

McClayton
Governor Ransom

February 11, 1939.

C. E. Cagle

S. E. C. Transamerica

Hearing

The morning session opened with Mr. Bacigalupi, former president of Transamerica Corporation, on the stand. He read a telegram from Mr. Giannini referring to his withdrawal from active participation in the affairs of the corporation and requesting that the \$792,000 balance of the \$1,400,000 credited to him in January 1930 be transferred to his account in the books of the bank.

Mr. Bacigalupi said that by that time he and Mr. Giannini had had some differences, although they had not completely broken, and he raised some question as to his authority to comply with Mr. Giannini's request, and that it was the general consensus of the various lawyers of the group that the balance should not be transferred as directed by Mr. Giannini, and no further payments were made from the \$792,000 balance until Mr. Giannini's return to power in the early part of 1932 after the famous proxy battle.

In Mr. Rogge's attempt to develop facts on the \$5,200,000 total credits to Mr. Giannini, it was obvious that he was having some difficulty in linking up the \$1,500,000 contribution to the University of California. Mr. Bacigalupi asked if he could explain the transaction in his own way. Mr. Rogge seemed to welcome this (presumably because he had counted on Mr. Bacigalupi as being hostile to the Gianninis). Mr. Bacigalupi explained that in 1925 a committee of outstanding directors of the corporation was set up to study the matter of compensation to Mr. Giannini. Two years later (in 1927) the committee recommended that the board give Mr. Giannini 5 per cent of the net profits of Bancitaly Corporation (now Transamerica Corporation) and that over a million dollars was credited to Mr. Giannini in one year. Some time thereafter Mr. Bacigalupi stated that Mr. Giannini raised some question as to his accepting the 5 per cent profit and thought it would be well for the bank or the corporation to use at least a portion of the profits to create an endowment or foundation or something that would help develop agriculture in the State and at the same time give the bank some good advertising, etc. Accordingly, \$1,500,000 was contributed by the corporation to the University of California to create the Giannini Foundation, as I understood it, for agricultural economics.

Mr. Bacigalupi stated that the donation was made by Bancitaly Corporation and not by Mr. A. P. Giannini. He quickly added, however, that in his opinion the corporation

would not have made the \$1,500,000 contribution had not Mr. Giannini suggested it and waived his 5 per cent.

It was very obvious that Mr. Bacigalupi's explanation of the \$1,500,000 donation was much more favorable to Mr. Giannini than Mr. Rogge anticipated, and he very promptly took up with Mr. Bacigalupi a new subject. He asked Mr. Bacigalupi as to any conversations which he had with Mr. A. P. Giannini with respect to dividend policies in 1929 and 1930. Mr. Bacigalupi indicated that he did not desire to answer the question and at about the same time Mr. Stanley raised some objection. Mr. Bacigalupi immediately turned to the trial examiner and stated that he did not know what his rights were as a witness but that unless he was forced to answer the question he would rather not go into the matter of conversations with Mr. Giannini, stating that they had later had a break and that all of this stuff had been aired in papers all over the country and that there was nothing new that he could add and that it would be useless repetition of an unpleasant affair.

I think by this time Mr. Rogge had begun to realize that Mr. Bacigalupi was not as favorable a witness as he had anticipated, and the witness was excused and permitted to leave town.

Mr. Smith, C.P.A., and assistant manager of the San Francisco office of Ernst & Ernst since 1933, took the stand. Most of his time was consumed in introducing audit reports and work papers. After squabbling over the relevancy and competency of these, Mr. Rogge had marked for identification all reports and many of the work papers which Ernst & Ernst have prepared in this case since 1927.

Mr. Rogge wanted to put in as exhibits the complete audit reports and work papers but the examiner indicated that he would not admit them except as to such portions as are relevant.

The examiner stopped Mr. Rogge from asking the auditor for a break-down of the 1927 net profits of Bancitaly Corporation, amounting to \$33,000,000. Mr. Rogge contended that of this amount \$26,000,000 was made up of profits on the sales of Bank of Italy stock which Bancitaly Corporation had bought up at a low price and sold at higher prices. He stated

that in 1928 he expected to show that of the \$70,000,000 net profits of the corporation \$54,000,000 was on the sale of Bank of Italy stock. After Mr. Rogge argued that these were not real profits, on which the 5 per cent compensation could be calculated, the examiner ruled that he could not go into this matter, whereupon Mr. Rogge requested a recess and promptly appealed the question to the Commission.

It is understood that the Commission ruled that Mr. Rogge could develop the data as background but that the Commission's ruling was not to be construed, for the time being at least, as covering any matter other than the relevancy of the data as background.