

Minutes for May 9, 1960

To: Members of the Board

From: Office of the Secretary

Attached is a copy of the minutes of the Board of Governors of the Federal Reserve System on the above date.

It is not proposed to include a statement with respect to any of the entries in this set of minutes in the record of policy actions required to be maintained pursuant to section 10 of the Federal Reserve Act.

Should you have any question with regard to the minutes, it will be appreciated if you will advise the Secretary's Office. Otherwise, please initial below. If you were present at the meeting, your initials will indicate approval of the minutes. If you were not present, your initials will indicate only that you have seen the minutes.

Chm. Martin	<u>W</u>
Gov. Szymczak	<u>[Signature]</u>
Gov. Mills	<u>[Signature]</u>
Gov. Robertson	<u>R</u>
Gov. Balderston	<u>CCB</u>
Gov. Shepardson	<u>[Signature]</u>
Gov. King	<u>[Signature]</u>

Minutes of the Board of Governors of the Federal Reserve System  
on Monday, May 9, 1960. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman  
Mr. Balderston, Vice Chairman  
Mr. Szymczak <sup>1/</sup>  
Mr. Robertson  
Mr. Shepardson  
Mr. King

Mr. Sherman, Secretary  
Mr. Thomas, Adviser to the Board  
Mr. Young, Adviser to the Board  
Mr. Fauver, Assistant to the Board  
Mr. Noyes, Director, Division of Research and  
Statistics  
Mr. Koch, Adviser, Division of Research and  
Statistics  
Mr. Landry, Assistant to the Secretary  
Mr. Keir, Chief, Government Finance Section,  
Division of Research and Statistics

Report on money market conditions. Mr. Keir presented a report  
on Treasury debt operations over the past year, including changes in  
ownership of the Federal debt; and Mr. Thomas reported on the banking  
situation, with particular reference to bank reserves.

It was understood that Mr. Keir would provide the Treasury with  
a copy of the tables used to document his report following their revision.

Provision of information regarding new Treasury allotments to  
Federal Reserve. There had been distributed a memorandum from Mr. Keir  
dated May 6, 1960, regarding a request from Mr. Donald Miller, formerly  
of the Board's staff and now Vice President of the Continental Illinois  
National Bank and Trust Company of Chicago, for a listing of new issue

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<sup>1/</sup> Withdrew from meeting at point indicated in minutes.

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awards made to the Federal Reserve in Treasury refunding operations for the period from 1946 to 1953. It was noted that these figures were desired in connection with a study Mr. Miller was doing for the American Bankers Association as a part of its work for the Commission on Money and Credit of the Committee for Economic Development. Mr. Keir commented that data on new issue allotments to the Federal Reserve are not now available in published form but Mr. Miller would not publish such figures in his study. His need for Federal Reserve figures arose only because he wished to break commercial banks out of a larger total for the banking system, which figures are directly available in published form for the period from 1953 to the present in Table 5 on Public Debt Operations in the Treasury Bulletin. To obtain similar data on bank allotments for the period from 1946 to 1952 Mr. Miller had approached the Treasury, which had sent him allotment data for the whole banking system including Federal Reserve Banks. This was done because the Treasury believed it should not release the Federal Reserve allotment figures but that this decision should be left to the Federal Reserve. Consequently, Mr. Miller had approached the Board for the Federal Reserve information in order to make his own breakdown. It was the opinion of the Government Finance Section that continued confidentiality of the Federal Reserve allotment data for the period from 1946 through 1952 seemed to serve no necessary purpose. Consequently, said Mr. Keir, his memorandum had been written to request the Board's permission to give

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Mr. Miller the information sought. Mr. Keir said, in reply to a question from Governor Robertson, that the Treasury did not object to the provision of the requested information.

Unanimous approval was then given to making public the data relating to new issue awards to the Federal Reserve in Treasury refunding operations for the period from 1946 to 1953.

Messrs. Koch and Keir then withdrew and Messrs. Hackley, General Counsel; Solomon, Director, Division of Examinations; Johnson, Director, Division of Personnel Administration; Hexter and O'Connell, Assistant General Counsel; Nelson, Assistant Director, Division of Examinations; and Sprecher, Assistant Director, Division of Personnel Administration, entered the room.

