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The Banking Act of 1933 in Operation and the Contemplated Modifications

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would be the first to admit it. Such a policy, enunciative of the Administration's purposiveness, indicates that agriculture is not yet finally entombed. A complete survey, objectively conducted and weighed, of the effect of the Agricultural Adjustment Administration's operations, may yet lead to a solution of what is indisputably one of society's gravest problems.

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THE BANKING ACT OF 1933[1] IN OPERATION AND THE CONTEMPLATED MODIFICATIONS.—Since the beginning of our economic crisis, the banking system has been on no more secure a basis than at present, and as the days go by banks are continually gaining in strength. For the cause of this revitalization we need look no further than to the Banking Act of 1933 and to the wholesome banking practices which it has engendered.

The most publicized feature of the Act was a plan which provided for the insurance of all deposits up to $10,000; seventy-five percent of the deposits above $10,000 and up to $50,000; and fifty percent of the amount above $50,000,[2] all in a permanent system effective July 31, 1934. A temporary system insuring all deposits up to $2,500 went into effect on January 1, 1934 and was to continue until June 30, 1934, when it was to be superseded by the permanent plan.[3]

On July 1, 1934, however, the permanent plan will not go into effect as intended by the Act, nor will the temporary deposit insurance plan expire on its scheduled date, for bills have already been presented to both houses of Congress to extend the temporary fund and to postpone the effectiveness of the permanent plan for another year.[4] That these bills will become law is assured.[5]

Ostensibly the permanent insurance feature has been postponed to permit corrective legislation in such states like Connecticut, whose laws now prevent their own banks from subscribing to the permanent plan.[6] This has been a signal victory for the large banks for they have opposed the permanent plan from the first on the theory that if losses were great (due to the insolvency of other banks) they would be called upon for the heaviest assessments.[7] They have con-

[1] Act of June 16, 1933, c. —, 48 Stat.

[2] *Supra* note 1, §8; Amending the Fed. Res. Act by inserting between §§12-13 (U. S. C., tit. 12, §§261, 262, 342) thereof subd. 12B.

[3] *Id.* 12B (y).

[4] N. Y. Times, Feb. 14, 1934, at 31:1.

[5] *Ibid.*

[6] Rep. Steagall (Chairman of House Banking Com. and co-author with Sen. Glass of the Banking Act) in N. Y. Times, *supra* note 4.

[7] *Supra* note 2, §12B (e).

stantly agitated for the elimination of the permanent insurance feature from the law, and have even gone so far as to seek the revision or abolition of the whole deposit guaranty system.[8]

Such a move will be contested by the smaller banks for whom the deposit insurance feature has been a savior, in so far as it has been the stopgap in halting the continually increasing withdrawal of deposits by both small and large depositors, who felt that they might find better protection in a five billion rather than a five million dollar banking corporation. Too, hoarding lost all of its advantages and there began a return, in a steady stream, of deposits formerly withdrawn, for now the size of the bank no longer mattered to a depositor whose savings were as secure in one bank as in another, all due to the insurance feature. The banks point to the fact that although "the temporary insurance fund is now well within its third month of operation, so far no bank which is a member of this fund has closed its doors. This absence of failures among institutions whose deposits are insured is in striking contrast with the experience of previous years. During the twelve years ending and including 1933 the average number of banks which failed in the United States for the combined months of January and February was 204 involving an average of $79,645,916 in deposits."[9] The little banks have pointed out that 54,682,092 accounts in 13,529 banks are guaranteed by the temporary insurance fund, aggregating $15,482,981,016.[10] This means that thirty-eight percent of all deposits in all banks of the United States and ninety-six percent of all depositors are guaranteed by the insurance fund.

Another argument against scrapping the deposit insurance feature is that it is in accord with the administration's attempt to facilitate the flow of capital to small business men, since banks subscribing to the insurance fund need no longer have so great a liquidation of assets in anticipation of emergencies due to runs by depositors and can therefore make loans with greater safety and profit. As a psychological factor in the recuperative process of our economic life it is of incalculable importance.[11] The deposit system, in spite of the opposition of the larger banks will be preserved, for the political power of the little banks will assure its continuance.[12]

The Federal Deposit Insurance Corporation was created by the Act not only to supervise the insurance features of the law but also to liquidate, as far as possible, the assets of the closed National and State banks,[13] and toward that objective it has gone with commendable success. On March 16, 1933, 1,446 National banks were unlicensed, but by March 1, 1934, all but 280 were doing business again,[14] and

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[8] Theodore C. Wallen, LIT. DIGEST, Dec. 23, 1933.
[9] N. Y. American, March 9, 1934; N. Y. Times, March 9, 1934, at 34:2.
[10] *Supra* note 4.
[11] David Lawrence, U. S. NEWS, March 5, 1934, at 16.
[12] *Supra* note 8.
[13] *Supra* note 2, §12B (a).
[14] N. Y. Herald Tribune, March 8, 1934, at 31:8.

