Legislative Control of Commercial Banking in Wisconsin

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A man who is now a justice of the Supreme Court of Wisconsin struck the key-note of a legislative objective in the control of banking, when, as state senator, he addressed the members of the Wisconsin Bankers' Association:

"A bank is a quasi-public institution. It exists solely by the permission of the law. The banking business, if carried on at all, must be carried on subject to the burdens and restrictions imposed by law. It has been the effort of every country in the civilized world to promote a strong system of banking. The state seeks to regulate the business because it is a business which so vitally affects the welfare of its citizens and of the body politic itself. A strong bank is a blessing to a community. A strong banking system is a security to a state or nation. A weak bank is a detriment to a community and likewise a weak banking system is a menace to a state or nation. One bank failure carries in its wake untold hardship and suffering, even where it does not precipitate runs on, and pull down, other banks, thus adding to the direful results. It is therefore important that every state and every nation have the strongest and best banking system that can be devised by the intelligence of the law making bodies acting from motives of the highest patriotism. If this accomplishment should require the imposition of additional burdens upon those who engage in the business it should be regarded as but an incident to a most beneficent plan. No imposition or burden, not destructive of the business itself, should be given the least consideration in opposition to any plan or system that

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makes for the security of the depositor.\textsuperscript{1} It is the public by whose permission banks exist that should be accorded first consideration at the hands of the law making power, and the public interests should never be sacrificed to swell bank dividends or to give one bank an advantage over another. Any other policy smacks of special privilege and selfish interest, and under our form of government it is the whole people whose interest should be jealously safeguarded.”\textsuperscript{2}

**HISTORICAL OUTLINE.**

It is necessary for a complete understanding of the legislative control of commercial banking in Wisconsin to outline some of the significant related events in the history of the state.

The first constitutional convention which met in 1846 introduced a provision into the proposed constitution prohibiting both banks of issue and banks of deposit. Dire experience with failing banks and worthless currency furnished the reason. Although sentiment was overwhelming for the prohibition in the convention, the constitution met defeat by the people largely because of the efforts of the Whigs and others who believed that such a wide departure from the principles of constitution-making was unwarranted.

Naturally enough the second constitution again showed the effect of extraordinary caution. It contained a provision that banking laws must be submitted to the people before becoming effective:\textsuperscript{3} This constitution was ratified in 1848.

Within a period of three years there developed a strong demand for banks, with the result that the legislature passed an act which was presented to the people and ratified. This, the act of 1852,\textsuperscript{4} was practically entirely concerned with the regulation of banks of issue, although banks of deposit were authorized.\textsuperscript{5} Thus 1852 becomes an outstanding date in the history of Wisconsin bank legislation.\textsuperscript{6}

With the exception of a law providing for a bank examiner in 1895,\textsuperscript{7} from 1852 until the beginning of the present century there was

\textsuperscript{1} Italics ours.


\textsuperscript{3} This provision was by no means unique in Wisconsin, but was employed by several other states of the North and West.

\textsuperscript{4} Chapter 479.

\textsuperscript{5} Section 18.


\textsuperscript{7} Chapter 291. The state treasurer, by and with the approval of the governor, was authorized to appoint a bank examiner. Section 11 of the law is interesting. A bank was given thirty days to make good a capital deficiency discovered by the examiner, after which he was to publish in certain newspapers a notice of the refusal or neglect of the bank to make the deficiency good. This law is an illustration of early legislative regulation which by indirection would attain the objectives of both restraint and liberty. See Ernst Freund, “Legislative Regulation,” New York, 1932, p. 63.
only negligible additional legislation, although the federal law taxing state bank notes out of existence\(^8\) gave rise to the growth of banks of deposit, thereby inviting the necessity for rather extensive measures of new control. Governor Taylor in 1874, in his message to the Legislature, said: “The depositor in a state bank has no adequate security against loss, his faith in the integrity and capacity of its officers being really his only guarantee.” He called attention to the necessity for legislation to increase the liability of stockholders, and recommended that banks be placed under the authority of the state, with a system of inspection, in order that the public might no longer be in the dark concerning the capital and the investments of its banks.\(^9\)

The absence of any substantial bank legislation can be attributed largely to the difficulties attending the submission of acts for popular approval.\(^10\) While in some other states the necessity was obviated by judicial decision on the ground that the constitutional prohibition applied only to banks of issue,\(^11\) this situation did not prevail in Wisconsin, owing to a different interpretation of the court.\(^12\)

In 1897\(^13\) a comprehensive bank law was passed by the legislature, but was defeated when presented to the people in November of the following year. While a majority of the people did not vote at all, it appears that the chief arguments instrumental in defeating the act were that there was too much power over appointments given to the bank commissioner, too great a limitation on real estate loans to the alleged detriment of the farmer, and an injustice in placing the expense of

\(^8\) Chapter 78, section 6, U.S. Statutes at Large (1865). The law took effect on July 1, 1866.


\(^12\) \textit{State ex rel. Reedsburg Bank v. Hastings}, 12 Wis. 47 (1860). While the Wisconsin court came to a conclusion resulting in a detriment to the effective legislative control of commercial banking, there seems to be a real reason for the decision. The fact that both banks of issue and banks of deposit were prohibited in the first proposed constitution throws light on the real intent of the framers. Furthermore, the constitutional provision referring to “any bank, banking power or privilege \textit{whatever}” made any other decision difficult, although the reasoning in the Illinois and Ohio decisions points in the other direction. The Iowa and Kansas courts apparently had sounder footing, not only in the contexts of the constitutions involved, but in the debates of the constitutional conventions as well.

\(^13\) Chapter 303.
bank examinations upon the state rather than upon the banks, as had been provided in the law of 1895.

In 1902 the constitution of the state was amended, abolishing the requirement that banking laws should be referred to the people for approval. But as indicative of the prejudice that had not been entirely removed, there was a provision that all laws should receive a two-thirds vote of both houses.

Under this new provision of the constitution a rather elaborate banking law was passed by the legislature, repealing all acts of which it was amendatory. Thus the banking law of 1903 is the basis of the present control of banks and banking in Wisconsin. It will be the purpose of this article to indicate the evolutionary trends in this period of approximately thirty years.

PRIVATE BANKING.

Before 1903 anyone in Wisconsin could establish a bank by common right without restriction. As a result, many private banks were operated by individuals in connection with another business, or if a company was formed, its preliminary assets might consist, not of cash, but of only the subscribers' promissory notes. This type of individual operation was attended with numerous defects and dangers, the net result being anything but satisfactory. If a banker were engaged in another business, as he generally was, the creditors of that business would share with the depositors in case of a failure; and upon the death of the banker, the temporary suspension of business for the purpose of probate might result in demoralizing the confidence of customers. Furthermore, an inspection by the state would be fruitless if it did not take into consideration the personal assets and liabilities of the banker as well as those which were more exclusively concerned with his various other business ventures.

14 The policy of the state has always been to make examination fees support the banking department. A schedule of fees was provided in each of the following years: 1895 (chapter 291), 1903 (chapter 234), 1911 (chapter 172), 1921 (chapter 473), and 1932 (chapter 10, Special Session, 1931).
15 This conclusion is based upon editorial comments appearing in The Milwaukee Sentinel for November 5 and November 22, 1895.
16 Article XI, section 4.
17 Chapter 234.
18 See letters from several Wisconsin bankers, quoted in the Chicago Banker, February 16, 1905.
19 L. B. Krueger, "Evolution of Unit Banking etc.", op. cit., pp. 203-204.
20 "While it was always conceded . . . . that many of the private banks of Wisconsin, while they were in existence, were strong and irreproachable institutions, it must be said that they were the exceptions." Ninth Annual Report of the Commissioner of Banking, p. 15 (1903).
An attempted remedy for these defects was a bill which would exempt the assets of the bank from the claims of outside creditors. Laying aside the point of its dubious constitutionality on the ground of its being a deprivation of the equal protection of the laws, such an enactment would have been a potent instrument in facilitating fraud on the part of the banker by enabling him to transfer part of his assets to the bank upon any indication of an approaching failure.

