Dallas, Texas, July 17, 1939.

PERSONAL.

Mr. Marriner S. Eccles,
Board of Governors,
Federal Reserve System,
Washington, D.C.

Dear Mr. Eccles:

Enclosed is the memorandum about which you talked with me the day before I left Washington. The language of Section 10 of the Federal Reserve Act is such as to make it impossible to give a dogmatic answer to the specific question. It provides for appointment of members of the Board by the President, by and with the advice and consent of the Senate for terms of 14 years; for the designation by the President of a chairman and vice chairman for terms of 4 years; and for members of the Board to hold over after the expiration of their terms of office until their successors have been appointed and qualified. The hold-over provision may be read either way. Under one construction it may be read to apply also to the terms of office of the chairman and vice chairman. Under this construction a member acting as chairman whose term of office expired would hold over as a member and as chairman. Under the other construction such a member would hold over as a member, but the office of chairman would become vacant.

Dealing with the practical aspects of the question, it may be noted that neither the chairman nor vice chairman perform any acts as such which would give rise to cause for complaint on the part of any private individual. Therefore, if an administrative interpretation is put upon the provision to the effect that it does apply also to the chairman and vice chairman until the President has designated their successors, it is hard to see who, if anyone, could complain. Furthermore, an administrative interpretation is, in itself, sometimes persuasive to a court.

Because of the points made in the enclosed memorandum, as well as the common sense of the matter, I am persuaded that the chairman and vice chairman hold over, and I believe that a court (assuming that the question could ever get before a court) would hold to that effect. At the same time, however, it must be stated that there is ample room in the language of the statute for differences of opinion as to its meaning and effect, and it is entirely possible for reasonable minds to come to the other conclusion.

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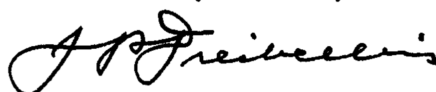
You will observe that the memorandum does not discuss the possibility of the President designating as chairman a member whose term has expired but who is holding over under the provisions of the statute. Technically this would appear to be possible under the law, the reasons therefor being as follows: The Federal Reserve Act, section 10, paragraph 2, says the President shall designate chairman "to serve as such for a term of four years." However, this must necessarily mean that he is designated to serve for four years <u>or such shorter period as he remains a member of the Board.</u> Otherwise, there would be the anomalous situation that a member would be disqualified for the chairmanship, no matter how great his qualifications, merely because of the technical, - or mechanical, - fact that he did not have a full four years more to serve on the Board. Such a result is so unreasonable that it cannot be imputed to Congress, certainly without the clearest and most inescapable language. If a member can be designated with, say, two years to serve, there is no reason why a mere hold-over member may not be designated.

I did not include the foregoing in the memorandum because upon reflection it seemed to me to have practical weaknesses which would eliminate it from consideration. While I am not sufficiently versed in such matters to appraise the possible consequences, it seems to me that claims might be made that the President was evading at least the spirit of the law or that there was fear that confirmation by the Senate would not be forthcoming and that the real reason for the action would be misinterpreted. As I say, however, that is a matter about which my opinion is of little value.

One possibility has occurred to me which seems to me to be worth considering. A personal letter from the President to you in which it was stated that he understood you were undecided whether or not you would accept reappointment and that in the interim he would appreciate your holding over and continuing to serve as chairmas as contemplated under the law might serve the double purpose of being an administrative interpretation of the law, and, if necessary, of being in fact a designation of you as chairman in line with his authority to designate as chairman a member whose term had expired but who was holding over under the law. If you think there is any merit in this suggestion I believe that a very good letter along those lines could be drafted without much difficulty.

I expect to be back on Monday, the 31st, but if you desire anything additional done before that time I can be reached at 4611 Nakoma Drive, Dallas, Texas.

Yours very truly,



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State Courts have rather generally held that a state officer, after the expiration of the term for which he was elected or appointed, continues to hold office until his successor has been appointed or elected and qualified. However, the few authorities dealing with federal officials make it plain that, in the absence of statutory authority, a federal official whose term has expired does not hold over. It would follow, therefore, that, except for the provision contained in Sec. 10 of the Federal Reserve Act, the office of a member of the Board, including the chairmanship and vice chairmanship, would become vacant at the expiration of the term of office of the incumbent. Such was the case prior to the enactment of the Banking Act of 1935, but that Act amended Section 10 of the Federal Reserve Act, and it now contains the following provision:

> "Upon the expiration of their terms of office, members of the Board shall continue to serve until their successors are appointed and have qualified."

It is clear, therefore, that members of the Board now hold over, and it remains to determine whether this applies also to the offices of chairman and vice chairman.

Members of the Board are appointed by the President, by and with the advice and consent of the Senate, but the chairman and vice chairman are merely designated by the President to serve as such for a term of four years. Prior to the enactment of the Banking Act of 1935 the Act provided that of the persons appointed members of the Board, one should be designated by the President as governor (now chairman), and one as vice governor (now vice chairman). There was no provision with respect to the term of office of such governor and vice governor, but the provision was consistently interpreted as meaning that they served at the pleasure of the President. The practice was for the President to designate the governor each year, and that practice remained the custom until the time Governor Myer was appointed.

The Banking Act of 1935 also amended Section 10 of the Federal Reserve Act with respect to the appointment of chairman and vice chairman by changing the name of governor and vice governor to chairman and vice chairman respectively, and by adding language providing for the chairman and vice chairman to serve as such for a

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term of four years. The purposes of the latter provision were to clarify the existing law and to make more plain its purpose of enabling the administration in office to maintain a liaison and responsive relationship with the Board.

Under the Act the chairman, and the vice chairman in his absence, performs no statutory duties different from any other member of the Board except to act as the Board's executive officer. The offices are but incidents to membership upon the Board. The Act specifically provides that members of the Board shall continue to serve until their successors are appointed and have qualified. This means that a member of the Board, whose term has expired, would continue to serve and perform all of his duties as a member until his successor had been appointed and qualified, and it follows that a member of the Board acting also as chairman would continue to perform all of the duties of his office, including his duties as chairman, until his successor had been appointed and qualified.

In a recent case involving the question of immunity from suit by a Regional Agricultural Credit Corporation, the Supreme Court said:

> "Congress naturally assumed that the general corporate powers to which it had given particularity in the original statute establishing Reconstruction would flow automatically to the Regionals from the source of their being;"

and, again,

> "Congress had a right to assume that the characteristic indulgence for corporate enterprise with which, a few months previously, it had endowed Reconstruction would now radiate through Reconstruction to Regional." (Keifer & Keifer v. Reconstruction Finance Corporation, 59 Sup. Ct. Rep. 516.)

While there is no similarity between the question with which the court was there dealing and the question of whether the chairman as a member of the Board also holds over as chairman, under the logic of the statement, it may be argued that Congress has a right to assume that the characteristics of the office of a member of the Board with respect to holdover radiates through the member to the office of chairman.

Furthermore, it should not be assumed that the holdover provision applies exclusively to membership upon the Board, and not to the offices of chairman and vice chairman. To the con-

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trary, the holdover provision refers to "terms of office", and it will be observed that the chairman and vice chairman are appointed for a "term". Moreover the holdover provision is but a part of a general paragraph and follows provisions dealing with the appointment of members of the Board and the appointment of a chairman and vice chairman, thus indicating its general application.

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