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9/62

Minutes for November 28, 1962

To: Members of the Board

From: Office of the Secretary

Attached is a copy of the minutes of the Board of Governors of the Federal Reserve System on the above date.

It is not proposed to include a statement with respect to any of the entries in this set of minutes in the record of policy actions required to be maintained pursuant to section 10 of the Federal Reserve Act.

Should you have any question with regard to the minutes, it will be appreciated if you will advise the Secretary's Office. Otherwise, please initial below. If you were present at the meeting, your initials will indicate approval of the minutes. If you were not present, your initials will indicate only that you have seen the minutes.

Chm. Martin

Gov. Mills

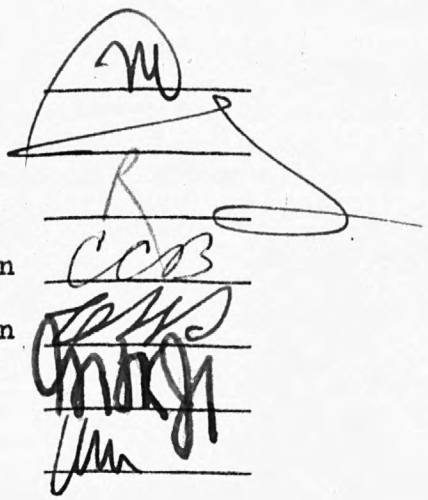
Gov. Robertson

Gov. Balderston

Gov. Shepardson

Gov. King

Gov. Mitchell



Minutes of the Board of Governors of the Federal Reserve System on Wednesday, November 28, 1962. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Mills
Mr. Robertson
Mr. Shepardson
Mr. King

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Molony, Assistant to the Board
Mr. Fauver, Assistant to the Board
Mr. Hackley, General Counsel
Mr. Solomon, Director, Division of Examinations
Mr. Johnson, Director, Division of Personnel Administration
Mr. Hexter, Assistant General Counsel
Mr. O'Connell, Assistant General Counsel
Mr. Hooff, Assistant General Counsel
Mr. Leavitt, Assistant Director, Division of Examinations
Mr. Thompson, Assistant Director, Division of Examinations
Mr. Sprecher, Assistant Director, Division of Personnel Administration
Mr. Mattras, General Assistant, Office of the Secretary
Mr. Lyon, Review Examiner, Division of Examinations

Circulated or distributed items. The following items, copies of which are attached to these minutes under the respective item numbers indicated, were approved unanimously:

	Item No.
Letter to Valley Bank and Trust Company, Springfield, Massachusetts, approving the establishment of a drive-in branch at Westfield.	1

	Item No.
Letter to Irving Trust Company, New York, New York, approving the establishment of a temporary branch at 2 Broadway, Borough of Manhattan.	2
Letter to Fidelity-Philadelphia Trust Company, Philadelphia, Pennsylvania, approving (1) the establishment of a branch at Wynnewood, and (2) an investment in bank premises.	3
Letter to The Cleveland Trust Company, Cleveland, Ohio, approving (1) the establishment of a branch in the Biddulph Plaza Shopping Center, Brooklyn, and (2) a drive-in branch at the same approximate location.	4
Letter to The Vienna Trust Company, Vienna, Virginia, approving the establishment of a branch at Church Street and Dominion Road.	5
Letter to Wachovia Bank and Trust Company, Winston-Salem, North Carolina, approving the establishment of a branch at 1065 Providence Road, Charlotte.	6
Letter to Whitney Holding Corporation, New Orleans, Louisiana, granting a determination exempting it from all holding company affiliate requirements except those contained in section 23A of the Federal Reserve Act.	7
Letter to the Securities and Exchange Commission regarding possible violation of Regulation T in a transaction involving an extension of credit by a securities dealer to a corporation in connection with the retirement of some of the corporation's stock. (With the understanding that an interpretation based on the letter would be published in the Federal Reserve Bulletin and the Federal Register.)	8

Mr. Hooff then withdrew from the meeting.

First Oklahoma Bancorporation (Items 9-14). In connection with the application of First Oklahoma Bancorporation, Inc., Oklahoma City, Oklahoma, for permission to acquire stock of two banks and thereby become a bank holding company, there had been distributed to the Board a proposed order and statement that would deny a motion filed by a group of protesting banks to reopen the record to permit cross examination on matters received in evidence.

After discussion, the order and statement were approved and their issuance was authorized, with the understanding that the wording of the statement would be revised slightly in light of a point raised at this meeting. Copies of the order and statement, as issued, are attached to these minutes as Items 9 and 10.

Pursuant to the decision reached at the meeting on October 31, 1962, Governor Robertson and Governor King dissenting, there had also been distributed a proposed order and statement reflecting the Board's approval of the aforesaid application by First Oklahoma Bancorporation.

In discussion, authorization was given for minor editorial changes in the wording of the proposed majority statement. Governor King stated that he would file a dissenting statement, and it was understood that Governor Robertson likewise would file such a statement.

The issuance of the order, majority statement, and dissenting statements was then authorized. Copies of the order and statements, as subsequently issued, are attached to these minutes as Items 11 through 14.

Messrs. Hackley, Solomon, Hexter, O'Connell, Leavitt, Thompson, and Lyon then withdrew from the meeting.

Salary structure at Atlanta Bank. There had been circulated a memorandum from the Division of Personnel Administration dated November 6, 1962, regarding an employee salary structure revision proposed by the Federal Reserve Bank of Atlanta. The memorandum noted that during informal conversations with the Atlanta Bank it had been pointed out that the upper grades of the employees' salary structure at the head office were falling below the ranges for those grades at other Reserve Banks, thus making it difficult for the Atlanta Bank to compete to fill professional vacancies. On October 15, 1962, the Atlanta Bank requested the Board to approve an amendment to its salary structure for grades 12 through 16, which would place the structure in a more favorable competitive position. However, the Bank also proposed to make the new structure (for those grades) applicable to the Bank's branches as well as the head office.

The Personnel Division favored approval of the proposed structure changes at the head office, but felt that a similar revision at the branches was not justified. There were no research or other professional employees at the branches, and the proposed revision would

place the upper grades for the Atlanta branches higher than those at most other branches throughout the System.

In discussion, Governor King expressed the feeling that the position of the Personnel Division was well taken, but that there were some mitigating circumstances which would suggest caution. He then reviewed some phases of the history of salary administration at the Atlanta Bank and pointed out that the move toward higher salaries for upper-grade head office positions was in accord with views that had been expressed to the Bank. In the circumstances, although the ranges proposed for the top grades at the branches might not be entirely realistic, he would be inclined to approve them, since he would not want to discourage the Bank from pursuing progressive salary administration practices in the future by turning down a part of its present request. If, however, the Board was inclined to adopt the position of the Personnel Division, he felt that the manner in which the subject was taken up with the Atlanta Bank would be important.

It was noted that both Chairman Tarver and President Bryan of the Atlanta Bank were to be in the Federal Reserve Building in the near future. It was therefore agreed, at the suggestion of Governor Balderston, that Chairman Martin might discuss the matter with Chairman Tarver and that Governor King might explore the matter with President Bryan. In the circumstances, it was understood that no letter would be sent to the Atlanta Bank at this time.

Chairmen's Conference. There was an informal discussion with respect to items on the agenda for meeting of the Conference of Chairmen of the Federal Reserve Banks to be held November 29-30, 1962.

The meeting then adjourned.

Secretary's Note: Governor Shepardson today approved on behalf of the Board a letter to the Federal Reserve Bank of San Francisco (attached Item No. 15) approving the appointment of Jack A. Byers as examiner.

Secretary

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 1
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
Valley Bank and Trust Company,
Springfield, Massachusetts.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a drive-in branch by Valley Bank and Trust Company, Springfield, Massachusetts, at 7-9 School Street, Westfield, Massachusetts, provided the branch is established within six months from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branch; and that if an extension should be requested, the procedure prescribed in the Board's letter of November 9, 1962, (S-1846) should be followed.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 2
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
Irving Trust Company,
New York, New York.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a temporary branch at 2 Broadway, Borough of Manhattan, New York, New York, by Irving Trust Company, for the purpose of conducting the operations of certain of the bank's departments during construction of a 30-story addition to its head office. This approval is given provided the branch is established within six months from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branch; and that if an extension should be requested, the procedure prescribed in the Board's letter of November 9, 1962, (S-1846) should be followed.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 3
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
Fidelity-Philadelphia Trust Company,
Philadelphia, Pennsylvania.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a branch by Fidelity-Philadelphia Trust Company, Philadelphia, Pennsylvania, at 250 East Lancaster Avenue, Wynnewood, Lower Merion Township, Montgomery County, Pennsylvania, provided the branch is established within one year from the date of this letter.

