

Office CorrespondenceDate November 16, 1936Board of Governors

Subject: _____

Mr. Morrill

There is attached to this memorandum a letter dated November 13, 1936, from the Secretary of the Federal Reserve Bank of Kansas City advising that the executive committee of the bank had appointed Chairman Thomas to serve as alternate member of the Federal Advisory Council at the meeting of the Council to be held in Washington on November 16 and 17.

In this connection, it appears from the records of the Board that the question whether an officer or director of a Federal reserve bank should serve as a member of the Council was touched upon in a report submitted by a committee (Messrs. Delano and Warburg) on October 8, 1914 and adopted by the Board. The report, a copy of which is attached, took the position that "the directors of the various Reserve Bank Boards should be given a rather free hand in the selection of the men most fit for membership in the Council whether they happen to be members of the Board of Directors or Governor or not". During 1916 the Governors of the Federal Reserve Banks of Richmond, St. Louis and San Francisco served as members of the Council, but no officer of a Reserve bank has served since that year.

At the meeting of the Board on November 5 the Chairman of the Federal Reserve Agents' Conference reported that the Conference had considered the topic "Members of Advisory Council should not be officers or directors of Federal reserve banks", but there is no information available as to the decision reached. At the meeting of the Board on December 29, 1915, a resolution was adopted, a copy of which is attached, which reads in part as follows:

"BE IT RESOLVED, That it is the sense of the Federal Reserve Board that governors, or other officers of Federal reserve banks should not serve as members of the Advisory Council. As the election of Directors has already taken place it is suggested that this rule shall not apply as to Directors until January 1, 1917.

"RESOLVED FURTHER, That a copy of this resolution be sent to each Federal reserve bank."

At the request of the Board, the Board's counsel considered the question whether it was within the power of the Federal Reserve Board to promulgate a ruling having binding force upon the actions of the board of directors of a Federal reserve bank in electing a representative of the Federal Advisory Council. Counsel's opinion, dated January 27, 1916, copy of which is attached, states that:

"Inasmuch as Section 12 does not preclude officers or directors of Federal reserve banks from serving on the Advisory Council, I am, therefore, of the opinion that the Federal Reserve Board cannot by regulation make such officers and directors ineligible but can only suggest to the directors of Federal reserve banks the advisability of pursuing the course recommended in the resolution of December 29, 1915."

At the meeting of the Board on February 14, 1916, the Board noted a letter from Mr. J. P. Cotton, Consulting Counsel, concurring in the opinion of counsel relative to the lack of power in the Board to prescribe the qualifications of members of the Federal Advisory Council.

At the meeting of the Board on December 18, 1916 in connection with the decision that there would be no objection to the retention of the then present members of the Council for another year, it was understood that an effort would be made to get the Federal Advisory Council to work out a plan governing its own membership. As a result of this action, the Governor addressed a letter to all Federal reserve agents on December 18, 1916, a copy of which is attached, which states: "The Board is of the opinion that while it is desirable that officers of Federal reserve banks whose salaries are approved by the Board should not serve on the Advisory Council there is no reason at this time to seek to impose such a limitation upon any director of any Federal reserve bank". The letter also states that there would be taken up with the Council the question of a plan for rotation in its membership, but no decision was reached in this connection. The record does not disclose that the Board ever reversed the position in its resolution of December 29, 1915, that officers of Federal reserve banks should not serve as members of the Federal Advisory Council.

In connection with the appointment of alternate members of the Federal Advisory Council, the Board on March 23, 1925, sent a letter to the Federal reserve banks stating that it was not believed there was any way in which the Federal reserve banks might legally make such appointments, and that while the Council might invite anyone it chose to attend its meetings such a person would not be a legally constituted member of the Council and would not have power to vote on recommendations or other matters coming before the Council for consideration. The position taken by the Board in this matter has been considered on subsequent occasions but has not been changed.

EXCERPT FROM THE MINUTES OF THE MEETING OF
THE FEDERAL RESERVE BOARD HELD ON OCTOBER 8, 1914.

