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January 10, 1935.

Mr. A. P. Giannini, Chairman
Transamerica Corporation
San Francisco, California

Reference: Legal Basis for the Issuance of Voting Permits by the Federal Reserve Board.

Dear Mr. Giannini:

In response to your request for a statement of the questions of law involved in the application of Transamerica Corporation for a voting permit, I am submitting herewith a review of the legislative history of the applicable provisions of the Banking Act of 1933 together with a discussion of how these provisions in my opinion were intended to be construed and applied.

STATUTORY PROVISIONS

The statutory provisions relating to the voting of the shares of national banks under voting permits read as follows:

> "Sec. 19. Sec. 5144. In all elections of directors, each shareholder shall have the right to vote the number of shares owned by him for as many persons as there are directors to be elected, or to cumulate such shares and give one candidate as many votes as the number of directors multiplied by the number of his shares shall equal, or to distribute them on the same principle among as many candidates as he shall think fit; and in deciding all other questions at meetings of shareholders, each shareholder shall be entitled to one vote on each share of stock held by him; except (1) that shares of its own stock held by a national bank as sole trustee shall not be voted, and shares of its own stock held by a national bank and one or more persons as trustees may be voted by such other

person or persons, as trustees, in the same manner as if he or they were the sole trustee, and (2) shares controlled by any holding company affiliate of a national bank shall not be voted unless such holding company affiliate shall have first obtained a voting permit as hereinafter provided, which permit is in force at the time such shares are voted. Shareholders may vote by proxies duly authorized in writing; but no officer, clerk, teller, or bookkeeper of such bank shall act as proxy; and no shareholder whose liability is past due and unpaid shall be allowed to vote.

"For the purposes of this section shares shall be deemed to be controlled by a holding company affiliate if they are owned or controlled directly or indirectly by such holding company affiliate, or held by any trustee for the benefit of the shareholders or members thereof.

"Any such holding company affiliate may make application to the Federal Reserve Board for a voting permit entitling it to cast one vote at all elections of directors and in deciding all questions at meetings of shareholders of such bank on each share of stock controlled by it or authorizing the trustee or trustees holding the stock for its benefit or for the benefit of its shareholders so to vote the same. The Federal Reserve Board may, in its discretion, grant or withhold such permit as the public interest may require. In acting upon such application, the Board shall consider the financial condition of the applicant, the general character of its management, and the probable effect of the granting of such permit upon the affairs of such bank, but no such permit shall be granted except upon the following conditions:

"(a) Every such holding company affiliate shall, in making the application for such permit, agree (1) to receive, on dates identical with those fixed for the examination of banks with which it is affiliated, examiners duly authorized to examine such banks, who shall make such examinations of such holding company affiliate as shall be necessary to disclose fully the relations between such banks and such holding company affiliate and the effect of such relations upon the affairs of such banks, such examinations to be at the expense of the holding company affiliate so examined;

(2) that the reports of such examiners shall contain such information as shall be necessary to disclose fully the relations between such affiliate and such banks and the effect of such relations upon the affairs of such banks; (3) that such examiners may examine each bank owned or controlled by the holding company affiliate, both individually and in conjunction with other banks owned or controlled by such holding company affiliate; and (4) that publication of individual or consolidated statements of condition of such banks may be required;

"(b) After five years after the enactment of the Banking Act of 1933, every such holding company affiliate (1) shall possess, and shall continue to possess during the life of such permit, free and clear of any lien, pledge, or hypothecation of any nature, readily marketable assets other than bank stock in an amount not less than 12 per centum of the aggregate par value of all bank stocks controlled by such holding company affiliate, which amount shall be increased by not less than 2 per centum per annum of such aggregate par value until such assets shall amount to 25 per centum of the aggregate par value of such bank stocks; and (2) shall reinvest in readily marketable assets other than bank stock all net earnings over and above 6 per centum per annum on the book value of its own shares outstanding until such assets shall amount to such 25 per centum of the aggregate par value of all bank stocks controlled by it;

