

FEDERAL RESERVE BOARD

WASHINGTON

OFFICE OF GOVERNOR

September 12, 1935.

Mr. M. S. Eccles,
c/o Eccles Investment Co.,
Ogden, Utah.

Dear Marriner:

You will be interested in reading the enclosed letter from the Department of the Interior which confirms our earlier fears that the Federal Trade Commission would not be out of the way in time for the building program to be completed as planned. At the Board meeting today this matter was discussed and in view of the likely delay, Thomas, Morrill and I were authorized to negotiate with the high bidder for a postponement of the date for commencement of the demolition. Meanwhile, it has been said that Mr. Ickes took with him to Hyde Park a memorandum on this matter.

The meeting authorized the filing of the white collar project with the understanding that it would be limited to work in closed banks and that any enlargement of the project would be subject to further Board action. Meanwhile, Dr. Currie has sent letters to the ABA and the Reserve City bankers asking for their endorsement.

The press today swings in the opposite direction from the Kiplinger comment and as you, of course, know by now, the Secretary held a press conference in which he stated that he was very much in favor of your reappointment as Chairman. This, of course, will spike all the loose talk and will probably obviate the necessity of the plan you mentioned the other evening.

I am enclosing herewith a copy of an opinion handed me personally by Mr. Vest on the matter of strategy which we discussed over the telephone.

Bob Fleming's speech at Atlantic City certainly reflected the views you have been expressing for many months regarding necessity of expansion of private credit in order to get the government out of it. The new Banking Act is recognized by Fleming as opening the gate for such a development. I have marked the most significant passages and am enclosing herewith.

Please check the enclosed proposed letter to Professor Fisher and see if you wish it sent or not.

Yours sincerely,

Larry.

Office Correspondence

FEDERAL RESERVE
BOARDDate September 12, 1935To Mr. Clayton
From Mr. VestSubject: Questions relating to appointment
of members of the Board of Governors.

O.P.O. 16-852

In accordance with the request contained in your memorandum of September 11, I have given consideration to the matter outlined therein. For purposes of convenience, I shall discuss the second of your three questions first. This question is as follows:

In the event no one is appointed until after 2/1/36 to succeed Mr. Eccles, would his present appointment carry over until the time of such appointment?

The Banking Act of 1935 provides that "upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified". The present members of the Board are just as much members of the Board of Governors as will be those appointed effective February 1, 1936. The phrase "members of the Board" in the sentence above quoted is unrestricted and it appears to be applicable to the present members of the Board. Some possible doubt is thrown on this by the provision that each appointive member of the Board in office on the date of enactment of the Banking Act of 1935 shall continue to serve as a member until February 1, 1936. It may be argued that this provision definitely terminates on the latter date the service of present members of the Board; but the statute does not so provide, and it is believed that this provision merely indicates the date of expiration of the terms of office of present members and does not prevent the application to present members of the sentence providing for continuance in office after expiration of term until successors are qualified.

It is my opinion, therefore, that the sentence above quoted is applicable to the present members of the Board and that, if Mr. Eccles should not be nominated by the President prior to February 1, 1936, or if he should be nominated and confirmation denied or delayed beyond that date by the Senate, he would continue to hold office until his successor is appointed and has qualified.

The question also arises whether Mr. Eccles could continue to serve as Chairman in such circumstances. The new law provides that "Hereafter * * * the governor and the vice-governor of the Federal Reserve Board shall be known as the chairman and the vice-chairman respectively" and accordingly Mr. Eccles is now Chairman of the Board by virtue of the fact that he was Governor on the date of enactment of the Banking Act of 1935. The law, after stating the manner in which the President shall fix the terms of successors to appointive members in office on the date of the enactment of the Banking Act of 1935, also provides that the President shall designate a chairman from the persons "thus appointed", apparently referring to persons appointed to succeed present appointive members of the Board. However, inasmuch as Mr. Eccles is now Chairman, it would seem that he would continue to be Chairman if he should hold over, unless some other member were designated as Chairman. The law does not expressly provide for this, but it would seem to be a reasonable interpretation of the hold-over clause which says that members "shall continue to serve" until their successors are appointed and have qualified. If the President failed

to designate any other member as Chairman, the Board would probably be without a Chairman unless this construction should prevail, for it appears very doubtful whether the President would have authority to designate Mr. Eccles as Chairman until he has been given a new appointment. It is believed, therefore, that Mr. Eccles would continue as Chairman of the Board in holding over after February 1, unless some one else were designated as Chairman.

The first question stated in your memorandum is as follows:

Assume Mr. Eccles were appointed now to succeed himself and he were not confirmed by the Senate prior to 2/1/36: In such a case, would the Board be without a Chairman?

Since the statute provides that the present members shall continue to serve as members of the Board until February 1, 1936 and since they actually are serving as such, in my opinion the statute evidences an intention that the Board shall consist of seven members after February 1, 1936 and of not more than eight members until that time. On this basis, there appear to be no vacancies in the membership of the Board at this time. Accordingly, I know of no authority under which the President might appoint Mr. Eccles to become a member of the Board at this time. Such an appointment might possibly be made effective February 1, 1936, but it is believed that this would require confirmation by the Senate before he could take office, since it would have the same effect as if made after the Senate convenes. Even if it should be considered that there is at this time a vacancy with respect to the office of the new seventh appointive member of the Board, and I do not believe that is the preferred interpretation of the law, and if Mr. Eccles should be appointed during the recess of the Senate to fill such vacancy, his

term under such appointment would end with the expiration of the next session of the Senate. Conceivably, it may be suggested that Mr. Eccles resign his present office to create a vacancy therein and be reappointed now to succeed himself in such office. If he did so, however, it appears that his term would expire on February 1, 1936, because he could only be appointed to fill a vacancy for the unexpired term of his predecessor. In any of these cases, of course, as above indicated, the provision for holding over would be applicable in the event no successor were appointed and qualified at the end of the term.

Your third question is as follows:

In the event Mr. Eccles were appointed after Congress convenes, how long could he serve without confirmation?

If Mr. Eccles were appointed to succeed himself while the Senate is in session, it is believed that it would be necessary for him to be nominated by the President and confirmed by the Senate before he could serve in such circumstances under such new appointment. However, as indicated above, it is believed that he could hold over after February 1 under his existing appointment unless his successor had been appointed and qualified by that date.

I trust that the above discussion of this matter will give you and Mr. Eccles the information which is desired in this connection. I feel that the most important point above considered is that with respect to the holding over of present members of the Board after February 1

in the event their successors have not been appointed and qualified by that date. There is some slight doubt about this, but after carefully studying the statute it is believed the provision for holding over is applicable not only to members hereafter appointed but also to those now in office, so that if a successor to Mr. Eccles has not been appointed and qualified by February 1, 1936 he may continue to serve as a member of the Board until a successor has been appointed and qualified.

Respectfully,

George B. Vest
George B. Vest,
Assistant General Counsel.