(Birdseel memo. Photo'd from copy furnished by Robert Delano)

OUTLINE OF ABUSES OF POWERS BY AUTHORITIES ADMINISTERING FEDERAL BANKING AGENCIES

THE DUAL NATURE OF THE AMERICAN BANKING SYSTEM

One of the most interesting studies in the development of American institutions is that which is concerned with the development of banking. Originating as a private business ministering to local needs, banking has developed into a quasi-public business capable of meeting the financial requirements of a nation of 135 million people whose industrial output by far exceeds any estimate that would have been made as late as a quarter of a century ago. It is a study of the development of a dual system parallelling the dual system of American government. It has been characterized by the same elements of weakness and strength which have enabled us, through profiting by experiment and learning by experience, to develop the most stable political institutions of any nation on earth while at the same time and in the same manner developing financial institutions commensurate with industrial development, which in turn helps to assure governmental stability.

The story as to banking has its beginning in the local institutions that financed local enterprises. They were adapted to the varying requirements of the communities in which they existed, whether their prime interests were commercial, industrial or agricultural. National concern would be manifested only when a government of delegated powers would be subjected to some strain which affected some predominant national interest. Usually it has required a national panic or depression or some extraordinary financial strain incident to war to spur the national interest to the point of unifying the financial organizations for public service. If there were a demonstrated need for a national

currency a tax might be imposed to drive other currency out of circulation. If it were necessary to marshal the financial resources of the nation in support of a war, a national banking system would be brought into being. If a relationship between banking institutions existing throughout the nation facilitated or obstructed the flow of bank credit at the will of those influential in industrial and financial circles, necessity for control in the public interest is demonstrated and a federal reserve system results. If long and bitter experience discloses that the business of banking is conducted not only at the risk of stockholders but at even greater risk to depositors, national insurance of deposits results. These are milestones in the development of the American dual system of banking. Every step up to the present time has been taken, however, through the enactment of laws designed to add strength and stability to the system and cause it to function in the public interest.

The present structure, however, is erected upon the old foundations. Sovereign states, with regard to banking, still perform the functions of sovereign states. They still charter state banks and surround their operations with all the safeguards needed to protect the public interest. They give to the banks the facilities which they think will enable them to serve best the public interests and they further enable them to participate in the added facilities designed to subserve the national interest. One sovereign state would thus limit a bank to operations in a given locality. Another sovereign state will find that the interests of its people are better served by a branch banking system. This is purely a matter of local self-government and all the federal law there is on the subject of branch banking recognizes, both expressly and impliedly, the right as well as the competency of the state to choose a branch banking policy.

Under the federal law a national bank may be required to confine its operations to the place of location of its office, or it may be permitted to operate as a branch banking system either within a city, a county or state-wide, depending upon the varying provisions of state laws with respect to the operation of state banks. There is no provision anywhere in the Federal Reserve Act, the National Bank Act or any other federal act affecting banking which would support action by any administrative or supervisory authority that would discriminate against a national bank or a member bank in the performance of its charter powers according to its status with respect to branches. Recently, however, a step has been taken in Washington which is altogether unprecedented in the history of American banking. A group composed of men, each of whom exercises in some official capacity or other a limited supervisory power, circumscribed by law, has taken upon itself the responsibility of interfering with the various states in the development and carrying out of their banking policies in the manner which is provided for both by state law and by federal law.

Thus in the field of banking there has been substituted for government by law government by quasi-official fiat. We say "quasi-official fiat" for the reason that there is no sanction of law either for constituting the group or for formulating policies which are thus sought to be made effective. Legislative policies are formulated within the halls of Congress. When administrative bureaus created by Congress transcend those policies it has become an American habit to protest the excesses of power as bureaucratic. When, however, there is not even a legislative sanction for the affiliation of a group, when it cannot justify its concerted action by any shred of legislative authority, and when it expresses or seeks to formulate policies which are inconsistent with those expressed in legislation, the unwarranted action is worse than bureaucratic. Dictatorial is the only adjective that describes it. It is nothing more nor less than the arbitrary exercise of undelegated power.

In the course of this discussion we shall have occasion to note the advent of dictatorship in banking by reference to some specific situations. In the interest of orderly discussion, however, a brief explanatory statement of the banking policies of some of the Western states would seem to be appropriate. This will be followed by references to the state laws under which those policies are to be carried out, and similar references will be made to the federal statutes pursuant to which those policies are to be effectuated and correlated in a well-rounded dual system.

BASIS FOR STATE BRANCH BANKING POLICY

For many years the country has been accustomed to conditions which have resulted in the development of financial centers in the East. The concentration of industrial power in large corporations whose operations are nationwide has been accompanied by a like concentration of banking power. In some of our Western states, of which California is an outstanding example, it has been thought wise to equip each community in which an industry might be developed to substantial size with an instrument which would enable the industry to grow and develop without being hampered by credit restrictions that might be imposed if it were required to depend upon remote sources for its credit facilities. This instrument could be provided by a branch banking system, statewide in its operations. Implicit in that system is the discretion which is vested in the Superintendent of Banks of the state to consider the factors which point to the need in the community for such a financial agency. If a bank equipped to render the service believes that it can be advantageously established, and if the Superintendent of Banks believes that the community will be served, the state policy is definitely favorable to the establishment of this local unit, the credit facilities of which will not be limited by the amount which usually

attends the organization of a small corporate bank. Under this system, however, both single unit banks and branch banks are founded and prosper side by side. One is not to be favored over the other. The banking public is better served and is not dependent upon more remote sources for its credit supply. This plan is acceptable to the millions of people who occupy this region and who are fast developing it to a position of supremacy -- social, industrial and economic.

