

Minutes for October 11, 1965

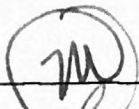
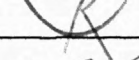
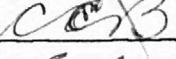
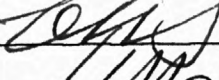

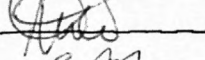
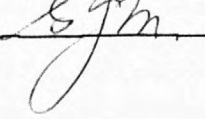
To: Members of the Board

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></u>
Gov. Robertson	<u></u>
Gov. Balderston	<u></u>
Gov. Shepardson	<u></u>
Gov. Mitchell	<u></u>
Gov. Daane	<u></u>
Gov. Maisel	<u></u>

Minutes of the Board of Governors of the Federal Reserve System on Monday, October 11, 1965. The Board met in the Board Room at 10:00 a.m.

PRESENT: Mr. Martin, Chairman
Mr. Balderston, Vice Chairman
Mr. Robertson
Mr. Shepardson
Mr. Mitchell
Mr. Daane
Mr. Maisel

Mr. Sherman, Secretary
Mr. Kenyon, Assistant Secretary
Mr. Noyes, Adviser to the Board
Mr. Molony, Assistant to the Board
Mr. Cardon, Legislative Counsel
Mr. Fauver, Assistant to the Board
Mr. Hackley, General Counsel
Mr. Solomon, Director, Division of Examinations
Messrs. Hexter, O'Connell, Shay, and Hooff,
Assistant General Counsel
Messrs. Leavitt and Thompson, Assistant Directors,
Division of Examinations
Mrs. Semia, Technical Assistant, Office of the
Secretary
Messrs. Sanders and Heyde of the Legal Division
Messrs. Burton, Donovan, Lyon, Noory, Rumbarger,
and (James R.) Smith of the Division of
Examinations

Application of Society Corporation. There had been distributed a memorandum dated September 10, 1965, from the Division of Examinations and other pertinent papers relating to the application of Society Corporation, Cleveland, Ohio, to acquire shares of The North Madison Banking Company, North Madison, Ohio. On the basis of analysis of the factors cited for consideration under the Bank Holding Company Act, the Division recommended approval, as had the Federal Reserve Bank of Cleveland and the Ohio Superintendent of Banks.

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After summary comments by Mr. Lyon, Governor Robertson asked several questions regarding the reasons for characterizing the management of the North Madison bank as conservative. The staff indicated that this view was based not only on the bank's rather low loan-deposit ratio but also on other factors such as the bank's reluctance to make certain kinds of loans and the fact that it did not provide various services that apparently would be useful to the community (although there were admittedly other sources from which they could now be obtained). Such services would be provided by the bank as a subsidiary of the holding company.

Governor Maisel inquired about previous Board decisions bearing upon the use of the holding company device to accomplish expansion that would not be permitted through branching under State laws. He noted that the Federal Reserve Bank of Cleveland had called attention to the fact that if this application was approved the applicant in a sense would be accomplishing through the holding company device what a Cleveland bank would not be permitted to do under State branching law.

The staff replied that this question had come up on many occasions. The Board's position had been that its responsibility under the Bank Holding Company Act was to determine, after taking into consideration specified factors, whether or not a proposed transaction was consistent with the statutory objectives and the public interest. The discharge of that responsibility was not understood by the Board to require that it weigh

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as a consideration adverse to approval of an application the existence of a State statute restricting branch banking. The Board had approved acquisitions of banks by holding companies in at least three instances where the laws of the States involved prohibited branch banking.

After further discussion statements by members of the Board as to their positions indicated that all were in favor of the current proposal.

The application of Society Corporation was thereupon approved unanimously, it being understood that an order and statement reflecting this decision would be prepared for the Board's consideration.

Application of Virginia Commonwealth Corporation. There had been distributed a memorandum dated September 30, 1965, from the Division of Examinations and other papers relating to the application of Virginia Commonwealth Corporation, Richmond, Virginia, to acquire shares of The Peoples Bank of Stafford, Falmouth, Virginia. The Division recommended approval, as had the Federal Reserve Bank of Richmond and the State Commissioner of Banking.