Items circulated to the Board. The following items, which had been circulated to the Board and copies of which are attached to these minutes under the respective item numbers indicated, were approved unanimously:

	<u>Item No.</u>
Letter to the Chairman of the Federal Reserve Bank of New York regarding the retirement allowance of an officer of the Bank.	1
Letter to The First National Bank of Gordon, Gordon, Nebraska, approving its application for fiduciary powers.	2
Letter to The First State Bank, Abilene, Texas, granting its request for permission to exercise fiduciary powers.	3

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	<u>Item No.</u>
Letter to Liberty County Bank, Chester, Montana, approving an investment in bank premises.	4
Letter to Security Bank, Lincoln Park, Michigan, approving the establishment of a branch in Allen Park.	5
Letter to Maplewood Bank and Trust Company, Maplewood, Missouri, approving an extension of time to establish a branch 60 feet north of its main office.	6
Letter to First Security Investment Company, Salt Lake City, Utah, transmitting a final tax certification with respect to that company.	7
Letter to the Federal Reserve Bank of San Francisco concurring in the view that certain financial details reported by California Bank, Los Angeles, California, incident to construction of its new head office building would not require consideration by the Board under the provisions of section 24A of the Federal Reserve Act.	8

Messrs. Johnson and Sprecher withdrew from the meeting following the action on Item No. 1 and Governor Szymczak withdrew following the action on Item No. 8. Before leaving, Governor Szymczak stated that he favored sending to the Department of Justice the proposed letter regarding the Board's views on Old Kent Bank and Trust Company, next to be considered.

Letter to the Department of Justice relative to Old Kent Bank and Trust Company v. Martin et al (Item No. 9). There had been distributed a draft of letter to the Department of Justice relative to the U. S. Court of Appeals' decision on April 28, 1960, in the

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Old Kent Bank and Trust Company case. This letter would reply to a letter from Justice dated May 2, 1960, requesting an expression of the Board's views and comments on this decision and on the Department's proposal to file a petition for rehearing en banc. A copy of the Department's letter of request as well as a covering memorandum dated May 6, 1960, were attached to the draft letter, which would favor the action now contemplated by Justice as to filing a petition for a rehearing en banc. The draft letter also noted that if any such petition for rehearing should be denied, it was hoped that immediate consideration would be given by the Department to the filing of a petition for a writ of certiorari from the United States Supreme Court. It was noted further that in the event a petition for rehearing is filed, Justice might wish to consider as a point to be urged upon the Court of Appeals the fact that there is presently pending in the United States District Court for the District of Columbia, a suit filed against the Board by the Wachovia Bank and Trust Company, Winston-Salem, North Carolina, (Civil No. 93-59) involving issues of law substantially identical with those in the Old Kent Bank case and that by stipulation, further action in the Wachovia Bank case awaits "ultimate judicial determination" in the Old Kent Bank case.

Mr. Hackley said that according to the conversations held between Mr. O'Connell and Justice, the latter was interested in more than a perfunctory answer to its letter of May 2.

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Mr. O'Connell observed, with respect to the Court of Appeals' adverse decision in the Old Kent Bank case, that the brevity of the majority opinion appeared to limit the grounds upon which a petition for rehearing might be premised. On the other hand, the lack of any substantiating rationale for the interpretation placed by the Court on the word "establish" with reference to branch banks seemed to justify framing the main thrust of the petition for rehearing on the alleged error of the Court in its conclusion as to the meaning of "establish" and in support of this position to utilize the language of Judge Washington's dissenting opinion. He went on to say that the conclusion reached by the majority of the Court apparently placed the principal burden of reversing the majority's position on convincing a reviewing court that the Board's interpretation of "establish" was valid.

Messrs. Thomas and Young then withdrew and Mr. Molony, Assistant to the Board, entered the room.

Governor Robertson noted that the draft of reply to Justice placed emphasis on the approach taken by the Board that branches acquired as a result of a merger were subject to Board approval, even though approval of the merger itself might not require Board approval. He then inquired as to the importance of the majority decision denying this distinction so far as the Old Kent and Wachovia cases were concerned.

