

A meeting of the Federal Reserve Board was held in Washington on Wednesday, September 13, 1933, at 12:10 p.m.

PRESENT: Mr. Black, Governor
Mr. Hamlin
Mr. Miller
Mr. James
Mr. Thomas
Mr. Szymczak

Mr. Morrill, Secretary
Mr. Carpenter, Assistant Secretary
Mr. Bethea, Assistant Secretary
Mr. Martin, Assistant to the Governor
Mr. Wyatt, General Counsel

ALSO PRESENT: Mr. W. L. Hemingway, President of the
Mercantile-Commerce Bank and Trust Company,
St. Louis, Missouri.

Governor Black stated that Mr. Hemingway had expressed a desire to be heard by the Board in regard to the ownership by the Mercantile-Commerce Bank and Trust Company of the stock of the Mercantile-Commerce National Bank, both of St. Louis, Missouri, with respect to which on July 11 and 27, 1933, the Board had advised the Federal Reserve Agent at St. Louis that the trust company should begin immediately the consideration of steps by which it will dispose of all the stock of the national bank now held by it, in such a manner that it will retain no interest therein, and that such disposition should be accomplished completely not later than December 15, 1933. Governor Black then requested Mr. Hemingway to present the bank's position in the matter and to make such statement as he desired in that connection.

Mr. Hemingway said that he thought he could explain the bank's position more concisely by reading a statement which he had prepared in advance, and requested permission to do so. The Board consented and Mr.

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Hemingway read his prepared statement, as follows:

"When the National Bank of Commerce in St. Louis and Mercantile Trust Company were consolidated it was agreed that the consolidated company should acquire as much of the stock of the National Bank of Commerce as could be had. In pursuance of this all of the stock is now owned by the Mercantile Commerce Bank and Trust Company. The right to own this stock is authorized by the laws of Missouri governing trust companies.

"The National Bank of Commerce was operating as a national bank when the Federal Reserve Act was passed and automatically became a member, purchasing the required amount of stock. Its capital and surplus were reduced at the time of consolidation to \$350,000 and \$75,000 respectively, being the same today and its holding of stock in the Federal reserve bank was correspondingly reduced. The Mercantile Trust Company was I think the very first nonmember to join the system. At the time of consolidation it was decided for some reason to surrender the stock of the Mercantile Trust Co. and apply for membership for the consolidated company and thereby hangs this tale. When this application was made a copy of the consolidation agreement was filed with the Federal reserve authorities and they became aware of the plan for the acquisition of all of the stock of the National Bank of Commerce or as much as could be gotten, not less than 81%. The agreement of consolidation also stated that it was contemplated to keep the National Bank of Commerce until its trusts were terminated or turned over to the consolidated company. At that time there was no thought of putting the bank into an active banking business. Before admitting the consolidated bank to membership this Board imposed the usual conditions required of nonmembers, number three of which says that the applicant shall not acquire stock in any bank without first applying for and receiving the consent of this board. This condition could not apply to the present case because one of the provisions of the consolidation agreement was the acquisition of the stock. The board knew this and agreed to it by admitting the applicant. About a year later it was suggested that it would be profitable to have a bank in the midtown section because the two banks in the section of Grand & Olive were in difficulties and the public wanted a good bank there. The two banks afterwards failed. So we applied to our counsel for opinion and were advised that if the Comptroller of the Currency approved we could change the name of the bank, to avoid confusion in the minds of the public, and could move the bank and set it up in active business. As has been stated here by Mr. Lonsdale, then president of the consolidated company, he asked the Comptroller, Mr. Pole and the Governor of the Federal Reserve Board, Mr. Young, and was told that there was no objection. So the name of the bank was changed to the Mercantile Commerce National Bank and it opened for a neighborhood banking business

