

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

Office Correspondence

Date June 3, 1938

3 P.M.

To Chairman Eccles

Subject:

From Ronald Ransom

Mr. Wyatt, Mr. Morrill, and I have just conferred with Mr. Clayton about the provisions of the Fair Labor Standards Bill, which is now in conference. We have agreed that it is highly desirable for you to speak to both Senator Thomas, of Utah, who is Chairman of the Committee, and to Senator La Follette, who is a member of the Committee, preferably tonight and not later than tomorrow (Saturday) morning regarding one matter relating to the provisions of the Senate and House bills. It is impossible to reach any of the members of the Committee by telephone this afternoon.

The provisions of the Senate bill are flexible enough to permit special treatment for special classes of cases relating to the nature and character of employment, and it is felt that the special character of bank employment could be recognized under the provisions of the Senate bill, whereas they could not be under the more rigid provisions of the House bill.

There is reasonable doubt as to whether the provisions of either bill are applicable to banks. The question can not be easily answered. Banks are disturbed about the situation, and we think it is preferable that they should have the applicable provisions of the Senate bill rather than the applicable provisions of the House bill.

The American Bankers Association has presented their views to Senator Thomas and other members of the Committee, but I am not sure that they have made their case, and I think a statement of your own views to Senator Thomas and Senator La Follette will do more to be helpful in this situation than anything else we can do.

It seems to us, and I understand the banks agree with this, that it is of the utmost importance not to attempt any language specifically referring to banks in the provisions of this bill.

For your information, I attach a copy of a memorandum from Mr. Wyatt to me under this date and also a copy of the statement that the American Bankers Association has submitted to the Conference Committee. I also attach a list of the membership of the Conference Committee.



June 3, 1938

Governor Ransom

Applicability of Wage-Hour

Mr. Wyatt, General Counsel

Bill to Banks

The situation regarding the question whether or not the Wage-Hour Bill (S. 2475) is applicable to banks may be summarized briefly as follows:

1. This office apparently has never gone into the question thoroughly and has never taken any definite position on it.

2. In view of the present confused state of the law as to what is and what is not interstate commerce, I do not believe it is possible for any lawyer to give a definite opinion on the question with any assurance that it will be sustained by the courts.

3. There are several grounds upon which it could be argued that neither the bill as it passed the House nor the bill as it passed the Senate is applicable to banks and the courts might sustain this position.

4. On the other hand, the Government could easily take the position that the bill is applicable to banks, thus forcing the banks either to submit to the provisions of the bill or to engage in lengthy and expensive litigation, the outcome of which would be uncertain.

5. If the bill were amended so as expressly to exempt the banks from the maximum hours provisions in certain circumstances, as was done in the Bankers' N.R.A. Code, this would practically destroy all possibility of having the bill construed as not applying to banks.

6. On the other hand, if no such partial exemption is incorporated in the bill, the banks run the risk of finding themselves in a very embarrassing position if the bill is construed as being applicable to them.

7. In the circumstances, I should be inclined not to undertake to advise the banks as to which horn of this dilemma they should choose; but I should be inclined to point out to them the possible alternatives and to stand ready to give them any proper assistance in obtaining a reasonable amendment if they choose that course on their own responsibility.

I shall be glad to discuss this with you at your convenience.

Respectfully,



Walter Wyatt,
General Counsel.

WWS:eba

Re: S. 2475, Fair Labor Standards Bill

ABA

It is desired to call attention to certain problems which will confront banks in the event rigid wage and hour standards are imposed upon them. There are certain days each month when employees must work longer hours than during other periods, such as in getting out depositors' statements at the end of the month. Also, there are times when employees, through their own fault must work longer hours than usual, as in the case of a teller in verifying his cash or a bookkeeper in correcting an error in his ledgers. Banks are subjected to periodical examination by State and Federal examining authorities. During the examinations, which run from 3 days to 3 or 4 weeks, bank employees are at the call of the examiners and often work far into the night. Many banks, particularly in communities situated in agricultural districts, have periods ranging up to 3 or 4 months out of the year where they must operate for longer hours due to seasonal requirements for the handling of crops such as tobacco, cotton, grain, fruit, and the like. To require such banks to pay time and one-half for overtime under such circumstances would be burdensome, particularly to the smaller banks.

The Bankers Code of Fair Competition under the NRA, which became effective October 16, 1933, provided for a 40-hour work week averaged over a period of 13 consecutive weeks. It also made the following exceptions to this general rule: Where seasonal activity imposes an unusual demand upon banking facilities, banks subject to such peak demand were permitted a 48-hour work week for a period not to exceed 16 consecutive weeks. Extra work or later hours required of bank employees in connection with periodic examinations by Federal or State banking authorities were wholly exempted. Employees in banks employing not more than 2 persons in addition to executive officers in towns of less than 2,500 population, not part of a larger trade area, and employees in a managerial or executive capacity or in any

other capacity of distinction or sole responsibility were wholly exempted. Night watchmen in banks were also exempted.

The Senate Bill contains provisions under which it is believed banks could continue to operate without unduly increased expense and without the hardships which would be experienced under the rigid provisions of the House Bill.

Under Section 9(4) of the Senate Bill, an order promulgated by the Labor Standards Board "may classify employers, employees, and employments within the occupation to which such order relates according to localities, the population of the communities in which such employment occurs, the number of employees employed, the nature and volume of the work produced and such other differentiating circumstances as the Board finds necessary or appropriate to accomplish the purposes of such order, and may make appropriate provision for different classes of employers, employees, or employment; * * *."

The Board also by regulation or order may provide, in accordance with Section 6(b) for "(4) over-time employment in periods of seasonal or peak activity * * * and the wage rates to be paid for such over-time employment not exceeding the rate of time and one-half; and (5) suitable treatment of other cases or classes of cases which, because of the nature and character of the employment, justify special treatment."

These provisions would seem to be broad and flexible enough to allow the Board by order or regulation to permit the banks to so adjust the hours of employment of their employees to take care of peak and seasonal activities while keeping the average hours of employment within the maximum hours' standard which may be established by the Board.

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