Summary comments by Mr. Thompson were followed by questions by Governor Robertson, to which the staff responded, regarding loan-deposit ratios and the capital position of Virginia Commonwealth's subsidiary banks, principal among which was The Bank of Virginia, Richmond, Virginia. It was brought out that the capital structure of the latter bank had recently been strengthened pursuant to suggestions by the Board as to the need for such action.

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At the conclusion of the discussion all members of the Board expressed themselves in favor of the current proposal.

The application of Virginia Commonwealth Corporation was thereupon approved unanimously, and the staff was requested to prepare for the Board's consideration an order and statement reflecting this action.

Application of BancOhio Corporation. There had been distributed a memorandum dated June 28, 1965, from the Division of Examinations regarding the application of BancOhio Corporation, Columbus, Ohio, to acquire shares of The First National Bank of Jackson, Jackson, Ohio. The Division recommended approval, as had the Federal Reserve Bank of Cleveland and the Comptroller of the Currency.

Among the supplemental papers that had been distributed was a memorandum dated July 2, 1965, in which the Division of Examinations commented on data prepared by the Banking Markets Unit of the Division of Research and Statistics comparing deposits and loans of BancOhio's subsidiaries with those of other Ohio banks in various areas and groups. The view of the Division of Examinations was that the data presented did not invalidate the conclusion expressed in the June 28 memorandum that the present proposal, if consummated, would not have the effect of substantially lessening competition or tending to create a monopoly.

Because the Department of Justice had under way an investigation (discussed at the meeting of the Board on June 4, 1965) regarding the position of BancOhio Corporation in relation to the banking structure of

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Ohio, in addition to the routine notice to the Department of the receipt of BancOhio's application to acquire First National Bank of Jackson, the Department had been advised in another communication that the Board would welcome its views as to the relationship, if any, between that application and the Sherman or Clayton Acts. A statement transmitted to the Board on August 10, 1965, contained the Department's analysis of the competitive factors involved in the Jackson application. The conclusion of the statement was as follows:

BancOhio presently has subsidiaries in 20 of the 88 counties in Ohio and in a number its subsidiaries are dominant. Approval of this Application will bring its representation to 21 counties and add to its dominance. Sixty-seven counties will remain in which BancOhio is not represented by a subsidiary bank.

Of these 67 counties there are 33 in which the total deposits of all banks in a county are under 50 million dollars; in 17 such total deposits are between 50 and 100 million dollars and in the remaining 17 counties such deposits exceed 100 million dollars. The potential for BancOhio to expand is very great, particularly in those 33 counties where only a comparatively small bank would be involved.

Approval of the present Application will act as a precedent should BancOhio seek to acquire control of a bank, especially in one or more of the smaller 33 counties. The result would be a holding company that would dominate banking in Columbus and elsewhere in Ohio outside the large centers of population.

Information relating to certain points made by the Department of Justice was supplied to the Board by Counsel for BancOhio in letters of September 7 and 18, 1965.

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In a distributed memorandum dated September 22, 1965, the Division of Examinations interpreted the statement by the Department to mean that the Department probably would not institute legal proceedings to prohibit the proposed acquisition in the event the Board approved the application. The Division believed that the Department had presented no information of material significance that had not already been considered in the Division's memoranda. On the basis of the Department's statement, the Division saw no reason to change its conclusion that BancOhio's resulting concentration of bank deposits in the area concerned did not require denial of the instant application. It was not believed that the acquisition would increase the size and extent of BancOhio's system beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking. The Division observed, with reference to the last two paragraphs of the Department's conclusion, that BancOhio had not been active in acquiring banks, and the Division did not agree with the Department that approval of the present application would act as a precedent. Each application presented in the future would be considered by the Board on the basis of the factors requiring consideration, including the size and extent of BancOhio's system, the public interest, and the effect on competition. In addition, the Board would consider any such matter from the standpoint of its responsibilities under the Clayton Act.

Mr. Thompson discussed the salient points involved in the application, after which Mr. Solomon commented that the position of the Department

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of Justice appeared to be based principally on apprehension that approval of the present application would provide a precedent for a series of acquisitions by BancOhio. In the absence of evidence of such intention on the part of the holding company and in view of the fact that the Board could deal with such a program if and when it eventuated, the Division did not feel that this possibility should govern the evaluation of the present application.

Chairman Martin observed that he understood the Attorney General's concern was not about the presently proposed acquisition per se, but rather that it had to do principally with the dominant position BancOhio already occupied in one county.

