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BANKS AND BANKING - TAXATION OF NATIONAL BANK - SAFE DEPOSIT VAULT AS INTEGRAL FUNCTION OF NATIONAL BANK

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BANKS AND BANKING — TAXATION OF NATIONAL BANK — SAFE DEPOSIT VAULT AS INTEGRAL FUNCTION OF NATIONAL BANK — The council of the city of Portland passed an ordinance declaring it unlawful to carry on certain businesses without securing an appropriate license from the city. Among the business activities specified was "Safe Deposit Vault" for which an annual license fee of forty dollars was imposed. The plaintiff, a national bank, and other national banks, all of which operated safe deposit vaults, brought an action to restrain the city and its officers from collecting the fee. It was *held* that the safe deposit business is a necessary and integral function of a national bank, and therefore the city was without power to collect such a tax. *Bank of California v. City of Portland*, (Ore. 1937) 69 P. (2d) 273.

It is commonplace that national banks, as instruments of the federal government, are exempt from state taxation which affects any essential function performed by such banks.[1] It is also axiomatic that a national bank has only those primary powers which are expressly granted to it by statute and such incidental powers as are necessary to carry into effect those expressly granted.[2] Under this general doctrine it has been conclusively adjudicated that a national bank has power to receive special deposits.[3] But the recognition of this power has not been absolute. In the leading case on the point, after holding that such power existed, the United States Supreme Court added, "We do not mean that it could convert itself into a pawnbroker's shop." [4] This qualification has led other courts to attempt to establish certain external limits to the exercise of the power. Thus it has been held that a national bank does not have power to accept, for safe-keeping purposes, a stock of shoes,[5] a violin,[6] or a will.[7] On the other hand, the bank does not exceed its powers when it receives, as a special deposit, bonds,[8]

[1] McCulloch v. Maryland, 4 Wheat. 316, 4 L. Ed. 579 (1819); Davis v. Elmira Sav. Bank, 161 U. S. 275, 16 S. Ct. 502 (1895); First Nat. Bank v. California, 262 U. S. 366, 43 S. Ct. 602 (1922).

[2] Logan County Nat. Bank v. Townsend, 139 U. S. 67, 11 S. Ct. 496 (1891); California Bank v. Kennedy, 167 U. S. 362, 17 S. Ct. 831 (1897); First Nat. Bank of Charlotte v. National Exchange Bank of Baltimore, 92 U. S. 122, 23 L. Ed. 679 (1876); Baltimore & O. R. R. v. Smith, (C. C. A. 3d, 1932) 56 F. (2d) 799.

[3] First Nat. Bank v. Graham, 100 U. S. 699, 25 L. Ed. 750 (1880); Whitney v. First Nat. Bank of Brattleboro, 154 U. S. 664, 14 S. Ct. 1215 (1880); Pattison v. Syracuse Nat. Bank, 80 N. Y. 82, 36 Am. Rep. 582 (1880).

[4] First Nat. Bank v. Graham, 100 U. S. 699 at 704, 25 L. Ed. 750 (1880).

[5] American Nat. Bank v. E. W. Adams & Co., 44 Okla., 129, 143 P. 508 (1914).

[6] Rodgers v. First Nat. Bank of Paris, (Tex. Civ. App. 1934) 68 S. W. (2d) 371.

[7] Meyers v. Exchange Nat. Bank, 96 Wash. 244, 164 P. 951 (1917). As to a state bank, see Britton v. Elk Valley Bank, 54 N. D. 858, 211 N. W. 810 (1926).

[8] Harper v. Merchants' & Planters' Nat. Bank, (Tex. Civ. App. 1934) 68 S. W. (2d) 351; Bank v. Zent, 39 Ohio St. 105 (1883); Third Nat. Bank of Baltimore v Boyd, 44 Md. 47, 22 Am. Rep. 35 (1875); Turner v. First Nat. Bank of Keokuk, 26 Iowa 562 (1869); Chattahoochee Nat. Bank v. Schley, 58 Ga. 370 (1877); First Nat. Bank of Monmouth v. Strang, 138 Ill. 347, 27 N. E. 903 (1891).

title papers,[9] a closed metal box,[10] or diamonds.[11] It would seem that there has been some support in the cases for the conclusion of one authority that "a bank may become a special depositary only of those things which in their very nature come within the lines of regular banking business." [12] The federal statute providing for national banks authorizes such banks to invest not more than fifteen per cent of capital and surplus in corporations engaging in the safe deposit business.[13] In the instant case this was construed to be a grant of power to conduct such a business.[14] The court drew an analogy between the safe deposit business and the receiving of special deposits, and relied heavily upon the reasoning which supports the power of a national bank to accept such deposits. The fundamental basis of the decision was the recognition that the maintenance of a safe deposit vault has largely supplanted the practice of receiving special deposits, and that practically all national banks furnish such service today. In assuming the position that "the banking powers are those which are either fundamental parts of the business or have become so linked with them as to be identified with the exercise of the banking franchises," [15] the court was admittedly adjusting the concept of an integral function of banking to fit modern conditions. If the analogy to the reception of special deposits is granted, it is clear that the court did not feel confined by the attempts at limitation which other courts have made, and that the holding is much broader than that of any previous case.

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[9] Security Nat. Bank v. McCutcheon, 106 Kan. 303, 187 P. 697 (1920).

[10] White v. Commonwealth Nat. Bank, 4 Brewst. 234, Fed. Cas. No. 17,544 (1866). But see Sawyer v. Old Lowell Nat. Bank, 230 Mass. 342, 119 N. E. 825 (1918); Levy v. Pike, Brother & Co., 25 La. Ann. 630 (1873).

[11] First Nat. Bank of Muskogee v. Tevis, 29 Okla. 714, 119 P. 218 (1911).

[12] 5 MICHIE, BANKS AND BANKING 645, § 336 (1932).

[13] 44 Stat. L. 1224, § 2 (1927), 12 U. S. C., § 24 (1935).

[14] Bank of California v. City of Portland, (Ore. 1937) 69 P. (2d) 273 at 279.

[15] 1 MORSE, BANKS AND BANKING, 6th ed., § 48 (1928).