"(c) Notwithstanding the foregoing provisions of this section, after five years after the enactment of the Banking Act of 1933, (1) any such holding company affiliate the shareholders or members of which shall be individually and severally liable in proportion to the number of shares of such holding company affiliate held by them respectively, in addition to amounts invested therein, for all statutory liability imposed on such holding company affiliate by reason of its control of shares of stock of banks, shall be required only to establish and maintain out of net earnings over and above 6 per centum per annum on the book value of its own shares outstanding a reserve of readily marketable assets in an amount of not less than 12 per centum of the aggregate par value of bank stocks controlled by it, and (2) the assets required by this section to be possessed by such holding company affiliate with it and for losses incurred in such banks, but any deficiency in such assets resulting from such use shall be made up within such period as the Federal Reserve Board may by regulation prescribe;

"(d) Every officer, director, agent, and employee of every such holding company affiliate shall be subjected to the same penalties for false entries in any book, report, or statement

of such holding company affiliate as are applicable to officers, directors, agents, and employees of member banks under section 5209 of the Revised Statutes, as amended (U.S.C., title 12, sec. 592); and

"(e) Every such holding company affiliate shall, in its application for such voting permit, (1) show that it does not own, control, or have any interest in, and is not participating in the management or direction of, any corporation, business trust, association, or other similar organization formed for the purpose of, or engaged principally in, the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail or through syndicate participation, of stocks, bonds, debentures, notes, or other securities of any sort (hereinafter referred to as 'securities company'); (2) agree that during the period that the permit remains in force it will not acquire any ownership, control, or interest in any such securities company or participate in the management in any such securities company or participate in the management or direction thereof; (3) agree that if, at the time of filing the application for such permit, it owns, controls, or has an interest in, or is participating in the management or direction of, any such securities company, it will, within five years after the filing of such application, divest itself of its ownership, control, and interest in such securities company and will cease participating in the management or direction thereof, and will not thereafter, during the period that the permit remains in force, acquire any further ownership, control, or interest in any such securities company or participate in the management or direction thereof; and (4) agree that thenceforth it will declare dividends only out of actual net earnings.

"If at any time it shall appear to the Federal Reserve Board that any holding company affiliate has violated any of the provisions of the Banking Act of 1933 or of any agreement made pursuant to this section, the Federal Reserve Board may, in its discretion, revoke any such voting permit after giving sixty days' notice by registered mail of its intention to the holding company affiliate and affording it an opportunity to be heard. Whenever the Federal Reserve Board shall have revoked any such voting permit, no national bank whose stock is controlled by the holding company affiliate whose permit is so revoked shall receive deposits of public moneys of the United States, nor shall any such national bank pay any further dividend to such holding company affiliate upon any shares of such bank controlled by such holding company affiliate.

"Whenever the Federal Reserve Board shall have revoked any voting permit as hereinbefore provided, the rights, privileges,

and franchises of any or all national banks the stock of which is controlled by such holding company affiliate shall, in the discretion of the Federal Reserve Board, be subject to forfeiture in accordance with section 2 of the Federal Reserve Act, as amended." (Banking Act of 1933 approved June 16, 1933).

LEGISLATIVE HISTORY

The first movement in Congress with respect to bank holding companies was a resolution introduced by Senator King of Utah (S. Res. 71) on May 24, 1929 which among other things had for its purpose an investigation of "chain banking." This resolution was referred to the Senate Committee on Banking and Currency.

In his annual report to Congress for 1929, the Comptroller of the Currency recommended Federal Reserve District-wide branch banking and also national legislation which would bring bank holding companies under Federal supervision in cases where they owned the majority of the stock of one or more national banks.

In the same year, the Secretary of the Treasury in his annual report to Congress indicated the need for branch banking and urged that Congress institute an investigation of bank holding companies.

The President of the United States in his message to Congress in December, 1929 also recommended an investigation of the banking system and in this connection

made special mention of the ownership of banks by holding companies.

On January 6, 1930, Mr. Beedy introduced a bill (H.R. 8085) authorizing the establishment by national banks of Federal Reserve District-wide branches and providing for supervision of bank holding companies by the Comptroller of the Currency.

