

FEDERAL RESERVE BOARD

181

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO  
THE FEDERAL RESERVE BOARD

X-7562

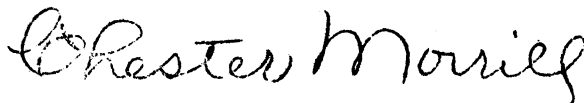
August 26, 1933.

SUBJECT: Opinion of the Attorney General  
as to meaning of term "Executive  
Officer".

Dear Sir:

For your information, there is inclosed here-  
with a copy of an opinion of the Attorney General of  
the United States rendered under date of August 18,  
1933, with regard to the interpretation of the term  
"executive officer" as used in Section 22(g) of the  
Federal Reserve Act as amended by the Banking Act of  
1933.

Very truly yours,



Chester Morrill,  
Secretary.

Inclosure.

TO CHAIRMEN AND GOVERNORS OF  
ALL FEDERAL RESERVE BANKS.

C O P Y

X-7562-a

OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON, D. C.

August 18, 1933.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

I have the honor to refer to your letter of August 4, 1933, requesting my opinion (1) concerning the legality, under Section 12 of the Banking Act of 1933 (approved June 16, 1933), of the proposed acquisition by a new national bank in the District of Columbia of notes evidencing indebtedness of its executive officers to closed banks whose assets will be taken over by the new bank, and (2) as to what officers of a bank are comprised within the term "executive officer".

Section 12 amends the Federal Reserve Act (U.S.C. Title 12, 221 et seq.) by adding thereto the following paragraph:

"No executive officer of any member bank shall borrow from or otherwise become indebted to any member bank of which he is an executive officer, and no member bank shall make any loan or extend credit in any other manner to any of its own executive officers: Provided, That loans heretofore made to any such officer may be renewed or extended not more than two years from the date this paragraph takes effect, if in accord with sound banking practice. If any executive officer of any member bank borrow from or if he be or become indebted to any bank other than a member bank of which he is an executive officer, he shall make a written report to the chairman of the board of directors of the member bank of which he is an executive officer, stating the date and amount of such loan or indebtedness, the security therefor, and the purpose for which the proceeds have been or are to be used. Any executive officer of any member bank violating the provisions of this paragraph shall be deemed guilty of a misdemeanor and shall be imprisoned not exceeding one year, or fined not more than \$5,000, or both;

and any member bank violating the provisions of this paragraph shall be fined not more than \$10,000 and may be fined a further sum equal to the amount so loaned or credit so extended."

If a bank should acquire by purchase a note evidencing an indebtedness of one of its executive officers, the officer would certainly "become indebted to" the bank, within the literal meaning of the words, and it is to be borne in mind that a contrary conclusion might make possible the circumvention of the statute by subterfuges.

However, it is provided that loans made prior to the enactment of the statute may be renewed or extended not more than two years, if in accord with sound banking practice, with evident purpose to avoid the harshness and possible losses consequent upon immediate foreclosures and cancellations; and I do not perceive that there is less reason for application of the principle when, during the two-year period, the bank is affected by a reorganization or other such turn in its affairs which results in the transfer of its assets to another corporation in which some or all of its officers will serve.

Understanding, therefore, that the loans in question were proper and lawful when made and come within the spirit of the proviso authorizing renewals or extensions for not more than two years, if in accord with sound banking practice, I perceive no objection to approval of the proposed organization because of the fact that notes evidencing such loans are among the assets which will be acquired by the new bank.

Upon the question who are executive officers, your Solicitor quotes from Arkansas Amusement Corporation v. Kempner, 33 S.W. (2d) 42, to the effect that "an executive officer or employee is one who assumes

command or control and directs the course of the business, or some part thereof, and who outlines the duties and directs the work of subordinate employees", as usually provided for in the articles of association, the by-laws, or a resolution of the directors. The Supreme Court of Oklahoma, determining that "the cashier of a national bank clearly is an executive officer", derived assistance from statutory provisions concerning his duties. First National Bank v. Mee, 126 Okla. 265, 269.

I approve these general conclusions, but, they permit no categorical answer to the question which you have submitted. "It is not the designation under which one is known but the nature of his duties which characterizes him as an 'executive officer'." Small v. Gibbs Press, 225 N.Y. S. 141, 142.

It is the duty of the banks and of all officers who by any possibility might be affected to keep within the statute and to weigh carefully all the facts and circumstances (peculiarly within their possession) before acting. If cases arise in which it appears that the statute may have been violated, I shall be glad to consider the advisability of prosecutions; and I shall, of course, be glad to advise you in connection with any such cases wherein you may have some duty to perform. In either event, however, it would be necessary that I be fully informed as to the facts.

Respectfully,

(Signed) HOMER S. CUMMINGS

Attorney General.

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