

OPINION
69-28

December 23, 1969 (OPINION)

Mr. G. W. Ellwein

Acting Commissioner of Banking

and Financial Institutions

RE: Banks - Interest Rates on Time Deposits - Authority of Banking B

This is in response to your letter in which you make reference to newspaper advertisements by certain banks as to the interest they will pay on deposits. You also mention that the State Banking Board has authorized banks to pay a five percent interest on time certificates of deposit only. The advertisement to which you make reference appears to include savings deposits using a passbook system and would imply that interest is payable on other than time certificates of deposit. You then ask for an opinion whether or not the State Banking Board is authorized to issue regulations defining the various types of time deposits.

We are assuming that your question relates to regulations defining the various types of time deposits for purposes of determining the interest rate which may be payable on such deposits. In this respect we wish to call your attention to an opinion issued to Mr. H. L. Thorndal, Jr., dated July 31, 1969, in which we said that the statutory provisions do not differentiate between the amounts or purposes of deposits. Section 6-03-63 of the North Dakota Century Code provides as follows:

"INTEREST ON DEPOSITS - RATE PAYABLE - MISDEMEANOR. No state banking association shall pay interest on deposits, directly or indirectly, at a greater rate than four percent per annum unless authorized by the state banking board to pay a greater rate, which in no case shall exceed six percent per annum. The board may grant permission to pay a rate of interest exceeding four percent on deposits, but the rate so granted shall be uniform within any county. Any officer, director, or employee of any association violating the provisions of this section, directly or indirectly, is guilty of a misdemeanor."

It should be noted that the term "deposit" is not qualified or modified in any manner. It is an accepted fact that the term "deposit" has various meanings, depending on the context in which it is used. In this instance it is used in relation to banking activities. 9 C.J.S. SEC. Page 544, in discussing "deposits" state the following:

"The term 'deposit' has a well accepted meaning in the banking business, and has been defined as the act of placing or lodging money in the custody of a bank or banker, for safety or convenience, to be withdrawn at the will of the depositor or under rules or regulations agreed on; * * *."

It continues by saying the term "deposit" means:

"* * * a sum of money left with a banker for safe-keeping, subject to order and payable not in the specific money deposited but in an equal sum; * * *."

It is significant to note that the Supreme Court of Iowa in State v. Cadwell, 44 N.W. Reporter, Page 701-702, in discussing the term "deposit" as used in its statute, which again was without any qualification or modification said:

"* * * It is fair to presume that the legislature used the term 'deposit' as it is ordinarily used in banking and commercial circles, and we see no reasons for thinking the law designed a protection for the people against loss by one class of deposits, and not the other. * * *."

The foregoing remark was made with reference to time and call deposits. The Court clearly stated that the term "deposit", without qualification or modification, includes all types of deposits.

We have been unable to find any statutory definition which would have specific application to the term "deposit" as used in Section 6-03-63 of the North Dakota Century Code. This gives rise to a strong implication that the term as used includes all types of deposits.

On the basis of the foregoing, it is our opinion that under existing statutory provisions there is not distinction between time and call deposits, or savings deposits, and that the interest rate which may be set within limits by the Board applies to all types of deposits. It is conceivable that the F.D.I.C. may impose some restrictions on corporations insured by it, preventing the payment of interest on demand deposits (money placed in checking accounts), however, such restrictions are not because of North Dakota law but because of a condition under which the F.D.I.C. will insure the bank.

It is recognized that there might be justification for classifying different deposits and possibly authorizing a different return of interest for the different types of deposits, however, before this may legally be accomplished it will be necessary to first obtain appropriate legislative authority so that any classification or regulations therefor can be enforced. We might also mention that the usury statute (Section 47-14-09 of the North Dakota Century Code) is directly affected by the provisions of Section 6-03-63.

If, however, you have in mind to adopt regulations for internal control or supervision of banking associations without regard to the interest which may be paid on various deposits, you can develop regulations as to the records which must be kept and other related items for such deposits, but any regulations - whether it is for administrative purposes or supervisory purposes - could not include a different interest rate for any of the various deposits under the existing statutes.

HELGI JOHANNESON

Attorney General