

Minutes of the Board of Governors of the Federal Reserve System on Monday, December 27, 1965. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Robertson, Acting Chairman
Mr. Shepardson
Mr. Mitchell
Mr. Maisel

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Young, Senior Adviser to the Board and
Director, Division of International Finance
Mr. Holland, Adviser to the Board
Mr. Solomon, Adviser to the Board
Mr. Molony, Assistant to the Board
Mr. Fauver, Assistant to the Board
Mr. Goodman, Assistant Director, Division
of Examinations
Miss Eaton, General Assistant, Office of
the Secretary
Mr. Furth, Consultant

Messrs. Brill, Koch, Partee, Axilrod, Bernard,
Eckert, Ettin, and Keir of the Division of
Research and Statistics

Messrs. Baker and Gemmill of the Division of
International Finance

Money market review. Mr. Bernard presented a review of Government securities market developments, referring in the course of his comments to tables that had been distributed on money and capital market perspective, on recent interest rate developments, and on bank reserve utilization. The staff then responded to various questions asked by members of the Board, after which Mr. Gemmill reported on foreign exchange market developments and related matters.

Messrs. Goodman, Axilrod, Bernard, Eckert, Ettin, Keir, Baker, Gemmill, and Furth then withdrew and the following entered the room:

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Mr. Hackley, General Counsel
 Mr. Solomon, Director, Division of Examinations
 Mr. Hexter, Associate General Counsel
 Mr. O'Connell, Assistant General Counsel
 Mr. Kakalec, Controller
 Miss Hart and Messrs. Heyde and Smith of the Legal Division
 Messrs. Burton, Egertson, and Lyon of the Division of Examinations

Discount rates. The establishment without change by the Federal Reserve Banks of Philadelphia, Cleveland, Richmond, St. Louis, Minneapolis, Kansas City, and Dallas on December 23, 1965, of the rates on discounts and advances in their existing schedules was approved unanimously, with the understanding that appropriate advice would be sent to those Banks.

Report on competitive factors (Jacksonville-Boone, North Carolina).

A report to the Comptroller of the Currency on the competitive factors involved in the proposed merger of First National Bank of Boone, Boone, North Carolina, into First National Bank of Eastern North Carolina, Jacksonville, North Carolina, was approved unanimously for transmittal to the Comptroller. The conclusion read as follows:

The proposed merger of First National Bank of Eastern North Carolina, Jacksonville, and First National Bank of Boone would have no adverse effect on competition.

Application of Barnett National Securities Corporation (Items 1 and 2). There had been distributed drafts of an order and statement reflecting the Board's denial on November 3, 1965, of the application of Barnett National Securities Corporation, Jacksonville, Florida, to acquire shares of First National Beach Bank, Jacksonville Beach, Jacksonville Beach, Florida.

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After a discussion during which several changes in the statement were agreed upon, the issuance of the documents was authorized. Copies of the order and statement, as issued, are attached as Items 1 and 2.

Research project on links between monetary policy and aggregate demand. A memorandum dated December 21, 1965, from Mr. Brill, which had been distributed to the Board, requested authorization to enter into a contract with the Social Science Research Council for a research project on the linkages between monetary policy and aggregate demand, that is, on the effects of financial factors on spending and investing. The project would be undertaken by a research team headed by Professor Franco Modigliani of the Massachusetts Institute of Technology and Professor Albert Ando of the University of Pennsylvania. Expenditures under the contract were estimated at \$90,000, of which about 40 per cent would be spent in the calendar year 1966 and the remainder in the calendar year 1967. This expenditure would be in addition to the \$20,000 included in the 1966 budget of the Division of Research and Statistics for contract research to be undertaken under the administration of the Social Science Research Council.

Following a discussion of the presently proposed project and of the possibility that other economists holding somewhat different points of view might likewise seek financial aid on research projects, it was agreed that it was important to gain as much information as possible on the linkage process and that any additional research proposals in this

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area should be evaluated on their merits. Unanimous approval then was given to the proposed contract with the Social Science Research Council, as described in Mr. Brill's memorandum, with the understanding that this action also authorized any resulting overexpenditure in the appropriate account of the 1966 budget of the Division of Research and Statistics.