Mr. O'Connell replied that the Court of Appeals' decision would relate to the Old Kent and Wachovia cases currently outstanding but not

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to future cases, because the passage last week by Congress of the bank merger bill would affect all future applications, changing the situation completely. The reason for this view was that representation by counsel for Old Kent Bank and Trust Company in the District Court and before the Court of Appeals that the Board was trying to exercise authority over bank mergers would no longer be effective now that the Board held such power under the recently enacted merger law. He added that should the Board not obtain a rehearing of the Old Kent Bank case before the Court of Appeals, it would be necessary for the Board to say that its previous position regarding the separability of bank mergers and the establishment of branches incident thereto must be abandoned in favor of viewing the whole process as an integral one.

Governor Robertson asked whether it seemed advisable to go to the expense and effort of further litigation in the light of the circumstances and prospects described by Mr. O'Connell, since future cases would come under the new merger law. He questioned whether the Board's position would be strengthened by a reversal of the Court of Appeals' decision now that the new merger law was on the statute books.

In the discussion that followed various views were expressed concerning the Board's authority in the future to pass on the establishment of branches of banks incident to mergers under the bank merger bill recently passed by the Congress and to the status of the outstanding Old Kent and Wachovia cases in the light of this new law.

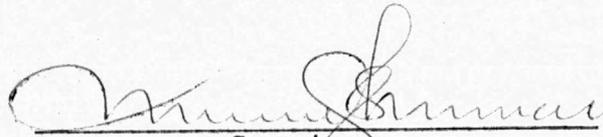
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At the conclusion of the discussion, unanimous approval was given to the letter to the Department of Justice replying to its letter of May 2, 1960. A copy of this letter is attached Item No. 9.

The meeting then adjourned.

Secretary's Note: Governor Shepardson today approved on behalf of the Board a memorandum from the Office of the Controller dated May 5, 1960, recommending that a per diem allowance of \$5 be paid to George F. Rudy while assigned to the Board's Legal Division for a period of approximately one year under the terms of the Board's letter of March 2, 1960, to the Federal Reserve Bank of Dallas.



Secretary

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON

Item No. 1  
5/9/60

OFFICE OF THE VICE CHAIRMAN

May 9, 1960



Confidential (FR)

Mr. Philip D. Reed,  
Chairman,  
Federal Reserve Bank of New York,  
New York 45, New York.

Dear Mr. Reed:

In accordance with your letter of April 22, 1960, there is enclosed a draft of an agreement which might be used by the Bank for the purpose of entering into an arrangement with Mr. Alfred Hayes to guarantee him a minimum retirement allowance of 40 per cent of final salary at age 65.

The Board is prepared to give consideration to such an agreement, if recommended by your Board of Directors.

To illustrate some of the provisions of the agreement, should Mr. Hayes retire as President at age 65, using the present salary rate for purposes of example (\$60,000), he would be guaranteed a total minimum allowance of \$24,000. His retirement allowance from the Retirement System of the Federal Reserve Banks (pension and annuity) would approximate \$21,240 annually, and about \$2,760 would be payable annually directly to him by the Federal Reserve Bank of New York to make up the \$24,000 figure. This guaranteed minimum allowance in the event of retirement prior to age 65 but after completing 10 years of service creditable under the Retirement System would be adjusted downward by the pension reduction formula applicable to the Retirement System at the time of his retirement. The post-retirement payments by the Bank would cease at his death, with no provision for payments to his wife. However, under the Rules and Regulations of the Retirement System, for the portion provided by that System, a survivorship election could be arranged to provide for payments to his wife after his death. Mr. Hayes would not contribute to the supplemental allowance which would be paid from Bank funds.

In addition to the benefits he would receive under the guaranteed minimum allowance agreement, Mr. Hayes would also be entitled to Social Security benefits at age 65.

Confidential (FR)

Mr. Philip D. Reed

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If your Board wishes to proceed in this matter, I hope that this explanation and the enclosed draft of an agreement which has been used by other Federal Reserve Banks for this purpose may prove helpful.

