

FINANCIAL INSTITUTIONS, DEPARTMENT OF: Credit unions, reserve fund, how managed.

May 21, 1937.

Hon. E. C. Bucher,
Supervisor Building and
Loan Division,
Indianapolis, Indiana.

Dear Sir:

This will acknowledge receipt of your letter of May 18 asking an interpretation of that portion of section 318 of the Financial Institutions Act which contains the following language:

“The reserve fund shall belong to the corporation and shall be held to meet contingencies and shall not be distributed to the members except upon dissolution of the corporation.”

In answer to this question your attention is invited to the provisions of the statute immediately preceding this sentence, which requires that:

“All entrance fees and charges shall, after the payment of the organization expenses, be known as reserve income, and shall be added to the reserve fund of the credit union.”

The Act also provides that:

“At the close of the fiscal year, there shall be set apart to the reserve fund twenty per cent of the net income of the corporation which has accumulated during the year.”

This twenty per cent may be increased if the members so desire or it may be decreased when the reserve fund equals the paid-in capital.

It is apparent, therefore, from a reading of the Act that it was the intention of the legislature to require a reserve fund or a surplus to be created by the credit union during the years of its operation, which reserve fund could be used by the corporation to meet contingencies that might arise from time to time in the operation of its business, without having to resort to other assets of the corporation. This surplus or

reserve has always been considered in banking institutions as the property of the institution above and beyond the capital stock and such remains the property of the institution until it is divided among the stockholders.

Bank of Commerce v. Tennessee, 161 U. S. 134 at 147.

I think it is not the practice among banks to keep their surplus or reserve intact and in cash on hand but the same is treated as other assets are treated for the purposes of producing revenues.

It is my opinion, therefore, that the requirement that the reserve shall be held to meet contingencies means only that it shall not be distributed to members except upon dissolution of the corporation. It does not mean that the same shall be held as cash in hand.

HIGHWAY COMMISSION, STATE: Robinson-Patman Act, applicability of same to bids received by State Highway Commission.

May 24, 1937.

Hon. W. H. Skinner,
Purchasing Agent,
State Highway Commission,
State House,
Indianapolis, Indiana.

Dear Mr. Skinner:

I have before me your letter stating that on May 18, 1937, the State Highway Commission of Indiana received bids on 2,725,000 to 3,000,000 gallons of gasoline, having an octane rating of 69 or more, to be furnished over a period of twelve months.

You state that the above quantities are estimated only and that the successful bidder must furnish more or less during the twelve-month period as may be needed, and that gasoline requirements for all other state departments are to be obtained upon this contract in accordance with the award.

You state further that the bids were made upon the basis of a discount from the posted tank wagon market price (in-