Under the guiding spirit of a man who had the genius to appreciate and understand the advantages of banking conducted according to such a plan there has been developed in California the largest and most serviceable statewide branch banking system in the United States. It has no counterpart in the East; it is not understood in the East. But these facts furnish no reason for discrimination against it if it is being conducted according to the policy preferred by a sovereign American state. Under the express provisions of the National Bank Act (U.S.R.S. Sec. 5155) a national banking association, with the approval of the Comptroller of the Currency, may establish and operate new branches at any point within the state provided that state banks may, by virtue of the statute law of the state specifically granting such authority, likewise operate branches.

BANKING POLICY FIXED BY LOCAL LAW

The banking policy of the states of California, Oregon and Nevada with respect to branch banking is definitely established by statute. Such statutes authorize the opening or establishing of branches for the public convenience in substantially the same language that is employed to authorize the establishment of the bank itself. In Appendix "A" hereto attached will be found copies of the applicable statutes in California, Oregon and Nevada

which are expressive of the public policy of those states. For the sake of brevity we will state here only the substance of the requirements in each state.

CALIFORNIA

By Section 127 of the Bank Act of California persons who desire to organize a corporation to conduct either a banking or a trust business must obtain the previous written consent of the Superintendent of Banks to the proposed organization and to that end they are required to file with him an application and pay a fee of $100.00. When the corporation is organized it is prohibited from transacting any business without the written certificate of the Superintendent stating that the corporation has complied with the provisions of the Act and that it is authorized to transact the business specified. The Superintendent may withhold such certificate "whenever he has reason to believe that the bank is being formed for any other than the legitimate objects contemplated by this act, or whenever he has reason to believe that the public convenience and advantage will not be promoted by the opening of such bank."

In Section 128 it is further provided that if the Superintendent has not withheld the certificate for any of the reasons set forth in Section 127, he "shall ascertain, from the best sources of information at his command, whether the character and general fitness of the persons named as stockholders are such as to command the confidence of the community in which such bank is proposed to be located, and, if so satisfied, he shall, within sixty days after such application has been made to him, issue, under his hand and official seal, the certificate of authorization required by this act."

Section 9 of the Bank Act provides that a bank shall not open or keep an office other than its principal place of business "without first having obtained the written approval of the Superintendent of Banks to the opening of

such branch office, which written approval may be given or withheld in his discretion, and shall not be given by him until he has ascertained to his satisfaction that the public convenience and advantage will be promoted by the opening of such branch office." Provision is further made for additional capital requirements which must likewise be satisfied, and "Every bank, before it opens a branch office, shall obtain the certificate of authority of the Superintendent of Banks for the opening of each of said branch offices." A certificate fee of $50.00 is required.

OREGON

The similar provisions of the Oregon Code are found in the 1935 Supplement, Vol. 5, where an entire chapter (Chapter XXX) is devoted to "Branch Banking." Under this chapter any bank or trust company may establish or operate branches under the conditions therein specified. Provision is made for establishing branches "at any place within the state"; also at any place within a county (where the population is less than 200,000) or outside the county within the tributary trade area by satisfying the prescribed capital requirements applicable to each type of branch.

Aside from definite restrictions imposed, the application is subject to approval or disapproval by the Superintendent of Banks and an appeal is granted to the State Banking Board "all in the same manner as is provided in the case of the organization of a bank or trust company." The chapter contains fourteen separate regulatory sections.

NEVADA

Section 747, Compiled Laws of Nevada, Supplement 1931-1941, provides for the insertion in the articles of incorporation of a banking corporation of an article "Tenth," under which the bank "may maintain branch offices" to be

established by the Board of Directors "with the written consent of the Superintendent of Banks" and upon satisfying the prescribed capital requirements. The Secretary of State is required to issue a certificate of incorporation of the bank but it may transact no business not incidental to its organization "until it shall have been authorized by the superintendent of banks to commence the business of banking as hereinafter provided." (Sec. 747.01)

In Section 747.02 it is provided: " *** if the superintendent of banks is satisfied that such bank has been organized as prescribed by law, that its capital and surplus is fully paid in cash, and that it has in all respects complied with the law, and that the personnel of its organizers and officers and directors is such as to inspire confidence, and that the proposed operations will not bring such bank into such competition with any similar institution then operating under the provisions of this act, or of any federal charter, as to endanger such institution then operating, and that the probable sphere to be served by such bank is not at that time adequately served, he shall issue *** " a certificate of authorization.