On January 9, 1930, Mr. Strong of Kansas introduced a bill (H.R. 8367) the effect of which would prohibit the operation of bank holding companies. Upon the same day Mr. Goldsborough of Maryland introduced a bill (H.R. 8363) which would make it unlawful for holding companies to vote the shares of national bank stock which they might own.

On February 3, 1930, the House of Representatives adopted a resolution (H. Res. 141) authorizing its Committee on Banking and Currency to investigate among other things branch banking and bank holding companies. Under this resolution the House Committee on Banking and Currency after having gathered statistical and documentary information with respect to the subject matter under consideration, began on February 25, 1930 a series of public hearings which lasted for fourteen weeks. These hearings, which were among the most extensive ever conducted by this Committee comprised an exhaustive study of the operation of bank holding companies. Mr. A. P. Giannini founder of Bank of America,

N. T. & S. A. and of Transamerica Corporation personally appeared before the Committee as did the general counsel for Transamerica Corporation. In addition to their oral statements and cross examination by members of the Committee they laid before the Committee exhaustive documentary information with respect to the organization and operation of Transamerica Corporation.

On April 18, 1930, the Senate Committee on Banking and Currency reported out the King Resolution above mentioned as rewritten by Senator Glass. The Senate on May 5, 1930 adopted this resolution which authorized the Senate Committee on Banking and Currency to proceed with an investigation of the banking system, including branch banking and bank holding companies.

Senator Glass on June 17, 1930 introduced a bill (S. 4723) with the short title of "Banking Act of 1930" and this bill became the basis for the Senate investigation. Section three thereof prohibited holding companies from voting national bank stock owned by them and there was no provision for a voting permit. It was an absolute prohibition identical with that of the Goldsborough bill above mentioned.

In the early part of December, 1930 the Senate Committee began its investigation through the employment of experts to gather pertinent data. The first series

of public hearings began before the Committee on January 19, 1931 and were concluded on March 2 of that year. The investigation however of the Committee was continuous throughout 1931, 1932 and the first part of 1933 with public hearings from time to time. This was one of the most exhaustive investigations ever undertaken by the Senate Committee. In addition, all data acquired by the House Committee on Banking and Currency were made available to the Senate Committee. Moreover, experts through questionnaires and private investigations secured all the information with respect to the existing holding companies, including Transamerica Corporation, which the Committee desired.

These investigations and researches led the Senate Committee to modify the position expressed in the earlier Strong, Goldsborough and Glass banking bills which, in effect, prohibited the operation of bank holding companies and instead it provided the language now appearing in the Banking Act of 1933, the basis of which is the mechanism of a voting permit.

In the first drafts of the bills which eventually took the form of the Banking Act of 1933 the responsibility for the issuance of voting permits to bank holding companies was imposed upon the Comptroller of the Currency. However, in the final draft of the bill certain provisions

were inserted which brought the state member banks of the Federal Reserve System under closer Federal supervision by requiring them to conform to many of the provisions of the Banking Act of 1933 which by their terms related only to national banks. In other words, after these amendments to the National Bank Act were drawn making certain prohibitions as to national banks, several covering clauses in another section of the bill which amended Sec. 9 of the Federal Reserve Act, made these prohibitions conditions of membership for state member banks in the Federal Reserve System. Among these was the provision for a voting permit in cases where a state member bank might be owned by a holding company. At this time, apparently for the purpose of establishing a uniform procedure, the bill was changed to provide that the Federal Reserve Board should have the authority to issue voting permits in place of the Comptroller of the Currency. That is to say, the Board would issue these permits both for national and state member banks.

STATUTORY CONSTRUCTION

It is a presumption of law that Congress has before it complete knowledge with respect to any subject matter upon which it enacts legislation. In the present instance it is also an historical fact that both the House and Senate Banking and Currency Committees had acquired by

investigation, research, expert financial and legal interpretations and assistance as well as by direct and cross-examination in public of officials, complete information and data necessary and adequate to an intelligent and final determination of the question of Government supervision of bank holding companies. The provisions under which the procedure of supervision was set up took the form of an amendment of section 5144 of the Revised Statutes of the United States which embraced the provisions for voting the shares of national banks. The amendment provided that a bank holding company may not vote national bank shares except upon the issuance to it by the Federal Reserve Board of a voting permit upon application to the Board by the holding company and that thereafter such holding company submit itself to the supervisory authority of the Comptroller of the Currency through reports of condition and periodical examinations.

