MINUTES OF MEETING

of the

FEDERAL ADVISORY COUNCIL

November 19-21, 1933

MINUTES OF MEETING OF THE FEDERAL ADVISORY COUNCIL

November 19, 1933.

The fourth statutory meeting for 1933 of the Federal Advisory Council was convened in Room 836 of the Mayflower Hotel, Washington, D. C., on Sunday, November 19, 1933, at 10:30 A. M., the President, Mr. Smith, in the Chair.

Present:

Mr. Thomas M. Steele	District No. 1
Mr. Walter E. Frew	District No. 2
Mr. Howard A. Loeb	District No. 3
Mr. Howard Bruce	District No. 5
Mr. John K. Ottley	District No. 6
Mr. Melvin A. Traylor	District No. 7
Mr. Walter W. Smith	District No. 8
Mr. Theodore Wold	District No. 9
Mr. W. T. Kemper	District No. 10
Mr. Joseph H. Frost	District No. 11
Mr. Henry M. Robinson	District No. 12
Mr. Walter Lichtenstein	Secretary

Absent:

Mr. H. E. McEldowney	District No. 4

The Secretary informed the Council that he had received word that Mr. McEldowney was ill and therefore unable to be present.

The minutes of the meeting of September 17-19, copies of which had been previously sent to the members, were read and two corrections were noted. On page 8 it is stated that the Council voted to withdraw the recommendation reading as follows:

"Resolved, that the Council reaffirm its position of May 16, 1933, that there is no greater need today than that of the better cooperation between the various governmental agencies, particularly the Treasury Department, the Comptroller's Office, the Federal Reserve System, the Reconstruction Finance Corporation and the Federal Deposit Insurance Corporation. In conformity with that position the Council is of the opinion that public interest demands that all appraisals of the assets of banks for the purpose of membership in the Federal Deposit Corporation and in the Temporary Federal Insurance Fund be made upon a uniform basis and with the application of uniform tests, whether such banks be State or National, members or nonmembers; and the Council strongly urges upon the Federal Reserve Board and the Comptroller of the Currency that every effort be made to secure the adoption of like methods, including uniform regulations for determining asset values."

The recommendation in question was not withdrawn; the Council merely voted not to have it distributed.

On page 8, the fifth paragraph should read "The Governor of the Federal Reserve Board" instead of "The Governor of the Federal Reserve Bank."

Mr. Thomas M. Steele, a member of the Council and for many years a lawyer in active practice, presented a brief showing that the Federal Advisory Council has the right to give publicity to its proceedings if it so desires. This brief is attached to these minutes as a separate document.

It was unanimously voted to thank Mr. Steele for the excellent brief and for his willingness to undertake the great labor of preparing it.

It was unanimously voted to extend the thanks of the Council to Mr. Bruce for his kind invitation to members of the Council for dinner on Monday evening.

Mr. Frew introduced a recommendation covering the subject of inflation and monetary policy, but requested the Secretary to read an amended form of this recommendation. Mr. Frew thereupon moved that the recommendation be adopted and the motion was seconded by Mr. Frost. The recommendation in question in its amended form, as presented by the Secretary, reads as follows:

"One of the primary functions of the Federal Reserve System of which the Federal Advisory Council is an integral part is to regulate the currency of the country. The Council has specifically imposed upon it by the Federal Reserve Act the duty 'to call for information and to make recommendations in regard to . . . the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system.'

"The Council feels, therefore, that it would be remiss in fulfilling its obligations if it did not call attention to the serious implications involved in some of the present policies relating to the currency of the country.

"In addition, the members of the Council feel a sense of responsibility collectively towards the Federal Reserve Board and individually towards the districts and business communities which they represent, which impels them to make the following formal statements:

"AS TO MONETARY POLICY,

"1. The Federal Advisory Council views with serious apprehension the announced intention to raise the price level by the process of depreciating the currency:

"First, because it believes that a permanently higher price level can only be attained if accompanied by higher national income, and that, in an economy based on private enterprise, this can only be brought about by increased volume of business done at a reasonable profit.