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"on August 1, 1930. It now has 2748 checking accounts totaling \$1,990,000 and 3025 savings accounts totaling \$600,000. It also has \$200,000 postal savings funds and \$700,000 U. S. Government balances. It has a circulation of \$350,000. Almost a year after the opening of the bank at the new location this board notified the consolidated company that the conditions of membership had been violated and asked the president to appear before it. He did so twice - in June and August of 1931. The board then stated that it would not require the disposition of the stock at that time but would defer action until such time as the board might see fit. Recently notice has been given us to get rid of the stock in toto by December 15, 1933. Our counsel advise us that the board is not within its legal rights in making this demand but I am not here to discuss that feature of it. I am here to ask for a postponement - on the grounds: First, that the Mercantile Commerce National Bank is a good solvent bank serving a public need - that its closing will be a hardship on many of its customers; second that its liquidation means letting out of employment 24 people receiving total salaries of \$34,000 per annum. The parent bank is now overmanned and we cannot take them on. Third, there is soon to be a special session of the legislature and included in the call will be a revision of the state banking laws to conform with the Banking Act of 1933. From this may come the power to have branches within the limits of St. Louis. As I understand your rules under such circumstances there would be no objection to the establishment of branches by us and we could then take over the banking business of the Mercantile Commerce National Bank. Fourth, There is much talk to the effect that the next Congress will write a new bank act or amend the present law. Out of this may come permission to continue to own the Mercantile Commerce National Bank or to establish a branch there. And lastly, If we are required to liquidate the Mercantile Commerce National Bank the public will wonder what is the reason and will be sceptical of anything we say. They may think it is due to trouble at the parent bank. We have had one run this year when our lobbies were crowded with people for three days and we would hate to see another. So it seems to us that no one can be hurt by continuing as we are for a while and certainly there are possibilities of injury to many if we are required to close the Mercantile Commerce National Bank."

Thereupon Mr. Hemingway withdrew from the meeting and the Board discussed the matter at length. Mr. James alluded to the remarks of Mr. Hemingway indicating that former Governor Young of the Federal Reserve Board and Mr. Pole, formerly Comptroller of the Currency, had acquiesced

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in the holding of the stock of the national bank by the Mercantile-Commerce Bank and Trust Company. Mr. James stated that Governor Young had told him very definitely that he had not approved the holding of the stock of the national bank by Mr. Hemingway's institution and that, in any event, regardless of the bank's representations, it seemed clear that there was no legal responsibility upon the Board in that connection.

Mr. Hamlin stated that, in view of the practical aspects of the matter, he would be inclined to favor granting the bank a further extension of time in which to comply with the Board's requirements. He, therefore, moved that the bank be granted an extension of time for a period of six months from September 15, 1933, in which to dispose of the stock of the national bank.

The motion was put to a vote and lost, Messrs. Hamlin and Thomas voting in the affirmative.

After further general discussion, Mr. James moved that the Board stand on its decision of July 11, 1933, requiring the Mercantile-Commerce Bank and Trust Company of St. Louis to dispose of the stock of the national bank not later than December 15, 1933. The motion was put to a vote and carried, Messrs. Hamlin and Thomas voting in the negative. In this connection, it was understood that Governor Black would advise Mr. Hemingway informally regarding the action taken by the Board.

Mr. Hamlin suggested that the Board consider the question which had been presented whether a State member bank of the Federal Reserve System located in the State of Ohio may establish and operate a branch outside of the limits of the city, town or village in which it is situated. He said that the matter had been discussed informally on a number of

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previous occasions and that, in his opinion, it was advisable, if possible, to dispose of the matter at this time.

Mr. Wyatt reported that Mr. Vest, Assistant Counsel, had prepared an opinion, in which he concurred, to the effect "that a State member bank located in Ohio, * * * * may lawfully establish and operate a branch outside of the limits of the city, town or village in which it is situated, subject to the restrictions as to the location contained in the Ohio statute". Mr. Wyatt stated that, in view of the wording of the Banking Act of 1933, the question was not free from doubt, and that the courts might decide either way, but that, in his opinion, the State statute should be construed from the standpoint of its substance, rather than the mere form of statement.

Mr. Thomas stated that he felt strongly that the State statute should be interpreted strictly in view of the manifestly careful wording of section 5155 of the Revised Statutes, as amended by the Banking Act of 1933, which authorizes national banks to establish and operate branches under certain conditions if, among other things, "such establishment and operation are at the time authorized to State banks by the Statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition * * * * ". He referred to the fact that the part of the Ohio statute which is pertinent to this question reads as follows: "No branch bank shall be established until the consent and the approval of the superintendent of banks has been first obtained, and no bank shall establish a branch bank in any place other than that designated in its articles of incorporation, * * * * ".