Congress, however, did not leave to the Federal Reserve Board the responsibility or authority to name all the conditions upon such holding company as a condition precedent to the issuance of the permit but provided in the Act itself the basic conditions which every such holding company must meet, which conditions are binding alike upon the holding company and the Federal Reserve Board. These conditions in their relationship to national bank shares,

may be summarized as follows:

(1) The holding company must agree to submit to examination by national bank examiners,

(2) must agree that the reports of such examiners shall contain the information necessary to disclose the relations between such holding company and the controlled national bank and the effect of such relations upon such bank,

(3) must agree that such examiners may examine controlled non-member banks,

(4) must agree to the publication of individual or consolidated statements of condition of all banks controlled,

(5) must agree that its officers and employees shall be subject to the same statutory penalties provided in the case of national banks for false entries as provided under section 5209 of the Revised Statutes of the United States,

(6) must agree that after the permit is granted it will declare dividends only out of actual net earnings,

(7) must agree that after the permit is granted to submit from time to time to the Comptroller of the Currency through such controlled national bank reports of its own financial condition simultaneously with the submission of the regular reports of condition of such bank,

(8) must agree that beginning on June 16, 1938 it shall

(a) have a free liquid reserve other than bank stocks in an amount not less than 12% of the aggregate par value of all bank stocks controlled, which percentage shall be increased by not less than 2% per annum until such reserve shall equal 25 per centum of the aggregate par value of such bank stocks,

(b) reinvest in ready marketable assets other than bank stocks all net earnings over and above 6% per annum on the book value of its own shares outstanding until the full amount of such reserve shall be attained,

(c) have divested itself of the control of interet in any corporation engaged in the securities business.

You will observe that the foregoing conditions are calculated, without any others, to effect an adequate supervision of and to obtain sufficient information with respect to any holding company which applies for a permit to vote national bank shares.

It is true that the Act gives the Federal Reserve Board the discretionary power to grant or withhold the permit as the public interest may require but this language must be read as a part of the entire provision, the evident intent of which is that the Board shall issue the permit if all statutory conditions are met and the additional special conditions which the Board is authorized to impose are also fulfilled. Congress itself has decided the primary question that bank holding companies may under Federal supervision continue to vote the shares of controlled national banks.

The Federal Reserve Board in acting upon an application for a voting permit is required in the first place to see that all the statutory conditions specifically enumerated are fully complied with and in the second place

and in addition it is specifically required to consider:

(1) the financial condition of the applicant holding company,

(2) the general character of the management of the applicant holding company,

(3) the probable effect of the granting of such permit upon the affairs of the national bank, the shares of which are to be voted by such applicant holding company.

In order to discharge its responsibility the Federal Reserve Board may demand and obtain any information or data which may seem to it necessary to a proper determination of the above questions.

THE RESPONSIBILITY OF THE FEDERAL RESERVE BOARD

The entire burden of responsibility with respect to the issuance of the voting permits was not intended to be placed upon the Federal Reserve Board. A large share of the responsibility was as we have seen deliberately shouldered by Congress. It seems to me clear also that in cases where the application for the voting permit involves the shares of a national bank, the governmental responsibility with respect to the condition of such bank rests upon the Comptroller of the Currency. It appears to have been the intent of Congress that the Board's principal responsibility in such a case is to be limited to its consideration of the financial condition of the applicant holding company and the general character

of its management. It seems to me that the determination of the question of the probable effect of the granting of the permit upon the affairs of such a national bank is a conclusion to be drawn by the Board from its consideration of the financial condition and the general character of the management of the applicant holding company.

It is to be assumed that the Board will in every such case make a detailed study of the condition of any national bank for the voting of whose stock an application is made by a holding company. I feel sure however that it was not the intent of Congress that the Federal Reserve Board should in such a case proceed de novo on its own responsibility but should avail itself of the records of the Comptroller of the Currency with respect to such bank and admit them as proper and sufficient evidence of its condition.

