

State banks are permitted to have such branches in a large number of cities, of which the following are the more important: New York, Philadelphia, Detroit, Cleveland, Boston, Baltimore, Los Angeles, Buffalo, San Francisco, Cincinnati, New Orleans, Atlanta, Richmond, and Nashville. In each of the cities of New York and Cleveland, there is a State bank with over fifty home-city branches. In each of the cities of Detroit and Los Angeles there are in the neighborhood of three hundred home-city branches of State banks.

While some State banks have no doubt established an unreasonable number of home-city branches, this development in banking practice has apparently passed the experimental stage. Banks with a reasonable number of these offices have demonstrated their ability to hold their customers and to develop new business at outlying points. In the main these offices appear to be economically successful.

In what position then do the national banks find themselves in those cities in which the State banks are thus favored? This presents one of the most dif-

ficult situations which the national system has ever had to meet. The Comptroller of the Currency has always held that the National Bank Act did not permit a national bank to establish a branch bank wherein a general banking business might be conducted. In this position he was confirmed by the opinion of Attorney-General Wickersham, of May 11, 1911.¹ Although this opinion denied the authority to establish and operate a branch bank the Attorney-General did not at that time have before him the present-day city banking developments and the question of the right of the national banks to establish offices or agencies. His opinion therefore has no direct bearing upon this question.

In the face of this new form of competition, presenting a phase of banking practice in which only the State banks could participate, many national banks, in the cities above mentioned, began to lose ground. Many of them felt impelled by necessity to sacrifice their national charters and to go into the State system. By the year 1922, no relief having been given by Congress, there were only three national banks left in Cleveland, three in Detroit, and one in New Orleans. In these great commercial centers the national bank system had become a secondary banking organization. The situation in other cities was equally serious. In New York some of the great

¹ See 29 Op. Atty.-Gen. 81.

national banks had through consolidation acquired a few branches but some others were not so fortunate since the opportunity to acquire branches in this manner is limited. Many, therefore, of the old and time-honored members of the national system began seriously to consider taking out State charters. Some of them did so, and not only in New York. There was a feeling of unrest and uneasiness among the national banks in all of the branch banking States.

Comptroller Crissinger in 1922 met this great emergency with a courageous and wise decision. Although opposed to State-wide branch banking and in accord with the traditional legal position of the Comptroller's office which denied the right of a national bank to establish a branch bank, he began to permit national banks to establish agencies or additional offices in those cities where the State banks were already given that privilege. Himself a lawyer, he reached the conclusion that the National Bank Act gave the national banks the right by implication to meet this new form of competition from the State banks. His policy was set forth in a letter to Congressman Dyer under date of August 15, 1922.² At the same time he recommended to Congress that it give to the national banks the

² See Journal of the American Bankers Association, November, 1922, p. 394.

express power to meet the competition of State banks in the matter of establishing branches, the operation of such a law to be confined to those States which permitted State banks to have branches and with the same territorial limitations as imposed by the States. A bill was introduced for this purpose (H. R. 12415, 67th Congress, Second Session) but it did not get beyond the committee stage.

Comptroller Crissinger granted about ninety-seven permits for additional offices for national banks during the period from June 13, 1922, to April 30, 1923, the date when he retired from the office of Comptroller to become Governor of the Federal Reserve Board. There naturally arose a great deal of discussion over this action of the Comptroller as the subject of branch banking was already occupying the center of the stage in banking circles.

When Mr. Henry M. Dawes became Comptroller on May 1, 1923, in order to allay any doubts that may have arisen in the public mind, he immediately sought to clarify the legal questions involved in the granting of permits for such additional offices and also to formulate regulations for their operation. On August 30, 1923, he applied to the Attorney-General for an opinion as to whether a national bank had the corporate power under the National Bank Act "to open and operate an office or offices at a place or places other than its banking house for

the performance of such routine services as the collection of deposits and cashing of checks for its customers" and also whether such offices, if permissible, must be confined within the corporate limits of the city in which the bank is located.

On October 3, 1923, Attorney-General Daugherty rendered an opinion answering both of the above questions in the affirmative, while adhering to the former opinion of Attorney-General Wickersham that a national bank could not establish a branch bank for the conduct of a general banking business.

Attorney - General Wickersham recognized the right of a national bank to establish an agency under its incidental powers to carry on the business of banking but held that such incidental powers do not extend to the establishment of a branch bank. Under his interpretation the right to establish a branch bank would involve the right of a single board of directors to operate more than one bank upon the capital of only one. He contended that if this were permitted the capital requirements of the National Bank Act would lose their force and effect.

Attorney - General Daugherty approached the question from an entirely different direction. The question of the right to establish a branch for carrying on a general banking business was not involved but rather the right as an incidental corporate

power to do whatever was necessary for the proper conduct of a banking business. Section 5136 Revised Statutes of the United States specifically empowers national banks to exercise "all such incidental powers as shall be necessary to carry on the business of banking."

A rule similar to that involved in this opinion had already been initiated by the Attorneys-General of the States of Michigan and Pennsylvania and also in the case of *Bruner v. Bank*,³ in which the authority of a State bank to establish branches in the absence of express statutory authority was brought into question. In each instance the right to establish a branch for the conduct of a general banking business was denied but the incidental right to extend the facilities of the bank to customers by the establishment of home-city offices was recognized.

The Daugherty opinion also held that the manner in which the incidental powers of a national bank may be exercised are subject to the supervision of the Comptroller of the Currency.

Having received this confirmation from the Attorney-General, Comptroller Dawes on October 26, 1923, issued certain regulations which set forth the conditions under which additional offices would be permitted to national banks and also the char-

³ See 134 Ky. 283.

acter of business which might be conducted in them.*

Paragraph two of these regulations lays down the rule that a national bank would be permitted to establish an additional office only in a city in which other banks are engaged in banking practices which make it necessary for such national banks to have such outside offices in order effectively to carry on its business of banking. The Comptroller here recognizes only one ground or condition as evidence of the necessity for the exercise of the incidental corporate powers of a national bank to establish home-city offices and that is the presence of competition from the State banks engaged in rendering services through means of such home-city offices. In other words, he did not recognize the economic argument as being sufficient in itself for national banks thus to extend their services. The practical result of these regulations is that no national banks are permitted to establish additional offices in those cities where the State banks are prohibited from doing so by State law or regulation. The regulation, therefore, was an emergency measure and designed rather to protect national banks from the inroads of competition from State banks. Section 3 of the regulations confines the estab-

* For text of the opinion of the Attorney-General and of the regulations, see Appendix A, p. 131. See also report of the Comptroller of the Currency for 1923, pp. 151-155.

lishment of such offices to the limits of the city in which the bank is located and Section 4 requires the approval of the Comptroller of the Currency for the establishment of each such office.

With regard to the functions which may be performed at such offices, Section 7 confines the operations to the receipt of deposits, the payment of checks and such other routine or administrative functions as may be approved by the Comptroller.

Section 8 prohibits investments in securities for the account of the bank to be made at such offices. Section 9 prohibits loans to customers except upon the authority of the board of directors and in each case prohibits the board from investing any general discretionary authority in any officer or employee at such office. Section 10 requires a statement of the business conducted at such offices to be transmitted to the bank at the close of each day.

The total number of additional offices which have been granted to national banks up to December 1, 1925, is 256.

Like his predecessor, Comptroller Dawes also strongly recommended to Congress both in his 1923 and 1924 annual reports that national banks be given the express power to establish home-city branches in those cities in which the State banks are permitted to establish them. This permission

was contained in the McFadden National Bank Bill.⁵

While these additional offices set up by national banks under permits from the Comptroller of the Currency have in a measure relieved the tension in some quarters, they are nevertheless regarded as a temporary expedient. The business which can be conducted in them is much more restricted than the business which the State banks conduct in their home-city branches. National banks under these circumstances are unable fully to meet this character of competition from the State banks and need affirmative legislation from Congress permitting them to establish home-city branches as a matter of express statutory right.

⁵ See H. R. 8887, 68th Congress, Second Session. See also Chapter VIII.

CHAPTER VI

THE ST. LOUIS CASE ¹

THE First National Bank in St. Louis, acting upon the advice of its own counsel and without seeking the formal approval of the Comptroller of the Currency, proceeded to establish—as the record shows—a branch bank on June 15, 1922, within the city of St. Louis and announced its intention of establishing in the near future several additional branch banks. There were no State banks in that city with branches in operation and there was upon the statute books of the State of Missouri a law which provided “that no bank shall maintain in this State a branch bank or receive deposits or pay checks except in its own banking house.” ²

The State of Missouri thereupon on June 27, 1922, through its Attorney-General brought original proceedings in the nature of *quo warranto* in the State Supreme Court against the bank to determine its authority to establish and conduct a branch bank in the city of St. Louis. The State alleged that the

¹ See *First National Bank in St. Louis v. State of Missouri*, 263 U. S. 640-668, decided January 28, 1924.

² See Sec. 11737, Revised Statutes, Missouri, 1919.

First National Bank was engaged at this branch bank in the business of banking by discounting bills, notes, and other evidences of debt, receiving deposits and paying checks, buying and selling bills of exchange, and lending money. In other words, that a general banking business was being conducted at the branch. This, it was contended, was in violation of the laws of the State which prohibited the establishment of branch banks. That the prohibition in this law was applicable to the First National Bank because the national banking laws did not permit a national bank to establish a branch bank. The Attorney-General prayed that the bank be ousted from the privilege of operating this branch bank or any other branch bank.

The bank filed a demurrer which presented two questions of law, first that the State of Missouri was without authority to institute proceedings of this character against a national bank and, second, that the First National Bank was within its charter powers in establishing the branch bank in question.

Upon this issue of law the case was submitted. The record discloses no issue of fact, the bank having entered no denial of the allegations of fact set up in the information filed by the Attorney-General of the State.

The Supreme Court of Missouri held that the prohibition in the Missouri statute against the main-

tenance of branch banks applied to national banks and the contention of the State was upheld, judgment being rendered ousting the First National Bank from the location occupied by the branch.

The case was thereupon brought to the Supreme Court of the United States upon writ of error upon the same issue of law which was before the Supreme Court of Missouri.

This case coming on as it did at a time when the branch banking question was being hotly discussed in a number of States attracted a great deal of attention. There was an imposing array of counsel on each side, numbering in all thirty. On the brief of the Attorney-General for the State of Missouri there were also the Attorneys-General for the States of Illinois, Connecticut, North Dakota, Washington, Wisconsin, Iowa, Arkansas, Minnesota, Indiana, and Kansas. The Association Opposed to Branch Banking was also represented by counsel and a number of briefs were filed with leave of the court as *amici curiae*. Among these was the brief of Solicitor-General Beck who appeared on behalf of the government of the United States.

The case was argued before the Supreme Court on May 7, 1923 and was restored to the docket for reargument May 21, 1923 and was reargued November 21 and 22, 1923.

The Solicitor-General took the position that the

State of Missouri was without jurisdiction in attempting by *quo warranto* to inquire into the charter powers of a corporation created and supervised by the Federal Government. That to uphold the State of Missouri would involve an infringement upon the sovereignty of the United States whose jurisdiction over the charter powers of national banks was complete and all embracing. In discussing the merits of the case he agreed with counsel for the State that a national bank was without charter power to establish a branch bank for the conduct of a general banking business but that this lack of power was not inconsistent with the maintenance of city agencies of the banking house for the conduct of certain routine business found to be necessary under present conditions in order properly to carry on a banking business in certain cities. The question, however, of the authority to establish such agencies was not before the court in this case and formed no part of the opinion.

Mr. Justice Sutherland delivered the opinion of the court in which the contention of the State was upheld and the judgment of the Supreme Court of Missouri confirmed. Mr. Justice Van Devanter, Mr. Justice Butler, and Mr. Chief Justice Taft dissented from the majority opinion on the question of the jurisdiction of the State of Missouri to maintain this action.

In reaching this conclusion the Supreme Court held that a national bank has no charter power, express or implied, under the national banking laws to establish and maintain a branch bank and, therefore, when the First National Bank in St. Louis established a branch bank it was a clear violation of the Missouri statute. That the enforcement of the State law against a national bank did not in any way conflict with the laws of the United States because the prohibition therein was directed against acts which the Federal laws did not permit. The State was permitted to determine for itself whether the Federal statutes permitted a national bank to establish a branch bank and having determined that the power sought to be exercised by the bank had no justification in any law or authority of the United States, the way was open for the enforcement of the State statute by the State authorities.

In the light of this opinion how may a branch bank then be defined? The court followed Attorney-General Wickersham's opinion of May 11, 1911, which in turn was confirmatory of the long-established position of the Comptroller of the Currency. The following quotation from the Attorney-General's opinion has a direct bearing upon the organization and functions of a branch bank:

"In a branch bank, bills of exchange are negotiated and discounted; moneys received for deposit;

exchange, coin, and bullion are bought and sold; money is loaned, and every kind of banking business that is authorized is there transacted, unless it be the issuing and circulating of bank notes. In proportion to the amount of business transacted, the same capital is required to run the branch bank as to operate the parent bank. In the city of Atlanta no national bank can be organized for a less capital than \$200,000; and if a national bank in that city, having a capital stock of \$200,000, should establish a branch bank therein, the practical result would be that two banks would be in operation on a capital upon which only one bank is authorized to do business in that city; and each additional branch would, of course, constitute a further division of the capital in violation of the spirit of this section of the statute."

Along the same line Mr. Justice Sutherland in delivering the opinion in the present case said: "By Section 5138 Revised Statutes the minimum amount of capital is fixed in proportion to the population of the place where the bank is located. If it had been intended to allow the establishment by an association of not one bank only but, in addition, as many branch banks as it saw fit, it is remarkable, to say the least, that there should have been no provision for adjusting the capital to the latter contingency or for determining how or under what circumstances such

branch banks might be established or for regulating them. Section 5155 Revised Statutes provides that it shall be lawful for a State bank 'having branches, the capital being joint and assigned to and used by the mother-bank and branches in definite proportions, to become a national banking association . . . and to retain and keep in operation its branches . . . the amount of the circulation . . . to be regulated by the amount of capital assigned to and used by each.' This provision, confined by its terms, as it is, to existing State institutions, may be fairly considered as constituting an exception to the general rule, and the presence of safeguarding limitations in the excepted case, with their entire absence from the statute otherwise, goes far in the direction of confirming the conclusion that the general rule does not contemplate the establishment of branch banks. This apparently was the interpretation of Congress itself, since in two instances at least special legislation was deemed necessary to allow the establishment of branch banks, viz: at the Chicago Exposition, in 1892, c. 71, 27 Stat. 33, and at the St. Louis Exposition, in 1901, c. 864, 31 Stat. 1444, Sec. 21, the existence of the branch bank in each instance being expressly limited to the period of two years."