Sincerely yours,

(Signed) C. C. Balderston

C. Canby Balderston,  
Vice Chairman.

Enclosure

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 2  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960

Board of Directors,  
The First National Bank of Gordon,  
Gordon, Nebraska.

Gentlemen:

The Board of Governors of the Federal Reserve System has given consideration to your application for fiduciary powers and grants The First National Bank of Gordon authority to act, when not in contravention of State or local law, as executor and administrator. The exercise of such rights shall be subject to the provisions of Section 11(k) of the Federal Reserve Act and Regulation F of the Board of Governors of the Federal Reserve System.

A formal certificate indicating the fiduciary powers that your bank is now authorized to exercise will be forwarded in due course.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.



BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 3  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960

Board of Directors,  
The First State Bank,  
Abilene, Texas.

Gentlemen:

This refers to your request for permission,  
under applicable provisions of your condition of mem-  
bership numbered 1, to exercise fiduciary powers.

Following consideration of the information  
submitted, the Board of Governors of the Federal Reserve  
System grants permission to The First State Bank to exer-  
cise the fiduciary powers now or hereafter authorized by  
its charter and the laws of the State of Texas.

Very truly yours,

(Signed) Elizabeth L. Carmichael

Elizabeth L. Carmichael,  
Assistant Secretary.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 4  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Board of Directors,  
Liberty County Bank,  
Chester, Montana.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of Minneapolis, the Board of Governors of the Federal Reserve System approves, under the provisions of section 24A of the Federal Reserve Act, an investment in bank premises of not to exceed \$65,000 by Liberty County Bank for the purpose of acquiring land and erecting a building thereon to house the operations of the bank.

It is understood that subsequent to the inception of this building program the capital stock of the bank was increased from \$50,000 to \$75,000 by a stock dividend and that the present investment in bank premises does not exceed present capital stock.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,  
Assistant Secretary.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 5  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Board of Directors,  
Security Bank,  
Lincoln Park, Michigan.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of Chicago, the Board of Governors of the Federal Reserve System approves the establishment of a branch at the southeast corner of the intersection of Outer Drive and Southfield Road, Allen Park, Michigan, provided the branch is established within nine months from the date of this letter.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,  
Assistant Secretary.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 6  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Board of Directors,  
Maplewood Bank and Trust Company,  
Maplewood, Missouri.

Gentlemen:

Pursuant to your request submitted through the Federal Reserve Bank of St. Louis, the Board of Governors extends to June 2, 1960, the time within which Maplewood Bank and Trust Company, Maplewood, Missouri, may, under the authority granted in the Board's letter of November 2, 1959, establish a branch 60 feet north of its main office in Maplewood, Missouri.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,  
Assistant Secretary.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 7  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Mr. Thos. F. Hawkes, Secretary,  
First Security Investment Company,  
Deseret Building,  
Salt Lake City, Utah.

Dear Mr. Hawkes:

This refers to your letter of November 4, 1959, requesting that the Board issue a Final Certification pursuant to section 1101(e)(2) of the Internal Revenue Code of 1954.

Enclosed is a Final Certification issued by the Board today. A duplicate original is being sent to the Commissioner of Internal Revenue.

There is one point with respect to this Final Certification that should be mentioned. As you will recall, on August 11, 1959, there was issued, with respect to First Security Corporation's proposed divestment plan, a favorable Internal Revenue Service ruling which was subject to a proviso that

"the Board certifies that before the expiration of the period specified in section 1101(e)(1)(a) of the Code, First Security disposed of all the property the disposition of which is necessary or appropriate to effectuate Section 4 of the Bank Holding Company Act of 1956 (or would have been so necessary or appropriate if First Security had continued to be a bank holding company)".

With your letter of November 24, 1959 to the Board, you enclosed a copy of the ruling. On December 1, 1959, the Board wrote you, pointing out that Internal Revenue apparently was proceeding on the assumption that section 1101(e)(1) was applicable in this situation, which was not the case. The Board suggested that you might wish to ask Internal Revenue for an amended ruling containing a corrected proviso in lieu of the proviso quoted above.

On December 8, 1959, your Counsel wrote to Internal Revenue regarding this matter. On December 23, 1959, you received a reply that amended the "ruling letter" of August 11, 1959, to refer to "subparagraph (B) of section 1101(e)(2)" in lieu of "section 1101(e)(1)(a)".

