

## FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO  
THE FEDERAL RESERVE BOARD

X-7494

July 11, 1933.

Dear Sir:

There is attached hereto, for your information, a copy of a letter addressed by the Federal Reserve Board to Mr. Austin, Federal Reserve Agent at the Federal Reserve Bank of Philadelphia, advising, in response to his inquiry, that it appears that a conservator of a national bank is not a director or other officer or employee of the bank within the meaning of the Clayton Act.

Very truly yours,

Chester Morrill,  
Secretary.

Inclosure.

TO ALL F. R. AGENTS EXCEPT PHILADELPHIA.

C O P Y

X-7494-a

July 11, 1933.

Mr. R. L. Austin,  
Federal Reserve Agent,  
Federal Reserve Bank of Philadelphia,  
Philadelphia, Pennsylvania.

Dear Mr. Austin:

Receipt is acknowledged of your letter of June 25, 1933, inquiring as to the status, with respect to the Clayton Act, of an individual who is serving as a director of two national banks, one of which has resources aggregating more than \$5,000,000, and as a conservator of a third national bank, whose resources also exceed \$5,000,000. You state that the two larger banks are located in the same town but that the smaller one is located in a neighboring town.

In view of the fact that one of the two national banks of which this person is a director has resources aggregating more than \$5,000,000, his service of such two banks falls within the prohibitions of section 8 of the Clayton Act, and consequently it is necessary for him to have a permit in order to serve as a director of such banks.

With regard to the question whether it is necessary for him to have a permit covering his service as conservator, you will note that Section 8 of the Clayton Act makes it unlawful for a "director or other officer or employee" of a national bank with resources aggregating more than \$5,000,000 to serve as a director, officer or employee of another national bank unless a permit has been issued.

- 2 -

Section 8A of that Act, which was added by section 33 of the Banking Act of 1933, also applies to directors, officers and employees, but does not become effective until January 1, 1934. Neither section refers to receivers, conservators or similar officials.

Section 203 of the Act of March 9, 1933, authorizes the Comptroller of the Currency, under certain conditions, to appoint a conservator for a bank who shall "take possession of the books, records, and assets of every description of such bank, and take such action as may be necessary to conserve the assets of such bank pending further disposition of its business as provided by law. Such conservator shall have all the rights, powers, and privileges now possessed by or hereafter given receivers of insolvent national banks and shall be subject to the obligations and penalties, not inconsistent with the provisions of this title, to which receivers are now or may hereafter become subject. During the time that such conservator remains in possession of such bank, the rights of all parties with respect thereto shall, subject to the other provisions of this title, be the same as if a receiver had been appointed therefor."

It appears, therefore, that a conservator is not a director, officer or employee of a bank, but is an official appointed by the Comptroller of the Currency to take possession of the bank, acting under direction of the Comptroller, the effect of his appointment being to remove control of the affairs of the bank from the directors, officers and employees of the bank, and to vest such control in the

- 3 -

conservator, under the direction of the Comptroller. In these respects, the office of a conservator is very similar to that of a receiver of a national bank.

It, therefore, appears that a conservator, who is an official appointed by the Comptroller of the Currency to conserve the assets of a bank pending its reorganization, reopening or liquidation, is not a "director, or other officer or employee" of the bank within the meaning of the Clayton Act. Consequently, it is not necessary for a person to have a permit under the Clayton Act in order to serve as conservator of a national bank, even though he is also a director, officer or employee of another national bank which comes within the prohibitions of the Clayton Act.

Very truly yours,

Chester Morrill,  
Secretary.