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July 16, 1923.

TO the Federal Reserve Board)
(Extent of Board's Power in Pre-
FROM Mr. Wyatt, General Counsel.) scribing Conditions of Membership for State Banks.

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The opinion of this office has been requested on the question whether in admitting State banks to membership in the Federal Reserve System the Federal Reserve Board has the right to prescribe any conditions of membership which it deems necessary or advisable in order to carry out the spirit and purpose of the Federal Reserve Act or whether it may prescribe only such conditions as are necessary to carry out the express provisions of the Act; and specifically whether the Board may impose a condition prohibiting the establishment of branches without its consent.

The answer to this question depends upon the proper interpretation of the following provisions of Section 9 of the Federal Reserve Act as amended:

> "Any bank incorporated by special law of any State, or organized under the general laws of any State or of the United States, desiring to become a member of the Federal Reserve System, may make application to the Federal Reserve Board, under such rules and regulations as it may prescribe, for the right to subscribe to the stock of the Federal Reserve bank organized within the district in which the applying bank is located. Such application shall be for the same amount of stock that the applying bank would be required to subscribe to as a national bank. The Federal Reserve Board, subject to such conditions as it may prescribe, may permit the applying bank to become a stockholder of such Federal Reserve Bank.
> "In acting upon such application the Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this act."

* *

" * * * Subject to the provisions of this act and to the regulations of the Board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks; * * *."

OPINIONS OF BOARD'S FORMER COUNSEL.

Before discussing the results of my own investigation of this question, I wish to call attention to the fact that all of my predecessors in this office have advised the Board that it has power to prescribe conditions for the admission of State banks to membership which go beyond the express provisions of the Federal Reserve Act, andat least two of them have held specifically that the Board is authorized to prescribe as a condition of membership that the applying bank shall not establish any additional branches except with its consent.

In a memorandum addressed to Honorable A. C. Miller of the Federal Reserve Board, under date of August 2, 1917, Honorable Milton C. Elliott, who was the first General Counsel to the Federal Reserve Board, said:

> "In my opinion, Mr. Perrin's letter to Mr. Giannini correctly answers the question submitted. It may be well, however, for him to supplement these answers by calling attention to the fact that, while Section 9 does not impose restrictions other than those mentioned by Mr. Perrin, it authorizes the Board to impose certain conditions upon membership of State banks when the corporate powers possessed by the applying bank are inconsistent with the purposes of the Federal Reserve Act. This being true the Board might reasonably and probably would, in acting upon the application of the Bank of Italy, which has sixteen branches, impose the condition that the number of branches should not be increased without express approval of the Federal Reserve Board."

In a memorandum addressed to the Board by Mr. George L. Harrison, its second General Counsel, under date of October 3, 1919, it is stated that:

> "Under the terms of Section 9 of the Federal Reserve Act, any State bank which becomes a member of the Federal Reserve System shall, subject to the provisions of the Act and the Board's regulation, retain its full charter and statutory rights as a State bank and shall continue to exercise all corporate powers granted it by the State in which it was created. The Federal Reserve Board, however, is directed in acting upon applications of State banks to consider whether or not the corporate powers exercised by the bank are consistent with the purposes of the Act. Consequently, if an applying bank possesses charter powers which the Board deems to be inconsistent with the purposes of the Federal Reserve Act, the Board may properly, as a condition of admission, require that the State bank agree not to exercise such powers or agree to exercise them in such manner and subject to such limitations as the Board may impose."

And in a memorandum dated December 12, 1921, Mr. Walter S. Logan, the Board's third General Counsel expressed the opinion that, "Section 9 authorizes the Board to impose its usual condition of membership with respect to the establishment of branches."

Copies of these opinions are attached hereto.

MY CONCLUSION.