The Board of Governors also approves under the provisions of Section 24A of the Federal Reserve Act, an additional investment of $85,000 in bank premises for leasehold improvements incident to the establishment of the branch approved in this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branch; and that if an extension should be requested, the procedure prescribed in the Board's letter of November 9, 1962, (S-1846) should be followed.)

Item No. 4544
11/28/62

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
The Cleveland Trust Company,
Cleveland, Ohio.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment by The Cleveland Trust Company, Cleveland, Ohio, of a branch in the Biddulph Plaza Shopping Center, at the intersection of Ridge and Biddulph Roads, Brooklyn, Ohio, and a branch, drive-in facility, at the same approximate location provided both branches are established within six months from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branches; and that if an extension should be requested for either branch, the procedure prescribed in the Board's letter of November 9, 1962 (S-1846), should be followed.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 5
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
The Vienna Trust Company,
Vienna, Virginia.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a branch by The Vienna Trust Company at the corner of Church Street and Dominion Road, Vienna, Virginia, in connection with your plan to move the bank's main office from this location to subject's Maple Avenue branch, provided the proposed branch is established within six months from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branch; and that if an extension should be requested, the procedure prescribed in the Board's letter of November 9, 1962, (S-1846) should be followed.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 6
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Board of Directors,
Wachovia Bank and Trust Company,
Winston-Salem, North Carolina.

Gentlemen:

The Board of Governors of the Federal Reserve System approves the establishment of a branch by Wachovia Bank and Trust Company at 1065 Providence Road, Charlotte, North Carolina, provided the branch is established within one year from the date of this letter.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.

(The letter to the Reserve Bank stated that the Board also had approved a six-month extension of the period allowed to establish the branch; and that if an extension should be requested, the procedure prescribed in the Board's letter of November 9, 1962, (S-1846) should be followed.)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 7
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 29, 1962

Mr. Keehn W. Berry, President,
Whitney Holding Corporation,
New Orleans, Louisiana.

Dear Mr. Berry:

This refers to your application of July 2, 1962, submitted through the Federal Reserve Bank of Atlanta, for a voting permit from the Board of Governors of the Federal Reserve System to vote the stock of Whitney National Bank of New Orleans, New Orleans, Louisiana, and Whitney National Bank in Jefferson Parish, Louisiana.

The Board understands (1) that Whitney Holding Corporation is a holding company affiliate by reason of the fact that it owns a majority of the outstanding shares of stock of Whitney National Bank of New Orleans; (2) that the Corporation also owns a majority of the outstanding shares of stock of Whitney National Bank in Jefferson Parish, but that such bank is not a member bank of the Federal Reserve System as it has not commenced business; and (3) that the Corporation does not, directly or indirectly, own or control any stock of, or manage or control, any other banking institutions.

In view of these facts, the Board has determined that Whitney Holding Corporation is not engaged, directly or indirectly, as a business in holding the stock of, or managing or controlling, banks, banking associations, savings banks, or trust companies within the meaning of section 2(c) of the Banking Act of 1933; and, accordingly, the Corporation is not deemed to be a holding company affiliate except for the purposes of section 23A of the Federal Reserve Act, and does not need a voting permit from the Board of Governors in order to vote the bank stock which it owns.

If, however, the facts should at any time indicate that Whitney Holding Corporation might be deemed to be so engaged, this matter should again be submitted to the Board. The Board reserves the right to rescind this determination and make further determination of this matter at any time on the basis of the then existing facts. Particularly, should future acquisitions by or activities of the

Corporation result in its attaining a position whereby the Board may deem desirable a determination that the Corporation is engaged as a business in the holding of bank stock, or the managing or controlling of banks, the determination herein granted may be rescinded. The Board would consider the commencement of business by Whitney National Bank in Jefferson Parish as a material variation in the facts upon which this determination is made, and would make a new determination based upon the facts then existing.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 8
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 29, 1962

Mr. Irving M. Pollack, Associate Director,
Division of Trading and Exchanges,
Securities and Exchange Commission,
Washington 25, D. C.

Dear Mr. Pollack:

This is in reply to your letter of May 23, requesting the views of the Board on whether the transfer by Rowles, Winston & Co. to Tusco Corporation of 4,161 shares of stock of Tusco Corporation for a consideration of $33,288, of which only 10 per cent was paid in cash, was in violation of Federal Reserve Regulation T. This depends on whether such extension of credit by Rowles, Winston & Co. to Tusco Corporation was permissible if the transaction came within the scope of section 220.4(f)(8) of Regulation T, which permits a "creditor" (such as Rowles, Winston & Co.) to

> "Extend and maintain credit to or for any customer without collateral or on any collateral whatever for any purpose other than purchasing or carrying or trading securities."

Accordingly, the crucial question is whether Tusco Corporation, in this transaction, was "purchasing" the 4,161 shares of its own stock, within the meaning of the Regulation.

Upon first examination, it might seem apparent that the transaction was a purchase by Tusco Corporation. From the viewpoint of Rowles, Winston & Co. the transaction was a sale, and ordinarily, at least, a sale by one party connotes a purchase by the other. Furthermore, other indicia of a sale/purchase transaction were present, such as a transfer of property for a pecuniary consideration. However, when the underlying objectives of the margin regulations are considered, it appears that they do not encompass a transaction of this nature, where securities are transferred on credit to the issuer thereof for the purpose of retirement.

Section 7(a) of the Securities Exchange Act of 1934 requires the Board of Governors to prescribe margin regulations "For the purpose of preventing the excessive use of credit for the purchase or carrying of securities." Accordingly, the provisions of Regulation T are not intended to prevent the use of credit where the transaction will not have the effect of increasing the volume of credit in the securities markets.

It appears that the instant transaction would have no such effect. When the transaction was completed, the equity interest of Rowles, Winston & Co. was transmuted into a dollar-obligation interest; in lieu of its status as a stockholder of Tusco, Rowles, Winston & Co. became a creditor of that corporation. And Tusco did not become the owner of any securities acquired through the use of credit; its outstanding stock was simply reduced by 4,161 shares.

The meaning of "sale" and "purchase", as defined in the Securities Exchange Act, has been considered by the Federal courts in a series of decisions dealing with corporate "insiders'" profits under section 16(b) of that Act. Although the statutory purpose sought to be effectuated in those cases is quite different from the purpose of the margin regulations, the decisions in question support the propriety of not regarding a transaction as a "purchase" where this accords with the probable legislative intent, even though, literally, the statutory definition seems to include the particular transaction. See Roberts v. Eaton (CA 2 1954) 212 F. 2d 82, and cases and other authorities there cited. The governing principle, of course, is to effectuate the purpose embodied in the statutory or regulatory provision being interpreted, even where that purpose may conflict with the literal words. U. S. v. Amer. Trucking Ass'ns, 310 U. S. 534, 543 (1940); 2 Sutherland, Statutory Construction (3d ed. 1943) ch. 45.

There can be little doubt that an extension of credit to a corporation to enable it to retire debt securities would not be for the purpose of "purchasing...securities" and therefore would come within section 220.4(f)(8), regardless of whether the retirement was obligatory (e.g., at maturity) or was a voluntary "call" by the issuer. If this is true, it is difficult to see any valid distinction, for this purpose, between (a) voluntary retirement of an indebtedness security and (b) voluntary retirement of an equity security.

For the reasons indicated above, it is the opinion of the Board of Governors that the extension of credit here involved is not of the kind which the margin requirements are intended to regulate and that the transaction described does not involve an unlawful extension of credit as far as Regulation T is concerned.

The foregoing interpretation relates, of course, only to cases of the type described. It should not be regarded as governing any other situations; for example, the interpretation does not deal with cases where securities are being transferred to someone other than the issuer, or to the issuer for a purpose other than immediate retirement. Whether the margin requirements are inapplicable to any such situations would depend upon the relevant facts of actual cases presented.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

UNITED STATES OF AMERICA

Item No. 9
11/28/62

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D. C.

