

Record No. 5383

**In the
Supreme Court of Appeals of Virginia
at Richmond**

VIRGINIA BANKERS ASSOCIATION

v.

**HARRISONBURG LOAN & THRIFT
CORPORATION, ET AL.**

FROM THE STATE CORPORATION COMMISSION

RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5383

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Friday the 18th day of August, 1961.

VIRGINIA BANKERS ASSOCIATION, Appellant,
against

HARRISONBURG LOAN & THRIFT CORPORATION,
ET AL., Appellees.

From the State Corporation Commission

Upon the petition of Virginia Bankers Association, a corporation, an appeal of right was awarded it by one of the Justices of the Supreme Court of Appeals on August 18, 1961, from an order entered by the State Corporation Commission on the 1st day of May, 1961, in a certain proceeding then therein depending styled: Application of Harrisonburg Loan and Thrift Corporation for interpretation of the first paragraph of §6-251 of the Code of Virginia as amended in 1960; upon the petitioner, or some one for it, entering into bond with sufficient security before the clerk of the said State Corporation Commission in the penalty of five hundred dollars, with condition as the law directs.

RECORD**HARRISONBURG LOAN & THRIFT CORPORATION**
Harrisonburg, Virginia.

F. O. Funkhouser
President

December 9, 1960.

Honorable Logan R. Ritchie
Commissioner of Banking
State Corporation Commission
Richmond, Virginia

Dear Commissioner Ritchie:

Please be advised that your letter of November 23, 1960 was read to the Board at its regular monthly meeting and same is noted in the records of our minutes of December 5, 1960.

We sincerely desire to cooperate with your office in every way possible. In complying with the laws and regulations affecting our corporation we have always made every effort to comply with not only the strict letter of the law but also the spirit of same. We do not feel that the matters referred to in your letter of November 23rd are in conflict with either the letter or the spirit of Section 6-251 of the Code.

The word "withdrawal" has many meanings and uses. Certainly, where the right is granted, a person may withdraw his investment.

We have been a member of both the Virginia Industrial Bankers Association and the American Industrial Bankers Association for many years and we feel that we have the right to advise the public that we belong to these associations.

If, after further consideration of the matters, you are of the opinion that we are in violation of Section 6-251 of the Code, we would like to have a conference with the full Corporation Commission in order to present our views in this matter.

Respectfully yours,

F. O. FUNKHOUSER
President.

FOF/p

page 2 } COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

At Richmond, January 12, 1961.

**APPLICATION OF
HARRISONBURG LOAN AND THRIFT
CORPORATION**

For interpretation of the first paragraph of §6-251 of the Code of Virginia as amended in 1960.

CASE NO. 15098.

THE APPLICANT having requested a hearing on the proper interpretation of the first paragraph of §6-251 of the Code of Virginia as amended in 1960,

IT IS ORDERED that the matter be set down for hearing in the Courtroom of the State Corporation Commission, Blanton Building, Richmond, Virginia at 10:00 A. M. on February 21, 1961.

AN ATTESTED COPY hereof shall be sent to the applicant at 65 East Market Street, Harrisonburg, Virginia and to the Commissioner of Banking.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

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* * * * *

At Richmond, February 7, 1961.

UPON MOTION of Counsel for the Applicant, and for good cause shown,

IT IS ORDERED that this proceeding be continued from February 21, 1961 to 10:00 A. M. March 15, 1961.

AN ATTESTED COPY hereof is being sent to Henry C. Clark, Attorney-at-Law, 66 South Court Square, Harrisonburg, Virginia and to the Commissioner of Banking.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

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* * * * *

MOTION OF VIRGINIA BANKERS ASSOCIATION FOR
LEAVE TO INTERVENE.

Now comes Virginia Bankers Association and represents:

(1) That it is a corporation organized and doing business under the laws of the Commonwealth of Virginia; that its purpose is to promote the best interests of banking therein; and that nearly all banks in the Commonwealth, both state and federal, are among its members;

(2) That it is vitally interested in the proper interpretation of the first paragraph of §6-251 of the Code of Virginia, as amended in 1960;

and it therefore prays that it be permitted to become a party to this proceeding.

VIRGINIA BANKERS
ASSOCIATION
By DAVID J. MAYS
Counsel.

DAVID J. MAYS,
TUCKER, MAYS, MOORE & REED,
1407 State-Planters Bank Building,
Richmond 19, Virginia.

Commonwealth of Virginia,
City of Richmond:

I, the undersigned, Lois R. Lee, a Notary Public for the City of Richmond, in the Commonwealth of Virginia, page 5 } do hereby certify that Rawley F. Daniel, who is personally known to me, appeared before me this day and made oath that he is the Executive Vice President of Virginia Bankers Association, the movant, and that all of the facts set forth in the above motion are true.

My commission expires July 17, 1964.

Given under my hand this 3rd day of March, 1961.

LOIS R. LEE
Notary Public.

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* * * * *

Present: Commissioners H. Lester Hooker (Chairman), Jesse W. Dillon, Ralph T. Catterall, (Commissioner Catterall presiding).

Appearances: Joseph C. Carter, Jr., Counsel for Applicant.

Henry C. Clark, Counsel for Applicant.

David J. Mays, Counsel for Virginia Bankers' Association, Intervener.

Henry J. Lankford, Counsel for Norfolk Savings and Loan Corporation.

Norman S. Elliott, Counsel for the Commission.

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Date of Hearing
March 15, 1961

Margaret P. Wootton, Official Court Reporter, State Corporation Commission, Richmond, Virginia.

page 8 } Commissioner Catterall: This is sort of a Declaratory Judgment suit, and I reckon Mr. Elliott had better lead off. Don't you think so?

Mr. Carter: All right.

Mr. Elliott: May it please the Commission, this proceeding arises by virtue of a disagreement between the Harrisonburg Loan and Thrift Corporation and the Bureau of Banking through the Commissioner of Banking with respect to the proper interpretation of Section 6-251 of the Code of

Virginia, and especially in connection with certain advertisements which the Harrisonburg Loan and Thrift Corporation has made and processed, to which the Commissioner of Banking has taken exception.

In particular, the exceptions relate to an advertisement circulated by the Harrisonburg Loan and Thrift Corporation called "Safe Savings." That advertisement has in it seven references to the Loan Company being a member of the American Industrial Bankers Association and a member of the Virginia Industrial Bankers Association. That advertisement is in the file and forms a part of the page 9 } official file of the Commission.

The second matter of contention is a folder distributed by the Harrisonburg Loan and Thrift Corporation entitled "Statement of Condition." In that the Association refers to the fact that it is a member of the Virginia Industrial Bankers Association.

Chairman Hooker: Would it not be best to put this in the record? We want some evidence anyway.

Mr. Clark: We will agree that it be part of the record.

Commissioner Catterall: I think the original documents should go in this file.

Mr. Elliott: The original documents are a part of this filing, and I think present the controversy without dispute, and I ask that we start with letter of September 26, 1960, from Mr. Ritchie to Mr. Fred O. Funkhouser, President of Harrisonburg Loan and Thrift Corporation.

Commissioner Catterall: That will be received as Exhibit No. 1.

Note: Reporter later directed to copy correspondence into the record.

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EXHIBIT NO. 1.

"September 26, 1960.

"Mr. Fred O. Funkhouser, President
 "Harrisonburg Loan & Thrift Corporation
 "65 East Market Street
 "Harrisonburg, Virginia

"Dear Mr. Funkhouser:

"Please submit this letter to your Board of Directors and return the certificate required by §6-259 of the Code of Virginia before October 21, 1960.

“It is my opinion that, in the words of §6-260, ‘the laws of the State relating to industrial loan associations are not being fully observed’ by Harrisonburg Loan & Thrift Corporation. The law I refer to is that part of §6-251 which provides that no industrial loan association shall ‘publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits.’

“I have before me three advertisements published by Harrisonburg Loan & Thrift Corporation that violate the law in the following particulars.

page 11 } “1. A folder entitled ‘Safe Savings.’

“This small folder repeats the words banking or bankers seven times.

“In very large letters it offers: ‘Sound Banking Service.’

“It nowhere offers to sell certificates of investment but refers to savings accounts and savings customers. The public are not invited to purchase certificates of investment, but ‘to open a safe savings account.’

“2. A folder entitled ‘Statement of Condition.’

“This folder solicits ‘Regular Savings’ in addition to certificates of investment.

“3. A form letter dated ‘September, 1960.’

“The next to the last paragraph applies the word ‘withdraw’ to ‘regular savings certificates.’ The word ‘withdraw’ in this context suggests the withdrawal of deposits. §6-255 authorizes the corporation to ‘sell certificates of investment.’

“Please notify me that you will discontinue the above types of advertising. §6-244 forbids industrial loan associations to do business under the name of ‘bank’ or ‘banker’
page 12 } and §6-251 forbids them to suggest that they are doing a banking business. Since the corporation cannot refer to itself as a banker it cannot refer to itself as a member of an association of bankers in its published advertisements.

“Yours very truly,

“(Signed) LOGAN R. RITCHIE
Commissioner of Banking.”

Mr. Elliott: Then letter of October 3, 1960 from Harrisonburg Loan and Thrift Corporation to Mr. Ritchie.