Commingled investment account (Item No. 3). In a letter to the Board dated November 24, 1965, Chairman Patman of the House Banking and Currency Committee stated that he had asked the Attorney General to consider criminal action against First National City Bank, New York, New York, if its plan to launch a proposed commingled investment account was carried out "in contravention of section 21" of the Banking Act of 1933. As a result of the request, Mr. Fred M. Vinson, Assistant Attorney General, had asked the Board in a letter of December 14, 1965, to supply any information it might have concerning the proposal of First National City Bank, including copies of all documents submitted by the bank in support of its proposal. The letter also stated that the Justice Department would be pleased to receive any comments or opinions of the Board concerning the legality of the proposed action.

A distributed memorandum prepared in the Legal Division under date of December 21, 1965, submitted a draft of reply to Mr. Vinson and referred to various enclosures also proposed to be sent. The memorandum noted, with respect to a Legal Division memorandum previously sent to

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Chairman Patman on this subject, that it was not customary to release unpublished documents prepared for a Congressional Committee to other persons or agencies, but in view of Chairman Patman's interest, as indicated by his letter to the Attorney General, it was felt the Board might like to make an exception in the present case.

Unanimous approval was given to furnishing the suggested material to the Justice Department. A copy of the letter sent to Mr. Vinson is attached to these minutes as Item No. 3.

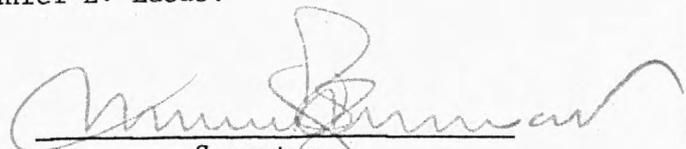
Chase Manhattan proposal. In response to a question regarding the status of the proposal of The Chase Manhattan Bank (National Association), New York, New York, to acquire stock of Liberty National Bank and Trust Company of Buffalo, Messrs. Hackley and Hexter recalled that Chase's request for a section 301 determination, or in lieu thereof a voting permit, was being held in abeyance pending receipt by the Board from counsel for Chase of a brief on the voting permit matter. Meanwhile, however, the Comptroller of the Currency had advised Chase that the proposed transaction could not be consummated without his approval under the Bank Merger Act. The Legal Division had now received from counsel for Chase a copy of an application addressed to the Comptroller. That application therefore was now before the Comptroller, who presumably would request competitive factor reports, and until his decision was made the Board apparently had no reason to take action. If the Comptroller should approve the application, the matter of Chase's request for a voting permit would again become active.

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After discussion of various facets of the matter, it was generally agreed that no action on the part of the Board was called for at this time.

The meeting then adjourned.

Secretary's Note: Governor Shepardson today approved on behalf of the Board a memorandum from the Division of Bank Operations dated December 21, 1965, recommending that Robert B. Haycock, Analyst in that Division, be designated as a witness to the mutilation of facsimile signature plates of Reserve Bank officers in lieu of Daniel E. Lucas.


Secretary

UNITED STATES OF AMERICA
BEFORE THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
WASHINGTON, D. C.

In the Matter of the Application of
BARNETT NATIONAL SECURITIES CORPORATION,
JACKSONVILLE, FLORIDA,
for approval of the acquisition of voting
shares of First National Beach Bank,
Jacksonville Beach, Jacksonville Beach,
Florida.

ORDER DENYING APPLICATION UNDER
BANK HOLDING COMPANY ACT

There has come before the Board of Governors, pursuant to section 3(a)(2) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(a)(2)) and section 222.4(a)(2) of Federal Reserve Regulation Y (12 CFR 222.4(a)(2)), an application on behalf of Barnett National Securities Corporation, Jacksonville, Florida, a registered bank holding company, for the Board's approval of the acquisition of 80 per cent or more of the voting stock of First National Beach Bank, Jacksonville Beach, Jacksonville Beach, Florida.

As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of receipt of the application and requested his views and recommendation thereon. The Comptroller voiced

no objection to approval of the application. Notice of receipt of the application was published in the Federal Register on August 25, 1965 (30 Federal Register 11006), which provided an opportunity for submission of comments and views regarding the application. Time for filing such comments and views has expired and all comments and views filed with the Board have been considered by it.

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

Dated at Washington, D. C., this 27th day of December, 1965.

By order of the Board of Governors.

Voting for this action: Unanimous, with all members present.

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

(SEAL)

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

APPLICATION BY BARNETT NATIONAL SECURITIES CORPORATION FOR APPROVAL
OF THE ACQUISITION OF VOTING SHARES OF FIRST NATIONAL BEACH BANK,
JACKSONVILLE BEACH, JACKSONVILLE BEACH, FLORIDA

STATEMENT

Barnett National Securities Corporation, Jacksonville, Florida ("Applicant" or "Barnett"), a registered bank holding company, has applied to the Board of Governors, under the Bank Holding Company Act of 1956 ("the Act"), for permission to acquire 80 per cent or more of the voting stock of First National Beach Bank, Jacksonville Beach, Jacksonville Beach, Florida ("Bank").

