FR 609
Rev. 10/59

Minutes for July 14, 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

Gov. Szymczak

Gov. Mills

Gov. Robertson

Gov. Balderston

Gov. Shepardson

Gov. King

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Minutes of the Board of Governors of the Federal Reserve System on Thursday, July 14, 1960. The Board met in the Board Room at 9:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Mills
Mr. Shepardson

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Hackley, General Counsel
Mr. Solomon, Director, Division of Examinations
Mr. O'Connell, Assistant General Counsel
Mr. Benner, Assistant Director, Division of Examinations
Miss Hart, Assistant Counsel
Mr. Leavitt, Supervisory Review Examiner, Division of Examinations

Continental Bank and Trust Company. On July 7, 1960, the Board reached a decision that an order should be issued in the matter of Continental Bank and Trust Company, Salt Lake City, Utah, requiring the bank within six months from the date of the order to effect an increase in its net capital and surplus funds in the amount of $1,500,000 by the sale of common stock for cash. The staff was requested to prepare for the Board's consideration drafts of an order and accompanying statement, and such drafts had been distributed prior to this meeting. The draft statement, distributed under date of July 12, 1960, contained sections on the background of the Continental matter, the legal aspects of the case, and the factual basis for the Board's order.

Mr. Hackley stated that the staff had attempted to draft the statement in the light of the discussion at the meetings of the Board

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last week. The legal portion of the statement was in accord with the legal memoranda previously transmitted by the staff to the Board and with the oral presentation he had made to the Board last week. There were a few minor changes that the staff would like to make in the draft statement, and it was the thought to incorporate them along with such further suggestions as the members of the Board might wish to make.

Governor Mills said he had no objection to the form of order or the amount of additional capital that would be required. However, he believed that the draft statement, both in the sections dealing with the legal aspects and the factual background of the case, was replete with peril for the Board. Furthermore, he did not believe that the statement of legal aspects carried out what he understood to have been the position of the Board at its meetings last week because the statement seemed to fall back on the position that in effect the hearing was in error, in that it was preliminary to a final hearing, and that subsequent to the issuance of the proposed order it would be incumbent upon the Board to call for another hearing in accordance with section 9 of the Federal Reserve Act. It had been his own impression that from the outset of the proceedings it was generally understood that the hearing which concluded with oral argument on July 22, 1959, was all-inclusive and final. If that was not the case, he felt the error went back to the vagueness of the original request to Continental to introduce additional capital, and in not giving proper notice to the institution that the hearing was to be

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preliminary to a final proceeding in which the entire issue would be reviewed. From the concluding summary of the Board's Special Counsel at the time of oral argument it appeared to be the view of Special Counsel that the hearing that had been held was final and conclusive. Against the evidence submitted in that hearing, Special Counsel recommended that the Board call upon Continental to introduce additional capital. Also, counsel from the Board's staff had served with Special Counsel in the conduct of the hearing. If the Board now proceeded against this background to call the record merely a preliminary hearing, it would seem to repudiate members of its own staff and also to repudiate Special Counsel without having his impression as to what had been the intention of the Board.

Turning to the section of the statement dealing with the factual aspects of the case, Governor Mills said he found it discursive. He felt that it would be preferable to issue an order against the background of the testimony that was in the hearing record. In that connection, he thought there was serious question regarding the use of data that had been developed subsequent to the conclusion of the hearing, particularly information obtained from reports of examination.

Mr. Hackley commented that opinions might well differ as to the legal situation. However, he had not understood that the Board disagreed with the line of reasoning presented by the staff at the meetings last week. He felt it was clear that the notice of the hearing that began in

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1956 in no sense charged Continental with violation of any law or regulation. He thought the notice also had made it clear that the Board had not, before that hearing, determined whether or not the bank's capital was inadequate or, if so, by what amount. Rather, the notice indicated that a determination would be made before any forfeiture of membership proceedings were instituted under the law. As he recalled, Special Counsel concluded his exceptions to the Hearing Examiner's Report with a recommendation that the bank's membership be forfeited only if the Board should order the bank to increase its capital by a specified amount and this was not done. Further, in his opinion, if the hearing was regarded as final and if the Board should now take action to forfeit the bank's membership, the bank might immediately go to court and perhaps successfully prevail on the court to overturn the Board's position.