If the Superintendent should refuse to issue a certificate to authorize the bank to commence its business, the bank is given an appeal to the State Board of Finance, which Board, after hearing the Superintendent, may order the certificate to issue.

It is further provided that the section shall not deprive an aggrieved bank from "presenting the entire matter to the supreme court of the State of Nevada for review and the issuance of such order relative to the issuance of such certificate as may appear to such court to be proper in the circumstances."

It is thus clear that the Nevada statutes place the right of a bank to operate branches upon an exact parity with the right to engage in the business of banking. A bank that has expressed in its articles of incorporation the

location of branch offices in which it is desired to conduct its business can no more be deprived of the right to conduct its business at such branches by arbitrary action than it can be deprived of the right to conduct business at its principal office. The same would seem to be true with reference to additional branches which are authorized to be established from time to time by the Board of Directors with the written consent of the Superintendent of Banks.

MICHIGAN

It is doubtful if any state in the Union had a more disastrous experience during the depression in the early 30's than the State of Michigan. A high percentage of its banking resources were in banks that were placed in receivership. Fresh from this experience the Legislature of Michigan in 1937 passed a new financial institutions act which authorized the establishment of statewide branch banking systems. A copy of the opinion of the Attorney General of Michigan and a copy of the opinion of the Attorney General of the United States so construing the act are found in Appendix "B". It is worthy of note that a national branch banking system is now in operation in Michigan as a result of this statute and that the Comptroller of the Currency has given his approval thereto. It is notable that the Comptroller of the Currency has from time to time issued certificates of authority for other branches of other national banks in the State of Michigan.

Some thirteen additional states, too, have adopted a statewide branch banking policy, with varying restrictions. (See 22 Federal Reserve Bulletin, page 858.) The laws of these states, however, need not be specifically noted here.

A competent critic who has made a thorough study of country banking in Wisconsin during the depression says: "The unsatisfactory functioning of the banking system during the depression was due in no small measure to inherent characteristics of the system of independent unit banking. This system

of banking, which is dominant in most parts of the country, has many virtues, but it also has certain defects that have caused it not to be dependable in times of difficulty * * *. Independent unit banking offers the advantage of local control, but it also places upon each community the responsibility of absorbing its own losses and of providing the resources from which credit may be extended and deposits may be liquidated." (Technical Bulletin No. 777, July 1941, U.S. Dept. of Agriculture, by Fred L. Garlock, Senior Agricultural Economist, page 86.)

A sovereign state has the right to prescribe its own policy with respect to these matters and where it has done so such policy is not to be circumvented or defeated by action of federal authorities except in strict conformity with federal law.

Let us now turn to the federal statutes and note their bearing upon the banking policy in states which specifically authorize branch banking systems.

FEDERAL BANK SUPERVISORY AGENCIES

There are three separate federal agencies possessing authority with respect to bank supervision. They are the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation. Each agency acts with respect to banks that are under its jurisdiction. The authority of one agency does not overlap that of any other. The Comptroller of the Currency acts with respect to national banking associations; the Board of Governors of the Federal Reserve System acts with respect to state banks that are members of the Federal Reserve System; and the Board of Directors of the Federal Deposit Insurance Corporation acts with respect to state banks which are not members of the Federal Reserve System, the deposits of which are insured by that Corporation.

COMPTROLLER OF THE CURRENCY

Under Section 5155 U.S.R.S. the conditions under which a national banking association may retain and establish or operate branches are definitely stated.

1. It has a right to operate such branches as may have been in lawful operation on February 25, 1927.

2. If a state bank is converted to a national bank or becomes consolidated therewith, or if two or more national banks consolidate, the converted or consolidated association may retain and operate any branches which were in operation on February 25, 1927.

3. With the approval of the Comptroller of the Currency, any national banking association may establish and operate new branches any place either within the corporate limits of the place where the bank is situated, or within the state if by the "statute law of the state" state banks are affirmatively authorized to establish branches. The establishment of branches by national banks is further rendered "subject to the restrictions as to location imposed by the law of the state on state banks."

4. National banks to operate branches outside the corporate limits of the place of location must have a minimum capital of $500,000 unless the population of the state be less than one million and it has no cities with population exceeding 100,000, in which case the minimum capital is $250,000; and if the population of the state be less than half a million and it has no cities with population more than 50,000, the minimum capital shall be $100,000, but it must have an aggregate capital in any event which would be not less than the aggregate minimum capital required to establish a number of national banking associations equal to the number of banks and branches established in the various

places where they are situated. A branch once established cannot be removed without the consent and approval of the Comptroller of the Currency.

5. After an association has been formed for the carrying on of the business of banking under the National Bank Act, it may not transact a banking business "until it has been authorized by the Comptroller of the Currency to commence the business of banking." (U.S.R.S. Sec. 5136.) In the National Bank Act itself there are no standards specifically set up which purport to govern the discretion of the Comptroller of the Currency in the issuance of such authority to a new primary association. However, the Banking Act of 1935 (Section 12b of the Federal Reserve Act, as amended) contains a provision which is binding on the Comptroller in this respect. In subsection (e) (2) it is provided that in order for such new national bank to be insured, the Comptroller shall give to the Federal Deposit Insurance Corporation a certificate stating that the bank is authorized to transact the business of banking "and that consideration has been given to the factors enumerated in subsection (g) of this section." The factors enumerated in subsection (g) are the following: "The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this section."

