FEDERAL RESERVE BOARD

WASHINGTON

March 31,1918.

X-1432
(Revised)

Subject: Section 11 (k) of the Federal Reserve Act.

Sir:

An opinion has been asked with reference to the construction of Section 11 (k) of the Federal Reserve Act as amended by the Act of September 26, 1918. That section as amended, provides in part that the Federal Reserve Board shall be authorized and empowered

> "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, registrar of stocks and bonds, guardian of estates, assignee, receiver, committee of estates of lunatics, or in any other fiduciary capacity in which State banks, trust companies, or other corporations which come into competition with national banks are permitted to act under the laws of the State in which the national bank is located.
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> "Whenever the laws of such State authorize or permit the exercise of any or all of the foregoing powers by State banks, trust companies, or other corporations which compete with national banks, the granting to and the exercise of such powers by national banks shall not be deemed to be in contravention of State or local law within the meaning of this Act."

The question for determination is whether a national bank may exercise any of the eight powers expressly set forth in the law quoted above in any case where neither State banks, trust companies nor other competing corporations are authorized to exercise those powers. In other words, in a State where State banks or trust companies may exercise all of these eight powers with the exception of "administration", for instance, may national banks located in that State be permitted to act in that capacity?

Under the interpretation of the term "when not in contravention of State or local law" as construed before the amendment of September 26,1918 and as generally followed by the Federal Reserve Board prior to that date, there is no doubt that the Board may permit a national bank in such a case to act as "administrator" if there is no express provision in the laws of the State which either directly or by necessary implication prohibits national banks from acting in that capacity.

It may be argued that the second paragraph quoted above was intended to make a complete and exclusive definition of what constitutes "when not in contravention of State or local law" and that even though there is no express

provision of the State law which prohibits national banks from exercising any particular fiduciary power, nevertheless, such banks shall not be permitted to act in any fiduciary capacity in which a State bank, trust company or other competing corporation cannot act. It does not appear, however, that this construction can properly be supported nor that it is consistent with the purpose for which the amendment was enacted.

The phrase "when not in contravention of State or local law" is the only restrictive clause applicable in this discussion for it is apparent that the succeeding paragraph is permissive rather than restrictive and operates solely as an exception to the restrictive clause of the first paragraph. The purpose of this exception was merely to insure to a national bank the right to exercise fiduciary powers in any case where a State bank, trust company or other competing corporation is permitted under the State law to exercise those powers, even if the State laws should contain an express provision either directly or by necessary implication prohibiting national banks from doing so.

In other words, the sole fact that Congress expressly provided that it is not in contravention of State law within the meaning of the first paragraph of Section 11 (k) for a national bank to exercise any fiduciary power which a State bank or trust company may exercise, cannot of itself reasonably be construed to imply that it is in contravention of State law for a national bank to exercise a fiduciary power which a State bank or trust company cannot exercise. If that had been the intention of Congress the term "when not in contravention of State or local law" would have been omitted from the first paragraph and the second paragraph would have been made to read substantially as follows:

> "No national bank shall be permitted to exercise any of the foregoing powers which neither State banks, trust companies or other competing corporations are permitted to exercise under the State law."

That, however, was not done. The restrictive phrase "when not in contravention of State or local law" was retained in the first paragraph without change and the second and supplementary paragraph was inserted solely to protect national banks from any possible discrimination on the part of State legislators. In short, while giving to the legislature of each State in the first paragraph, the right expressly to prohibit national banks from exercising fiduciary powers, Congress, in the second paragraph, eliminates the possibility of discrimination against national banks by providing, as a rule of law, that no State statute shall be construed to prohibit a national bank from exercising any fiduciary power which a State bank, trust company or other competing corporation can exercise.

It is respectfully submitted, therefore, that the Federal Reserve Board may legally approve the application of any national bank to exercise any of the fiduciary powers authorized by Section 11(k) unless there is an express statute of t the State in which the national bank is located which either directly or by necessary implication prohibits a national bank from exercising those powers, and that even in the case where there is such an express statute, the Board may approve the application if any State bank, trust company, or other competing corporation in that State is permitted to exercise the powers applied for by the national bank. That, I believe, was the intention of Congress and the purpose of the law as amended.

Respectfully,

GEORGE L. HARRISON.

General Counsel.

Hon. W.P.G. Harding,
Governor, Federal Reserve Board.