

S-167
Reg. R-2

INTERPRETATION OF LAW OR REGULATION

(Copies to be sent to all Federal Reserve banks)

July 12, 1939.

Mr. _____, Vice President,
Federal Reserve Bank of _____,
_____, _____.

Dear Mr. _____:

Consideration has been given to your letter of June 26, 1939, with further reference to the question whether Mr. (A) of _____, _____, a dealer in securities, may serve as Secretary to the Board of Directors of The _____ National Bank of _____, _____.

The question presented is whether Mr. (A) would be an "officer, director, or employee" of the bank within the meaning of section 32 of the Banking Act of 1933, as amended. In this connection you state:

"The bank informs us that, as Secretary, Mr. (A) would be without vote, voice, or official status and that his only duties would be to attend the meetings of the Board for the purpose of recording and reading the minutes of all meetings, regular or call, and to furnish certified copies of the minutes of such meetings when necessary."

The purpose of this somewhat unusual arrangement would be (as stated by Mr. (B), Executive Vice President of the bank, in his letter of May 22, 1939) to "identify him with" the bank, although Mr. (B) makes it clear that it is the desire of the bank "to comply strictly with the spirit as well as the letter of the law."

Generally speaking, the term "employee" includes everyone performing services for a corporation except an officer or director of the corporation or an independent contractor. Furthermore, a person may be an employee even though he does not receive money compensation for his services.

In furnishing certified copies of the minutes of the meetings of the board of directors, Mr. (A) would be performing a function usually performed by the secretary of a corporation or

his assistant. In recording and reading the minutes of meetings, Mr. (A) would be performing the duties usually performed by one of the directors, or the secretary of the corporation, or a clerk.

Therefore, it appears that Mr. (A) would be rendering services to the bank and its board of directors similar to those usually performed by an officer or a clerical assistant to an officer, and since it seems clear that the purpose of the statute, in using the words "officer, director, or employee" is to include everyone who has a position with the bank, the Board is of the opinion that the proposed arrangement would be within the prohibition of the statute.

Very truly yours,

(Signed) S. R. Carpenter

S. R. Carpenter,
Assistant Secretary.