Upon the recommendation of the bank examiner that steps be taken in the direction of control, and after the pronouncement of Governor La Follette that "the savings of no community should be hazarded, under the seeming protection of the law and without security of any kind in the private ventures of an individual who adopts the title of Banker to inspire public confidence," a law was passed which had even the immediate effect of abolishing all private banks.

This law prohibited, by the imposition of a substantial penalty, the use of the word "bank" as an office sign or upon written or printed materials by other than banking corporations properly organized in accordance with the laws of the state and authorized by charter from the commissioner for the purpose of engaging in the business of banking.

**The Commissioner of Banking**

An ideal for the purpose of making the office of supervisor of banks a significant factor in control was established by the State Bank Division of the American Bankers’ Association by setting up these as the fundamental requirements:

1. That the state supervisor devote all of his time to the supervision of banking;
2. That the tenure of office be made secure and lasting;
3. That the compensation and discretionary power be sufficient to attract executives of outstanding ability;

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23 258A, (1901).
26 Chapter 234, chapter II, section 45, Laws of 1903.
28 See Ernst Freund, “The Police Power,” p. 420. Ostensibly this legislation appeared as regulation, but the actual effect, which was intended, was prohibition. The control, however, was only indirect; if the business could thrive without a label, there was legally no objection to its continuance.
29 The supervisor in Wisconsin is called a commissioner of banking. In other states he is given various designations, as State Examiner, Superintendent of Banks, Auditor of Public Accounts, etc. The office was created in Wisconsin in 1903.
4. That the supervisor be as free from the entanglements of politics as the judiciary.

It is of interest to inquire to what extent Wisconsin has approached this stated ideal.

The duties of the commissioner extend to the supervision of commercial banking, and the business conducted by trust companies, building and loan associations, small loan companies, credit unions, and other designated financial institutions. The commissioner has no control over insurance.

He now enjoys very substantial powers, some advisory and some discretionary. He may make recommendations to the banking review board\(^{31}\) as to the advisability of, and the terms of, bank consolidation;\(^{32}\) or recommend to the board that he should take possession of a bank when it shall appear that any law has been violated, capital impaired, examination refused, or that the management by officers or employees\(^{33}\) puts safety in jeopardy, with power to proceed immediately if in his opinion such action is imperative.\(^{34}\) When, in his judgment, it is necessary or expedient, he may make all necessary examinations and audits or devote any necessary attention to the conduct of the affairs of any state bank;\(^{35}\) if he finds that the capital of the bank is impaired, he has the power to require that the deficiency be made good;\(^{36}\) he may permit the operation of receiving and disbursing stations in small communities in order that they may not be deprived of banking facilities;\(^{37}\) and he may obtain information from banks at any time as to the names of stockholders, their residences, and the amount of their stock holdings.\(^{38}\) That he shall not be trammeled in the exercise of his duties, he may appoint as many examiners and clerks to assist him as he may find necessary;\(^{39}\) and to stimulate courageous moves on his part he shall suffer no civil liability or criminal penalty

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\(^{31}\) Created by Chapter 10, section 2, Laws of Special Session (1931).

\(^{32}\) Chapter 10, section 9, Laws of Special Session (1931).

\(^{33}\) As a further protection to depositors, every person in the employ of a bank having control over funds must give an adequate fidelity bond. Chapter 10, section 14, Laws of Special Session (1931).

\(^{34}\) Chapter 10, section 8, Laws of Special Session (1931).

\(^{35}\) Chapter 10, section 4, Laws of Special Session (1931).

\(^{36}\) Chapter 10, section 7, Laws of Special Session (1931).

\(^{37}\) This is subject to review at the request of the bank involved upon a stated objection.

\(^{38}\) Chapter 10, section 9, Laws of Special Session (1931).

\(^{39}\) Chapter 10, section 10, Laws of Special Session (1931).

\(^{30}\) Chapter 15, section 2, Laws of Special Session (1931).

One of the serious objections to the act of 1897 (chapter 303) was the fact that the commissioner of banking was given power to appoint as many assistants as he pleased. See editorial, "A Good Law," *The Milwaukee Sentinel*, November 5, 1898.
for any error of judgment for any action made in good faith and upon reasonable grounds.\(^{40}\)

The maximum salary of $7,500 which he may receive\(^{41}\) is somewhat commensurate with the high position of his office under the new imposition of duties and the enlargement of powers.

While the commissioner is appointed by the governor with the advice and consent of the senate,\(^{42}\) and is therefore not divorced from the possibilities of entangled politics, the designation of a five year term\(^{43}\) has the effect of reducing political control to a very considerable extent.\(^{44}\)

When measured by the standards set up by the American Bankers' Association, it is apparent that Wisconsin is entitled to a high rank in dealing with the office of commissioner of banking.

### THE BANKING REVIEW BOARD.

There is unquestionably much merit, at least during times of great stress in the commercial world when frequent and important decisions must be made, in a board which is in a position to act in an advisory capacity, to strengthen the position of the commissioner in his decisions, to act in a checking capacity in several respects, to make important decisions in its own right, and in general to support a much more vigorous policy of bank control than would be possible with single responsibility. Whether upon the return of an era of business ascendancy the necessity for a board with such powers will be removed is still the unknown in an interesting and developing social experiment.

The legislature in special session in 1931-1932,\(^{45}\) in common with a number of states that rely to a greater or less extent upon plural re-

\(^{40}\) Chapter 26, section 1, Laws of Special Session (1931).

\(^{41}\) Chapter 7, section 3, Laws of 1933.

\(^{42}\) Chapter 234, chapter I, section 2, Laws of 1903; Section 220.01, Statutes of 1931. Most of the states designate appointment by the governor by and with the consent of the senate. The commissioner is popularly elected in Illinois and Florida; selected by a banking board or commission in Oregon and Virginia; appointed by the governor from five nominated by the state bankers' association in Tennessee; appointed by the governor upon advice of the executive council of bankers in South Carolina; and by the bankers directly in Mississippi.

\(^{43}\) Chapter 234, chapter I, section 2, Laws of 1903.

\(^{44}\) While the Wisconsin Bankers' Association had the matter of political control up for discussion in 1918, there was no suggestion that the method of appointment be changed, but there was adherence to the ideal of non-political control. Proceedings of the Twenty-fourth Annual Convention, pp. 118-120 (1918).

\(^{45}\) Chapter 10, section 2.
sponsibility, created a banking review board consisting of five members with five year terms, appointed by the governor with the advice and consent of the senate, with compensation on a per diem basis. As for their qualifications, at least two of them shall have at least five years' banking experience.

The duties of the board are to advise with the commissioner, to review his decisions, and to make judgments upon his recommendation. The board has the same power to subpoena witnesses as is possessed by the industrial commission. Final orders of the board may be reviewed in the circuit court of Dane county, this being the location of the seat of government, unless an appeal is otherwise specified by law. While the duties of the board are to a large extent advisory, decisions in the administration of the banking department are by no means negligible. If certain statutory causes exist which give rise to the necessity of taking over the business of a bank, the board must make the decision except in case of extreme urgency. The power of decision as to the question of new banks, which was formerly vested in the commissioner of banking, has now been placed in the hands of the board.

