

October 12, 1915.

S i r :

In an opinion published on page 222 of the August issue of the Federal Reserve Bulletin this office discussed the following question which had been submitted to it for consideration:

"If a director of a national bank having deposits, capital, surplus and undivided profits aggregating more than \$5,000,000 is elected at the annual meeting in January, 1916, may he, without violating Section 8 of the Act referred to, continue to serve until January, 1917, and at the same time serve as a director of another national bank?"

It had been suggested that directors under such circumstances, elected in January, 1916, could serve until January, 1917, by reason of that provision of the Act, generally known as the Clayton Act, which reads as follows:

"\* \* \* 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."

In the opinion referred to, however, after reviewing the general provisions of the Act in question, the conclusion was reached that a person who is a director or other officer of a bank having aggregate resources of more than \$5,000,000 will be ineligible to serve as a director on the board of another national bank or of a State bank or trust company which is a member of the Federal reserve system after October 15, 1916, although elected at a meeting held in January, 1916.

From letters subsequently submitted to this office for consideration it appears that this opinion has been interpreted to mean that no bank can elect a director at the meeting to be held in January, 1916, if, after October 15, 1916, such director will become ineligible, and this specific question has been submitted to this office for consideration.

Section 5145, Revised Statutes, provides in part that directors of national banks shall be elected -

"\* \* \* at meetings to be held on such day in January of each year as is specified therefor in the articles of association. The directors shall hold office for one year and until their successors are elected and have qualified."

Section 5146, Revised Statutes, provides in part that -

"Any director who ceases to be the owner of the required number of shares of the stock or who becomes in any other manner disqualified, shall thereby vacate his place."

Section 5148, Revised Statutes, provides that -

"Any vacancy in the board shall be filled by appointment by the remaining directors, and any director so appointed shall hold his place until the next election."

In view of these provisions it seems clear that directors who will be ineligible to serve after October 15, 1916, may be elected at the annual meetings to be held in January, 1916; that they will become disqualified to serve on October 15, 1916, and that their offices will thereupon become vacant and their successors may be appointed by the remaining directors, who shall serve until the next election.

In the case of State banks or trust companies which are members of the Federal reserve system, but which are not subject to the provisions of the Revised Statutes above quoted, successors to directors becoming disqualified on October 15, 1916, should be elected in accordance with the charters and by-laws of such associations and in conformity with any State laws which provide for filling vacancies on boards of directors of such State banks or trust companies:

Respectfully,

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Counsel.

To Hon. Charles S. Hamlin,  
Governor, Federal Reserve Board.