FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARD

X-7589

September 16, 1933.

Dear Sir:

For your information there is inclosed herewith a copy of an opinion of the Attorney General of the United States, which was rendered under date of September 7, 1933, in regard to reports of affiliates of national banks.

Very truly yours,

Chester Morrill

Chester Morrill,
Secretary.

Inclosure.

TO ALL FEDERAL RESERVE AGENTS.

X-7589-a 229

C O P Y

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

C O P Y

September 7, 1933.

The Honorable,

The Secretary of the Treasury.

My dear Mr. Secretary:

I have the honor to refer to your letter of August 23rd, requesting my reconsideration of the questions submitted in your letter of August 11th as arising under the Banking Act of 1933.

I understand from your letters and from conferences between members of our respective Departments that the Comptroller has called upon the national banks to render reports and, in connection therewith, to furnish reports of their affiliates, as provided by Section 27 of the Banking Act, and the banks, finding it burdensome or otherwise objectionable to follow the letter of the statute and conceiving that it may not be literally applied in all instances, have submitted to your Department many questions with requests for rulings. As stated in my letter of August 18th, I cannot properly undertake to resolve such questions for the banks.

You refer to the duty of the Comptroller to determine whether or not the banks have complied with the statutory obligation to furnish reports of their affiliates in response to his call. This question, I think, cannot properly be said to arise except as particular banks may fail or refuse to furnish the reports.

You also call attention to the statutory provision concerning the examination of affiliates in connection with examination of national banks. Section 28 (a) provides for examining affiliates "as shall be necessary to disclose fully the relations between such bank and such affiliates and the effect of such relations upon the affairs of such bank." The ordinary and preferable course would be to decide the question of the Comptroller's power to examine particular affiliates as occasion may arise and in the light of the facts and circumstances then apparent.

While, as stated, I prefer not to pass upon these questions except as particular cases actually arise, it does not seem objectionable to say that I perceive the force of your Solicitor's conclusion that ownership and control through majority stockholding does not include a holding by a bank merely as executor or in some other such fiduciary or representative capacity, subject to control by a court, or by a beneficiary or a principal, and without the incentive and opportunities which might arise from a holding of the stock by the bank as its own property.

Upon the question of excluding from the operation of the statute classes of concerns which the bank owns or controls, or by which the bank is owned or controlled, or in which a majority of the directors are also directors of the bank, upon consideration of the nature of the business of the concern or the manner in which ownership or control was obtained, the only safe course is to assume that the statute means just what it says, with the burden upon any one assuming an exception in the particular case to establish it. In interpreting the Act of Congress I

could not properly be concerned with the scruples of the banks about literal compliance, but it is nevertheless worthy of note that the Senate Committee which reported the Bill stated a purpose to discourage "affiliates of all kinds." (S. Rept. 77, p. 10.) I am familiar with the statements of members of Congress made to your Department and to mine, that Congress did not intend to go so far as apparently it has in the definition of "affiliates." However this may be, the executive department must accept the law as Congress has written it, leaving it to Congress to correct by amendment any inequities which may appear.

To illustrate the difficulties confronting us in any attempt to distinguish between "affiliates" upon a consideration of the nature of their business, I invite your attention to the following: Section 13 of the Act regulates certain transactions between a bank and its affiliate -- and it is quite probable that the reports by and examinations of affiliates are required largely in aid of this and similar provisions. If an unsecured loan, forbidden without qualification by Section 13, is to be deemed as forbidden when the affiliate is engaged in one business but permissible if the affiliate is engaged in another, perhaps equally hazardous, my attention has not yet been directed to any provision making such a distinction.

I have thus gone into the matter at some length in order that you may understand the difficulties that would be encountered in attempting to answer at this time the questions submitted by you and, aside from that, the apparent inadvisability of doing so. Please be assured,

however, that I shall be glad to advise you promptly and definitely, upon your request, in connection with any particular cases in which banks may fail to submit reports of "affiliates," observing the letter of the statutory definition, or in which it may be desired to make some examination and the right to do so is challenged by the parent bank or by the "affiliate."

Respectfully,

(Signed) HOMER S. CUMMINGS,

Attorney General.