The Solicitor-General in his brief for the government after quoting Section 5155 Revised Statutes gave the following definition of a branch bank: "A

branch bank, therefore, as the term is used in the National Bank Act, by the Attorney-General, and by the office of the Comptroller of the Currency, is an institution partaking of the nature of a primary organization. To it may be allocated a proportionate share of the capital stock and the extent of its business is governed by the amount of such allocation. It has an organized personnel. In the officers at the branch there is vested the same character of authority, responsibility, and discretion as is vested in the officers at the parent bank. In so far as its practical operations are concerned, it is a complete substitute for a local bank in the locality which it serves. It engages in a general banking business in conjunction with and in subordination to, the parent bank. Practically a branch bank is in many respects a partly autonomous unit separately housed in its own banking house. It is to many intents and purposes an additional bank under the same board of directors, closely associated with the parent bank, but operating in most matters independently.

“Considering Section 5190 Revised Statutes, in the light of the above definition, the ‘banking house’ is the legal domicile of the bank from which its discretionary powers are exercised and in which its policies are formulated and approved. If a national banking association established a branch bank or banks it would be transacting its banking business

at more than one banking house. It would in effect be operating more than one bank. This power to multiply banking houses the law as interpreted for many years has consistently denied, and the refusal of Congress to authorize branch banking, as generally allowed in England and France, leaves no doubt as to the policy of the law.

“If, therefore, a national bank should attempt to establish and operate a branch bank, such action could be treated by the Comptroller as a violation of Section 5190 Revised Statutes. His remedy would be to invoke Section 5239 Revised Statutes, by bringing suit in his own name for forfeiture of charter of the bank.”

The First National Bank in St. Louis chose to meet the issue upon the question of its authority to establish and maintain branch banks in the city of St. Louis and in a clear-cut decision of the Supreme Court of the United States lost the case. What would have been the decision of the court had the First National Bank denied the fact of establishing and operating a branch bank and presented the issue upon the fact of having established an agency or additional office as a service instrumentality, has been a matter of considerable speculation. The court in the present case after referring to the Wickersham opinion of 1911 makes the following remarks in a footnote: “Our attention is directed

to a later opinion of the Attorney-General, dated October 3, 1923, which, although in terms affirming the earlier opinion, announces a limited rule which does not seem to be in precise agreement with it. To the extent of the disagreement, however, we accept the view of the earlier opinion." ^a These remarks are not a part of the opinion of the court and cannot be taken as an authoritative expression upon the legality of the establishment of agencies or additional offices by national banks. The facts and reasons for the establishment of such offices were not before the court and were argued before the court only in the brief of the Solicitor-General for the information of the court.

The only way in which an adequate opinion upon the home-city agency, additional office, or teller's window question could be rendered by the Supreme Court would be through an action brought against a national bank which established such instrumentalities upon a formal permit from the Comptroller of the Currency in a city in which the State banks, under the sanction of State law or authority, were engaged in the establishment and maintenance of similar instrumentalities. The question then would be not whether one board of directors could operate two banks upon the capital of one, such as is involved in the branch bank question decided in the St.

^a See 268 U. S., p. 658.

Louis case, but whether a national bank in order to preserve its existence may under its incidental powers extend its services to receive deposits and pay checks to places beyond the four walls of its banking house but within the limits of the city in which the bank is located. If a national bank possesses the charter power to perform all acts as may be necessary to carry on the business of banking, as it no doubt has both by legislative grant and by judicial decisions,⁴ has it not the authority incidentally to engage in a banking practice which has been established by the State banks, such as is involved in giving the community a banking service at more than one office in a given city? In the city of Detroit, for example, where without express authority of State law but under the theory of incidental powers the State banks have established nearly three hundred home-city offices as a means of rendering a more direct business service to their customers, how can a national bank engaged in exactly the same field of banking efficiently and adequately carry on its banking business unless it is recognized that it too has the incidental right to establish such agencies, not primarily upon the same grounds upon which the State banks exercise their incidental powers, but rather upon the stronger ground of the economic necessity

⁴ See Sec. 5136 Rev. Stat. of the United States. Also *First National Bank v. National Exchange Bank*, 92 U. S. 122.

of conforming to an accepted banking custom having its origin with the State banks?

In summary, the St. Louis case is simply a confirmation of the Departmental interpretation of Sections 5190 and 5136 of the Revised Statutes of the United States to the effect that a national bank is without authority to establish a branch bank for the conduct of a general banking business. This case, however, left untouched the whole question of the authority of national banks to establish home-city branches or additional offices for the purposes outlined above.

CHAPTER VII

BRANCH BANKING IN THE FEDERAL RESERVE SYSTEM

NEARLY 200 State member banks of the Federal Reserve System are engaged in branch banking and operate a total of nearly 1150 branches. Of these about 850 are home-city branches and about 300 are branches proper and located outside of the limits of the city in which the parent bank is located.

The situation created through the exercise of charter powers of these State member banks to establish branches while the national member banks are denied such powers has given serious concern to the Federal Reserve Board since the beginning of the Federal Reserve System,¹ and the Board has repeatedly recommended to Congress that the national banks be permitted to meet this competition of the State member banks, in the interest of uniformity of operations within the Federal Reserve System, and to prevent one group of member banks

¹ For an authoritative statement of the administrative policy of the Federal Reserve Board in connection with branch banking within the Federal Reserve System *see* Federal Reserve Bulletin for December, 1924, pp. 925-929.

from having a substantial advantage over another group.

The Board has given an exposition of this situation in the following language:²

“In one of its aspects the branch banking problem itself has been continuously presented to the Board. This aspect has been that developing out of competition of member and nonmember branch systems with national banks which operate under a prohibition of branch banking imposed upon them by Federal statute. In States which have permitted branch banking national banks have experienced the pressure of competition with the expanding branch systems of State institutions and have in numerous instances been absorbed into branch systems, or have in other instances surrendered their national charters and taken out charters under State laws which granted them branch-banking privileges. Under these conditions the Federal Reserve Board has given careful consideration to ways and means of enabling national banks to compete on terms of fair equality with State banks. In respect to national banks the Board’s branch banking policy has found expression in recommendations of amendatory legislation by Congress.”

In its second annual report to Congress,³ among

² See Federal Reserve Bulletin, December, 1924, p. 926.

³ See Annual Report, Federal Reserve Board, 1915, p. 22.

the recommendations for new legislation occurs the following: "(4) Permission should be granted to national banks to establish branch offices within the city, or within the county, in which they are located."

On August 26, 1916, the Senate voted favorably on a bill amending the Federal Reserve Act in several particulars; among them was an amendment to permit national banks in cities of more than 100,000 inhabitants and possessing capital and surplus of \$1,000,000 or more to establish branches. When the bill was passed by the House, this amendment permitting national banks to have home-city branches was stricken out. In conference the House insisted upon its disagreement and the Senate yielded by receding from this amendment.

In its annual report for 1916 the Federal Reserve Board again recommended to Congress the enactment of an amendment which would permit any national bank in a city of more than 100,000 population and possessing a capital and surplus of \$1,000,000 or more to establish not exceeding ten branches within the corporate limits of such city, but only in those States in which State banks or trust companies may lawfully establish branches.⁴

Again in its annual report for 1918 the Federal Reserve Board (p. 83) renewed its recommenda-

⁴ See Annual Report, Federal Reserve Board, 1916, p. 145.

tion for the enactment of the amendments above referred to and in support thereof used the following language: "In the opinion of the Board the proper development of the Federal Reserve System makes it necessary to coördinate as far as possible the powers of all member banks. Under existing law, State banks and trust companies in many cases are permitted to operate branches even after conversion into national banks, with the result that some member banks, both national and State, are given advantage over other member banks.

"The Board therefore renews its recommendation that this amendment be adopted, being confident that it will prove beneficial to the Federal Reserve System, as well as to the communities concerned."

The Board renewed its recommendation for branches for national banks in its annual report for 1919 (pp. 64-65), in the following language: "The Board has on several occasions recommended to Congress that the Federal Reserve Act be amended so as to permit national banks under certain conditions to establish branches within the corporate limits of the cities in which they are located. Under the present law national banks cannot afford the same facilities to the public as are given by State banks having branches, except in cases where State banks and trust companies operating branches have merged with national banks, when existing branches

may be continued by the national banks. The Senate has passed a bill authorizing national banks located in cities of not less than 500,000 inhabitants and having a capital and surplus of \$1,000,000 or more to establish branches not exceeding ten in number within the corporate limits of the cities in which they are located, provided the laws of the State extend a similar privilege to banking institutions operating under State charters. While the Board would prefer to have this privilege extended to national banks in cities of not less than 100,000 inhabitants, or, failing that, have the population limit raised to 200,000, it wishes to point out that the limit fixed in the Senate bill does not affect the principle involved, and it therefore respectfully recommends once more that national banks be permitted to establish branches in the cities in which they are located under such limitations as in the wisdom of Congress may be deemed desirable."

Again in its annual report for 1922 (p. 5), the Board refers to the branch-banking situation in the following language: "One of the developments in banking which has attracted considerable attention during the past year has been the establishment of branches by some of the larger State banks. Attention was drawn to this development largely because it had gone so far in a few States, notably California, and in a few large cities, including New

York, Cleveland, and Detroit, as to reduce greatly the number of national banks. In view of this fact, and of the fact that the national banking act does not prohibit the opening of additional offices of a national bank within the limits of the city mentioned in its charter, the Comptroller of the Currency has been permitting such banks to open additional offices in States where State banks are given the privilege of establishing branches."

In its report for the year 1923 (p. 48), the Board again makes the following reference to branch banking in the United States:

"The Board has called attention in previous reports to the growth of branch banking in some portions of the country. In the State of California the development has been rapid and continuous in recent years. The growth of branch banking presents a problem which is receiving the serious attention of the Board, with a view of finding a satisfactory method of dealing with the situation. The difficulties of the problem arise in part from the differences in the legislation of the various States and the competitive disadvantages suffered by national banks in States that permit branch banking. The Board is hopeful that it can by administrative measures find some reasonable method of harmonizing existing differences of interest of State and national banks in the matter of branch banking, and thus lay

the basis for a policy which will result in shaping the development and practice of branch banking in the United States along useful and serviceable lines."

Under the provisions of the first paragraph of Section 9 of the Federal Reserve Act which provides that the Board may permit applying banks to become members of the Federal Reserve System "subject to such conditions as it may prescribe," the Board had prior to November, 1923, in dealing with the question of branch banking by member banks, considered each case upon its own merits, setting out particular conditions for each applicant, to which such applicant was required to agree upon being admitted to membership. Common to all applicants was the requirement to agree to establish no branches without the permission of the Board. As a general administrative policy the Board in passing upon applications to establish branches took under consideration among other things the condition of the parent bank, the rate of expansion of a given branch system, coördination of branches already acquired, the character of the management, local conditions, and the public convenience and advantage. It should be borne in mind that such applications for branches would come before the Board only after they had been approved by the State Banking Department. The administrative

policy, therefore, of the Board with reference to branch banking has been developed through its actions upon individual applications of member banks for permission to establish branches.

On November 7, 1923, the Committee of the Board on Examinations recommended the adoption of a resolution wherein it was proposed that the Board as a general administrative policy announce the principle that State banks with extra-city branches should not be permitted to become members of the Federal Reserve System except upon condition that such branches be relinquished and further that member banks ought not to be permitted to establish such branches except in territory contiguous to the city in which the bank is located, "contiguous territory" being defined as a city whose corporate limits coincide at some point with the city in which the parent bank is located.⁵ On the same day this resolution was adopted by the Board. It was designed to become effective as a guiding principle in acting upon individual applications for branches after February 1, 1924, thus allowing sufficient intervening time to dispose of pending applications and for the submission of new applications for the purpose of executing plans already made by the banks concerned.

⁵ For full text of this report *see* Annual Report of the Comptroller of the Currency, 1923, pp. 13, 15.

In the spring of 1924 the Board again had this subject under consideration and on April 7, 1924, adopted a resolution amending the resolution of November 7, 1923, in several important particulars. The most notable of these was in the nature of an exception to Section I, which would permit the Board to depart from the principle of an absolute limitation of branches to the city and contiguous territory in instances where the State banking authorities have certified, and the Board finds, that public necessity and advantage render a departure from this principle necessary or desirable. Thus the Board reserved to itself the prerogative of permitting the further extension of State-wide branch banking by State member banks under the circumstances indicated. The practical effect of this resolution has been to retard the further extension of State-wide branch banking in the Federal Reserve System.

The amended resolution is incorporated in "Regulation H, Series of 1924." * Section IV (4) provides as a condition precedent to membership that no State member bank shall establish a branch except upon application to and approval by the Board. Section VI (2) enunciates the general principle that the Board will not consider an application for a branch unless the State authorities regularly make

* For full text *see* Appendix C.

satisfactory simultaneous examinations of head office and all branches; Section VI (3) that an adequate ratio of capital to total liabilities and an adequate percentage of liquidity in its total investments be maintained by the bank. Section VI (4) lays down the rule that the Board will not consider an application for a branch unless approval shall have first been given by the State authorities and report and recommendation has been made by the Federal Reserve Bank of the district in which the bank is located. Section VI (5) provides that if a branch is not opened within six months from the date of approval by the Board, the permit shall become void, unless the time is extended by the Board for cause and Section VI (6) that the Board reserves the right in the public interest to cancel any permit for cause.

From the foregoing it is apparent that the question of branch banking has been constantly before the Federal Reserve Board and that the Board has through its administrative policy held the branch activities of the State member banks in check pending the declaration of a legislative policy by Congress which would establish some sort of parity of charter powers in respect to branch banking between the State member and the national banks.

The Comptroller of the Currency, Mr. Henry M.

Dawes, in his annual reports for 1923 and 1924,⁷ speaking in behalf of the national banks, dwelt at length on the necessity for immediate action by Congress upon the question of branch banking in the Federal Reserve System. He recommended that the further extension of State-wide branch banking in the system be prohibited along the lines of the resolution of the Federal Reserve Board of November 7, 1923 as originally adopted, supplemented by a direct grant of power to the national banks to establish home-city branches at the discretion of the Comptroller, in those cities where the State banks had that power. He closed his recommendations of 1924 to Congress with these words:

“It is my deliberate opinion that if the general extension of branch banking is not curbed within the Federal Reserve System on the one hand, and if the national banks are not permitted equality within city limits on the other hand, defections from the national banking system will take place within a period of a very few years to such an extent as to reduce the national banking system to the position of an unimportant factor in the nation’s financial structure.”⁸

⁷ See 1923, pp. 7-9; 1924, pp. 3-6.