Mr. Thos. F. Hawkes

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This amendment of the ruling corrected the erroneous citation to the Internal Revenue Code. However, it failed to correct the remainder of the proviso. Consequently, the proviso, even as amended, still makes Internal Revenue's favorable ruling dependent upon certification by the Board

"that...First Security disposed of all the property the disposition of which is necessary or appropriate to effectuate Section 4 of the Bank Holding Company Act of 1956 (or would have been so necessary or appropriate if First Security had continued to be a bank holding company)."

As forecast in the Board's December 1, 1959 letter, the Final Certification now issued by the Board does not certify in the manner described in the above-quoted proviso, but simply certifies that First Security Investment Company "has ceased to be a bank holding company". The latter is the certification explicitly required by section 1101(e)(2)(A) of the Internal Revenue Code.

What happened in this case appears clear. Upon receiving your Counsel's letter of December 8, 1959, Internal Revenue properly eliminated the reference to section 1101(e)(1), but failed to change the language of the remainder of the proviso, which was simply a paraphrase of section 1101(e)(1). The proviso should have been changed in its entirety, to read somewhat as follows:

"provided the Board certifies that, before the expiration of the period specified in sub-paragraph (B) of section 1101(e)(2) of the Code, First Security ceased to be a bank holding company."

That this should have been done is clear from the fact that the proviso, as amended by Internal Revenue, cites one provision of Code and, in connection therewith, in effect quotes from another provision that has no applicability with respect to the provision cited.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,  
Secretary.

Enclosure

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON

F I N A L   C E R T I F I C A T I O N

Pursuant to section 1101(e)(2) of the Internal Revenue Code of 1954, the Board of Governors of the Federal Reserve System hereby certifies, to the best of its knowledge and belief, that First Security Investment Company (formerly First Security Corporation), Salt Lake City, Utah, which formerly was a bank holding company as defined in section 2(a) of the Bank Holding Company Act of 1956, has ceased to be a bank holding company before the expiration of the period specified in subparagraph (B) of section 1101(e)(2) of the Internal Revenue Code of 1954.

Executed in Washington, D. C., pursuant to direction of the Board of Governors of the Federal Reserve System.

(Signed) Merritt Sherman  
Merritt Sherman,  
Secretary.

Date: May 9, 1960

(SEAL)

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 8  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Mr. E. R. Millard, Vice President,  
Federal Reserve Bank of San Francisco,  
San Francisco 20, California.

Dear Mr. Millard:

Reference is made to your letter of April 25, 1960, and enclosures relating to the investment in banking premises by California Bank, Los Angeles, California, and particularly to the new building being constructed at 6th and Spring Streets to house the head office. It is noted that upon completion of the building, the street address to be used will be 600 South Spring Street instead of 610-12 South Spring Street as we were previously advised.

According to the information submitted, the aggregate direct and indirect investment of California Bank in banking premises will be less than its capital stock and, therefore, we concur in the view expressed in Mr. Mangels' letter, a copy of which you submitted, that consideration of the matter will not be required under the provisions of section 24A of the Federal Reserve Act.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,  
Assistant Secretary.

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
WASHINGTON 25, D. C.

Item No. 9  
5/9/60

ADDRESS OFFICIAL CORRESPONDENCE  
TO THE BOARD

May 9, 1960



Mr. George Cochran Doub,  
Assistant Attorney General,  
United States Department of Justice,  
Washington 25, D. C.

Attention Mr. Samuel D. Slade,  
Chief, Appellate Section.

Re: Old Kent Bank and Trust Company v. William  
McC. Martin, Jr., et al. (No. 15244, C.A.D.C.)  
Your Ref: GCD:SDS:JGL, 115-105-8

Dear Mr. Doub:

This refers to your letter of May 2, 1960, in connection with the above-captioned case, requesting an expression of the Board's views and comments on the decision recently rendered by the United States Court of Appeals in this case and on the Department's proposal to file a petition for rehearing en banc.

