# OFFICIAL OPINIONS

OF

# THE ATTORNEYS GENERAL

OF

## THE UNITED STATES

ADVISING THE

## PRESIDENT AND HEADS OF DEPARTMENTS

IN RELATION TO

## THEIR OFFICIAL DUTIES

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EDITED BY

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To the PRESIDENT.

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CHANGE OF LOCATION OF FEDERAL RESERVE BANKS.

The Federal Reserve Board can not legally change the present location of any Federal reserve bank, whether there has been an alteration or readjustment in the district lines or not.

The Federal reserve act, in prescribing a minimum capitalization of $4,000,000 for Federal reserve banks as a condition precedent to commencing business, does not require that such minimum capitalization shall be preserved when member banks reduce their capital stock or surplus, or cease to be members.

DEPARTMENT OF JUSTICE,
*April 14, 1916.*

SIR: At the request of the Federal Reserve Board you have submitted the following questions for my opinion:

"I. Can the Federal Reserve Board legally change the present location of any Federal reserve bank:

"(*a*) In the case where there has been no alteration in the district lines, and

"(*b*) In the case where there has been such readjustment of district lines as in the opinion of the board necessitates the designation of a new Federal reserve city in order that due regard may be given to the convenience and customary course of business as required by section 2 of the Federal reserve act?

"II. Must the Federal Reserve Board, in exercising it admitted power to readjust, preserve the $4,000,000 minimum capitalization required of each Federal reserve ban as a condition precedent to the commencement of bus ness?"

I.

In my opinion of November 22, 1915, I expressed the view that the Federal reserve act does not confer on the Federal Reserve Board the power to *abolish* any of the

existing Federal reserve banks or Federal reserve districts. I believe that the reasoning of that opinion is equally applicable to both branches of the first question now submitted.

Section 2 of the Federal reserve act provides (38 Stat. 251):

"As soon as practicable, * * * the Reserve Bank Organization Committee shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States * * * into districts, each district to contain only one of such Federal reserve cities. The determination of said organization committee shall not be subject to review except by the Federal Reserve Board when organized: *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all. Such districts shall be known as Federal reserve districts and may be designated by number. * * *

"Said organization committee shall be authorized * * * to make such investigation as may be deemed necessary by the said committee in determining the reserve districts and in designating the cities within such districts where such Federal reserve banks shall be severally located."

The same section further provides:

"The said committee shall supervise the organization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as 'Federal Reserve Bank of Chicago.'"

Since the act thus provides that each city designated as a Federal reserve city is to be the location of a Federal reserve bank, it follows that a change in the location of a Federal reserve bank would in effect be the designation of a new Federal reserve city and the abandonment of one

previously designated. I find no more warrant in the act for the abandonment of one Federal reserve city and the designation of a new one than I do for the abolition of a Federal reserve district when once established.

The power to designate a new Federal reserve city (12 cities having been named by the organization committee), or to change the location of a Federal reserve bank, is not expressly conferred by the act on the Federal Reserve Board. If the board possesses such power it is only by implication from the provision (sec. 2) that—

"The determination of said organization committee shall not be subject to review except by the Federal Reserve Board when organized: *Provided*, That the districts shall be apportioned with due regard to the convenience and customary course of business and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all."

In my opinion there is no clear indication either in the provision just quoted or elsewhere in the act of an intent to confer on the Federal Reserve Board the power to change the location of Federal reserve banks by the designation of new Federal reserve cities. On the contrary, there are indications of an opposite intent. As stated in my opinion of November 22, 1915, above referred to—

"The merely negative statement that the determination of the organization committee '*shall not* be subject to review except by the Federal Reserve Board when organized' clearly cannot be enlarged into an affirmative grant of power to the board to review and set aside everything done by the organization committee. The reasonable view is that by that language Congress meant that the determination of the organization committee should not be subject to review at all, except in so far as the subsequent provisions specifically authorize a review by the Federal Reserve Board. The only subsequent provision authorizing a review of the determination of the organization committee by the Federal Reserve Board is contained in the sentence—

"'The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all.'"