⁸ See Annual Report, 1924, p. 6.

CHAPTER VIII

THE McFADDEN NATIONAL BANK BILL IN THE FIRST SESSION OF THE SIXTY- EIGHTH CONGRESS

CHAIRMAN LOUIS T. McFADDEN of the House Committee on Banking and Currency, in response to a number of recommendations for amendments to the National Bank Act made to Congress, introduced a bill on February 11, 1924, which has become generally known as the "McFadden National Bank Bill."¹ Subsequently, on May 14, 1924, an almost identical bill was introduced in the Senate by Senator Pepper and the bill thereafter has been frequently referred to as the "McFadden-Pepper Bill."²

The method by which the recommendations for these amendments which formed the basis for the bill were originally formulated, as well as an explanation of the purpose and need for each one, is set

¹ H. R. 6855, 68th Congress, First Session. Reintroduced as H. R. 2, 69th Congress, First Session.

² S. 3316, 68th Congress, First Session. Reintroduced as S. 1782, 69th Congress, First Session.

forth at length in the annual report of the Comptroller for 1924 (pages 2-12).

This bill was designed to give to the national banks certain privileges, enlargement of charter powers, and protection in the conduct of the banking business already enjoyed by the State banks and trust companies, quite generally, under modern State banking codes. The bill was intended to contain no provision inimical to the interests of the State banks in any State (except certain limitations on branch banking by State member banks of the Federal Reserve System) and no enlargement of charter powers which had not already been demonstrated to be sound banking.³

The bill as originally introduced contained sixteen sections and as considered by the House Committee the confidential print had nineteen sections.⁴ The sections of the bill which created the most widespread interest, and over which the only controversy engendered by the bill was aroused, were those which proposed to legislate upon the subject of branch banking. There were two principal propositions on branch banking in the bill. The one prohibited the

³ For a detailed explanation of the bill section by section, see article by Chairman McFadden "To Lift National Bank Handicaps" in the Journal of the American Bankers Association, February, 1924. See also his speech in the House, June 9, 1924, Daily Congressional Record, pp. 11298-11301.

⁴ For text of the confidential print see House Hearings on H. R. 6855, 68th Congress, First Session, pp. 1-7.

further extension of State-wide or outside branches in the Federal Reserve System by State chartered banks and trust companies and the other gave permission to the national banks to have home-city branches in those cities where the State permitted State banks and trust companies to have such branches. Four sections of the bill dealt with the subject of branch banking.

Section 1 authorized State banks to consolidate directly with national banks under national charter. Under existing law such a consolidation cannot take place until after the State bank has converted into a national bank. This section contained a proviso making it unlawful for any such consolidated national bank to retain in operation any extra-city branches which may have been established after this bill becomes a law.⁵ Under this language a national bank could consolidate with a State bank with branches and thus acquire all branches, both home-city and extra-city, which the State bank had at the time this bill was approved. Extra-city branches established after the approval of the bill would have to be relinquished. This proviso contains no grant of additional authority to national banks to have branches but on the contrary is a restriction upon existing powers when read in connection with Section 7. By conversion under exist-

⁵ Confidential Committee Print, Sec. 1.

ing law any State bank may bring into the national system all of its branches wherever located.⁶

The second branch banking provision in the bill was in Section 7 which reënacted Section 5155 Revised Statutes with amendments. It provided that a State bank upon converting into a national bank might retain only home-city branches except that it might also retain any extra-city branches which had been established before the bill became a law.

The third reference to branch banking was in Section 8 which reënacted Section 5190 of the Revised Statutes with amendments. It authorized national banks in States which permitted branch banking to have home-city branches and prohibited absolutely the establishment by national banks of extra-city branches. The establishment and operations of all such home-city branches of national banks were subject to the approval and administrative regulation of the Comptroller of the Currency.

Section 9 of the bill proposed to amend Section 9 of the Federal Reserve Act by providing that after the bill is enacted into law State bank and trust company members of the Federal Reserve System would be required to confine their branch-banking activities to home-city branches only. That is to say, no State bank could become a member of the Federal Reserve System except upon the relinquish-

⁶ See Sec. 5155 Rev. Stat.

ment of any extra-city branches established after the approval of the bill and those State banks already members would not be permitted to establish any new extra-city branches. This is the section of the bill about which there has been a great deal of controversy since it involves a direct and positive limitation upon State-wide branch banking as carried on within the Federal Reserve System under the laws of several States by State member banks.

The term "branches" as used in the bill was defined as including branch banks, branch offices, branch agencies, additional offices or any branch place of business at which deposits are received or checks cashed or money loaned.

These four sections of the bill taken together represent the formulation of a policy which had been specifically recommended by the Comptroller of the Currency in his annual report to Congress for 1923. It was also in line with the general principle enunciated in the resolution of the Federal Reserve Board of November 7, 1923, except that the bill did not permit the expansion of branches into contiguous territory.⁷

Public hearings were held on the bill H. R. 6855 before the House Committee on Banking and Currency April 9, 15, 16, and 18, 1924. The only sec-

⁷ But *see* amended resolution of April 4, 1924, referred to on p. 79.

tions of the bill which received attention at the public hearings were those relating to branch banking to which reference has been made above. The Comptroller of the Currency, Mr. Henry M. Dawes, read to the Committee a prepared statement in which he reviewed the branch banking conditions in the Federal Reserve System and urged that national banks be protected by being permitted on the one hand to establish home-city branches where the State banks have them, and on the other hand by curbing the extra-city branch-banking activities of the State member banks. He gave figures to show that the national banking system in those States where branch banking is permitted to State banks was gradually losing prestige through the reduction in number of national banks due to the difficulty of competing with the State banks under the limited powers given by the national charter. He showed that the national banks as a whole had in the course of the last forty years dropped from the position of holding 75% of the commercial banking resources of the United States to only about 48% in 1924.*

* The recent compilation by R. N. Sims, Secretary of the National Association of Supervisors of State Banks, gives figures which indicate that in 1925 the total resources of national banks had dropped to 47% of the whole. See "Statement Showing Aggregate Resources, etc., of All Banking Institutions Under State Control Compiled from Statements Furnished by Heads of State Banking Departments, also an addendum covering aggre-

He took the position that branch banking (not including home-city branch banking in that term) was unadapted to American conditions and led to a concentration of financial control which was dangerous to the welfare of the community. He made an appeal for the salvation of the unit banks which formed the national system from the gradual but ultimate destruction which he saw imminent in the spread of branch banking under State laws. The national banks being compulsory members of the Federal Reserve System, Mr. Dawes pointed to the injustice of permitting great systems of branch-banking State banks, which were voluntary members, to enjoy the benefits and prerogatives of the system while at the same time the basic membership and the chief financial support fell upon the national banks large and small. He strongly urged the immediate passage of the bill.

Comptroller Dawes was followed by Mr. Edward Elliott, Vice President of the Security Trust and Savings Bank, Los Angeles, and Mr. John S. Drum, President, Mercantile Trust Company, San Francisco. These two gentlemen represented a group of California State member banks engaged in branch banking which were opposed to the provisions of Section 9 of the bill which undertook to limit the

gate Resources, etc., of all National Banks, taken from Reports of the Comptroller of the Currency and figures exhibiting total Bank Resources of the United States, issued July, 1925."

further establishment of extra-city branches within the Federal Reserve System. In this position they were supported at the hearings by Mr. J. G. Johnston, Superintendent of Banks of the State of California, and his counsel, James M. Oliver, Esq. On account of the important bearing of the position taken by this California group in opposing Section 9 of the bill, it is deemed advisable to devote a separate chapter to the presentation of their views.⁹

The Committee next heard bankers representing the smaller unit banks of California, these being Mr. J. S. MacDonnell, President of the First National Bank and of the First Trust and Savings Bank of Pasadena; Mr. W. F. Morrish, President of the First National Bank of Berkeley and the Berkeley Bank, and Mr. Howard Whipple, President of the First National Bank and the Commercial Bank of Turlock. Mr. Whipple was also President of the California League of Independent Bankers.

These three gentlemen talked at length on the branch-bank situation in California and discussed the methods by which the branch bankers proceeded to absorb the smaller banks in the State. This testimony from these California bankers was from the firing line so to speak and is replete with first-hand information and expressions regarding the development of branch banking under the California

⁹ See Chapter X.

law from the standpoint of the bankers themselves, large and small. The testimony of Messrs. MacDonnell, Morrish, and Whipple show in detail the extreme difficulty under which a small-unit bank struggles for existence in the face of the gradual spread of branch banking.

Two members of the Federal Reserve Board, in the person of Governor Crissinger and Vice Governor Platt, appeared before the Committee. Mr. Platt read a prepared statement to the Committee reviewing the development of branch banking outside of the Federal Reserve System in the Southern States. He also took issue with Comptroller Dawes on the branch banking question. He was in favor of permitting national banks to have the same privileges in branch banking as the State banks had and was opposed to Congress putting any restrictions upon the branch banking activities of the State member banks.¹⁰

Governor Crissinger also expressed opposition to Section 9 which prohibited the further extension of extra-city branches in the Federal Reserve System by restricting the State member banks to home-city branches. He expressed himself as being in favor of permitting national banks to have the same branch banking privileges as State banks in the several States. He agreed with the Comptroller

¹⁰ Hearings, pp. 205-231.

of the Currency that the situation was critical and that it was imperative that Congress take immediate action in order to prevent the rapid disintegration of the national banking system in those States which permitted branch banking to the State chartered banks.

The House Committee had the bill under consideration in executive session from April 22 to the 25th. The bill was taken up for discussion section by section and amendments proposed and voted on. A new bill embodying the views of the committee was ordered reported out.¹¹ This bill, H. R. 8887, was identical with H. R. 6855 except for the changes made by the Committee. In so far as these relate to branch banking they are here noted.

In Section 1, which provided for the consolidation of State with national banks, it was made unlawful for the consolidated association to retain in operation any extra-city branches which the State bank may have established, whereas the bill as originally introduced permitted the retention of those extra-city branches in existence prior to the final approval of the bill.

Section 7 provided that upon a State bank converting into a national bank it must relinquish all extra-city branches whereas the original bill per-

¹¹ House Report No. 583, 68th Congress, First Session, April 26, 1924.

mitted the retention of all such branches established prior to the final approval of the bill.

Section 8 was in practically the same language as the original bill in permitting national banks to have home-city branches in those States where the State banks were permitted to have them but went further and prohibited national banks from having any such branches in cities of less than 25,000 population; not more than one in cities of population between 25,000 and 50,000; not more than two in cities of population between 50,000 and 100,000; and in cities above 100,000 within the discretion of the Comptroller.

Section 9 required State banks upon becoming members of the Federal Reserve System to relinquish all extra-city branches whereas the original bill permitted the retention of all such branches which the bank had at the time of the approval of the bill. Section 9 also imposed the same limitation as to population upon State member banks as was imposed upon national banks in Section 8.

Thus it is seen that the bill as reported by the House Committee was more restrictive in its branch banking features than it was as originally introduced. H. R. 6855 would have barred from the national system and from the Federal Reserve System only those extra-city branches which might be established after the bill became a law whereas

H. R. 8887 would have barred from both systems all existing extra-city branches not already within it as well as all future extra-city branches.

The bill however was reported so late in the session, a little more than a month before the adjournment of Congress, that there was no chance of its being brought before the House in the regular course of business. It was necessary, therefore, for the Committee to seek a special rule from the Committee on Rules. At that time there were many other important public measures pressing upon the Rules Committee for urgent consideration and it was not until June 3rd that the special rule was granted bringing the McFadden National Bank Bill before the House. This left three days before adjournment.

In the meantime there had been three other developments outside of Congress having an important bearing upon the course of the bill. The Chicago and Cook County Bankers Association, on May 15th suggested certain amendments to the bill which would limit branch banking to those States which permitted branch banking at the time of the approval of the bill—so far as the national banking and the Federal Reserve Systems are concerned. If any State should, subsequent to the approval of the bill, enact legislation permitting branch banking in any form, under this principle the only banks which

could function under such a law would be the non-member State banks. The theory upon which these proposals were founded was that the powerful banking interests in the large cities, being practically all national or State member banks, would be deprived of any motive to seek branch banking legislation from the State legislatures. With this plan adopted it was anticipated that the chances of a non-branch banking State changing to a branch banking State would be very remote. The real urge behind these suggestions was the fear upon the part of the small neighborhood and outlying city banks that with branch banking limited even solely to home-city branches they would be faced with ultimate extinction. The principle thus advocated became embodied in what have become known as the Hull amendments. They were prepared by Congressman Morton D. Hull of Chicago but were not introduced until the next session of the Sixty-eighth Congress.

On May 22, 1924, Chairman McFadden made a formal reference of the bill to the Federal Reserve Board and on May 26th, the Board adopted a resolution urging the passage of the bill at that session of Congress. Senator Pepper in reporting an almost identical bill (S. 3316) on May 31st from the Senate Committee on Banking and Currency said: "While the policy of restricting branch banking is disap-

proved by a minority of the members of the Federal Reserve Board, the passage of the bill at this session is urged by resolution of the Board.”¹²

On May 28th, ten days before adjournment, officials of the National Association of Supervisors of State Banks filed a protest with Chairman McFadden upon the ground that the bill should contain an amendment protecting the State banks from the exercise of supervision over them by the Federal Reserve Board such as was embodied in Regulation H.¹³ It was contended that such matters should not be left to regulation by the Board but that all conditions of membership and all conditions of operation in the Federal Reserve System should be made statutory. Chairman McFadden agreed to offer an amendment depriving the Federal Reserve Board of all authority to pass upon the establishment of branches by State member banks, thus leaving the question of approval or disapproval solely to the State Bank Supervisors. This amendment was subsequently offered and passed the House. The association, however, took the position that this amendment did not go far enough.

In the meantime, on May 14th, Senator Pepper

¹² Senate Report No. 666, 68th Congress, First Session, p. 8. With reference to the relation of this resolution to an endorsement of Sec. 9 of the bill *see* remarks of Senator Glass in Senate Hearings, Part 2, pp. 77-79.