Views and recommendation of supervisory authority. - As required by section 3(b) of the Act, the Board notified the Comptroller of the Currency of receipt of the application and requested his views and recommendation thereon. The Comptroller voiced no objection to approval of the application.

Statutory factors. - Section 3(c) of the Act requires the Board to take into consideration the following five factors: (1) the financial history and condition of the holding company and the banks concerned; (2) their prospects; (3) the character of their management; (4) the convenience, needs, and welfare of the communities and the area concerned;

and (5) whether or not the effect of the proposed 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.

The Board has this date announced approval of an application by Barnett to acquire controlling stock ownership of its affiliate, Barnett First National Bank of Jacksonville, Jacksonville, Florida. Accordingly, for purposes of this Statement, the Barnett First National Bank of Jacksonville will be treated as a subsidiary bank of Applicant.

Applicant's holding company system is comprised of six subsidiary banks which, at December 31, 1964,^{1/} had combined deposits of about \$235 million. Three of the banks are in Jacksonville and the other three are located, respectively, at St. Augustine, DeLand, and Cocoa. By this application, Applicant seeks permission to acquire the only bank in Jacksonville Beach, located about 18 miles east of Jacksonville. Bank has deposits of \$9.4 million.

Financial history and condition, prospects, and management of Applicant and Bank. - The financial history and condition of Applicant are satisfactory. Its prospects, viewed in the light of the sound condition and satisfactory deposit and earnings growth of its subsidiary banks, appear favorable. Its management is regarded as capable and experienced.

^{1/} Unless otherwise indicated, all banking data noted are as of this date.

Bank was chartered as a State banking institution in 1938 and converted to a national bank in 1960. Bank's growth has been steady and its operations reasonably profitable. Bank's financial history and condition are satisfactory. Based thereon, and on the future growth potential of its service area, prospects for Bank's sound growth, either continuing operation independent of Applicant's control or as a subsidiary of Applicant, appear favorable.

Bank's principal organizer and chief executive officer, although 74 years of age, is regarded as a competent bank officer. The executive vice president, who is 54 years of age, has had more than 25 years' banking experience (11 years with Bank) and is also considered competent. Although the latter-mentioned officer has suffered ill health, it is not made to appear that his earlier illness would prevent his taking charge of Bank when the chief executive retires.

Applicant asserts that the age and health factors respecting these two principal officers will soon present a management succession problem that cannot be solved internally and that Bank, because of its size, is unable to attract and retain qualified top management personnel. While the Board recognizes that Applicant could, with its pool of experienced managerial talent, readily solve management succession problems which Bank might encounter, it does not agree that Bank could not, as an independent institution, provide its own solution to any such problems. Apart from the fact that the problem of management succession or replacement in Bank appears at this time to be conjectural,

even should Bank have need to seek management succession from outside, it appears to the Board that Bank's efforts would prove successful. Bank is a \$10 million-asset institution with a good earnings record. It is situated only 13 miles from Jacksonville and within that city's metropolitan area. These considerations should give Bank reasonable, and perhaps advantageous, access to qualified managerial talent within and beyond the State of Florida. Nothing in the record before the Board suggests a contrary conclusion. Accordingly, while Applicant's acquisition of Bank could provide Bank with a convenient and reasonable solution to any future problems of management succession, for the reasons given this consideration does not weigh significantly in favor of approval of the application.

Convenience, needs, and welfare of the communities and area concerned. - Bank's primary service area^{2/} is delineated roughly as a rectangular area extending along the Atlantic coastline for approximately 15 miles from north to south and 2-1/2 to 4 miles from east to west. The area has a population of about 33,000 persons, representing an annual growth rate of about 10 per cent since 1940, and encompasses, from north to south, the cities of Atlantic Beach, Neptune Beach, Jacksonville Beach, and Ponte Vedra (hereafter sometimes referred to collectively as "the Beaches"). There is one other bank in the area, Ocean State Bank (deposits \$4.4 million), which was established in 1962 in Neptune Beach, 1-1/3 miles to the north of Bank.

^{2/} The area from which Applicant estimates virtually all of Bank's deposits of individuals, partnerships, and corporations ("IPC deposits") are derived.

