

DEPARTMENT OF JUSTICE

Washington

191

X-4553

March 4, 1926.

Sir:

I have the honor to reply to your letter of January 12, 1926, transmitting one from the Governor of the Federal Reserve Board, and submitting for my consideration and opinion the question whether a trustee, officer or employee of a mutual savings bank is eligible for appointment as a class B or class C director of a Federal reserve bank.

Section 4(5) of the Federal Reserve Act (Act of December 23, 1913, c. 6, 38 Stat. 254) provides that the board of directors of Federal reserve banks shall consist of nine members divided into three classes designated as classes A, B and C.

It is further provided that:

No director of class B shall be an officer, director or employee of any bank.

No director of class C shall be an officer, director, employee or stockholder of any bank.

It has been contended that a mutual savings bank, having no capital stock, and not engaged in a general banking business, is not such a bank as is contemplated by the statute, and that, therefore, an officer of such mutual savings bank is not prohibited from serving as a class B or class C director of a Federal reserve bank.

The real question presented for my consideration, therefore, is whether a mutual savings bank of the character above

described, is to be considered a "bank", as that term is used in section 4(5) of the Federal Reserve Act, prescribing the qualifications of class B and class C directors.

The word "bank" is inclusive and cannot be restricted to institutions transacting all of the business usually transacted by commercial banking institutions. A mutual savings bank, although having no capital stock, accepts deposits, makes loans, and invests its money in securities, paying over to its depositors the principal of their deposits and accrued net earnings. To that extent it is engaged in the banking business. Bouvier defines a bank as "A place for the deposit of money".

The Supreme Court of the United States, in *Smith v. Kansas City Title Company*, 255 U.S., 180, 210 said: "Generally speaking, a bank is a moneyed institution to facilitate the borrowing, lending and caring for money". In *Bank of Savings v. The Collector*, 70 U.S. 495, the Supreme Court of the United States had under consideration the status of mutual savings banks operating without capital stock, such as those referred to in your communication. At pages 512-513 the Court said:

Banks, in the commercial sense, are of three kinds, to wit: 1, of deposit; 2, of discount; 3, of circulation. All or any two of these functions may, and frequently are, exercised by the same association; but there are still banks of deposit, without authority to make discounts or issue a circulating medium.

Savings banks which receive deposits and loan the same for the benefit of their depositors, although they may have no capital stock, and neither make discounts nor perform other functions usually performed by commercial banks, are, nevertheless, engaged in the business of banking and are, therefore, banks within the

meaning of section 4(5) of the Federal Reserve Act, supra.

I have the honor, therefore, to advise you that mutual savings banks are banks within the meaning of section 4(5) of the Federal Reserve Act, prohibiting directors of class B and class C from being officers, directors or employees of "any bank".

Respectfully,

(Signed) Jno. G. Sargent

Attorney General.

The Honorable,

The Secretary of the Treasury.