

INTERPRETATION OF BANKING ACT OF 1933

(Copies to be sent to all Federal Reserve Banks.)

April 17, 1934.

Mr. Eugene M. Stevens,
Federal Reserve Agent,
Federal Reserve Bank of Chicago,
Chicago, Illinois.

Dear Mr. Stevens:

On April 11, 1934, Mr. C. S. Young, Assistant Federal Reserve Agent of your bank, left with Mr. DuBois, an assistant counsel to the Board, a letter dated April 9, 1934, from _____, President of The _____ Trust Company, _____, to Mr. Dunn, General Counsel of your bank, a letter from Mr. _____ to Mr. Young dated April 2, 1934, and a copy of a Deed of Trust, dated May 28, 1932, by and between Mr. _____ as party of the first part and the _____ Trust Company, as party of the second part, creating an irrevocable trust to be known as the _____ Bank Stock Trust. Under this Deed of Trust Mr. _____ transferred shares of stock of certain banks to the _____ Trust Company, as trustee, to be held in trust for the purposes set forth. It is understood that a ruling of the Board is requested as to whether by reason of the Deed of Trust any organization is a holding company affiliate, as defined in Section 2(c) of the Banking Act of 1933, of one or more of the banks, the stock of which is now held in this trust.

Section 2(c) of the Banking Act of 1933 defines a holding company affiliate as a corporation, business trust, association or other similar organization which is in a position to exercise controlling influence over a member bank in any one of certain ways specified in

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the definition. No "business trust" is created by the Deed of Trust, but the _____ Trust Company is a corporation and the question is therefore raised whether by reason of its position as trustee under this Deed of Trust it falls within the scope of the statutory definition.

The Attorney General of the United States in answer to a question propounded by the Secretary of the Treasury has stated in an opinion that

"it does not seem objectionable to say that I perceive the force of your Solicitor's conclusion that ownership and control through majority stock-holding 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".

Under the terms of the Deed of Trust here considered the corporate trustee holds the stock constituting the corpus of the trust as trustee and without the incentive or opportunity for private profit, but it determines the manner in which such stock is to be voted and in so doing apparently is not subject to control by any court, beneficiary or principal. It is therefore the opinion of the Board that if it holds under the Deed of Trust more than 50 per centum of the outstanding number of shares of the stock of any member bank or more than 50 per centum of the number of shares of the stock of any such bank voted for the election of directors at the preceding election, the _____ Trust Company is a holding company affiliate of such bank or banks and

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the stock of such bank or banks owned or controlled by it, either in its capacity as trustee or otherwise, may not validly be voted unless it first obtains from the Board a voting permit under authority of Section 5144 of the Revised Statutes of the United States, as amended.

The Board is not in possession of sufficient facts to rule definitely that no other organization is a holding company affiliate of any of the member banks whose stock is held in this trust, but it is believed that the foregoing ruling is determinative of the doubt which prompted the inquiry submitted by Mr. Young. You are requested to advise Mr. _____ of the Board's conclusion and to furnish the _____ Trust Company with a copy of the Board's Regulation P and copies of the Board's printed form of application for a voting permit. The two letters from Mr. _____ referred to in the opening paragraph of this letter are returned to you herewith.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill
Secretary.

Inclosures.