From the provisions of law referred to above governing the exercise of authority of the Comptroller of the Currency with respect to (a) branches and (b) primary banks, it is submitted:

With respect to national banks they are to be permitted to operate branches within a state subject to the same terms and conditions (except as to capital requirements which are definitely fixed) under which state banks within the state may operate branches.

The Federal statute does not give to the Comptroller of the Currency any power to override the policy of the state with respect to branch banking. On the contrary, his policy is expressly brought into conformity with such local policy.

Any action by the Comptroller of the Currency which in a branch banking state would discriminate against a national bank by denying it the right to operate a branch at a given place while authorizing the creation in the same place of a unit bank is action without warrant of law and therefore involves arbitrary discrimination. Moreover, it is designed to defeat the banking policy of a sovereign state contrary to the federal statutes which specifically recognize the competency of the states to act within this realm.

A national banking association is given by federal law every right with respect to engaging in business primarily, and with respect to the operation of branches, that is given to a state bank provided the definite conditions and requirements of the law are met.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

In creating the Federal Reserve System the Congress of the United States clearly disclosed a purpose to continue the dual banking system. Among other features indicative of such a purpose is division of the nation into separate reserve districts in each of which an autonomous bank is set up to be administered with a view to the peculiar industrial and agricultural needs of the district. This contrasts with the central bank idea which was rejected at the time the Act was passed in 1913.

Another such feature is the provision by which state banks are to be admitted to the system on equality with national banks. Section 9 of the

Federal Reserve Act provides for the admission of state banks upon application and it further provides that such state banks may establish and operate branches "on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks." It is expressly provided (Sec. 9 (2)) that any state bank which was operating branches on February 25, 1927 in conformity with state law was entitled to retain them upon becoming a member of the Federal Reserve System. It is provided further that the Act should not prevent a state member bank from establishing branches beyond the corporate limits of the place where the parent bank is situated on equality with national banks. It provides for approval by the Board of Governors of the Federal Reserve System instead of approval by the Comptroller of the Currency. In passing upon an application under this section the Board is required to "consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this act." (Section 9 (3).)

By virtue of Section 12b (e) (2) of the Federal Reserve Act the Board of Governors, in the case of the admission of a previously uninsured state bank to membership in the Federal Reserve System, is required to certify to the Federal Deposit Insurance Corporation that it has considered the factors enumerated in subsection (g) of Section 12b. These factors are: "The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this section."

There is nothing in the Federal Reserve Act which would warrant any inference that Congress had delegated to the Board of Governors of the Federal

Reserve System authority to undermine or circumvent the policy of a state with regard to the operation within it of a branch banking system. On the contrary, the provisions with reference to the admission of state banks to membership in the Reserve System clearly reflect the recognition by Congress of the right of the states to determine their own policies with respect to branch banking and that state banks operating branches in branch banking states shall have equal rights with national banks and other state banks to the benefits of membership in the Federal Reserve System.

FEDERAL DEPOSIT INSURANCE CORPORATION

Following closely upon the bank crisis of 1933 and in an effort to guard against repetition of the catastrophe which accompanied the numerous bank failures of the previous years, the Congress of the United States created the Federal Deposit Insurance Corporation and again unmistakably evidenced its desire that the dual banking system should be perpetuated. The act under which this Corporation was set up was the Banking Act of 1933 and the specific provisions for insurance were incorporated in the Federal Reserve Act, as amended, as Section 12b thereof. It provided for compulsory insurance for every national and state member bank and it likewise admitted to the benefits of insurance all of the state banks, not members of the Federal Reserve System, which upon application and examination would be found to be solvent.

Subsection (y) of Section 12b of the Federal Reserve Act which provided for the insurance, expressly declared as follows: "It is not the purpose of this section to discriminate, in any manner, against state nonmember, and in favor of, national or member banks; but the purpose is to provide all banks with the same opportunity to obtain and enjoy the benefits of this section." This language, still in subsection (y), was carried over verbatim into the Banking Act of 1935 when the plan for the permanent insurance of deposits was revised.

In the revised plan the Board of Directors of the Federal Deposit Insurance Corporation is given authority both with respect to the admission of nonmember banks to membership in the Corporation and with respect to the approval of branches. Subsection (g) of Section 12b of the Federal Reserve Act, as amended, provides for the factors to be considered by the Directors in admitting such state nonmember banks. The subsection reads: "The factors to be enumerated in the certificate required under subsection (e) and to be considered by the board of directors under subsection (f) shall be the following: The financial history and condition of the bank, the adequacy of its capital structure, its future earnings prospects, the general character of its management, the convenience and needs of the community to be served by the bank, and whether or not its corporate powers are consistent with the purposes of this section."

