

INTERPRETATIONBANKING ACT OF 1935

(Copies to be sent to all Federal reserve banks)

January 16, 1936.

Mr. _____, President,
 _____ National Bank of _____,
 _____, _____.

Dear Sir:

This refers to your letter of December 7, 1935, asking certain questions with respect to the making of loans by member banks to their executive officers.

It is understood that you desire to be advised whether the Chairman of the Board of Directors of your bank may lawfully continue in such capacity while there remains outstanding a loan made to him by your bank in July, 1935, in the amount of \$4,000. You state that such Chairman of the Board of Directors of your bank is inactive and receives no compensation as Chairman of the Board other than a regular director's fee which is received by all other directors.

As you perhaps know, subsection (g) of section 22 of the Federal Reserve Act, prohibiting the making of loans to executive officers of member banks, was amended by the Banking Act of 1935, approved August 23, 1935, so as to eliminate the criminal penalties previously provided for the violation of its provisions. In lieu of such penalties, it is now provided that an executive officer of a member bank accepting a loan or extension of credit in violation of the provisions of this subsection is subject to removal from office in the

manner prescribed by section 30 of the Banking Act of 1933. However, it appears that the criminal penalties must be regarded as still in force with respect to acts committed prior to the amendment of section 22(g) by the Banking Act of 1935, on August 23, 1935, in view of the provisions of Section 29 of title 1 of the United States Code, which provides as follows:

"The repeal of any statute shall not have the effect to release or extinguish any penalty, forfeiture, or liability incurred under such statute, unless the repealing Act shall so expressly provide, and such statute shall be treated as still remaining in force for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture, or liability."

In the circumstances, therefore, it appears that the answer to your question depends upon whether the loan made by your bank in July, 1935, to the Chairman of your Board of Directors was in violation of the provisions of section 22(g) of the Federal Reserve Act as it was then in force.

In construing the provisions of that section prior to its amendment by the Banking Act of 1935, it was the position of the Board that it could not appropriately express an opinion as to who were "executive officers" within the meaning of its provisions since penalties of fine or imprisonment were provided for violations thereof and since the determination of the question whether a particular case should be prosecuted for a criminal violation of the subsection was a matter entirely within the jurisdiction of the Department of Justice. Accordingly, the Board cannot properly advise you as to whether the loan

to which you refer constituted a violation of the law.

Under the present law, the Board of Governors of the Federal Reserve System is authorized to issue regulations and to define the term "executive officer" for the purposes of the subsection in question; and in accordance with this authority, the Board has defined the term "executive officer" in section 1(b) of its recently issued Regulation O, effective January 1, 1936, to include the Chairman of the Board of Directors, regardless of whether he is active in the performance of the duties of his office. However, as indicated above, the determination of the question who are to be considered "executive officers" in the case of apparent violations arising prior to August 23, 1935, the date of the enactment of the Banking Act of 1935, is a matter which appears to be properly within the jurisdiction of the Department of Justice.

You further request to be advised whether a member bank may lawfully advance an executive officer his salary for the ensuing month, i.e., whether, for example you might on January 1 credit an executive officer his salary for the month of January without violating the law.

It will be noted that subsection (c) of section 1 of the Board's Regulation O provides that the terms "loans", "loaning", "extension of credit", and "extend credit" include, among other things, "any advance of unearned salary or other unearned compensation for periods in excess of 30 days". Strictly interpreted, this provision would preclude the advance of unearned salary for any full month having

31 days. However, where an officer's salary is computed on a monthly basis, the Board will not regard the advance of unearned salary for a month having more than 30 days as a loan or extension of credit within the meaning of the Board's regulation.

For your information, there is inclosed herewith a copy of the Board's Regulation O, effective January 1, 1936.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,
Assistant Secretary.

Inclosure.