

INTERPRETATION OF BANKING ACT OF 1933

366

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

May 1, 1934.

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Dear Sir:

This is in reply to your letter of April 23, 1934, addressed to the Governor of the Federal Reserve Board, in which you request the Board's ruling as to whether an affiliation exists by reason of the following facts which, in order to avoid misstatement, are quoted from your letter.

"The shareholders of a member bank control a business corporation chartered under state laws. At the immediate preceding election of directors of the member bank, such shareholders cast less than fifty per centum of the total number of votes cast, computed on the basis of the bank shares which they actually owned. However, one of the shareholders of the member bank who also owned shares in the corporation, cast a number of votes by proxy for bank shareholders who had no interest whatsoever in the corporation. The shares thus voted by proxy, added to the number of votes cast by the bank shareholders who control the business corporation, make a total amount of more than fifty per centum of the votes cast for such directors."

After stating these facts you ask whether this proxy vote should be considered as being "controlled by the shareholders of the member bank who also control the business corporation so as to make the corporation an affiliate of the member bank under the provisions of section 2(b) (2) of the

Banking Act of 1933."

In determining whether the business corporation is an affiliate of the member bank it is necessary to determine whether the persons who hold control of the business corporation also own or control more than 50 per centum of the number of shares voted for the election of directors of the bank at the preceding election but the significant issue in resolving the question is whether such ownership or control exists at the time of the determination, not whether it did exist at the time of the last election. Whether the person who voted the shares of stock referred to at the last election of directors under a proxy then in effect now controls those shares is a question of fact and a question upon which the Board can give no ruling unless all of the pertinent facts of the specific case are presented to it. It is perhaps sufficient for your purposes, however, to state that while the Board recognizes that the voting of these shares under a proxy at the last election may be a factor to be considered, it is not determinative of the existence of present control and that even if control had existed at the time the shares were voted the termination of the proxy either by its terms or by revocation might well have been a factor sufficiently important to have ended the preexisting "control" and the affiliation which resulted therefrom.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.