

promise to pay, directly or indirectly, an aggregate amount which (together with any other funds available for the purpose) will suffice to discharge, when due, all interest on and principal of such obligations, which promise (1) is made by a governmental entity that possesses general powers of taxation, including property taxation, and (2) pledges or otherwise commits the full faith and credit of said promisor; said term does not include obligations not so supported that are to be repaid only from specified sources such as the income from designated facilities or the proceeds of designated taxes." (Hearings, p. 1018.)

(e) A major requirement of the foregoing definition is that a *general obligation* must be supported by general powers of taxation, including property taxation. The Board recognizes, however, that such support by general powers of taxation may be indirect as well as direct.

(f) If a State (or other governmental entity having general powers of taxation) agrees unconditionally to pay to an Authority rentals that will be sufficient and will be used, in all events, to cover required payments of interest and principal on the relevant securities when due, the securities, in the opinion of the Board, are indirectly supported by general taxing powers, and, accordingly, constitute *general obligations* within the meaning of R.S. 5136. On the other hand, if the lease does not contain an unconditional promise of the State to provide sums sufficient, in all events, to cover required payments of interest and principal on the bonds of the lessor Authority as they become due, the securities cannot be considered *general obligations*.

(g) The status of a particular issue of such lease-supported bonds thus depends upon the terms of the lease involved. Where the lease is for a term of years not less than the maximum maturity of the relevant bond issue, and the State unconditionally promises to pay rentals sufficient to cover all payments on the bonds as they become due, the bonds ordinarily will qualify as *general obligations*. Where the promise of the State is to pay a fixed dollar rental, the securities will not qualify as *general obligations* unless the lease

provides that rental payments in amounts sufficient to service the bonds cannot be expended by the authority for any other purpose than the payment of principal and interest thereon.

(h) This interpretation is intended to indicate the circumstances in which securities issued by public Authorities without taxing powers constitute *general obligations* that are eligible for underwriting by member banks, under R.S. 5136. The status of any particular issue can only be determined through examination of all relevant laws and contracts, in order to ascertain the actual legal and financial arrangements.

(12 U.S.C. 24, 335)

§ 250.123 Underwriting of notes payable from proceeds of subsequent sale of general obligation bonds.

(a) The Board of Governors has received inquiries whether California Bond Anticipation Notes constitute *general obligations* of the State of California within the meaning of paragraph Seventh of section 5136 of the U.S. Revised Statutes (12 U.S.C. 24).

(b) The Board understands that, in anticipation of the sale of general obligation bonds duly authorized, Finance Committees of certain public authorities of the State are empowered, under section 16736 of the Government Code of California, to direct the State Treasurer to issue Bond Anticipation Notes whenever "the committee deems it in the best interests of the State".

(c) Although there appears to be no judicial decision as to the nature of Bond Anticipation Notes under California law, the State Attorney General has issued an opinion (No. 63/182 of Nov. 8, 1963) concluding that the Notes do not constitute "a general obligation of the State in the sense that they are secured by the State General Fund and general taxing power of the State".

(d) While the California Attorney General's opinion is not controlling in a determination as to whether the Notes are *general obligations* within the meaning of section 5136, a Federal statute, it is significant in such a determination insofar as it indicates that the Notes are not secured by the State's "general powers of taxation, including property taxation", a sine qua

non of *general obligations* under section 5136. (See § 250.122.)

(e) Although the Board of Governors has recognized that the pledge of the "general powers of taxation, including property taxation" may be indirect as well as direct, with respect to payment of the principal of its Bond Anticipation Notes the State of California does not commit its general taxing powers either directly or indirectly. The principal of such Notes is payable solely from the proceeds of subsequent sale of other securities, which means that the State retires the Notes through the exercise of its borrowing powers as distinct from its taxing powers.

(f) That the general obligation bonds, from the proceeds of whose sale the Notes are expected to be paid, will pledge the State's taxing powers cannot be considered an indirect pledge of that power to secure the Notes, because the pledge of the State's taxing powers attaches to the general obligation bonds only after they are sold and can in no way be utilized for the payment of the Notes. In order for obligations to be secured directly or indirectly by general taxing power, that power must be available for use, if necessary, to provide funds for the required payments of both principal and interest.

(g) The Board of Governors accordingly concludes that California Bond Anticipation Notes do not constitute general obligations within the meaning of section 5136. The Notes, therefore, would not be eligible for underwriting and dealing in by member State banks.

(12 U.S.C. 24, 335)

§ 250.140 Member bank acquisition of stock of another bank.

(a) The Board of Governors has recently considered, in several cases, whether a member bank may lawfully acquire stock of another bank. In some instances, a direct acquisition was involved; in another, the stock was to be purchased by a wholly owned subsidiary of the member bank. In one instance, the bank stock was to be purchased for cash; in others, the consideration was to consist of newly issued shares of stock of the acquiring bank. All of the cases involved acquisition of

a majority of the stock of the *subsidiary* bank.

(b) The Board reaffirmed its position, originally taken shortly after enactment of the Banking Act of 1933 (1933 Federal Reserve Bulletin 449), that such acquisitions by member banks are not legally permissible. Section 5136 of the U.S. Revised Statutes (12 U.S.C. 24) forbids a national bank to purchase "for its own account * * * any shares of stock of any corporation." That prohibition is also applicable to State member banks, under section 9 of the Federal Reserve Act (12 U.S.C. 335). Legislative history and judicial interpretations in this field support the view that Congress did not intend to permit national banks or State member banks to acquire, for their own account, the stock of other banks, either directly or through intermediary corporations. The statutory prohibition applies to any voluntary acquisition of the stock of another bank, whether the consideration given for the stock consists of cash, other bank assets, or shares of stock of the acquiring bank.

(c) The Board concluded that such acquisitions would also violate the provisions of section 5155 of the Revised Statutes and section 9 of the Federal Reserve Act (12 U.S.C. 36 and 321) that prohibit the establishment of branches by member banks except under prescribed conditions. Those provisions of law were intended to permit national banks and State member banks to operate additional banking offices only with the prior approval of the Comptroller of the Currency or the Board of Governors, respectively. When one bank owns all or a majority of the stock of another, the offices and resources of the latter are a part of the banking organization owned by, and subject to the control of, the parent bank, despite the existence of separate corporate entities. Consequently, if such acquisitions of stock were permissible, member banks could conduct banking operations through additional offices without obtaining supervisory approval, which would undermine an important regulatory purpose of the Federal statutes relating to multiple-office banking.