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Banks: Interest computation in Leap Year

STATE OF MAINE

Inter-Departmental Memorandum Date April 25, 1977

To John A. Durham, Superintendent Dept. Bureau of Banking

From S. Kirk Studstrup, Assistant Dept. Attorney General

Subject Computing Interest in a Leap Year

In response to your request for information regarding treatment of February 29 for purposes of computing interest on certificates of deposit, there appears to be no settled law on the subject.

In the FDIC Regulations, Sec. 329.101 explicitly recognizes the existence of the 366 day year in establishing maturity dates and computing interest on deposits. Footnote 19 of that section states that a one-month certificate of deposit normally matures in 30 days, but in February the maturation period is 28 <u>or</u> 29 days. This departure from the 30 day standard is called "de minimis," but held necessary on the grounds of fairness and simplicity. However, the FDIC Regulations say nothing about February 29 in the context of "continuous compounding" of interest.

The Federal Reserve Bank of New York, in a 1970 letter, issued the opinion that, for purposes of determining the maximum rate of interest permissible on certificates of deposit governed by Regulation Q, a "year" is composed of 365 days. However, a subsequent Federal Reserve System Regulation, 12 CFR 217.151, states that in computing interest on time and savings deposits the "denominator may be either 360, 365, or, in the case of a leap year, 366." In 1976, the Federal Home Loan Bank Board issued Memorandum T, 10-6(c), which also required the use of 366 in the fractional computation of interest in leap year. None of these expressions of policy, however, are identical to or binding upon our fact pattern.

Historically, there is some English and early American statutory support for the concept that February 28 and 29 should be treated as one day for legal purposes. (see 21 Hen. III). In 1861, the Indiana Supreme Court asserted that "commercially, February never has but twenty-eight days," (<u>Kahler v. Montgomery</u>, 17 Ind. 220 (1861)), but that reasoning was overruled in 1879 (<u>Helphenstine v. Vincennes Nat. Bank</u>, 65 Ind. 582 (1879)). Those state cases reviewed did not deal with leap year in the context of banking, but it would appear that in general terms the modern trend has been to recognize February 29 as a legal entity.

In light of the foregoing analysis of the state of the law, the issue might best be considered as a policy determination of acceptable levels of truth in banking advertising. In other words, there presently is no legal requirement that financial institutions pay interest on

certificates of deposit for February 29th in a leap year or pay interest on more than 360 days a year unless their advertising is such that failure to pay would be reasonably considered to be a deceptive or unfair practice. This matter would have to be decided on a case-by-case basis with regard to past practices or it could be addressed by an appropriate rule or regulation for prospective operation.

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