BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

OFFICE OF THE CHAIRMAN

September 7, 1938.

Honorable M. S. Eccles,
Eccles Investment Company,
Ogden, Utah.

Dear Governor:

Enclosed, in accordance with my suggestion, is a letter to you from Dreibelbis informally outlining the situation with respect to the legal question which you wanted me to refer to him. I suggested that he put it in the form of a personal letter to you since the question can be dealt with simply, rather than in a formal legal opinion.

It boils down to this: That he sees no insuperable obstacles to a combination appointment, assuming that it were felt to be wise procedure and assuming also that it were buttressed with a formal opinion by the Attorney General as well as some sounding out of the Senate to make sure that it does not encounter undue obstacles there. The point is first, as I see it, that if the will existed to do it, it is possible to argue oneself around such legal difficulties as exist. These circumventing arguments may or may not be altogether persuasive or foolproof in a court of law, but they at least would seem to give a justification, or rather, it is apparent that there is no absolutely insurmountable barrier.

Apart from the legal question, however, it seems to me clear that it would be far preferable to approach this question directly rather than by indirection. It will be necessary to obtain Senate confirmation, which would mean that one branch of the legislature would have to acquiesce in any case, and a good many Senators might properly object, I think, that in creating these various offices by law it was not their intent or the intent of Congress to have them lumped. There is particular force in this view, I feel, because under the Banking Act of 1935 Congress specifically removed "political appointees" from this Board.

In answer to the question which was presented to you, I think that you should take the position that our counsel do not say that such action is prohibited, but do feel that the argument on legal grounds for taking such consolidating action is open to question, but that apart from the fact that the legal difficulties can be argued away by what possibly would be a somewhat strained argument, viewing the matter from a broader ground, it would be much better to ask both branches of Congress to sanction the proposed action directly rather than to ask one branch to ratify it indirectly and establish a precedent which the Senate might not wish to establish. The more I think of it, the more I am persuaded that it would be more difficult to win over the Senate to this indirect method, especially Glass, who would probably be adamant against this, than to present the case directly by separate legislation to both branches of Congress in the usual way. That, of course, is a matter of judgment or of high policy.

Peace continues to reign here, precarious though it is in Europe, with all eyes turned in that direction and gold pouring in here at a horrifying rate again. On the political scene, the President's purge seems to be a great boon to the victims thereof because, of course, the real issue becomes lost in the archaic nonsense about local sovereignty, states' rights, and local pride, just as the real issues in the Scottsboro, or Mooney, or Sacco-Vanzetti cases became lost when outsiders attempt to intervene. Whether justice has been done is totally obscured in the inevitable surge of local pride and rush to defend local processes of judicial procedure.

I feel as in the Supreme Court fight that the real issue here fails to be properly understood by the mass of the people. It is especially vital to you, I think, because your own philosophy of how the Government should function and your own carefully integrated practical approach are frustrated by the fact that the setup makes it impossible, or virtually impossible, to carry through a rational program in the national interest, because the allegiance of nominal members of the party in power is to local communities and not to the head of the party. The titular leader of the party is impotent except as he must bargain and trade chiefly through the power of patronage. Thus he is continually

forced to make unsatisfactory compromises and to abandon major policies and programs. This is an old story to you, but ultimately almost every discussion is bound to lead back to this central fact that the Government is not organized on a basis to carry through a national program except as such a program may happen to coincide with local interests--something which happens chiefly when it comes to dipping money out of the Treasury and ladling it out to the local voters.

Up to this hour no final decision has been reached on the financing, which seems to hang on the Secretary's feeling about what may develop abroad. I believe Mr. Ransom has given you the details with reference to alternative suggestions. My own unimportant feeling is very strongly that the best approach would be to go ahead as if we expected no explosion and that the backing and filling which hinges on apprehensions about Europe only serves to generate uneasiness in this country.

I am enclosing a copy of the text of the report to the President on labor conditions in England because this seems to me to be a very important and interesting document, which you may not want to bother with while on vacation, but in case you might wish to have some heavy reading late at night, I am sending it along.

Russ Smith was kind enough to send the text of the Adams oration. It is a hard diatribe to answer because it is chiefly emotional, illogical and hard to pin down at any point, but for whatever use it may be, I shall airmail you about tomorrow night what would seem to me to be the best counter-blast, though I know that you need no prompting and have the answers more completely and in better form than I would have. However, I have asked Dr. Goldenweiser to go over this speech and give me the benefit of his views.

Incidentally and again with apologies for encroaching on your too much occupied time, you might want to think over the question of dealing with reserves along the lines that Goldenweiser is just about prepared to recommend; namely, that beyond a given point to be fixed by the Board, further acquisitions of deposits by member banks (and, of course, this would involve covering at least all insured banks in the System) would not constitute

a basis for a multiple expansion of loans. There are, of course, some difficulties with this or, for that matter, any scheme but this sounds to me like the simplest approach, and as far as I have gone into it, the chief difficulty would be in ear-marking deposits subject to multiple expansion and those not so subject. Goldenweiser does not consider this by any means insuperable. What appeals to me most about the scheme is that I think it would be easier to sell than either 100% reserves or that old plan based on velocity of deposits, which would not be applicable in any case to the present situation. Also, it seems to me that there would be relatively little resistence from the banking system as compared with taking their multiple expansion privileges away from them after they have once been created.

Goldenweiser's scheme, of course, involves doing away with different reserve requirements for different classes of banks, and contemplates allowing the banks to count vault cash as reserves. The scheme would work, it seems to me, for the banking system as a whole without bearing down on individual banks, and the knottiest operation difficulty would be in the transfer of deposits from one bank to another in order to prevent a non-multiplying deposit from becoming a multiple one in another bank.

