

FEDERAL RESERVE BOARD

WASHINGTON

OFFICE OF GOVERNOR

September 16, 1935.

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

Dear Marriner:

Here is the Vest memorandum which I trust will be of assistance.

In our conversation this morning we both assumed that under the terms of the Banking Bill of 1935 the President could appoint at any time after the effective date of the act any or all members of the new Board who would take office on February 1, 1936, or as soon thereafter as they should be confirmed by the Senate. Mr. Vest's opinion is exactly contrary to this assumption. Since there are no vacancies, there can be no appointments. And while a nomination might conceivably be made now by sending the name to the appropriate officer of the Senate, it is suggested that this is of doubtful legality and is at best a very unusual procedure. Mr. Vest, therefore, concludes that in case action of some kind is desirable before Congress convenes, the President can make an announcement of his intention to nominate one or more persons to be members of the new Board.

While the above reasoning seemed somewhat technical to me at first, the more I think about it the more I feel that the meaning of the language in the act coincides with the above argument. Mr. Vest pointed out that an appointment is never effective except in case of an interim appointment, when the commission of office issues simultaneously with the appointment. Except in case of a vacancy, however, an appointment or nomination has no legal effect and the commission cannot issue until the Senate has confirmed.

In conclusion, it seems to me that what the President should do now is to announce that he has consulted you and that you have indicated your willingness to serve on the new Board as Chairman and that he would make your nomination upon convening of Congress. Elliott's letter develops this phase of the matter.

Sincerely,

President's authority with respect to appointments  
to the Board of Governors of the Federal Reserve System  
under the Banking Act of 1935.

The Board of Governors of the Federal Reserve System now consists of six members appointed by the President by and with the advice and consent of the Senate and two ex officio members. Under the Banking Act of 1935, the Board will consist, after February 1, 1936, of seven members appointed by the President by and with the advice and consent of the Senate. The law provides that the members in office on August 23, 1935 and the ex officio members shall continue to serve until February 1, 1936.

The law contemplates that the President shall appoint seven members of the Board to take office February 1, 1936, the terms of office of such members to be two, four, six, eight, ten, twelve and fourteen years from that date, respectively. There are no vacancies in the membership of the Board at this time, however, and in my opinion the President is, accordingly, not authorized to appoint a member of the Board to take office prior to February 1, 1936 unless such a vacancy should occur.

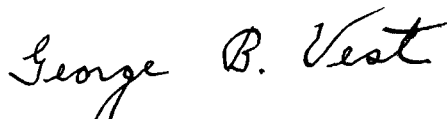
The President may, however, if he desires for any reason to give notice at this time of his selections of Board members effective February 1, publicly announce at once that he will nominate upon the convening of the Senate certain persons to take office on February 1 when confirmed by the Senate. In lieu of merely making such announcement, it is believed that the President may, if he desires, send nominations of the persons selected to the appropriate officers of the Senate at this time, even though it is now in recess. As this would be an unusual procedure and might raise some questions as to its legal effect, it would be well, if such procedure is followed, again to submit such nominations to the Senate as soon as it convenes.

While it is not believed that the President may designate a member of the Board as Chairman to serve for a term of four years as provided by the law unless the person so designated has been appointed as a member since August 23, 1935, the President may, if he so desires, announce that he intends to designate a certain person as Chairman when he shall have become a member on or after February 1. Pending such designation, the present Chairman will continue as such during his service as a member of the Board.

If the President should nominate all seven members of the Board and their nominations should be promptly confirmed by the Senate so that they all assume their offices on February 1, 1936, it would not be necessary to designate any particular appointee as succeeding any particular

present member of the Board. However, unless all of such appointees do take office on February 1, 1936, the question will arise which of the present members go out of office on that date and which of them hold over under the provision of the law that members of the Board shall continue to serve until their successors are appointed and have qualified. It is quite possible that confirmations of all the appointees would not be obtained before February 1 or that for other reasons there might be some delay in all of the appointees taking office on that date. Accordingly, as a practical matter it would appear necessary and certainly desirable that the President designate or indicate which appointee is to succeed which present member, so that it can be definitely ascertained which of the present members may continue to serve after February 1 until their successors are appointed and have qualified. Presumably, a present member who is reappointed would be appointed to succeed himself, but if so this should be indicated for the reason stated.

Respectfully,



George B. Vest,  
Assistant General Counsel.

Board of Governors of the Federal Reserve System