On motion it was voted to adopt the report with reference to the qualifications of members of the Advisory Council submitted by Mr. Delano and Mr. Warburg. The report as thus adopted is as follows:

The Committee appointed to report upon the qualifications of members of the Advisory Council and their relationship to the Federal Reserve Board submits its recommendations as follows:

The law does not specify whether or not the member of the Advisory Council shall be a member of the Federal Reserve Bank Board, hence it is plainly left to the discretion of the A, B and C Directors to elect whom they think best qualified. The feature of an advisory council is a new one in regulatory laws of our country and was added at the urgent request of bankers and business men in order to give the business community an opportunity of expressing its opinion and of giving its advice to the Federal Reserve Board. Indeed, the Act as passed gives the Advisory Council the privilege of interrogating the Federal Reserve Board with respect to certain defined subjects.

It would appear, therefore, that the Act contemplated that this Council should have a twofold object; first, to give the Federal Reserve Board the advantage of the best expert opinion from representatives of the banking and business communities; second, of enabling the bankers to express their views to the Federal Reserve Board. Furthermore, inasmuch as the Federal Reserve Board has ample opportunity of securing inside information from the Federal Reserve Agents and from the Governors, it has been argued that the idea that members of the Advisory Council shall not be members of the Board of the Reserve Bank, but that, on the contrary, they shall represent the independent and critical judgment of member banks or of the business community in general has a basis.

The opposite point of view is that such outside members of the Advisory Council would not be sufficiently familiar with the machinery and operations of the Federal Reserve Banks to give the Reserve Board valuable or

constructive suggestions. From this angle it is claimed that the best representatives on the Advisory Council would be either the Governors or one of the A Class.

Some students of the question have suggested that the Advisory Council should comprise a committee of all the Governors and it is quite conceivable that that may eventually prove the best plan but, in the meantime, it must not be forgotten that the much needed cooperation between the Federal Reserve Banks would result from having the Governors act as a committee of the whole, or in groups, meeting from time to time at Washington or elsewhere, while the Advisory Council, independent of it, might continue its separate and valuable functions.

To sum up, your Committee would suggest that, the Advisory Council, having been created to provide the best possible means of securing a consultative body of experts to give to the Federal Reserve Board the benefit of effective and constructive criticism, the Directors of the various Reserve Bank Boards should be given a rather free hand in the selection of the men most fit for membership in the Council whether they happen to be members of the Board of Directors or Governor or not.

Whichever of the two ways is chosen, it is obvious from what has been said that the office of member of the Advisory Council should not be given to anybody as a mere compliment, but only to such men as will be considered the best qualified to render efficient and distinguished service.

F. A. DELANO

Respectfully submitted.

PAUL M. WARBURG

October 8, 1914.

The Secretary of the Board was instructed to send the substance of this report to Federal Reserve Agents in its finally amended form.

EXCERPT FROM MINUTES OF THE FEDERAL RESERVE BOARD, MEETING OF DEC. 29, 1915

Mr. Delano, on behalf of the Committee on Law, to whom had been referred a resolution at the last preceding meeting of the Board relating to the personnel of the Advisory Council, presented the following resolution:

WHEREAS, Section 12 of the Federal Reserve Act provides for the establishment of a Federal Advisory Council with power to confer with the Federal Reserve Board on general business conditions, to make representations concerning matters within the jurisdiction of said Board, and to make recommendations regarding discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open market operations by said banks, and the general affairs of the reserve banking system; and

WHEREAS, The Federal Reserve Board has determined, after careful consideration, that the purposes for which said Council has been established and the interests of the Federal Reserve System require that the members of said Council should not be officially connected with the Federal reserve banks and, therefore, in a position to give to the Federal Reserve Board the benefit of their disinterested and unbiased advice:

BE IT RESOLVED, That it is the sense of the Federal Reserve Board that governors, or other officers of Federal reserve banks should not serve as members of the Advisory Council. *As the election of Directors has already taken place it is suggested that this rule shall not apply as to Directors until January 1, 1917.

