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## NATIONAL BANKS AND PROTECTIVE STATE LAWS

By

THOMAS L. WENTLING\*

No Pennsylvania court has ever determined to what protection national banks are entitled in handling deposits in this state. The Pennsylvania Banking Code<sup>1</sup> lays down certain statutory procedures to be followed in making payment of deposits made in the name of a minor, or in joint names, or made in the name of one person as trustee for another, and in making payment where there is an adverse claim.<sup>2</sup> If the statutory procedure is followed, the bank is absolved from further liability. May national banks in Pennsylvania follow the same procedure and be similarly protected?

The Federal banking laws and regulations do not contain any provision granting national banks specific protection in paying out such deposits. Nor is there any general grant of Federal power conferring upon national banks all the privileges and protection given state banks under applicable state law. There are indeed specific federal provisions granting to national banks equality with state banks in regard to such things as the payment of interest,<sup>3</sup> the establishing of branch banks,<sup>4</sup> the exercise of fiduciary powers,<sup>5</sup> and amenability to state taxation.<sup>6</sup> In addition, national banks have been given "such incidental powers as shall be necessary to carry on the business of banking."<sup>7</sup> It is obviously very doubtful if national banks could use the terms of this general grant to protect themselves in paying out deposits.<sup>8</sup>

Since the Federal law does not expressly confer equal protection on national banks, it is important to determine whether the Pennsylvania law does. Generally speaking, there is no constitutional objection to extending the provisions of a state statute to cover national banks. In a number of jurisdictions, including Idaho,<sup>9</sup> Texas,<sup>10</sup> West Virginia,<sup>11</sup> Connecticut<sup>12</sup> and the District of Columbia,<sup>13</sup>

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<sup>1</sup>Act of 1933, May 15, P.L. 624, 7 P.S. Sec. 819.

<sup>2</sup>7 P.S. Sec. 819—902-905 Inclusive.

<sup>3</sup>Federal Reserve Act, Sec. 24, 12 U.S.C.A. Sec. 371.

<sup>4</sup>Revised Statutes, Sec. 5155(c), 12 U.S.C.A. Sec. 36(c).

<sup>5</sup>Federal Reserve Act, Sec. 11(k), 12 U.S.C.A. Sec. 248(k).

<sup>6</sup>Revised Statutes, Sec. 5219, 12 U.S.C.A. Sec. 548.

<sup>7</sup>Revised Statutes, Sec. 5136, 12 U.S.C.A. Sec. 24.

<sup>8</sup>See *Houston vs. Drake*, 97 F. (2d) 863; *Healey & Son vs. Stewardson National Bank* (Ill. 1936), 1 N.E. (2d) 858.

<sup>9</sup>S.L. 1925 Ch. 133 Sec. 1, Idaho Code Ann. Title 25 Sec. 1202.

<sup>10</sup>Vernon's Ann. Tex. Stat. (1925 ed.) Title 16, Art. 409-410.

<sup>11</sup>W. Va. Code of 1943 Ann. Secs. 3205, 3206.

<sup>12</sup>Conn. Gen. Stat. (1930 Rev.) Secs. 3985, 3986.

<sup>13</sup>Dist. of Columbia Code (1940) Title 26 Secs. 201-204.

the state banking laws expressly extend their protective provisions to national banks. In *First National Bank vs. Missouri*,<sup>14</sup> the Supreme Court said:

"National banks are brought into existence under federal legislation, are instrumentalities of the federal government and are necessarily subject to the paramount authority of the United States. Nevertheless, national banks are subject to the laws of a state in respect to their affairs unless such laws interfere with the purpose of their creation, tend to impair or destroy their efficiency as federal agencies, or conflict with the paramount law of the United States."

The application of state statutes to national banks is the ordinary rule unless the state law conflicts with the Federal law or purpose.<sup>15</sup> The protective provisions in a state banking code would facilitate rather than hinder the carrying on of a banking business. There could be no basis for an assertion of a conflict between the state law and the Federal provisions.