Again, as stated in that opinion—

"A reading of the act shows at once that the organization committee was created not merely for the purpose of attending to the formalities of organization or to serve as a stop-gap until the Federal Reserve Board should come into existence, but that it had an independent function to perform and to that end was invested with wide powers. That is to say, its function was to *organize* the system as contradistinguished from the function of the Federal Reserve Board, which was primarily to *administer* the system."

The duty of designating Federal reserve cities belonged to the Reserve bank organization committee as a part of the organization of the system, and the committee was required by the act to designate not less than 8 nor more than 12 cities. This duty is named first among those imposed upon the organization committee, and it is imposed by the same provision of section 2 which required the committee to divide the United States into Federal reserve districts. The same considerations that indicate an intention that the several districts should be permanent would also indicate that the designation of the cities was not to be made for temporary purposes, but was intended to be permanent, subject, of course, to change by Congress. The designation was to be made only after thorough investigation, and the same machinery was provided to facilitate both the determination of the districts and the designation of the cities. Thus, section 2 provides:

"Said organization committee shall be authorized to employ counsel and expert aid, to take testimony, * * * and to make such investigation as may be deemed necessary * * * in determining the reserve districts *and in designating the cities* within such districts where such Federal reserve banks shall be severally located."

In my opinion, this coupling of the duty of determining the districts with the duty of designating the Federal

reserve cites within the several districts shows an intention on the part of Congress that the cities so designated are to constitute the fixed centers in the scheme or system of division, the duty of designating the cities being coordinate with the duty of forming districts around them. It was left to the discretion of the organization committee whether it should designate the full number of Federal reserve cities and establish the full number of Federal reserve districts permitted by the act. The committee elected to designate and establish the full number authorized, thereby practically suspending the operation of the provision of the act that "new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all." The primary, if not the only purpose of that provision, must have been to take care of the situation in the event that the organization committee had designated less than 12 Federal reserve cities.

The fact that the Federal Reserve Board, aside from the provision relating to the creation of new districts from time to time, was merely given the power to "readjust" districts suggests that there was to be some permanent characteristic or element in the districts created by the organization committee. If, however, in addition to the power which the Federal Reserve Board has of readjusting districts by changing their boundary lines, it also possessed the power to change the location of the respective Federal reserve cities within such districts, then the board could, by successive changes of cities and boundaries, entirely obliterate existing districts and substitute in their place new districts totally different from those created by the organization committee. I do not think that Congress intended to confer such a power.

The act provides that each Federal reserve bank is to include the name of the city in which the bank is located. By section 4 it is provided that the organization certificate of each bank shall state specifically—

"The name of such Federal reserve bank, the territorial extent of the district over which the operations of such Federal reserve bank are to be carried on, *the city and State in which said bank is to be located*, the amount of

capital stock and the number of shares into which the same is divided * * *."

Upon the filing of such certificate with the Comptroller of the Currency in the manner prescribed, such Federal reserve bank—

"shall become a body corporate and as such, *and in the name designated in such organization certificate*, shall have power—

"* * * To have succession for a period of twenty years from its organization unless it is sooner dissolved by an act of Congress, or unless its franchise becomes forfeited by some violation of law." (Sec. 4.)

It is to be noted that there is no provision in the act by which the Federal Reserve Board may change the name of a Federal reserve bank or amend its certificate in this respect. The whole tenor suggests permanency.

The omission of Congress to grant, by express language, the power to change Federal reserve cities is significant, especially in view of the language of section 11 (e) of the act, which confers the power—

"To add to the number of cities classified as reserve and central reserve cities * * *; or to reclassify existing reserve and central reserve cities, or to terminate their designation as such."