The importance to the Board of the judicial determination in this matter is evidenced, it is believed, by the nature and extent of the Board's presentation of its position before the United States District Court, as contained in the memoranda in support of the Board's motions filed in the District Court. As therein stated, plaintiff's assertion, adopted by the Court of Appeals, that the word "establish", found in section 9 of the Federal Reserve Act (12 U.S.C. § 321), does not mean "operate after acquiring by merger", necessarily argues for a similar exclusion from review by the Board of all branch acquisitions through absorption of any bank, whether national or State, member or nonmember of the Federal Reserve System, insured by the Federal Deposit Insurance Corporation or non-insured. In addition to the potentially harmful effects on competition, other dangers also inherent in such a situation could involve faulty management or unsafe financial condition, and are equally of concern when branches are acquired through merger as when established de novo. A more graphic illustration of the scope of this potential danger is provided by the fact that in the period 1950-1959, a total of 768 branches were acquired and operated by State member banks as the continuing institutions following mergers, consolidations or absorptions.

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. George Cochran Doub

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For the foregoing reasons, among others, the Board concurs in the action now contemplated by the Department of Justice as to filing a petition for rehearing en banc and urges that such action be taken. Moreover, if any such petition for rehearing should be denied, it is hoped that immediate consideration will be given by the Department to the filing of a petition for a writ of certiorari in the United States Supreme Court.

In the event that a petition for rehearing is filed, you may wish to consider, as a point to be urged upon the Court of Appeals, the fact that there is presently pending in the United States District Court for the District of Columbia a suit filed against the Board by the Wachovia Bank & Trust Company, Winston-Salem, North Carolina (Civil No. 93-59), involving issues of law substantially identical with those in the Old Kent Bank case. By stipulation, further action in the Wachovia Bank case awaits "ultimate judicial determination" in the Old Kent Bank case.

As to the Court of Appeals' decision in the Old Kent Bank case, while the brevity of the Court's majority opinion would appear to limit the grounds upon which a petition for rehearing might be premised, the lack of any substantiating rationale for the interpretation placed by the Court on the word "establish" would seemingly justify framing the main thrust of the petition for rehearing on the alleged error of the Court in its conclusion as to the meaning of "establish" and, in support of this position, emphasizing the position taken by Judge Washington in his dissenting opinion.

In view of the conclusion reached by the majority of the Court that "If Congress had meant to require 'the same business and corporate entity as the national banking association' to get the Board's approval in order to continue operating the association's branches, we think Congress would have said so.", it seems clear that the principal burden in any effort to effect a reversal of the majority's position is to convince a reviewing court of the validity of the Board's interpretation of the word "establish". If that is done, that portion of the majority's opinion dealing with the provisions of 12 U.S.C. § 214b, supra, (Op. p. 3) is answered.

Support for the position espoused by the Board as to the meaning of the word "establish" is, in the Board's judgment, to be found in the fact that a provision of the Michigan Law (§ 23.862, Mich. Stat. Ann. (1957)) contains a provision substantially identical to 12 U.S.C. § 214b, regarding the "passage" to the consolidated bank of all the rights, interests, privileges, powers, etc., of the

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Mr. George Cochran Doub

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consolidating banks. At the same time, however, § 23.867, Mich. Stat. Ann. provides that any such consolidated bank may, with the written permission of the State Banking Commission, "establish and operate as a branch or branches the consolidating trust company, bank or banks." Thus, the statutory requirements of the State of Michigan are substantially identical with those with which we are here concerned, with the exception that the Michigan Statute, by specific reference to "consolidated banks", has made more clear its position that the operation by a consolidated bank of offices acquired by it through consolidation constitutes the "establishment and operation" of such branches. Plaintiff in the present case obtained written authorization from the State Banking Commission "to establish and operate" each of the branches formerly operated by Peoples, the bank absorbed by plaintiff. While it is recognized that the interpretation placed by the State of Michigan upon its statutes is in no respect binding upon the Court of Appeals, expansion of the foregoing point would seem to have merit in any effort to urge the validity of the interpretation given the word "establish" by Judge Washington.

Upon decision by your office as to the form of review, if any, to be sought in this case, the Board's legal staff will, of course, be available for any assistance that may be requested by your Department.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,  
Secretary.