September 6, 1929

To Hon. Sanger N. Annis, Bank Commissioner
Re: Joint Deposits

I have your inquiry regarding Chapter 307 of the Public Laws of 1929, in which you ask four questions, and also have the enclosure in which you have noted fourteen questions with suggested answers thereto. I have gone over the enclosure and supplemented some of the answers as you will see, although they were correct as far as you had them.

I was personally acquainted with the various propositions pending in the last Legislature which finally resulted in the passage of the act above referred to and, therefore, can interpret it somewhat in the light of its legislative history.

By Section 25 of Chapter 144, P. L. 1923, the Legislature made an effort to clarify the situation with reference to two named deposits. This effort was discussed by the Supreme Court in Garland, Appellant, 126 Me. 84. The opinion is by the Chief Justice and shows that the Court still feels strongly that the policy of our law is against joint tenancy with the right of survivorship on the death of one of the joint tenants. The Court, therefore, held, in effect, that the Statute of 1923 had failed to provide for such joint tenancies in two named accounts.

The representatives of the Savings Banks and Trust Companies submitted proposed legislation at the current Legislative Session to overcome the effect of this decision. To this law, as first submitted, this department entered protest at the hearing before the Committee on Banks and Banking on the ground that the revenues of the State under the inheritance tax would be injuriously affected. Personally, as a lawyer, I questioned the advisability of such a change in the well settled rules of law, perceiving some dangers and opportunities for fraud which might result from the change.

Several changes were suggested both before the hearing and subsequently for meeting these objections and the Act as finally passed embodied some of these changes. In effect, the present Act, therefore, was a compromise between the situation of the law as it existed after the decision, and the original proposition submitted to the Legislature, which would have opened the door to the creation of joint tenancies in two named deposits.

The Act aims to extend the privilege of creating a technical joint tenancy with the right of survivorship to a certain limited class of persons for a certain limited sum, and in certain limited institutions, viz., Trust Companies, Savings Banks and Loan and Building Associations.

National Banks were apparently not represented and the Statute does not extend the privilege to their deposits. If they have any privilege in that respect it must be by virtue of some Federal Statute with which I am not acquainted.

A husband and wife may have a technical joint tenancy with the right of survivorship in Savings Bank, Trust Company or Loan and Building books, the total in the case of any one husband and wife not to exceed $3,000. That is, any one husband and wife may have a total of $3,000. invested in joint tenancy divided among Trust and Savings Bank deposits and Loan and Building books, but the excess above $3,000. does not have the privilege conferred by the Act.

In the same way a parent and child may have a similar total of $3,000. If a father has four children he may have for each child, jointly with himself, a series of such deposits and Loan and Building Association accounts up to $3,000 for each such child entitled to the privilege given by the Act.

This is a practical compromise rather than one justified by any principle. The objections in principle to any such joint tenancy which the law court pointed out still exist but with these objections this department has no official concern and, therefore, withdraw objection to the Act when it was limited in effect to a class of persons and the amount of money which as a practical matter removed the likelihood of any serious effect on the revenue of the State, the existing inheritance tax exemption being $10,000 in the case of widows, widowers and children of a decedent.

I can, therefore, answer definitely the four questions in your letter of July 30th, as follows:

1. National Banks are not by the Act invested with the privilege given by clauses (b) and (c). If they have any such privilege it is by virtue of Federal laws.

2. When additions to a deposit bring it up above $3,000. the excess is not entitled to the privilege of joint tenancy conferred by sub-division (b).

3. A bank or association does not need to obtain the written declaration in the case of new accounts opened after August 1, 1929.

4. One person may be a party in more than one account payable to either or survivor. For instance, a father of four children may participate in four sets of accounts, each payable to himself and one child, provided the total of each set does not exceed $3,000, and the privilege created by the Act extends to each such set of accounts.

If I can be of any further help to you in this somewhat confusing matter, do not hesitate to call on me. Banks and lawyers have been puzzled by the problem for a long time. The recent Act clarifies it only in part.

Clement F. Robinson
Attorney General