FEDERAL RESERVE BOARD

WASHINGTON

X-3880
November 6, 1923.

SUBJECT: Administration of the Clayton Act.

Dear Sir:

The question has been raised in the past, whether a permit issued under the Kern Amendment authorizing a person to serve as director of a national bank and some other bank continues to be effective after such national bank consolidates with another national bank under the provisions of the Act of November 7, 1918. This Act provides, in part:

> "Any two or more national banking associations * * may * * * consolidate into one association under the charter of either existing bank * * *. All the rights, franchises and interests of said national bank so consolidated in and to every species of property, personal and mixed, and choses in action thereto belonging, shall be deemed to be transferred to and vested in such national bank into which it is consolidated without any deed or other transfer, and the said consolidated national bank shall hold and enjoy the same and all rights of property, franchises, and interests in the same manner and to the same extent as was held and enjoyed by the national bank so consolidated therewith."

These provisions necessarily imply that the corporate existence of the consolidating or constituent banks shall be terminated, while the corporate existence of the absorbing bank continues and carries with it all the rights and interests of the defunct consolidating banks. The consolidating banks accordingly cease to exist as separate corporations and permits covering them must be deemed similarly to terminate, unless it can be said that permitted directorates in such banks are included in the rights, franchises or interests of a consolidating national bank which are transferred upon a consolidation within the meaning of the Act of November 7, 1918. The Board previously held that a permit issued under the Kern Amendment is a personal license to the applying director and does not constitute such a right, franchise or interest of the consolidating national bank. In cases of consolidation of national banks, therefore, the Board ruled that a permit will continue to be effective where the consolidation is carried out under the charter of the national bank already covered by the permit, but that the permit will lapse and a new permit will be required where the national bank covered by the permit consolidates with and under the charter of another national bank.

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The Board has recently had occasion to reconsider this ruling and, after careful study of the entire question, it is now of the opinion that there is no warrant in law for the distinction made in that ruling. While a permit issued under the Kern Amendment is primarily a personal license to the applying director, giving him the right to serve in certain capacities, it also confers upon the bank involved a definite, though incidental, interest in the director's services and the Board believes that this interest of the bank should be construed as included in the rights, franchises or interests of a consolidating national bank within the meaning of the Act of November 7, 1918. The distinction drawn in the Board's former ruling was based entirely upon the question of which charter was selected as the basis for the consolidation, but the Board is now of the opinion that the mere choice of a charter should make no difference for the purposes of a Clayton Act permit, since it was the obvious intent of the Act of November 7, 1918, to transfer to the consolidated institution all the rights, interests, and privileges of all the constituent banks, irrespective of which national bank was selected to continue its charter and its corporate entity.

The Board accordingly rules that where a permit is granted to a person to serve as director of a national bank and some other bank, and the national bank subsequently consolidates with another national bank, under the Act of November 7, 1918, the permit will continue to be effective and will authorize the director in question to serve the consolidated national bank and the other bank, irrespective of which national bank charter was selected as the basis for the consolidation. Such permits, however, will be subject to revocation and, as stated in the Board's circular letter X-3603, dated January 2, 1923, the Board will consider the revocation of permits in cases where existing interlocking directorates have had the effect of lessening or stifling competition between banks which, but for the common directorate, would freely compete. Federal Reserve Agents will, therefore, report to the Board all cases of interlocking directorates involving national banks which have consolidated where, in the Agent's opinion, the question of the revocation of permits should be considered by the Board in accordance with the practice heretofore indicated.

Very truly yours,

Walter L. Eddy,
Secretary.

TO ALL F. R. AGENTS.

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