

*Governor Eccles*

August 31, 1949

Members of the Board

Transamerica

Mr. Vardaman

CONFIDENTIAL

After a careful study of respondent's exception and appeal from the rule of the Hearing Officer denying respondent's motion to dismiss, and the brief filed in support of that exception, I am more convinced than ever that the Board should hear en banc respondent's motion to dismiss and decide the question en banc, rather than refer it to the Hearing Officer. I was of this opinion at the time the matter was discussed and acted upon by the Board on July 19, and you may recall that I urged the Board then to consider the motion en banc.

I now urge the Board members to consider the advisability of reversing the previous action of the Board on this question, and of considering this exception and appeal, and hearing oral arguments, en banc.

I feel strongly that the Hearing Officer, by ordering the reopening of the hearings on September 19, does not allow a fair and sufficient time to the respondent company; and when this matter is considered by the Board, I intend to urge that at least three or possibly four months additional time be granted by the Board from September 19.

Aside from the fact that I think respondent would be entitled to considerably more time than allowed by the Hearing Officer even under ordinary circumstances, the fact that respondent has lost by sudden death one of its principal defense witnesses undoubtedly mitigates against the respondent. Obviously, considerable additional research, examination of records, and other work will be necessary on the part of the respondent's attorneys to prepare and piece together the substance of evidence which could probably have been given on a few moments notice by Mr. A. P. Giannini, had he lived.

I see no harm that could be done the Board's case by allowing respondent additional time; and I think the request is reasonable and should be granted.

I did not dissent from the majority opinion of the Board on July 19 when it declined to consider the motion to dismiss and referred the motion to the Hearing Officer, because at that time I understood that such procedure had been recommended by the Board's Special Counsel. I later learned that such was not the case and that Special Counsel had not been requested to pass upon the advisability of such procedure, but had simply been asked whether or not such procedure was possible and legal.

My present feeling is that I will have to dissent if the Board refuses to hear en banc respondent's present motion, and I will ask that my dissent be noted on the record and the ruling.

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CC - Mr. Vest  
Mr. Smith  
Mr. Thurston  
Mr. Morrill

2. Respondent's request for an adjournment of the hearing date prescribed by the Hearing Officer in his Notice denying respondent's motion to dismiss for failure of proof be, and it hereby is, denied.

This \_\_\_\_\_ day of \_\_\_\_\_, 1949.

By the Board.

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S. R. Carpenter,  
Secretary.

(SEAL)

Governor Vardaman dissents. In his opinion, respondent's exception and appeal should be allowed, and the Board itself should hear and determine respondent's motion to dismiss for failure of proof. Governor Vardaman is also of the opinion that, respondent's exception and appeal having been dismissed, respondent's request for an adjournment of the hearings should be granted to the extent of adjourning or continuing the hearings to a date not earlier than sixty days subsequent to September 19, 1949, the date fixed by the Hearing Officer for the resumption of the hearings.

Governors Eccles and Clayton took no part in the consideration or decision of the exception, appeal and request referred to in the foregoing statement and order.