¹³ *See* Appendix C. *See also* Chapter VII.

introduced the bill in the Senate.¹⁴ It was under consideration by the Senate Committee on Banking and Currency from May 22nd to May 27th and was reported out on May 31st.¹⁵ In these closing days of the session there was the usual legislative jam in the Senate and it was impossible to get a new bill of this importance up for consideration. A similar situation existed in the House and although the bill there had the prestige of a special rule behind it during the last four days of the session it was of no avail under the circumstances. The first session of the Sixty-eighth Congress thus expired leaving the McFadden National Bank Bill pending in a privileged status in both the House and the Senate. The bill had however gained considerable publicity during these four months of its existence.

¹⁴ S. 3316, 68th Congress, First Session.

¹⁵ Senate Report 666, 68th Congress, First Session.

CHAPTER IX

THE McFADDEN NATIONAL BANK BILL IN THE SECOND SESSION OF THE SIXTY-EIGHTH CONGRESS

DURING the interim between the first and second sessions of the Sixty-eighth Congress the chief developments in the branch banking situation were the absorption of the Association Opposed to Branch Banking by the American Bankers Association, the former becoming the branch banking committee of the latter; the further discussion of the Hull amendments; and the endorsement of the McFadden bill by the unanimous vote of the American Bankers Association.

For a number of years there had been in the American Bankers Association a bitter controversy over the question of branch banking. Although the Association had gone on record as opposed to branch banking in any form there was a strong minority composed of national banks in branch banking States who favored home-city branches, and also a minority of State banks favorable to branch banking as conducted by them under State laws.

Friends of the national banks in the Association Opposed to Branch Banking began to see in the proposed Hull amendments the possibility of a compromise whereby the Association could go on record in favor of the McFadden National Bank Bill and at the same time be consistent in its position as opposed to branch banking. The McFadden bill as thus amended would be predominantly an anti-branch banking bill and the net result of its enactment would be a positive restriction on branch banking as a whole both as to outside and home-city branches.

The Association's Committee on Branch Banking therefore after due consideration approved the Hull amendments and in a report to the Association recommended the endorsement and early passage of the McFadden bill with these amendments incorporated. The Association at the Chicago convention of 1924 adopted a resolution on October 1st, without a dissenting vote, indorsing the bill as recommended by its branch-banking committee. Those opposed to branch banking in any form voted for the resolution because they believed the Hull amendments would practically preserve the existing status quo in the anti-branch States regardless of future changes in State legislation in favor of branch banking and because these amendments themselves would render the accomplishment of such changes highly

improbable. Those in favor of home-city branches for national banks in branch banking territory favored the resolution because under the terms of the bill the national banks, under reasonable restrictions, would be able to meet the competition engendered by the home-city branch-banking activities of the State banks.

The Hull amendments as thus endorsed by the convention would prohibit any State bank in a State which at the time of the enactment of the bill prohibited branches from bringing into the national system by conversion into or by consolidation with a national bank any branches, home-city or extra-city, which may have been established, under whatever authority, after the enactment of the bill. These amendments also put the same prohibitions upon State banks desiring to become members of the Federal Reserve System and upon those already members. For example, let us assume that the State of Illinois prohibited branch banking in every form at the time the McFadden bill with the Hull amendments was approved and that subsequent to that event the State legislature enacted a law which permitted home-city branches for State banks in the city of Chicago. Under these circumstances no national bank in Chicago could establish *de novo* a home-city branch nor could it acquire any by consolidation with a State bank with branches. State

banks in Chicago with branches thus acquired could not convert into national banks or become members of the Federal Reserve System except by giving up their branches nor could they consolidate with a national bank under national charter except upon like conditions. No State member bank in Chicago could establish or otherwise acquire any such branches. Under the Hull amendments, therefore, the only banks in Chicago which could avail themselves of the authority of such new State legislation would be those State banks which were not members of the Federal Reserve System.

Proponents of the Hull amendments, however, assume that so long as they remain in force there would be no legislation enacted by the Illinois legislature which would permit home-city branches in Chicago for the reason that such a measure if proposed would not have the support but rather the opposition of all of the national and State member banks of the Federal Reserve System. In other words, all of the big downtown banks, the only banks which would have any reason to establish home-city branches, would not only not derive any benefit from such legislation but would be embarrassed by it.¹

The second session of the Sixty-eighth Congress

¹ For text of the Hull amendments as they passed the House *see* H. R. 8887, Sec. 1, Sec. 7, Sec. 8, and Sec. 9; and as reported to the Senate *see* H. R. 8887, Sec. 1, Sec. 7, and Sec. 8. The full text of these sections is printed in Appendix D, p. 159.

was the short session, lasting from the first Monday in December, 1924, to March 4, 1925, when the life of that Congress expired by the customary operation of law. The McFadden bill was one of the first measures of general legislation to be taken up by the House. On January 9th the Chairman of the Committee on Rules reported out a special rule, making it in order for the House to proceed immediately to the consideration of H. R. 8887. This rule was forthwith adopted and debate on the bill proceeded. It was confined principally to the question of branch banking. The opposition in the House came from those who were opposed to every form of domestic branch banking. It centered around Section 8 of the bill which would give the national banks a limited right to have home-city branches where the State banks had them. The House, however, was overwhelmingly in favor of this permissive grant, for on the final vote on the bill on June 14 the count on a division was 172 ayes to 65 noes. Had there been a record vote the majority would doubtless have been greater. The only record vote that was taken was the vote to recommit the bill. This showed 90 yeas and 236 nays.

The Hull amendments were adopted as presented by Mr. Morton D. Hull by a vote of 129 to 63.

On the following day, January 15th, the bill went

over to the Senate, where it was immediately referred to the Senate Committee on Banking and Currency. Hearings were held on January 19th, 26th, 29th, and 30th following which the bill received consideration by the committee in executive session.

The chief feature of these hearings, so far as the branch-banking question is concerned, was the documentary presentation by Senator Glass of the views of certain officials of the Federal Reserve Banks and a reiteration of the opposition of certain California State bankers to Section 9 of the bill as it passed the House.²

Among the data presented by Senator Glass was a statement from the Executive Committee of the Federal Advisory Council in which they endorsed the main purpose of the bill and urged its enactment but strongly objected to the Hull amendments upon the ground that they imposed unfair limitations upon both national and State member banks in those States which might permit branch banking in the future. He also presented a statement from the Federal Reserve Agent at San Francisco in opposition to restrictions upon branch-banking activities proposed by Section 9 of the bill upon the ground that branch banking in a State like Cali-

² For a detailed presentation of the position of these California bankers see Chapter X.

ifornia has proven helpful and should not be disturbed by Federal legislation; also statements from the Governor of the Federal Reserve Bank at Richmond, the Governor of the Federal Reserve Bank at Boston, the Governor of the Federal Reserve Bank at Atlanta, and the Federal Reserve Agent at New York, each of whom was opposed to Section 9 and the Hull amendments; a statement from the Federal Reserve Agent at Chicago, in opposition to Section 9; and statements from the Governor of the Federal Reserve Bank of New York, the Governor of the Federal Reserve Bank of Minneapolis, and Federal Reserve Agent at Minneapolis, in opposition to the Hull amendments. (See Hearings before the Committee on Banking and Currency, U. S. Senate, 68th Congress, 2d Session, S. 3316 and H. R. 8887, part two, pages 52 to 64.)

The bill as favorably reported to the Senate contained the following amendments relating to branch banking: Section 1 and Section 7 were amended to permit a State bank to bring into the national system by consolidation with a national bank or by conversion into a national bank all extra-city branches which it had at the time the bill became enacted into law and Section 8 was amended to permit national banks to establish home-city branches also in contiguous territory in those cases where the Comptroller found such contiguous terri-

tory was a commercial unit with the city in which the bank is located. Section 9 as it passed the House was stricken out entirely.

The effect, therefore, of the Senate Committee amendments was to permit the continuance of State-wide branch banking within the Federal Reserve System and also to permit national banks to have home-city branches in the city and contiguous territory in those States permitting branch banking. When Section 9 was stricken out, the Hull amendments applicable to State member banks also disappeared, but the Hull amendments as passed by the House, imposing restrictions upon national banks in those States which might in the future permit branch banking, were left intact. Under the bill, therefore, as reported by the Senate Committee State member banks could avail themselves of the provisions of branch-banking laws wherever or whenever enacted without detriment to their status as Federal Reserve members, whereas national banks would be prohibited from having either extra-city or home-city branches in a State which did not permit branch banking at the time of approval of the bill and in those other States which permitted State-wide branch banking national banks would be limited to home-city branches.

The bill was reported to the Senate on February 6th, less than a month before the date of final ad-

journalment. The steering committee of the Senate included this bill in a list of ten measures to be passed before March 4th. As is usual with the closing days of the short session of Congress in the Senate it was very difficult to gain consideration of general legislation. On February 19th it was agreed to consider the bill at night sessions of the Senate and subsequently, by unanimous consent, it was made the unfinished business of the Senate with a view to being taken up each day automatically until a disposition had been made. The condition of the business in the Senate was such, however, as practically to require unanimous consent for any business to be transacted. Many Senators had other measures in which they were particularly interested and important conference reports on appropriation bills were pending and had the right of way. Senator Pepper presented the bill to the Senate on February 19th and February 23rd, following which there was intermittent debate until the close of the session. The bill remained in its privileged status as the unfinished business until the last day of the session, but it was found impossible under the circumstances to bring it to a vote. It was evident that Senators desired a fuller opportunity to debate the bill than was afforded during these closing days of Congress.

Section 9 of H. R. 8887 as it passed the House

was designed to restrict the branch banking activities of the State member banks of the Federal Reserve System to the same scope as that authorized for national banks in Section 8. That is to say national banks were to be permitted to have home-city branches wherever the State banks had them and State member banks in those States which permitted extra-city branches were to be restricted in the future to the establishment of home-city branches.³

In a State like California this would mean that non-member State banks having extra-city branches could not become members of the Federal Reserve System without giving up or dismantling themselves of all branches outside of the home city of the parent bank, and on the other hand State banks already members, while being permitted to retain the extra-city branches they already had, would be prohibited from establishing any more such branches. In other words, it was the House position that State member banks in such a State would have to forego the exercise of the full measure of their charter powers to engage in branch banking in return for the privileges and benefits derived from membership in the Federal Reserve System.

In approving Section 9 the House acted upon the theory that the establishment of branches outside

³ For text of Sections 8 and 9 see Appendix D, p. 159.

of the home city of the bank was inherently wrong in principle and should be made contrary to the public policy of the United States by prohibiting its further spread within the Federal Reserve System.

The branch-banking provisions of the bill as originally recommended by the Comptroller of the Currency and as reported to the House Committee by its committee on Banking and Currency proceeded upon the theory that home-city branch banking did not involve the same issues as those involved in the establishment of branches outside of the city in which the parent bank is located. Under this view, the establishment of home-city branches was not inherently wrong or unsound but was a matter which should be left, as a matter of local self-government, to the respective State legislatures, and wherever a State permitted them to the State banks the national banks should likewise be permitted to establish them.

The House, however, in approving the Hull amendments, changed the theory of the bill as to home-city branches by declaring the establishment of home-city branches in what is now non-branch-banking territory to be contrary to the public policy of the United States. This is shown by the absolute prohibition upon both national and State member banks from having home-city branches (as well as

from having extra-city branches) in every State which at the time of the enactment of the bill does not permit home-city branches.

The philosophy of the House position, therefore, seems to be generally adverse to all forms of branch banking, but it recognizes the practical condition which the presence of branch banking in many States presents. It would have been conceivably possible to force both national and State member banks to give up all branches, both home-city and extra-city, which they have at the present time and absolutely to prohibit them from having any additional branches of any kind in the future. This would have been one way of placing the national and State member banks in the Federal Reserve System upon the same plane of operation so far as branch banking is concerned. A procedure so drastic, however, was deemed unwise and impracticable by even the strongest opponents of branch banking and no such proposal was seriously advanced.

The House, therefore, recognized and attempted to regulate and limit the further establishment of home-city branches by confining the future development thereof to those cities in which it has already become established under the State laws. State member banks being thus permitted to continue to engage in home-city branch banking, it became logi-

cally necessary for the House to permit the national banks also to have home-city branches in these particular cities. The continuation of home-city branch banking by the State member banks and a denial to the national banks of the power to have home-city branches would have meant not a limitation upon home-city branch banking in these cities but rather the ultimate extermination of the national banks therein. While thus declaring home-city branch banking to be against public policy so far as the Federal Reserve System and the national banking system are concerned in those cities where home-city branch banking is not now permitted, the House nevertheless by permitting national banks to compete with the State member banks in establishing home-city branches, where such State member banks already have this power, recognized the fact that so far as the individual bank is concerned home-city branch banking may be an advantage. That is to say, other things being equal, a bank not having the authority to establish home-city branches in a large city where other banks have that power is in a weaker position in building up and holding its business. The House, therefore, conceded to the national banks this limited power on account of conditions beyond the practical control of Congress. It was necessary for public policy to adapt itself to existing conditions.

On December 7, 1925, the opening day of the Sixty-ninth Congress, Chairman McFadden reintroduced his national bank bill⁴ embodying the same branch banking policy as contained in H. R. 8887 as it passed the House January 14, 1925. Senator Pepper also introduced the identical bill in the Senate December 17, 1925.⁵

⁴ H. R. 2, 69th Congress, First Session. See Appendix D, pp. 164, 170, for text of the sections relating to branch banking.

⁵ S. 1782, 69th Congress, First Session.

