

November 21st, 1914.

SUBJECT: Interpretation of Section 8
of the Act approved October 15, 1914.

My dear Governor:-

A number of letters have been received from bankers and others asking for an interpretation of Section 8 of the Act approved October 15, 1914, and generally referred to as the Clayton Act. Section 8 reads as follows -

"That from and after two years from the date of the approval of this Act no person shall at the same time be a director or other officer or employee of more than one bank, banking association or trust company, organized or operating under the laws of the United States, either of which has deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, and no private banker or person who is a director in any bank or trust company, organized and operating under the laws of a State, having deposits, capital, surplus, and undivided profits aggregating more than \$5,000,000, shall be eligible to be a director in any bank or banking association organized or operating under the laws of the United States. The eligibility of a director, officer or employee under the foregoing provisions shall be determined by the average amount of deposits, capital, surplus, and undivided profits as shown in the official statements of such bank, banking association, or trust company filed as provided by law during the fiscal year next preceding the date set for the annual election of directors, and when a director, officer, or employee has been elected or selected in accordance with the provisions of this Act it shall be lawful for him to continue as such for one year thereafter under said election or employment.

"No bank, banking association or trust company organized or operating under the laws of the United States in any city or incorporated town or village of more than two hundred thousand inhabitants, as shown by the last preceding decennial census of the United States, shall have as a director or other officer or employee any private banker or any director or other officer or employee of any other bank, banking association or trust company located in the same place: PROVIDED, That nothing in this section shall apply to mutual savings banks not having a capital stock represented by shares: PROVIDED, FURTHER, That a director or other officer or employee of such bank, banking association, or trust company may be a director or other officer or employee of not more than one other bank

or trust company organized under the laws of the United States or any State where the entire capital stock of one is owned by stockholders in the other; AND PROVIDED FURTHER, That nothing contained in this section shall forbid a director of Class "A" of a Federal reserve bank, as defined in the Federal Reserve Act, from being an officer or director or both an officer and director in one member bank.

"That from and after two years from the date of the approval of this Act no person at the same time shall be a director in any two or more corporations, any one of which has capital, surplus, and undivided profits aggregating more than \$1,000,000, engaged in whole or in part in commerce, other than banks, banking associations, trust companies and common carriers subject to the Act to regulate commerce, approved February fourth, eighteen hundred and eighty-seven, if such corporations are or shall have been theretofore, by virtue of their business and location of operation, competitors, so that the elimination of competition by agreement between them would constitute a violation of any of the provisions of any of the anti-trust laws. The eligibility of a director under the foregoing provision shall be determined by the aggregate amount of the capital, surplus, and undivided profits, exclusive of dividends declared but not paid to stockholders, at the end of the fiscal year of said corporation next preceding the election of directors, and when a director has been elected in accordance with the provisions of this Act, it shall be lawful for him to continue as such for one year thereafter.

"When any person elected or chosen as a director or officer, or selected as an employee of any bank or other corporation subject to the provisions of this Act is eligible at the time of his election or selection to act for such bank or other corporation in such capacity his eligibility to act in such capacity shall not be affected and he shall not become or be deemed amenable to any of the provisions hereof by reason of any change in the affairs of such bank or other corporation from whatsoever cause, whether specifically excepted by any of the provisions hereof or not, until the expiration of one year from the date of his election or employment".

It will be observed that paragraph one and paragraph three each begins "That from and after two years from the date of the approval of this Act"; while paragraph two contains no such provision. The question has accordingly been raised whether or not paragraph two becomes immediately effective or after the expiration of two years from the approval of the Act. An analysis of this section

will show that paragraph one and paragraph two both deal with the question of qualification of directors serving on the Boards of banks organized under the laws of the United States while paragraph three has reference to corporations engaged in whole or in part in commerce and to common carriers.

Paragraph one and paragraph three each begins with the word "That" which introduces the grammatical object of the enacting phrase, and as the second paragraph has no such introductory word and deals with the same general subject matter as paragraph one, it seems entirely clear that paragraphs one and two constitute one enactment and that the provisions of paragraph two become effective at the same time as the provisions of paragraph one, - namely, two years after the passage of the Act. This view is borne out by an analysis of paragraphs one and two.

Paragraph one provides in effect that no person shall at the same time be a director, officer or employee of more than one bank organized or operating under the laws of the United States, if such person is a director, officer or employee of a bank having aggregate resources of more than five million dollars. If such person is a director, officer or employee of a state bank having aggregate resources of more than five million dollars, he shall not be eligible to serve as a director, officer or employee of any bank organized or operating under the laws of the United States.

Paragraph two provides in effect that no person shall be a director in a bank organized under the laws of the United States and located in a city of more than two hundred thousand inhabitants if such person is a director of any other bank, banking association or trust company located in the same place. There are certain exceptions to this provision, namely -

- (a) Mutual savings companies having no capital stock are excluded.
- (b) Class "A" directors of Federal reserve banks may serve as directors of other banking institutions in the same place.
- (c) A director, officer or employee of one banking association in such city may be a director, officer or employee of not more than one other bank or trust company organized under the laws of the United States where the entire capital of one is owned by stockholders in the other.

It will, therefore, be observed that these two paragraphs relate to the question of what persons are eligible to serve on the Board of Directors of a bank organized under the

laws of the United States, or to serve in the capacity of officer or employee of such bank.

This being a Federal statute it cannot, of course, relate to the qualifications of state bank directors but merely provides that persons who are directors of state banks under certain conditions shall be ineligible to serve as directors of banks organized under Federal law, and since both paragraphs relate to this one subject, there would seem to be no justification for treating them separately as there is nothing to indicate that they constitute two separate enactments.

Respectfully,

(Signed) M. C . Elliott.

Counsel:

Hon. Charles S. Hamlin,
G o v e r n o r .

12/5/14.