In view of the importance of this question and the earnestness with which the contrary view has been urged upon the Board by eminent Counsel, I have not been content merely to adopt the opinion of my predecessors, but have made a thorough, independent, and impartial investigation of the entire subject, with the very able assistance of Mr. Vest, Assistant Counsel. Such investigation has convinced me beyond any doubt that the conclusions of my predecessors were entirely correct, and that the Board has power, in admitting State banks to membership in the Federal Reserve System, to prescribe such reasonable conditions of membership as in its discretion it deems necessary or advisable in order to carry out the spirit and intent of the Federal Reserve Act; that its power is not limited to prescribing such conditions as are necessary to carry out the

express provisions of the Act; and that it may prescribe as a condition of membership that the applying bank shall not establish any additional branches without the consent of the Federal Reserve Board.

HISTORY OF DEVELOPMENT OF SUBJECT.

It is believed that a much clearer understanding of this question will result from a chronological discussion of the history of its development.

Original Statute and Practice Thereunder.

Section 9 of the Federal Reserve Act as originally enacted provided, in part, as follows:

> "The Organization Committee or the Federal Reserve Board under such rules and regulations as it may prescribe, subject to the provisions of this section, may permit the applying bank to become a stockholder in the Federal Reserve Bank of the district in which the applying bank is located."

Acting under authority of this provision, the Board has always understood that it has the power to impose on State banks admitted to membership such conditions as in its discretion it deems necessary or advisable. It acted on the theory that, even if this power were not included in the power to prescribe rules and regulations, it was an incident of the power to approve or reject the application of any particular state bank, in the Board's discretion. In other words, it acted on the theory that the discretionary power to approve or reject any application included the power to approve any application on such conditions as it might prescribe.

The Board has consistently exercised this power from the very beginning and has never hesitated to prescribe such conditions of membership as in its discretion it deemed necessary or desirable. Among other conditions, it customarily prescribed that before being admitted to membership a State bank should agree not to establish any branches without

its consent. This practice of the Board in imposing conditions of membership had become well established before Section 9 was amended in any way. The amendments, therefore, were enacted in the light of this administrative practice and must be construed accordingly.

The Federal Reserve Board's letter transmitting its first regulations with reference to membership of State banks (Regulation M, Series of 1915) contained the following statements which indicate the Board's understanding of the scope of its power as well as the spirit in which it approached this problem:

> "A unified banking system, embracing in its membership the well-managed banks of the country, small and large, State and National, is the aim of the Federal Reserve Act. There can be but one American credit system of nation-wide extent, and it will fall short of satisfying the business judgment and expectation of the country and fail of attaining its full potentialities if it rests upon an incomplete foundation and leaves out of its membership any considerable part of the banking strength of the country. The way must be opened for State banking institutions to contribute their share to the capital and resources of the Federal Reserve Banks, in harmony with the intent of the Federal Reserve Act and in accordance with its provisions. State banks, trust companies, and national banks have their distinctive characters and places in the American banking organization, and these should be respected in coordinating them in the Federal Reserve System. The problem presented is to find a basis upon which these different types of banking institutions may thus be associated which shall be fair to each and which will not require greater uniformity of operation than may be necessary to the attainment of the purposes of the Federal Reserve Act.
>
> "Appreciating fully that the strength of the Federal Reserve System is to be measured by the quality and character of its members, rather than by their number, the Federal Reserve Board is prepared to use the broad discretionary power vested in it by the Federal Reserve Act to bring about this coordination on the basis of equity and practicability. The Board has sought, in the regulations governing the admission of State banks and trust companies hereto appended, first, to establish only such reasonable standards of admission as will be generally recognized as necessary to protect the Federal Reserve System and the national banks, whose membership in the system is obligatory, against the admission of any bank which would be a source of weakness rather than of strength, and, second, to prescribe such regulations governing

their conduct as will insure a reasonable conformity to fundamental principles deemed essential to the success of the new banking system.

* *

"The Board realizes, however, that membership also carries with it of necessity obligations as well as privileges. The Federal Reserve Act imposes certain fundamental conditions governing the membership of State banks in the Federal Reserve System, and prescribes that banks not organized under the Federal law must comply with the capital and reserve requirements relating to national banks, and must conform to the provisions of law imposed upon national banks respecting the limitation of liability which may be incurred by any person, firm, or corporation to such banks, the prohibition against purchases of or loans upon stock of such banks, the withdrawal or impairment of capital, and the payment of unearned dividends, and must conform to other provisions of the Federal Reserve Act applicable to member banks, such as restrictions on the amount of acceptances by such banks and on transactions between such banks and their directors, and to such rules as the Federal Reserve Board may prescribe.