In my opinion Congress did not, furthermore, intend to delegate to the Federal Reserve Board, in making the provisions for the voting permit, (section 5144, Revised Statutes as amended) the authority to impose operating conditions upon national banks as conditions precedent to its issuance of a voting permit to an applicant holding company which owns the majority of the stock of such national bank, nor to assume supervisory powers over such bank after such a permit has been granted. My reason for saying this is that this procedure would involve a transfer of jurisdiction from the Comptroller of the Currency to the Federal Reserve Board which would, in effect, repeal the basic pro-

visions of the National Bank Act. The indirect language of the Act does not support any such radical interpretation. Specific language would be required to repeal the long established authority of the Comptroller of the Currency. The pertinent language of the Banking Act of 1933 reads thus: "In acting upon such application, the Board shall consider the financial condition of the applicant, the general character of its management, and the probable effect of the granting of such permit upon the affairs of such bank." It seems to me that this language can not by any possible statutory construction be stretched to the point where the Comptroller of the Currency would be relieved of the great powers specifically vested in him by law for the supervision of all national banks.

It may be appropriate to indicate some of the statutory powers which the Comptroller of the Currency has over all national banks:

(a) He is solely responsible for the issuance of their charters,

(b) he is responsible for the enforcement of all the provisions of the national banking laws under which such banks operate,

(c) he may in his own name sue any national bank for the forfeiture of its charter for violation of any provision of the national banking laws,

(d) he is responsible for the periodical examination of the national banks,

(e) he is responsible for making and enforcing operating conditions for keeping national banks within the law and within sound banking practices,

(f) the Comptroller of the Currency has the responsibility for making the final decision in the determination of losses in national banks and from his decision there is no appeal.

(g) when he deems it necessary in order to conserve the assets of a national bank he may appoint a conservator to take charge of such bank under his direction,

(h) upon him rests the statutory responsibility for the approval of the reorganization of national banking associations,

(i) when in his opinion there is mismanagement of a national bank he may institute proceedings, after due warning, for the removal of such management,

(j) upon him is the responsibility of the approval of the consolidation of national banks,

(k) the approval of the establishment of branches by national banks must be made by him,

(l) rules and regulations covering many important aspects of the banking business are drafted, promulgated and enforced by him,

(m) by virtue of his office he is a member of the Federal Reserve Board and the Federal Deposit Insurance Corporation, but so far as the national banks are concerned there is no doubt that Congress has from the inauguration of the national banking system intended that he alone must bear the undivided responsibility for their public supervision.

I might here, parenthetically, call your attention to two statements of documentary record of Senator Glass himself than whom there is no more ardent champion of the integrity of the powers of the Federal Reserve Board. He

said in 1923, during a hearing of the Joint Committee of the House and Senate for inquiry into the Federal Reserve System, that the Comptroller of the Currency was the czar of the national banks. And in the Senate, during the debate on the Banking Act of 1933 of which he was the sponsor, he said:

> "The Comptroller of the Currency is not a minor official of the Treasury Department. He holds an independent office for a longer time than the Secretary of the Treasury himself. He makes his report, not to the Secretary of the Treasury, but directly to the Congress of the United States." (Congressional Record, January 23, 1933).

In view, therefore, of the established position of the Comptroller of the Currency as the governmental agency for the supervision of national banks, it seems clear to me that in order to effect the transfer to the Federal Reserve Board of the visitorial powers of the Comptroller of the Currency over the national banks which may be affiliated with holding companies a mandate from Congress in clear and unmistakable terms would be required. Before leaving this phase of the matter let us take a hypothetical case in which the Federal Reserve Board undertakes to exercise general visitorial powers over a national bank which is affiliated with a holding company which has applied for a voting permit and suppose that the Comptroller of the Currency in

such a case does not relinquish his visitorial powers over such a national bank. Suppose that the Board is satisfied with the financial condition of such holding company and satisfied also with t he general character of its management. Suppose that this national bank has met all the requirements imposed by the Comptroller of the Currency, including the charge-off of all losses determined by the Comptroller, and is conducting its business under operating policies which the Comptroller of the Currency has either approved or to which he has made no objection. Suppose under these circumstances that the Board was not satisfied with the condition of such national bank and proceeded to demand that it eliminate or charge-off certain assets -- assets which the Comptroller of the Currency has knowingly permitted the bank to carry. Would not such a situation cause endless confusion to such a national bank? And would it not be intolerable from every standpoint for two federal agenciesto exercise independently of each other general visitorial powers over a national bank to the same end, namely, to protect the public interest?

