

C O P Y

CUSHING & CUSHING
Attorneys at Law
1 Montgomery Street
San Francisco, Cal.

Mayflower Hotel
Washington, D. C.
February 14, 1940

Honorable Preston Delano
Comptroller of the Currency
Washington, D. C.

Dear Sir:

This has reference to your communication to the Bank of America N. T. & S. A. and its Directors dated January 11, 1940 in which you announce a proceeding for the purposes specified in your communication, on February 14 before Henry M. Bates as your special representative.

We believe you have been advised by Mr. Everard, the Secretary of the Bank, that we are authorized to represent the Bank and its Directors.

12 U.S.C.A., Section 484 provides that "No bank shall be subject to any visitorial powers other than such as are authorized by law * * *." In our opinion, the proposed proceeding involves the exercise of visitorial powers which are not authorized by law and any decision of your representative would have no legal validity and would bind neither you nor the Bank.

One purpose of the proceeding, as described in your communication, relates to the possibility of a hearing before the Board of Governors of the Federal Reserve System pursuant to a statute (12 U.S.C.A., Section 77) which prohibits publicity of any order of the Board and findings of fact upon which it is based. The publicity that has already been given to your notice of the proposed proceeding seems to run counter to that statute.

The Bank, of course, is willing to give you any information for which you may ask concerning its business or affairs, but the Bank and its Directors very respectfully decline to participate in this proceeding.

Yours very respectfully,

CUSHING & CUSHING

By s/ O. K. Cushing

C O P Y

February 16, 1940

O. K. Cushing, Esq.
Mayflower Hotel,
Washington, D.C.

Dear Mr. Cushing:

In the Comptroller's absence I am acknowledging your letter of February 14, 1940 declining on behalf of the Bank of America N.T. & S.A. and its directors to participate in the proceeding before Henry M. Bates as his representative, which was scheduled to commence on February 14, 1940 and which is now under way. The reasons which you give for not participating are, briefly, first, that the proceeding involves the exercise of visitorial powers not authorized by law, and second, that the publicity already given the proceeding runs counter to law.

As was pointed out in the Comptroller's telegram of January 20, 1940 to Mr. Everard, Secretary of the Board of Directors of the Bank, the purpose of the proceeding was to provide the Bank and its directors with an opportunity to present before a disinterested tribunal any relevant matter before final action is taken by the Comptroller with respect to sanctions authorized by law. It seems obvious that a proceeding of this character does not involve in any way the exercise of unauthorized visitorial powers. The responsibility for declining to take advantage of the opportunity thus offered them is one which must be borne by the Bank and its directors.

I am sure that the Comptroller shares your regret with reference to the publicity that has been given in the press to the proceeding. However, I repeat the assurance which was given you in the Comptroller's office that no one connected with the Treasury Department is responsible in any way for the publicity, and any implication in your letter to the contrary is in fact without any foundation whatsoever.

Very sincerely yours,

Deputy Comptroller of the Currency

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CC Cushing & Cushing,
1 Montgomery St.,
San Francisco, California.