Commissioner Catterall: That will be received as Exhibit No. 2.

“October 3, 1960.

“Dear Commissioner Ritchie:

“(1) The folder entitled ‘Safe Saving’ is a real old folder, has been discontinued and will not be used again.

"(2) The folder entitled 'Statement of Condition,' it was our purpose and intent to state that we had Christmas Clubs, Vacation Clubs, and regular savings certificates, in other words, at the bottom of these defined clubs it specified that we paid 4% on all. Since you have objected to this we are calling Whittett and Shepperson to cut this out of our folders or blank, since we have forty or fifty thousand on hand.

(3) As for the form letter dated September, 1960, we find it difficult to know what your objection is to the word 'withdrawal', since our customers are certainly entitled to withdraw the money which they have placed with us, whether on Certificates of Investment or otherwise, and offhand we cannot think of a more suitable word than 'withdrawal.' Our board should like to be further enlightened as the reasons for your objections to using the word 'withdrawal,' although, of course, the letter of September, 1960, has already gone out.

“We wish to advise further that in our thirty
page 14 } six years of operation we have made every effort
to comply with all laws and regulations affecting
industrial loan associations and you can be assured that we
will continue to comply.

“Very truly yours,

“Signed) W. E. Wilburn (Signed) R. G. Heneberger
Director Director

“(Signed)

“(Mrs.) Leona B. Blosser (Signed) F. O. Funkhouser
Director Director

“(Signed) Charles E. Cooley
Director”

Chairman Hooker: Is that in reply to Mr. Ritchie's letter?

Mr. Elliott: Yes, sir; letter of October 11, 1960, from Mr. Ritchie to Mr. Funkhouser.

Commissioner Catterall: That will be received as Exhibit No. 3.

EXHIBIT NO. 3.

“October 11, 1960.

“Mr. Fred O. Funkhouser, President
“Harrisonburg Loan & Thrift Corporation
“65 East Market Street
“Harrisonburg, Virginia

“Dear Mr. Funkhouser:

“Receipt is acknowledged of your letter of
page 15 } October 3 in reply to our letter of September 26,
1960.

“(1) You advise that the folder entitled ‘Safe Savings’ has been discontinued and will not be used again. This of course would eliminate future use of the reference to ‘Sound Banking Service.’

“(2) Future ‘Statement of Condition’ folders will eliminate reference to ‘Regular Savings.’

“(3) The first sentence of next to the last paragraph of the form letter dated September, 1960, should be changed to read: ‘Our certificates of investment bear interest at 4% per annum, compounded annually (or however compounded) from the day you buy them until the day you cash them.’ You will observe here the word ‘cash’ has been used in substitution to the word ‘withdraw,’ thereby curing the objection taken in our letter of September 26, 1960.

“In all future advertisements and Statement of Condition you should eliminate any reference to membership in any organization which carries in its name the word ‘bank,’ ‘banking’ or ‘banker’ or words of similar import.
page 16 } “This letter should be brought to the attention of
the Board of Directors. In addition to the

assurances which you have given to compliance with the items listed in paragraphs 1, 2 and 3, we request your assurance of compliance with the above additions.

“Yours very truly,

“(Signed) L. R. RITCHIE

“Commissioner of Banking.”

Mr. Elliott: Letter of November 9, 1960 from Harrisonburg Loan and Thrift Corporation to Mr. Ritchie.

Commissioner Catterall: Received as Exhibit No. 4.

EXHIBIT NO. 4.

“November 9, 1960.

“Honorable Logan R. Ritchie
“Commissioner of Banking
“State Corporation Commission
“Richmond, Virginia

“Dear Commissioner Ritchie:

“This will acknowledge receipt of your letter of October 12th replying to our letter of October 3rd.
page 17 } “Your letter has been brought to the attention of
the Board of Directors and each of the Directors
has signed this letter.

“Even though we pay one and one-half times more in examination fees than the banks we are not permitted to say that we are under your supervision, therefore we have eliminated this from all of our statements, radio, television and newspaper advertisements.

“We would still like to be enlightened as to the reason for your objection to our use of the word ‘withdrawal.’ We might add that we can use this word ‘withdrawal’ one thousand different ways and it certainly was not spelled out in the Bill that was passed.

“In your letter you state that in all future advertisements and Statements of Condition we should eliminate references to membership in any organization which carries in its name the word ‘Bank,’ ‘Banking’ or ‘Banker’ or words of similar import. We are also somewhat puzzled about this request since we have been a member of the Virginia Industrial Bankers Association for 36 years and have also been a member

of the American Industrial Bankers Association since 1940;
and this is the first time that objection has ever
page 18 } been made to our referring to our membership in
such organizations.

“We have always complied to the letter of the law and shall
continue to do so, but there are certainly differences of opinion
that we cannot reconcile.

“Yours truly,

“Directors.

“(Signed) W. E. Wilburn (Signed) E. R. G. Heneberger
“(Signed)
“(Mrs.) Leona B. Blosser (Signed) F. O. Funkhouser
“(Signed) Charles E. Cooley”

Chairman Hooker: That replies to his letter?

Mr. Elliott: Yes; the next one is Mr. Ritchie's reply to
that letter, which is dated November 23, 1960.

Commissioner Catterall: That will be received as 'Exhibit
No. 5.

EXHIBIT NO. 5.

“November 23, 1960.

“Mr. Fred O. Funkhouser
“Harrisonburg Loan & Thrift Company
“East Market Street
“Harrisonburg, Virginia

“Dear Mr. Funkhouser:

page 19 } “We have your letter of November 9 in response
to ours of October 11.

“You will recall that we first made objection to certain of
your advertisements in a letter of September 26 to which you
responded on October 3. Our letter of September 26 was
supplemented by a letter of October 11. We assume there will
be no repetition of the matters complained of in those letters.
If this assumption is not correct, you are requested to advise
to that effect.

“You ask that we enlighten you as to the reasons for our
objection to the use of the word 'withdrawal' in your
advertisements. The word 'withdrawal' has a definite meaning

when used by financial institutions. The word has been defined in *Hensch v. Metropolitan Savings and Loan Company*, 197 N. E. 416 as follows: ‘‘Withdrawal’’ is the removal of money or securities from a bank or other place of deposit.’ Certificates of investment are not deposits. Deposits are funds received by banks. Deposits may be withdrawn. When you speak of ‘withdrawal’ you clearly imply that your Association is a bank. Such an implication is a violation of Section 6-251(1) of the Code which forbids the publication by industrial loan association of any advertisement
 page 20 } suggesting that it is engaged in the business of banking or that it receives deposits.

‘‘There is certainly no objection to your membership in the Virginia Industrial Bankers Association or the American Industrial Bankers Association. It is true that many industrial loan associations have in the past referred to their membership in these associations in their advertisements without objection from us. No objection was made because there was no law that prohibited the practice, but since July 1, 1960, with the enactment of the 1960 amendment to Section 6-251 of the Code reference to membership in these organizations in advertisements published by industrial loan associations is prohibited. In our opinion, reference to such membership in your advertisements suggests that your industrial loan association is engaged in the business of banking, when, in fact, it is not.

‘‘Very truly yours,

(Signed) L. R. RITCHIE

‘‘Commissioner of Banking.’’

Mr. Elliott: Letter from Harrisonburg Loan
 page 21 } and Thrift Corporation to Mr. Ritchie dated
 December 9, 1960.

Commissioner Catterall: That will be received as Exhibit
 No. 6.

EXHIBIT NO. 6.

‘‘December 9, 1960.

‘‘Honorable Logan R. Ritchie
 ‘‘Commissioner of Banking
 ‘‘State Corporation Commission
 ‘‘Richmond, Virginia

“Dear Commissioner Ritchie:

“Please be advised that your letter of November 23, 1960 was read to the Board at its regular monthly meeting and same is noted in the records of our minutes of December 5, 1960.

“We sincerely desire to cooperate with your office in every way possible. In complying with the laws and regulations affecting our corporation we have always made every effort to comply with not only the strict letter of the law but also the spirit of same. We do not feel that the matters referred to in your letter of November 23rd are in conflict page 22 } with either the letter or the spirit of Section 6-251 of the Code.

“The word ‘withdrawal’ has many meanings and uses. Certainly, where the right is granted, a person may withdraw his investment.

“We have been a member of both the Virginia Industrial Bankers Association and the American Industrial Bankers Association for many years and we feel that we have the right to advise the public that we belong to these associations.

“If, after further consideration of the matters, you are of the opinion that we are in violation of Section 6-251 of the Code, we would like to have a conference with the full Corporation Commission in order to present our views in this matter.

“Respectfully yours,

“(Signed) F. O. Funkhouser
“President.”

Chairman Hooker: Would it not be better to have the letter and reply attached as one exhibit?

Mr. Clark: All of these letters concern the same subject and we can't say that one letter is a reply to the other one, because, frankly, each one brings up new matters and follows on down the line.

page 23 } Commissioner Catterall: The only reason for having them in a separate exhibit is if you want to refer to them by dates.

Mr. Mays: In any event, there are only a few of them.

Mr. Elliott: There are three pages of material referred to in this letter. One is on the letterhead of the Harrisonburg Loan and Thrift Corporation, dated September, 1960, signed by Charles E. Cooley, Executive Vice President, and Fred O. Funkhouser, President, and addressed, “Dear Friend.”