Without doubt, the state legislators have the authority to protect national banks equally with state banks. The important question, however, is not what the legislators could have done, but what they have done. The Pennsylvania Banking Code of 1933 must be looked to in order to determine whether it, in accordance with legislative intent, does or does not purport to cover national banks.

Other jurisdictions have had this same problem presented, but no final appellate court in any state has given any illumination to the problem in an opinion. In Utah, the banking laws apply to all banks organized or doing business in the state "except banks organized under the laws of the United States."<sup>16</sup> The Banking Code provided that banks in Utah should be protected in paying out a deposit in the face of an adverse claim unless the claimant procured a restraining order or executed a bond to the bank.<sup>17</sup> A national bank in Salt Lake City paid out funds upon the check of a depositor after written notice by the plaintiffs of an adverse claim. The Utah Court<sup>18</sup> held that the state statute controlled the obligations of a national bank and that the Federal courts would enforce the rights provided by state laws. The Court did not, in its opinion, mention the fact that the Utah statute expressly excluded national banks from its coverage.

The result reached by the Utah Court is certainly the desirable one. It would be an almost impossible task for the Federal laws and regulations specifically to

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<sup>14</sup>263 U.S. 640, 656.

<sup>15</sup>*McClellan vs. Chipman*, 164 U.S. 347; *Middletown Trust Company vs. Middletown Bank*, 147 Atl. 22, 110 Conn. 13; *Lau vs. Lau*, 7 N.W. (2d) 278, 304 Mich. 218.

<sup>16</sup>Utah Code Ann. (1943) 7-3-1, C.L. 17, Sec. 1015.

<sup>17</sup>Utah Code Ann. (1943) 7-3-52, L. 1929, c.68 Sec. 1.

<sup>18</sup>*National City Bank of New York vs. Continental National Bank and Trust Company of Salt Lake City*, 83 F.(2d) 134.

grant national banks all beneficial provisions granted under the corresponding state laws, and a general grant of equal rights would be indefinite and confusing. The obvious intent of Congress was to establish banks on a real competitive basis with state banks, with equal rights and protection for both.

In New York, the problem of the applicability of the New York Banking Laws has been faced several times by the lower courts. In *Herrick vs. Hamilton*<sup>19</sup> the court "inclined to the view" that the rights of depositors were the same in a state or national bank despite the court's recognition of the fact that the state law apparently was drawn to cover only domestic institutions.<sup>20</sup> In *In re Hickmott's Estate*,<sup>21</sup> the court thought the sections of the Code which governed banks and trust companies should be applied to national banks while the sections covering savings banks should not be applied. Other New York cases have held the same thing.<sup>22</sup> In none of them was there an extended discussion of the basis for the holding that the state law was intended to cover national banks. The New York courts, in their desire to reach a practical result, seem to base their decisions on the theory of similarity in function and purpose between state and federal banks. To illustrate, in *Garlock's Estate*,<sup>23</sup> the court held that although Section 249 of the Banking Code applied literally only to savings banks, it should be extended to cover savings and loan associations "since money is deposited there also for the purpose of saving."

The Pennsylvania courts need not have as much difficulty as the New York judges in reaching the same result. The Pennsylvania Banking Code does not expressly include or exclude national banks. Whether they are to be included is wholly a matter of interpretation. The protective provisions of the Pennsylvania Act are in consecutive sections of the Code.<sup>24</sup> Each of these sections applies to an "institution," according to the statutory language. As to the scope of "institution," the section<sup>25</sup> of the Code on Definitions declares:

"Institution includes any bank, bank and trust company, savings bank, trust company or private bank."

In the same section, a "bank" and a "bank and trust company" are defined. They are defined to "include" any bank or bank and trust company incorporated under the Act of 1933, or under the Act of 1876, or under any special act of the General Assembly of Pennsylvania. In handling most of the other definitions in this same section, the legislature used the word "means" instead of the word "include" between the word to be defined and the definition. The use of the

<sup>19</sup>160 Misc. 440, 290 N.Y.S. 65.

<sup>20</sup>Art. 3 and art. 6 of the N.Y. Banking Law (L. 1914, Ch. 369).