In the Matter of the Application of FIRST OKLAHOMA BANCORPORATION, INC., OKLAHOMA CITY, OKLAHOMA, Pursuant to Section 3 of the Bank Holding Company Act of 1956	DOCKET NO. BHC-64

ORDER DENYING MOTION TO REOPEN RECORD

In connection with the above application, there has been filed on behalf of parties opposing approval of the application, a Motion to Reopen Record to Permit Cross Examination on Matters Received in Evidence. Consideration has been given to the arguments asserted in support of said Motion.

IT IS ORDERED, for the reasons set forth in the Board's Statement accompanying this Order, that the said Motion be and hereby is denied.

Dated at Washington, D. C., this 29th day of November, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Robertson, Shepardson, King, and Mitchell.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

Item No. 10
11/28/62

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D. C.

In the Matter of the Application of FIRST OKLAHOMA BANCORPORATION, INC., OKLAHOMA CITY, OKLAHOMA, Pursuant to Section 3 of the Bank Holding Company Act of 1956	DOCKET NO. BHC-64

STATEMENT ACCOMPANYING ORDER
DENYING MOTION TO REOPEN RECORD

A motion filed on behalf of Protestants requests that the Board reopen the hearing record in this matter for the purpose of enabling Protestants' counsel to cross-examine Mr. C. A. Vose as to (1) his verified statement dated June 1, 1962, received in evidence by the Hearing Examiner in Mr. Vose's absence and over the objection of Protestants' counsel, (2) the application in this matter, and (3) an affidavit of the same Mr. Vose containing what affiant stated therein to be, to his best knowledge and belief, a correct statement of the total shares of stock owned by affiant or members of his family in banks within the State of Oklahoma (except shares owned in The First National Bank and Trust Company of Oklahoma City, affiant's interest in which is identified elsewhere in the record), the total authorized issued and outstanding shares of stock of each such bank, and the calculated percentage of total ownership therein of affiant and his family. The information contained in the

affidavit of C. A. Vose was submitted pursuant to a request of the Board addressed to Applicant's counsel during oral argument before the Board.

Protestants' present motion renews an earlier motion, substantially to the same effect, that was denied by the Board by Order dated October 11, 1962. Protestants now assert that due process of law in the protection of their property and of their rights under the law has been denied by "failure to permit cross examination upon the two Vose statements (Applicant's Exhibit 1) and the purported listing of banks and upon the Application to which Mr. Vose is a signatory".

Protestants were not entitled under the Bank Holding Company Act or other statute to a hearing on the application in question; nor, once admitted as a party to the hearing that the Board, in its discretion, held, were Protestants entitled as a matter of due process of law to the type of hearing required by sections 4 or 5 of the Administrative Procedure Act (5 U.S.C.A. §§ 1003, 1004) to be conducted pursuant to section 7 of that Act. First National Bank of McKeesport v. First Federal Savings & Loan Ass'n., 225 F. 2d 33 (D.C. Cir. 1955); Bridgeport Federal Savings & Loan Association v. Federal Home Loan Bank Board, 199 F. Supp. 410 (D.C.E.D. Pa. 1961). The scope and nature of Protestants' participation in the hearing in question were to be determined by the Board's Rules of Practice for Formal Hearings (12 CFR Part 263), no provision of which grants the right of cross-

examination to a party. Under the Rules, "any oral or documentary evidence may be received" (section 263.2(h)). Questions as to evidential presentation and cross-examination are vested under section 263.2(g) in the sound discretion of the hearing examiner. Upon review of the record, including the transcript of the hearing, the Board finds that the Hearing Examiner's rulings as to admission of evidence and as to requests made by Protestants for adjournment of hearing were sound and, in all respects, fair to Protestants. For the reasons hereafter indicated, the Board concludes that in respect to the matters raised by Protestants' motion, Protestants have been accorded full due process of law.

Pursuant to his authorization, the Hearing Examiner received in evidence the statement of Mr. C. A. Vose, having ascertained through inquiry of Applicant's counsel that Mr. Vose was ill and, as best could be determined, would be unavailable for several weeks. The statement was received "for whatever it may tend to prove in the light of the entire record". The Hearing Examiner further stated that Mr. Vose's interest in the proceedings and the fact that the statements were hearsay declarations, not subject to cross-examination, were elements of probative consideration in determining the weight to be assigned to his statements. It is noted that the Hearing Examiner also received in evidence more than 50 letters stating opposition to Applicant's proposal (Board Exhibit 6), a certified copy of resolution of the Oklahoma

Bankers Association opposing the granting of the application (Protestants' Exhibit 5), and an unverified, unsigned statement on behalf of an opposing bank (Protestants' Exhibit 22), all of which evidence was characterized by the Hearing Examiner as hearsay declarations reflecting opposition to approval of the application. It is clear that no different or less favorable treatment was accorded evidence supporting Protestants' position than was given to the Vose statement. In fact, the three exhibits last mentioned were received in evidence without a finding that they met any exception to the hearsay rule, a finding made by the Hearing Examiner in receiving the Vose statement.

In view of the well-established principle that in an administrative hearing of the type conducted in this matter rules of evidence are not as strictly applied as they are in a judicial proceeding, the Board finds that the receipt in evidence of the Vose statement, and the refusal of the Hearing Examiner to recess the hearing in order to enable Protestants' counsel, at a then unascertainable time, to cross-examine Mr. Vose, constituted a proper exercise of authority and discretion and accorded Protestants a fair hearing procedure and full due process of law.

Even if the receipt in evidence of the Vose statement could be said to have been in error under the procedures employed in this hearing, Protestants are not adversely affected, if in fact they ever would be, unless and until it is made clear that such statement was relied upon by the Hearing Examiner, without other corroborating evidence. The

Hearing Examiner made no reference to the Vose statement in his findings. There is nothing to indicate that it was taken into consideration in the formulation of his Report and Recommended Decision. Similarly, as to statements contained in the application, there is no indication that the Hearing Examiner relied upon any statements, including those attributable to Mr. Vose by reason of his having signed the application, that were not corroborated by other probative evidence, testimonial and documentary, to which Protestants had full access for purposes of inquiry and possible refutation.

The Board rejects Protestants' assertions of denial of due process of law insofar as the actions, rulings, and decision of the Hearing Examiner are concerned.

In respect to Protestants' allegations of denial of due process of law, either as resulting from previous action of the Board itself, or to follow from refusal of the Board to grant Protestants' motion, the Board finds such assertions also to be without merit. In the Board's Order of October 11, 1962, denying Protestants' motion to reopen the hearing record, it was stated that a determination as to the weight, if any, to be accorded the Vose statement would be made only after the Board's review of the entire record. This review has now been made incident both to this motion and to the Board's decision function in respect to the application. The Board finds that the Vose statement, Applicant's Exhibit 1 in evidence, is, for the most part, cumulative of other probative evidence in the record. Substantially

identical assertions of fact, belief, intention, and opinion are to be found in the application to which Mr. Vose has affixed his signature. The fact that his signature is found in the application does not, however, require rejection of the assertions therein, since other persons who also signed the application, as well as a witness who acknowledged under oath his personal responsibility for preparation of the application, were available for examination by Protestants. Two of the above persons testified at length and were cross-examined by Protestants' counsel.

For the reasons set forth above, the Board finds it unnecessary to rely upon Applicant's Exhibit 1. Similarly, to the limited extent that the contents of the application can be characterized as representing assertions or opinions that only Mr. C. A. Vose is qualified to make and express, these will be given no consideration by the Board. In all other respects, the weight that will be given the application in this matter will be determined by the extent to which the Board finds its contents to be relevant and either uncontroverted or supported by corroborative evidence of a probative nature.

With respect to the Vose affidavit dated October 16, 1962, relating to shares of stock in banks stated to be owned by affiant and/or his family, while the Board finds no reason to question the fullness and accuracy of the disclosures contained in the affidavit, the contents thereof are found to have little or no relevancy or materiality to the issues under consideration. Accordingly, the affidavit will not be considered by the Board in its determination of this matter. In so concluding, the Board has considered the several lines of inquiry that

Protestants assert would be developed through cross-examination relating to the Vose affidavit. The Board finds that in major respects the lines of inquiry are immaterial to the issues before the Board. To the extent that they can be said to be material, ample time and opportunity have been afforded Protestants to develop such information either on the basis of the affidavit itself or from other probative evidence of record.

