

Office Memorandum • UNITED STATES GOVERNMENT

TO : Mr. Martin

DATE: MAR 19 1951

FROM : Elting Arnold

SUBJECT:

Elting Arnold

Problem

You have asked my opinion as to whether there would be any legal obstacle to your retaining the position of Executive Director, without compensation, of the International Bank for Reconstruction and Development after becoming Chairman of the Board of Governors of the Federal Reserve System.

Conclusions

1. There is no general provision of law or provision of the Bretton Woods Agreements Act which would preclude your retaining the position of Executive Director after becoming Chairman of the Board of Governors; but
2. Members of the Board are required by section 10 of the Federal Reserve Act to "devote their entire time to the business of the Board. * * *"; and
3. Section 10 of the Act also provides that no member of the Board shall be "a director of any bank." While it might be argued that Congress could not have had in mind such a post as a directorship of an international banking institution when this provision was adopted in 1913, it literally would preclude your holding the directorship of the International Bank.

Discussion

You will recall that a similar question was considered in my memorandum to you of October 25, 1949, with respect to the positions of Assistant Secretary of the Treasury and Executive Director of the International Bank. That memorandum concluded that if it should be determined that the duties of U.S. Executive Director on the International Bank were not such as to interfere with the performance of your duties as Assistant Secretary of the Treasury there would appear to be no legal prohibition to holding both offices. It was pointed out that the Bretton Woods Agreements Act itself merely provided that no compensation should be received from the United States for services as an executive director.

It was also pointed out in that memorandum that, in general, on the subject of conflicts of interests in two positions, the Attorney General has stated that public officers should not engage in activities which are incompatible with the duties of public office but in the absence of "legal incompatibility" the question of the propriety of appointing the same person to each of two offices belongs to the appointing power and that it is for him to decide whether one person can properly perform the duties of both offices. The question of the compatibility of the two offices is complicated in the case of a member of the Board of Governors by the provision in section 10 of the Federal Reserve Act (12 U.S.C. 241) that "The members of the Board shall devote their entire time to the business of the Board * * *."

Another serious question arises, moreover, in connection with a member of the Board of Governors of the Federal Reserve System holding the office of U.S. Executive Director of the International Bank. Section 10 of the Federal Reserve Act (12 U.S.C. 244) provides in part:

"No member of the Board of Governors of the Federal Reserve System shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve bank or hold stock in any bank, banking institution, or trust company; and before entering upon his duties as a member of the Board of Governors of the Federal Reserve System he shall certify under oath that he has complied with this requirement, and such certification shall be filed with the secretary of the Board.
* * *"

This provision has appeared in the Federal Reserve Act without substantial change since its first enactment in 1913. The House and Senate Reports on the Federal Reserve Act do not add much to an understanding of the applicability of this section to the present situation. House Report No. 69 of the 63rd Congress, 1st Session, states at page 44:

"For obvious reasons it is considered wise that every member of the Federal reserve board designated by the President shall surrender any banking connections he may have had at the time of his nomination
* * *."

It seems clear that the Congress did not intend to limit this prohibition to a member bank of the Federal Reserve System since other provisions of the Act provide that members of the Board shall be ineligible to hold any office, position, or employment in any member bank. It must be noted that the language of this provision does not even limit the prohibition to an office or directorship in a banking institution in the United States. On the other hand, it might be argued that the Congress had no reason to consider at the time that the Federal Reserve Act was adopted a directorship on an international institution such as the International Bank for Reconstruction and Development and that what they were concerned about was a possible conflict in interest between a private U.S. banking interest and the performance of duties as a member of the Board of Governors. Accordingly, the proper interpretation is not certain, but literally the Federal Reserve Act would preclude your holding the directorship of the International Bank.

It is suggested that if you wish to give further consideration to holding both posts, you should consult the legal staff of the Federal Reserve Board which could more appropriately give you an opinion than I can. Conceivably, it might even be desirable to request an opinion of the Attorney General.