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## F E D E R A L   R E S E R V E   B O A R D

WASHINGTON

February 9, 1915.

My dear Governor:-

The following questions have been referred to this office by the Board for an opinion:

(1) Under Regulation F-I-(c)-3, does the term "taxable property" include franchises where such franchises are actually taxed upon the valuation set forth in the city's return of taxable property?

(2) Under Section 14 of the Federal Reserve Act, sub-section (b) where the Federal reserve bank is authorized to "buy and sell.....bills, notes, revenue bonds and warrants with a maturity from date of purchase of not exceeding six months", does this language permit the purchase of bonds having long maturities but which are acquired by a Federal reserve bank within six months of the date of maturity and, if so, under what circumstances may such purchases be made?

In answer to question (1), Regulation F reads in part as follows:

"I. A Federal Reserve Bank may purchase such warrants as are issued by a municipality.....

(c) 3. Whose net funded indebtedness does not exceed ten per centum of the valuation of its taxable property, to be ascertained by the last preceding valuation of property for the assessment of taxes".

This provision is not contained in the statute but is a matter of regulation and the language to be construed is accordingly that of the Board and it is within its discretion to determine whether or not the term "taxable property" shall include franchises.

## C. S. H. No. 2.

The courts have generally construed a franchise to be property subject to taxation and so giving the language "taxable property" its ordinary interpretation it would seem clear that franchises which are actually taxed and which are included in the city's return of taxable property should be taken into consideration in determining the net funded indebtedness as provided in Regulation F.

In the case of The West River Bridge Company vs. Dix et al., 6 How. (U. S.) 507-533, the Court said

"A franchise is property, and nothing more; it is incorporeal property, and is so defined by Justice Blackstone, when treating, in his second volume, chap. 3, page 20, of the Rights of Things".

In the case of Society for Savings vs. Coite., 6 Wall (U. S.) 594-606, the Court holds that the franchise of a private corporation is a legitimate subject of taxation. This doctrine is affirmed in the case of Provi- dent Institution vs. Massachusetts, 6 Wall (U. S.) 611-623 and again in the case of Hamilton Company vs. Massachusetts, 6 Wall, (U. S.) 632-638.

In answer to the second inquiry submitted, the Act provides that "revenue bonds.....with a maturity from date of purchase of not exceeding six months" may be purchased. The provision that such bonds must mature within six months from the "date of purchase" clearly indicates that Congress contemplated that such bonds might have a maturity of longer than six months at the date of issue.

It is true that the term "revenue bonds" is sometimes construed to refer to short-term bonds or warrants issued by municipalities to defray expenses for a short period prior to the collection of taxes.

The word "revenue", however, does not of itself limit the term of a bond to that of a fixed maximum maturity but instead refers to the character or nature of the bond rather than to the time of its maturity.

In other words, giving the language its ordinary interpretation, it would seem merely to indicate bonds of any maturity, payment of which is guaranteed out of the collection of taxes or assured revenues.

C. S. H. No. 3.

The Act specifically provides that such bonds must be issued in anticipation of the collection of taxes or assured revenues but does not prescribe how long in advance of collection of such taxes the bonds may be issued. The provisions of the Act would seem to be complied with if, at the time of issue, provision is made for the establishment of a redemption or sinking fund which will be sufficient and available for the payment of the bonds at maturity and are, therefore, self-liquidating at the expiration of six months.

It is, of course, understood that all other provisions of Regulation "F", Series 1915, must be complied with before such bonds may be purchased.

In this connection, I beg to call attention to Paragraph VI, Regulation "F", which is as follows:

"Opinion of recognized counsel on municipal issues or of the regularly appointed counsel of the municipality as to the legality of the issue shall be secured and approved in each case by counsel for the Federal reserve bank."

The Board has ruled that where such opinions have been procured and approved by counsel for a Federal reserve bank, any other Federal reserve bank shall be deemed to have complied with the requirement of this paragraph if it secures certified copy of such opinion and approval.

In order to avoid duplication of work I would, therefore, respectfully suggest that where such opinions have been procured and approved by counsel for a Federal reserve bank copy should be filed with the Federal Reserve Board so as to be available for other counsel who are called upon to pass upon the legality of the same issues.

Respectfully,

(Signed) M. C. ELLIOTT

Counsel.

Hon. Charles S. Hamlin,  
Governor.