The Board is likewise given power of approval with respect to branches. It is expressed in subsection (v) (5) as follows: "No State nonmember insured bank (except a District bank) shall establish and operate any new branch after thirty days after the effective date unless it shall have the prior written consent of the Corporation, and no branch of any State nonmember insured bank shall be moved from one location to another after thirty days after the effective date without such consent. The factors to be considered in granting or withholding the consent of the Corporation under this paragraph shall be those enumerated in subsection (g) of this section."

As if to make it clear beyond peradventure that such state nonmember insured banks were not to be discriminated against, the following affirmative expression as to the duties of the Board is inserted in subsection (k) (1): "The board of directors shall administer the affairs of the Corporation fairly and impartially and without discrimination."

There is not a shred of legal authority which could possibly warrant interference by the Board of Directors of the Federal Deposit Insurance Corporation

with the orderly operation of a branch banking system in any State in the American Union. The duties of that Corporation and its Board of Directors with respect to the insurance of deposits in banks are clear and standards by which to determine action are expressly prescribed. There is not a single question to be determined by the Board which can be decided one way or the other, depending upon whether or not the applicant is a unit bank or a bank with branches. This is likewise true with respect to the questions to be decided by the Comptroller of the Currency and the Board of Governors of the Federal Reserve System.

In the light of the development of our banking system, of its dual nature as expressed in various acts heretofore referred to, noting particularly the relation of state banks to the Federal agencies and instrumentalities designed to secure the more perfect functioning of the whole while securing to such federal instrumentalities as national banks a right of untrammelled operation on an equality with state banks, let us now turn to specific rulings of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation upon applications made pursuant to law through which, and only through which, the benefits prescribed can be enjoyed by the public and by the applicants.

SPECIFIC INSTANCES OF ABUSE OF POWER

During the past few years the Bank of America National Trust and Savings Association has time and again requested permission for the operation of branches in localities affected by a phenomenal expansion of industrial activity. It is the policy of this bank to be on the alert and always ready to improve its service to its customers and extend it to the communities which need the service it is prepared to render. It is not stagnant and shows no signs of becoming so. The bank is adequately capitalized -- far above the requirements of the law; it is experienced in furnishing the particular type of service required; it operates successfully and fully meets every reasonable requirement or condition that should affect approval of its action in establishing the proposed branches; yet every such application has met with denial without any statement of a ground for such denial other than that "conditions do not warrant approval." In some instances it would seem that "conditions" were subject to a rather rapid change because they were found to warrant approval of the establishment of banking facilities by other banks in the same community within a remarkably short period.

The First National Bank of Portland, Oregon, has had a similar experience.

The Board of Governors of the Federal Reserve System has declined to approve the establishment of branches of the First Trust and Savings Bank of Pasadena, which had been approved and recommended by the Superintendent of Banks of California.

The Board of Governors of the Federal Reserve System has admitted into the system Peoples Bank, Lakewood Village, California and has imposed restrictions upon the stockholders of the bank as a condition of the bank's continued membership, which it is believed are wholly arbitrary, without authority of law and

unprecedented and which clearly discriminate against the rights of Transamerica Corporation and Bank of America.

The Board of Directors of the Federal Deposit Insurance Corporation has refused to approve the establishment of a branch of the Central Bank of Oakland, a nonmember insured bank, although the same was approved and recommended by the Superintendent of Banks of California.

The Board of Directors of the Federal Deposit Insurance Corporation has also withheld its approval of an application for insurance made by the Bank of Nevada, Las Vegas, Nevada, which application likewise had and has the approval of the Superintendent of Banks of the State of Nevada.

In so far as each of the banks in question or one of its principal stockholders has been advised of the reasons for the action in each of the foregoing cases, the same will appear in correspondence hereto attached as Appendix "C". Correspondence relating to each is arranged in the order in which the banks are named above. In this discussion we shall refer to those portions of the correspondence which reflect the character of the action taken by the various supervisory authorities referred to and the absence of any legal warrant for such action, which would seem to demonstrate its purely arbitrary character as well as an assumption of power to override the banking policies of sovereign states.

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION

Notwithstanding the phenomenal growth and development of California in recent years, and notwithstanding the transformation which has taken place, particularly in the industrial pattern of the state, and the urgent need for extension of the services of the bank in areas of new development, the Comptroller of the Currency has not granted a permit for any additional permanent branches

in the last five years. Applications for branches will be allowed to lie in the Office of the Comptroller of the Currency for six months or even longer and then the bank will be formally advised that "after careful consideration it has been decided that conditions do not warrant approval." The conditions are not stated and the record is closed so far as the only office of the Government that has any legal authority with respect to the application is concerned.

FIRST NATIONAL BANK OF PORTLAND

With regard to applications made by the First National Bank of Portland, Oregon, it will be noted that they had been pending for a considerable period of time and that while they were pending favorable action had been taken on applications of a larger competing bank. No criticism is suggested of such action as it would seem to be in accord with all legal requirements and with the policy of both the national and state laws. So far as has been made apparent, however, every reason which justifies favorable action upon applications of the competing bank likewise exists in the case of the First National Bank of Portland; yet the applications of the latter are denied with the statement that "conditions do not warrant approval."