In respect to the Board's conclusion that refusal to "permit" cross-examination of Mr. Vose has not deprived Protestants of due process of law, it is to be noted that the Board is not authorized by the Bank Holding Company Act or by other applicable statute to issue a subpoena ad testificandum in connection with its determination of an application under the Bank Holding Company Act. No persons, including signatories to an application under section 3(a) of the Act, can be required by this Board to submit themselves to interrogation, in any form, in connection with an application before the Board. Thus, if reason in Protestants' favor had been found to reopen this hearing, the Board could not have, as suggested by Protestants, ordered Mr. Vose to submit himself personally or through written interrogatories to Protestants' counsel. For the same reason, the mere reopening of the record to "permit" cross-examination of Mr. Vose, could not have assured Protestants that Mr. Vose would ever have been available. In sum, even had reason been found to justify a reopening of the record, under the circumstances such reopening might prove to be a meaningless act.

November 29, 1962

Item No. 11
11/28/62

UNITED STATES OF AMERICA

BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

WASHINGTON, D. C.

In the Matter of the Application of FIRST OKLAHOMA BANCORPORATION, INC., for permission to become a bank holding company through the acquisition of voting shares of The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, and The Idabel National Bank, Idabel, Oklahoma	DOCKET NO. BHC-64

ORDER APPROVING APPLICATION
UNDER BANK HOLDING COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842) and section 222.4(a)(1) of the Board's Regulation Y (12 CFR 222.4(a)(1)), an application by First Oklahoma Bancorporation, Inc., Oklahoma City, Oklahoma, for the Board's prior approval of action whereby Applicant would become a bank holding company through the acquisition of a minimum of 28.15 per cent of the voting shares of The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, and a minimum of 50.5 per cent of the voting shares of The Idabel National Bank, Idabel, Oklahoma.

As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of the receipt of the application and requested his views. The Comptroller replied that he had no opinion or recommendation at that time. However, in a subsequent letter, the Comptroller recommended that the application be approved.

Notice of receipt of the application was published in the Federal Register on January 30, 1962 (27 Fed. Reg. 869), affording opportunity for submission of comments and views regarding the proposed acquisition. Thereafter, a public hearing, ordered by the Board pursuant to section 222.7(a) of the Board's Regulation Y (12 CFR 222.7(a)), was held before a duly selected Hearing Examiner; proposed findings of fact and conclusions of law were submitted by the parties; and the Hearing Examiner's Report and Recommended Decision was filed with the Board wherein approval of the application was recommended. Protestants' exceptions, with supporting brief, to the Report and Recommended Decision, and Applicant's response thereto, have been considered.

The Board, upon motion of parties opposing the application, held oral argument and received further briefs. In addition, the Board has received, considered, and ruled upon the several motions and petitions filed in this matter by the parties opposing the application.

IT IS HEREBY ORDERED, for the reasons set forth in the Board's Statement of this date, that the said application be and

hereby is approved, provided that the acquisition so approved shall not be consummated (a) within seven calendar days after the date of this Order or (b) later than three months after said date.

Dated at Washington, D. C., this 30th day of November, 1962.

By order of the Board of Governors.

Voting for this action: Chairman Martin, and Governors Balderston, Mills, Shepardson, and Mitchell.

Voting against this action: Governors Robertson and King.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

BOARD OF GOVERNORS

OF THE

FEDERAL RESERVE SYSTEM

Item No. 12
11/28/62

APPLICATION OF FIRST OKLAHOMA BANCORPORATION, INC., OKLAHOMA CITY, OKLAHOMA, FOR APPROVAL OF ACQUISITION OF SHARES OF THE FIRST NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY, OKLAHOMA CITY, OKLAHOMA, AND THE IDABEL NATIONAL BANK, IDABEL, OKLAHOMA

STATEMENT

First Oklahoma Bancorporation, Inc. ("Bancorporation" or "Applicant"), with its principal place of business in Oklahoma City, Oklahoma, has filed an application, pursuant to section 3(a)(1) of the Bank Holding Company Act of 1956 ("the Act"), for the Board's approval of the acquisition of a minimum of 28.15 per cent and a maximum of up to 100 per cent of the voting stock of The First National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma ("First National"), and from 50.5 per cent up to 100 per cent of the stock of The Idabel National Bank, Idabel, Oklahoma ("Idabel National"). By this acquisition, Bancorporation would become a bank holding company.

Background. - Following the filing of the application and pursuant to requirement of the Act, views on the application were requested of the Comptroller of the Currency. Notice of receipt of the application was transmitted in writing to the United States Department of Justice and was published in the Federal Register on January 30, 1962. By letter dated February 28, 1962, the Comptroller advised that he had no present opinion or recommendation regarding the application. Following expiration of the

period allowed in the published notice for receipt of comments on Applicant's proposal, the Board ordered a public hearing to be conducted in Oklahoma City before a Hearing Examiner selected for this purpose by the United States Civil Service Commission. This hearing was not required by law but was ordered pursuant to section 222.7(a) of the Board's Regulation Y (12 CFR 222.7) promulgated under the Act, upon the Board's finding that such hearing would be in the public interest.

By ruling of the Hearing Examiner, four of the banks ("Protestants") that had expressed opposition to Applicant's proposal were admitted and participated as parties. Applicant and Protestants presented evidence and had opportunity for examination and cross-examination of persons appearing as witnesses.

Among the documentary material received in evidence was a second letter to the Board on this application from the Comptroller of the Currency, dated June 5, 1962, which reached Board counsel on the final day of the hearing, recommending that the application be approved.

Subsequent to the hearing, parties were afforded the opportunity to file, and did file, comments, proposed findings of fact and conclusions of law, with supporting briefs. On August 20, 1962, the Report and Recommended Decision of the Hearing Examiner was filed with the Board wherein it was recommended that the application be approved. Exceptions to the Report and Recommended Decision were filed by Protestants, together with a supporting brief. A response thereto was received from Applicant over Protestants' objection. Upon motion of Protestants, opposed by Applicant, the

Board held oral argument in this matter and thereafter received briefs in support of positions stated.

On the basis of the entire record, formation of which has been described principally above, the matter is now before the Board for decision.

First National has 1,100,000 shares of stock outstanding of which 309,134 shares are owned or controlled, directly or indirectly, by Mr. C. A. Vose and his family. Mr. Vose is one of Applicant's organizers and, with members of his family, owns a majority of the shares of Ravco Corporation, a holding company the principal asset of which is its ownership of 290,400 of the 309,134 First National shares owned or controlled by the Vose family. The Vose controlled stock, plus 563 shares owned by Mr. Hugh L. Harrell, also one of Applicant's organizers, represents 28.15 per cent of First National's outstanding stock and the minimum amount of that Bank's stock proposed to be acquired. There are outstanding 1,000 shares of Idabel National, of which 505 shares (50.5 per cent) are held by the same Vose family which is asserted to have effective control of First National.

The Hearing Examiner has found, and the evidence of record supports the findings, that although less than a numerical majority of First National's outstanding stock is controlled by the Vose interests, present effective control of both First National and Idabel National is held by the Vose interests. Consummation of this proposal would affect principally the form of ownership of these banks.

First National is located in Oklahoma City, the State's capital and largest city, with a 1960 population of 324,000. At December 31, 1961,* First National was the largest of 14 banks located in Oklahoma City, and held deposits of $284.8 million. Its nearest Oklahoma City competitor, measured by deposits, is Liberty National Bank and Trust Company with $198.9 million of deposits. First National ranked third in size in the State, behind The First National Bank and Trust Company of Tulsa ($350.1 million), and National Bank of Tulsa ($332.7 million).

Idabel National is one of the two banks located in Idabel, about 250 miles southeast of Oklahoma City. Idabel, the county seat of McCurtain County, had a 1960 population of 5,000; the County population was 26,000. Idabel National's primary service area, the area from which at least 75 per cent of its deposits originate, has been designated as comprising Idabel and the portions of McCurtain County southeast and southwest of Idabel. At year-end 1961, Idabel National held deposits of $4.5 million, or 46.2 per cent of the deposits held by the city's two banks combined. The other bank, First State Bank of Idabel, held $5.3 million of deposits.

Statutory factors. - In acting upon this application the Board is required under section 3(c) of the Act to take into consideration the following five factors: (1) the financial history and condition of the Applicant and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and area concerned; and (5) whether the effect of the proposed

* Unless otherwise stated, all figures herein are as of this date.

acquisition would be to expand the size or extent of the bank holding company system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

Financial history, condition, and prospects of Applicant and Banks. - In view of Applicant's recent organization, there is no operating history upon which to predicate a judgment as to its financial condition or prospects. However, since Applicant's assets would consist of shares of First National and Idabel National, its financial condition and prospects are considered to be satisfactory, principally due to the sound financial history, condition, and prospects of First National.