* *

"The conditions of membership of State institutions are, furthermore, prescribed only in general terms in the act, the further and final elaboration of them being left to the Federal Reserve Board, which is vested with the necessary discretionary authority."

These statements show that when it first considered this subject the Board took the position that it was authorized and expected to impose conditions of membership which should go beyond the express provisions of the Act and might include any provisions which the Board in its discretion believed necessary to carry out the purpose and intent of the Act.

The text of the regulation (Regulation M, Series of 1915) provided, in part, as follows:

"In passing upon an application the Federal Reserve Board will consider especially -

"(1) The financial condition of the applying bank or trust company and the general character of its management.

"(2) Whether the nature of the powers exercised by the said bank or trust company and its charter provisions are consistent with the proper conduct of the business of banking and with membership in the Federal Reserve Bank.

"(3) Whether the laws of the State or district in which the applying bank or trust company is located contain provisions likely

to interfere with the proper regulation and supervision of member banks.

" * * * Whenever the Board may deem it necessary, it will impose such conditions as will insure compliance with the act and these regulations. When the certificate of approval and any conditions contained therein have been accepted by the applying bank or trust company, stock in the Federal Reserve Bank of the district in which the applying bank or trust company is located shall be issued and paid for under the regulations of the Federal Reserve Act provided for national banks which become stockholders in the Federal Reserve Banks.

* *

"Every State bank or trust company while a member of the Federal Reserve System -

"(1) Shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise the same functions as before admission, except as provided in the Federal Reserve Act and the regulations of the Federal Reserve Board, including any conditions embodied in the certificate of approval.

The portions of Regulation M, Series of 1915 above quoted, were repeated in substantially the same form in the Board's Regulation H, Series of 1916.

Amendment of June 21, 1917.

On June 21, 1917, there was enacted into the law a bill which had been drafted and submitted to Congress by the Federal Reserve Board for the purpose of making a number of amendments to various provisions of the Federal Reserve Act. One of the principal purposes of those amendments was to induce more State banks to join the Federal Reserve System, and this result was sought in two ways; (1) By assuring them that the liberal interpretation of the law previously adopted by the Board would not be changed and that the Board would not amend those portions of its regulations which assured to State member Banks the continued exercise of the rights enjoyed by them under State law, subject to such conditions as the Board might prescribe prior to the admission of such banks to membership; (2) by repealing a number of provisions of the Federal Reserve Act which subjected State member banks to examination by the

Comptroller of the Currency and to various provisions of the National Bank Act. In other words, those portions of the bill which pertain to State bank membership were designed to do two things: (1) To incorporate into law the Board's liberal interpretation of the Act and certain provisions of its regulations based thereon; and (2) To eliminate certain other portions of the Act which State banks had deemed objectionable.

The original language of that part of Section 9 last quoted above, was amended by the Actof June 21, 1917, to read as follows:

> "The Federal Reserve Board, subject to such conditions as it may prescribe, may permit the applying bank to become a stockholder of such Federal Reserve Bank."

The substitution of the word "conditions" for the words "rules and regulations" which appeared in the corresponding portion of the original act clearly indicates that Congress intended to sanction the Board's established practice of imposing conditions of membership (which quite frequently limited the exercise of the applying bank's corporate powers). The power to prescribe rules and regulations which was originally conferred on the Board in the first paragraph of Section 9 was covered in a new paragraph inserted by the amendment of June 21, 1917, as hereinafter explained, and this indicates that Congress intended to make a distinction between (1) conditions of membership prescribed by the Board and voluntarily agreed to by the applying bank prior to admission and (2) rules and regulations which the Board might prescribe at any time and might amend subsequent to the admission of any bank.

The same Act also made certain additions to Section 9, which are pertinent to this discussion. A new paragraph reading as follows, was added after the clause last above quoted:

"In acting upon such application the Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this act."