Governor Mills commented that he felt the Board was interested primarily in the question of its authority to require a member bank to introduce additional capital on penalty of forfeiture of membership in the Federal Reserve System. He felt it was superfluous whether the courts would take issue with the proceedings in this case if they did not deny the fundamental authority on the part of the Board.

In this connection, Mr. O'Connell suggested the possibility that Continental might prevail on a court that the initial step was inadequate to apprise them of the nature of the hearing. On that basis a court might dismiss the case without reaching a determination as to the Board's authority.

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Governor Mills suggested that this might be a risk to which the Board should expose itself against the background of what might be determined to have been an error in the procedure that was followed in initiating this case.

Chairman Martin then inquired of Governor Mills how he felt that the order should be drawn, and the latter replied that he considered the order satisfactory. However, he felt that the Board would expose itself to extreme peril if it published a statement in the form in which it had been drafted.

In commenting on a question as to the procedure that would be contemplated if Continental failed to comply with the Board's order, Mr. Hackley said that if the hearing already held was regarded as the hearing required by statute, Continental then might say that it never had a fair chance to defend itself against a specific charge of violation.

Mr. O'Connell noted that the draft order contained no reference to the possibility of a subsequent hearing, for such a reference would tend to convey the suggestion that Continental was not going to comply with the order and this would be almost a prejudgment. If it should appear to the Board that Continental had not complied with the order within the specified time, then Continental would be entitled to a hearing to determine whether or not it had complied with the order and whether its membership should be forfeited. The law seemed to require a hearing in that regard, although obviously no hearing would take place if Continental complied with the order.

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Governor Balderston raised the question whether the order should not call for the introduction of "at least" $1.5 million of new capital, and it was agreed that this would be appropriate and consistent with the Board's decision.

Governor Balderston then stated that he had certain suggestions with regard to the draft statement. Some of these involved simply changes in wording and he proposed to turn them over to the staff, but others related more to matters of substance. Accordingly, he distributed a memorandum outlining these suggestions, and there was discussion of them. It was understood that these suggestions, and the comments thereon, would be taken into account by the staff in connection with preparing the statement in final form.

Chairman Martin then inquired of Governor Mills whether the latter visualized any way of redrafting the statement to meet the points he had raised, and Governor Mills replied in the negative. He went on to say that if the Board was prepared to expose itself to public criticism in the manner that he foresaw, he would vote with the majority of the Board. However, he felt that such a course would be dangerous.

Governor Shepardson said that he was somewhat disturbed about the position in which the Board found itself. From a legal position, it seemed to him that the procedure outlined was proper. Nevertheless, one could not get away from the fact that there was a different understanding on the part of many people regarding the basis on which the hearing was

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held. The thing that was not clear to him was the necessity of a long statement which, as Governor Mills had suggested, seemed to present an opportunity for criticism. It might be that the statement was essential, but the situation was somewhat embarrassing. In summary, while he agreed that it seemed necessary to take the steps indicated by the staff for the reasons discussed by Mr. Hackley, the statement was of some concern to him.

Question then was raised as to the possibility of issuing the order without any accompanying statement, and Mr. Hackley said he felt that strictly as a legal matter no statement was necessary. However, it seemed almost certain that Continental would go to court in some way. Therefore, issuance of a statement seemed desirable to assist the court in determining whether the Board had statutory authority to issue its order and, if so, whether the Board's determination was reasonable. The court would be informed thereby of the ground on which the Board assumed it had legal authority to require a bank to maintain adequate capital, and also to see that the Board had based its factual determination on reasonable evidence. The staff itself was disturbed by the outcome of its reasoning in view of the extensive hearing and the passing of a period of some four years since the proceeding was instituted. Nevertheless, the staff felt that the danger of criticism and legal attack would be much greater if the Board, without a further hearing on a specific charge of violation, ordered the forfeiture of the bank's membership.

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There followed discussion as to the need for a statement from the point of view of explaining to the public the background against which the Board's order was issued, and to the possibility of accomplishing this objective in a brief statement. Possible dangers inherent in the use of any extremely brief statement also were cited.

