

DEPARTMENT OF JUSTICE
WASHINGTON

November 26, 1917.

Sir:

I have your letter dated November 16, 1917, with reference to the authority of the Federal Reserve Board to grant to national banks located in New York the power to act as trustee, executor and administrator. I am of opinion that the Reserve Board has no such authority under existing laws.

Section 11 (k) of the Federal Reserve Act of December 23, 1913, c. 6, empowers the Reserve Board:

Sec.11(k). To grant by special permit to national banks applying therefor, when not in contravention of State or local law, the right to act as trustee, executor, administrator, or registrar of stocks and bonds under such rules and regulations as the said Board may prescribe. (38 Stat. 251, 262.)

The congressional enactment therefore authorizes the special permit only "when not in contravention of State or local laws".

The Act of April 16, 1914, Article V, section 223, Laws of New York 1914, c. 369, p. 1371, provides:

No corporation other than a trust company organized under the laws of this State shall have or exercise in this State the power to receive deposits of money, securities or other personal property from any person or corporation in trust, or have or exercise in this State any of the powers specified in subdivisions one, four, five, six, seven and eight of section one hundred eighty-five of this article, nor have or maintain an office in this State for the transaction of, or transact, directly or indirectly, any such or similar business, except that a federal reserve bank may exercise the powers conferred by subdivision one of such section if authorized so to do by the laws of the United States * * * .

Subdivisions 1, 4, 5, 6, 7, and 8 of section 185 of Article V referred to confer authority upon trust companies to act as registrar of stocks and bonds, as executor and administrator, and as trustee in various capacities.

The laws of New York empower only trust companies organized under the laws of that State to act as trustee, executor and administrator. This is not a case where the local law simply authorizes State banks to assume trust company functions. Fellows v. First National Bank, 192 Mich. 640. Corporations other than those organized in New York are expressly prohibited from exercising such powers. Since the national banks in question are not organized under the laws of New York, a special permit to act as trustee ^{be} would plainly in contravention of the State law.

I find nothing in the opinion of Mr. Chief Justice White in First National Bank v. Fellows, 244 U. S. 416, which would justify, in the present matter, a different construction of the unambiguous provisions of the controlling statutes. The language of the present Chief Justice demonstrates the power of the national legislature to confer authority upon national banks to act as trustee, executor and administrator, where such powers are exercised by State trust companies, even though the State law discriminates against the national agencies in this regard. The power of Congress to determine how far national banks may be subject to State control is settled, and State regulations which conflict with the congressional enactments are invalid. Davis v. Elmira Bank, 161 U. S. 275; Easton v. Iowa, 188 U. S. 220; VanReed v. National Bank, 198 U. S. 554. But in this case Congress has not exerted its power. By section 11 (k) it has explicitly constituted the local statutory provisions as the criterion of the corporate capacity of national banks. The New York statute, therefore, can not fairly be said to deny to national banks operating in New York a power Congress intended they should have.

Very respectfully,

T. W. GREGORY

The President.

Attorney General