A comparison of this paragraph with the above quoted provisions of Regulation M, Series of 1915, will show that it was merely an adaptation of the principles previously announced by the Board as a basis for its action on the applications of State banks for membership. This demonstrates beyond a doubt that Congress did not intend to change the Board's established practice regarding the applications of State banks for membership, but rather intended to confirm and perpetuate such practice.

The tenth paragraph of Section 9, which was also added by the amendment of June 21, 1917, contains the following sentence:

"Subject to the provisions of this act and to the regulations of the Board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks: * * * "

This new paragraph was also an adoption by Congress of a portion of Regulation M, Series of 1915, and Regulation H, Series of 1916, and further indicates the intent of Congress to approve the Board's construction of the Act and its established practice in acting upon applications for membership. The phraseology of this provision is substantially the same as the wording of the Board's regulation, except that the words "including any condition embodied in the certificate of approval" found in the regulations are omitted from the Act. It seems clear that Congress omitted these words from this portion of the Act, because the power to impose "conditions" was specifically confirmed elsewhere,

i. e., in paragraph 1 of Section 9.

It is obvious, therefore, that all these changes in the language of Section 9 were made, not for the purpose of changing the substance of the law as it had been construed by the Federal Reserve Board, but rather for the purpose of clarifying the law and writing into the statute itself the liberal interpretation which the Board had given it, thus assuring the State banks that the Board would not amend its regulations in this respect or adopt a different interpretation of the law.

Practice of Board subsequent to Amendments.

That this was the Board's contemporaneous construction of the amendment of June 21, 1917, is indicated by the fact that the above quoted portions of the regulations of 1915 and 1916 are to be found in substantially the same form in the new regulations issued by the Board on June 22, 1917, for the purpose of incorporating the changes made in other parts of its regulations by the amendment of June 21, 1917. The Board, therefore, at the time of the passage of this amendment must have understood that Congress intended to make no changes in these features of State bank membership. This is especially important in view of the fact that the Board had drafted and recommended this amendment to Congress, and, therefore, must have been intimately familiar with its purpose and intended effect. The provisions of the present Regulation H are substantially the same in the respects discussed, as they were when issued on June 22, 1917, the day after the amendment was signed by the President.

Furthermore, the Board has continued to prescribe many of the very same conditions of membership (including that with reference to the establishment of branches) as it prescribed prior to the amendment of June 21, 1917. At least two or three of these conditions have been

prescribed for every State bank admitted to membership since June 21, 1917.

The Board has thus been entirely consistent in construing the amendment of June 21, 1917, as approving its previously established practice of prescribing conditions of membership which go beyond the express terms of the Act.

THE LAW AS TO STATUTORY CONSTRUCTION BY EXECUTIVE DEPARTMENTS.

The consistent and well established practice of the Board in prescribing for State banks admitted to membership, any conditions which it deems necessary to carry out the spirit and purposes of the Federal Reserve Act, is to be given great weight in the construction of this statute, because the Board is the executive authority charged with the duty of administering the Act, and in such case the uniform construction of a statute by the executive authority is not to be overruled except where plainly erroneous.

This is a well settled rule of statutory construction and has been repeatedly recognized by the United States Supreme Court. It is stated in United States v. Johnston, 124 U. S. 236, by Mr. Justice Harlan:

> "In view of the foregoing facts the case comes fairly within the rule often announced by this court, that the contemporaneous construction of a statute by those charged with its execution, especially when it has long prevailed, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, and unless it be clear that such construction is erroneous."

In the case of Robertson v. Downing, 127 U.S. 607, in discussing the construction of a statute by the Treasury Department, the court said:

> "This construction of the Department has been followed for many years without any attempt of Congress to change it, and without any attempt, as far as we are advised, of any other Department of the Government to question its correctness, except in the present instance. The regulation of a Department of the Government is not of course to control the construction of an Act of Congress when its meaning is plain. But when there has been a long acquiescence

> in a regulation, and by it rights of parties for many years have been determined and adjusted, it is not to be disregarded without the most cogent and persuasive reasons. United States v. Hill, 120 U.S. 169, 182; United States v. Philbrick, 120 U.S. 52, 59; Brown v. United States, 113 U.S. 568, 571."