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It was pointed out that the Comptroller of the Currency has already taken the position that a national bank in Ohio may establish a branch outside of the limits of the city, town or village in which it is situated, that one or more national banks had acted on that interpretation, that it was understood that certain State member banks desired to do so, and that from a practical standpoint any other interpretation placed upon the Ohio statute by the Board might prove embarrassing both to the Comptroller's office and the banks concerned.

After full discussion in which all members of the Board present participated, Mr. Miller moved that the Board concur in Mr. Vest's opinion. The motion was put to a vote and carried, Messrs. James and Thomas voting in the negative. In this connection, the Board authorized the Secretary to send the following letter which had been held in abeyance pending a decision by the Board with respect to the proper interpretation of the Ohio statute with the understanding that a copy thereof would be transmitted to the Federal Reserve Agent at Cleveland and that a similar letter would be sent to Senator Bulkley in response to his letter of June 27, 1933 on this subject:

"Reference is made to your letter of June 16, 1933, addressed to the Board's General Counsel, in which you raised the question whether a State member bank of the Federal Reserve System located in the city of Cleveland, Ohio, may lawfully establish a branch in Chagrin Falls, Ohio. I regret that it has not been possible to advise you with reference to this matter at an earlier date but the question presented involved a legal problem of some difficulty which has had the careful consideration of the Board's Counsel.

"As you know, under the provisions of section 9 of the Federal Reserve Act, as amended by the Banking Act of 1933, a State member bank is authorized to establish and operate branches outside of the city in which it is located 'on the same terms and conditions and subject to the same limitations and restrictions as are applicable to the establishment of branches by national banks'; and, under the provisions of section 5155 of the Revised Statutes, as amended by the Banking Act of 1933, a national bank, subject to certain prescribed restrictions and conditions, may establish a branch at any

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"point within the State in which it is located 'if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.'

"The Board understands that the statute of the State of Ohio contains the following provision with reference to branches of State banks organized under the laws of that State:

'Sec. 710-73. ***** No branch bank shall be established until the consent and the approval of the superintendent of banks has been first obtained, and no bank shall establish a branch bank in any place other than that designated in its articles of incorporation, except in a city or village contiguous thereto, or in other parts of the county or counties in which the municipality containing the main bank is located. If such consent and approval is refused, an appeal may be taken therefrom in the same manner as is provided in section 710-45 of the General Code.'

"After careful study of the question presented, it is the view of the Federal Reserve Board that a State member bank, located in the State of Ohio, may lawfully establish and operate a branch in a city or village contiguous to the place designated in its articles of incorporation or in other parts of the county or counties in which the municipality containing the main bank is located, provided that said State bank complies with all requirements of the law applicable to the establishment of out-of-town branches by national banks. Among the requirements in question is that the approval of the Comptroller of the Currency be obtained before the establishment and operation of any such out-of-town branch. Accordingly, it is suggested that if a State member bank located in Ohio desires to establish and operate an out-of-town branch, it communicate its request or application for approval of the establishment of such branch to the Federal Reserve Agent of the Federal Reserve Bank of Cleveland. The Federal Reserve Agent, after carefully considering the matter and obtaining such information as may appear to be necessary, will transmit the request to the Federal Reserve Board, which will submit it to the Comptroller of the Currency."

Mr. Miller referred to the action taken by the Board at its meeting yesterday in authorizing the Secretary to send tentative drafts of Regulations "L" (revised) and "R" (new) to all Federal reserve banks for their recommendations and suggestions, and stated that, while he had previously entertained some misgivings in his own mind as to whether,

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under the provisions of section 8A of the Clayton Act, as amended by the Banking Act of 1933, the Board had authority to issue permits under that Act, he had subsequently changed his opinion as a result of further discussions with Counsel and others with respect to the provisions of the Banking Act of 1933, so that he now had no objection whatever to the tentative drafts of the proposed regulations. Mr. Miller said that, in the circumstances, he desired to be recorded as joining with other members of the Board in the action taken on this matter at the meeting held on September 12, 1933.

The Board then considered and acted upon the following matters:

The minutes of the meetings of the Federal Reserve Board held on August 29 and 30, 1933, were approved.