The following states have banking boards of varying powers. The board of Alabama may direct the superintendent of banking to take over banks for certain statutory causes [section 6299, Banking Civil Code, 1928], and may review the decisions of the superintendent in refusing a charter [section 6355]. In Connecticut, the banking commissioner is a member of a banking commission which approves increases of capital stock [section 3887, Laws, 1931], and to approve and disapprove charters [section 3877]. The banking board of Iowa acts in an advisory capacity only [chapter 412-A1, section 9154-a8, Banking Law, 1931], as does the board in Kansas [section 90, Banking Law, 1931]. In Nevada the state board of finance sits as a banking board, and, in connection with the state bank examiner, has supervision and control of banking [section 698, Hillyer's Nevada Compiled Laws, 1929]. The duty of the commission in North Carolina is "policy-determining, sitting as a court of final jurisdiction on appeals from rulings of the bank commissioner." [Editor's note on chapter 5, article 7, section 221 (o), Banking Laws, 1931]. In North Dakota the department of banking is in the hands of a state banking board [chapter 96, section 1, S. L. 1931]. A banking board in Texas consisting of the banking commissioner and two other state officers, has the supervision of banks [article 439, Statutes, 1928]. The Virginia code [chapter 146, 1930] provides for a state corporation commission which is given certain powers over the administration of banks [section 4149 (52)].

A board of review, consisting of the governor, the secretary of state, and the attorney general, the duty of which was to pass merely upon decisions of the commissioner with respect to bank charters, was abolished upon the creation of the new board. Chapter 10, section 11, Laws of Special Session (1931).

There is probably much wisdom displayed in selecting the personnel from active bankers, as a powerful outside control might be much more easily charged with, and subject to, bureaucratic tendencies.

Chapter 10, section 2, Laws of Special Session (1931).

See Note 34.

Chapter 10, section 8, Laws of Special Session (1931).

Chapter 10, section 12, Ibid.
BANKING LEGISLATION

BANK COMPETITION.

While public sentiment has favored unlimited competition among banks, treating them like other business organizations in which men of good character and average business ability might engage with freedom,53 banking authorities have been for some time of the opinion, and are now in practical agreement that an excessive number of banks is one of the primary causes of bank failures.54 A special joint committee, appointed by the legislature of Minnesota for the purpose of making a study of the banking situation in that state, after pointing out that it is now almost universally admitted that banking supervisors have granted too many charters, states that “one of the outstanding factors which have caused the present situation in Minnesota is the fact that there have been too many banks.”55 A very late report of the Economic Policy Commission recommends that “the greatest care and moderation should be exercised in granting new charters, so as to guard against over-banking or the launching of new banks by unqualified persons, which have doubtless been serious factors in the bank failure situation in the past.”56

The commissioner of banking of Wisconsin57 was no laggard in perceiving this as a fundamental cause of bank failure. In his report for 191158 he called attention to the menace of free competition, stated that too many banks had been organized during the year that had just passed, and urged the enactment of legislation in the interest of restriction. The statute in existence in 191159 provided, first, that the articles of incorporation should be approved by the commissioner, which, he correctly observed, had reference only to his power over form and content; and, second, that he should grant a certificate authorizing a bank to commence business when the capital had been paid

53 Report of the Economic Policy Commission (1927), 20 Jour. of the American Bankers Association, 304 at 305. O. M. W. Sprague, professor of Banking at Harvard University, assisted in the investigation which preceded this report, which was made to the Houston convention of the American Bankers' Association.
54 Too many banks has been named as the primary cause of bank failures by Dan V. Stephens in an article entitled “Adjusting Banking to Changing Conditions” (1927), 20 Jour. of the American Bankers Association, 323. Writing later in Nation's Business, he referred to the fact that the principle of the “survival of the fittest” has been applied to banks, but concludes that “a bank can no more be subjected to competition of that character safely and successfully than can a post office.” “Nebraska's Bank Experiment,” February, 1929.
57 Albert E. Kuolt.
58 Seventeenth Annual Report of the Commissioner of Banking, p. xv (1911).
59 Section 2024-8, Chapter 109, Laws of 1905.
in, in cash, withholding it in case he had reason to believe that the corporation had been formed for other than legitimate banking business.\textsuperscript{60}

He pointed to the inadequacy of the statute, referring to the fact that only the one cause for disapproval was provided for, and that the time of disapproval came when the bank was ready for business, thus causing unnecessary loss to many innocent stockholders. He then continued with his recommendations:

"The power of refusal should be coincident with the first overtures to organize a new bank . . . The authority to disapprove . . . ought to be amplified to the end that harmful competition may be prevented."\textsuperscript{61}

The result was that the legislature gave him some control by authorizing him to disapprove applications for charters by undesirable individuals\textsuperscript{62}, which he thought would be of service in increasing efficiency.\textsuperscript{63} But realizing that the legislature had fallen short of its duty, he again emphatically recommended control over new banks by stating that it was "plainly evident to one who had made a careful analysis of the banking business" that additional banks would invite disaster.\textsuperscript{64}

This vigorous espousal of the cause for additional controlling legislation, coupled with a significant administrative event,\textsuperscript{65} brought at the next session of the legislature an additional provision, giving the com-

\textsuperscript{60} Section 2024-12.
\textsuperscript{61} The proposal to control the establishment of new banks was stubbornly opposed by \textit{The Madison Democrat}. "No state officer in any circumstances should be clothed with the colossal power to forbid any man to engage in banking so long as that man is able to comply with the proper regulations which now are assuring to Wisconsin citizens banking so unusually safe. . . . The legislature should not be persuaded for an instant to concede any such rights as the commissioner demands." Editorial, "Shutting Out Banks," February 18, 1913. Compare this with an antipodal philosophy: " . . . . in the banking law of the state of New York, which is largely the product of the best thought of our most intelligent bankers, powers are conferred upon the Superintendent of Banks which makes him almost an autocrat. Like the ancient seigniors, he has the power of life and death. . . . " George I. Skinner, "Model State Banking Laws," Preceedings of the Forty-Fifth Annual Convention of the American Bankers' Association, 660 at 666 (1919).
\textsuperscript{62} Chapter 749, Laws of 1913.
\textsuperscript{63} Nineteenth Annual Report of the Commissioner of Banking, p. 10 (1913).
\textsuperscript{64} Twentieth Annual Report of the Commissioner of Banking, p. 11 (1914).
\textsuperscript{65} Early in 1914 an application for a second bank at Mosinee was refused on the grounds that the amount of business did not warrant additional banking facilities, that there was convincing evidence of its being a "spite bank," that it was being dominated by outside interests, and that the largest subscribers of stock were unsafe parties to be engaged in the business of banking. An appeal was taken to the board of review, consisting of the governor, secretary of state, and attorney general, where the commissioner's decision was reversed on the grounds that it would be unconstitutional to delegate legislative power to an administrative officer, and that the statutes had not been violated by the applicants. It was obvious that such an impasse in the future could only be obviated by a change in the law, a recommendation the commissioner proceeded to make. See Twentieth Annual Report of the Commissioner of Banking, p. 10 (1914).
missioner power to pass upon proposed new banks from the standpoint of public convenience and advantage, a power which even before this law was passed had been exercised.

In 1921 an extraordinarily comprehensive law was passed, giving the commissioner of banking more power to base his approval or disapproval of applications for charters upon these points:

1. The character, responsibility, and general fitness of the persons named in the application with reference to their ability to command confidence and to warrant the belief that the business of the proposed corporation will be honestly and efficiently conducted;
2. The question as to the promotion of public convenience and advantage if the bank should organize;
3. The character and experience of the proposed officers, the adequacy of existing banking facilities, and the need of further banking capital;
4. The outlook for the growth and development of the city, town, or village in which the bank is to be located, and the surrounding territory from which patronage would be drawn;
5. The interest rate which existing banks charge to borrowers;
6. The methods and banking practices of the existing bank or banks;
7. The character of the service which they render the community, and the prospects for the success of the proposed bank if efficiently managed.