Commissioner Catterall: That will be received as Exhibit No. 7.

EXHIBIT NO. 7.

"September, 1960.

"Dear Friend:

"Once again we would like to invite you to use the many services that we provide. We are enclosing a financial statement for your inspection.

"For years we have been the leader in all types of installment loans. The following is a 'self selection' table for different types of loans:

page 24 } " 'SELF-SELECTION' TABLE.

**Amount	60							
of Note	12 Mo.	18 Mo.	24 Mo.	30 Mo.	36 Mo.	48 Mo.	Mo.	
“\$ 300.00.	25.00	16.66	12.50	10.00	8.33			
“ 600.00.	50.00	33.33	25.00	20.00	16.66			
“1,000.00.	83.33	55.55	41.66	33.33	27.27			
“1,500.00.	125.00	83.83	62.50	50.00	47.67			
“2,000.00.	166.66	111.11	83.33	66.66	55.56			
“3,000.00.	250.00	166.00	125.00	100.00	83.33	62.50	50.00	
“4,000.00.	333.33	222.22	166.66	133.33	111.11	83.34	66.67	
“5,000.00.	416.66	277.77	208.33	166.66	138.88	104.17	83.34	

"*Interest Deducted from Note

"New automobiles can be financed for 36 months. If you make your contract after the 15th of any month you do not have to make a payment for 45 days. When you finance any car through us we give you a caddie key holder which holds dimes, nickels and pennies.

"Home improvement loans can be financed for a period of five years. We make all types of loans up to \$70,000.00. We keep \$12,000.00 worth of First National City Bank of New York traveler checks on hand at all times.

page 25 } "Four per cent interest, compounded from the first day until the day you withdraw, is paid on regular savings certificates. Be sure to keep all your idle money working for you. We give a free gift with each new savings account, plus a bonus gift for a limited time.

We hope to be in our new building around January, 1961 to give you even better service.

“Sincerely,

“(Signed) Fred O. Funkhouser
“President.

“(Signed) CHARLES E. COOLEY,
“Executive Vice
President.”

Mr. Elliott: And the next is “Statement of Condition June 30, 1960” in the form of a folder which should be Exhibit No. 8.

Commissioner Catterall: It will be received as Exhibit No. 8.

Mr. Elliott: And the next one is a folder headed “Safe Savings.”

Commissioner Catterall: That will be received as Exhibit No. 9.

Mr. Elliott: That presents the controversy between the Commissioner of Banking and the Harrisonburg Loan and Thrift Corporation.

Mr. Clark: May it please the Court, I think in page 26 } order to confine this hearing to exactly what our controversy is, that we could agree on several things.

In the first instance, quite a number of these things have gone in as exhibits, in order to determine what we want to know.

In the first communication received from Mr. Ritchie of September 26, 1960, objection was made to three things which he pointed out in his letter. The first of these is the use of this Exhibit No. 9, “Safe Savings” which was mailed out in August or September, 1960, with other information to owners and holders of Certificates of Investment.

That was objection No. 1 of his letter. These little pamphlets on “Safe Savings” were at that time held in storage by the Harrisonburg Loan and Thrift Corporation, and were sent out by mistake. It was not intended to send them out. They had been on hand prior to the effective date of the statute of July 1, 1960, and went out as filler mail by mistake, and we agreed that such practice would not happen again.

page 27 } Today we realize that this little pamphlet of “Safe Savings” was done in violation of the statute effective July 1, 1960.

Chairman Hooker: That has been discontinued?

Mr. Clark: Yes. The second objection was in regard to the "Statement of Condition" put out by Harrisonburg Loan and Thrift Corporation, and which was filed as Exhibit No. 8, and in that is the reference "Regular Savings."

Commissioner Dillon: What exhibit is that?

Mr. Clark: The "Safe Savings" exhibit I referred to was Exhibit No. 9, and the letter I referred to was in regard to this exhibit.

Commissioner Dillon: Now, what is the exhibit number?

Mr. Clark: Exhibit No. 9. Now, his objection to Exhibit No. 9 was "Safe Savings."

In order to prevent any controversy with the State Banking Commissioner, our Company has always tried to comply not only with the letter but the interpretation of the law, although I do not want it understood that we do not believe that we have the right to use it, because we do have regular page 28 } savings in savings certificates, Christmas Clubs, and Vacation Clubs. So we don't agree to that, but agreed not to use it.

The third is in Paragraph three—

Commissioner Catterall: You mean the third objection?

Mr. Clark: Yes. The third objection was the use of the word "Withdrawal" in the form letter, which is Exhibit No. 7. At that point we reached a parting of the ways with Commissioner Ritchie. Up to that point we thought our controversy could be settled without any proceeding, but we insist on our right to use the word "Withdraw" not only in Exhibit No. 7 but in any way we wish to the general public, that their certificate can be withdrawn without loss of interest, that they get their interest up to the date of withdrawal, and we are here today upholding that view.

Chairman Hooker: That is the narrow issue?

Commissioner Catterall: Are they like demand deposits?

Mr. Clark: Yes. If you put it in today and page 29 } take it out tomorrow, you get one day's interest.

Commissioner Catterall: You don't have to give thirty days' notice?

Mr. Clark: Yes, that is what we do. There is that one narrow issue of "Withdrawals," and the other is the letter of September 26th, which says that the objection is made—it is not in the numbered objections—but it states, "Objection is made to the use of the advertisement which appears on the face of our Statement of Condition in our newspaper advertisement, and objection to the use of the seal that shows we are a member of the Virginia Industrial Bankers

Fred O. Funkhouser.

Association and the American Industrial Bankers Association.

The original objection of Mr. Ritchie was under Section 6-244 which says that:

“No such corporation shall use in its corporate name or title, nor shall it do business under the name of ‘bank,’ ‘savings bank,’ ‘banker,’ ‘trust company,’ ‘trust’ or other words of similar import,”.

And, later, he expanded and said that it inferred we were in the banking business.

page 30 } There we have the two issues, one the use of the word “Withdrawal,” and the other in the use of the words “Member of Virginia Industrial Bankers Association and the American Industrial Bankers Association.”

Commissioner Dillon: And the use of the seal?

Mr. Clark: Yes. This particular one has the seal of the American Industrial Bankers Association.

We have tried to go along with the letter and spirit of the law and are willing to do it now, but it comes to the point that we object to his picking one thing and then picking another and citing something else, and that is why we have made this application.

Commissioner Catterall: Call your first witness.

page 31 } FRED O. FUNKHOUSER,
a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. State your name and address.

A. Fred O. Funkhouser, Harrisonburg, Virginia.

Q. What is your connection with the Harrisonburg Loan and Thrift Corporation?

A. I serve as President of the Corporation.

Q. What is the business of the Harrisonburg Loan and Thrift Corporation?

A. It is an industrial loan association. Our primary business is the making of all types of loans in the sales of certificates of investments, as permitted, and also we have Christmas Savings and Vacation Savings.

Fred O. Funkhouser.

Q. What type of advertising is done by your company?

A. We utilize every type of advertisement we can use. We use radio, T. V., and personal contact, and every legitimate means we can possibly use.

Q. We have heard reference made to letter of page 32 } September 26, 1960, from Mr. Ritchie to you.

Did you receive this communication from the Commissioner of Banking?

A. Yes, on September 26, 1960, we received a letter from the Commissioner of Banking, directing us to cease to use several words and forms in our advertising. The basis for this action was the new statute which had become effective as of July 1, 1960, which prohibited industrial loan associations from advertising that they received deposits, or engaged in the banking business.

Q. What particular objections to your advertising were raised by this letter?

A. The first had to do with an old folder called, "Safe Savings," and I might add that we had approximately twenty thousand of these on hand, and they were in the basement of the building, and we had them previous to this, and, through error, they went out with other advertisements which we had on hand and mailed out, and we agreed with Mr. Ritchie that since the text referred to banking, we should discontinue their use.

Q. What was the next objection?

page 33 } A. It had to do with the folder entitled "Statement of Condition June 30, 1960" which stated interest would be paid on Regular Savings. We did agree with Mr. Ritchie that we would not use this term and discontinued such, although we see no objection to its use.

Q. Were there any other objections?

A. Yes, in a form letter dated September, 1960, which was used as a mailing piece, we stated that "Four per cent interest, compounded from the first day until the day you withdraw, is paid on regular savings certificates." Mr. Ritchie objected to this saying that the use of the word "withdraw" implied that we were a bank.

Q. Any other objection?

A. Yes, Mr. Ritchie gave his opinion that we cannot state in any advertisement that the Corporation is a member of the Virginia Industrial Bankers Association or the American Industrial Bankers Association because of the use of the word "bank." We have been a member of the Virginia Industrial

Fred O. Funkhouser.

Bankers Association since 1929, and the American
page 34 } Industrial Bankers Association since 1940. We
have often referred to this in our advertisement,
and Mr. Ritchie stated that referring to these Associations
implied that we were engaged in the banking business.

Q. In regard to the Virginia Industrial Bankers Association
and the American Industrial Bankers Association, what do
they do, or what is their purpose?