The minutes of the meetings of the Executive Committee of the Federal Reserve Board held on September 2 and 5, 1933, were approved and the actions recorded therein were ratified unanimously.

Memorandum dated September 11, 1933, from Mr. Morrill recommending that, effective on that date, Mrs. Olga W. Bangs, previously assigned to the office of the Governor of the Board, be transferred from that office to the Division of Examinations as Secretary to Mr. Leonard, Federal Reserve Examiner.

Approved.

Reply on September 12, 1933, approved by six members of the Board, to a letter dated September 6 from Mr. McClure, Federal Reserve Agent at Kansas City, with regard to indebtedness of members of his staff and outside business affiliations of officers and employees of the Federal

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Reserve Bank of Kansas City. The reply noted that the indebtedness of Mr. J. C. Clark, Jr., to a member bank will be paid entirely by September 20, that Mr. James R. Taylor, at the first favorable opportunity, will transfer his indebtedness to the Commercial National Bank of Kansas City to a nonmember bank, that Messrs. Phillips, Sherman, Campbell and Moore have resigned or will resign the official positions held by them with outside business concerns, although Mr. Campbell states that he would prefer to delay his resignation as director and treasurer of the Joplin Machinery and Electric Company until the next meeting of the board of directors in January, 1934; and stated that, unless there is some compelling reason why Mr. Campbell's resignation should be withheld until that time, the Board feels that it should be tendered by him promptly. The reply also stated that careful consideration has been given by the Board to Governor Hamilton's letter to Mr. McClure under date of August 21, 1933, with regard to his service as a director of the Kansas Gas and Electric Company of Wichita, Kansas; that the Board feels, however, that the affiliation is clearly within the scope of the letter of April 29, 1933 (X-7425); and that Governor Hamilton should give consideration to the advisability of terminating the connection as soon as possible, advising the Board of his decision in the matter.

Approved.

Reply on September 12, 1933, approved by six members of the Board, to a letter dated August 11 from Governor Seay of the Federal Reserve Bank of Richmond requesting that the Board reconsider the application of

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the Bank of Raleigh, Beckley, West Virginia, for membership in the Federal Reserve System, which application, as Mr. Hoxton, Federal Reserve Agent at Richmond, was advised under date of August 5, 1933, the Board did not feel warranted in approving at that time. The reply stated that, after careful consideration of the application, the supplementary data, Governor Seay's letter of August 11, 1933, and the accompanying memorandum prepared by Mr. Fry, the Board still feels that the criticized conditions in the bank should be corrected before admission to the System; and that the Board's experience indicates that it is sound policy to defer action in such a case as this until the management has corrected the unsatisfactory conditions rather than to approve the application subject to requirements, compliance with which seems improbable of accomplishment within the period of thirty days usually granted. The reply also stated that, in the event that a correction of, or a substantial improvement in, the criticized features of the bank's condition is effected, the Board, upon favorable recommendation of the Federal reserve agent and the executive committee, will be glad to consider a new application after a complete examination of the bank.

Approved.

Letter dated September 12, 1933, to Mr. M. Barber, Second Vice President of The Chase National Bank of the City of New York, New York, approved by six members of the Board, stating that the Board has received the application of the Chase National Bank for leave to establish a branch in the City of San Juan, Puerto Rico, and that Mr. Barber will be advised as soon as the Board has taken action thereon. The letter

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stated also that the Board has not been furnished with any evidence that the making of the application has been authorized by the board of directors of the bank, and that it will be appreciated if Mr. Barber will forward to the Board a certified copy of a resolution of the bank's board of directors authorizing or ratifying the filing of such application and the execution thereof by Mr. Charles S. McCain, Chairman of the board of directors of the bank.

Approved, together with letters dated September 12, 1933, also approved by six members of the Board, to the Comptroller of the Currency and the Secretary of War, respectively, inclosing for the information of each a copy of the application referred to above, and stating that the Board would appreciate receiving an expression of their views on the question whether it would be in the public interest to permit The Chase National Bank to establish a branch in the City of San Juan, Puerto Rico; and to Mr. Case, Federal Reserve Agent at New York, inclosing a copy of the bank's application and requesting that he investigate the desirability of the establishment of the branch and give the Board an expression of his views thereon, together with his recommendation as to the action which should be taken on the application and the reasons therefor.