RESOLVED FURTHER, That a copy of this resolution be sent to each Federal reserve bank.

(* For discussion.

On being put to a vote the resolution was carried.

(The above resolution was sent to the Federal reserve banks on January 8, 1916, without the asterisk in the last sentence of the next to the last paragraph and the note thereunder.)

2.

As stated in the case of Morrill vs. Jones, 106 United States, 467, the Board can only "regulate the mode of proceeding to carry into effect what Congress has enacted". In this case the Act of Congress provided that animals specially imported from beyond the seas for breeding purposes were not subject to duty. The Secretary of the Treasury issued a regulation which required that before any animals were admitted free the collector should "be satisfied that they are of superior stock, adapted to improving the breed in the United States". In speaking of this regulation the Court said:

"The regulation seeks to confine its operation to animals of 'superior stock'. This is manifestly an attempt to put into the body of the statute a limitation which Congress did not think it necessary to prescribe. ***** In our opinion, the object of the Secretary could only be accomplished by an amendment of the law. That is not the office of a treasury regulation".

To the same effect see United States vs. Eaton, 144 U. S., 687.

Inasmuch as Section 12 does not preclude officers or directors of Federal reserve banks from serving on the Advisory Council, I am, therefore, of the opinion that the Federal Reserve Board cannot by regulation make such officers and directors ineligible but can only suggest to the directors of Federal reserve banks the advisability of pursuing the course recommended in the resolution of December 29, 1915.

Respectfully,

Counsel.

Hon. A. C. Miller,
Federal Reserve Board.

COPY

January 27, 1916.

My dear Mr. Miller:-

I am in receipt of your memorandum of the twenty-first instant asking whether "it is within the power of the Federal Reserve Board to promulgate a rule having binding force upon the actions of the Board of Directors of a Federal Reserve Bank in electing a representative of the Federal Advisory Council".

It appears that this question has been raised by the Board of Directors of the Federal Reserve Bank of San Francisco as a result of a resolution of the Federal Reserve Board dated December 29, 1915, which reads in part as follows:

"BE IT RESOLVED, That it is the sense of the Federal Reserve Board that Governors, or other officers of Federal reserve banks should not serve as members of the Advisory Council, but as the election of directors has already taken place this rule shall not apply as to directors until January 1, 1917".

Section 12 of the Federal Reserve Act provides in part that:

"There is hereby created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council".

It will be observed that the only qualification on the eligibility of members of the Federal Advisory Council is that they shall be residents of the district from which they are elected. There is nothing in the Act which prohibits an officer or a director of a Federal reserve bank, or of any other bank, from being selected by the board of directors.

It is true that the Federal Reserve Board exercises a general supervision over the management of Federal reserve banks. The power of selecting directors, is vested by law in the board of directors of each Federal reserve bank. This power of supervision does not give the Board the right by regulation to prescribe limitations which are not contained in the Act.

COPY

FEDERAL RESERVE BOARD

Washington.

December 18, 1916.

Sent to all Federal Reserve Agents.

Dear Sir:

On December 28, 1915, the Board adopted a resolution regarding membership in the Federal Advisory Council which appears on page 3 of the January, 1916, issue of the Federal Reserve Bulletin.

Inquiries have been received from Federal Reserve Agents asking for definite advice as to whether Federal Reserve bank directors should be voted for as members of the Federal Advisory Council. The Board is of the opinion that while it is desirable that officers of Federal reserve banks, whose salaries are approved by the Board, should not serve on the Advisory Council, there is no reason at this time to seek to impose such a limitation upon any director of any Federal reserve bank. While it may be to the advantage of the system that there should be rotation in memberships on the Advisory Council, it is nevertheless desirable that changes be so made that a majority of the membership may not be made up of new men.

The matter will be taken up with the Advisory Council at its next meeting with the view of having the Council itself recommend to the Federal Reserve Banks a well considered plan for rotation in its membership. The Board desires, as far as the forthcoming election is concerned, that Class "C" directors feel free to exercise their own judgment.

Very truly yours,

Governor.