It would have been equally easy, had Congress desired to grant the authority to designate new Federal serve cities, to have said so in express terms. (*Tillson* v. *United States*, 100 U. S., 43, 46, quoted in my opinion of November 22, 1915, *supra.*)

It may be suggested that changes in the "customary course of business" or other changes not foreseen by the organization committee may result in inconveniences which the Federal Reserve Board can not remedy if its power to change the location of Federal reserve cities is denied. The answer is that the remedy is with Congress, in so far as it may not already be supplied by section 3, which authorizes the establishment of as many branch banks in any district as may be found expedient.

To sum up my conclusion on the question whether the Federal Reserve Board can legally change the present

location of any Federal reserve bank, I am of opinion that the board has no such power, and that such power is lacking whether there has been an alteration or readjustment in the district lines or not.

## II.

Coming now to the consideration of the second question submitted, namely, whether the Federal Reserve Board, in exercising its admitted power to readjust, must preserve the $4,000,000 minimum capitalization required of each Federal reserve bank as a condition precedent to the commencement of business, I am of opinion that this question is to be answered in the negative.

The Federal reserve act provides, in section 2:

"No Federal reserve bank shall *commence business* with a *subscribed capital* less than $4,000,000."

The same section also contains a provision requiring subscriptions to the capital stock to be paid—

"One-sixth * * * on call of the organization committee or of the Federal Reserve Board, one-sixth within three months and one-sixth within six months thereafter, and the remainder of the subscription, or any part thereof, shall be *subject to call when demed necessary by the Federal Reserve Board* * * *."

Section 4 contains the following provision:

"*When the minimum amount of capital stock* prescribed by this act for the organization of any Federal reserve bank *shall have been subscribed and allotted*, the organization committee shall designate any five banks * * * to execute a certificate of organization * * *.

"Upon the filing of such certificate with the Comptroller of the Currency the said Federal reserve bank shall become a body corporate."

The decrease of capital stock is authorized by the following provision of section 5:

"The outstanding capital stock shall be increased from time to time as member banks increase their capital stock and surplus or as additonal banks become members, *and may be decreased as member banks reduce their capital stock or surplus or cease to be members.*"

Additional provisions relating to the decrease of capital stock are found in sections 5 and 6, as follows:

"Sec. 5. * * * When a member bank reduces its capital stock it shall surrender a proportionate amount of its holdings in the capital of said Federal reserve bank, *and when a member bank voluntarily liquidates it shall surrender all of its holdings of the capital stock* of said Federal reserve bank and be released from its stock subscription not previously called. In either case *the shares surrendered shall be canceled* and the member bank shall receive in payment therefor * * * a sum equal to its cash-paid subscriptions on the shares surrendered * * * less any liability of such member bank to the Federal reserve bank.

"Sec. 6. *If any member bank shall be declared insolvent* * * * *the stock held by it* in said Federal reserve bank *shall be canceled* * * * and all cash-paid subscriptions on said stock, with one-half of one per centum per month from the period of last dividend, not to exceed the book value thereof, shall be first applied to all debts of the insolvent member bank to the Federal reserve bank, and the balance, if any, shall be paid to the receiver of the insolvent bank. *Whenever the capital stock* of a Federal reserve bank *is reduced*, either *on account of a reduction in capital stock of any member bank or of the liquidation or insolvency* of such bank, the board of directors shall cause to be executed a certificate to the Comptroller of the Currency showing such reduction of capital stock and the amount repaid to such bank."

In section 9 it is provided:

"If at any time * * * a member bank has *failed to comply with* * * * *the regulations of the Federal Reserve Board*, it shall be within the power of the said board, after hearing, to require such bank to *surrender its stock* in the Federal reserve bank; * * * and said Federal reserve bank shall, upon notice from the Federal Reserve Board, be *required to suspend said bank from further privileges of membership*, and shall within thirty days of such notice *cancel and retire its stock* and make payment therefor in the manner herein provided."