State banks were strengthened through the purchases of their preferred stock, capital notes and debentures by the Reconstruction Finance Corporation.[15]

The other important provision of the Banking Act was an attempt to divorce commercial banks from their security affiliates.[16] To thoroughly scrutinize the relationship of member banks to holding companies and subsidiary affiliates reports had to be submitted to the Federal Reserve Board at stated intervals.[17] The clear and unambiguous language of the Act has necessitated a strict construction, and this has resulted in the accumulation of useless and impractical information which the controller's office must somehow digest. Retail clothing corporations, packing companies, newspapers, lumber yards, steamship companies, churches, eleemosynary institutions, etc., are apparently affiliates of member banks, and although it may not have been the intention of Congress to include these in the category of affiliates, yet nevertheless, in a strict and technical sense, many of them are. To comply with the law regarding the publication of reports from these "affiliates," has proven to be expensive, burdensome and embarrassing.

Controller of the Currency, O'Connor, in his annual report made on February 14, 1934, strongly urged that this provision of the Act be clarified and that his office be given discretionary powers as to when these reports may be waived. He requested that the law be changed to eliminate the necessity of any reports from "Affiliates which have become such, by the acquisition of the bank of a majority of the voting shares of a corporation as collateral to the debt of the corporation to the bank; by the acquisition of a majority of shares of a corporation through foreclosure, or as trustee, and where it holds a majority of voting stock for the benefit of certain of its customers."[18]

The Act prohibits the creation of an indebtedness by an executive officer to any member bank[19] but fails to define in accurate terms the words "executive officer." May a bank make a loan to a partnership in which an executive officer is a partner? This is not clear.[20]

The Banking Act of 1933 provides that directors must own at least $2,500 worth of stock in their respective banking corporations, if the capitalization is over $50,000, or at least $1,500 in banks capitalized at less than that figure.[21] A return to the old provisions

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[15] J. F. T. O'Conner, Controller of the Currency, *supra* note 4, at 27:1.
[16] *Supra* note 2, §20.
[17] *Id.* §19, amending REV. STAT. §5144 (U. S. C. tit. 12, §61); *id.* §5 (c), amending §9 of the FED. RES. ACT (U. S. C. tit. 12, §371; Supp. VI, tit. 12, §321).
[18] *Supra* note 4.
[19] *Supra* note 2, §12g, amending §22 of the FED. RES. ACT (U. S. C., tit. 12, §§375, 376, 503, 593-595; Supp. VI, tit. 12, §5937).
[20] *Supra* note 4.
[21] *Supra* note 2, §31.

of the law requiring a minimum of $1,000 for banks of over $50,000 capitalization and $500 for those of a lesser capitalization is advocated, for in many cases stock, especially in small banks, may not be available except at prohibitive prices, while in other cases directors may have made the maximum amount of investment.[22]

Under the present Act it would appear that National banks are prohibited from performing the service of buying or selling corporate stock for any of its customers [23] thus penalizing not only the banks, but also their customers (who are located in communities other than money centers) in disposing of or purchasing new securities for investment purposes. As such a function in no way imperils the finances of the bank or results in an appreciable outlay of its own money, it would seem that such a provision unnecessarily restricts the business of such banks without promoting a proportionate or any increase in its stability.[24]

It was likewise urged that §33 of the Act which prohibits the directors, officers or employees of any bank from holding positions in corporations which make loans secured by stocks or bonds be likewise amended, for a corporation may legally and safely loan funds to its employees secured by stock of the corporation; also, the controller's report asserts that such a provision "acts as a deterrent on desirable men with wide business experience, who would not be willing to serve on bank directorates in so far as they cannot intimately keep in touch with the daily activities of the other corporations in which they are interested." [25]

Other alterations in the Banking Act were sought to be made among which were clarification of the law to eliminate the doubt as to whether a bank could have more than one holding company affiliate, and as to whether an affiliate or a subsidiary of a corporation holding the controlling interest of the bank's stocks is of necessity an affiliate of the bank.

Section 11(b) of the Act prohibits any member bank from paying interest on demand deposits except (among others) on the deposits of a State's public funds (thus expressly eliminating interest on demand deposits of Federal funds), and forbids the payment of time deposits before maturity. That these were objectionable features the controller's annual report made plain.[26]

The controller's report likewise stated that the law providing for the consolidation of two National banks [27] "should be rewritten so as to provide for effective passage of trust fiduciary powers, accountable to dissenting stockholders for the proceeds of the sale of stock in

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[22] *Supra* note 4.
[23] *Supra* note 2, §32.
[24] *Supra* note 4.
[25] *Ibid.*
[26] *Supra* note 2, §11 (b), amending §19 of the FED. RES. ACT (U. S. C. tit. 12, §§142, 374, 461-466; Supp. VI, tit. 12, §426a).
[27] *Supra* note 2, §24 (b).

excess of the appraised value and to meet the situation where one appraiser refuses to agree with two other appraisers." [28]

The desires of Congress, in providing for the conversion of State to National banks would best be served by permitting certain sound assets in State banks not now accounted as assets in National banks to be eligible as assets in the new National banks at the discretion of the controller of the currency.[29]

That these and other amendments to clarify and interpret the will of Congress will be carried out, is quite evident since they do not change the essential schemes upon which the Act is based, but merely round them out into a practical working order. Because of the favorable reception of the provisions of the Act upon the public as a whole and of the wholesome effects which it had upon the banking life the writer feels that further opposition to the Act will gradually diminish.

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[28] *Supra* note 4.

[29] *Ibid.*