The financial history and present condition of Idabel National appear reasonably satisfactory. The area surrounding the City of Idabel and encompassing most of McCurtain County is presently classified as economically distressed. However, improved conditions are forecast based primarily upon discoveries of local gas deposits, development of water transportation and recreational facilities, and efforts by Federal, State, and municipal authorities to develop programs looking toward economic advancement of the area. While Idabel National's prospects appear satisfactory in the light of the economic recovery forecast for the area, it is the Board's judgment that the Bank's capacity to contribute to and participate in this recovery effort would be increased to some extent through greater managerial experience and initiative, procurement of which, the Hearing Examiner has found, would be more assured under Applicant's ownership.

Management of Applicant and the Banks. - With respect to the management of Bancorporation and the proposed bank subsidiaries, Protestants have urged that the Applicant has failed to adduce evidence bearing on the character of Applicant's proposed management, and that such failure must be weighed against approval of the application. Protestants have also taken exception to the asserted failure of the Hearing Examiner to make a specific finding in relation to the character of Applicant's management. In the Board's judgment, neither of the asserted failures constitutes a lack critical in nature. No provision of the Act nor of Regulation Y dictates or requires a specific procedural format to be followed by an applicant in the course of a public hearing. Obviously, an applicant assumes the risk of any deficiencies that may be inherent in the form of presentation selected. The mere fact, however, that an applicant chooses a particular form of presentation over another does not in and of itself constitute an adverse consideration. Thus, while it may be argued that the best evidence of the character and quality of Applicant's proposed management would have been adduced by and through the appearance of Mr. Vose at the public hearing, if other evidence of record is available upon which the Board reasonably can base a finding on this issue, the directive of section 3(c) of the Act can be satisfied. Such evidence is available in this record.

Applicant's management will be nearly identical with the present management of First National. Mr. C. A. Vose, Chairman of First National's Board of Directors, has been associated with that Bank

for over 40 years, serving in each of its principal executive positions. This experience should qualify him as Applicant's President. Similarly, Applicant's Vice President, Mr. Hugh L. Harrell, has nearly one-half a century of experience in the fields of banking and finance. He has been a Vice President of First National for 25 years. Mr. W. H. McDonald, President of First National, will act as Applicant's Treasurer. Upon consideration of the banking experience of the aforementioned individuals, the beneficial effect of which is reflected in the soundness of First National's operation, the Board finds ample evidence of the satisfactory character of management of both Applicant and First National. No evidence to the contrary was adduced at the hearing.

In respect to the question of management of Idabel National, the evidence permits of two conclusions. Applicant asserts its confidence in the Bank's present management, and the Bank's financial statements received as evidence support a finding that its management is satisfactory. Further, Applicant's witnesses conceded that any management succession or personnel replacement problem that might arise could be remedied by Bank's ownership as presently constituted. Thus, it can be concluded that Idabel National's management is in all pertinent respects reasonably satisfactory.

The Hearing Examiner, while finding that the present owners can be expected to provide some solution to such problems as management succession and personnel placement, concluded that "future effective staffing and the succession would be more assured under the proposed program". This conclusion, in the Hearing Examiner's judgment, must be weighed on the side of approval of the application. In reaching this

conclusion, the Hearing Examiner attributed significance to the recommendation of approval given by the Comptroller of the Currency (letter of June 5, 1962), which the Hearing Examiner found to have been rendered "essentially on the basis of management considerations at the Idabel Bank".

Protestants assert the Hearing Examiner erred by attributing evidentiary weight to the Comptroller's letter "because the letter was based upon asserted factual considerations, which were found to be contrary to the actual facts prevailing as such facts were developed at the hearing in this proceeding". Contrary to the assertion of Protestants, the Comptroller's comments with respect to present management problems were not related by the Comptroller to specific facts. Presumably, the opinions expressed were premised upon the Comptroller's interpretation of facts and data derived either solely from the application filed with the Board or from that source and from such additional information gained in the performance of his supervisory functions. In either event, the Board concurs in the action of the Hearing Examiner in attributing significance to the Comptroller's opinion. It is the Board's judgment that on the basis of the evidence presented, including the views of the Comptroller of the Currency, Idabel National's prospects, as affected by present and prospective management, will be more favorable under the proposed affiliation than would otherwise be the case.

Convenience, needs, and welfare of the communities and areas concerned. - The communities and areas whose convenience, needs, and welfare are most directly affected by this application are Oklahoma City, the City of Idabel, and McCurtain County in which Idabel is located.

First National is centrally located in Oklahoma City. Its primary service area is described as comprising a major portion of Oklahoma City and as having a population of approximately 200,000. Thirteen other Oklahoma City banks, with aggregate total deposits of $417.5 million, are located within First National's primary service area. Establishment of bank branches is prohibited by State law.

Applicant concedes that its proposal does not contemplate any substantial change in the type of banking service now provided by First National to its primary service area, although expansion of several types of service is suggested as being possible through the vehicle of the holding company.

Applicant's uncontroverted statement of the leading role that First National has played in the industrial improvement and economic growth of the Oklahoma City area, in large measure made possible only through a corresponding increase and expansion in First National's specialized banking services, satisfies the Board as to the present scope and adequacy of banking service rendered by First National. Moreover, there is no evidence that the remaining banks in Oklahoma City, whose respective deposits range from $4.3 million to $198.9 million, and loans from $811 thousand to $97.3 million, are not rendering similarly adequate service to the businesses and residents of the Oklahoma City area.

It is principally the area served by Idabel National that Applicant asserts will be benefited by Idabel National's operation as a subsidiary of Applicant. The benefits foreseen by Applicant will

allegedly derive from greater availability of reserves for the protection of local depositors; increased availability of trust services, bond services, and personnel training, including provision for management succession; more efficient handling of excess loan participations; greater facility in respect to community service financing through the organization and operations of a small business investment corporation; operational improvements including improved audit system and other internal controls; experienced judgment on miscellaneous bank operation problems; and provision for employee benefits such as a pension plan, employees' thrift plan, and group life, health, and accident insurance coverage, all of which benefits, Applicant states, are presently enjoyed by employees of First National.

Clearly, many of the services enumerated would inure directly to the benefit of Idabel National. As to those services that would be offered directly to the public, in view of the apparently limited demand therefor, it is concluded that such demand could be met by Idabel National, either alone or with the assistance of correspondent banks.

Applicant has placed considerable stress upon the increasing banking needs that are foreseen for the Idabel/McCurtain County area incident to the efforts now underway to rejuvenate the economy of that area. In addition to Idabel National, three other banks serve McCurtain County: First State Bank of Idabel ($5.3 million deposits); Citizens State Bank ($2.6 million deposits), 12 miles northeast of Idabel at Broken Bow; and

Farmers State Guaranty Bank ($636 thousand deposits), 17 miles northwest of Idabel at Valliant. These three banks are majority owned and controlled by the same person and/or members of his immediate family. Idabel National and First State Bank of Idabel compete for customers in Idabel and throughout McCurtain County. The record reflects that some competition exists between Idabel National and the banks at Broken Bow and Valliant. In general, the type and extent of banking services rendered by each of the McCurtain County banks are similar. Considering the population of the County and its general characteristics heretofore discussed, the Board cannot find that there exists, or will arise in the reasonably foreseeable future, a demand for banking services from within the area that could not be satisfied to a reasonable degree by one or more of the McCurtain County banks, alone or collectively, and as assisted in any necessary respect by their respective correspondent banks in Oklahoma City, Tulsa, or elsewhere.

In substance, the foregoing finding was made also by the Hearing Examiner. However, he further found that acquisition and operation of Idabel National by Applicant would assure to that Bank "greater continuity, flexibility and stability" in respect to management succession and personnel recruitment and retention than could be expected under present ownership. The Hearing Examiner concluded that, unless outweighed by adverse factors, the foregoing consideration tended to support approval of the application. The Board finds the Hearing Examiner's conclusion reasonable.

In many applications under the Act, it is asserted that holding company ownership of proposed bank subsidiaries will result in better service to the public, or greater assurance of continuity of such service.