It will be observed from the foregoing quotations that the Federal reserve act expressly provides that no Federal reserve bank shall *commence business* with a subscribed capital of less than $4,000,000. (Sec. 2.) They were each to be organized when the minimum amount of capital stock had been subscribed. (Sec. 4.) Only three-sixths of the capital subscribed is required to be paid in, the remainder being left "subject to call when deemed necessary by the Federal Reserve Board." (Sec. 2.)

The act specifically provides for the decrease of capital stock (1) as member banks reduce their capital stock; and (2) as they cease to be members. (Sec. 5.)

Member banks may cease to be members for any of four causes—

(*a*) Voluntary liquidation (sec. 5);

(*b*) Insolvency (sec. 6);

(*c*) Violation of regulations of Federal Reserve Board (sec. 9);

(*d*) Transfer from one Federal district to another through readjustment of districts (sec. 2).

The act specifically requires the cancellation of capital stock where membership ceases under (*a*), (*b*), or (*c*). (Secs. 5, 6, and 9.)

No specific provision is made for cancellation of capital stock where membership ceases under (*d*).

While the minimum capital had to be *subscribed* in order to *commence* business, the *maintenance* of that minimum is nowhere prescribed by the act. The fact that the board is to determine whether more than half the subscription is to be paid in seems to indicate that the minimum to be subscribed was fixed as a precaution to make sure that ample credit should be pledged to insure the success of the system.

Not only is the maintenance of the minimum not prescribed, but express provision is made for reducing the capital stock as, or whenever, member banks "cease to be members." This language is general and includes in its terms all cases in which member banks cease to be members. It is coupled with no expressed condition that the minimum capitalization be preserved, and since the

Federal reserve act required the organization of the Federal reserve banks upon the subscription of the minimum, it is obvious that any reduction whatever made after commencing business might reduce the capital below the minimum.

It is plain that a member bank can be a member only of the Federal reserve bank of the district in which both are located. This is obvious from the nature of the Federal reserve districts and is assumed in sections 2, 4, and 9. Of necessity, therefore, when the Federal Reserve Board, in the exercise of its power to readjust, transfers a member bank from one district to another, such transferred bank must cease to be a member of the Federal reserve bank of the district from which it is transferred. When it thus ceases to be a member, the capital of the Federal reserve bank may be reduced; and there is nothing in the act requiring the reduction to be made subject to the maintenance of a minimum capital.

It is to be noted that section 5 provides that the capital stock *shall* be increased and *may* be decreased under the conditions therein mentioned. Succeeding provisions of sections 5, 6, and 9, however, make it clear that *may* is here used in the sense of *shall*, as applied to cases arising under (*a*), (*b*), and (*c*). It seems reasonable to infer that it is used in the same sense as applied to (*d*). But whether so used or used in its more literal sense is here immaterial, for, so far as the answer to the question submitted is concerned, the result is the same whether the board is *required* or merely *authorized* to reduce the capital when member banks cease to be members.

Nor can any significance be attached to the fact that specific provision is made for reducing the capital stock of a Federal reserve bank in cases arising under (*a*), (*b*), and (*c*), while the act is silent as to cases arising under (*d*). The cases specifically provided for include cases where the member banks cease to be members as the direct result of their own acts or conduct. Cases under (*d*) arise where banks cease to be members as an incident of the exercise of the power of the Federal Reserve Board

to readjust districts. The grant of the specific power to readjust carries with it, as fully as if expressed in the act, the power to do what is necessarily incidental. (Broom's Maxims, 7th ed. 505; 199 U. S. 12.)

My conclusion as to the second question submitted is that the Federal reserve act, in prescribing a minimum capitalization of $4,000,000 for Federal reserve banks as a condition precedent to commencing business, does not require that such minimum capitalization shall be preserved under the circumstances.

Very respectfully,

T. W. GREGORY.