CHAPTER X

SPECIAL PLEA OF THE CALIFORNIA BRANCH BANKERS

A GROUP of California State bankers engaged in branch banking appeared before the House and Senate Committees on Banking and Currency and made a protest against the policy proposed to be enacted in Section 9.¹ The banks which they represented are members of the Federal Reserve System. From the representations made by them there emerge

¹ Mr. John S. Drum, President of the Mercantile Trust Company of San Francisco, and Mr. Edward Elliott, Vice President of the Security Trust and Savings Bank of Los Angeles, appeared before the House Committee in behalf of the banks of which they were officers and also of the following banks: The Pacific Southwest Trust and Savings Bank of Los Angeles, and the American Bank of Oakland. (House Hearings, p. 105.) Mr. Drum also appeared before the Senate Committee as a representative of his bank, the Mercantile Trust Company of San Francisco, and of the Security Trust and Savings Bank of Los Angeles, the Pacific Southwest Trust and Savings Bank of Los Angeles, and the American Bank of Oakland. Mr. Frank T. Flint, an attorney from California, appeared before the Senate Committee as representing the California banks "engaged in branch banking, having State-wide branches." (Senate Hearings, Pt. 2, pp. 66, 72, 119. See also article by Mr. J. F. Sartori, President of the Security Trust and Savings Bank of Los Angeles, "McFadden Bill Opposed," in Los Angeles Daily Times, December 5, 1924, Pt. 1, p. 16.)

three principal objections to the proposed limitation upon the establishment of extra-city branches by State member banks in the Federal Reserve System. The most important of these is in the nature of a special plea based upon the manner in which these branch banking systems in California entered the Federal Reserve System. In addition they maintained that branch banking is a positive benefit to the State of California and should be allowed to continue its development under the State laws. They further pointed out that so far as California is concerned the limitations in Section 9 of the McFadden bill would weaken the Federal Reserve System instead of strengthening it because the State member banks would be tempted to leave the system in order to preserve the privilege of continuing the establishment of extra-city branches.

As to the first point, it is shown that California is a great agricultural State with a wide diversity of agricultural products over an extensive geographical area. It is not a one or two-crop State having a State-wide seasonal marketing period. On the contrary the State has a number of one-crop sections with its specific seasonal marketing period. Some of these sections are as large as some of the smaller eastern States. Within them are cultivated rice, citrous fruits, cotton, grain, beans, beets, apples, lettuce, and other vegetables, aspara-

gus, raisins, prunes, walnuts, almonds, berries, and the like, in large quantities for the market. In each of these sections there is a peak-load demand for funds for marketing, but this demand is distributed throughout the various months from January to December. In addition to these agricultural industries there are canning industries, lumber industries, and numerous industrial and manufacturing enterprises at various points in the State. This economic situation it is urged presents a special need for the character of services offered by branch banking. The branch banking system is able to use the same funds over and over again in California because it is able to meet the marketing demands in one section before there is a demand for marketing in another section. The money received from the liquidation of the agricultural products in a particular section is sent by the branch bank to the head office which sends it to some other branch where it is needed and so on throughout the year. It is contended that a unit bank located in one of these sections could only finance the marketing of the particular crop cultivated in the vicinity of the bank but during the rest of the year the State industries would gain no benefit from these funds because the unit bank could not lawfully do business outside of its own section. As a consequence such a local bank would be driven to invest these funds in outside securities.

It would also be subject to all of the hazards involved in a one-crop section.*

On account, therefore, of the peculiar geographical and economic conditions in California, where branch banking has been successfully conducted for many years past, it is urged that any proposed restriction by the Federal Government as set forth in Section 9 would work an injury to the State.

The second principal objection urged by California is that if Section 9 be enacted into law as a Federal banking policy the State member banks in California would be faced with the alternative of making a choice between the right to continue the establishment of branches under the State law and the privilege of remaining in the Federal Reserve System without such right. In view of the fact that the bulk of the deposits in these branch banking systems are in the nature of savings deposits these banks do not derive very much immediate and direct benefit from the Federal Reserve System. That is to say, they have no occasion to borrow from the Federal Reserve Bank at San Francisco, in fact some of them could not do so to any considerable extent on account of the character of paper held by them which is necessarily largely non-commercial. They contend, therefore, that they are supporting the Federal Reserve System at a cor-

* See House Hearings, pp. 64-139.

porate loss but are willing to do so because they believe the Federal Reserve System is so great a benefit to the country that it deserves the support of the entire banking community.

They emphasized the fact that there was in California several large branch banking systems outside of the Federal Reserve System. These would not be limited in any way in their branch banking activities by Section 9 and as a consequence could proceed under the State laws to develop while the State member banks would have to stand still and suffer a competition which they could not meet. Under these circumstances the question is raised whether the ties which bind these branch banking systems in California to the Federal Reserve System would be strong enough to hold them. It was suggested that self-interest would compel these member banks eventually to desert the Federal Reserve System. In such an event the Federal Reserve System in the Twelfth District would be greatly weakened by a tremendous loss of resources and furthermore the national banks would be left without any protection from the competition of State-wide branches. Section 9, therefore, in practical operation would defeat the very purpose for which it is designed. Instead of protecting the national banks it would leave them with the entire burden of supporting the San Francisco Federal Reserve Bank in the face of even

greater competition from State branch banking systems than now exists.

In the third place it is contended by this group of California bankers that the Federal Government, by virtue of the amendment of 1917 to the Federal Reserve Act and the understanding with the Federal Reserve Board which these banks had thereunder, is under a moral obligation which would be violated were the limitations in Section 9 enacted into law.⁸ It is represented that the state of facts given below furnishes the basis for this moral obligation of the Government of the United States.

During the War when the Federal Reserve System had scarcely gotten under way and not many State banks had come in, the President of the United States wrote a letter to the Governor of the Federal Reserve Board and made the definite request that all of the large State banks in California come into the System immediately. At that time it is said that the California State banks had about 10% of all of the outstanding gold in the United States.

Upon the communication of this request to the California banks, meetings were held in San Francisco and Los Angeles. The Federal Reserve Agent definitely urged the larger State banks to enter the System. It was pointed out to him that under the

⁸ See House Hearings, 54-60, pp. 84-89; and Senate Hearings, 74-79-83-119.

State law these California banks were forced to maintain certain reserves which would have to be duplicated if they joined the Federal Reserve System. In view of this obstacle a committee of these branch banking systems came to Washington late in 1917 and appeared before the Federal Reserve Board. Here they presented the question of government reserves, and also the further question as to what would be the policy of the Board toward the charter powers of State banks. The Board pointed out that Congress had already answered that question by the 1917 amendments permitting the State banks to come in with their charter powers unimpaired.

With these assurances they returned to California and at the request of the Board attempted to induce the Governor of the State to call a special session of the legislature to enact an amendment relieving them of the duplication of reserves, but in this they were unsuccessful. In the meantime the War came to an abrupt close. Pressure, however, was still exerted by Federal authorities for these California State banks to come into the Federal Reserve System and at a subsequent session of the State legislature they proceeded to work out an amendment to the California Bank Act to the effect that the reserves maintained in the Federal Reserve System would also serve as reserves to the State

system. This was enacted into law. Several of the large State branch banking institutions then joined the Federal Reserve System, but one of them asked for still further assurances from the Federal Reserve Board, particularly as to its policy with reference to branch banking. This particular bank wrote a letter to the Federal Reserve Bank in San Francisco seeking information as to what conditions the Board would make in the matter of branches, and in reply received a letter from the Federal Reserve Agent and Chairman of the Board of that Federal Reserve Bank to the effect that the Board was not opposed to the principle of branch banking; that it would only reserve the right to approve the establishment of new branches in order that it may be assured that the bank's general strength and liquidity would not suffer. Therefore, the Board would exact from each such bank as a condition precedent to membership that it would agree to establish no branches except with the approval of the Board. It was stated to this bank that it need not hesitate to come into the Federal Reserve System on account of any apprehension as to difficulties which might be interposed by the Board to the maintenance of branches or establishing new ones. Upon these representations this bank also became a member.⁶

⁶ For text of this correspondence see *House Hearings*, pp. 55-59.

These State banks came in during the year 1919. It is their contention that having come in not upon their own solicitation but at the request of the President of the United States upon the ground that the resources held by them were necessary for the development of other sections of the Twelfth Federal Reserve District, and having been assured both by Act of Congress and by the Board that their charter powers would remain unimpaired by virtue of membership in the Federal Reserve System, that Congress although it may have the legal and constitutional right to enact Section 9 has not the moral right so to do. They insist that Section 9, being not an amendment to the National Bank Act but to the Federal Reserve Act, is an abrogation of the guarantees made by Congress in the amendment to that Act in 1917.

This group of California branch banking systems make no objection to the proposed grant of authority by Congress to national banks to engage in home-city branch banking as provided in Section 8 of the bill. They would go further and amend Section 8 to permit national banks to have all of the powers to engage in branch banking, both home city and outside, which the State banks have. In other words, they have no objection to seeing all of the banks in California possessed of the charter powers necessary to enable them to engage in State-wide

branch banking. So far as California is concerned they are in favor of branch banking in its widest application and would support the general arguments in favor of branch banking set forth in the first chapter of this work.

CHAPTER XI

REASONS ADVANCED FOR BRANCH-BANKING RESTRICTIONS IN THE FEDERAL RESERVE SYSTEM.¹

Those in favor of the restrictions upon State-wide branch banking which are set forth in Section 9 of the McFadden National Bank Bill take the position that the real issue involved presents a broader question than the relationship of the Federal Reserve System to a half dozen or more State banks in California. They see in the continued establishment of outside branches by State bank members of the Federal Reserve System the gradual development of a force which will ultimately destroy the Federal Reserve System itself. Section 9, therefore, in their opinion, presents to Congress an issue of great importance in which is involved the fate not only of the national banks but of the traditional American

¹ See article "Why Section 9 is necessary to the National Bank Bill," by Hon. L. T. McFadden, Chairman of the House Committee on Banking and Currency, in the American Bankers Association Journal, November, 1925; also a paper "The Reasons for Section 9 of the McFadden National Bank Bill," printed and circulated by the National Bank Publicity Committee, Washington, 1925.

system of banking which has reached its present strength through the operations of independent unit banks, large and small, rural and urban.

When Congress, after mature deliberation, determined upon the financial policy which led to the establishment of the Federal Reserve System, it chose as the foundation for that System the system of national banks over the charter powers of which it had absolute control. All of the national banks were brought into the System by compulsion. The question is raised whether Congress could create a Federal Reserve System in any other way. The conditions under which the national banks are required to operate within the Federal Reserve System are in effect the same conditions under which they operate as national banks, that is to say, the corporate powers of the national banks are derived solely from Congress and may be changed from time to time as Congress may desire to readjust the banking policy of the Government.

Congress saw fit, however, to extend to the State banks an invitation to become members of the Federal Reserve System upon certain conditions. One of these conditions, embodied in Section 9 of the Federal Reserve Act, was that the Federal Reserve Board should consider "whether or not the corporate powers exercised (by such State bank) are consistent with the purposes of this Act." About four

years later, the year 1917, the State banks not having been attracted to the Federal Reserve System, and it being desired to strengthen the resources of that System on account of the War, Congress amended the Federal Reserve Act by permitting State banks upon becoming members to retain their full charter and statutory rights under the State laws but "subject to the provisions of this Act and to the regulations of the Board made pursuant thereto."

Bearing in mind that the Federal Reserve System is a Federal instrumentality for the coördination of banking resources and banking operations in their relationship to the public interest, it is necessary at all times that the Federal Government have complete control either through its legislative branch or through agencies set up by Congress over the conditions under which the constituent members thereof carry on their banking operations. While Congress may control these conditions directly so far as the national banks are concerned, it can only control the State chartered banks through setting up conditions which would compel them to conform to the purposes of the Federal Reserve Act itself.

The conditions of membership of all member banks, both State and national, may be changed from time to time as public policy may determine—those of the national banks by direct amendment of

their charter powers, and those of the State banks by modifying or changing the conditions under which State banks may become or may continue to operate as members. Neither the national banks nor the State banks acquire any vested right to exercise all of the charter powers as members of the Federal Reserve System which they possessed at the time of entrance therein. Congress is free at all times to exercise complete control over the instrumentalities which it has set up. It is not only within the legal right of Congress to change the conditions and qualifications for Federal Reserve membership of both State and national banks but it becomes the duty of Congress in the discharge of its responsibility to the public to make from time to time such amendments to the Federal Reserve Act as may in its judgment be necessary to the preservation and enforcement of a sound national financial policy.

It is further pointed out that although the Federal Reserve System has been open to the membership of the State banks and trust companies for about eight years, they have shown no great enthusiasm to enter. Of a total of about 21,000 State banks in the United States, only about 1,475 are members. These State bank members have the privilege of withdrawing at will upon six months' notice. They are not bound to the System. On the other hand, the 8,000 national banks are un-

conditional members. They cannot withdraw. It is upon them that the burden of carrying on the Federal Reserve System logically falls.

Here is where Congress is directly faced with an issue. Branch banking by State member banks has reached such proportions within the Federal Reserve System in some localities—notably in California—that it is necessary for Congress to declare a national branch-banking policy. Now, it is argued, there are two positions that Congress can logically take. One is to accept the views of those favoring branch banking and to permit national banks to engage not only in State-wide but in nation-wide branch banking, and so far as conditions upon membership in the Federal Reserve System are concerned to make no objection to State member banks enjoying equal privileges. This would put the stamp of approval upon branch banking and would definitely commit the nation to the system of banking in vogue in European countries and in the British Isles and dominions.

But, it is urged, Congress has repeatedly refused to sanction branch banking as a national policy. Branch banking has no substantial support in this country, either among the rank and file of State and national bankers or among the people at large. The establishment of outside branches is prohibited by law in nearly all of the States. Many groups of

bankers, including the American Bankers Association itself, have condemned the practice as unsound and dangerous. At a recent popular vote upon referendum in the State of Illinois, branch banking was prohibited by a vote of more than two to one.

The other position, therefore, which Congress can take is to continue its prohibition of outside branches upon the national banks and at the same time establish a new condition of membership in the Federal Reserve System for State banks, which will prohibit the further spread of State-wide branch banking therein. This is exactly what the House of Representatives did when they passed the McFadden National Bank Bill with Section 9 in it at the last session of Congress.

The proponents of Section 9 do not concede the right of the California branch bankers to complain of this action by the House. They see no virtue or logic in the argument that Congress has not the moral right to change the conditions of membership of those State banks which came into the Federal Reserve System by the invitation and solicitation of Federal officials. They reply that these California State banks have come into the System and have become engaged in a form of banking inimical to public welfare and subversive of the fundamental principles upon which has been built up the greatest system of banking in the world. These few State

bankers cannot, therefore, be heard to complain if Congress becomes aroused over the growth of branch banking and takes steps to protect the small banks, both national and State, by limiting the State bank membership of the Federal Reserve System only to those State banks which are willing to refrain from the establishment of any additional outside branches even though the State laws permit it.

To accept any other view, it is urged, would be tantamount to taking the position that the State banks have an inherent right to membership in the Federal Reserve System upon conditions fixed by the respective State legislatures. If this line of reasoning were followed to its logical conclusion it would lead to an absurdity. This question was settled when Congress enacted the Federal Reserve Act wherein State member banks are required to conform, in the exercise of their charter powers, to the purposes of the Act.