Mr. Morrill referred to the action taken by the Board at its meeting yesterday in extending until September 26, 1933, the time within which reports of affiliates of member banks may be filed pursuant to the provisions of the Banking Act of 1933, and stated that the Comptroller of the Currency did not mention at the meeting yesterday that he had addressed a letter to the Board under date of September 12, 1933, inclosing a proposed press release with respect to the extension of time for filing reports of affiliates of national banks and a modification of the requirements as to the kind of report to be submitted. Mr. Morrill read

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the letter from the Comptroller and its inclosure, which were received by him following the meeting yesterday. The inclosure stated the reasons for extending the time for filing reports of affiliates of national banks and that the Comptroller of the Currency and the Federal Reserve Board will not require affiliate reports where the affiliate relationship arises through a holding of stock or other control by a bank merely in a fiduciary or representative capacity subject to control either by a court in the case of court trusts or by a beneficiary or principal in other cases, it being considered that the ownership or control in such instances is not the type of ownership or control contemplated by the Banking Act of 1933, inasmuch as control cannot under such conditions be exercised by the bank in its own interest; that affiliates as to which reports of all assets and liabilities will be required are those engaged in the issue, flotation, underwriting, public sale, or distribution at wholesale or retail, or through syndicate participation of stocks, bonds, debentures, notes or other securities, those engaged in making loans secured by stock or bond collateral to others than their own subsidiaries, and those holding or dealing in real estate or real estate mortgages for the benefit of the bank; and that, for the purposes of the first report, the Board and the Comptroller of the Currency will require affiliates not within the foregoing classification to submit and publish reports showing only the nature and the extent of the affiliate relationship, whether by stock control, dual directorship, or in any other manner as set forth in section 2 of the Banking Act of 1933, and the amount of indebtedness, if any, of the affiliate to the bank, and of

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the bank to the affiliate. Mr. Morrill stated that members of the Board's staff met this morning with Mr. Awalt, Deputy Comptroller of the Currency, and Mr. McGrath, Assistant Counsel in the Insolvent National Bank Division of the Comptroller's office, for the purpose of discussing the proposed press release, and that it had been decided that, in view of the possibility of numerous questions arising as to what institutions would be required to submit detailed statements of assets and liabilities, the proposed press release should be modified so as to provide that, for the purposes of the first report, which was called for as of June 30, 1933, the Comptroller of the Currency and the Board will not require national banks and State member banks to obtain and publish the detailed statements of assets and liabilities of their affiliates and holding company affiliates, but such banks must furnish and publish a report of each such affiliate containing all other information called for in the forms which have been furnished to such banks; and that affiliate reports will not be required where the affiliate relationship arises through a holding of stock by a bank merely as executor or in some other fiduciary or representative capacity subject to control by a court or by a beneficiary or principal, it being considered that the ownership or control in such instances is not the type of ownership or control contemplated by the Banking Act of 1933, inasmuch as the bank does not have the incentive and opportunities which might arise in the case of a holding of the stock by the bank as its own property. Mr. Morrill stated that Messrs. Awalt and McGrath concurred in these changes.

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After discussion, the Board concurred in the action proposed to be taken by the Comptroller of the Currency with respect to State member banks, and approved the proposed press release, subject to the modifications discussed by Mr. Morrill, which he stated would be submitted to the Comptroller for approval before being given out.

Reports of Standing Committee dated September 13, 1933, recommending approval of the following changes in stock at Federal reserve banks:

| <u>Applications for ORIGINAL Stock</u> | <u>Shares</u> | |
|---|---------------|------------|
| <u>District No. 4.</u> | | |
| Cleves National Bank, Cleves, Ohio | 36 | 36 |
| <u>District No. 5.</u> | | |
| Hamilton National Bank, Washington, D. C. | 750 | 750 |
| <u>District No. 6.</u> | | |
| First National Bank at Bessemer, Alabama | 66 | 66 |
| | <u>Total</u> | <u>852</u> |

Approved.

Thereupon the meeting adjourned.

O. E. Morrill
Secretary.

Approved:

E. R. Black
Governor.