A. We offer means of cooperation and the maintaining of
high standards of service, and offer service such as monthly
material and advisory communications, and also other service
such as skip tracing, that is, if a person skipped on the
payment of an automobile, and also take action on some
projects, such as legislative matters.

Q. How many Industrial Loan Associations are there today
in this State?

A. The record is twenty-four. We have had some new ones
in Norfolk there, I believe.

Q. And how many belong to the Virginia Association?

A. Twenty-one.

Q. And how many to the American Association?
page 35 } A. Fourteen belong to the National Association.

Q. Do you know whether, from your own
information, all Industrial Loan Associations refer to being
members in these Associations in their advertising?

A. Every one of them has done it for years.

Q. What is your reason for using these Associations in your
advertising?

A. We believe it enhances the prestige of any corporation,
particularly those in a local organization, to publicize their
affiliation with both the National and State Associations.
Since both Associations refer to industrial bankers, we do not
believe that the use of the name will imply to the man in the
street that we are engaged in a banking business, and we do
not, in short, think that this reference misleads anyone because
in our community everyone knows what we do and how we do
it, and we have made a Hundred and Ninety-Six Million
Dollars in loans since organization, and ours is the largest
association in Rockingham County, and we are in all types of
loans of this type.

Mr. Mays: I won't make any objection, but this seems
unnecessary.

Fred O. Funkhouser.

page 36 } A. (Continued) And we have more loans
outstanding than any financial institution in our
County, and more savings than any financial institution in
our County.

Mr. Clark:

Q. What is your position with regard to the use of the word "Withdrawal," and reference to the membership in these organizations?

A. We feel strongly that we should be permitted to do so in the future, and that is the reason we asked for this hearing so we could get an official interpretation from you gentlemen.

Q. Have you had any indication from the general public that they had been misled by your advertising?

A. Not at all, and the banks in our area can take care of themselves, and through the years they have had a large advantage because they advertise that only banks are safe because they have Federal protection, and that only banks are supervised and protected by the Federal Government. Our banks have done that, and the local banks have engaged in vicious campaigns against us, which the F. D.
page 37 } I. C. has said was unauthorized, and it has not
stopped them to date.

Commissioner Catterall: Your lawyer spoke of demand savings, and you speak of time savings. Can you clarify that?

A. The only thing we have is time savings, and the only thing we have is certificate of time savings.

Q. Define the difference between what you mean.

A. Some banks have six days' notice or thirty days' notice, and that penalizes you if you draw your money out within a certain time, but we do not do that.

Q. How many days' notice do you require?

A. We have it in our certificate that we can require ninety days' notice, and we pay interest from the day that they put it in and until the date they take it out.

Q. Do you have a certificate with you?

A. No, but I can send it to you.

Fred O. Funkhouser.

CROSS EXAMINATION.

By Mr. Mays:

Q. You mentioned that these advertisements, page 38 } which indicate that you are a member of the American Industrial Bankers Association and the Virginia Industrial Bankers Association, have been used for years by your institution?

A. Yes.

Q. And there has been no interruption of that until this hour?

A. That is correct.

Q. Do you remember in 1958 the General Assembly of Virginia provided for a study of this matter of industrial loan companies so that there could be a revision in the Code?

A. Yes, this is the second study.

Q. And you were there?

A. Yes, and you were there also.

Q. Speaking for the Virginia Bankers Association.

A. Yes, and an excellent one it was.

Q. And we stated that we were not out to prevent you from operating, but the one thing we wanted to prevent was for the Industrial Loan Companies to state that they were in the banking business?

A. Yes.

Q. And the study group, recognizing that that page 39 } objection was valid, therefore, wrote into this new codified Section 6-251:

“(1) Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Banking, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits.”

You recall that, do you not?

A. Yes, but the word “deposits” has always been in the Code.

Q. And the position the Virginia Bankers Association took was to see that you did not represent yourself as a bank?

Fred O. Funkhouser.

A. Yes.

Q. And to get that into the Code?

A. Yes.

Q. And, in spite of that, you have continued to advertise, after the effective date of the Act, just as you did before?

A. We had it on our stationery that we are page 40 } entitled to say that we are members of the National Association just as we would say that we are members of the Chamber of Commerce, that we have the right to say that we are members of the National Industrial Association, and since we have been doing it all of the time, I think we have a right to do it.

Q. And after this Act was passed, you did just as before?

A. Yes.

Q. Just as before, you didn't change that?

A. Yes, to this date.

Chairman Hooker: It is on your advertising?

A. Yes, it is on the statement that we are members of the American and Virginia Industrial Bankers Associations.

Mr. Mays:

Q. You don't mean to continue to advertise that you are subject to supervision by the State Corporation Commission of Virginia?

A. No, but I would like to say that we pay one and a half times what the banks pay for auditing of our books, but they say that we can't say that we have been audited by the Banking Commissioner.

page 41 } Mr. Mays: I am not contradicting that, but if he would just answer my questions.

Commissioner Catterall: The witness did not understand the question.

Mr. Mays:

Q. You made some reference about the F. D. I. C., making some criticism of the Banking Commissioner's position. I don't know what you meant by that, and I think it is irrelevant so I will not pursue it.

Mr. Clark: Then why ask him about it?

Mr. Mays: I just wanted to clear it up.

Leon C. Hall.

Mr. Clark: I just want to be sure that the record is straight that Mr. Funkhouser stated that the advertising practice had continued the same as it was before, and that he meant only as to the membership in the Virginia Industrial Bankers Association and the American Industrial Bankers Association.

Mr. Clark:

Q. That is what you meant to convey, is it not?

A. Yes.

Commissioner Dillon: We understood that.

page 42 }

LEON C. HALL,

a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. Will you state your name and address?

A. Leon C. Hall, Norfolk, Virginia.

Q. Are you connected with an Industrial Loan Association operating in Virginia?

A. Yes.

Q. Please identify that association and your connection with it.

A. It is the Norfolk Savings and Loan Association, and my position is President.

Q. How long has this Association been in business?

A. Since 1915.

Q. And is your business generally comparable to the type of business in this State such as the Harrisonburg Loan and Thrift Corporation?

A. Generally speaking, yes.

Q. Do you use the same type of operation as
page 43 } Harrisonburg Loan and Thrift Corporation?

A. Generally speaking, yes.

Q. Do you use the word "Withdrawal" in your advertising?

A. We do not use the word "Withdrawal" in our ads, or in telephone or radio advertisements, but we do use it in a little book we give to the people to show that they have so much on deposit.

Q. That is in the nature of a pass book?

A. Yes.

Leon C. Hall.

Commissioner Catterall: Do you have a sample?

A. No, but I will be glad to send you one.

Mr. Clark:

Q. Is your Association a member of the Virginia Industrial Bankers Association?

A. Yes.

Q. How long have you been a member?

A. Since 1940.

Q. And are you a member of the American Industrial Bankers Association?

A. Yes, since 1942.

Q. I believe you have held positions with the
page 44 } Virginia Industrial Bankers Association?

A. Yes, I have been Treasurer, Vice President,
and then President in 1953.

Q. That is of the American Industrial Bankers Association?

A. Yes.

Q. Do you refer to these memberships in your advertising?

A. Yes.

Q. Is it your desire to continue to do so?

A. Yes, it is.

Q. What is the purpose of so advertising?

A. Because the Association promotes high standards of ethics and integrity, and it lends prestige to our Association, and we are recognized in that way to show that we are not a fly-by-night association. Recognition as members in these Associations gives you certain prestige, and then, too, we have the exchange of information with others which is of great benefit.

Q. Are there any qualifications for membership in these Associations?

A. Yes, you have to be a respectable concern,
page 45 } and you are investigated by a member of the
Virginia Industrial Bankers Association, and you
have to be a member of the Industrial Bankers Association
in the State in which you operate, and you have to be examined
by the State Banking Commissioner.

Commissioner Catterall: Did Mr. H. W. Goodwyn belong to it?

A. He did, but is not now in it.

Leon C. Hall.

Q. Does this Association use any disciplinary action?

A. Yes, it does.

Q. To your knowledge, has the Virginia Association been called upon to take disciplinary measures?

A. Yes, for the benefit of the Association, and one member was required to resign.

CROSS EXAMINATION.

By Mr. Mays:

Q. You have been advertising the same way as Mr. Funkhouser has for many years. Do you belong to both Associations?

A. Yes, to both Associations.

page 46 } Q. And that has not been interrupted at all since the new statute in 1960?

A. That is correct.

Q. Did you participate in those little conferences?

A. Yes.

Q. And you heard the testimony of Mr. Funkhouser a little while ago?

A. Yes.

Q. And you remember my presentation, as he stated a little while ago?

A. Yes.

Q. And you have the same recollection as he had and stated a few minutes ago?

A. Yes.

Q. And you mentioned that members of the National Association have prestige. I wonder why you don't organize a company which would be known as the Virginia Industrial Loan Association.

A. I think this has been in existence for many years, and I think we have a right to use it. The American Industrial Bankers Association has been in existence for many years.

page 47 } Commissioner Catterall: Tell me one more thing about the National Association. Did they originate out of the Morris Plan Bank?

A. It originated in 1937. I don't think so. It was formed by a group of men in the industrial loan business.

Q. But was not the Morris Plan Bank regarded as an industrial association bank?

A. In 1937, yes, sir.

Harry Myers.