<sup>21</sup>256 App. Div. 1047, 10 N.Y.S. (2d) 918.

<sup>22</sup>In *Re Riley's Estate*, 261 App. Div. 690, 27 N.Y.S. (2d) 176; *Community Vol. Fire Co. of Nimmensburg vs. City National Bank*, 171 Misc. 1027, 14 N.Y.S. (2d) 306

<sup>23</sup>157 Misc. 571, 285 N.Y.S. 52.

<sup>24</sup>7 P.S. Sec. 819—902-905.

<sup>25</sup>7 P.S. Sec. 819—2.

world "include" in defining bank, and bank and trust company by the legislature is of real significance. "Include" is a word of enlargement and not of restriction. It is generally used to indicate an addition rather than merely to specify. For example, in this same list of definitions, "includes" is used instead of "means" in the definition of the word "attorney." "Attorney," it is said, "includes any attorney at law who receives a general retainer as solicitor or as counsel for an institution." Certainly, this is no attempt to define "attorney" generally. Attorneys are not thereby restricted to those receiving general retainers from state banks. Similarly, the listing of certain state banks and bank and trust companies after the word "include" is not an attempt by definition to restrict the applicability of the Banking Code to state banks. The listing was probably made merely to assure the legislative purpose to have the Code apply to banks organized prior to 1933.

The Supreme Court of the United States, in construing a statute, has said:

"The terms 'means' and 'includes' are not necessarily synonymous. The distinction in their use is aptly pointed out by Sections 2, 200 of the Act itself. Section 2(a) gives general definitions of ten terms; of these, three are stated to 'include' designated particular instances, the other seven are stated to 'mean' the definitions subsequently given. Section 200, in addition to the definitions contained in subsection (a), gives four of which two use the verb 'include' and two the verb 'means'. That the draftsman used these words in a different sense seems clear. The natural distinction would be that where 'means' is employed, the term and its definition are to be interchangeable equivalents and that the verb 'includes' imports a general class, some of whose particular instances are those specified in the definition."<sup>26</sup>

In like view, a Texas Court declared that the words "include" and "including" were not to be regarded as being identical or equivalent to "such less elastic words and terms as 'meant' or 'meaning' or 'by which is meant.'" While the word "including" is susceptible of different shades of meaning, it is generally employed as a term of enlargement and not a term of limitation or of enumeration."<sup>27</sup> And in *In re Goetz*,<sup>28</sup> the court pointed out that in a bequest "of all my personal property including furniture, plate, etc.," the word "including" did not limit the bequest to the property enumerated after the word.<sup>29</sup>

The Pennsylvania legislature did not intend to bar national banks from the protection of the Code. The use of the word "include" is not an appropriate one upon which to base an exclusion. Our courts need have no difficulty in

<sup>26</sup>*Helvering vs. Morgan's, Inc.*, 293 U.S. 121, at 125 note, 55 S. Ct. 60; Accord: *Harris vs. State*, 175 So 342, 179 Miss. 38.

<sup>27</sup>*Peerless Carbon Black Co. vs. Sheppard*. (Texas Civil Appeals) 113 S.W. (2d) 996, 997.

<sup>28</sup>75 N.Y.S. 750, 71 App. Div. 272.

<sup>29</sup>See *Weller and Weller vs. Grange Co.*, 105 Pa. Super. 547, for a general discussion by a Pennsylvania Court of the meaning of the word "include." And see *Cannon vs. Nicholas*, 80 F(2d) 934, and cases cited.

holding that national banks are protected by the state law. These provisions of the Code are declaratory of the public policy of the state in regard to the handling by banks of certain types of deposits. That public policy should have general application. To hold otherwise would put national banks at an almost intolerable disadvantage in competing with state banks. For example, the inability of a national bank readily to pay over a deposit to a "Totten" trust beneficiary or to a minor would be a serious hindrance to their efficient operation in the banking business. Certainly, such a result would be contrary to the spirit of competition and parity contemplated by Congress. Fortunately, the wording of our state Code requires no such result.