Governor Daane remarked that the Department's figures indicated that BancOhio subsidiaries had 50 per cent or more of the total deposits in several counties, so that the plucking off of other banks envisaged as a possibility did not seem to be the only point of concern to the Department.

The ensuing discussion brought out that in several counties where BancOhio controlled a sizable proportion of deposits because its subsidiary was the largest bank, the total deposits of all of the banks in the county were relatively small.

Governor Maisel noted that in this case there appeared to be only slight weight on either the positive or the negative side. He asked if precedents or legislative history suggested that large advantages were required to support approval or strong adverse aspects to justify denial.

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Mr. O'Connell replied that there had been a number of more or less neutral cases in which the Board, not necessarily by unanimous vote, had found sufficient consistency with the requirements of the Bank Holding Company Act to warrant approval. This necessarily involved a weighing of slight advantages or disadvantages under the several statutory factors. It was his impression that a review of cases might suggest that the Board ordinarily had required a stronger finding of benefit to the public interest in bank merger cases than in bank holding company cases. In all cases, of course, the Board had to consider its responsibilities under the Clayton Act.

In response to a question from Governor Mitchell as to the need for recognizing in the Board's statement on this case, if the application were approved, that the holding company was already dominant in the Columbus area, Mr. O'Connell responded that if the fact of dominance was apparent, it was advisable for the Board to be on record as recognizing it. Having done so, the Board could cite reasons for not denying the particular application. This had been done in previous cases.

Governor Mitchell expressed the view that the competitive situation and trend toward concentration would not be significantly affected by approval of the proposed acquisition in Jackson County. However, BancOhio's concentration in Franklin County was apparent, which raised the question of the relevance of that fact to the Board's decision.

Mr. Hackley commented that section 7 of the Clayton Act, read literally at least, would only require the Board to consider whether

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this specific stock acquisition would result in a substantial lessening of competition or tendency toward monopoly. The Board, of course, had no responsibility under the Sherman Act.

Mr. Solomon observed that the concentration in BancOhio subsidiaries of deposits in Columbus and in Franklin County had shown some slight decline in recent years.

Chairman Martin then called upon the members of the Board for their views, and Governor Robertson said he found this case difficult because he saw little advantage to the public arising out of the proposal. First National of Jackson was a good bank and, even though its present owners wished to sell, there was the possibility of sale of the bank to parties other than the holding company. However, looking at the proposal from the standpoint of whether it would diminish competition and create a monopolistic position, his view was that it would not. He found some merit in the position of the Department of Justice relating to precedent; but in view of BancOhio's history of not trying to expand on a wholesale basis, he would approve the application.

Governor Mitchell stated that in studying this application he found little weight on either side. He believed the effect on competition was highly conjectural, while there was also some doubt as to the claimed advantage of better services. BancOhio's record seemed to indicate that it was not predatory, and he could not assign a great deal of weight, for the purpose of this case, to BancOhio's dominance in Franklin

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County. Although he could not come to a very strong conclusion one way or the other, neither could he find any outstandingly hostile element, and therefore he would approve.

Governor Daane stated that, like Governor Robertson, he could not see that the public interest would be served in measurable degree; yet neither could he see a clear basis for denial.

Other members of the Board also having indicated that they would vote in favor of the proposal, the application of BancOhio Corporation was approved unanimously, with the understanding that an order and statement reflecting this decision would be drafted for the Board's consideration.

Member bank advertising (Item No. 1). There had been distributed a memorandum dated September 27, 1965, in which Governor Robertson proposed that the Board establish a program directed toward keeping informed as to false or misleading advertising by member banks. Specifically, he proposed that the Board request each Reserve Bank to designate an officer (preferably a lawyer) to review bank advertisements in major newspapers published in the Bank's district. If the officer considered that an advertisement was false or misleading, he should forward a copy, with the reasons for his opinion, to the Board's General Counsel. The staff would then bring the matter to the Board's attention with recommendations for action.