As pointed out above the practice of the Federal Reserve Board in imposing conditions on State banks when admitted to membership existed prior to the adoption of the amendment of June 21, 1917, and prior to that amendment the Board imposed the very condition, which is the particular subject of consideration here, that with reference to branch banks. It is well settled that in re-enacting or amending a law the legislature must be presumed to have known of the established construction of that law by the executive department. And where the legislature, knowing of that construction, re-enacts or amends the law without in any way indicating its disapproval thereof, it must be considered to have approved that construction. Mr. Justice McKenna, speaking for the court in the case of United States v. Cercedo Hermanos y Compania, 209 U.S. 337, said:

> "We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution. Robertson v. Downing, 127 U.S. 607; United States v. Healey, 160 U.S. 136. And we have decided that the re-enactment by Congress, without change, of a statute, which had previously received long continued executive construction is an adoption by Congress of such construction. United States v. Falk, 204 U.S. 143, 152."

In adopting the amendment of June 21, 1917, Congress not only failed to indicate in any way disapproval of the Board's construction of Section 9 of the Federal Reserve Act as indicated by its regulations and by the practice described above, but expressly indicated its approval of this construction by incorporating them in the law itself. This it did by the use of the word "conditions" in the place of "rules and regulations" in the first paragraph of Section 9 and by adopting much of the language

of the Board's regulations in the second and tenth paragraphs, as explained above. This action on the part of Congress seems to show beyond question that it intended to sanction the Board's established practice and permit it to continue to prescribe any conditions of membership which in the exercise of its discretion it considers necessary to carry out the purpose of the Federal Reserve Act.

POWER TO PRESCRIBE CONDITIONS NOT QUALIFIED BY TENTH PARAGRAPH.

It has been argued very earnestly that the power given in the first paragraph of Section 9 to prescribe conditions of membership is limited by the following language of the tenth paragraph of Section 9:

> "Subject to the provisions of this act and to the regulations of the board made pursuant thereto, any bank becoming a member of the Federal Reserve System shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise all corporate powers granted it by the State in which it was created, and shall be entitled to all privileges of member banks."

Specifically, it has been argued that the Board's power to impose conditions is limited by this assurance that State member banks shall retain their full charter and statutory rights under State law and may continue to exercise all corporate powers granted by State law. But these rights are to be retained and enjoyed "subject to the provisions of this Act and to the regulations of the Board made pursuant thereto." It is argued that this means that the rights enjoyed under State law are limited only by the express provisions of the Federal Reserve Act and by regulations of the Board which merely interpret and carry into effect such express provisions. One of the express provisions of the Act, however, is that the Board shall have the power to impose conditions of membership before admitting a bank to the Federal Reserve System, and it

is clear that the Board's power to impose such conditions was intended as a limitation on the exercise of the powers enjoyed by them under State law. This result is obvious when we consider the fact conclusively demonstrated above that the amendment was intended to incorporate into the law the Board's existing regulations, which provided that:

> "Every State bank or trust company while a member of the Federal Reserve System -
>
> "(1) Shall retain its full charter and statutory rights as a State bank or trust company, and may continue to exercise the same functions as before admission, except as provided in the Federal Reserve Act and the regulations of the Federal Reserve Board, including any conditions embodied in the certificate of approval."

Furthermore, the interpretation contended for by Counsel for the State banks would deprive the language of the first paragraph of Section 9 which authorizes the Board to impose conditions of membership of all meaning and effect. If the Board may impose only such conditions as are expressly stated in the law or are incorporated in regulations based upon express provisions of the Act, then it would be useless and unnecessary to prescribe conditions of membership, and thus the grant to the Board of the authority to impose conditions of membership would be an idle and meaningless provision. It is one of the fundamental rules of statutory construction, that the various provisions of a statute must be read together and harmonized, if possible, in such a way as to give some meaning and effect to all the various provisions thereof. Congress will not be presumed to have used words in a statute without intending them to have some meaning, and the sole purpose of statutory construction is to seek out and give effect to that meaning.

DISTINCTION BETWEEN "REGULATIONS" AND "CONDITIONS."