The administrative agency set up by Congress, namely, the Federal Reserve Board, is charged with the duty of enforcing this provision. To this end it has issued rules and regulations setting forth specific conditions to which every State bank must conform upon entering the Federal Reserve System. Therefore, it is pointed out, the State banks thus become bound by a Federal policy which transcends the policy of any particular State. In voluntarily

becoming members of a Federal instrumentality and in participating in the benefits thereof they incur an obligation to the Federal Government and to the extent of their relationship to the Federal Reserve System they are amenable to the will of Congress at all times. If at any time they find it to their greater advantage to resume operations solely under the State laws they are at liberty to dissipate their dual relationship without any interference from the Federal Government.

How then, it is asked, can a State member bank be heard to insist upon the right to exercise within the Federal Reserve System all of the charter powers of whatever nature which may be granted to it by the State legislature and to go even further and to insist that Congress adjust its financial policy to that of the State legislature by granting to the national banks in the State in question whatever charter powers that may be possessed by the State banks? Not only would such a procedure lead to the complete decentralization of the national banking system but it would be an abdication by Congress of its power and duty to establish a national financial policy in the interest of the general public. For the past sixty-two years Congress has exercised its right to control the dominant banking policy of the country, first by the establishment of a system of national banks under strict Federal control and

supervision, and second by using these national banks as a sure foundation of a wider system of banking control, namely, the Federal Reserve System. Thus for more than half a century the standards of commercial banking have been set up and developed under a national policy. This policy grows out of the public need of some form of general control over the instrumentalities of credit. It is by its very nature vested with a national interest.

In answer to those who contend that the restrictions upon branch banking in Section 9 constitute an indirect invasion of the rights of the States, the proponents of Section 9 enter a vigorous denial. They point out that the few State banks which make this objection lose sight of the fact that Congress has no power to limit the charter powers of the State banks and trust companies. Those powers are derived solely from the State legislatures. After Section 9 goes into effect the forty-eight State banking systems remain intact. In those States which permit State-wide branch banking the State banks which are Federal Reserve members may have to choose between the benefits of the Federal Reserve membership on the one hand the right to engage in branch banking under the State laws on the other. There is nothing in the bill which would restrict any non-member bank in any way. The State legislatures, the State executive officials, and

the State banks remain free to pursue their own banking policies.

It is recognized, however, that there may be a conflict between a State banking policy and the national banking policy, such as is presented by State laws permitting State-wide branch banking. But if in such a case the Federal government proceeds to protect its own interests by pursuing an independent policy with regard to the Federal instrumentalities, namely, the national bank system and the Federal Reserve System—no issue of States' rights is presented. The question of States' rights can be raised only upon the assumption that each State has a right to name the conditions under which the charter powers of its banks may be exercised as members of the Federal Reserve System and, therefore, any condition set up by Congress in conflict with those prescribed by a State is an infringement upon the rights of the State legislature. Such an assumption, it is argued, involves not only an unworkable scheme but is itself unconstitutional and constitutes an invasion of the rights of the Federal Government.

APPENDIX A

OPINION OF ATTORNEY-GENERAL HARRY M. DAUGHERTY

October 3, 1923.

POWER OF NATIONAL BANKING ASSOCIATIONS TO ESTABLISH OFFICES

SIR:

I have your letter of August 30, 1923, requesting my opinion on the power of national banking associations to open and operate offices at places other than their banking houses for the performance of such routine services as the receipt of deposits and cashing of checks for their customers. You request to be advised whether:

(1) Assuming that a national banking association is without power to establish and maintain a branch bank for carrying on a general banking business, has it the corporate power to open and operate an office or offices at a place or places other than its banking house, for the performance of such routine services as the collection of deposits and cashing of checks for its customers?

(2) If a national banking association has the corporate power to open and operate such an office or offices,

must they be located within the city limits of the place designated in the organization certificate of the association as the place where its operations of discount and deposit would be carried on?

The statutes relating to national banking associations, so far as they are material to our present inquiry, are Sections 5133, 5134 (Par. 2), 5136 (Par. 6 and 7), and 5190 R. S. The material parts of said statutes read as follows:

“Sec. 5133. Associations for carrying on the business of banking under this title may be formed by any number of natural persons, not less in any case than five. They shall enter into articles of association, which shall specify in general terms the object for which the association is formed, and may contain any other provisions, not inconsistent with law, which the associations may see fit to adopt for the regulation of its business and the conduct of its affairs.”

“Sec. 5134. The persons uniting to form such an association shall, under their hands, make an organization certificate, which shall specifically state:

* * * * *

Second. The place where its operation of discount and deposit are to be carried on, designating the State, Territory, or district, and the particular county and city, town, or village.”

“Sec. 5136. Upon duly making and filing articles of association and an organization certificate, the association shall become, as from the date of the execution of its organization certificate, a body corporate, and as

such, and in the name designated in the organization certificate, it shall have power—

* * * * *

Sixth. To prescribe, by its board of directors, by-laws, not inconsistent with law, regulating the manner in which the stock shall be transferred, its directors elected or appointed, its officers appointed, its property transferred, its general business conducted, and the privileges granted to it by law exercised and enjoyed.

Seventh. To exercise by its board of directors, or duly authorized officers or agents, subject to law, all such incidental powers as shall be necessary to carry on the business of banking; by discounting and negotiating promissory notes, drafts, bills of exchange, and other evidence of debt; by receiving deposits; by buying and selling exchange, coin, and bullion; by loaning money on personal security; and by obtaining, issuing, and circulating notes, according to the provisions of this Title.”

“Sec. 5190. The usual business of such national banking associations shall be transacted at an office or banking house located in the place specified in its organization certificate.”

The provisions of Section 5190 R. S., as to the place at which the usual business of the bank shall be transacted refers to the city or town in which the bank is located and not the particular place within the city. *McCormick v. Market Nat'l Bank*, 165 U. S. 538, 549.

National banks have only those powers specified in the National Banking Act, and such other powers

as are necessarily incidental thereto. *McBoyle v. Union Nat'l Bank*, 122 Pa. 458; *First Nat'l Bank v. Nat'l Exchange Bank*, 92 U. S. 122, 127; *Logan Co. Nat'l Bank v. Townsend*, 139 U. S. 67, 73; *Bullard v. Bank*, 18 Wall, 589, 593.

In *Bullard v. Bank*, *supra*, the Supreme Court said:

“The extent of the powers of national banking associations is to be measured by the Act of Congress under which such associations are organized.”

In *Logan Co. Nat'l Bank v. Townsend*, *supra*, the court said:

“It is undoubtedly true, as contended by the defendant, that the National Banking Act is an enabling act for all associations organized under it, and that a national bank cannot rightfully exercise any powers except those expressly granted by that act, or such incidental powers as are necessary to carry on the business of banking for which it was established.”

It is to be observed that section 5190 R. S., relates to the “usual business” which, in my opinion, is to be construed the general banking business usually conducted by national banks. There is no statutory requirement that all the business of a national bank shall be transacted at the general office or banking house of the association.

In my opinion, a national banking association may establish in the city or place designated in its

certificate of organization an office or offices for the transaction of business of a routine character, which does not require the exercise of discretion, and which may be legally transacted by the bank itself. It may not, however, establish a branch bank to do a general banking business such as is usually done by national banks. The establishment of such a branch would be illegal, and subject the offending bank to the forfeiture of its charter. 29 Op. 81.

It seems to be the intent of the National Banking Act that the business of banking ordinarily transacted by a national banking association shall be performed in the city or place designated in its organization certificate.

It has been held that a national bank cannot make a valid contract for the cashing of checks upon it, at a different place from that of its residence, through the agency of another bank. *Armstrong v. Second Nat'l Bank*, 38 Fed. 883, 886.

While national banking associations may exercise all the powers expressly given them by the statute, and such additional powers as may be necessary to carry on the business of banking, the manner in which the powers may be exercised is subject to the supervision of the Comptroller of the Currency. Should the Comptroller, in the exercise of his supervisory powers over national banks, ascertain that the directors or officers have knowingly violated,

or are violating the national banking laws, he may proceed against such association, its officers and directors as provided by Section 5239 R. S., which reads as follows:

“If the directors of any national banking association shall knowingly violate, or knowingly permit any of the officers, agents, or servants of the association to violate any of the provisions of this Title, all the rights, privileges and franchises of the association shall be thereby forfeited. Such violation shall, however, be determined and adjudged by a proper circuit, district, or territorial court of the United States, in a suit brought for that purpose by the Comptroller of the Currency, in his own name, before the association shall be declared dissolved. And in cases of such violation, every director who participated in or assented to the same shall be held liable in his personal and individual capacity for all damages which the association, its shareholders, or any other person, shall have sustained in consequence of such violation.”

Answering your specific questions I have the honor to advise you as follows:

First: National banking associations have the power to open and operate offices at places other than their banking houses, within the place specified in their organization certificate, for the performance of such routine services as the receipt of deposits and the cashing of checks for their customers.

Second: National banking associations have no

authority to open offices for the purpose of receiving deposits, paying checks, etc., outside of the limits of the city or place designated in the organization certificate as the place of its operations of discount and deposit.

Respectfully,

H. M. DAUGHERTY,
Attorney-General.

The Honorable,

The Secretary of the Treasury.

APPENDIX B

October 26, 1923

REGULATIONS OF THE COMPTROLLER OF THE CURRENCY RELATING TO ESTAB- LISHMENT OF ADDITIONAL OFFICES BY NATIONAL BANKS

1. Under the authority of the National Bank Act, as construed by the Attorney-General in opinions rendered on May 11, 1911 and October 3, 1923, respectively, the Comptroller of the Currency will permit national banks, under the conditions hereinafter set forth, to establish one or more additional offices.

2. A national bank will be permitted to establish such an office only in a city in which other banks are engaged in, and under existing law or regulation are permitted to engage *de novo* in, banking practices which make it necessary for the national bank in question to operate such an office in order effectively to conduct its banking business.

3. National banks will be permitted to establish such offices only within the limits of the city,

town, or village named in its organization certificate as the place where its operations of discount and deposit are to be carried on.

4. A national bank desiring to establish and to operate one or more additional offices shall make application therefor to the Comptroller of the Currency on a form prescribed or approved by him in which shall be set forth, among other things, the following:

- (a) The number of offices and the proposed street location or vicinity of each.
- (b) A statement of the condition of the applying bank as of the date of application.
- (c) The number of banks with branches or additional offices in operation in said city.
- (d) A statement of the facts and conditions which, in the opinion of the board of directors, make it necessary for the applying bank to establish the proposed office or offices.

5. Each application for one or more additional offices shall be accompanied by a certified copy of a resolution of the board of directors showing that such application has been submitted to and approved by the board.

6. After the Comptroller has approved the application of a national bank for one or more additional offices and before such office or offices are opened for business, a statement shall be transmitted to the Comptroller showing the street location, the

purchase price paid, the annual rental cost, and the cost of equipment, for each such office.

7. Operations of additional offices of national banks established under these regulations shall be confined to the receipt of deposits and the payment of checks and other such routine or administrative functions.

8. No investment in bonds or other securities for the account of the bank shall be made at any such additional office.

9. No loan or discount shall be made to any customer of the bank through any such additional office that has not been authorized *at the banking house* by a resolution of the board of directors, or by an appropriate committee of such board, or by an officer or officers acting under authority from such board, and no general authority issued by the board of directors shall vest in any officer or employee at such additional office any discretionary authority with reference to making such loans or discounts.

10. A statement of the business conducted at such offices shall be transmitted to the banking house as of the close of business daily, shall be incorporated on the books at the banking house at regular intervals, and shall enter into all statements of the condition of the bank.

EXPLANATORY LETTER TO NATIONAL BANKS WHICH
APPLY FOR PERMITS TO ESTABLISH
ADDITIONAL OFFICES

DEAR SIR:

The Attorney-General in an opinion dated October 3, 1923, has made the following ruling:

"A national banking association may establish in the city or place designated in its certificate of organization, an office or offices for the transaction of business of a routine character which does not require the exercise of discretion and which may be legally transacted by the bank itself. It may not, however, establish a branch bank doing a general banking business such as is usually done by national banks. The establishment of such a branch would be illegal and subject the offending bank to the forfeiture of its charter."

In this connection the Attorney-General further held that the manner of the exercise of the incidental powers by virtue of which under the law national banks are permitted to establish such offices, must be exercised "subject to the supervision of the Comptroller of the Currency."

In the opinion rendered by Attorney-General Wickersham May 11, 1911, it was held that a national bank is not authorized under the National Bank Act to establish a branch bank for the purpose of engaging in a general banking business; that the establishment of such a branch would be illegal

and would subject the offending bank to the forfeiture of its charter.

This view is confirmed and restated in the opinion of October 3 in which Attorney-General Daugherty elaborates the earlier opinion by making a distinction between the discretionary powers of a national bank (that is to say, the corporate powers of the bank as exercised by its board of directors) and the purely routine or administrative functions which may be performed by the bank employees. Upon this theory, while denying to a national bank the power to maintain a branch bank in which the discretionary authority of the board of directors could be exercised, he held that a national bank might establish an office or offices within the city or town in which the bank is located, at a distance from its banking house, and at or through such office or offices the bank might perform routine or administrative functions, leaving the discretionary authority of the bank to be exercised solely at the banking house.

The right or power to establish such additional offices in the city or town in which the bank is located, not being expressly authorized by statute but being an implied incidental power, and the functions to be performed through such offices, in the opinion of the Attorney-General, being limited to routine or administrative functions, it is necessary

for the Comptroller of the Currency in the exercise of his general supervisory powers to prescribe regulations in which are set forth the conditions under which such offices may be established and operated.

While the opinion of the Attorney-General permits the Comptroller of the Currency to afford a measure of relief to national banks in certain cities where local banking practices have put the national banks to a disadvantage, he could not properly permit such national banks to establish additional offices without restriction, or in localities where the other banks are prohibited from enjoying similar privileges. The establishment of such offices being an exercise of an implied power, must be exercised only where an actual necessity exists in each instance and only after approval by the Comptroller of the Currency.

Where a bank desires through such offices to exercise particular administrative functions not dealt with in existing regulations, an application should be made to the Comptroller of the Currency for a special ruling.

With reference to applications to the Comptroller by national banks for permission to establish such an office or offices, the Comptroller will not take into consideration as a reason for his approval the fact that a bank has prior to making such applica-

tion invested funds in property for the purpose of securing a site or sites therefor.