Chapter 441, Laws of 1915. The constitutionality of a similar statute was passed upon by the supreme court of Kansas in the case of *Schaake v. Dolley et al.*, 85 Kan. 598, 158 Pac. 80, 37 L.R.A. (N.S.) 877 (1911). The Comptroller of the Currency had taken this position in the absence of statutory regulation:

"To say that the comptroller, bank supervisor, or any other power to issue bank charters, must give one to all who apply, irrespective of conditions, is preposterous." Reference is made to this statement in an editorial, "Regulation of Bank Organization," *The Outlook*, XCIX, p. 800, December 2, 1911. It was doubtless the position of the comptroller regarding administrative authority that prompted the commissioner of banking in Wisconsin to make his decision in the Mosinee affair. In his report for 1911, page xv, he states that the power is properly exercised.

Chapter 555.

A comparison with the law of Iowa on this point of control over new banks is enlightening:

"No such (banking) association shall have the right to commence business until its officers or its stockholders shall have furnished to the superintendent of banking a sworn statement of the paid-up capital, and, when the said superintendent is satisfied as to that fact, he shall issue to such association a certificate authorizing it to commence business." Chapter 414, section 9207, Banking Laws of Iowa (1931).

Iowa has been selected for this comparison not only because it is an important neighboring state, but because the Wisconsin commissioner in his report for 1927 referred to the fact that there was in that state, with its many bank failures, one bank to every eleven hundred of population compared to twenty-four hundred in Wisconsin, and drew the conclusion, from this and other facts, that bank troubles are directly related to inadequate bank population.
Co-ordination, systematization, standardization, and examination systems are the non-mechanical products of clearing house associations which had their origin in a mechanical function, viz., the clearing of checks.\(^7\)

A far-reaching clearing house bill,\(^7\) having for its dual function the improvement of banking and the lodging of greater control in the state over the banking business, was recommended by the special interim legislative committee of 1931,\(^2\) but it failed to receive the necessary two-thirds vote to become a law.

The bill would create clearing house districts, not less than twenty nor more than thirty-five in number, to be fixed by the commissioner of banking, but subject to the approval of the banking review board. Within each district there may be created a clearing house association, composed of three or more banks or trust companies, whether state or national,\(^3\) the association to be governed by a board of nine directors who must be directors or officers of member banks and trust companies and who reside within the district.

The purpose of these clearing house associations is to promote safety, to improve service, render advice, give auditing service to member banks, furnish information as to credit risks and investments, assist in the collection of items, and to promote the raising of funds on local credits held by banks.

The powers of these associations include the making of studies of bank conditions looking to improvement; to make recommendations concerning bank organizations, records, and investments, the latter including the handling of money and the making of local loans; to make studies and recommendations to be effected by bank reorganizations and consolidations; to promote organizations for the purpose of lending money on or discounting local loans; to issue publications dealing with the problem of making safe investments and loans within the district, and generally to do those things which would promote the objectives of safety, better service, and improved credit facilities.

In order to stimulate membership in these clearing house associations and to preserve the system of unit banking, it is provided that no public funds can be deposited in any bank unless it is a member of


\(^7\) Assembly Journal, Special Session, p. 61 (1931).

\(^2\) Doubt as to the constitutionality of a provision which would give some control over national banks was expressed by some, with the result that a provision was introduced to the effect that the unconstitutionality of one part would not affect any other part.
the association; that no bank shall make any loans on the stock of any other bank unless that other bank is a member of an association; and that no bank shall make any loan collateralized by the shares of any corporation which has more than twenty per cent of its assets invested in the stock of banks or trust companies, or which owns more than fifteen per cent of the stock of more than five banks or trust companies in Wisconsin. Nor shall any bank become a member of the association if more than ten per cent of its stock is held by any corporation or association.\textsuperscript{74}

**The Duty of Directors.**

There is much evidence to support the conclusion that directors can play a very substantial role in supervising their banks in the interest of safety. Writing in the *Chicago Banker* in 1905, Joseph Chapman stated that he had heard it said by both the state superintendent of banking and the Comptroller of the Currency that "no national bank or state bank has ever failed where the directors have done their duty."\textsuperscript{75} The special joint committee of the house and senate of Minnesota, after considerable study surrounding the bank-failure situation in their own state, came to the conclusion that in spite of the deflation in values, conservative management would have saved the banks, and that if there had been real supervision by the directors, frequent meetings and discussions, the number of fatalities would have been very substantially lessened.\textsuperscript{76} Speaking before the Florida Bankers' Association in 1928, Joseph W. McIntosh, Comptroller of the Currency, said:\textsuperscript{77}

"It is my belief that failures of many banks could have been and can be averted if the directors would give closer attention to the affairs of the bank . . . . Most failures involve mismanagement in some form . . . . They (directors) must maintain a supervision of the bank's affairs, have a general knowledge of the character of the busi--

\textsuperscript{74} The provisions directed at the control of chain and group banking give rise to queries as to the actual purpose of the bill. It was stated in a Madison newspaper: "Protection of depositors should be the first aim of all banking laws. Whether that thought is as present in the proposed bill before the interim legislative committee as is state domination of the banking situation is doubtful." Editorial, "State Domination Aim of Bill," The *Wisconsin State Journal*, October 19, 1931.

There is exhibited in this bill an ingenious method of control of group and chain banking, corresponding closely to the methods of publicity. Group and chain banks are not prohibited: the bankers must choose between the merits of their system and the desirability of membership in an association.

\textsuperscript{75} "Bank Examinations," June 15, 1905.

\textsuperscript{76} *Report* (1927) *op. cit.*, pp. 3 and 5.

\textsuperscript{77} Quoted in *The New York Times*, April 5, 1928.
ness and the manner in which it is conducted and to know on what se-
curity at least its large lines of credit are given."\(^7\)

The laws of Wisconsin dealing with directors have been progres-
sively strengthened by the enumeration of restrictions and the addition
of duties. The provision for a board with a minimum of three mem-
bers, which remained from 1903\(^7\) to 1925, was changed in the latter
year to a minimum of five.\(^8\) There were no residence requirements in
the defeated act of 1897.\(^9\) In 1903\(^8\) there was a provision that a ma-
jority of the directors should be residents of Wisconsin, while in
1931\(^8\) the law was changed to require all the directors to be residents
of Wisconsin, and that a majority should be residents of the county or
of the adjoining counties where the bank is located. On the question
of stock ownership, the law of 1903 was silent. The Legislature of
1925\(^8\) provided that a director should own at least one share, but the
amount to be owned was raised in 1931\(^8\) to a minimum of one per
cent for banks with a capital of less than $50,000, or a par value of
$500 for banks with a capital of $50,000 or more, this stock, further-
more, not to be pledged as collateral security. The defeated act of
1897\(^8\) merely stated that directors should perform their duty. In
1903\(^6\) it was provided that a committee should examine the affairs c
the bank, thereafter making a report to the board; but a still more ef-
cfective provision was made a part of the law of 1911,\(^7\) placing the
duty upon the whole board, and then specifying that duty as being an
investigation of the affairs of the bank and a determination as to
whether the value of the assets corresponds to that at which they are
carried on the books of the bank.\(^8\) The law respecting the duty of di-
rectors was further strengthened in 1931\(^8\) by a provision for a loan

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\(^7\) There is always a question for legislative determination as to just how great
a duty may be laid on a board of directors. The legislative committee of
1910 prepared a bill (Report, p. 40) providing at each monthly meeting for
personal inspection of each loan and discount item, a verification of signa-
tures of makers and indorsers, and a determination of the value of the items
carried. The Wisconsin Bankers' Association thought these duties were too
onerous, and that no one with such a burden would act as a director. Pro-
cedings of Wisconsin Bankers' Association, pp. 89-90 (1910).