This program would not require the promulgation of a regulation or the issuance of a ruling. It would be designed to prevent member

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banks from violating a prohibition contained in Federal law, namely, the provision of the Federal Trade Commission Act that "Unfair methods of competition in commerce and unfair or deceptive acts or practices in commerce, are declared unlawful." Governor Robertson's memorandum cited a court decision, interpreting this provision, which held that "soliciting the purchase of goods by advertisement is a method of competition; if the advertisement contains false representations, it is an unfair method of competition." Although a bank could not lawfully solicit patronage by false or misleading advertising, the Federal Trade Commission was without power to require a bank to cease and desist therefrom because banks were specifically exempted from its jurisdiction. However, because both the language and the policy of the statute clearly were directed against all false and misleading advertising, it seemed to Governor Robertson that the Board should accept responsibility, to the extent of its abilities, to assure that banks acted in accordance with the law. There was attached to the memorandum a draft of letter to the Federal Reserve Banks reflecting Governor Robertson's proposal.

In discussing his memorandum Governor Robertson commented that the proposed program represented an attempt to do something that he felt all bank supervisors should have been doing for many years. Although there did not appear to have been too many situations that called for remedial attention, he saw a need to insure that false advertising did not become a part of the fabric of the banking industry. There had been

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instances where individual Reserve Banks had exercised persuasion against misleading advertising successfully; the proposed program would institute uniformity of practice within the System.

Mr. Hackley commented that while there was no question as to the desirability of the objective, he was somewhat concerned that in the proposed letter to the Reserve Banks the program would seem to be based almost entirely on a provision of the Federal Trade Commission Act, enacted over fifty years ago, under which no bank supervisory agency had ever taken action. It could be argued that banks perhaps had been exempted from the jurisdiction of the Federal Trade Commission because the activities of many banks fell under the supervision of other agencies, but he believed it would be preferable in any event to couch the letter to the Federal Reserve Banks more in terms of a supervisory matter. It was his view also that it would be preferable if the letter merely stated the problem and asked the Reserve Banks to keep informed and report any apparently misleading or false advertising to the Board.

In the ensuing discussion it was suggested that primary responsibility be placed upon the Reserve Banks to handle cases of false or misleading advertising. Governor Robertson indicated that he would not object. His purpose had been partly to promote uniformity of approach among the Reserve Banks, which could be accomplished by reports to the Board on any instances of apparently false or misleading advertising by member banks, including reports of action taken where State member banks were involved.

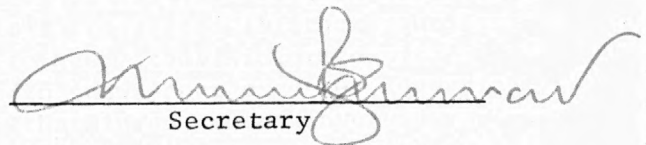
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There developed to be general agreement that it would be well to base the letter to the Reserve Banks upon the Board's concern from the supervisory standpoint rather than on the provisions of the Federal Trade Commission Act. In reply to a question in this regard, Mr. Hackley pointed out that it could be argued that false or misleading advertising by a member bank constituted an unsafe and unsound banking practice, one that could easily subject the bank to litigation. There was also general agreement with the suggested procedural approach that would assign primary responsibility to the Reserve Banks for handling instances of apparently false or misleading advertising.

At the conclusion of the discussion a letter to the Federal Reserve Banks in the form attached as Item No. 1 was approved unanimously.

The meeting then adjourned.


Secretary

Item No. 1
10/11/65

BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
WASHINGTON, D. C. 20551

S-1970

ADDRESS OFFICIAL CORRESPONDENCE
TO THE BOARD

October 13, 1965.



Dear Sir:

From time to time the Board of Governors receives inquiries and complaints regarding advertising by member banks.

Quite apart from any question of unfair trade practices, the Board feels that false or misleading advertising by member banks of the Federal Reserve System constitutes an unsafe and unsound banking practice that is a proper subject of concern to the Board and the Federal Reserve Banks from a bank supervisory standpoint.

It is assumed that the Reserve Banks have always been alert to any instances of false advertising by member banks. However, in order to assure uniform policies and procedures, it is requested (1) that your Bank take such measures as may be appropriate to keep itself informed with respect to any apparently false or misleading newspaper or other advertising by member banks in your District, (2) that in any cases involving a State member bank the matter be brought to the bank's attention with a request for prompt correction, and (3) that all such instances, as well as instances of apparently false or misleading advertising by national banks, be reported to the Board of Governors.

Very truly yours,

A large, flowing handwritten signature in cursive script, reading "Merritt Sherman".

Merritt Sherman,
Secretary.