At the northern end of the primary service area is a large naval harbor, Mayport Naval Station. Atlantic, Neptune, and Ponte Vedra Beaches are, for the most part, residential beach areas, while Jacksonville Beach is primarily a small business, motel, and tourist area. The cities are linked together along the coast with no rural areas separating their respective corporate limits. It is Applicant's belief that the area will continue to grow residentially as the Jacksonville suburbs expand away from the downtown area and as more and faster highways are constructed connecting the city and outlying communities. According to Applicant, many people now residing in Atlantic and Neptune Beaches are employed in the City of Jacksonville.

Applicant, while conceding that Bank is now generally serving the convenience, needs, and welfare of its service area, asserts that, under Applicant's ownership, Bank will be able to provide two additional important services. As a result of affiliation with Barnett First National Bank of Jacksonville, Applicant asserts that Bank will provide trust services and, with access to National's experience and knowledge respecting securities investments, Bank will be able to provide improved and expanded investment services for its customers.

As to the proposed provision for trust services, Applicant states no intention either to have Bank seek fiduciary powers or, if such are sought and granted, to install in Bank a trust department.

Rather, Applicant intends that Bank utilize the trust services available at Applicant's large Jacksonville Bank. Save for a closer and more intimate relationship that would be provided by such an affiliation, Bank presently has available to it the services of the trust departments of the three largest banks in Jacksonville, including Barnett First National Bank, on a correspondent bank relationship.

With respect to Applicant's proposal to give Bank access to Barnett First National's securities investment assistance, it is not proposed that Applicant will install an investment department at Bank, nor is there evidence of a need for such installation. Further, the Board is of the view that whatever may be the need of Bank's customers for investment advice or portfolio management, such need can be reasonably and adequately met by Bank through recourse to available commercial sources, or through the large Jacksonville banks, only 18 miles distant, three of which have deposits in excess of \$100 million. In the circumstances presented, the slightly greater assurance of assistance offered by the proposed affiliation does not weigh significantly in favor of approval of Applicant's proposal.

Other services which would be rendered by Applicant to Bank, as a subsidiary, include assistance on providing successor management, modern accounting and check processing, automation, and periodic audit services. Although such services would be of some benefit to Bank and might result in more efficient internal operations, Applicant's holding company system is not the only convenient source for these services.

Advice and assistance in such internal matters are generally available through appropriate supervisory authorities, correspondent banks, and from qualified professional organizations, though perhaps not as economically from the latter two sources as they would be through a parent holding company.

For the foregoing reasons, while considerations respecting the convenience, needs, and welfare of the communities and area concerned appear consistent with approval of the application, the Board finds that such considerations offer only limited support therefor.

Effect on adequate and sound banking, the public interest, and banking competition. - On the basis of the evidence of record showing (1) the areas within which Applicant's subsidiaries and Bank now operate, (2) the geographic and business characteristics of those areas, and (3) the banking alternatives reasonably available to the residents of Bank's service area, the Board concludes that the Jacksonville Metropolitan Area is an appropriate market within which to evaluate the probable effect of Applicant's proposal on the adequacy and soundness of banking, the public interest, and the preservation of banking competition. Consideration is also to be given to certain collateral, but relevant, aspects of the proposal having State-wide effect.

There are five registered bank holding company groups and one other banking group (the "Florida National Group") operating in Florida. The six groups control about 13 per cent of the banks and

23 per cent of all bank deposits in the State. Applicant's subsidiary banks constitute 1.2 per cent of the State's banks, and they control about 3.4 per cent of the deposits of all banks in the State.

Measured on a State-wide basis, the addition of Bank to Applicant's holding company system would not appear to expand the extent of control of banking resources either by Applicant or by all Florida banking groups combined to a degree inconsistent or incompatible with the preservation of banking competition.

Turning to the Jacksonville Metropolitan Area, it is noted that this area is coextensive with Duval County. There are three groups of banks operating in the County: the Atlantic Group, with five banks; the Florida National Group, with six banks; and the Barnett Group with three banks, one of which is its largest subsidiary. Applicant's three banks held, at June 30, 1965, 22 and 23 per cent, respectively, of the total deposits and loans held by all banks in the County. The 14 banks controlled by the three groups hold, combined, 81 per cent of the IPC deposits, 82 per cent of the total deposits, and 79 per cent of the loans held by the 24 banks in the County. Otherwise stated, banks that are not associated with the three groups represent about 40 per cent of all banks in the County, but hold less than 20 per cent of the deposits of all banks. If Applicant's acquisition of Bank were consummated, Applicant's position in the segment of Duval County comprising Bank's primary service area would approach the degree of dominance occupied by the three groups' banks in Duval County. Acquisition

of Bank would give Applicant control of deposits and loans equal to two-thirds of the total deposits and loans now held by the two banks in that area.