\(^8\) Chapter 234, chapter II, section 9.

\(^9\) Chapter 292.

\(^8\) Chapter 234, chapter II, section 9.

\(^8\) Chapter 432.

\(^8\) Chapter 292.

\(^8\) Chapter 432.

\(^8\) Chapter 292.

\(^8\) Chapter 249.

\(^8\) Chapter 303, section 10.

\(^8\) Chapter 234.

\(^8\) Chapter 432.

\(^8\) Chapter 250.

\(^8\) The commissioner reported that the directors had readily responded to this
new provision. Sixteenth Annual Report of the Commissioner of Banking,
p. xiv (1911).
committee from the directors other than active executive officers to determine policies concerning applications and renewals. Finally, significant changes were made in the number of meetings of the board. The defeated act of 1897 was silent on the subject; the law of 1903 provided for meetings every six months; the law of 1911, every three months; the law of 1931, every month. And for the purpose of making this more than a mere formal statutory requirement, the legislature provided that if any director should be lax in attendance at meetings he should be removed by the commissioner.

The office of commissioner of banking has been alert in stimulating active interest and participation on the part of directors. The commissioner in his report for 1907 devotes considerable space to the question of supervision, relating how he has sent letters to directors reminding them of their duties, and requesting them to leave their regular work to co-operate with the bank examiner. "When bank directors are strictly held to their sworn duty, and then only, does bank supervision constitute the full measure of protection to depositors contemplated by law. It has been my endeavor . . . . to make it plain to bank directors . . . . that the law imposes upon them active, not passive duties." Again, says the commissioner in 1915, "if a board of directors gives proper attention to the affairs of a bank, invariably an examination discloses a healthy condition." Bank examiners were instructed to bring the matter of responsibility to the attention of directors, who, at special meetings called at the time of examination, were provided with a report covering facts relating to the bank. Frequent meetings of the directors were considered so important by the commissioner of banking that he recommended monthly meetings four years before the legislature made the change.

LICENSES FOR BANKERS.

The legislative interim committee on banking in 1931 discussed a proposal requiring licenses for bank officials, an idea by no means altogether new in the state, as the commissioner of banking in 1912, aft-

90 Chapter 234.
91 Chapter 432.
92 Chapter 250.
93 It is interesting to note that the special legislative committee on banking in 1910, after stressing the great importance of supervision by directors, recommended and prepared a bill providing for monthly meetings. Report, pp. 20 and 40-41.
95 Twenty-first Annual Report of the Commissioner of Banking, p. 17.
98 Meetings and Hearings of the Legislative Interim Committee on Banking, II, p. 228 (1931).
er pointing out that the state requires examinations of those pursuing the liberal professions and many of the trades, recommended the establishment by law of certain efficiency standards for the managing officers of new banks. The bill proposed to the interim committee would constitute the commissioner of banking and the banking review board a licensing body to issue licenses on the basis of examination or school certificates indicating a certain knowledge of banking, such licenses to be revocable in case of violations of any laws or orders of the commissioner, or any mismanagement or incompetency in bank operations. The proposed bill was similar to a law of Nebraska, which was passed in that state upon the recommendation of the Nebraska State Bankers' Association.

**Minimum Capital.**

With a present minimum capital requirement of $30,000, Wisconsin makes a creditable showing when compared with other states of the Union. Nevertheless, there is a substantial failure to reach the recommendation of the Economic Policy Commission, which would have no capitalization below $50,000. Even the present minimum has been obtained with considerable hesitancy and difficulty. The laws of 1852 provided for a minimum capital of $25,000, but an

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100 Meetings and Hearings, I p. 22 (1931).
101 For a discussion in favor of the licensing system, see Roy L. Bone, “Too Many Banks, Too Few Bankers,” (1926), 19 Jour. of American Bankers Association, 340. H. H. Sherwood of the Bank of Gays Mills, Wisconsin, argues against the licensing system on the ground that successful bank administration is very largely dependent upon judgment, which cannot be tested by an examination. Meetings and Hearings, II p. 270 (1931).

It is the opinion of the author that while there is value in initial control, the greater value lies in the control that can be exercised through the power of revocation. In view of the removal power given to the commissioner in case of any evidences of mismanagement, a great part of the necessity for a license has been removed. Chapter 10, section 8, Laws of Special Session (1931).

102 See C. M. Harger, “Nebraska Licenses Its Bankers,” 19 Jour. of American Bankers Association. 495 (1927)
103 Chapter 10, section 13, Laws of Special Session (1931).
104 In 1930 twenty-nine states required a minimum capital of $25,000 and four states, California, Connecticut, Massachusetts, and New Jersey a minimum of $50,000.
106 Speaking in 1922 before the Wisconsin Bankers' Association, Marshall Cousins, Commissioner of Banking, in referring to efforts toward establishing a larger minimum, said: “This matter has been considered by the legislatures on a number of occasions and it is a surprising fact that the existing banks have opposed an amendment to this section of the law. Such an amendment would not affect existing banks. It would protect them.” Proceedings of the Twenty-eighth Annual Convention of the Wisconsin Bankers' Association, p. 86 (1922).
107 Chapter 479, section 18, Laws of 1852.
amendment in 1861 allowed banks to begin business when $15,000 had been paid in. The law of 1903 provided for graduated minima, depending upon the population of the place of the location of the banks, but made the minimum for small places only $5,000. This was a serious defect and was most decidedly a step backward, but some improvement was made in 1905 when the minimum was placed at $10,000. In 1916 and in several subsequent years the commissioner emphatically called attention to the fact that the new minimum was too low, and pointed out two factors upon which a change should be predicated: a completion of the land improvement program in the more remote regions of the state, and the presence of economic prosperity. In spite of the law, however, the commissioner was able to present, with reasonably successful results, the necessity for a larger capital to many existing and newly chartered banks. The commissioner's activities were handicapped by a law which taxed capital and surplus instead of income.

**Impairment of Capital.**

Control over the impairment of capital to be effective must be coupled with both an adequate system of state supervision and inspection and a uniform system of bookkeeping. The former was not provided for until 1895 and the latter in 1903. While the law of attempted to control this situation, it was largely ineffective for the two reasons given, and receiverships frequently revealed fictitious capital. In connection with this matter of impairment of capital, the Legislature of 1933 went as far as possible to keep banks open. Chap-

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108 Chapter 242, section 14.
109 Chapter 234, chapter II, section 1.
110 The absence of merit was recognized before the bill became a law. See Ninth Annual Report of the Commissioner of Banking, p. 16 (1903). The original bill provided for a minimum of $10,000, but was reduced because of the organized opposition of the one hundred and forty-eight private banks in the state. See L. B. Krueger, "Evolution of Unit Banking, etc." op. cit., p. 12.
111 Chapter 109, section 1. This remained until 1925 (chapter 292) when the minimum was raised to $15,000.
112 Twenty-second Annual Report of the Commissioner of Banking, p. 11.
115 Twenty-second Annual Report of the Commissioner of Banking, p. 6 (1916).
116 Chapter 291, section 6.
117 Chapter 234, Chapter I, section 11.
118 Chapter 479, section 40. "If any portion of the original capital of any banking association shall be withdrawn for any purpose whatever, whilst any debts of the association shall remain unsatisfied, no dividends or profits in the shares of the capital stock of the association shall thereafter be made until the deficit of capital shall have been made good, either by subscription of the share-holders, or out of the subsequent accruing profits of the association."
119 L. B. Krueger, "Revolution of Unit Banking, etc.," op. cit., p. 204.
ter 6, section 4, Laws of 1933, states that any bank should be considered solvent if its assets at a fair valuation should be equal to or in excess of its liabilities *exclusive of capital stock*.

