

C O P Y

DEPARTMENT OF STATE  
Washington

In reply refer to  
Ls 840.51 Frozen Credits/  
6-3045

July 17, 1945

My dear Mr. Lynch:

Reference is made to this Department's letter dated May 22, 1945 concerning certifications issued by the Secretary of State under Section 25(b) of the Federal Reserve Act as amended by the act of Congress approved April 7, 1941 in relation to property of foreign governments on deposit with, or received and held by, Federal Reserve banks and insured banks.

There is enclosed for your information a copy of the opinion rendered on June 30, 1945 by the Attorney General concluding that the Secretary of State has the authority under the above-mentioned act of Congress to certify the authority of any person to deal with property of a foreign state or a central bank thereof, whether the property has been deposited before or after the certification is issued.

Sincerely yours,

/s/ Green H. Hackworth

Green H. Hackworth  
Legal Adviser

Enclosure:

Copy of opinion  
rendered by Attorney  
General, June 30, 1945.

Mr. Thomas J. Lynch,  
Acting General Counsel,  
Treasury Department,  
Washington, D. C.

June 30, 1945

The Honorable,

The Secretary of State.

My dear Mr. Secretary:

In your letter dated May 22, 1945, you ask whether the Secretary of State has the authority to issue a certificate under section 25(b) of the Federal Reserve Act (55 Stat. 131-132; 12 U.S.C. 632) with respect to property of a foreign state or a central bank thereof received by a Federal Reserve bank after the issuance of the certificate, or whether his certifying authority is limited to property on deposit when the certificate is issued.

The pertinent part of Section 25(b) of the Federal Reserve Act, as amended, provides as follows:

"Whenever (1) any Federal Reserve bank has received any property from or for the account of a foreign state which is recognized by the Government of the United States, or from or for the account of a central bank of any such foreign state, and holds such property in the name of such foreign state or such central bank; (2) a representative of such foreign state who is recognized by the Secretary of State as being the accredited representative of such foreign state to the Government of the United States has certified to the Secretary of State the name of a person as having authority to receive, control, or dispose of such property; and (3) the authority of such person to act with respect to such property is accepted and recognized by the Secretary of State, and so certified by the Secretary of State to the Federal Reserve bank, the payment, transfer,

delivery, or other disposal of such property by such Federal Reserve bank to or upon the order of such person shall be conclusively presumed to be lawful and shall constitute a complete discharge and release of any liability of the Federal Reserve bank for or with respect to such property."

The action imposes three conditions that must be met if a Federal Reserve bank is to secure the protection afforded by the statute. These conditions are (1) receipt by such a bank of property either from a foreign state that has been recognized by the Government of the United States or from the central bank of such a foreign state; (2) certification by the accredited representative of the foreign state of the name of a person having authority to deal with the property and (3) the certification of the authority of this person by the Secretary of State to the bank.

There are two possible interpretations of section 25(b). It is possible to suggest that the use of the phrase "has received" and of the word "holds" in the first condition imposed by the statute indicates that a certificate can apply only to property that is being held by the bank at the time the Secretary of State issues the certificate. On the other hand the statute may be interpreted to mean that once a certificate is issued it applies to any property received and held by the bank at any time while the certificate is in effect. It is my opinion that the language of section 25(b), read in the light of the plan and purpose of the statute, leads to the conclusion that the second construction is the proper one.

To support the position that a certificate of the Secretary of State can relate only to property held by a bank at the time of its

issuance it is necessary to conclude that the sequence in which the conditions are set forth in the statute establishes the temporal order in which they must occur. This conclusion ignores the fact that the statute expressly provides that whenever the three conditions have been met the statutory immunity becomes available. The use of the word "whenever" shows that Congress intended the statute to apply at any time when the three statutory conditions have been fulfilled without regard to whether receipt of the property precedes or follows the issuance of a certificate.

This conclusion is further supported by a consideration of the language of the statute in light of the statutory scheme and purpose. Prior to the enactment of the statute foreign governments of various countries found it difficult in many cases, because of conditions arising out of the war, to deal with property held by banks in this country for their account. Some of these countries were at war; others had been invaded; still others had been completely occupied by enemy forces. Disputes had arisen as to the representatives authorized to deal with the property. Under these circumstances the banks concerned either had to make payments at their peril or to refuse payment until these disputes were settled by litigation or otherwise. These circumstances made it difficult for friendly foreign governments to secure adequate banking facilities and service in this country and gave rise to embarrassments between these governments and our own. The purpose of the statute was to provide a practical method whereby the Secretary of State, in the exercise of his discretion, might deal with this problem. ((1941) H.R. Rept. No. 349, 77th Cong., 1st sess.; (1941) S. Rept. No. 133, 77th Cong., 1st sess.) If the statute should

be construed as permitting the Secretary of State to issue certificates only with respect to property held by a Federal Reserve bank at the time the certificate is issued a friendly foreign government could not obtain a certificate before making a deposit with the bank. Furthermore, it would be necessary for the friendly foreign government to obtain a new certificate from the Secretary of State every time it made a new deposit, even though that deposit was made in an existing account. In my view these consequences would conflict with the purpose of the statute.

I conclude, therefore, that the Secretary of State has the authority under section 25(b) to certify to a Federal Reserve bank the authority of any person to deal with property of a foreign state or a central bank thereof whether the property has been deposited before or after the certificate is issued. I express no views as to the question whether a certificate should issue in any particular case or as to the circumstances under which a certificate should be revoked; these are matters for the appropriate exercise of your administrative discretion.

Sincerely yours,

/s/ Francis Biddle

Attorney General

cc: Messrs. Aarons, Friedman, Brenner, Hoffman, O'Flaherty, Richards, McNeill