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SPECIFIC STATUTORY AUTHORITY FOR ADMINISTRATIVE ACTIONS

One cannot expect to find definite and specific statutory authority for all actions taken by the Board or by any other Government agency. Much of the legislation enacted by Congress necessarily is written in more or less general terms because it would be impossible for the members of Congress or for anyone else to anticipate and to deal expressly with all questions which might arise concerning the application of a law to particular situations. As to many matters, Congress has considered it necessary or advisable to vest in administrative agencies broad discretionary powers, with only vague statutory guides. Examples of this are the laws administered by the Federal Trade Commission and the Interstate Commerce Commission. Even though it were otherwise possible and practicable to draft legislation expressly covering every contingency, the legislative process is such that complete and carefully drafted legislation is the exception rather than the rule. Thus, questions of interpretation inevitably arise with respect to laws affecting the authority of Government agencies, just as they do in case of other laws. As to many of these questions, there may be grounds for reasonable differences of opinion.

In these circumstances, in order to properly discharge its responsibility for the administration of a law, the Government agency (in the absence of court decisions) must decide what it believes to be the correct interpretation and proceed accordingly. Government agencies would be derelict in the performance of their duties, laws would be inadequately and unfairly administered, and the intent of Congress would be defeated if such agencies acted only in those instances in which they could point to statutory language which dealt with the precise situation and left not a shadow of a doubt as to the authority to take the proposed action.

The provisions of law relating to the Federal Reserve System are much more detailed than some other Federal statutes, yet there are a number of instances in which the statutory provisions are in general terms and even after many years it would be difficult to determine precisely how they should be made more explicit, as for example:

1. Open Market Operations. The law provides that no Federal Reserve Bank shall engage or decline to engage in open market operations except in accordance with the directions of and regulations adopted by the Open Market Committee. The principles governing the Committee are stated to be that the time, character and volume of the purchases and sales shall be governed with a view to accommodating commerce and business and with regard to their bearing upon the general credit situation of the country. The Committee must determine for itself how it should operate under these broad provisions.

2. Removal of officers and directors of member banks. The

statute does not specifically define the term "unsafe and unsound practices" nor is it believed that it would be feasible for Congress to attempt to specify every case that would be deemed to be covered by these terms. But the Board should not be charged with exceeding its powers when it does interpret these terms as applying to a practice which is not specifically mentioned in the law and therefore removes an officer or director for continuing the practice. In other words, Congress manifestly intended that the Board should exercise its judgment.

3. Holding company affiliates. While the law is explicit to a certain extent in its definition of a holding company affiliate as applying to a case where the company owns or controls a majority of the shares of capital stock of a member bank or more than 50 percentum of the number of shares voted for the election of directors of any one bank at the preceding election, even these terms have given rise to questions of interpretation, and when the law goes on to provide that such a company includes one that "controls in any manner the election of a majority of the directors of any one bank", the problem becomes much more difficult. Yet the Board cannot escape the responsibility for determining what this provision means in a given case and applying it according to its best judgment.

4. Conditions of membership. The law prescribes a number of limitations upon admission of banks to membership in the System, but within these limitations it leaves considerable latitude for the exercise of judgment when it provides that in acting upon an application the Board shall 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 the Act, and further provides that the admission of the bank to the System shall be subject to such conditions as the Board may prescribe pursuant to the provisions of the Act. There are, of course, differences of opinion as to what conditions may properly be prescribed, and differences of opinion have existed over the whole period of the administration of the law. On the other hand, it would be very difficult to arrive at any specific formula which could be written into the statute to cover all cases, unless, for example, it were provided simply that all commercial banks be members of the Federal Reserve System. Even then there would no doubt be unforeseen questions.

Many other illustrations could be given but these would seem to be sufficient to make the point clear.