

## INTERPRETATION OF BANKING ACT OF 1933.

Copies to be sent to all Federal reserve banks.

September 23, 1933.

Mr. \_\_\_\_\_,  
\_\_\_\_\_  
\_\_\_\_\_.

Dear Sir:

Reference is made to your letter of July 7, 1933, in which you requested to be advised whether each bank controlled by the \_\_\_\_\_ Corporation is an "affiliate", as that term is used in The Banking Act of 1933, of each other bank controlled by such corporation, and of your letter of July 11, 1933, supplementing your letter of July 7, 1933.

Since you have not submitted to the Federal Reserve Board any information as to the form, manner, or extent of control by the \_\_\_\_\_ Corporation of the banks in question, the Board is unable to rule definitely on the question which you have presented. However, the copy of the letter from Messrs. \_\_\_\_\_, which was inclosed with your letter to the Board of July 7, 1933, indicates that it is your contention, and that of your counsel, that the banks controlled by the \_\_\_\_\_ Corporation are not affiliates of the member banks in the group solely on the theory that subdivision (2), sub-paragraph (b), Section 2 of the Banking Act of 1933, contemplates control by "shareholders" of a member bank other than a "holding company affiliate", and that, since the banks in question are controlled by a "holding company affiliate", as distinguished from "shareholders", the banks are not affiliates of the member banks in the group within the meaning of the Banking Act of 1933. In their letter of July 11, 1933, your counsel contend that, if banks controlled by a

- 2 -

holding company affiliate were to be regarded as "affiliates" of the subsidiary member banks within the meaning of the Act, subdivision (4), paragraph (a) of Section 5144 of the Revised Statutes, as amended, which requires a holding company affiliate to agree that individual or consolidated statements of its banks may be required, would be superfluous and serve no useful purpose.

The Board is unable to concur in the conclusion that the term "shareholders", as used in Section 2, sub-paragraph (b), subdivision (2) of the Banking Act of 1933, should be interpreted to exclude from the scope of its meaning a "holding company affiliate". There is no obscurity or ambiguity in the language of this particular section, and there is, therefore, no occasion or justification for considering the word "shareholders" except in its ordinary and usual signification. Moreover, it does not appear that, as a result of such interpretation, the provisions of subdivision (4), paragraph (a) of Section 5144 of the Revised Statutes would be rendered superfluous. Sections 5(c) and 27 of the Act do not require publication by a member bank of reports of condition of its affiliated member banks, but, under the provisions of subdivision (4), paragraph (a) of Section 5144, publication of statements of all banks which are subsidiaries of a holding company affiliate, both member banks and nonmember banks, may be required, if deemed advisable. In addition, such provisions of Section 5144 provide a means whereby the Board or other duly constituted authority may require publication of consolidated statements, in contradistinction to individual statements, of such banks.

It should also be noted that, if the construction for which you contend were adopted, Section 13 of the Banking Act of 1933, and the sections requiring reports, and publications thereof, would be subject to ready evasion.

- 3 -

It is the Board's opinion that the construction which you favor would tend to frustrate the clear purposes of the Act, and that the law cannot properly be construed in such manner.

The Board, therefore, is of the opinion that the word "shareholders", as used in Section 2, sub-paragraph (b), subdivision (2), of the Banking Act of 1933, means any person or organization of any kind whatsoever which holds stock in a member bank, including a "holding company affiliate" of such bank. Accordingly, if the \_\_\_\_\_ Corporation holds the requisite control of the banks in question, each nonmember bank in the group would appear to be an "affiliate" of each member bank in the group, and the member banks would appear to be "affiliates" of each other, within the meaning of the Banking Act of 1933.

Under date of August 7, 1933, the Board advised you that it understood that a question similar to that discussed above had been submitted by the Comptroller of the Currency to the Attorney General of the United States for an opinion. The Attorney General has now rendered an opinion, but you will note from the inclosed copy thereof that he refused to rule on the matter in question.

For your information, there are also inclosed a copy of a press release relative to the publication of reports of affiliates of member banks, and a copy of a telegram relative to the furnishing of reports of such affiliates. It is believed that the procedure set forth therein will ameliorate somewhat the inconvenience and expense involved in the making and publication of such reports.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,  
Assistant Secretary.

Inclosures.