The regulations to be prescribed by the Board under the authority contained in the tenth paragraph of Section 9 must be made pursuant to the provisions of the Act, i. e., they must be based upon and intended to carry into effect some express provision of the Act. The power to impose conditions, however, is something entirely different. It was given to the Board in order to enable it to prescribe conditions before admitting a State bank to membership which would cover matters not covered by any express provision of the law and which, therefore, could not be covered by any regulation made pursuant to the express provisions of the law.

Furthermore, there is another important practical distinction between "conditions" and "regulations". Conditions of membership must always be prescribed by the Board and voluntarily agreed to by a State bank before it is admitted to membership, while regulations made pursuant to the terms of the law may be prescribed at any time and may be amended from time to time.

This is entirely in accordance with the demands of the State banks which led to the enactment of the amendment of June 21, 1917. They had represented to the Board that before coming into the Federal Reserve System they wished to know exactly what terms, conditions, and regulations they would be required to comply with and they wished to be assured before being admitted to membership that the Board would not thereafter amend its regulations in such a way as to change the terms and conditions on which they had entered the System. This desire is fully met by the interpretation which the Board has placed upon the Act. Inasmuch as the

Board's regulations regarding State member banks must be based upon express provisions of the Act, the banks know in advance what such provisions are, and they can not be substantially changed without an amendment to the law. As to conditions of membership, they are equally protected, because such conditions must be prescribed before such banks become members, and when the Board has prescribed the conditions on which it will admit a particular State bank to membership that bank has the option of voluntarily accepting those conditions and becoming a member of the System or refusing to accept the conditions and staying out of the System. If it voluntarily accepts the conditions and becomes a member, the Board can not, thereafter change the conditions without the bank's consent, and the bank can not justly complain of the conditions because it has voluntarily agreed to them.

The Federal Reserve Board, of course, has no power to prescribe arbitrary conditions or conditions which have no reasonable relation to the purposes of the Federal Reserve Act. But on the other hand, it is evident that in prescribing conditions the Board is not restricted to the express provisions of the Act. It may prescribe any condition which is reasonably necessary or incidental to carrying into effect the broad purpose and policy of the Federal Reserve Act.

POWERS OF STATE BANKS INCONSISTENT WITH ACT.

The second paragraph of Section 9 of the Federal Reserve Act provides:

> "In acting upon such applications the Federal Reserve Board shall consider the financial condition of the applying bank, the general character of its management, and whether or not the corporate powers exercised are consistent with the purposes of this act."

If any of the corporate powers of the applying bank are not consistent

with the purposes of the Federal Reserve Act, then the Board is authorized to reject the application or to prescribe conditions of admission to membership to reconcile these inconsistencies. It is clear that the Federal Reserve Board is to exercise its own discretion in approving or rejecting applications or in prescribing conditions. It is also to exercise its discretion as to what conditions of membership to prescribe. If the Federal Reserve Board in the exercise of its discretion and judgment, believes that a certain condition is necessary in order to make the powers of an applying bank consistent with the purposes of the Federal Act, it may prescribe such condition. The matter is one to be decided entirely by the Federal Reserve Board. There is no other reasonable construction of the Act possible. It is not indicated in the Act what powers are inconsistent with membership and the Federal Reserve Board, therefore, must be the judge.

In the exercise of its judgment and discretion, the Board may find that the establishment of an unlimited number of branches is inconsistent with membership and with the purposes of the Act. It might base its judgment on the grounds that a large number of branches make the proper supervision and examination of the member bank impossible, or that an unlimited number of branches is inconsistent with the independent system of banking which was the basis upon which the Federal Reserve System was founded. In such cases, and in any other cases in which the Board in its discretion considers it necessary or advisable, it may legally and validly impose a condition prohibiting the establishment of branches without its consent.

POWER TO PRESCRIBE CONDITIONS NOT A POWER TO LEGISLATE.

It has been contended that if the Board's interpretation is correct the grant to it of the power to prescribe conditions of membership is an unconstitutional delegation of the power to legislate; but such contention is clearly erroneous.

