

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal reserve banks)

November 21, 1938.

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

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

Receipt is acknowledged of your letter of October 28, 1938, forwarding the request of The Bank of \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, for permission to purchase certain additional stock of the \_\_\_\_\_ Agricultural Credit Corporation. It is noted that the \_\_\_\_\_ Agricultural Credit Corporation was organized under the laws of the State of \_\_\_\_\_ and that all of its capital stock is now owned by The Bank of \_\_\_\_\_.

The Board, in its ruling published on page 449 of the Federal Reserve Bulletin for 1933, to which reference has been made by your counsel, and in other instances, has ruled that, inasmuch as section 9 of the Federal Reserve Act, as amended by the Banking Act of 1933, subjects State member banks to the same limitations and conditions with respect to the purchase of stock of other corporations as are applicable to national banks under paragraph seventh of section 5136 of the Revised Statutes of the United States, State member banks are not permitted to invest in any stocks except stock of the limited types of corporations in which national banks are allowed to invest. A contrary view would result in a discrimination between State member banks and national banks in this regard and would thus be inconsistent with the intention of Congress in enacting the provision of section 9 relating to the purchase of stock by State member banks. With reference to the suggestion of your counsel that section 23A of the Federal Reserve Act may be considered as authority for the purchase of the stock in question, it may be stated that the Board has taken the position that this section does not authorize a State member bank to purchase stock of an affiliate, and for your information and that of your counsel there is inclosed herewith a copy of the ruling which the Board made some time ago on this subject.

The Board, however, has given careful consideration to the request of The Bank of \_\_\_\_\_ and to the views of your counsel expressed in connection therewith, but, since there is no authority in the Federal law for a national bank to invest in the stock of an agricultural credit corporation incorporated under State law, it is the view of the Board that The Bank of \_\_\_\_\_, a State member bank, may not lawfully purchase additional stock in the \_\_\_\_\_ Agricultural Credit Corporation.

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In communicating the Board's views in this matter to the member bank, it is requested that you advise the bank that the Board recognizes that the purpose of its request is to serve the agricultural credit needs of its community and that legal considerations require the position which is taken above. It is assumed that you will also assure the member bank of the desire of the Federal Reserve bank to assist it as far as possible in making credit available to the community.

Very truly yours,

(Signed) L. P. Bethea

L. P. Bethea,  
Assistant Secretary.

Inclosure.

July 21, 1934.

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

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

It is understood that the \_\_\_\_\_ Company \_\_\_\_\_, Pennsylvania, has requested the Board to reconsider its ruling that the exercise by the \_\_\_\_\_ Company of its preemptive right to acquire its pro rata share of the newly authorized capital stock of its affiliate, the \_\_\_\_\_ Bank, \_\_\_\_\_, Pennsylvania, would be in violation of Section 9 of the Federal Reserve Act, as amended by Section 5(c) of the Banking Act of 1933. Before making such ruling the Board gave careful consideration to the effect of Section 23A of the Federal Reserve Act, as enacted by Section 13 of the Banking Act of 1933, but as requested by the \_\_\_\_\_ Company, the entire subject has now been reviewed with particular attention to that Section. After such reconsideration the Board is of the opinion that its prior ruling was correct.

The Board has heretofore ruled that inasmuch as Section 9 of the Federal Reserve Act, as amended by Section 5(c) of the Banking Act of 1933, subjects State member banks to the same limitations and conditions with respect to the purchase of stock of other corporations as are applicable to national banks under paragraph Seventh of Section 5136 of the Revised Statutes, State member banks are not permitted to invest in stocks except in the stock of the limited types of corporations in which national banks are allowed to invest. Such ruling was

made with respect to the stock of a corporation which was not an affiliate of the member bank in question and before giving to the \_\_\_\_\_ Company the ruling now under reconsideration it was therefore necessary for the Board to determine whether any provision of law permitted a member bank to invest in the stock of an affiliated corporation although it would not have been allowed to do so had the corporation not been an affiliate. It is urged on behalf of the \_\_\_\_\_ Company that Section 23A, by fixing limitations beyond which a member bank may not invest in the stock of an affiliate, impliedly authorizes such investment up to the limits prescribed and the Board recognizes that rules of statutory construction would justify this interpretation in the absence of evidence indicating legislative intention to the contrary.

With respect to the provisions of Section 23A which relate to investments in stocks, however, the above mentioned provision of Section 9 of the Federal Reserve Act which subjects State member banks to the same limitations as are applicable to national banks is an important additional factor to be considered. Prior to the Banking Act of 1933 the Comptroller of the Currency had ruled that national banks did not have the corporate power to invest in stocks of any corporations except in a few clearly defined cases and the amendment made to Paragraph Seventh of Section 5136 of the Revised Statutes by the Banking Act of 1933 was a definite recognition by the legislature of the non-existence of such power. It seems extremely unlikely that Congress intended by another provision of the same Act to increase the corporate powers of all

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national banks in so indefinite a manner as by the implied permission which may be inferred from the language of Section 23A. Furthermore, there is no apparent reason why Congress should have prohibited State member banks from investing in the stock of non-affiliated corporations but should have permitted them to invest up to the prescribed limits in the stock of corporations which were already affiliates. The fact that in certain cases an affiliation arises from circumstances such as the existence of common directors suggests no reason why the law should have permitted an investment by the member bank in the stock of its affiliated company and in other cases, such as a holding company affiliate, an investment would appear to be more objectionable than an investment in the stock of a non-affiliated company.

Accordingly the Board is of the opinion that in view of other provisions of law Section 23A is not to be construed in the manner suggested by the \_\_\_\_\_ Company and the Board is therefore unwilling to reverse or modify its previous ruling. You are requested to notify the \_\_\_\_\_ Company accordingly.

Very truly yours,

(Signed) Chester Morrill

Chester Morrill,  
Secretary.