It would seem that if the facts set forth in the letter of Mr. Charles W. Collins to the Comptroller of the Currency, dated September 17, 1940 (see Appendix "C"), which was written in support of the applications then on file, were not deemed sufficient the bank is entitled to know wherein the deficiency lies. It is submitted that on the face of the record the action of the Comptroller of the Currency with respect to the First National Bank of Portland, Oregon is both arbitrary and discriminatory as against such bank.

FIRST TRUST AND SAVINGS BANK OF PASADENA

With respect to the First Trust and Savings Bank of Pasadena it is necessary to read the correspondence in Appendix "C" which purports to set forth the basis for the action of the Board of Governors of the Federal Reserve System in denying the application. It is submitted that reading of the correspondence will show that, all else aside, the only reason that the application is not granted for the two branches requested is that Transamerica Corporation owns approximately 60% of the stock of the bank. This, of course, is not a lawful reason. Transamerica has a right to own 60% or any other percent thought desirable in this particular bank. Its rights are no greater and no less in that respect than those of any corporation possessing similar powers.

In response to the earnest appeal of the Chairman of the Board of Transamerica for a frank statement of the reasons for such discrimination, a reply is received which states no reason whatsoever and which merely notifies the Chairman that the Board is actuated by its views of public policy without stating what that policy is. Obviously, if administrative officers could legally justify their action by resting it upon the views which at the moment they entertain on public policy, we are no longer living under a government of law. Such a board so able to impress its decisions with finality would have greater power than the President himself. What is the policy today of the Board of Governors of the Federal Reserve System may not be the policy tomorrow of the same board. If there are changes in the personnel of the Board and its action is to reflect a composite view as to public policy, the policy will of course change as the personnel of the Board changes.

When the Supreme Court of the United States in the Schechter case (295 U.S. 495) denied to the President of the United States the power to prescribe a code governing the practices in an industry it held that legislative power could not be constitutionally delegated to the President without setting up "standards

aside from the general aim of rehabilitation, correction and development of trades and industries." It was also held that if a policy is laid down in a statute for the guidance of selected instrumentalities in the making of subordinate rules within prescribed limits, the delegation to the instrumentalities of the function of determining facts to which the policy of the statute is to apply would be lawful. It is elementary in administrative law that persons, including corporations, affected by administrative determinations of facts are entitled to know the facts which prompt administrative action.

PEOPLES BANK, LAKEWOOD VILLAGE

It will be noted that on February 6, 1941 (Appendix "C") the Comptroller of the Currency denied the application of Bank of America National Trust and Savings Association for the establishment of a branch at Lakewood Village, stating as the ground for such denial that "conditions do not warrant approval." In November, 1941, after the Superintendent of Banks of California had approved a request for a new bank at Lakewood Village, application was made by the bank for membership in the Federal Reserve System. This application was disapproved and subsequently, on March 11, 1942 the Board of Governors of the Federal Reserve System indicated the conditions upon which the application would be reconsidered. (See Appendix "C".) These conditions were met in the manner indicated in a communication from Peoples Bank to the Federal Reserve Bank of San Francisco on March 23, 1942 (see Appendix "C"). On May 6 and 7, 1942 the bank was notified of the action of the Federal Reserve Board (see Appendix "C") admitting such bank to membership and imposing conditions for continuance of such membership. Among the conditions imposed are the following:

> "4. If, without prior written approval of the Board of Governors of the Federal Reserve System Transamerica Corporation or any unit of the Transamerica group, including Bank of America National Trust and Savings Association, or any holding company affiliate or any subsidiary

thereof, acquires, directly or indirectly, through the mechanism of extension of loans for the purpose of acquiring bank stock, or in any other manner, any interest in such bank, other than such as may arise out of usual correspondent bank relationships, such bank, within 60 days after written notice from the Board of Governors of the Federal Reserve System, shall withdraw from membership in the Federal Reserve System."

If there is any warrant in law for such condition being imposed upon membership in the Federal Reserve System it would seem that Transamerica Corporation and Bank of America National Trust and Savings Association would be advised as to the basis thereof by the Board of Governors of the Federal Reserve System before any such condition would be imposed, both corporations being subject to the supervisory jurisdiction of such Board.

Another statement in the formal letter to the bank notifying it of its membership is worthy of attention. It is said:

"The application for membership has been approved upon representations that the bank is a bona fide local independent institution and that no holding company group has any interest in the bank at the time of its admission to membership, and that the directors and stockholders of the bank have no plans, commitments or understandings looking toward a change in the status of the bank as a local independent institution. Condition of membership numbered 4 is designed to maintain that status."

