

MEMORANDUM

To: The Informal Capital Funds Committee
From: Ganson Purcell
Re: Authority for certain aspects of capital control

The question presented is whether a program of controlling (and, if necessary, preventing) the sale of securities and of coordinating financing so as to minimize interference in competition with necessary wartime financing, may be carried out pursuant to executive order.

Existing legislative authority is, in my opinion, sufficient to permit the institution of such a program through executive order. Section 2(a)(2) of Title III of the Second War Powers Act, 1942, as approved March 27, 1942, is particularly significant. It provides:

"Whenever the President is satisfied that the fulfillment of requirements for the defense of the United States will result in a shortage in the supply of any material or of any facilities for defense or for private account or for export, the President may allocate such material or facilities in such manner, upon such conditions and to such extent as he shall deem necessary or appropriate in the public interest and to promote the national defense."

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Capital is a material or facility for defense, private account, or export, and the President may "allocate" it "upon such conditions and to such extent as he shall deem necessary or appropriate."

Should there be any doubt that capital is a material or facility within the Act, the President, if he deems a capital control program necessary to effect the allocation

1/ Nekoosa-Edwards Paper Co. et al. v. Railroad Commission of Wisconsin, 193 Wis. 538 (1927). The language used is cited with approval in Nekoosa-Edwards Paper Co. v. Min. St. P. & S.S.M. Ry. Co., 259 N.W. p. 618 (1935). See, too, 25 C.J. 334.

of material or facilities (which are surely comprehended within the Act), may institute such a program thereunder. The President is empowered by the Act to proceed "in such manner . . . as he shall deem necessary or appropriate. . . .", and he may do so through a program designed to prevent competition and interference with financing necessary for effective war procurement.

The provisions of Section 2(a) of the Act provide ample powers to obtain information, level penalties and effect administration through existing governmental agencies.

The President's broad emergency powers over banks and credit (12 U.S.C.A. Section 95, and Trading With the Enemy Act, Section 5(b)), his emergency powers over interstate means of communications (Communications Act of 1934, Section 606(a)), his broad powers to aid small business and plant expansion (Second War Powers Act), to conduct studies and investigations to facilitate trade expansion in emergencies (31 U.S.C. Section 821), afford additional bases and sanctions for institution of the proposed program by executive order.