The credibility of the evidence adduced in support of such an assertion must be determined by the Board. In the Board's judgment, the present record contains sufficient credible evidence that Applicant's ownership of the Banks concerned will result in personnel benefits and more assured management continuity in respect to Idabel National, with reasonable probability that such benefits will inure indirectly to those served by that Bank, to constitute a consideration somewhat favorable to approval of the application. In concluding that the affiliation proposed should prove beneficial to Idabel National, and ultimately to its present and potential customers, the Board has considered as supporting this conclusion the judgments in this respect reached by Applicant's organizers, one of whom, with his family, has owned a majority of the voting stock of Idabel National for over 40 years. This same organizer has been a principal operating officer of First National since 1923, and with Applicant's other organizers, owns 28.15 per cent - effective control - of First National. It is the considered business judgment of these organizers, a judgment reached after more than a score of years of ownership and/or control of the Banks involved, that the Applicant's ownership and operation of the Banks, particularly Idabel National, would advance the Banks' interests and the interests of the public.

It has been vigorously urged by Protestants that Idabel National's present majority owners could today utilize First National's financial and manpower resources on Idabel National's behalf as effectively as could be done by and through Applicant. Despite the apparent effective control

of First National represented by the 28.15 per cent of its voting stock held by Applicant's organizers, the fact remains that the owners of 72 per cent of First National's voting stock, numerically representing actual control, have no ownership interest, as far as this record shows, in Idabel National. Accordingly, it is not unreasonable to believe that, despite the "effective control" of First National by the Vose interests, the majority stockholders of that Bank might reject and prevent efforts to use the resources and facilities of First National on behalf of Idabel National, to the extent that such use would be disproportionate to that usually made available to other correspondent banks of similar size. Moreover, an awareness of the uncertainty attending any such assistance proposal might well discourage even the formulation thereof by Idabel National's majority owners. Thus, Applicant's proposal to acquire up to 100 per cent of the stock of First National and Idabel National holds sufficient probability of resulting advantages to Idabel National and to those it serves as to support the conclusion now reached that the proposal would tend to contribute to the convenience, needs, and welfare of the area served by Idabel National.

Effect of proposed acquisition on adequate and sound banking, public interest, and banking competition. - Section 3(c)(5) of the Act requires that the Board reach a judgment as to whether the proposed transaction would expand the size and extent of the proposed holding company system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

First National and Idabel National will comprise Applicant's system as proposed by this application. Accordingly, in combination, their size and the extent of their operations accurately reflect the size and extent of Applicant's system as proposed. The relative size of First National and Idabel National is indicated by the following comparison of deposits and loans held by the two Banks with the deposits and loans held by other banks, individually or in combination, located in the State and within areas thereof considered pertinent for purposes of comparison.

In Oklahoma City 14 banks, including First National, hold combined total deposits of $702.3 million and total loans of $363 million. First National holds 41 per cent of such deposits and 43 per cent of such loans. In terms of deposits held, First National is the City's largest bank. Three competing banks, all located within two blocks of First National, rank second, third, and fourth in size in the City, with deposits of $198.9 million, $54.5 million, and $39.4 million, respectively. Deposits held by each of the City's other 10 banks range from $30.8 million to $4.3 million.

In Oklahoma County 24 banks (including the 14 Oklahoma City banks) hold, combined, deposits of $738.9 million and loans of $377 million. First National holds 39 per cent of such deposits and 42 per cent of such loans.

In the City of Idabel, two banks hold, combined, deposits of $9.8 million and loans of $4.7 million. Idabel National holds 46 per cent of such deposits and 49 per cent of such loans.

In McCurtain County, four banks (including the two Idabel banks) hold, combined, deposits of $13 million and loans of $5.8 million. Idabel National holds 35 per cent of such deposits and 40 per cent of such loans.

In the State of Oklahoma, there are 388 banks operating 415 banking offices (including drive-in and walk-up facilities). These banks, combined, hold deposits of $2,925 billion and loans of $1,327 billion. Fourteen of these banks hold deposits exceeding $20 million. Of the latter banks, six are located in Oklahoma City and five in Tulsa. Only four of the 388 banks in the State - two in Oklahoma City and two in Tulsa - hold deposits exceeding $100 million.

Analysis of the foregoing comparative data, while identifying the prominent position occupied by a few large banks in the State, does not reflect that First National or any other bank is so dominant in the State as a whole, or within a specific area of the State, that approval of Applicant's proposal would have an adverse effect upon the existing banking structure. The variety of sizes of the City's banks appears compatible with the service requirements of the Oklahoma City area and with the demands from banks in other areas of the State for correspondent bank service. The record does not reflect a harmful imbalance in competition in the areas served by either First National or Idabel National. To the contrary, there is ample evidence that, at the present, competition among the several banks located in the areas pertinent to consideration is vigorous. Combining under Applicant's control the deposits and loans held by First National and

Idabel National would result in an increase of only .15 per cent in the percentage of the combined deposits and loans of all commercial banks in the State now held by First National (9.74 per cent). The proportion of the deposits and loans of all commercial banks in Oklahoma City and Idabel that would be held by subsidiaries of Applicant would be identical, of course, with those now held, respectively, by First National and Idabel National.

In respect to the competitive aspects of this proposal, the Hearing Examiner concluded, in part, that consummation of the proposal would not result in expansion of banking operations into new competitive areas, and that there would be no elimination or modification of any existing correspondent or other business relationship of either Bank with any other bank in their respective service areas. Assuming that the reference to "new competitive areas" was intended to mean geographic areas, as distinguished from product areas, the Hearing Examiner's conclusion, literally read, is justified, since no additional or different banking facility will be introduced into either Oklahoma City or Idabel. Realistically, of course, a holding company system of bank operations will be introduced into the areas involved. However, it does not appear that Bancorporation's acquisition of First National or Idabel National would give to either Bank an undue advantage over its competitors. In respect to First National, this was the candid opinion of more than one of Protestants' witnesses, one of whom appeared on behalf of First National's principal competitor in Oklahoma City, and another of whom is associated with a bank second largest in Tulsa and in the State.

In regard to any undue competitive advantage that Idabel National might realize from the proposed affiliation, the President of the First State Bank of Idabel who owns a majority of the stock of that bank and, with members of his family, a majority of the stock of the other two banks in McCurtain County outside of Idabel, expressed the opinion that a holding company controlled bank could not offer the citizens of Idabel anything that First State Bank of Idabel could not now offer them. The witness did express apprehension over the adverse effect on the First State Bank of Idabel that he believed might result from the many changes in services at Idabel National that Applicant asserts will come about. Weighing in a light most favorable to the Protestants the testimony adduced in respect to the probable impact on competing banks from Applicant's control of the Banks, the Board concludes that such testimony does not support a conclusion that an undue competitive advantage will result.

An aspect of Applicant's proposed ownership of First National and Idabel National on which considerable opinion has been voiced is the effect that the resulting affiliation may have upon established and potential correspondent bank relationships. The evidence presented satisfies the Board that the rendition of services to smaller banks by nearly all medium and large size banks in Oklahoma constitutes an important part of the business of those banks. The obtaining and retention of correspondent accounts appears to be a vigorously competitive objective, the seeking for which has resulted, as earlier noted, in the availability to smaller banks, and through them to the public, of numerous services that might otherwise be unavailable.

Applicant asserts there would be no change in any existing correspondent bank relationship considered pertinent to this application. Protestants' witnesses who testified on this matter forecast immediate and continued adverse effects on established correspondent relationships between and among the banks that now compete State-wide for correspondent bank business. The Hearing Examiner concluded that there would be no elimination or modification of any existing correspondent or other business relationship of either First National or Idabel National with any other bank in their respective areas.

It may not be assumed logically that the affiliation here proposed will have no effect on presently existing correspondent bank relationships. However, for the reasons hereafter discussed, it is the Board's judgment that such effects as reasonably may be anticipated from approval of this application will not, under existing circumstances, constitute an adverse consideration. The record reflects that banks in Oklahoma City and McCurtain County presently have adequate alternative sources of correspondent bank services. Normally, an affiliation such as that proposed would reduce by one the number of alternative sources of correspondent banking services available, as a practical matter, to banks in competition with the affiliating bank. This reduction in the number of alternative sources has been viewed by the Board as a consideration militating against approval of such a proposed affiliation. In the Matter of the Application of First Security Corporation (Carbon Emery Bank), 48 Federal Reserve Bulletin 295, 297 (March 1962).