This shows that the Board of Governors of the Federal Reserve System has undertaken to discriminate as between branch banks and unit banks, as well as against a particular branch bank and a corporation which is a minority stockholder therein. There is no statutory authority to support any such discrimination. Branch banks and unit banks alike are entitled to all the benefits of membership in the Federal Reserve System. If it became necessary for the Lakewood bank to make representations with respect to its being a unit bank and with respect to the intention to continue as a unit bank in order to obtain favorable action by the Board of Governors of the Federal Reserve System, it was necessary only because the Board of Governors, in exacting such a condition, exceeded any authority given to it by Congress. What right does the Board of Governors have to determine

the policy of a sovereign state with reference to branch banking? What right does the Board of Governors have to discriminate against its own members as to the effect upon membership in the System of changes in ownership of stock, even of a small minority interest? What right does the Board of Governors of the Federal Reserve System have to use membership of banks in the System as a club to embarrass the development of branch banking in states where it is permitted? All of the affirmative legislation negatives any such right.

In passing it may be remarked that since there is not the slightest suggestion in the action by the Board of Governors of the Federal Reserve System that the establishment of the Peoples Bank in Lakewood Village was not reasonably required for public convenience, the action of the Board would seem to be some evidence that the Comptroller of the Currency, in finding that conditions did not warrant the establishment of a branch of Bank of America at that point, was not referring to the convenience and needs of the community.

CENTRAL BANK OF OAKLAND

It appears that notwithstanding the approval by the Superintendent of Banks of California of the establishment by the Central Bank of Oakland of a branch office at Lafayette, the Federal Deposit Insurance Corporation has withheld its consent. In its formal letter of advice, dated February 21, 1942, it is stated that approval is not warranted "Upon the basis of the information available." It appears that the Federal Deposit Insurance Corporation maintains an office in San Francisco, with a supervising examiner in charge. The Corporation is therefore in a position to obtain any information which in its judgment would have any bearing in determining the Board's action upon an application for a branch. The bank was never called upon to give any information additional to that accompanying its application, but if there is any deficiency of pertinent information the

bank will gladly supply it. In view of the ease with which any additional information thought necessary could be acquired and supplied, it seems strange that an application would be denied on the basis of available information when full information is at hand.

Furthermore, since the information would relate to one or more of the factors set forth in subsection (g) of Section 12b of the Federal Reserve Act (page 16 hereof), which constitute the standard for action by the Board of Directors of the Federal Deposit Insurance Corporation upon such a matter, it would seem that an applicant is entitled to be informed wherein it has failed to meet the prescribed standard.

It appears, however, that the Directors of the Federal Deposit Insurance Corporation have allowed considerations other than the standard prescribed by Congress to determine their action. They have not so advised the bank and the bank has not been supplied with copies of correspondence passing from the Federal Deposit Insurance Corporation to the Superintendent of Banks of California, but in a letter written by the Superintendent of Banks of California to the Federal Deposit Insurance Corporation on September 3, 1942, it is stated that the Corporation had informed him that it had denied the application for this branch "because of policy matters which were unanimously agreed upon by the Federal Deposit Insurance Corporation, the Comptroller and the Board of Governors of the Federal Reserve System."

Further references to "policy" will likewise be found in the correspondence with the Board of Governors of the Federal Reserve System relating to the First Trust and Savings Bank of Pasadena (Appendix "C"). It is truly astounding that a governmental corporation set up to perform a particular function which is fully outlined in the law, and the duties of the directors of which are specifically delineated, should justify a departure from the law and the standard of action therein specified and openly declare that they were doing so because they,

in combination with other officers of the Government, had determined upon a policy which in their judgment was more suitable than the policy prescribed by Congress.

Additional evidence that the Federal Deposit Insurance Corporation prefers to set aside standards for action which have been provided by Congress is found in the concluding sentence of its report to insured banks of December 31, 1941. There it says: "In the case of established towns and cities that need banking facilities, the Corporation believes that the needs should be met wherever possible by a new unit bank, rather than by a branch office." If the law of a state places unit banks and branch banks on a parity, where is the legal authority for any discrimination to be made by the Federal Deposit Insurance Corporation? Is such a statement intended to serve notice that the Board which has obligated itself to administer the law "fairly and impartially" has become prejudiced against a class of fully qualified applicants?

In its annual report to Congress for the year ending December 31, 1941, we do not find any change recommended in the legislation governing the Federal Deposit Insurance Corporation in these matters. It appears, however, from page 185 of such annual report to Congress, that during the year 1941 the Corporation approved applications to establish 46 additional banking offices and that from the year 1935 to 1941, inclusive, it approved 381 such applications. These are exclusive of applications for the establishment of branches by national banks which are approved by the Comptroller of the Currency, and of state banks, members of the Federal Reserve System, which are approved by the Board of Governors of the Federal Reserve System.

BANK OF NEVADA, LAS VEGAS, NEVADA

Prior to May, 1941, persons who regarded as favorable the prospect of improving the banking service at Las Vegas and Boulder City, Nevada, discussed the matter with the State Superintendent of Banks. As a result a proposed bank was incorporated as the Bank of Nevada, Las Vegas, Nevada, and the certificate of incorporation was issued on May 12, 1941. The certificate of authorization for this bank was issued by the Superintendent of Banks on May 19, 1941 and a copy will be found in Appendix "C". Under this certificate of authority a branch was opened at Boulder City on December 8, 1941 and the head office was opened on April 30, 1942.