Consummation of the proposed acquisition would reduce by one the number of non-group banks in the County. In view of the dominant position now held by group banks in Duval County, any further increase in this position through acquisition by one of the groups of an existing independent bank should be permitted only if favorable considerations clearly outweigh the patently adverse competitive consequences. The Board is unable to find such overriding favorable considerations in this case.

There are, in the Board's opinion, discernible differences between the present proposal and prior acquisitions by bank holding companies in the Jacksonville area which have received Board approval.^{5/} Each of the earlier cases involved the establishment and acquisition of a new bank. Board approvals in those cases did not permit, as would approval of this application, an immediate increase in the concentration of banking deposits under holding company control, elimination of an independent bank, and a decrease in the number of alternative banking sources. Further, in each of the earlier cases the establishment of a new banking outlet was found to be of potentially significant benefit to the convenience, needs, and welfare of the Jacksonville area.

^{5/} In the Matter of The Atlantic National Bank of Jacksonville and Atlantic Trust Company, 1959 F. R. Bulletin 1353 (Nov.), In the Matter of The Atlantic National Bank of Jacksonville and Atlantic Trust Company, 1961 F. R. Bulletin 917 (Aug.), and In the Matter of Barnett National Securities Corporation, 1964 F. R. Bulletin 1138 (Sept.).

As earlier stated, Jacksonville Beach is in the Jacksonville Metropolitan Area, only 18 miles from Jacksonville. A substantial number of the Jacksonville Beach residents are employed in Jacksonville, thus resulting in daily travel between the two areas. The relatively short distance, and the fact that two highways connecting the areas provide the residents of Jacksonville Beach with direct and rapid access to Jacksonville, warrant the conclusion that Jacksonville constitutes a convenient situs for the business and shopping requirements of the Jacksonville Beach residents. It follows, in the Board's judgment, that the Jacksonville banks constitute reasonable alternative sources of banking services for these residents. While the record reflects that a relatively small portion of Barnett First National Bank's total deposits originates in the Jacksonville Beach area, the volume of loans obtained by Barnett First National Bank from Bank's primary service area is not insignificant. Barnett First National Bank derives from Bank's service area commercial and industrial loans and consumer loans equal in dollar volume to approximately 40 per cent, respectively, of the total commercial and industrial and consumer loans held by Bank. The significance of these data becomes more pronounced in the light of the fact that consumer loans comprise nearly 80 per cent of Bank's total loan portfolio. Consummation of Applicant's proposal would eliminate the significant competition that is evidenced for loans arising in Bank's primary service area.

Further, residents of Jacksonville Beach, particularly the segment of the working population employed in Jacksonville, would be deprived of a reasonably accessible alternative source of banking service. The importance of this consideration is to be appraised in the light of the potential development of the area between Jacksonville and Jacksonville Beach. It may be reasonably assumed that Jacksonville Beach will increasingly develop as a suburb of Jacksonville. As this occurs, the potential for increased competition between Bank and Jacksonville banks, including Applicant's Jacksonville subsidiaries, will increase. The benefits of such increased competition to the banking public would be foreclosed by approval of this application. While the Board cannot predict with certitude the precise nature and volume of competition that will develop between the banks of the two areas, the evidence of record satisfies the Board that approval of Applicant's proposal would foreclose a sufficiently meaningful volume of future competition as to be inconsistent with the preservation of competition in the field of banking and contrary to the public interest.

On the basis of all the relevant facts as contained in the record before the Board, and in the light of the factors set forth in section 3(c) of the Act, it is the Board's judgment that the proposed transaction would not be consistent with the public interest and that the application should therefore be denied.

December 27, 1965.

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

4438
Item No. 3
12/27/65

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

December 28, 1965.



Mr. Fred M. Vinson,
Assistant Attorney General,
Criminal Division,
Department of Justice,
Washington, D. C. 20530

Dear Mr. Vinson:

This refers to your letter of December 14, 1965, in which you ask for all information the Board of Governors may have concerning the proposal of the First National City Bank, New York, New York ("First"), to operate a "commingled investment account", including copies of all materials submitted by the bank in support of its proposal. Such copies are enclosed herewith, together with copies of Board correspondence to First regarding its proposal and a legal memorandum supplied to Chairman Patman of the House Banking and Currency Committee pursuant to his request, discussing the legal considerations relating to the proposal under section 32 of the Banking Act of 1933.