Goldenweiser and apparently his staff feel that the solution of the problem lies along this line, and my only excuse for mentioning it to you is in the thought that while pulling trout, salmon, tarpon, or whatever it is you catch out there, out of the water you might entertain one portion of your restless mind by thinking this through to its correct conclusion.

While I am a man of peace and like it quiet, there is such a thing as too much of it until one gets to feeling very useless. While I may live to regret it, I do not mind saying at the moment that I miss your stimulating presence, as I am sure your colleagues on the Board do too, however much they may growl occasionally. After all, a growl is better than a yawn.

Faithfully,

enclosures

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

August 30, 1938

Mr. Marriner S. Eccles,

Ogden, Utah.

Dear Mr. Eccles:

Shortly after you left, Elliott Thurston asked me to look into and advise you with respect to the power of the President to effect substantial consolidation of Federal supervision through the exercise of his appointive power. Since the request, I have given a good deal of study to the question and it has given me so much trouble that aside from the narrow question of the legality of such procedure I would like to pass on for your consideration a few comments with respect to some of the problems which arise or could arise.

First, there are legal obstacles to the plan which I will enumerate briefly, as follows:

1. Section 10 of the Federal Reserve Act requires that Board members "devote their entire time to the business of the Board."

2. There are several Federal statutes of general application directed against using appropriated funds for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 and prohibiting a person who holds an office, the salary or annual compensation attached to which amounts to the sum of $2,500, from being appointed to or holding any other office to which compensation is attached.

3. The legislative history made by Congress when the Comptroller of the Currency was eliminated as a member of the Board could prove embarrassing should an attempt be made to re-establish the ex officio relationship through exercise of the appointive power.

Concerning the legal requirement that members of the

Board shall "devote their entire time to the business of the Board" the point has been made that a member of the F.D.I.C. board could not perform his lawful duties as such and at the same time devote his entire time to the business of the Board of Governors. Obviously this is one interpretation which could be put upon the provision. However, I feel that the purpose of the provision is, within the limits of reason, to prohibit a member of the Board from devoting his time to his own business as distinguished from the Board's business and that it should be so construed. Since so much of the Board's business is in common with the business conducted by the other agencies, it could be validly argued that a member of the Board in devoting the necessary portion of his time to such matters but, for purposes of efficiency and economy, acting nominally in another capacity, would be devoting his time to the business of the Board within the meaning and purpose of the prohibition.

With respect to the general statutes directed against holding two offices and drawing two salaries, an argument can be made to the effect that they are inapplicable by their own terms. The argument, however, has weaknesses. I am persuaded, therefore, that in order to negative the effect of such statutes specific exemptions with respect to the particular offices in question must be found.

The employment, compensation, leave, and expenses of the members of the Board are said by the Federal Reserve Act to be governed solely by its provisions. This may be argued as exempting members of the Board from the general statutes relating to employment and compensation.

With respect to the F.D.I.C., it is provided that "nothing in this or any other Act shall be construed to prevent employment and compensation as an officer or employee of the corporation or any officer or employee of the United States in any board, commission, independent establishment, or executive department." The general rule is that the directors of a corporation are officers. Hence, it can be argued that directors of the F.D.I.C. are exempted from the provisions of the general statutes.

The exemption of the Comptroller of the Currency from the general statute would have to come from the fact that he is a director of the F.D.I.C.

To many these arguments may appear fatuous. Furthermore, I doubt if it ever occurred to any member of Congress that the

particular provisions of the Federal Reserve Act would have the effect here given to them. Nevertheless they are susceptible to such interpretation, and my feeling is that if the President made the appointments and if the Senate confirmed them the job would be done and would remain done. Therefore, while the question is undoubtedly one with respect to which a lawyer would be much happier if his case were stronger, I believe that it would be a mistake dogmatically to advise that it could not be done. Furthermore, since it is one of those questions which cannot be resolved with complete assurance and positiveness, it would be desirable to proceed only after advice by the Attorney General.

Diverting to the more practical side of the matter, one should be reminded that if there were a common will upon the part of the directing heads of the three agencies to accomplish the desired result, it would seem possible to do so upon a more informal basis without the necessity of making appointments which would interlock the relationships of the directing heads. For instance, with a common will to do the job, functions now duplicated could, by agreement, be exercised by only one of the three agencies which in turn could make its facilities and the results of its activities available to the other two. Thus, by agreement only one agency would gather statistics and only one agency would conduct examinations, but the examiners could carry commissions from the three agencies. Similar adjustments might be made with respect to all duplicated functions.

It is assumed that the principal reason for attempting consolidation in the manner suggested would be to avoid the necessity of legislation. Naturally, it would be desirable not to burden Congress unnecessarily if the desired result could be obtained otherwise. However, it must be remembered that in each case the appointments are by and with the advice and consent of the Senate. The objective sought to be accomplished by making the appointments would be patent upon their face. In effect, therefore, one house of Congress would still be giving its approval or at least would be in a position to disapprove. In such circumstances it would appear desirable first to decide whether or not Congress might not desire to give more direct approval to the plan, or none at all. And here again one must face the fact that the Senate would be asked to do by indirection the very contrary of that which it expressly did in enacting the Banking Act of 1935, to wit, to make the Comptroller of the Currency again a member of the Board of Governors.

For these reasons, I am persuaded that a direct approach

to the question is the more desirable one to be followed, but at the same time I would not say, strictly as a legal proposition, that it could not be done otherwise.

In conclusion, the provisions of section 10 of the Federal Reserve Act prohibiting the selection of more than one member of the Board of Governors from any one Federal Reserve District should not be overlooked. This is a limitation with which I assume all are familiar.

Very truly yours,

J. P. Dreibelbis.