I have discussed as a purely theoretical proposition, the question of transfer of such powers to the Federal Reserve Board principally for the purpose of clarifying to you the situation. I have no idea that the Board entertains any such view nor am I aware that the question has ever arisen. I think that Congress in the Banking

Act of 1933 as well as in many other of its legislative acts involving the banking laws, assumed and intended that there would be at all times the closest cooperation between the Comptroller of the Currency and the Federal Reserve Board with respect to their related responsibilities.

Both of them are agencies of the Government of the United States. The Comptroller of the Currency is an officer of the United States and each member of the Federal Reserve Board is an officer of the United States, all of them having been appointed by the President with the advice and consent of the Senate. Both agencies have important functions to perform with respect to our banking system. The Board and the Comptroller of the Currency each speak for the United States. Under these conditions it is inconceivable under any circumstances that the Board would attempt to impose operating conditions upon a national bank other and different from those imposed by the Comptroller of the Currency.

I think you will see how clearly Congress intended a cooperation between the Comptroller of the Currency and the Federal Reserve Board by a mere reference to various provisions in the national banking laws. The office of the Comptroller of the Currency was established in 1864 and therefore antedates the establishment of the Federal Reserve System by about forty-nine years. At the time of the creation of the Federal Reserve System consideration was given by Congress to the question of

the abolishment of the office of the Comptroller of the Currency in connection with the question of unification of the Federal supervision of banks. Congress however decided, instead of abolishing the office of the Comptroller of the Currency, to make the Comptroller a member, by virtue of his office, of the Federal Reserve Board. This was with the thought that the extensive and vital experience of the bureau of the Comptroller of the Currency and all of its years of precedents and data with respect to national bank operations would be available through the Comptroller to the Board at all times for such purposes as the work of the Board might require.

In the course of its operations the Federal Reserve Board and the Federal Reserve Banks have occasion from time to time to seek information with respect to one or another of the national banks. It has been the practice of the Board not to make its own examinations but to rely for such information upon those made by the Comptroller of the Currency.

In the Banking Act of 1933 national banks are required to transmit reports of condition to the Comptroller of the Currency of any holding company with which they may be affiliated. The act requires that such a report of the holding company to the Comptroller shall contain such information as in the judgment of the Comptroller

shall be necessary to disclose fully the relations between such holding company and the national bank in question so as to enable the Comptroller to inform himself as to the effect of such relations upon the affairs of such bank. (section 27). Also in provision for the issuance of the voting permit every such holding company is required to agree to submit to examination by the national bank examiners at the same time that any national bank which it may control is examined and such examination is required fully to disclose the relations between such banks and such holding company and the effect of such relations upon the affairs of such national banks. It is clear therefore that Congress intended that the Comptroller of the Currency should have considerable responsibility in obtaining the information with respect to holding companies upon the applications of which for voting permits the Federal Reserve Board must act.

Congress has therefore not set up two independent governmental agencies - the Federal Reserve Board and the Comptroller of the Currency - but has blended their operations upon the assumption that there could be no conflict of jurisdiction with respect to the Federal supervision of national banks.

I am not fully advised as to the exact procedure which the Federal Reserve Board will follow in determining the

question of a voting permit since the question is new. However, I feel safe in predicting that when it comes to the question of the condition of a national bank which may be affiliated with a holding company the agencies of the Board and those of the Comptroller of the Currency will come into consultation and the responsibility of the Comptroller for making the requirements concerning the condition of such national bank will be recognized. I say this because I believe that under this procedure the responsibility both of the Board and of the Comptroller of the Currency in this matter will be fully discharged.

Yours very truly,

Charles W. Collins