Mr. Mays:

Q. The fact is that you would much rather use the name "Banking Association"?

A. We feel we are a bank with certain limitations.

Witness stood aside.

page 48 } Mr. Clark: Without prolonging any further testimony on it, I would like to incorporate into the record the other persons who are here who would testify to substantially the same thing as Mr. Hall has testified to.

Commissioner Catterall: The only question is whether counsel would like to ask them any questions.

Mr. Mays: The question is as to how they would testify as to whether they operate in the same manner.

Mr. Clark: They would testify the same as Mr. Hall.

Commissioner Catterall: And they would testify as Mr. Hall testified, and, in reply to Mr. Mays' question, they would answer that they have all continued to use it after the law was passed. You can put them all on, and you can ask them the same question as to whether they would testify the same as Mr. Hall.

page 49 } HARRY MYERS,
a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. You are Mr. Harry Myers, Executive Vice President of the Staunton Industrial Loan Company, of Staunton, Virginia?

A. Yes.

Q. You have heard the statements made by Mr. Hall. Are you substantially in accord with those statements?

A. Yes, with Mr. Hall's statements, mainly. We do not use in our advertising that we are members of the American Industrial Bankers Association or the Virginia Industrial Bankers Association, but we have a plaque in our office showing that we are members of the American Industrial Bankers Association.

Q. Do you use the word "Withdrawal" in your public advertising?

W. T. Macleod.

A. Not in our public advertising, but in our pass book the word "Withdrawal" is used.

page 50 } CROSS EXAMINATION.

By Mr. Mays:

Q. Did you formerly use "Members of the American Industrial Bankers Association" in your advertising?

A. We have never used it consistently.

Witness stood aside.

page 51 } W. T. MACLEOD,
a witness introduced on behalf of Applicant, being
first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. You are Mr. W. T. MacLeod, and you are President of the Lynchburg State Industrial Corporation?

A. No, it's State Industrial Loan Corporation of Lynchburg.

Q. You heard Mr. Hall's testimony. Is your testimony practically the same as his?

A. We don't advertise like they do. It is seldom that we send out advertisement that we are members of the Virginia Industrial Bankers Association. We have done it occasionally, and we don't belong to the American Industrial Bankers Association. We used to, but we seldom referred to that. We formerly stated that we were under the supervision of the Banking Department.

Q. But you have used the words that you are members of the Virginia Industrial Bankers Association in your advertising?

A. Occasionally, but rarely.

page 52 } Q. How about the word "Withdrawal"?

A. That is on our book, but we are not publishing it on our letterhead to stockholders or prospective customers. We have to have some new books printed, so we would like to know what we can use on them.

Mr. Mays:

Q. How about the word "Cash"?

A. We could use that.

R. R. Murray, Jr. — W. W. Wood

Commissioner Dillon: But that would indicate a bank more than "Withdrawals."

Mr. Mays: I was not stating it, but just asking it.

Chairman Hooker: The inference was that you would have no objection to that.

Witness stood aside.

page 53 } R. R. MURRAY, JR.,
a witness introduced on behalf of Applicant, being
first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. You are Mr. R. R. Murray, of the Peoples Industrial Loan Association of Danville?

A. Yes.

Q. Is your business substantially the same as has been testified to by Mr. Hall?

A. Yes.

Q. And you advertise the same way?

A. Since the new statute was passed, we have eliminated reference to the inspection by the State Corporation Commission. We have continued to use the membership emblem of the American Industrial Bankers Association and the Virginia Industrial Bankers Association. We use that as a part of our little symbol cut in our advertising in Danville, and have done so since 1927.

Q. Has any objection been made to your using it?
page 54 } A. I've never heard of any objection until this
came up.

Witness stood aside.

W. W. WOOD,

a witness introduced on behalf of Applicant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Clark:

Q. You are Mr. W. W. Wood, of the Mutual Savings and Loan Association of Norfolk?

W. W. Wood.

A. Yes.

Q. I believe you are past officer of both the State and National Industrial Bankers Associations?

A. I have been.

Q. Do you concur with Mr. Hall as to the purposes and reasons for your advertising your membership in such Associations?

A. I am proud to be a member, and I see no objection to mentioning it.

Q. Does your company advertise that?

A. No.

Q. Do you use the word "Withdrawal" in your page 55 } advertising?

A. We don't do any advertising.

Witness stood aside.

Mr. Clark: That is our case.

Commissioner Catterall: Do you have any witnesses, Mr. Mays?

Mr. Mays: No.

Note: Counsel argued the matter before the Commission, and then decided to file briefs.

Commissioner Catterall: When do you want to file your briefs? Do you wish to file the first one, or do you want to file them simultaneously?

Chairman Hooker: The Applicant has a right to file first.

Commissioner Dillon: I think that is true.

Chairman Hooker: They have the right to file the first brief.

Commissioner Catterall: You want to file the first brief; Mr. Mays, do you wish the transcript before you file the brief?

page 56 } Mr. Mays: Someone will help prepare the brief, and I would like to have the transcript.

Commissioner Catterall: Mrs. Wootton promises the record by April 1st, and the opening brief will be filed by April 11th. The answering brief will be filed by April 20th; and, if you wish to reply to him, you may do so by April 27th.

The Commission will take this case under advisement.

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* * * * *

At Richmond, May 1, 1961.

THE APPLICATION herein was heard on March 15, 1961 and taken under advisement. The applicant was represented by Joseph C. Carter, Jr. and Henry C. Clark, its counsel, the Virginia Bankers Association, which filed its motion to intervene herein on March 6, 1961 and which became a party to this proceeding, by David J. Mays, its counsel, and the Commission by its counsel.

NOW ON THIS DAY the Commission having considered the evidence herein and the briefs filed by the applicant and the intervenor, a majority of them, Commissioner Catterall dissenting for reasons stated in an opinion this day filed and made a part of the record herein, is of the opinion and finds that neither the advertisement by Harrisonburg Loan and Thrift Corporation, an industrial loan company, of its membership in the Virginia Industrial Bankers Association or in the American Industrial Bankers Association, nor the use by Harrisonburg Loan and Thrift Corporation of the word "withdrawals" in connection with redemption by it of certificates of investment issued by it constitutes a violation of the first paragraph of §6-251 of the Code as amended by Chapter 60 of the Acts of the General Assembly of 1960.

ACCORDINGLY, IT IS ORDERED:

(1) That Harrisonburg Loan and Thrift Corporation, an industrial loan company, may advertise that it is a member of the Virginia Industrial Bankers Association and of the American Industrial Bankers Association;

(2) That Harrisonburg Loan and Thrift Corporation may use in its advertisements and circulars the word "withdrawals" in connection with the redemption of certificates of investment issued by it;

page 58 } (3) There appearing nothing further to be done this proceeding be dropped from the docket and the file placed in the file for ended causes; and

(4) That an attested copy hereof together with a copy of the opinion of Commissioner Catterall referred to herein

be sent to each of counsel appearing herein and to the Commissioner of Banking.

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

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* * * * *

Opinion, HOOKER, Chairman:

THIS PROCEEDING was instituted by Harrisonburg Loan and Thrift Corporation, an industrial loan company organized and existing under Chapter 6 of Title 6 of the Code for an interpretation of the first paragraph of §6-251 of the Code as amended at the 1960 session of the General Assembly. Prior to its amendment in 1960, §6-251 of the Code merely provided that no industrial loan corporation shall have any powers except those conferred by the General Corporation Law (Ch. 1, Title 13.1) and by the Industrial Loan Act (Ch. 6, Title 6). After the 1960 amendment (Ch. 60, Acts 1960) the first paragraph of this Section insofar as material to the question in this Case provided:

“No such corporation shall:

“1. * * * publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits.”

The controversy which Harrisonburg Loan and Thrift Corporation seeks to settle in this proceeding grew out of a letter dated September 26, 1960 (Ex. 1) from the Commissioner of Banking to Harrisonburg in which the Commissioner took exception under §6-251 as
page 60 } amended to the use by Harrisonburg of: (1) An advertising folder or circular entitled “Safe Savings” (Ex. 9); (2) A folder entitled “Statement of Condition” (Ex. 8); and, (3) A form letter dated September, 1960 (Ex. 7). After that letter was written, the Commissioner

and Harrisonburg were able to agree upon a proper interpretation of this Section as it related to the advertisement practices by Harrisonburg except: (1) The advertisement by Harrisonburg of its membership in the Virginia and the American Industrial Bankers Association; and, (2) The use by Harrisonburg in its advertisements and circulars of the word "withdrawals" in connection with the redemption of certificates of investment issued by Harrisonburg. The Commissioner took the position that both of these practices violated the first paragraph of §6-251, while Harrisonburg contended that it had the right to advertise its membership in the Virginia and the American Industrial Bankers Association and to use in its advertisement and circulars the word "withdrawals" in connection with the redemption of certificates of investment issued by it.

