FEDERAL RESERVE BOARD

WASHINGTON

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February 6, 1935

MEMORANDUM:

TO- Mr. Oliphant
FROM- Mr. Eccles

This is Mr. Wyatt's opinion with reference to my eligibility to serve as Governor of the Federal Reserve Board, in accordance with my telephone conversation with you this afternoon.

I wish you would personally go over this and advise me if you agree.

MSE

(Original copy with initials is in the envelop covering legal papers in connection with confirmation -- I do not recall whether this was ever sent to Oliphant and he returned it, whether it was an extra copy initialed for our files -- however, Mr. Eccles no doubt will remember.)

12/3/48
V.E.

January 26, 1935.

Governor Eccles.

Mr. Wyatt, General Counsel.

Eligibility as a member of the Federal Reserve Board.

This will confirm the views which I expressed to you some time ago on the question whether, in view of the facts hereinafter stated, you are complying with the following provision of section 10 of the Federal Reserve Act:

> "No member of the Federal Reserve Board 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 Federal Reserve Board he shall certify under oath that he has complied with this requirement, and such certification shall be filed with the secretary of the Board."

When the President asked you to become a member of the Federal Reserve Board, no member of the Board was a banker and presumably he desired to appoint as Governor of the Board a person experienced in banking. Having been engaged for many years in the banking business, it is natural that you had acquired some investments in that business as all successful bankers do. I understand, however, that you owned no bank stocks and that your investment in the banking business consisted of a minority interest in the First Security Corporation of Ogden, a holding company organized for the purpose of holding the stock of a group of banks located in Utah and Idaho.

Since you owned no bank stocks, it might have been said that no action on your part was necessary in order to comply with the requirement of the statute that a member of the Board shall not be a

stockholder of any bank; but you felt that the ownership of stock in a corporation engaged principally in the business of holding bank stocks might be considered inconsistent with the spirit and purpose of the law and that you should dispose of such stock. The stock of the First Security Corporation of Ogden was not listed on any stock exchange; and, in view of the economic and banking difficulties which this country had been experiencing for a number of years, there appeared to be no market for bank stocks or for the stock of corporations whose principal assets were bank stocks.

In the absence of any other purchaser for your stock in the First Security Corporation of Ogden, you sold such stock to the Eccles Investment Company at a considerable financial sacrifice and severed all of your connections as officer, director or stockholder in the First Security Corporation of Ogden.

I understand that the Eccles Investment Company was organized about twenty years ago to hold and manage certain assets of your father's estate for the benefit of your mother and his nine children, including yourself; that seven of the nine children were minors and your attorneys and business associates advised that the organization of such a corporation was the best way to preserve and manage their interests; that this arrangement has been found satisfactory and has been continued by mutual consent; that the assets of the Eccles Investment Company are not principally bank stocks, but include a large variety of investments, including real estate, bonds, notes

and stocks of corporations engaged in widely diversified types of business; and that you are not a principal stockholder of the corporation, but have only a small minority interest therein, which amounts to less than 10 per cent of the total stock.

Since you are not an officer or director of any bank, banking institution, trust company or Federal reserve bank and hold no stock in any bank, banking institution or trust company, it is clear that you are complying literally with the terms of the statute. The only question remaining is whether your ownership of a minority interest in a corporation which owns a small minority interest in a corporation which in turn owns bank stocks may be said to be inconsistent with the spirit and purpose of the statute.

I find that this office has never passed on this precise question, but it has passed on a somewhat analogous question. Approximately ten years ago, this office held that the ownership of stock in a corporation which owned stock in a bank did not disqualify a person from serving as a Class C director of a Federal reserve bank, notwithstanding the fact that section 4 of the Federal Reserve Act provides that a Class C director of a Federal reserve bank shall not be an officer, director, employee or stockholder of any bank.

Likewise, in my opinion, your ownership of a small minority interest in the Eccles Investment Company is not in any sense a violation of the statute and is not inconsistent with the spirit and

purpose of the law. To hold otherwise would stretch the language of the law to an unreasonable extent and would make it exceedingly difficult, if not practically impossible, for the President to appoint to membership on the Federal Reserve Board persons who had gained tested banking experience by successful participation in the business of banking, which is the only means by which such experience can be gained.

The only such relationships which Congress has expressly forbidden members of the Board to have are those of officers, directors or stockholders of banking institutions; and the question involved is whether, in order to comply with the spirit and purpose of the law, it is necessary to construe it as forbidding by implication other relationships which are not expressly forbidden.

The language of the statute is clear and unambiguous and presumably covers everything which Congress intended to prohibit. It is doubtful, therefore, whether any one would be justified in contending that Congress intended to prevent Board members from having other and different relationships which are not mentioned in the statute.

The obvious purpose of the statute is to guard against a member of the Board having such an interest in a bank as would prevent him from discharging his duties and responsibilities as a member of the Board fairly and impartially. Congress presumably gave careful consideration to this problem and decided that it was only necessary to prevent the members of the Board from being directors, officers or stockholders of banking institutions. If we inquire how much

further we must go in order to comply with the spirit and purpose of the statute, we immediately get into the realm of speculation and it is impossible to know exactly where to draw the line.