All of these steps were taken for the creation of this bank in reliance upon the provisions of law under which it would be entitled to become an insured bank. The bank was actually engaged in business at Boulder City more than two months before there had been any kind of expression of "policy" by the Board of Governors of the Federal Reserve System, said to have been concurred in by other agencies, under which the bank, although entitled thereto, might be denied the benefits of insurance. (See letter of Chester Morrill, transmitted February 21, 1942, Appendix "C", First Trust and Savings Bank, Pasadena.)

In the latter part of May, 1942, this bank mailed its application for insurance to the Federal Deposit Insurance Corporation in Washington. No acknowledgment of the same was received, but in July the bank was examined by an examiner for the Corporation, the examination being completed on July 14. No action on the application having been communicated to the bank or to the Superintendent of Banks of Nevada, the latter wrote to the Chairman of the Corporation on November 13, 1942, a copy of which letter will be found in Appendix "C". The letter contains a statement of reasons which the Superintendent of Banks believed should

result in favorable action by the Corporation on the bank's application for insurance. However, as this memorandum is being prepared we are advised through the Superintendent of Banks of Nevada of the receipt of a letter from the Chairman of the Corporation, dated November 30, 1942. A copy of this letter will also be found in Appendix "C". The letter contains this statement: "This action has been taken in accordance with the policy upon which there is unanimous agreement by our Board of Directors, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System, that permission for the acquisition of any additional banking offices by Transamerica Corporation or any unit thereof should be declined." Why? By virtue of what authority? If Transamerica is the object of a "policy" or the victim of one, why not at least disclose what that policy is?

The letter of the Chairman of the Corporation to the Superintendent of Banks contains this additional paragraph:

> "In this connection I might add that Transamerica Corporation was apprized of this policy some considerable period of time prior to the submission of this particular application."

Transamerica Corporation has at all times been advised of the provisions of law under which a bank in which it may be interested may apply to become an insured bank, and it has never been advised by the Board of Directors of the Federal Deposit Insurance Corporation of any policy according to which its rights may be otherwise determined. Neither Transamerica Corporation nor the bank has been a party to any proceedings before the Comptroller of the Currency, the Board of Governors of the Federal Reserve System or the Board of Directors of the Federal Deposit Insurance Corporation, sitting as a joint body or separately, which could be appropriately disposed of by the promulgation of a policy which is applicable to it alone. What is that "policy"?

The only official information the bank has ever received with respect to this application is contained in a letter dated December 4, 1942, (see Appendix "C") signed by a special assistant to the Board of Directors of the Federal Deposit Insurance Corporation, and it merely states that the application of the bank "has been disapproved," no reasons whatsoever being stated.

Thus we see that a bank which has proceeded in reliance upon the law, which entered upon its business before there was even any unofficial declaration of a policy of discrimination affecting it, and whose operations are a demonstration of the value of its service to the community, is arbitrarily denied the benefits of a Federal law.

APPROVALS OF BRANCHES FOR BANKS IN THE WESTERN STATES

There is appended hereto as Appendix "D" a table showing the authorizations by Federal authorities for the maintenance of branches or additional offices by banks in the United States and in a group of Western states for five years preceding December 31, 1941. It will be seen from this table that notwithstanding the very large increase in population in California and the extensive industrial development of this period, there is an actual decrease in the number of branches operating in California, while the number has been unchanged in Nevada and Utah. In Idaho, Oregon and Washington, however, additional branches have been authorized in considerable number, but none of these authorizations (except as to four for the National Bank of Washington in June of 1938, in which Transamerica Corporation owns a minority interest) represents any additional branches for any bank in which Transamerica Corporation is interested, all such applications having been denied.

More recently, however, approval has been granted for absorption of other banks into branches of an existing branch bank in one or more of these states outside of California in circumstances quite parallel to those for which authority was sought unsuccessfully in the case of the First National Bank of Portland and the First Trust and Savings Bank of Pasadena. (For illustration see clipping from American Banker of December 3, 1942, Appendix "E".) It is not intended to suggest that such action with respect to any other bank was improper in any respect; on the contrary such action is presumed to be entirely proper. It nevertheless shows that discrimination, such as is tacitly admitted in the cases of Bank of America, First National Bank of Portland, First Trust and Savings Bank of Pasadena, Central Bank of Oakland and Bank of Nevada, is being practiced.

CONCLUSION

Transamerica Corporation is owned by more than 150,000 stockholders. Those stockholders know that their corporation has substantial investments in a number of the outstanding banks in the Western part of the United States, and in other parts of the country. They have a right to expect that the public authorities, in the exercise of their legal supervisory jurisdiction, will not discriminate against their corporation in the conduct of one of its major business interests.

The foregoing memorandum shows that such discrimination is being practiced. It further shows that in order for this arbitrary action to be fully effective it has become necessary for officers in Washington, in whom bank supervisory jurisdiction is vested, to combine in initiating policies at variance with those established by the Congress of the United States. Also,

that though the policies established by Congress are in harmony with those of the various states, particularly the states in which Transamerica Corporation is principally interested, the policies of such states are being circumvented and set at naught by the arbitrary action of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Board of Directors of the Federal Deposit Insurance Corporation.