The questions presented for decision in this case, therefore, are whether: (1) *The advertisement by Harrisonburg of its membership in the Virginia and the American Industrial Bankers Association* or, (2) *The use by Harrisonburg in its advertisements and circulars of the word "withdrawals" in connection with the redemption of its certificates of investment constitute violations of the first paragraph of §6-251 of the Code as amended in 1960.*

page 61 } The Virginia Bankers Association which intervened in this proceeding on March 6, 1961 takes the position that the advertisement by Harrisonburg of its membership in the Virginia and the American Industrial Bankers Association constitutes a violation of §6-251 of the Code. It does not seriously contend that Harrisonburg does not have the right under the statute to use the word "withdrawals" in connection with the redemption by it of certificates of investment which it has issued.

It is quite clear to the Commission that the use of the word "withdrawals" by Harrisonburg in connection with the redemption of certificates of investment issued by it does not constitute a violation of the first paragraph of §6-251. As conceded in its brief by the Virginia Bankers Association, the word "withdrawals" is not a word of precise meaning. Certainly it is not exclusively associated with banking or the services rendered by banks. Industrial loan companies are permitted by statute in Virginia to issue and sell certificates of investment. These are in fact deposits, but they cannot be called such. Necessarily, industrial loan companies have the power to redeem these certificates of investment when they become due. When a holder of a certificate presents it to

an industrial loan company for redemption and it is redeemed by the industrial loan company, what in fact happens is that the holder of the certificate withdraws his investment from the industrial loan company. To call such a transaction a withdrawal describes exactly what has taken place and does not indicate or suggest to anyone that the industrial loan company is engaged in the business of banking or that it receives deposits. No other word describes more adequately what actually takes place.

After considering the provisions of the first paragraph of §6-251, as amended, and the record in this Case, the Commission is further of the opinion that the advertisement by Harrisonburg Loan and Thrift Corporation of its membership in the Virginia and the American Industrial Bankers Association does not violate the provisions of §6-251. It is undisputed that Harrisonburg has belonged to the Virginia Industrial Bankers Association for more than 30 years and to the American Industrial Bankers Association for more than 20 years. Over the years in its advertisements it has referred to the fact that it is a member of these Associations. Furthermore, the evidence shows that 21 of the 24 industrial loan companies in Virginia belong to the Virginia Industrial Bankers Association and 14 of the 24 belong to the American Industrial Bankers Association.

In the past 20 years it has become extremely common for persons engaged in the same type of business to organize and belong to a trade association. To name just a few, we have trade associations for general contractors, home builders, lumber manufacturers, electrical contractors, cement dealers, retail merchants, milk producers, insurance agents, launderers and cleaners, automobile dealers, lawyers, bankers and doctors. Such associations are organized for many reasons and purposes, but it is obvious that the members derive, or believe that they derive, benefit from belonging to them. In the case of the Virginia and the American Industrial Bankers Association, the evidence shows without contradiction that Virginia industrial loan companies join them because they believe that membership will (1) add prestige to the industrial loan company member, (2) provide a means of cooperation among members, (3) enable members to exchange ideas and information and maintain standards of service, and (4) enable members to join together to oppose proposed undesirable or oppressive legislation.

Although many industrial loan companies in Virginia have for a number of years advertised that they are members of either the Virginia or the American Industrial Bankers

Association, or both, there is no evidence that any member of the public has been misled by such advertising into believing that any industrial loan company was engaged in the business of banking, or that such advertisements suggested that any industrial loan company was engaged in the business of banking. Clearly the first paragraph of §6-251 was not passed to protect the banks, but to protect the public from false or misleading advertisements by industrial loan companies as to the nature and character of the services rendered by industrial loan companies in this State. The use page 64 } of the word "Industrial" in the names of these two Associations before the word "Bankers" clearly indicates that the members of these Associations are industrial loan companies and are not members who engage in a general banking business.

In the hearing before the Commission and in the briefs filed, reference was made by counsel for the Virginia Bankers Association to the hearing before the Legislative Committee which led to the revision of §6-251 of the Code by the 1960 General Assembly. In that connection it is interesting to note that although both the Virginia and the American Industrial Bankers Association have been in existence for many years prior to the hearings and the various industrial loan associations in the State have for years belonged to one or both of these Associations, no one contended or suggested that the purpose of the first paragraph of §6-251 as proposed and as later enacted was to prohibit industrial loan companies from advertising that they belonged to the Virginia or the American Industrial Bankers Association. Under such circumstances, and especially in view of the fact that no showing has been made that the public has been misled by industrial loan associations advertising that they were members of the Virginia or the American Industrial Bankers Association, the Commission must conclude that the provisions of §6-251 do not prohibit an industrial loan company in Virginia from advertising that it is a member of either the Virginia or the American Industrial Bankers Association, or both.

DILLON, Commssioner, concurs.

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* * * * *

CATTERALL, Commissioner, dissenting:

The 1958 General Assembly, by House Joint Resolution No. 51, established a commission to consider the regulation of industrial loan associations. The commission was composed of two members of the Senate, three members of the House of Delegates and two members appointed by the Governor. It elected the Honorable Edward E. Lane chairman.

The Lane Commission's report to the Governor and the General Assembly, dated August 26, 1959, begins:

"There has been apprehension on the part of many concerning the lack of regulation of industrial loan associations because a number of these associations solicit and accept savings from the public."

* * * * *

"The essential problem to be considered is this: industrial loan associations may receive the savings of the public the same way that banks do."

There are, of course, many ways in which members of the public invest their savings. The difference between the other ways and the specific way here involved is that
page 66 } *industrial loan associations receive the savings of the public the same way that banks do.* The customer of an industrial loan association pays his money and receives credit in his pass book the same way that the customer of a bank does. The resulting legal relationship is identical in both cases: the receiver of the money becomes the debtor of the customer in the amount that is credited in the pass book.

Since the two forms of investment look alike and are legally identical the only way to remind the customer that there are differences between banks and industrial loan associations, is to give the identical transactions different names. The name "deposit" was already in use for the transaction with the bank, and a new name had to be invented for the identical transaction with the industrial loan association. The importance of the name lies in the fact that the transactions differ in name only. The name invented was "certificate of investment." Chapter 448, Acts of 1928, authorized an industrial loan association to solicit the savings of the public by providing that it:

“* * * may sell certificates of investment or similar obligations upon either the fully paid or partial payment system * * *”

It is the “partial payment system” that makes it possible for industrial loan associations to receive the savings of the public the same way that banks do.

page 67 } When you “deposit” money in a bank the bank becomes your debtor and does not become a depository. In the early days, when the London bankers were goldsmiths, you actually did deposit gold and got it back later. The same thing happened in the early days in Virginia. You deposited tobacco in a public warehouse and got it back later. Since tobacco, like gold, is fungible you did not get back the same tobacco or gold, but you got back the same commodity, and the warehouse receipts could be used in credit transactions. The warehouse was a depository and not a debtor. A bank, however, is a debtor; it owes you money, and it cannot rely on the legal defenses that a depository has if the deposited goods are destroyed without his negligence. For historical reasons bank deposits are called “deposits” although they are really borrowed money. Using the word “deposits” for that kind of borrowed money releases the phrase “borrowed money” for a different type of transaction. §6-80 of the Code of Virginia requires a bank to show “borrowed money” as a separate item on its books and makes it unlawful to issue “certificates of deposit for the purpose of borrowing money.” If a country bank “deposits” money in a city bank that money is money borrowed by the city bank, but it is not called “borrowed money.”

page 68 } If a country bank applies to a city bank for a loan to tide it over a difficult period, that borrowed money is called “borrowed money.” The piece of paper evidencing the transaction must be called a promissory note and must not be called a certificate of deposit, although both pieces of paper are simple promises to pay a sum certain on a fixed day. The difference is not legal but factual; it turns on the motive that gave rise to the transaction.

The *legal* difference between the banking business and a non-banking business is a thin one and is largely a matter of words. For example, a “check” drawn on a bank is a bill of exchange payable on demand. Anybody is free to honor a bill of exchange drawn on him, but it would be misleading to call it a check. The significant legal difference between banks and other organizations is not in the powers that they can legally exercise, but in the restrictions to which they are legally

subject. Because of those restrictions, and because of federal deposit insurance, and because of the services rendered by the Federal Reserve System and local clearing houses in clearing checks, checks drawn on banks have become our principal medium of exchange. Because of that fact the American public lends many billions of dollars to banks without interest. The lenders receive no interest on "checking" accounts, and pay "service charges" to the bank in order to persuade it to borrow their money.

page 69 } The importance of banks to the general welfare is that they are solvent and liquid, and checks drawn on them are universally accepted as the equivalent of money. If the banks failed the whole economy would come down like a house of cards. That is why it is necessary to limit the number of banks and protect them against too much competition from each other and from non-banks. So great is the importance of protecting banks that the General Assembly, for their protection, is justified in passing laws abridging the freedom of speech notwithstanding Sec. 58 of the Constitution which provides: "The General Assembly shall not pass * * * any law abridging the freedom of speech." It is not a crime to say that the President of the United States is a numbskull, but it is a crime to say that the Peoples Bank of Snug Hollow is not doing very well financially. (Code §6-132).

The statute before us deals only with words and forbids industrial loan associations to use certain words. The question is: Which words does it forbid them to use?

