

INTERPRETATION

X-9445

BANKING ACT OF 1935

(Copies to be sent to all Federal Reserve banks)

January 15, 1936.

Mr. J. N. Peyton,
Federal Reserve Agent,
Federal Reserve Bank of Minneapolis,
Minneapolis, Minnesota.

Dear Mr. Peyton:

This refers to your letter of December 11, 1935, inclosing an opinion of counsel for your bank with regard to a situation where a member bank holds a cash item in the form of a check which, if put through the books of the bank, would thereby cause an overdraft in the account of an executive officer in an amount not in excess of 30 days' advance pay, or not in excess of the salary which has accrued to the executive officer. It is noted that counsel for your bank is of the opinion that the granting of the overdraft would constitute a violation of section 22(g) of the Federal Reserve Act and the Board's Regulation O. You inquire whether the Board is in accord with your counsel's opinion and inquire further whether the opinion would be the same if an actual overdraft had been created in the executive officer's account or if the executive officer in question had substituted his personal note for the amount of the overdraft.

In section 1(c)(1) of the Board's Regulation O, the terms "loan", "loaning", "extension of credit", and "extend credit" are defined to include "any advance by means of an overdraft, cash item, or otherwise;" and, under the second clause of the unnumbered paragraph

of section 1(c) it is provided that such terms do not include

"the acquisition by a bank of any check deposited in or delivered to the bank in the usual course of business unless it results in the granting of an overdraft to or the carrying of a cash item for an executive officer."

On the other hand, it is provided in such subsection that advances of unearned salary or other unearned compensation for periods not in excess of 30 days and advances against accrued salary or other accrued compensation are not included within the definition of such terms.

In the question presented, it does not appear that the granting of the overdraft to or the carrying of the cash item for the executive officer has been previously approved by a majority of the entire board of directors of the bank thereby bringing the transaction within the \$2500 exception as provided in section 3(a)(1), or that the executive officer has been advanced any salary, accrued or unaccrued, as such. On the basis of the above facts, the Board is of the opinion that if the bank carries a cash item in the form of a check which, if put through the books of the bank, would cause an overdraft in the account of the executive officer, the carrying of such cash item or the granting of such overdraft, as the case may be, would be a loan or extension of credit as defined in the Board's Regulation O. Likewise the substitution of the personal note of the executive officer for the amount of the cash item or overdraft would be a loan or extension of credit as defined in such regulation. The fact that the executive

-3-

X-9445

officer is entitled to compensation which has been earned or accrued or is entitled to an advance of unearned salary for a period not in excess of 30 days, which amounts would be equal to or in excess of the cash item, overdraft, or personal note, would not be sufficient to remove the transaction from the classification of a loan or extension of credit. In other words, the existence of an effect, under the circumstances described above, would not render legitimate a loan or extension of credit which is prohibited.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,
Secretary.