The above-mentioned opinion of the Attorney-General and the regulations of the Comptroller of the Currency, to which reference is herein made, have no application to branches of national banks acquired under the provisions of the Act of March 3, 1865, by virtue of which a State bank, having branches, may convert into a national bank and elect to retain its branches; nor to branches of national banks acquired as a result of the consolidation of national banks under the provisions of the Act of November 7, 1918, under which the branches of one or more of such consolidating banks, having been acquired under the Act of 1865 above referred to, may be retained by the national bank resulting from such consolidation.

A copy of the regulations of the Comptroller of the Currency relating to the establishment of additional offices, together with an application blank, is enclosed.

Yours very truly,

Comptroller of the Currency.

APPENDIX C

REGULATION H, OF THE FEDERAL RESERVE BOARD

Series of 1924 (As amended April 7, 1924)
(Superseding Regulation H of 1923)

MEMBERSHIP OF STATE BANKS AND TRUST COMPANIES

SECTION I. BANKS ELIGIBLE FOR MEMBERSHIP

1. Incorporation.—In order to be eligible for membership in a Federal Reserve Bank, a State bank or trust company must have been incorporated under a special or general law of the State or district in which it is located.

2. Capital stock.—Under the terms of section 9 of the Federal Reserve Act as amended, no applying bank can be admitted to membership in a Federal Reserve Bank unless—

(a) It possesses a paid-up, unimpaired capital sufficient to entitle it to become a national banking association in the place where it is situated, under the provisions of the National Bank Act, or

(b) It possesses a paid-up, unimpaired capital of at least 60 per cent of such amount, and, under penalty of loss of membership, complies with the rules and regulations herein prescribed by the Federal Reserve Board fixing the time within which and the method by which the unimpaired capital of such bank shall be increased out of net income to equal the capital required under (a).

In order to become a member of the Federal Reserve System, therefore, any State bank or trust company must have a minimum paid-up capital stock at the time it becomes a member, as follows:

If located in a city or town with a population of:	Minimum capital if admitted under clause (a)	Minimum capital if admitted under clause (b)
Not exceeding 3,000 inhabitants.	\$25,000	\$15,000
Exceeding 3,000 but not exceed- ing 6,000 inhabitants	50,000	30,000
Exceeding 6,000 but not exceed- ing 50,000 inhabitants	100,000	60,000
Exceeding 50,000 inhabitants	200,000	120,000

Any bank admitted to membership under clause (b) must also, as a condition of membership, the violation of which will subject it to expulsion from the Federal Reserve System, increase its paid-up and unimpaired capital within five years after the approval of its application by the Federal Reserve Board to the amount required under (a). For the purpose of providing for such increase, every such bank shall set aside each year in a fund exclusively

applicable to such capital increase not less than 50 per cent of its net earnings for the preceding year prior to the payment of dividends, and if such net earnings exceed 12 per cent of the paid-up capital of such bank, then all net earnings in excess of 6 per cent of the paid-up capital shall be carried to such fund, until such fund is large enough to provide for the necessary increase in capital. Whenever such fund shall be large enough to provide for the necessary increase in capital, or at such other time as the Federal Reserve Board may require, such fund or as much thereof as may be necessary shall be converted into capital by a stock dividend or used in any other manner permitted by State law to increase the capital of such bank to the amount required under (a): *Provided, however,* That such bank may be excused in whole or in part from compliance with the terms of this paragraph if it increases its capital through the sale of additional stock: *Provided, further,* That nothing herein contained shall be construed as requiring any such bank to violate any provision of State law, and in any case in which the requirements of this paragraph are inconsistent with the requirements of State law the requirements of this paragraph may be waived and the subject covered by a special condition of membership to be prescribed by the Federal Reserve Board.

SECTION II. APPLICATION FOR MEMBERSHIP

Any eligible State bank or trust company may make application on F. R. B. Form 83a, made a part of this regulation, to the Federal Reserve Board for an amount of capital stock in the Federal Reserve Bank of its district equal to 6 per cent of the paid-up capital stock and surplus of such State bank or trust company. This application must be forwarded direct to the Federal Reserve Agent of the district in which the applying bank or trust company is located and must be accompanied by Exhibits I, II, and III, referred to on page 1 of the application blank.

SECTION III. APPROVAL OF APPLICATION

In passing upon an application the Federal Reserve Board will consider especially—

1. The financial condition of the applying bank or trust company and the general character of its management;
2. Whether the corporate powers exercised by the applying bank or trust company are consistent with the purposes of the Federal Reserve Act; and
3. Whether the laws of the State or district in which the applying bank or trust company is located contain provisions likely to prevent proper compliance with the provisions of the Federal Reserve

Act and the regulations of the Federal Reserve Board made in conformity therewith.

If, in the judgment of the Federal Reserve Board, an applying bank or trust company conforms to all the requirements of the Federal Reserve Act and these regulations, and is otherwise qualified for membership, the Board will issue a certificate of approval subject to such conditions as it may deem necessary. When the conditions imposed by the Board have been accepted by the applying bank or trust company the Board will issue a certificate of approval, whereupon the applying bank or trust company shall make a payment to the Federal Reserve Bank of its district of one-half of the amount of its subscription, *i.e.*, 3 per cent of the amount of its paid-up capital and surplus, and upon receipt of this payment the appropriate certificate of stock will be issued by the Federal Reserve Bank. The remaining half of its subscription shall be subject to call when deemed necessary by the Federal Reserve Board.

SECTION IV. CONDITIONS OF MEMBERSHIP

Pursuant to the authority contained in the first paragraph of Section 9 of the Federal Reserve Act, which provides that the Federal Reserve Board may permit applying banks to become members of the Federal Reserve System "*subject to such condi-*

tions as it may prescribe," the Federal Reserve Board will prescribe the following conditions of membership for each bank or trust company hereafter applying for admission to the Federal Reserve System, in addition to such other conditions as the Board may consider necessary or advisable in the particular case—

1. Except with the permission of the Federal Reserve Board, such bank or trust company shall not cause or permit any change to be made in the general character of its assets or in the scope of the functions exercised by it at the time of admission to membership, such as will tend to affect materially the standard maintained at the time of its admission to the Federal Reserve System and required as a condition of membership.

2. Such bank or trust company shall at all times conduct its business and exercise its powers with due regard to the safety of its customers.

3. Such bank or trust company shall not reduce its capital stock except with the permission of the Federal Reserve Board.

4. Such bank or trust company shall not, except after applying for and receiving the permission of the Federal Reserve Board, establish any branch, agency or additional office.

5. Such bank or trust company, except after applying for and receiving the permission of the

Federal Reserve Board, shall not consolidate with or absorb or purchase the assets of any other bank or branch bank for the purpose of operating such bank or branch bank as a branch of the applying bank; nor directly or indirectly, through affiliated corporations or otherwise, acquire an interest in another bank in excess of 20 per cent of the capital stock of such other bank; nor directly or indirectly promote the establishment of any new bank for the purpose of acquiring such an interest in it; nor make any arrangement to acquire such an interest.

6. Such bank or trust company shall reduce to, and maintain within, the limits prescribed by the laws of the State in which it is located, any loan which may be in excess of such limits.

7. Such bank or trust company shall reduce to an amount equal to 10 per cent of its capital and surplus all balances in excess thereof, if any, which are carried with banks or trust companies which are not members of the Federal Reserve System, and shall at all times maintain such balances within such limits.

8. Such bank or trust company may accept drafts and bills of exchange drawn upon it of any *character* permitted by the laws of the State of its incorporation; but the aggregate *amount* of all acceptances outstanding at any one time shall not exceed the limitations imposed by Section 13 of the Federal Re-

serve Act, that is, the aggregate amount of acceptances outstanding at any one time which are drawn for the purpose of furnishing dollar exchange in countries specified by the Federal Reserve Board shall not exceed 50 per cent of its capital and surplus, and the aggregate amount of all other acceptances, whether domestic or foreign, outstanding at any one time shall not exceed 50 per cent of its capital and surplus, except that the Federal Reserve Board, upon the application of such bank or trust company, may increase this limit from 50 per cent to 100 per cent of its capital and surplus: *Provided, however,* that in no event shall the aggregate amount of domestic acceptances outstanding at any one time exceed 50 per cent of the capital and surplus of such bank or trust company.

9. The board of directors of said bank or trust company shall adopt a resolution authorizing the interchange of reports and information between the Federal Reserve Bank of the district in which such bank or trust company is located and the banking authorities of the State in which such bank is located. Each bank or trust company applying for membership hereafter will be required to agree to the above conditions and any other conditions which the Board may prescribe, prior to the admission of such bank or trust company to the Federal Reserve System.

SECTION V. PERMISSION NECESSARY PRIOR TO MAKING CHANGES IN ASSETS OR SCOPE OF FUNCTIONS

Each bank or trust company hereafter admitted to the Federal Reserve System and each bank or trust company which has heretofore been admitted subject to Condition No. 1 of Section IV or subject to any similar condition, shall through the Federal Reserve Agent, request the permission of the Federal Reserve Board prior to taking any action which may result in a change in the general character of its assets or in the scope of the functions exercised by it at the time of admission to membership, such as will tend to affect materially the standard maintained at the time of its admission to the Federal Reserve System and required as a condition of membership.

The Board considers that among the actions which may result in changes of the kind referred to in this Section are the establishment of branches, agencies, or additional offices and consolidations or mergers with, or purchases of the assets of other banks or branch banks.

SECTION VI. PRINCIPLES GOVERNING ESTABLISHMENT OF BRANCHES

In passing upon applications by State banks and trust companies for permission to establish branches, agencies, or additional offices, under Con-

dition No. 4 of Section IV, or under any similar condition which may have been prescribed by the Federal Reserve Board and agreed to by any bank or trust company heretofore admitted to the Federal Reserve System, the Federal Reserve Board will observe the following principles—

1. The Federal Reserve Board will as a general principle restrict the establishment of branches, agencies, or additional offices by such banks or trust companies to the city of location of the parent bank and the territorial area within the state contiguous thereto, as said territory has been defined in the Board's resolution of November 7, 1923,¹ excepting in instances where the State banking authorities have certified and the Board finds that public necessity and advantage render a departure from the principle necessary or desirable.

2. The Federal Reserve Board as a general principle will not consider an application by such bank or trust company for a permit to establish a branch, agency, or additional office, unless the authorities of the State in which such bank is located regularly make simultaneous examinations of the head office and all branches, agencies, or additional offices of

¹ The term "contiguous territory" is defined in the Board's resolution of November 7, 1923, to mean: "The territory of a city or town whose corporate limits at some point coincide with the corporate limits of the city or town in which the parent bank is located."

such bank, nor unless the examinations made by the State authorities are, in the judgment of the Federal Reserve Board, of such character in every respect as to furnish the Federal Reserve Board with sufficient information as to the condition of such bank and the character of its management to enable the Federal Reserve Board fully to protect the interests of the public.

3. The Federal Reserve Board as a general principle will require each bank or trust company which establishes, or maintains branches, agencies, or additional offices to maintain for itself and such branches, agencies, or additional offices an adequate ratio of capital to total liabilities and an adequate percentage of its total investments in the form of paper or securities eligible for discount or purchase by Federal Reserve Banks.

4. The Federal Reserve Board will not consider any application to establish a branch, agency, or additional office until the State banking authorities have approved the establishment of such branch, agency, or additional office, and the Directors or Executive Committee and the Federal Reserve Agent of the Federal Reserve Bank of the district in which such bank or trust company is located have made a report upon the financial condition of the applying bank or trust company, the general character of its management, what effect the establish-

ment of such branch, agency, or additional office would have upon other banks or branches in the locality in which it is to be established, and whether, in their opinion, it would be in the interest of the public in such locality, together with their recommendation as to whether or not the application should be granted.

5. When permission is granted for the establishment of such branch, agency, or additional office same shall be established and opened for business within six months after such permission is granted. If such branch, agency, or additional offices is not established within such time the permit shall become void, unless the time is extended by the Board for good cause.

6. The Federal Reserve Board reserves the right to cancel any permit which it may grant thereafter to establish any branch, agency, or additional office whenever it shall appear, after hearing, that such branch, agency, or additional office, is being operated in a manner contrary to the interest of the public in the locality in which it is established.

SECTION VII. POWERS AND RESTRICTIONS

Every State bank or trust company while a member of the Federal Reserve System—

1. Shall retain its full charter and statutory rights as a State bank or trust company, subject to the

provisions of the Federal Reserve Act, to the regulations of the Federal Reserve Board, and to the conditions prescribed by the Federal Reserve Board and agreed to by such State bank or trust company prior to its admission.

2. Shall maintain such improvements and changes in its banking practice as may have been specifically required of it by the Federal Reserve Board as a condition of its admission and shall not lower the standard of banking then required of it;

3. Shall enjoy all the privileges and observe all those requirements of the Federal Reserve Act and of the regulations of the Federal Reserve Board made in conformity therewith which are applicable to State banks and trust companies which have become member banks; and

4. Shall comply at all times with any and all conditions of membership prescribed by the Federal Reserve Board at the time of the admission of such member bank to the Federal Reserve System.

SECTION VIII. EXAMINATIONS AND REPORTS

Every State bank or trust company, while a member of the Federal Reserve System, shall be subject to examinations made by direction of the Federal Reserve Board or of the Federal Reserve Bank by examiners selected or approved by the Federal Reserve Board.

In order to avoid duplication, examinations of State banks and trust companies made by State authorities will be accepted in lieu of examinations by examiners selected or approved by the Board wherever these are satisfactory to the directors of the Federal Reserve Bank, and examiners from the staff of the Board or of the Federal Reserve Banks will, whenever desirable, be designated by the Board to act with the examination staff of the State in order that uniformity in the standard of examination may be assured.

Every State bank or trust company, while a member of the Federal Reserve System, shall be required to make in each year not less than three reports of condition on F. R. B. Form 105. Such reports shall be made to the Federal Reserve Bank of its district on call of such bank, on dates to be fixed by the Federal Reserve Board. They shall also make semi-annual reports of earnings and dividends on F. R. B. Form 107. As dividends may be declared from time to time, each State bank or trust company member shall also furnish to the Federal Reserve Bank of its district a special notification of dividend declared on F. R. B. Form 107a. F. R. B. Forms 105, 107, and 107a are made a part of this regulation.