As a result of the recommendations of the Lane Commission, §6-251 was amended to provide that no industrial loan association shall:

"Advertise that it is subject to regulation or supervision by the State Corporation Commission or the Bureau of Banking, or publish any advertisement suggesting that it is engaged in the business of banking or that it receives deposits."

page 70 } Here is a statute that forbids a man to tell the truth in advertising, but at least it does not force him to tell a lie. §13-136 of the old Blue Sky Law forbade a promoter to sell stock if the S. C. C. was of opinion "that the enterprise or business of the promoter is not based upon sound business principles;" and §13-132 required the promoter to print on his subscription contracts the words: "The value

-

of the stock * * * referred to in this contract has not been passed upon by the State Corporation Commission."

The old Blue Cross statute, §32-188, required the applications for, and contracts of, insurance issued by Blue Cross to contain the words: "This is not an application for, or a contract of, insurance."

After the Securities and Exchange Commission has gone over a company's prospectus with a fine-tooth comb and required deletions and additions until it is convinced of the accuracy and adequacy of the prospectus, it requires the following words to be printed in large type on the front cover of the prospectus:

"THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENCE."

You can be put in jail for saying that the S. E. C. has done its duty.

The examples given above are cases in which a company is required to publish a lie for fear that the public might misunderstand the truth. Similar considerations page 71 } support the validity under the police power of §6-251, which forbids industrial loan associations to advertise facts that are true but that might be misunderstood by some members of the public. Since sophisticated members of the public could not be misled, the only members of the public who could be protected by the statute are those who are ignorant or stupid. Since they are the only possible beneficiaries of the statute, the statute must be so interpreted as to protect them. If all members of the public had ordinary common sense, there would be no need for statutes making it illegal to advertise that Father Smith's Snake Oil is a sure cure for cancer.

The statute forbids the corporation to advertise any of the three following true facts:

1. That it is regulated by the S. C. C.
2. That it is engaged in the business of banking.
3. That it receives deposits.

1. It actually is regulated by the S. C. C. This part of the statute leaves no room for argument, and the industrial loan

associations have ceased to advertise that they are regulated by the State Corporation Commission or the Bureau of Banking. The report of the Lane Commission, p. 11, gives the reason for this prohibition:

“Since these few existing associations are not subject to the restrictions applicable to banks they should not suggest in their advertising that they are subject to the restrictions applicable to banks. If they advertise that they are regulated by the Bureau of Banking, some members of the public who have not read the banking laws are apt to believe that the associations are restricted in the same way that banks are.”

2. It actually is engaged in the business of banking. The only things that a bank can do that an individual or an ordinary corporation cannot do are to call itself a bank and receive from the public loans called “deposits.” Anybody who has money can lend money. Anybody can borrow money. Anybody can run a safe-deposit box business. Any individual (but not an ordinary corporation) can act as trustee, executor or guardian. The American Express Company and Thos. Cook & Sons sell travelers’ cheques, which are a form of letters of credit. Western Union takes money from A and transmits it to B.

The acceptance of loans called “deposits” is the only business that is peculiar to banks. The Banking Act, §6-6, says: “The word ‘banks’ whenever it shall appear in this chapter, shall include * * * all persons, firms and associations receiving deposits, or doing any banking business or trust business.” That declaration is so inconsistent with other provisions of law that it has little meaning left. §6-9 permits an individual to do a trust business. §6-223 permits a credit union to receive deposits and come right out and call them “deposits.” §6-201.4 permits a savings and loan association to accept savings accounts so long as it calls them “shares.”

§6-255 permits an industrial loan association to accept savings accounts so long as it calls them “certificates of investment.”

An industrial loan association can do everything that a bank can do except call itself a bank and call the money it borrows from the public “deposits.” (And except that it cannot act as trustee, executor or guardian). The statute does not forbid it to sell certificates of investment payable on demand, and as a matter of practice they are paid on demand. The statute does not forbid it to honor bills of exchange drawn on it.

If it did honor such bills of exchange and if it called them "checks," it would be suggesting that it was engaged in the banking business and that it was receiveing deposits.

Thus industrial loan associations actually do a banking business, and §6-245 calls them "banks of limited powers." One of the limitations on their powers is that they must not call themselves banks, and §6-251 forbids them to "publish any advertisement *suggesting* that it is engaged in the business of banking." The key word in this sentence is the word "suggesting," because no association is going to advertise flatly that it is a bank.

The industrial loan associations organize an association. They do not call themselves "The Association of Industrial Loan Associations;" they call themselves "The Virginia Industrial Bankers Association." They then point out that it is incontestably true that they have called themselves "Industrial Bankers" and claim the right to
page 74 } advertise that true fact. It is a true fact just as it is a true fact that they are supervised by the Bureau of Banking. But a stupid and ignorant person (for whose benefit the law was passed), could, and, indeed, naturally would, believe that a member of an Industrial Bankers Association must be an industrial banker. An industrial banker is a banker who seeks to attract the business of the industrial classes, just as the Farmers & Merchants Bank seeks to attract the business of the farming and mercantile classes. Using the adjective "industrial" does not suggest that the "industrial banker" is not a banker; it suggests that he is a banker. §6-244 requires every industrial loan association to have as part of its corporate name the words "industrial loan" and forbids it to have as part of its name the word "banker." Thus they are doubly forbidden to do business under the name "industrial banker." When they advertise that they are members of an association of industrial bankers, that is an *express* declaration that they *are* industrial bankers. Even if it could be thought to be merely an *implied* declaration, nevertheless, it at least *suggests* that they are industrial bankers.

The dictionary meaning of "industrial bank" is not important, first, because the people for whose protection the statute was passed are not the kind of people who make much use of dictionaries, and, second, because it is not in the dictionary. Some states do have organizations
page 75 } that are called "industrial banks." The only definition of such organizations is to be found in the statutes creating them. The states having such statutes

are Arizona, Colorado, Connecticut, Florida, Maine, New York and North Carolina. The national organization calls itself "The American Industrial Bankers Association." It is a true fact that the Virginia industrial loan associations belong to that national organization. The name does not suggest that the members are not bankers; it suggests that they are bankers who appeal for business to the industrial classes.

The only reason a corporation advertises its services is to attract customers, and if it advertises that it is a member of an Industrial Bankers Association, it does so to attract customers. It cannot legally attract customers that way in Virginia because to do so suggests that the advertiser is engaged in the business of banking.

3. An industrial loan association receives deposits in the same way that a bank receives so-called deposits, but it is not allowed to call them "deposits." It must call them "certificates of investment." §6-255 says: "Any industrial loan association may *sell* certificates of investment * * *" One thing is certain, the word "*sell*" is *never* used in connection with bank deposits, and the word "*withdraw*" is *always* used in connection with bank deposits.

page 76 } Industrial loan associations use a pass book having the same size, shape and form as a bank pass book. They are supposed to *sell* certificates of investment. Most of the customers, when their pass books are written up, would be surprised if they were told that they had bought something. To get away from the language of buying and selling, the industrial loan associations tell their customers that they can "*withdraw*" their money whenever they feel like it. The statute, even without the 1960 amendment, required the associations to use the language of buying and selling in dealing with their customers. They could not solicit "*deposits*," because the only imaginable reason for calling the things "*certificates*" was to keep the associations from calling them "*deposits*." The statute authorizes them to offer certificates for *sale*. They can, with perfect propriety, offer to buy them back or cash them; but the word "*withdraw*" suggests to customers that they have made a deposit just like a bank deposit. The suggestion will operate the more strongly on the minds of the customers because they *have* made a deposit just like a bank deposit. There is no difference in form, substance or legal effect, but only in name. As the Lane Commission put it, these associations "*receive the savings of the public the same way that banks do.*"

page 77 } One point made by the applicant is stated on page 3 of its brief as follows:

“There is not one word of evidence in the transcript or in the record before the Commission to indicate that the public has been misled by the use of the terms objected to by the Bureau of Banking. In fact the only evidence is directly to the contrary, since Mr. Funkhouser testified that there was no indication of public confusion in the area where the Applicant operates.”

Mr. Funkhouser's testimony is negative like that of a witness who says he did not hear the whistle blow. Certainly, a customer who thought that Mr. Funkhouser's corporation was suggesting that it was engaged in the banking business would not go to him and say: “I have been misled.” And surely Mr. Funkhouser never asked a customer whether or not he had been misled.

If an administrative body had to go out and round up the testimony of easily misled members of the public it could not administer a law like the one before us. The Federal Trade Commission has to administer a similar law and is not required to poll the public. The General Assembly in our case and the Congress in the case of the Federal Trade Commission has decided that specified facts ought not to be suggested, and the legislative decision is binding on the administrative body. It is not for us to review it.

In *Shafe v. Federal Trade Commission*, 256 F. (2d) 661 (1958) the Court of Appeals for the Sixth Circuit said (p. 664):

page 78 } “Actual deception of the public or injury to
competition need not be shown.”

In *Bockenstette v. Federal Trade Commission*, 134 F. (2d) 369 (1943) the Court of Appeals for the Tenth Circuit said (p. 371):

“Throughout their brief, petitioners stress the fact that there is no evidence that any person was actually deceived by these advertisements. There is some evidence that persons who read the advertisements drew an erroneous conclusion therefrom. It is not necessary, however, for the Commission to find that actual deception resulted.”