**Ratio of Capital to Deposits.**

While it was possible to get a number of banks to increase their capital voluntarily as their business grew, as has been pointed out, it became progressively evident that the legislature should prescribe a definite ratio between capital and deposits. The commissioner of banking in 1916\(^{120}\) stated that the deposits in some banks were in excess of thirty times the amount of capital stock; while in 1919 there were certain banks with deposits exceeding capital by fifty times.\(^{121}\)

On the matter of a specific ratio there was some uncertainty, the commissioner of banking pointing out that many authorities favored a ratio of ten to one. He thought, however, that initially the ratio should be fifteen to one, disregarding surplus, which was somewhat uncertain in quantity.\(^{122}\) A law was passed in 1929\(^{123}\) embodying this suggestion with respect to capital, but liberalizing by placing the ratio at ten to one for surplus.\(^{124}\)

**Surplus Fund.**

The economic *debacle* which had its beginnings in 1929 brought calamity to a number of banks and placed many others in an unenviable condition. In a time of extremity, legislative attention was focused on the principle that the earnings should be in part retained for the purpose of building up substantial surpluses. The law of 1903\(^{125}\) had provided that before any dividends should be paid, one-tenth of the net profits should be deducted and carried to surplus until the surplus should amount to twenty per cent of the capital stock. But this was not enough protection in a period of economic crisis. Therefore it was provided in 1932\(^{126}\) that the surplus must be allowed to accumulate until it reaches fifty per cent.

\(^{120}\) Twenty-second Annual Report of the Commissioner of Banking, p. 11 (1916).

\(^{121}\) Twenty-fifth Annual Report of the Commissioner of Banking, p. 20 (1919).

\(^{122}\) *Ibid*.

\(^{123}\) Chapter 431.

\(^{124}\) Only on one occasion was this matter of capital-deposit ratio discussed in the proceedings of the Wisconsin Bankers' Association, so far as the writer has been able to discover. F. J. Bohri argued in opposition to the legislative designation of a ratio that bank growth was conducive to conservatism in the making of loans and investments, and that large capital increased taxes while lessening profits. Proceedings of the Twenty-fourth Annual Convention, pp. 85-86 (1918).

\(^{125}\) Chapter 234, chapter II, section 35.

\(^{126}\) Chapter 15, section 2, Laws of Special Session (1931).
CASH RESERVE.

The bank examiner of 1896\textsuperscript{127} recommended that a minimum of available cash be required of all banks; but it was not until 1903 that there was any legislation on the subject.\textsuperscript{128} A few changes in the requirements have been made since that time. The provision for fifteen per cent of total deposits was reduced to twelve in 1915.\textsuperscript{129} The employment of one-third of the reserve in United States government bonds was permitted in 1919;\textsuperscript{130} and in 1925\textsuperscript{131} it was provided that federal reserve members need carry only the cash reserve required of national bank members of the system.

LOANS TO OFFICERS AND DIRECTORS.

Among the several recommendations of the first bank examiner was a law to prevent loans to officers, directors, or employees of a bank without ample security, and then only after formal, recorded action of the board of directors.\textsuperscript{132}

The law of 1903\textsuperscript{133} was only a halting step in the right direction. It provided no limit on loans, and demanded no security in the form of indorsement or collateral if the loan received the formal approval of the board of directors.

The defects of this law were pointed out by the commissioner of banking in 1909. As excessive loans were made under the law, he recommended that either the commissioner be given discretionary power over such loans, or that the amount be definitely fixed by statute.\textsuperscript{134} This matter became one of the important points to be acted upon by the legislative committee on banking in 1910. That a firm stand was taken by this committee is indicated by the following language from their report:

"... the committee ... desire to submit the proposition that in its (sic) opinion, no active officer of a bank should be permitted to borrow a dollar of the bank's funds. It is apparent that a managing officer of a bank stands in a moral sense, at least, in the relation of trustee of the funds deposited in the bank. ... From the standpoint of security to the banks, it would be wise legislation to extend this to the directors of the bank, but it may be readily seen that in many in-

\textsuperscript{127} Third Semi-Annual Report, p. 7.
\textsuperscript{128} Chapter 234, chapter II, section 25.
\textsuperscript{129} Chapter 75.
\textsuperscript{130} Chapter 578.
\textsuperscript{131} Chapter 292, section 2.
\textsuperscript{133} Chapter 234, chapter II, section 29.
\textsuperscript{134} Fourteenth Annual Report of the Commissioner of Banking, pp. 12-13 (1909).
stances this would keep very good and able men off the board of directors.”

No legislative action was taken until 1925, when a provision was made for a severe penalty by imprisonment for an officer or director who borrowed in excess of one thousand dollars without a formal, recorded resolution of the board of directors, upon approved indorsements or collateral security. A 1931 amendment declared that if the amount borrowed exceeds one thousand dollars the entire loan must be secured by indorsements or collateral, with the further important provision that one director's indorsement cannot be accepted as sufficient for another.

**Limit of Loans.**

Although the size of loans to single interests is of great importance from the standpoint of safety, not until 1903 was there a legislative declaration on the subject, a silence that had led not only to undesirable practices, but in many instances to bank failure. The bank examiner in 1902 recommended a limitation on the size of loans in proportion to capitalization, but mentioned no specific percentage. The Legislature of 1903, in pursuance of the commissioner's suggestion that a limitation should be made, put the limit at thirty per cent of capital and surplus, with the additional absurd provision that loans might equal capital and surplus if made upon approved security and voted by two-thirds of the board of directors. This would make it possible for a single failure to wipe out the entire capital. Such a loophole gave rise to "grave apprehensions" on the part of the commissioner of banking, and resulted in a change in 1905 in favor of a restriction to fifty per cent upon the vote of the board of directors. But this was still too liberal. For a period of several years the commissioner railed at the absence of significant limitations, recommending that the limitations should be twenty and thirty per cent of capital and surplus, with and without the approval of directors, respectively.

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135 Report, p. 20. The same attitude was later expressed by the commissioner of banking. "The law never contemplated the organization of banks as a mere convenience for financing the private undertakings of its officers." Twenty-ninth Annual Report of the Commissioner of Banking, p. vi (1923).
136 Chapter 292, section 3.
137 Chapter 252.
138 Chapter 234, chapter II, section 27.
140 Ibid.
141 Ninth Annual Report of the Commissioner of Banking, p. 17 (1903).
142 Chapter 109, section 3.
It was not until 1925 that the legislature made an absolute limitation of thirty per cent of capital and surplus. The special legislative session of 1931 reduced this to twenty per cent, with an additional provision for a sworn statement from the borrower as to his assets and liabilities, or for collateral security in excess of the loan, if the amount borrowed equals two per cent or more of the capital and surplus.

**Limit on Real Estate Loans.**

As a commercial bank demands a high degree of liquidity, a source of difficulty was found in the unrestricted loans on real estate security. The defeated Banking Act of 1897 was strongly opposed by many because it too greatly curtailed the power of banks to loan on real estate. This particular act would have limited the loans to twenty per cent of the capital stock, except that the amount might be increased to twenty-five per cent of capital, surplus and deposits by a two-thirds vote of the board of directors. Banks in small communities, however, were to be allowed to loan up to thirty-three and one-third per cent of capital, surplus and deposits.

The present law of Wisconsin on this subject, enacted in 1911, reads as follows:

“No bank shall lend any part of its capital, surplus or deposits upon real estate mortgages or on any other form of real estate security, directly or as collateral, except in this and adjoining states; nor shall it lend on real estate mortgages or any other form of real estate security, an amount exceeding fifty per cent of the aggregate of its capital, surplus and deposits, except when authorized as to amount, security and location by resolution of two-thirds of its board of directors properly entered upon its minutes.”