APPENDIX D

PROVISIONS OF THE McFADDEN NATIONAL BANK BILL RELATING TO BRANCH BANKING, AS CONTAINED IN H. R. 8887, AS IT PASSED THE HOUSE JANUARY 14, 1925; AS AMENDED BY THE SENATE COMMITTEE; AND AS REINTRODUCED IN THE HOUSE DECEMBER 7, 1925 in H. R. 2.

SECTION 1

This section provides for the consolidation of a State with a national bank under national charter.

H. R. 8887, 68th Congress, 2d Session.

Proviso to Section 1, as it passed the House
January 14, 1925.

“And provided further, That, except as to branches in foreign countries or dependencies or insular possessions of the United States, it shall be unlawful for any such consolidated association to retain in operation any branches which may have been established beyond the corporate limits of the city, town, or village in which such consolidated association is

located, and it shall be unlawful for any such consolidated association to retain in operation any branches which may have been established subsequent to the approval of this Act within the corporate limits of the city, town, or village in which such consolidated association is located, in any State which at the time of the approval of this Act did not, by law or regulation, permit State banks or trust companies created by or existing under the laws of such State to have such branches.”

H. R. 8887, 68th Congress, 2d Session.

Proviso to Section 1 as amended by the Senate Committee.

“And provided further: That it shall be unlawful for any such consolidated association to retain any branch or branches in any State, which at the time of the approval of this Act, did not by law, regulation, or usage with official sanction permit State banks or trust companies to have such branches; but branches established by a State bank under such law, regulation, or usage, and heretofore lawfully retained when consolidation was effected with a national banking association may continue to be maintained by such consolidated association.”

H. R. 2, 69th Congress, 1st Session.

Proviso to Section 1, as introduced in the House
December 7, 1925.

“And provided further, That, except as to branches in foreign countries or dependencies or insular possessions of the United States, it shall be unlawful for any such consolidated association to retain in operation any branches of such State bank which may have been established beyond the corporate limits of the city, town, or village in which such consolidated association is located, and it shall be unlawful for any such consolidated association to retain in operation any branches which may have been established subsequent to the approval of this Act within the corporate limits of the city, town, or village in which such consolidated association is located, in any State which at the time of the approval of this Act did not permit State banks created by or existing under the laws of such State to have such branches.”

SECTION 7

H. R. 8887, 68th Congress, 2nd Session.

Section 7 as it passed the House January 14, 1925.

That Section 5155 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5155. It shall be lawful for any bank or

banking association organized under State laws and having branches to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain: *Provided*, That no such State bank having branches in operation outside of the corporate limits or other such boundaries of the city, town, or village in which such State bank is located, but not including any branch established in a foreign country or dependency or insular possession of the United States, shall, upon conversion into a national banking association, retain or keep in operation such branches: *And provided further*, That it shall be lawful for any national banking association having, prior to the approval of this Act, acquired branches by virtue of having elected to retain such branches after having been converted from a State bank with branches into a national banking association, or through consolidation with such an association having such branches, to continue to operate any such branches, but it shall be unlawful for any national banking association having been converted into such association under the provisions of Section 5154 of the Revised Statutes to retain in operation any branch, wherever located, which may have been established subsequent to the approval of this Act, in any State which did not by law or regulation, at the time of the ap-

proval of this Act, permit State banks or trust companies created by or existing under the laws of such State to have branches.”

H. R. 8887, 68th Congress, 2nd Session.

Section 7 as amended by the Senate Committee.

That Section 5155 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5155. It shall be lawful for any bank or banking association organized under State laws and having branches to become a national banking association in conformity with existing laws, and to retain and keep in operation its branches, or such one or more of them as it may elect to retain: *Provided*, That it shall be unlawful for any such national banking association to retain any branch or branches in any State which at the time of the approval of this Act did not by law, regulation, or usage with official sanction permit State banks or trust companies to have such branches; but branches established by a State bank under such law, regulation, or usage and heretofore lawfully retained when conversion into a national banking association was effected may continue to be maintained by such association.”

H. R. 2, 69th Congress, 1st Session.

Section 7 as introduced in the House December 7, 1925.

Section 5155 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5155. It shall be lawful for any bank or banking association organized under State laws and having branches to become a national banking association in conformity with existing laws, and to retain its branches, or such one or more of them as it may elect to retain: *Provided*, That it shall be unlawful for any such State bank having branches in operation outside of the corporate limits or other such boundaries of the city, town, or village in which such State bank is located, but not including any branch established in a foreign country or dependency or insular possession of the United States, to retain such branches, upon conversion into a national banking association: *And provided further*, That it shall be lawful for any national banking association having, prior to the approval of this Act, acquired branches by virtue of having elected to retain such branches after having been converted from a State bank with branches into a national banking association, or through consolidation with such an association having such branches, to continue to operate any such branches, but it shall be unlawful for any national banking association hav-

ing been converted into such association under the provisions of section 5154 of the Revised Statutes to retain in operation any branch, wherever located, which may have been established subsequent to the approval of this Act, in any State which did not at the time of the approval of this Act, permit State banks or trust companies created by or existing under the laws of such State to have branches.”

SECTION 8

H. R. 8887, 68th Congress, 2nd Session.

Section 8 as it passed the House January 14, 1925.

That section 5190 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5190. The general business of each national banking association shall be transacted at only one office or banking house, which shall be located in the place specified in its organization certificate, and no such association shall own, establish, maintain, or operate any branch or branches in any State which does not at the time of the approval of this Act by law or regulation authorize banks created by or existing under the laws of such State to own, establish, maintain, and operate such branches, and no such association in any State whatsoever shall own, establish, maintain, or operate any branch or branches beyond the corporate limits of the municipi-

pality wherein such association is located, but any such association in any State which by law or regulation at the time of the approval of this Act authorizes banks created by or existing under the laws of such State to own, establish, maintain, and operate such branches may, upon application to the Comptroller of the Currency and upon approval by him, be permitted to establish and operate a branch or branches within the corporate limits of the municipality wherein such association is located, but it shall be unlawful for any such association to maintain in operation any branch within the corporate limits of such a municipality where the population by the last decennial census is less than twenty-five thousand and not more than one such branch where such population is not less than twenty-five thousand and not more than fifty thousand, and not more than two such branches where such population is not less than fifty thousand and not more than one hundred thousand, but these restrictions as to number shall not be construed to require the relinquishment of any branches acquired prior to the approval of this Act: *Provided, however,* That all such branches of such associations shall be subject to the general supervisory powers of the Comptroller of the Currency and shall operate under such regulations as he may prescribe: *And provided further,* That it shall be unlawful for any such association

to establish a branch in any State subsequent to the repeal or revocation by such State of the law or regulation under the authority of which permission was granted to banks created by or existing under the laws of such State to engage in branch banking.

“The term ‘branch’ or ‘branches’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received or checks cashed or money loaned.

“This section shall not be construed to amend or repeal Section 25 of the Federal Reserve Act, as amended, authorizing the establishment by national banking associations of branches in foreign countries or dependencies or insular possessions of the United States.”

H. R. 8887, 68th Congress, 2nd Session.

Section 8 as amended by the Senate Committee.

That Section 5190 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5190. The general business of each national banking association shall be transacted at only one office or banking house, which shall be located in the place specified in its organization certificate, but

a national banking association in addition to such rights as it may have under Section 3 of the Act of November 7, 1918, and under Section 5155 of the Revised Statutes of the United States as amended by this Act, may, upon approval by the Comptroller of the Currency, establish and maintain a branch or branches within the limits of the municipality wherein such association is located: Provided, That at the time of the approval of this Act there is in force in the State in which such association is located a law, regulation, or usage with official sanction authorizing banks existing under the law of such State to establish and maintain such branches, which said law, regulation, or usage remains in force at the date of the establishment by such association of said branch or branches: And provided, That no branch shall be established under the authority of this section in any part of a State to which the State law relating to branch banking does not extend: *And provided further*, That it shall be unlawful for any national banking association to establish under the authority of this section any branch in a municipality of which the population by the last preceding decennial census was less than twenty-five thousand, or to establish more than one branch in a municipality of which by the said census the population was not more than fifty thousand, or to establish more than two branches in a municipality of

which by the said census the population was not more than one hundred thousand; but any national banking association which has maintained not exceeding one branch continuously for a period of not less than twenty-five years immediately prior to January 1, 1925, may continue to maintain said branch: *Provided however*, That all branches of all national banking associations shall be subject to the general supervisory powers of the Comptroller of the Currency and shall operate under such regulations as he may prescribe.

“The term ‘branch’ or ‘branches’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received or checks cashed or money loaned.”

The term “limits of the municipality” as used in this section shall be held to mean the corporate limits thereof except in those cases in which the Comptroller of the Currency shall determine that cities, boroughs, towns, or villages actually contiguous to such municipality in fact constitute together with it a single commercial community; and in such cases only the term “limits of the municipality” shall be held to include such cities, boroughs, towns, or villages.

H. R. 2, 69th Congress, 1st Session.

Section 8 as introduced in the House December 7, 1925.

Section 5190 of the Revised Statutes of the United States be amended to read as follows:

“SEC. 5190. The general business of each national banking association shall be transacted in the place specified in its organization certificate, but it shall be unlawful for any such association to establish a branch in any State which does not at the time of the approval of this Act permit banks created by or existing under the laws of such State to establish branches, or to establish in any State a branch beyond the corporate limits of the municipality wherein such association is located, but any such association in any State which at the time of the approval of this Act permits banks created by or existing under the laws of such State to establish branches may, upon application to the Comptroller of the Currency and upon approval by him, be permitted to establish a branch or branches within the corporate limits of the municipality wherein such association is located: *Provided*, That it shall be unlawful for any such association to maintain in operation a branch within the corporate limits of such a municipality where the population by the last decennial census is less than twenty-five thousand or to maintain more than one branch where such

population is not less than twenty-five thousand and not more than fifty thousand, or to maintain more than two branches where such population is more than fifty thousand and not more than one hundred thousand, but these restrictions as to number shall not be construed to require the relinquishment of any branches acquired prior to the approval of this Act: *And provided further*, That all branches of such association shall be subject to the general supervisory powers of the Comptroller of the Currency and shall operate under such regulations as he may prescribe: *And provided further*, That it shall be unlawful for any such association to establish a branch in any State subsequent to the enactment hereafter by such State of a statute which shall deny to all banks created by or existing under the laws of such State the right to establish branches within the corporate limits of the municipality wherein such banks are located: *And provided further*, That no provision of this section shall be construed to modify or repeal any provision of Section 5155 Revised Statutes or of the Act of November 7, 1918, as respectively amended by this Act.

“The term ‘branch’ or ‘branches’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of

Columbia at which deposits are received or checks cashed or money loaned.

“This section shall not be construed to amend or repeal section 25 of the Federal Reserve Act, as amended, authorizing the establishment by national banking associations of branches in foreign countries or dependencies or insular possessions of the United States.”

SECTION 9

H. R. 8887, 68th Congress, 2nd Session.

Section 9 as it passed the House January 14, 1925.

That the first paragraph of Section 9 of the Federal Reserve Act be amended by adding at the end thereof two provisions and a new paragraph to read as follows:

“Provided, That on and after the approval of this Act the board shall not permit any such applying bank to become a stockholder of such Federal Reserve Bank except upon condition that such applying bank relinquish any branches which it may have in operation beyond the corporate limits of the municipality in which the parent bank is located, and it shall be unlawful for any such applying bank in any State which does not by law or regulation, at the time of the approval of this Act, permit State banks or trust companies created by or existing under the laws of such State, to have branches within the

limits of municipalities in such State, to become such a stockholder of such Federal Reserve Bank except upon condition that such applying bank relinquish any branches which it may have established subsequent to the approval of this Act: *Provided further*, That it shall be unlawful for any member bank after the approval of this Act to establish a branch beyond the corporate limits of the municipality in which such bank is located, and it shall be unlawful for any such member bank to maintain in operation any branch within the corporate limits of such a municipality where the population by the last decennial census is less than twenty-five thousand and not more than one such branch where such population is not less than twenty-five thousand and not more than fifty thousand and not more than two such branches where such population is not less than fifty thousand and not more than one hundred thousand, but these restrictions as to number shall not be construed to require the relinquishment of any branches acquired prior to the approval of the Act: *And provided further*, That the establishment of any branch by a member bank shall not require the approval of the Federal Reserve Board: *And provided further*, That it shall be unlawful for any such member bank to establish a branch within the limits of the municipality where such bank is located, in any State which does not by law or regu-

lation, at the time of the approval of this Act, permit State banks or trust companies created by or existing under the laws of such State to have branches within the limits of such municipalities in such State.

“The term ‘branch’ or ‘branches’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received or checks cashed or money loaned, but shall not include any branch established in a foreign country or dependency or insular possession of the United States.”

**THIS SECTION WAS STRICKEN FROM THE
BILL BY THE SENATE COMMITTEE.**

H. R. 2, 69th Congress, 1st Session.

Section 9 as introduced in the House December
7, 1925.

That the first paragraph of section 9 of the Federal Reserve Act be amended by adding at the end thereof two provisions and a new paragraph to read as follows:

“*Provided*, That on and after the approval of this Act it shall be unlawful for any such applying bank to become a stockholder of such Federal Reserve

Bank except upon condition that such applying bank relinquish any branches which it may have in operation beyond the corporate limits of the municipality in which the parent bank is located, and it shall be unlawful for any such applying bank in any State which does not, at the time of the approval of this Act, permit State banks created by or existing under the laws of such State, to have branches within the limits of municipalities in such State, to become such a stockholder of such Federal Reserve Bank except upon condition that such applying bank relinquish any branches which it may have established subsequent to the approval of this Act: *Provided further*, That it shall be unlawful for any member bank to establish a branch in any State which does not at the time of the approval of this Act, permit banks created by or existing under the laws of such State to establish branches or to establish in any State, after the approval of this Act, a branch beyond the corporate limits of the municipality in which such bank is located: *And provided further*, That it shall be unlawful for any such member bank to maintain in operation any branch within the corporate limits of such a municipality where the population by the last decennial census is less than twenty-five thousand, or to maintain more than one branch where such population is not less than twenty-five thousand and not more than fifty thousand, or to main-

tain more than two branches where such population is more than fifty thousand and not more than one hundred thousand, but these restrictions as to number shall not be construed to require the relinquishment of any branches acquired prior to the approval of this Act: *And provided further*, That the establishment of any branch by a member bank shall not require the approval of the Federal Reserve Board.

“The term ‘branch’ or ‘branches’ as used in this section shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received or checks cashed or money loaned, but shall not include any branch established in a foreign country or dependency or insular possession of the United States.”

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