As the result of this discussion, the suggestion was made that the staff endeavor to condense the draft of statement, with the possibility that in doing so it might be able to overcome some of the objections and reservations that had been stated at this meeting. While this suggestion related principally to the portions of the statement dealing with the background and legal aspects of the case, reference also was made to the portion containing the factual basis for the Board's determination and there were certain comments regarding the handling of that portion of the statement. While the general tone of the comments, as to all three parts of the statement, was suggestive of condensation, several comments were made by members of the Board regarding material that they considered it essential to retain.

At the conclusion of the discussion, there was agreement that the staff should prepare for the Board's consideration, by tomorrow if possible, a somewhat briefer version of statement, to accompany the Board's order, that would endeavor to take into account the suggestions and expressions of opinion that had been made at this meeting.

The meeting then adjourned.

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7/14/60

Secretary's Notes: Governor Shepardson today approved on behalf of the Board the following items:

Memorandum dated July 11, 1960, from Mr. Farrell, Director, Division of Bank Operations, recommending a change in title of James A. McIntosh from Analyst to Data Processing Analyst, with no change in his basic annual salary at the rate of $6,600, effective July 10, 1960.

Letter to the International Bank for Reconstruction and Development (attached Item No. 1) approving an extension of leave without pay for Stephen P. Taylor, Economist in the Board's Division of Research and Statistics, to enable him to continue to assist in connection with that Bank's mission to the Federation of Malaya to not later than August 31, 1960.

Letter to the Federal Reserve Bank of Dallas (attached Item No. 2) approving the designation of five persons as special assistant examiners.

Letter to the Federal Reserve Bank of San Francisco (attached Item No. 3) approving the designation of eleven persons as special assistant examiners.

Secretary

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OF THE
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WASHINGTON 25, D. C.

Item No. 1
7/14/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 14, 1960

Mr. W. A. B. Iliff,
Vice President,
International Bank for Reconstruction
and Development,
1818 H Street, N. W.,
Washington 25, D. C.

Dear Mr. Iliff:

Your letter to Governor Szymczak dated June 30, 1960 requesting an extension of the leave without pay for Mr. Stephen T. Taylor, a member of the Board's staff, has been brought to the Board's attention. It has been assumed that Mr. Taylor would return from his present leave by August 1 and, because of commitments that have been made, it would be highly desirable that he be at his desk during the first week of August. Provided that Mr. Taylor can spend that week here in the Board's building, the Board approves an extension of his leave for the purpose of enabling him to continue to assist in connection with your Bank's mission to the Federation of Malaya to not later than August 31, 1960. Arrangements for the additional leave would be on the same basis as those that have applied thus far.

Very truly yours,

(Signed) Merritt Sherman

Merritt Sherman,
Secretary.

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Item No. 2
7/14/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 14, 1960

Mr. L. G. Pondrom, Vice President,
Federal Reserve Bank of Dallas,
Dallas 2, Texas.

Dear Mr. Pondrom:

In accordance with the request contained in your letter of July 7, 1960, the Board approves the designation of the following individuals as special assistant examiners for the Federal Reserve Bank of Dallas for the purpose of participating in examinations of State member banks only:

Charles R. Bell
James F. Lucky
Charles R. Norris
Richard D. Ingram
A. J. Sullivan

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.

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Item No. 3
7/14/60

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

July 14, 1960

Mr. Eliot J. Swan, First Vice President,
Federal Reserve Bank of San Francisco,
San Francisco 20, California.

Dear Mr. Swan:

In accordance with the request contained in your letter of July 7, 1960, the Board approves the designation of the following individuals as special assistant examiners for the Federal Reserve Bank of San Francisco for the purpose of participating in examinations of State member banks only:

B. T. Branch
T. S. Carson
P. E. Corbin
D. A. Matney
J. W. Sines
P. K. Eads
J. H. Meredith
J. F. Davis
W. L. Galbraith
J. Meyer
R. T. Throndson

Appropriate notations have been made on our records of the names to be deleted from the list of members of the examining staff of your bank.

Very truly yours,

(Signed) Kenneth A. Kenyon

Kenneth A. Kenyon,
Assistant Secretary.

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