The Board has been supplied copies of certain documents filed with the Securities and Exchange Commission in the proceeding under the Investment Company Act of 1940 now pending before that Commission, involving First's proposal. It is assumed, however, that your letter does not have reference to materials in the official record of that proceeding which your Department can more conveniently obtain from the Commission, whose file would be complete.

Except for some of the articles that have appeared in newspapers and other periodicals, equally available to your Department, and not, of course, of any real probative value, the above-described materials comprise all the information of the Board in this matter.

As you are aware, First asked the Board last March for its views on the single question whether section 32 of the Banking Act of 1933 (12 U.S.C. 78) would forbid interlocking service between the bank

and its proposed commingled investment account. Following rather prolonged study of the matter, the Board concluded, on the basis of the information which had been submitted to it, that the commingled account, although required to register as an "investment company" under the quite different and distinct provisions of the Investment Company Act of 1940, should be regarded for purposes of section 32 as nothing more than a somewhat novel variation on traditional banking functions, to be conducted essentially as part of the trust department of the bank. Accordingly, the Board informed First, in a letter dated July 22, 1965, that the prohibition of section 32 would not apply to the proposal, as the Board understood that proposal.

In order to resolve the question whether the prohibition of section 32 would apply to interlocking service between First and its proposed commingled investment account, the Board's initial consideration was whether participations of interests in the account should be regarded as "other similar securities" within the meaning of that section. In view especially of its long-established position that shares in ordinary mutual funds (which for many purposes resemble the proposed participations) are such securities, and after considering the special aspects of the situation before it, the Board concluded that the participations would constitute securities covered under that section.

This conclusion indicated to the Board the pertinence of an inquiry into the question whether or not the proposed action of First might constitute a violation of section 21 of the Banking Act of 1933 (12 U.S.C. section 378). Accordingly, the Board suggested in its letter of July 22, 1965, that First might wish to consult your Department before proceeding with the matter, and was informed subsequently that the bank had done so, in a letter of August 10, 1965, a copy of which is included among the enclosed materials.

The Board has, however, a long-established policy of not expressing an opinion on questions arising under section 21, a criminal statute. This policy was explained in an interpretation published shortly after enactment of the Banking Act of 1933, as follows:

"The section does not give to the Federal Reserve Board any jurisdiction or discretion regarding the matters with which it deals. . . . On the other hand, the section provides a penalty of fine or imprisonment for any violation of its provisions and the determination of the question whether a person should be prosecuted for such violation is a matter entirely within the jurisdiction of the Department of Justice.

"In view of these circumstances, an expression of opinion by the Federal Reserve Board on the question whether the section is violated would not afford protection from prosecution if the Department of Justice upon consideration of the matter should take the position that a corporation had violated the statute and should feel it necessary to prosecute for such violation." (1934 Federal Reserve Bulletin 41)

Mr. Fred M. Vinson

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Equally important, of course, is the fact that any expression by the Board of an opinion that a person or an institution was engaging in criminal activity could have serious implications, regardless of the legal correctness of the opinion.

In addition, it might be remarked that in another interpretation, also published in 1934 when the circumstances surrounding enactment of the statute were still fresh in the minds of commentators, the Board pointed out that its view that "certificates of participation based on mortgages, notes issued in series, and other similar obligations secured by mortgages which are not ordinary mortgage notes" might, depending on the circumstances, be regarded as "securities" for purposes of section 32.

" . . . should not be construed as an expression of opinion by the Board that mortgage notes and other obligations secured by mortgages should [or should not] be considered 'bonds, debentures, notes, or other securities' within the meaning of section 21(a) of the Banking Act of 1933. Said section 21 provides a penalty of fine or imprisonment for violation of its provisions, and the interpretation of the provisions of that section is a matter entirely within the jurisdiction of the Department of Justice."

(1934 Federal Reserve Bulletin 302)

The Board, therefore, believes that the question whether a bank, in performing the proposed function, may be "engaging in the business" of issuing securities for the purposes of section 21, would be within the jurisdiction of your Department and the courts, and that it would not be appropriate for the Board to take a position on the matter.

It is hoped that the enclosed materials will be of assistance to you. If you have any further questions, or if you feel that the Board or its staff can assist you or your staff in any way, please do not hesitate to so advise us.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.

Enclosures