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Nov. 1, 1923.

Subject:

To Mr. Dawes, Chairman, Examination
Committee.
From Mr. Wyatt, General Counsel, Federal
Reserve Board

Power of the Board to Adopt
a Policy with Reference to
Branches of State Member
Banks.

You have requested my opinion as to whether or not the Federal Reserve Board would be acting within its legal rights if it should adopt the following resolution:

WHEREAS, the Federal Reserve Act contemplates a unified banking system in which State and national banks can participate on a basis fair to both, and,

WHEREAS, State banks in certain States have been permitted by law or regulation to engage in State-wide branch banking, while national banks are restricted by the Federal Statutes from establishing branches or offices beyond the limits of the city in which the parent bank is located, and,

WHEREAS, the Board believes that this results in an inequitable situation which renders it impossible for national and State banks to exist together in the Federal Reserve System on a fair competitive basis unless the powers of State and national member banks to engage in branch banking are reconciled, and,

WHEREAS, in the interest of the successful administration of the Federal Reserve System, it appears necessary and desirable to confine the operations of member banks within reasonable territorial limits, and,

WHEREAS, the Federal Reserve Board is authorized by the Federal Reserve Act to prescribe conditions under which applying State banks may become members of the Federal Reserve System,

NOW, THEREFORE, BE IT RESOLVED, that the Board continue hereafter as heretofore to require State banks applying for admission to the Federal Reserve System to agree as a condition of membership that they will establish no branches except with the permission of the Federal Reserve Board;

BE IT FURTHER RESOLVED, that as a general principle, State banks with branches or additional offices outside of the corporate limits of the city or town in which they are located or territory contiguous thereto ought not be admitted to the Federal Reserve System except upon condition that they relinquish such branches or additional offices;

BE IT FURTHER RESOLVED, that, as a general principle, State banks which are members of the Federal Reserve System ought not be permitted to establish or maintain branches or additional offices outside the corporate limits of the city or town in which the parent bank is located or territory contiguous thereto;

BE IT FURTHER RESOLVED, that in acting upon individual applications of State banks for admission to the Federal Reserve System and in acting upon individual applications of State banks which are members of the Federal Reserve System for permission to establish branches or additional offices, the Board, on and after February 1, 1924, will be guided generally by the above principles;

BE IT FURTHER RESOLVED, that the term "territory contiguous thereto" as used above shall mean the territory of a city or town whose corporate limits at some point coincide with the corporate limits of the city or town in which the parent bank is located.

BE IT FURTHER RESOLVED, that this resolution is not intended to affect the status of any branches or additional offices established prior to February 1, 1924.

As I interpret it, this resolution would not establish an absolute, hard and fast rule applicable in all cases, but would merely state certain general principles for the guidance of the Board in acting upon individual cases which are presented to it. Being merely a statement of general principles, it would not bind the Board absolutely to a definite course of action in every case that might arise in the future, and the Board could make exceptions in any individual case in which such general principles appear to be inapplicable.

After thorough investigation and careful study of the Board's power to prescribe conditions of membership, I rendered an opinion under date of July 16, 1923, in which I reached the conclusion that, in admitting State banks to membership in the Federal Reserve System, the Federal Reserve Board has power to prescribe such reasonable conditions of membership as in its discretion it deems necessary or advisable in order to carry out the broad purposes and policy of the Federal Reserve Act and is not limited to such conditions as are necessary to carry out the express provisions of the Act; and that if, in the exercise of its 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 the Board may legally and validly prescribe such a condition as a prerequisite to membership. I also expressed the opinion that, when the Board has prescribed such a condition and the bank in question has accepted it and become a member of the System, the Board has a reasonable discretion in deciding whether or not to permit that bank to establish a particular branch; and that if

it believes that the establishment of a particular branch would be inconsistent with the spirit or purpose of the Federal Reserve Act, then it may properly decline to permit it.

In that opinion attention was called to the fact that in acting upon the application of a State bank for admission to the Federal Reserve System, the Federal Reserve Board is expressly required to consider "whether or not the corporate powers exercised are consistent with the purposes of this Act." That requirement of the Act was discussed in part as follows (page 17):

"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 Reserve Act, it may prescribe such condition. * * * It is not indicated in the Act what powers are inconsistent with membership and the Federal Reserve Board, therefore, must be the judge."

It appears from the report of your Committee recommending the adoption of the above resolution that the principles stated in that resolution are based upon two propositions: (1) That one of the fundamental purposes of the Federal Reserve Act is to create a unified system of banking in which State and national banks can exist together on a basis fair to both; and (2) that the admission of State banks to the Federal Reserve System with the unrestricted power to engage in State-wide branch banking is inconsistent with this purpose of the Act, because it creates a competitive situation under which national banks cannot continue to exist.

If the Board thus finds that the power of a particular bank to engage in State-wide branch banking is inconsistent with the purposes of the Federal Reserve Act, it may, under the principles set forth in my opinion of July 16, refuse to admit any particular State bank having such power or it may admit it only on condition that it agree not to exercise such power except with the Board's consent.

Having the power to impose such a condition, the Federal Reserve Board must necessarily have the power to adopt general principles

for its guidance in acting upon each individual case which is presented to it. Inasmuch as the above quoted resolution purports to do nothing more than this, I am of the opinion that the Board would be acting within its legal rights in adopting such a resolution.

Respectfully,

(signed) Walter Wyatt

General Counsel.