In *Progress Tailoring Co. v. Federal Trade Commission*, 153 F. (2d) 103 (1946), the tailoring company advertised for salesmen. The ads stated that the company would give each salesman a free suit of clothes. A man would have to

be practically feeble-minded to believe that he was going to be given a suit of clothes for nothing. The Court of Appeals for the Seventh Circuit said (p. 105):

“As to the argument that no salesman was ever deceived, we need only to say that it is sufficient to show that the advertisements had a tendency or capacity to deceive, * * * actual deception of purchasers need not be shown. * * * The Commission may require advertisements to be so carefully worded as to protect the most ignorant and unsuspecting purchaser, * * *”

In *Charles of the Ritz Distributors Corporation v. Federal Trade Commission*, 143 F. (2d) 676 (1944), Charles of the Ritz was forbidden to use the word “Rejuvenescence” to describe his facial cream. A woman would have to be unusually ignorant and stupid to believe that a cosmetic could
page 79 } restore her lost youth. The Court of Appeals for the Second Circuit pointed out (p. 679) that the reason we have laws like this is to protect “the ignorant, the unthinking and the credulous,” and said (p. 680):

“That the Commission did not produce consumers to testify to their deception does not make the order improper, since actual deception of the public need not be shown in Federal Trade Commission proceedings.”

In *Parker Pen Co. v. Federal Trade Commission*, 159 F. (2d) 509 (1946) the Parker Pen Company ran advertisements stating in big type “Guaranteed for Life” and in fine print: “* * * subject only to a charge of 35¢ for postage, insurance and handling, * * *” The Court of Appeals for the Seventh Circuit ordered the company to print the 35¢ charge in the same size type as the rest of the advertisement. The court said (p. 512):

“In the case before us, there was no evidence to show any deception occurred and none was claimed by respondent.”

In *Pep Boys v. Federal Trade Commission*, 122 F. (2d) 158 (1941) the Pep Boys were selling radios under the registered trade-mark “Remington.” They were forbidden to use that trade-mark because an unwary purchaser might think he was buying a product of Remington Rand or Remington Arms or some other well-known company having Remington as part of its corporate name. The Court of Appeals for the Third Circuit said (p. 161):

page 80 } "A deliberate effort to deceive is not necessary
 nor must the Commission find actual deception
 * * *,

The federal statute that is most like our statute is the one forbidding the seller of oleomargarine to *suggest* that oleomargarine is a dairy product.

In *Reddi-Spred Corporation v. Federal Trade Commission*, 229 F. (2d) 557 (1956), the company sold oleomargarine mixed with butter and advertised that putting butter in the oleomargarine made it taste better. Since the company had done the very act forbidden by the legislature, the court had no right to inquire whether the act had even a tendency to deceive. The legislature had made that decision and it could not be reviewed by the court. The Court of Appeals for the Third Circuit said (p. 559):

"The issue before us is not whether the advertisements of Reddi-Spred have the tendency or capacity to deceive the purchasing public into believing that it is in reality a dairy product or something sold under a trade name which is actually different from oleomargarine. Nor does the Commission contend there is no butter in Reddi-Spred. It does justifiably decide that the shrewd featuring of the word butter in the advertisements coupled with skillfully worded statements which infer that because of its butter content Reddi-Spread is a dairy product and so violates the letter and spirit of the statute. With the advertisements before us it is impossible to say that the Commission's finding is arbitrary or clearly wrong.

"Petitioner must face the flat prohibition of 15(a) (2). Any change in its terms is a problem for the Congress, not the courts. As the amendment is worded and was intended the violation consists in the suggestion itself. The Commission is not forced to go to the length of showing
 page 81 } deception of the public. The design of the
 amendment is to prohibit a seller of oleomargarine from using dairy terms to imply that the oleomargarine offered is a dairy product. The 1950 law on its face does not contemplate public reaction or opinion evidence as its guide. It sets up a purely factual standard."

The Virginia statute we are considering also sets up a purely factual standard. It forbids any statement that an industrial loan association is supervised by the S. C. C. and any *suggestion* that it is doing a banking business or receiving

deposits. The federal statute prohibits "a seller of oleomargarine from using dairy terms." The state statute prohibits an industrial loan association from using banking terms.

In *E. F. Drew & Co. v. Federal Trade Commission*, 235 F. (2d) 735, cert. den. 352 U. S. 969 (1956), the seller of oleomargarine raised the constitutional point that its freedom of speech was abridged if the Federal Trade Commission was not required "to establish that the acts and practices involved are of a false and misleading character."

As to that, the Court of Appeals for the Second Circuit said (pp. 738, 739):

"Since the word 'suggested' modifies the word 'representations,' it is clear that any oleomargarine advertisement which *represents or suggests* in any manner that it is a dairy product is 'misleading in a material respect,' and hence, because of the provisions of §15 (a) (1), is a 'false advertisement' within the meaning of §12. Section 15 (a) (2) of the Federal Trade Commission Act clearly constitutes a finding by Congress that a representation that
page 82 } oleomargarine is a dairy product is misleading in
a material respect and hence is a false advertisement."

And at page 740:

"There is no constitutional right to disseminate false or misleading advertisements.

"Petitioner, however, contends that there is no proof and no finding that its advertisements were *in fact* false or misleading. But this finding has been supplied by Congress in the statute itself, which states that any representation or suggestion that oleomargarine is a dairy product is deemed to be misleading. Nor is such a finding unreasonable. Congress might well think that confusion, deception and substitution of oleomargarine for butter or other dairy products was a problem that deserved legislative action. The method selected by Congress to effect this purpose is a matter of legislative discretion, not subject to attack if reasonably related to the end sought. Cf. *Carolene Products Co. v. United States*, 1944, 323 U. S. 18, 23, 27-32, 65 S. Ct. 1, 89 L. Ed. 15.

"Nor is the slight and incidental limitation of speech necessary to avoid the danger of public deception an infringement of the First Amendment. Petitioner remains free to advertise its product. It is prohibited only from

representing or suggesting that its product is a dairy product.”

The company advertised that its oleomargarine was “churned.” Oleomargarine actually is churned. In fact the United States Internal Revenue Code (§4592) defines oleomargarine as “churned.” Nevertheless, the court refused to let it use in its advertisements the word “churned” on the ground that it might *suggest* butter, saying (p. 741):

“The Commission is not required to sample public opinion to determine what meaning is conveyed to the public by particular advertisements.”

“Withdrawal” suggests deposits at least as strongly as “churned” suggests butter; and the protection of
 page 83 } the banking business is even more important to the
 general welfare than the protection of the butter
 business.

I conclude that the statute is a constitutional exercise of the police power for the protection of the banks and of the public. It forbids an industrial loan association to attract customers by boasting that it belongs to an association composed of industrial bankers. In exercising its privilege of selling certificates of investment an industrial loan association must use language appropriate to buying and selling and not language that suggests depositing and withdrawing.

The statutory restrictions do not apply to associations that do not sell certificates of investment, for the reason that even if the customers of such an association thought they were dealing with a bank it would do no harm.

May 1, 1961.

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* * * * *

At Richmond, May 29, 1961.

Harrisonburg Loan and Thrift Corporation having filed due notice of appeal in this case.

IT IS ORDERED that the original exhibits filed with the

evidence, numbered and described as follows, be certified and forwarded to the Clerk of the Supreme Court of Appeals of Virginia, to be returned by him to this Commission with the mandate of that Court:

Exhibit No.	DESCRIPTION
1.	Letter dated September 26, 1960
2.	Letter dated October 3, 1960
3.	Letter dated October 11, 1960
4.	Letter dated November 9, 1960
5.	Letter dated November 23, 1960
6.	Letter dated December 9, 1960
7.	Letter dated September 1960
8.	Statement of Condition June 30, 1960
9.	Folder entitled "Safe Savings"

END

A True Copy.

Teste:

N. W. ATKINSON
Clerk of State Corporation
Commission.

page 85 } COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

CERTIFICATE.

Pursuant to an order entered herein on May 29, 1961, the original exhibits listed therein are hereby certified to the Supreme Court of Appeals of Virginia, to be returned by the Clerk thereof to this Commission with the mandate of that court.

It is further certified to the Supreme Court of Appeals of Virginia that the foregoing transcript of the record in this proceeding, with the original exhibits, contains all of the facts upon which the action appealed from was based, together with all of the evidence introduced before or considered by this Commission.

Witness the signature of H. Lester Hooker, Chairman of

H. LESTER HOOKER
Chairman.

N. W. ATKINSON
Clerk.

I, N. W. Atkinson, Clerk of the State Corporation Commission, certify that within sixty days after the final order in this case Virginia Bankers Association, intervenor, by David J. Mays, Counsel, State-Planters Bank Building, Richmond 19, Virginia, filed with me a notice of appeal therein which had been mailed to Henry C. Clark, 66 South Court Square, Harrisonburg, Virginia, and Joseph C. Carter, Jr., 1003 Electric Building, Richmond, Virginia, opposing counsel, to Counsel for the State Corporation Commission and to the Attorney General of Virginia, pursuant to the provisions of Section 13 of Rule 5:1 of the Rules of Supreme Court of Appeals of Virginia.

N. W. ATKINSON
Clerk.

✱ ✱ ✱ ✱ ✱

H. G. TURNER, Clerk.

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