FINANCIAL INSTITUTIONS, DEPARTMENT OF: Borrowing by officers of banks; credit—line of credit to officers of banks.

May 7, 1937.

Mr. E. H. DeHority,
Bank Supervisor,
Department of
Financial Institutions,
Indianapolis, Indiana.

Dear Sir:

Your letter of April 28 relative to the construction of section 200 of the Indiana Financial Institutions Act, as amended by Senate Bill 52 of the 1937 General Session, has been received.

You ask two questions:

> First: Does the statute prohibit borrowing by an inactive officer of a bank or trust company?

Part of the language of the applicable section is:

> "Except as otherwise provided in this section, no loan shall be made, directly or indirectly, by any bank or trust company to any *active executive officer*, agent or employee thereof. The board of directors may, by resolution, duly entered in the records of proceedings of the board, authorize loans to * * * directors not holding any other office in such bank or trust company, and etc." (Our italics.)

It will be seen that the limitation placed by this section on loans to officers is limited to the prohibition against loans to active executive officers. Therefore, it is my opinion that if the officer were inactive, as is suggested in your question, the statute does not prohibit the making of such loans. On the other hand, in the example which you give, you speak of a director. If the director holds no other office in the bank or trust company, then the board of directors of such bank or trust company may make loans provided they comply with the requirements of this section as to procedure and as to the limitation on the amount of such loans. Also such action can be taken only on authorization by a majority of all of the

directors and by an affirmative vote of all the directors present at the meeting to which such proposed loan is presented.

Your second question is:

> Second: Does the requirement of approval by the board of directors mean that each specific loan must be approved at its inception, or may the board of directors approve a line of credit to be drawn upon between directors' meetings?

The language of the Act is,

> "The board of directors may * * * authorize loans * * *."

A "loan" is said to be that which is furnished for temporary use, with a condition that it shall be returned with a compensation for the use. Rodman v. Munsin, 13 Barb. 63, 75. In another case, it is said that a "loan" has been properly defined as an advancement of money upon a contract or stipulation, express or implied, to repay it at some future day. Brittin v. Freeman, 17 N. J. L. 191, 231.

On the other hand, it is said that "credit" may be defined as the ability to borrow money or obtain goods by virtue of the opinion conceived by the lender or sender that the party will repay. Donnell v. Jones, 13 Ala. 490, 513.

Since the language of the Act speaks of loans and does not mention credit or line of credit, and since the two words "loan" and "credit" mean different things, it is my opinion that each specific loan must be approved at its inception. I say this fully appreciative of the fact that authority to do a greater thing implies authority to do a lesser thing, but I can see reasons why a prohibition may be set up against the extending of a line of credit to certain persons in particular positions, while a loan might be permissive.

In your last paragraph you ask for suggestions as to the particular handling of loans referred to in your second question. Would you object to writing a letter setting forth in greater detail the exact question in your mind? I am not just clear as to what is wanted, but I will be happy to give consideration to your request if you will write me again.