

S-58

Reg. L-6

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal Reserve banks)

December 28, 1937.

Mr. \_\_\_\_\_, President,  
Federal Reserve Bank of \_\_\_\_\_,  
\_\_\_\_\_, \_\_\_\_\_.

Dear Mr. \_\_\_\_\_:

Consideration has been given to Mr. \_\_\_\_\_'s letter of November 29, 1937 and the inclosed memorandum opinion of General Counsel to your bank and the copy of the letter from Mr. (A), vice president of The National \_\_\_\_\_ Bank of \_\_\_\_\_, regarding the applicability of the Clayton Act to Mr. (B). The question presented is whether Mr. (B) may continue to serve as a director of the national bank and as a director of the \_\_\_\_\_ Safe Deposit and Trust Company until February 1, 1939, in view of the provision in the Clayton Act that: "Until February 1, 1939, nothing in this section shall prohibit any director \* \* who is lawfully serving \* \* on the date of the enactment of the Banking Act of 1935, from continuing such service."

From the information before the Board it appears that Mr. (B) was "lawfully serving" as a director of both the above institutions on the date of the enactment of the Banking Act of 1935, under a permit issued to him by the Board. However, shortly thereafter he resigned from both institutions because he intended to seek election as Governor of (name of State), and a junior officer was elected to take his place temporarily on the board of the national bank. He was not elected Governor, and in May 1937, a year and a half after he had resigned, he was reelected a director of both institutions.

The Board is of the opinion that the provision quoted above is not applicable in such a case. In construing this provision it is important to remember that the Banking Act of 1935 amended the Clayton Act so as to prohibit a large number of relationships which had not previously been prohibited. The obvious purpose of the provision was to prevent wholesale resignations on the effective date of the amendments and to give the banks involved a reasonable time within which to make the required readjustments. Since the only purpose of the provision was to avoid the hardship which might result from a resignation, it cannot be construed as authorizing the resumption of a relationship which has already been terminated.

This conclusion is supported by the language of the provision, which does not say that such relationships shall be lawful until February 1, 1939, but provides merely that the prohibitions of the amended statute shall not prevent a director from "continuing" the relationships until that date. This language implies, at least, that the service must be continuous.

Mr. (A) refers to a ruling made by the Board in 1925 which held that the resignation of a director serving under a Clayton Act permit was tantamount to the abandonment of his permit, but argues that in the circumstances of this case there was no abandonment. However, this question is no longer involved because the Banking Act of 1935 eliminated from the Clayton Act the provision authorizing the issuance of permits by the Board, and the permit thereupon ceased to have any effect, except as it affected the question whether he was "lawfully serving" on the date of the enactment of the Banking Act of 1935 within the meaning of the provision discussed above.

The Board is not unmindful of Mr. (A)'s suggestion that his bank will lose a valuable director if Mr. (B) is not permitted to serve the two institutions, but as pointed out above the matter is governed by statute and the Board no longer has power to grant permits in such cases.

Very truly yours,

(Signed) S. R. Carpenter

S. R. Carpenter,  
Assistant Secretary.