FEDERAL RESERVE BOARD

WASHINGTON

August 14, 1917.

S i r :

The attached papers raise sundry questions with reference to the proper interpretation of the recent amendment to Section 22 of the Federal Reserve Act. These questions may be briefly summarized as follows:

(1) Is it necessary that the Board of directors should authorize the receipt on deposit of checks, drafts, or other items payable on demand from officers, or directors of the bank?

(2) Where an officer or director is a member of the firm or a stockholder in a corporation which is a customer of the bank, is it necessary that a majority of the directors should approve loans made to such firm or corporation?

(3) Would it be consistent with the purposes of the Federal Reserve Act to substitute for the resolution proposed by the Federal Reserve Board a written form of assent to be signed by a majority of the board of directors?

In reply to these several inquiries, it is respectfully submitted that the Board should adhere to its established policy of not undertaking to determine in advance whether a given transaction constitutes a violation of Section 22. Inasmuch as a violation of the provisions of this Section is made a criminal act subject to a severe penalty, the Board has no jurisdiction in the matter, and, as an administrative body, should not undertake to prejudge any case that may arise.

While the Board should not for reasons stated endeavor to express definite opinions on concrete cases arising, there would seem to be no objection to its advising the banks as to its understanding of the general purpose of this amendment, just as it approved in a former instance an opinion of this office dealing with the general purpose of Section 22. In this view, considering the context and the circumstances under which this amendment was added, it seems that Congress intended to remove any doubt as to the right of banks to receive deposits from directors under the same terms and conditions as it receives deposits from their customers and to pay such rate of

interest as it pays to other customers. It also intended to remove any doubt as to the right of any bank to make loans to directors on the same general terms and conditions that it makes loans to their customers, it being provided in the latter case that as a condition precedent the directors, by an affirmative vote or written assent of at least a majority of the members of the Board, shall authorize such loan. The receipt of deposits with interest would seem to contemplate the receipt of checks, drafts, and other demand items on deposit, as well as the receipt of money or currency, but whether or not giving immediate credit to a director for such items may be construed as a loan until the item is actually collected involves a question of law upon which the Board should not express a definite opinion.

If the counsel for the bank should reach the conclusion that the courts might construe such a deposit to be a loan, the bank could by resolution of the Board authorize the receipt of such items, but this is a question which should be determined by the bank's counsel. In like manner, a loan to a firm or corporation in which the director is interested might or might not be construed by the courts to be a loan to the director within the meaning of this act; and so counsel for the bank should determine whether these transactions should be included within the resolution referred to. While this statute, a penal statute, would in all probability be liberally construed by the courts so as to avoid the possibility of including transactions not contemplated by Congress, the Board should not undertake to rule on the substance of any transaction or to express an opinion as to whether it would or would not constitute a violation of law. It should confine its attention to a consideration of those acts which are designed to make it a matter of record on the minutes or records of the bank that the officers have taken the affirmative action called for, and, to this end, the Board has heretofore suggested a form of resolution to be passed by the directors of the bank giving their assent to loans to directors. In this connection it might be stated that the substitution of the written assent of a majority of the directors for the affirmative vote of a majority would seem to be in accordance with the terms of the Act.

Respectfully,

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Governor, Federal Reserve Board.