Conceivably, Congress could have provided that members of the Board shall never have been officers, directors or stockholders of banks, lest their previous interests in the banking business should cause them to favor their former associates and fellow stockholders. Congress apparently considered it unwise to go to this extreme, since it was obvious that a Board charged with such vast powers of supervision and regulation of the banking business should include one or more members experienced in banking and such a provision would have made it impossible to obtain such members. Congress not only did not insert such a provision in the statute but, on the contrary, it provided in the original Federal Reserve Act, that, "Of the five members appointed by the President, at least two shall be persons experienced in banking or finance". This language has since been dropped from the statute; but it may properly be considered in construing the language now under consideration, because both provisions were in the original Federal Reserve Act.

If Congress had intended that a member of the Board should not even have an indirect or remote financial interest in any banking institution, it would seem that it would have used language to the effect that no member of the Federal Reserve Board shall have any financial interest "directly or indirectly" in any banking institution.

It has used similar language in many other statutes and recently used similar language in the Banking Act of 1933.

Congress very wisely refrained from using such language in prescribing the qualifications of members of the Federal Reserve Board; because to have done so might have made it impossible for the President to appoint to membership on the Federal Reserve Board any person who had gained a familiarity with the banking business through successful participation in that business. It know_ that practically all successful bankers acquire investments in the banking business and that it is frequently impossible to dispose of those investments so completely that the person in question is left without any remote or indirect interest therein.

It is desirable for the members of the Board to "lean over backwards" in complying with the spirit and purpose as well as the letter of the law; but, since Congress did not consider it necessary to forbid the members of the Board to have any remote or indirect financial interest in any banking institution, I do not feel that it is necessary to go to the extent of holding that it is inconsistent with the spirit and purpose of the law for a member of the Board to have a small minority interest in a corporation which owns a small minority interest in another corporation which in turn owns bank stocks. Indeed, to go to this extent would lead to absurd results.

Several illustrations of the possible absurdities resulting from such a construction of the statute have recently come to my attention in connection with the issuance of voting permits to holding company

affiliates of member banks.

Thus, the Atlas Corporation, an investment trust holding a miscellaneous portfolio of stocks and other investment securities, owns, among other assets, the stock of the Pacific Eastern Corporation, which in turn owns the stock of the American Company which in turn owns the stock of the American Trust Company of San Francisco, California. Gimbel Brothers, Inc., which owns and operates seven department stores in New York, Philadelphia, Pittsburgh, Chicago and Milwaukee, also owns the stock of a bank. Armour and Company, which owns and conducts directly or indirectly one of the largest meat packing industries in the world, owned until recently the majority of the stock of a bank in Fort Worth, Texas. The Ford Motor Company owns a small holding company which in turn owns about 30 per cent of the stock of a member bank. It would be manifestly absurd to say that it would be contrary to the spirit and purpose of the Federal Reserve Act for a person to serve as a member of the Federal Reserve Board solely because he owned stock in the Atlas Corporation, Gimbel Brothers, Armour and Company, or the Ford Motor Company.

Suppose that, upon becoming a member of the Board, a person owned some stock of the United States Steel Corporation and that subsequently the United States Steel Corporation, in order to provide banking facilities for the employees at one of its plants, should subscribe to the stock of a newly organized member bank. Could it be said that this would disqualify the member of the Board unless he

immediately disposed of his stock in the United States Steel Corporation? The question is obviously "no".

If we desire to indulge further in speculation as to how far it is necessary to go in order to comply with the spirit and purpose of the statute, it is also appropriate to consider how much further Congress might have gone in safeguarding this principle in the language of the statute. It might have considered that for a member of the Board to have a close relative engaged in the banking business might unduly influence his official actions. Therefore, Congress might have provided that no member of the Board should be related to any person engaged in the banking business or financially interested therein. For obvious reasons, Congress found it impracticable to go to this extent and no one has ever had the temerity to suggest that it is contrary to the spirit and purpose of the law for a member of the Board to be related to any person engaged in the banking business.

If the wife, father, or brother of a member of the Board should be an officer or director of a member bank or have a large investment in stock of a member bank, that would be much more likely to influence the actions of the Board member than a remote and indirect interest in the banking business such as you have as a result of the relatively small amount of stock which you own in the Eccles Investment Company, which in turn holds a small minority interest in the First Security Corporation, which in turn owns bank stocks.

It would seem, therefore, that to say that such an indirect and remote interest in the banking business is contrary to the spirit and

purpose of the law would be to stretch the language of the statute by construction and implication to an unreasonable extent which would lead to results which Congress very wisely avoided in framing the language of the statute. It would be tantamount to an administrative amendment to the law, which would lead to the absurd result of making it exceedingly difficult if not impossible for the President to appoint to membership on the Federal Reserve Board any person experienced in the banking business. Such a construction of the statute cannot properly be indulged in.

Accordingly, it is my opinion that your ownership of shares of stock of the Eccles Investment Company does not cause you to be a stockholder of any bank, banking institution or trust company within either the letter or the spirit of the above quoted provision of section 10 of the Federal Reserve Act, and that, under the provisions of such section, you are duly qualified as a member of the Federal Reserve Board.

Respectfully,

Walter Wyatt,
General Counsel.