In the present case, the apparency of loss to Idabel National's McCurtain County competitors and their customers of an alternative source of a correspondent bank loses its significance in the light of existing facts. Similarly diminished in significance is the asserted removal, as an object of active competition among the Oklahoma City banks, of Idabel National. That Bank's sole correspondent account in Oklahoma City is with First National. The placement of this account can be explained by the identity of interest in the two Banks. That relationship can also fairly be viewed as having removed Idabel National from serious consideration by First National's competitors as an object of competition for its correspondent business. As to the availability of First National as a correspondent for Idabel National's principal competitor, First State Bank of Idabel, and for the two remaining banks in McCurtain County, both of which are affiliated with the latter bank through common ownership, the acquisition proposed portends no real disadvantage. Each of these banks presently uses but one and the same Oklahoma City correspondent bank, The Liberty National Bank and Trust Company, even though ample additional or alternative sources, including First National, are available.

It is the judgment of the Board that the affiliation of the two Banks, as to which common control now exists, under control of the holding company system proposed would not represent a concentration of banking resources inimical to adequate and sound banking or adverse to the public interest. No undue competitive advantage to either First National or Idabel National is foreseen as a result of the acquisition proposed,

nor would consummation of the proposal appear likely to affect adversely the correspondent relationships between and among banks whose interests are most directly affected by the present application.

In reaching the foregoing conclusions, the Board has necessarily formed judgments as to probable or possible future occurrences flowing from or attributable to approval of Applicant's proposal. One such consequence as to which concern is expressed in this case is the possibility, characterized by Protestants as a certainty, that approval of this application will be followed by additional acquisitions throughout the State by the Applicant and, as a competitively necessary step, by creation of other holding company systems of equal or greater size. Such a consequence, it is argued, will magnify the adverse consequences asserted to be inherent in Applicant's immediate proposal. In particular, emphasis is placed upon the elimination of choices of correspondent banks that would accompany each additional acquisition by Applicant, and each new holding company system formation.

The Board has carefully considered the testimony of record in forming a judgment as to the real likelihood of the occurrences predicted and concludes that there is insufficient evidence of the need, as a competitive measure, for the additional holding company formations predicted, to support a finding that the Board's approval of the proposal under consideration will either precipitate or result in mass activity toward such formations. Should that occur, however, it cannot be assumed, as Protestants

appear to have done, that the Board will abdicate its statutory responsibilities in passing upon any future application, or that approval in the present case constitutes a position of commitment to approval of any application that may hereafter be filed. As to any such application, the Board will make a judgment premised upon full consideration of all pertinent facts presented.

As to the present application, upon consideration of all the relevant facts in the light of the factors in section 3(c) of the Act and the underlying purposes of the Act, it is the Board's judgment that the proposed acquisitions would be consistent with the statutory objectives, principal among which is the public interest.

Board's authority to act as affected by State law. - A final aspect of this matter to which consideration must be given involves the assertion by Protestants that Oklahoma law prohibits the operation of a bank holding company within the State, and that under section 7 of the Bank Holding Company Act, the present application may not be approved.

Section 7 of the Act provides:

> "Sec. 7. The enactment by the Congress of the Bank Holding Company Act of 1956 shall not be construed as preventing any State from exercising such powers and jurisdiction which it now has or may hereafter have with respect to banks, bank holding companies, and subsidiaries thereof."

In asserting that provisions of law as contemplated by section 7 are in effect in Oklahoma, Protestants cite Article 9, Section 41, of the Constitution of the State of Oklahoma which provides, in part:

> "No corporation chartered or licensed to do business in this State shall own, hold, or control, in any manner whatever, the stock of any competitive corporation or corporations engaged in the same kind of business, in or out of the State, . . .",

and further cite the provisions of Title 79, Section 31, Statutes of Oklahoma, which provide in pertinent part that:

> "Every corporation which shall own, hold or control, in any manner whatever, the stock of any competitive corporation or corporations engaged in the same kind of business, in or out of this State, in violation of the Constitution and laws of this State, shall [enumeration of penalties]; provided, however, that this section shall have no application to corporations owning or holding stock of subsidiary corporations; when such ownership of stock in subsidiary corporations in no way furthers monopoly or restrains trade."

It is asserted that the Applicant and the two Banks proposed to be acquired would be engaged "in the same kind of business" within the meaning of the cited constitutional and statutory provisions.

The Hearing Examiner rejected Protestants' proposed conclusion as to the prohibitory effect of the Oklahoma law and concluded that the provisions cited did not "purport to outlaw bank holding companies". It is not, of course, within the province of the Board to determine authoritatively the validity or applicability of provisions of State law. Nevertheless, in the interest of orderly administrative procedure, and in the absence of judicial decisions as to the effect of such

provisions, the Board properly may form an opinion as to whether provisions of State law clearly would prohibit the formation of a bank holding company and thus render futile the Board's approval of such formation. In this case, the Board has reviewed the provisions of the Constitution and Statutes of the State of Oklahoma cited by Protestants and has concluded, as did the Hearing Examiner, that these provisions do not clearly prohibit the acquisition here proposed.

The provisions in question relate to unlawful combinations in restraint of trade and prohibit corporate ownership or control of the stock of a competitor engaged in the same kind of business. Obviously, Applicant does not now stand as a competitor to either of the proposed subsidiary Banks. It is not, nor, assuming the acquisition proposed would it be, engaged in the banking business as conducted by its banking subsidiaries. The several services and facilities that are made available by a bank holding company to its subsidiary banks are admittedly activities incident to the business of banking, as conducted by its subsidiaries. They do not, however, constitute an engagement by the holding company in the conduct of the banking business. While the availability to a bank holding company's subsidiaries of the resources of the holding company can constitute, as this Board has noted, a very real competitive advantage, the actions of the holding company in thus aiding its subsidiaries are not in fact or in law the exercise of banking functions or powers.

In the event, however, that the Oklahoma statute here in question should be interpreted by a court of competent jurisdiction to be applicable to Applicant's ownership of the shares in the Banks, it seems likely that the exclusionary provisions of the same statute would be held equally applicable, since the ownership proposed would not appear to further monopoly or to constitute a restraint of trade within the apparent meaning of the statute.

The Board's position in this matter is taken with awareness of a recent decision of the United States District Court for the District of Columbia[1/] wherein the Comptroller of the Currency was permanently enjoined from issuing to a national bank a certificate of authority to commence business, where a law of the State in which the bank would be located made it unlawful for the bank to commence business as a subsidiary of a bank holding company. Passage of the law in question was held by the Court to be within the power reserved to the States under section 7 of the Bank Holding Company Act. Even apart from jurisdictional and other issues that raise question as to the applicability of this decision to the Board, it is the Board's view that the decision does not govern the instant situation. The Court's decision was premised upon the stated finding that the State statute was "directly applicable to the proposed Defendant . . . [national bank] and that said statute makes it unlawful for said bank to commence business". For the reasons heretofore given, the Board cannot find that the quoted provisions of Oklahoma law apply to the Applicant and the proposed acquisition.

1/ Bank of New Orleans and Trust Company, et al., v. James J. Saxon, Comptroller of the Currency, et al., C.A. No. 1857-62, decided Nov. 5, 1962.

In relation to the Board's conclusion that the State law in question is not applicable to the acquisition here proposed, it is noted that the Board has received a letter from a Special Committee of the State Legislative Council, State of Oklahoma, dated November 7, 1962, advising of the decision of that Committee to recommend for enactment in the Twenty-ninth Legislature of the State of Oklahoma, which convenes on January 8, 1963, "proposed legislation prohibiting the creation of bank holding companies in this state". A copy of the proposed legislation was attached for the Board's information. It may reasonably be assumed that the Oklahoma State Legislative Council would not propose to recommend legislation prohibiting the creation of bank holding companies if creation of such companies were presently prohibited by State law.

Conclusion. - The findings of the Hearing Examiner contained in his Report and Recommended Decision of August 20, 1962, insofar as they are consistent with this Statement, are hereby adopted. Protestants' exceptions to the Report and Recommended Decision have been considered and the merit of certain of those exceptions is reflected in the Board's findings and conclusions. Otherwise, Protestants' exceptions are found to be without merit.

Accordingly, it is the judgment of the Board that the application should be approved.

November 30, 1962

Item No. 13
11/28/62

DISSENTING STATEMENT OF GOVERNOR ROBERTSON

Until enactment of the Bank Holding Company Act of 1956, no Federal law (other than the antitrust laws) controlled the creation or the expansion of bank holding company systems. Having concluded that absence of regulation in this field was contrary to the public interest, Congress decided not to prohibit creation and expansion of bank holding companies but rather to "control their future expansion", as stated in the title of the Act.