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144 Chapter 292, section 2.
145 In 1927 (chapter 275) an exception was made in favor of municipal corporations.
146 Chapter 10, section 13.
148 Chapter 303, section 35.
149 Chapter 138, Laws of 1911.
150 The old law (chapter 234, chapter II, section 30, 1903) stated that “no bank shall lend an amount exceeding fifty per centum of the aggregate of its capital, surplus and deposits upon mortgages or any form of real estate security except when authorized as to amount, security and location in this and the adjoining states by resolution of two-thirds of its board of directors...” It was the purpose of this language to permit loans only on mortgages in adjoining states, but the words were capable of misconstruction. A question of interpretation arose when certain banks wished to make loans in southern states. The attorney general held that the statute by implication authorized loans which did not exceed fifty per cent of capital, surplus and deposits. Fifth Biennial Report of the Attorney General, p. 75 (1910). See also Report of the Special Committee on Banking, p. 35 (1910).
LIABILITY OF STOCKHOLDERS.

Remarkable because it virtually stands alone in the law of 1852 as a protection for the depositor, is a provision which makes every stockholder of every corporation or association organized under the act individually responsible to the amount of his respective shares of stock for all of its liabilities, regardless of kind. That this amounted to double liability was decided in *Coleman v. White*:

“We are of the opinion that the liability is primary and absolute and attaches the moment the debt is contracted by the bank—that it is a liability of all the stockholders to all the creditors, in the principle of co-partnership, the stockholders standing on substantially the same footing as though they were partners . . . save only that the responsibility of each is limited to a sum equal to his share or shares of stock.”

Double liability was provided for in the law of 1903, with the exception, however, that liability should not extend beyond six months from the transfer of the shares. In 1915 there was an addition that liability should accrue immediately and be enforced by the commissioner of banking, with reimbursement out of any remaining property upon liquidation.

The depositor was given additional security by a provision in 1880 permitting stockholders of a bank under the law of 1852 to file a declaration of unlimited liability with the state treasurer, a pro-

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151 Chapter 479, section 47.
152 14 Wis. 700 (1861).
153 P. 701.
154 Chapter 234, chapter II, section 39. A provision, following the federal act, contains the words "equally and ratably, not one for another." These words are given the same meaning as that given by the Supreme Court of the United States. See *Schwenker v. Bekkedal*, 204 Wis. 546, 236 N.W. 581 (1931).
155 An amendment was made in the special session of 1931 that the liability should continue for six months after written notice to the commissioner of banking of any transfer. (Chapter 10, section 13). A further amendment was made in 1933 continuing this liability for one year. (Chapter 17, section 1, Laws of 1933). The purpose of these amendments is to prevent transfers made to escape liability. It appears that the law needs further strengthening, however, as only those transfers are invalid which are made when a bank is under notice to make good an impairment of capital (section 221.43, Statutes of 1931). A law providing that all transfers must be approved by the commissioner would probably be a step in the right direction.
156 Chapter 168.
157 Chapter 223, section 3. This law was not mandatory and doubtless was unconstitutional, as it has never been submitted to a vote of the people. Not all legislation concerning banks, however, needed to be submitted to the people. Duties might be placed upon banks under the exercise of the police power. It is unlikely that a court would have construed this provision other than as an amendment of the banking law. See *Van Steenwyck v. Sackett*, 17 Wis. 645 (1864).

vision that had been vigorously recommended by Alexander Mitchell," he a leading financier of the time. A similar provision was incorporated in the law of 1903, and remains today as a part of the statutes.

**Multiple Banking.**

Of the three types of multiple banking, chain, group, and branch, the first and second are permitted by Wisconsin laws, while the third is prohibited. This provision, which was effected in 1909, did not apply, however, to the branch banks in existence as of that date.

It is not the purpose of this discussion to set forth the arguments for or against multiple banking, but to present the situation as it exists in the state. Group banking has been growing rapidly in the United States, and the movement was developing in Wisconsin before the downturn of the business cycle in 1929. There has been vigorous political opposition to group banking in the state, the principal arguments being that banking should not be employed as a medium of speculative enterprise, and that it is a species of financial autocracy. Legislative control of chain and group banking was unsuc-

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158 He has been described as a man "who for executive and financial ability and business integrity, has had no superior west of New York, if he has had there." William George Bruce, "History of Milwaukee," 1922, Vol. I, p. 343.
159 Chapter 234, chapter II, section 46.
160 Inquiry of the banking department reveals that there have been several declarations under the law, but, with one exception, they have been withdrawn.
161 Chain banking is a term used to designate a form of organization in which banks are separately chartered, but are owned or controlled by one individual or a group of individuals without the responsibility of a publicly known corporate head organization; group banking is used to refer to a system of individually chartered banks with control centered in a holding corporation, which is responsible for their administration, but which assumes obligations of collective responsibility not imposed by law; branch banking is employed to describe a single chartered institution with sub-offices, each sub-office, as well as the head office, doing a general banking business. For the distinction made between the terms "chain banking" and "group banking" by J. W. Pole, Comptroller of the Currency, see Hearings before the Committee on Banking and Currency, House of Representatives, 71st Congress, 2nd Session, under H. R. 141, V. I. pt. 1, p. 26, 33.
162 Chapter 135.
163 For an excellent compilation of arguments for and against multiple banking, see "Selected Articles on Chain, Group, and Branch Banking," compiled by Virgil Willit, New York (1930).
164 "In spite of much criticism and opposition, group banking is developing with amazing rapidity. At the present time group banks control one-fifth of the bank resources of the country." Ibid, p. 10.
165 "One of the substantial evils of chain or group banking is that it introduces stock promotion into the ownership of banks... Those that are appealed to by speculative profits and various forms of gambling have no place in and should be ruthlessly excluded from banking." Message of Philip F. La Follette to the Special Legislature of 1931, Assembly Journal, p. 35.
166 Governor La Follette also condemns chain banking as a "bold challenge to Americanism and democracy." "Chain Banking," an address before The Tripoli Temple Booster Club of Milwaukee, December 6, 1929.
cessfully attempted through the Clearing House Association bill, which has been previously discussed.

Liquidation and Reorganization of Delinquent Banks.

The old method,—slow, expensive, inefficient,—in case a bank became insolvent or found itself in a position of not being able to restore an impaired capital, was to place it in receivership under the direction of the court. This method was provided for both in the law of 1901\textsuperscript{167} and 1903.\textsuperscript{168} A much better method is to provide that in case of delinquency the affairs and property shall be immediately taken over by the commissioner of banking. This was the purpose of a law in 1909.\textsuperscript{169}

In many cases, however, the interests of all concerned are best served, not by liquidation, but by reorganization and consolidation. For the attainment of this end, the commissioner is given power to approve reorganization plans, and to appoint an ample number of assistants to facilitate the work. That minority opposition might not be an obstacle, the legislature provided that if eighty per cent\textsuperscript{170} of the unsecured creditors agree, their agreement shall be controlling.\textsuperscript{171}

State Control Through Public Deposits.