, The power to prescribe the conditions on which the Board will admit a particular bank to membership is not a power to legislate. It is merely a power to enter into a voluntary agreement with each individual bank which desires to become a member of the Federal Reserve System and in that agreement to stipulate that certain conditions must be complied with or agreed to by that bank as a prerequisite of membership. The conditions prescribed necessarily vary with the different banks which apply for membership and must be made to fit the facts and circumstances of each particular case. In the case of one bank numerous conditions may be necessary in order that it may become suitable for membership in the Federal Reserve System and remain suitable after admission. In another case few conditions or no conditions may be necessary. Whether or not conditions are necessary and what conditions are necessary are questions of fact requiring the exercise of administrative judgment in each particular case. The Board must consider all facts and circumstances in each case and impose such conditions as in its judgment it believes to be necessary or advisable under the peculiar circumstances of that case. Itis a matter which clearly could not be covered by general legislation.

It is not possible to have a general set of conditions which would apply equally well to all banks which make application for membership. If this were true, Congress itself undoubtedly would have prescribed a

uniform set of conditions in the law and with those conditions all applying banks would be obliged to comply. Since this was not possible, Congress has vested the Federal Reserve Board with a broad discretion in prescribing conditions of membership so that the conditions presented may fit the facts in each particular case. It is well settled that Congress may vest such discretionary power in administrative officers or bodies and that it does not constitute a delegation of the power to legislate. Field v. Clark, 143 U.S. 649; Buttfield v. Stranahan, 129 U.S. 470; United States v. Grimaud, 220 U. S. 506, and Monongahela Bridge Co. v. United States, 216 U. S. 177; Intermountain Rate Cases, 234 U.S. 476; First National Bank v. Fallows, 244 U.S. 416.

CONDITIONS AGAINST BRANCHES.

The Board being thus empowered to prescribe such conditions as in its judgment and discretion are reasonably necessary to carry out the spirit, purpose and intent of the Federal Reserve Act, it seems obvious that there are some circumstances under which it has the power to prescribe as a condition of membership that a State member bank shall not establish any branch without first obtaining its consent. If upon investigation the Board finds that a bank applying for membership has a large number of branches and that the establishment of more branches would be likely to affect its solvency, the power of the Board to impose such a condition would seem to be beyond question. Even those who question the Board's power might admit this. The Board then has the power, under some circumstances, to prescribe the condition with reference to branches. If this is true, it must necessarily have the power to decide under what circumstances such a condition should be required. It is a matter of discretion with the Board as to when this condition is to be imposed.

And so it is a matter of discretion with the Board whether or not to permit a State member bank which has agreed to this condition regarding branches to establish a particular branch.

It has been argued recently that the question whether or not a State bank should be permitted to establish a branch is primarily a local question for the determination of the State authorities and that the Board has nothing to do with it. The question whether or not a State bank should be permitted to establish a branch and at the same time become or remain a member of the Federal Reserve System, however, is a question for the determination of the Federal Reserve Board alone. In considering this matter the Board must use its own discretion and judgment independent of the State authorities and must consider the effect which its consent to the establishment of such a branch would have upon the Federal Reserve System. It must determine whether the establishment of such a branch by the State bank would, or would not, be consistent with the spirit and purposes of the Federal Reserve Act. With this question the State authorities have no concern, and the decision of the State authorities certainly can not control the Board's decision. If the Board in its discretion finds that a possible injury to the system would result or that the establishment of a proposed branch would be inconsistent in any way with the spirit or purpose of the Federal Reserve Act, then it may decline to approve the establishment of that branch, regardless of the attitude of the State authorities as to the establishment of such branch.

CONCLUSION

I am of the opinion, therefore, that in prescribing the conditions

on which it will admit State banks to membership, the Federal Reserve Board is not limited to such conditions as are necessary to carry out the express provisions of the Federal Reserve Act, but it may impose any reasonable condition which it deems necessary or advisable to carry out the spirit and purpose of the Act, and in determining what conditions are necessary or advisable it must use its own discretion and judgment. If, in the exercise of this discretion and judgment, the Board believes that a condition should be imposed upon an applying bank prohibiting it from establishing branches without the Board's consent, then it may legally and validly prescribe such a condition as a prerequisite to membership.

Walter Wyatt
General Counsel

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