Congress might have effected control of holding companies by prescribing specific standards in the form of quantitative limitations. For example, the law could have provided that no holding company system could comprise more than 10 per cent of the deposits (or banking offices) in a State, a group of States, or the nation, and that all bank holding company systems, in the aggregate, could not hold more than 40 per cent of deposits or offices. Instead, Congress decided to delegate to the Board of Governors of the Federal Reserve System discretion to approve or to disapprove proposed transactions by individual holding companies or proposed holding companies, according to the Board's judgment, in each case, as to which course would better serve the general welfare.

Although the Board of Governors is vested with broad discretion in this field, section 3(c) of the Act requires that a number of enumerated "factors" be taken into consideration in determining whether to approve any acquisition. However, these factors do not constitute a

standard to govern the Board's actions. The only requirement is that consideration be given to the factors named; the weight to be accorded to each is completely within the Board's discretion. Because of special circumstances--for example, the existence of a plethora of banking facilities in the relevant area--the Board might conclude, in a particular case, that circumstances related to "the convenience... of the communities and the area concerned" were entitled to no weight whatever.

The choice before the Board, in each case under the Act, is to approve or disapprove the proposed acquisition. The Board must decide which answer--"Yes" or "No"--will better promote the general welfare of the country. This is the only "standard" under the Act; the enumerated factors are matters that must be considered before the decision is made, but the evidence under each is to be given such weight--much, little, or none--as the Board regards as warranted.

Applying these principles to the instant application, I am compelled to conclude that its approval is contrary to the best interests of both the people of Oklahoma and the people of the country generally. The proponents of the proposed holding company system contend that the financial condition, the prospects, and the management of the smaller bank, although presently satisfactory, may be improved by vesting control of that bank in the holding company, and the majority of the Board apparently are prepared to give these contentions substantial weight on the side of approval of the application, even though it is conceded

that there will be no change in the actual control of the two banks by the Vose family. On the other hand, the majority of the Board appear to conclude that less weight should be given to the immediate and potential anticompetitive effects of approval, its effect on concentration of banking resources and power, and other public-interest aspects of the situation.

It would be shortsighted indeed to regard this application as no more than a proposal to bring under common control a large bank in Oklahoma City ($285 million of deposits) and a bank with less than $5 million of deposits in a small town 250 miles away. By approving this application, the Board is permitting the first short step in a series that could transform Oklahoma from a State with almost 400 independent banks to a State in which banking will be dominated by a handful of holding companies.

As the Board's Statement points out, only four banks in the State--two in Oklahoma City and two in Tulsa--hold deposits exceeding $100 million. There is ample evidence that interests associated with all of these contemplate the organization of holding companies, if the Board authorizes the establishment of this bellwether system.

Scores of banks throughout Oklahoma have asked the Board to deny this application. It is not to be supposed that these institutions (many of which have no direct relationship to the banks immediately involved or the areas in which they operate) would be disturbed if they believed that no more is involved in this case than bringing together

one bank in Oklahoma City and one in Idabel. Their protests reflect their conviction that First Oklahoma Bancorporation will not remain a two-bank holding company system or the only holding company in Oklahoma.

The Board's Statement denies that "approval in the present case constitutes a position of commitment to approval of any application that may hereafter be filed." But although no such legal commitment is involved, of course, it is difficult to see how the Board could deny future applications for the organization of similar holding companies in Oklahoma, or applications by First Oklahoma Bancorporation to acquire additional widely separated banks in the State, without drawing arbitrary and capricious distinctions. Since the Board presumably would not take action of this character, I reluctantly conclude that, unless there is a reversal of Board policy or the State legislature takes preventive action, domination by holding companies will characterize banking in Oklahoma in the years ahead.

In the long run, the course of decision of the Board in cases of this kind necessarily will depend on the convictions of its members as to whether the public interest will be better served by a banking system made up of many independent units or by a banking system dominated by relatively few organizations, each with numerous offices. Multiple-office banking--whether in the form of branch banking or holding company banking--results in both benefits and detriments. Although difficult to measure or evaluate, advantages such as economy, efficiency, uniform sound policies, scope of available services, and the like, sometimes

accompany a multiple-office system, and most countries actually have banking systems of this nature. On the other hand, the American tradition, in banking as well as other industries, has favored a relatively large number of separate institutions, in the belief that such an arrangement promotes initiative, vigorous competition, beneficial risk-taking, opportunities for development of leadership, and similar benefits.

In my judgment, the advantages of the traditional American banking system, necessarily modified to meet changing conditions, outweigh the benefits to be derived from a banking system made up of a relatively small number of regional or national institutions. I believe that this philosophy underlay the enactment of the Bank Holding Company Act and, as an expression of national will reflected in legislative intent, should be taken into account by the Board in the administration of that Act.

Relevant in this connection is the decision of the Supreme Court of the United States in recent antitrust litigation. Referring to "the economic way of life sought to be preserved by Congress", the Supreme Ccurt spoke of Congress' desire to prevent "adverse effects upon local control of industry and upon small business", and stated:

> "Where an industry was composed of numerous independent units, Congress appeared anxious to preserve this structure....
>
> * * *
>
> "... we cannot fail to recognize Congress' desire to promote competition through the protection of viable, small, locally owned businesses." Brown Shoe Co. v. United States, 370 U.S. 294, 333, 344 (1962)

Also relevant in the instant case is the Supreme Court's reference, in that case, to "the mandate of Congress that tendencies toward concentration in industry are to be curbed in their incipiency.... In the light of the trends in this industry we agree...that this is an appropriate place at which to call a halt." Id. at 346

In my opinion, the record in this case indicates that slight, if any, benefits may reasonably be anticipated from the creation of the proposed holding company system. On the other hand, it is likely to lead to the replacement of the present independent banking system in Oklahoma with a system consisting principally of a few large banks in Oklahoma City and Tulsa, each associated with a large number of satellite banks throughout the State. This would eliminate, in large measure, competition for correspondent banking business within the State, and that business is an important part of the operations of the large banks in the two major cities. It seems to me that these detrimental effects outweigh the admittedly limited benefits that may be anticipated. Accordingly, the application should be denied.

November 30, 1962

Item No. 14
11/28/62

DISSENTING STATEMENT OF GOVERNOR KING

Although the complete prohibition of branch banking in Oklahoma may produce certain benefits, it also prevents bankers in that State from developing a structure that might serve the economy more adequately in some respects. Consequently, if this were a proposal to establish a holding company for the purpose of bringing additional banking facilities to parts of a metropolitan area where a need existed that otherwise would not be met as effectively and there was no adverse competitive effect, I would probably favor the proposal. See Whitney Holding Corporation, New Orleans, 1962 Federal Reserve Bulletin 560.

In this case, however, we are asked to permit common ownership in a holding company of a bank in Oklahoma City and another in a far corner of the State. If this proposal is approved, it is difficult to see how similar applications, by this or other organizations, to acquire banks in widely separated parts of Oklahoma could consistently be denied. In other words, a favorable decision in this matter amounts to acceptance of the principle of state-wide holding company systems, subject to control over further expansion only after a substantial proportion of the State's banking structure has come under holding company control. We must recognize that our decisions necessarily serve either to encourage or discourage efforts looking toward the growth of existing holding companies and the creation of new ones.

Despite this adverse consideration, I might nevertheless favor the pending application if it appeared that banking service to the public would be materially improved. However, it is practically conceded that the operations of the large Oklahoma City bank will not be affected by holding company control, and in my opinion the record falls short of supporting an expectation that there will be any significant change in the services rendered by the Idabel bank, either in scope or quality.

We must bear in mind that the Bank Holding Company Act was passed by Congress with the express intent to control the future expansion of holding companies. In the circumstances, it appears to me that the Congressional purpose and the public interest would be best served by denying this application to open Oklahoma to a state-wide holding company system, particularly on the basis of a record that does not support a finding that any substantial benefits would result. The extent to which multiple-office banking within a single urban area is in the public interest may be left to the will of the people of Oklahoma expressed through the legislative process, or for decision by this Board if and when holding company proposals of that nature should come before it.

For these reasons, I conclude that the application should be denied.

November 30, 1962

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON 25, D. C.

Item No. 15
11/28/62

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

November 28, 1962

Mr. H. E. Hemmings, First Vice President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Hemmings:

In accordance with the request contained in your letter of November 16, 1962, the Board approves the appointment of Jack A. Byers, at present an assistant examiner, as an examiner for the Federal Reserve Bank of San Francisco, effective January 1, 1963.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,
Assistant Secretary.