Prior to 1931 the banks made a bid for public funds, and upon being approved as public depositories by the proper governmental authority, they proceeded to furnish a surety bond to guarantee the funds in their possession. But the commercially tragic year of 1931 found few companies writing public depository bonds, and even these few were charging enormously high premium rates. Furthermore, many banks could not obtain these bonds even at the prevailing excessive rates.\textsuperscript{172}

\textsuperscript{167} Chapter 317.
\textsuperscript{168} Chapter 234, chapter I, sections 7 and 8.
\textsuperscript{169} Chapter 396. The law of 1903 (chapter 234, chapter II, section 24) provided that banks finding themselves in trouble could place their affairs and assets under the control of the commissioner of banking. This, of course, was a non-mandatory provision. The commissioner made this comment in 1904: "The unique provisions of this section of the law have been resorted to on several occasions and in each case have been vindicated both as to their wisdom and practicability." Tenth Annual Report, p. xv.
\textsuperscript{170} For a period of not exceeding two years the commissioner may waive the eighty per cent requirement in its application to stabilization and readjustment agreements, i. e., those agreements entered into by banks while they are still open. Chapter 26, section 3, Laws of Special Session (1931).
\textsuperscript{171} Chapter 10, sections 8 and 9; Chapter 15, section 2; Chapter 26, section 3, Laws of Special Session (1931).
\textsuperscript{172} See a summary of recent banking legislation in Wisconsin, together with a statement of some of the conditions leading up to this legislation by Robert B, L. Murphy (1932) 7 Wis. Law Review 255.
Out of this puzzling and highly critical situation was evolved a legislative program known as the public deposits law,\textsuperscript{173} embodying these essential features: (a) the designation of qualified banks by governing boards\textsuperscript{174} to act as public depositories, (b) the fixing of rates of interest by the board of deposits\textsuperscript{175} on these public funds, (c) a limitation on the amount\textsuperscript{176} that may be placed in any one depository, (d) a power in the board of deposits to require information concerning any depository, and (e) the creation of a state deposit fund, under the administration of the state treasurer, to be used to reimburse public depositors for any losses resulting from the failure of a public depository. This fund is accumulated by the payment on the part of depository banks of a certain percentage\textsuperscript{177} on the average daily balance of the public depositor, to be collected from the depositor.

Questions as to the success of this new law in providing satisfactory security for public depositors, and its influence on the banking situation in the state can only be answered by the course of developments in the future. However, certain features of the law, viz., the authoritative voice of the state in the determination of rates of interest to be paid on balances, indirectly affecting the type of security in which these funds will be invested by the banks, the power in the board of deposits to obtain any information concerning the depository, the limitation on the amount of deposit that can be made in any one depository, together with the new financial interest of the state in the integrity of the banking structure, give rise to interesting speculations as to the possibilities of these additional lines of state supervision and control.

\textbf{SUMMARY AND CONCLUSIONS.}

The conception that there is any common right to engage in the banking business has during the last quarter century been dealt a succession of very severe legislative blows. The first blow came in 1903 when it was made legally impossible for interests to use the work "bank" in any form or in any place unless those interests were engaged in \textit{authorized} banking; the second came in 1909\textsuperscript{178} when it was

\textsuperscript{173} Chapter 1, Laws of Special Session (1931).
\textsuperscript{174} A governing board is defined as the county board or committee of that board in case of a county, the city council in case of a city, etc.
\textsuperscript{175} The board of deposits consists of the governor and the commissioners of public lands.
\textsuperscript{176} The maximum is twenty per cent of the average daily deposits in the depository, but not exceeding twice the paid-up capital and surplus.
\textsuperscript{177} The rate has been fixed at one per cent annually, subject to change by the board of deposits on the recommendation of the commissioner of insurance and the commissioner of banking. It is the purpose to have the rate fixed so as to have sufficient funds, and no more, for prospective contingencies.
\textsuperscript{178} Chapter 285, section 2. The constitutionality of this provision was decided in \textit{Weed v. Bergh}, 141 Wis. 569, 124 N.W. 664, 25 L.R.A. (N.S.) 1217 (1910).
enacted that no one could engage in the banking business without being incorporated; and the final blows were administered in the years beginning with and succeeding 1915 when the banking department of the state was given powers of a dictatorial nature on the question as to whether even an incorporated company should engage in the business.

Certain conclusions can be drawn and questions raised from this historical study of the most important controls of the state over the business of banking. One of the most significant facts is that Wisconsin is attempting to find safety for depositors in more and more legislative and administrative regulation rather than in confidence in the ability of bankers and reliance upon private initiative in the process of emerging from a difficult banking situation. It should be made clear, however, that ability, confidence in that ability, and the drive of individual leadership can never be supplanted by even the most refined governmental controls.

It is, of course, impossible to divorce banking entirely from the speculative forces which endanger business in general, and which give rise to the business cycle, or to separate pretty legal theories and elaborate administrative machinery from the foibles of human nature. One cannot justly accuse the Legislature of Wisconsin with the possession of such blind optimism that it was believed that there might be established a sort of "Utopia" in which bank failures should become so rare as to be phenomena at the nadir of a business cycle. On the other hand, it has been discovered through experience in this state and elsewhere that there are certain fundamentals in a sound banking system. Among these fundamentals are that the inevitable periods of business depression must be prepared for in times of prosperity; that careful and able supervision can discover and check dangerous tendencies; that there are banks which should never find a corporate life; that there are banks in existence which should be consolidated or liquidated; that there are banking practices that can never be attended with ultimate success; and that there are bankers who have no right to occupy a position of public trust.

Without reflection on past legislative achievements, it should be pointed out that mere elaborate measures are worse than none at all. A legislative gesture toward strict control is like a hollow philosophy embraced in sonorous phrases. If a legislature sets up a system of

On the question as to whether this was regulation or prohibition, the court said: "The question is not whether it be the wisest form of regulation, or whether it be a form which commends itself to the judgment as ideal, but whether it be in fact a bona fide form of regulation with some reasonable public adaptation to meet and overcome any evils or dangers to the public which may lurk in unrestrained exercise of banking rights by individuals. We think it is."
stringent control, with large discretionary powers either in a commis-

sion or a commissioner, it must show a liberality in the compensation
of its most important servants, and accompany the system in general
with proper financial sustenance so that those who occupy high posi-
tions of control have the respect of the banking fraternity, have ability
commensurate with the powers, and the use of instruments and per-
sonnel to command the facts upon which judgments must be based.

The adoption of the principle that the primary concern of the
state is safety for the dependent public at the cost of large inroads on
private rights, embodied in the statement of Walter C. Owen that "no
imposition or burden, not destructive of the business itself, should be
given the least consideration in opposition to any plan or system that
makes for the security of the depositor," is in only the initial stages of
evolution. An approach has been made by giving the banking depart-
ment control over bank officials upon any indication of mismanage-
ment[^179^], large powers to preserve the integrity of capital and other as-
sets, and jurisdiction, without minority interference, in case of delin-
quency, to promulgate plans without delay, whether for liquidation,
consolidation, or reorganization. An appraisal of this evolutionary
process, however, at this time is practically impossible, as most of the
work that has been and is being done is in the nature of hospitalization.

Where this evolutionary path in governmental control will lead is,
therefore, problematical. Once the handicap of a constitutional pro-
vision, having its roots in a historic prejudice, had been removed, the
Banking Act of 1903 became a second landmark of improvement in
the legislative history of the state. What will be the position of the
enactments of 1931 remains for the future. At the threshold of this
new advance into the unexplored territory of elaborate control a few
questions present themselves. Will the possibilities of bureaucratic
control throttle private initiative? Can genuine administrative ability
be brought into the service of the state, and if brought in, are the pos-
sibilities of error so great as to impair initiative and destroy confi-
dence? Can the large powers be really used, or will there be only the
nominal functioning of a theoretically powerful body in the process of
pathetic decay? Will an attitude of parsimonious financial policy det-
er the entrance of the best ability, and cripple the exercise of existing
powers? However these questions are answered, it would appear that
legislative responsibility is, by virtue of the important step taken, in-
deed very great.

[^179^]: Attention is called to Chapter 6, section 4, Laws of 1933, which provides that
the banking department may request the removal of any officer or director
whose policies or practices are prejudical to the interests of the depositors.
If the request is not complied with the commissioner may effect the removal
by order which shall have the same effect as if made by the board of directors
or stockholders of the bank concerned.