"Second, because it is convinced that the depreciation of the currency will not adjust the troublesome existing discrepancies in the price level, and will on the other hand injure the agricultural producers, whom it is supposed to help, at the same time and in the same way that it will injure every man and woman in the country except the speculator.

"Third, because it is convinced that, so long as there is uncertainty in regard to the future value of the monetary unit, there can be no increased volume of business, and hence no higher price level accompanied by higher national income.

"Fourth, that this uncertainty does and has tended to depress the market price of Government securities, which in turn will affect adversely the banking structure and the entire securities market and thus stand in the way of recovery.

"FURTHERMORE,

"2. The Federal Advisory Council views with serious apprehension the methods by which it is proposed to carry out the purpose. Given the existing elements of the human equation and the political influences to which a democratic form of government will always be subjected, the Federal Advisory Council records its opinion that there can be no such thing as 'A dollar of constant purchasing and debt-paying power.' The Council further records its opinion that experimentation with academic and untried currency schemes, such as the automatic commodity dollar, or the so-called 'managed dollar,' will destroy confidence and prevent recovery; that no national currency scheme can prove satisfactory if it is not adopted by a majority of other important nations, that such international action is extremely improbable with regard to anything other than a gold standard; and that, therefore, no time should be lost in seeking to re-establish a gold standard. The Council feels that such a gold standard might well contain certain improvements and safe-guards, along the lines of the exploratory work done by the Gold Committee of the London Monetary and Economic Conference.

"FURTHERMORE,

"The re-establishment of confidence in the dollar will undoubtedly be conducive to an increased volume of business and production, which in turn will yield higher national income and a higher price level, provided that business is left free from excessive interference and regulation.

"NEVERTHELESS, A SOUND MONETARY POLICY CAN BE UNDERMINED AND RENDERED VOID BY A FISCAL POLICY WHICH LEADS TO THE IMPAIRMENT OF GOVERNMENT CREDIT,

"THEREFORE,

"The Federal Advisory Council makes record of its opinion:

"First, that the rapidly mounting total of the national debt is causing an increasing apprehension in regard to the soundness of the national credit.

"Second, that if a definite limit is not set for the total government debt, new issues of government bonds will become unmarketable, thus forcing a resort to excessive short-term borrowing, and eventually a resort to paper money.

"Third, that there is no such thing as a 'controlled' paper money inflation. History is full of the examples of governments which sought a way out of their difficulties by resort to the printing press, and history shows the inevitable consequences of such action,—the impoverishment of an entire people, except a few speculators, the ruin of national credit, and the destruction of national morality. The Federal Advisory Council condemns the mere thought of paper money inflation in this country as utterly senseless, utterly immoral, and utterly un-American."

A long discussion took place in reference to the recommendation and many amendments and changes were suggested.

Mr. Robinson left the meeting at one o'clock, while the other members of the Council lunched together and resumed the meeting after lunch.

In reference to the questions presented by the Governor of the Federal Reserve Board at the last meeting of the Council, the following reply was agreed upon:

"On September 18, 1933, the Governor of the Federal Reserve Board presented a list of questions to be considered by the Federal Advisory Council. The Council presents the following answers:

"1. *Federal Reserve:*

"(a) Open Market Operations. In view of the fact that the policy has presumably been changed since the last meeting of the Council, the Council before being able to reply to the inquiry desires to know what the present policy of the Open Market Committee is.

"(b) Loans to Individuals, Partnerships and Corporations. The Council regards the present provision as meeting the situation. If an applicant can not obtain accommodation at a regular bank, or because banking facilities in his district are lacking, it is very well that there should be some such provision as the present one.

"2. *Reconstruction Finance Corporation.* The Council believes that under present circumstances such loans *properly safeguarded* may be useful.

"3. *Commercial Banks.*

"Restricted credits, due to

"(a) Condition of capital market (See recommendation of Council presented at last meeting.)

"(b) Uncertainty about Federal Insurance Deposit Corporation. It seems to the Council that the Federal Insurance Deposit Corporation adds one more uncertainty to others, which at times causes loaning officers in banks to hesitate, especially in such banks as have not been examined and where possibly fear exists as to the results of such examination.

"(c) Monetary Situation. Reference is made to the recommendation made at this meeting by the Council, which covers the situation.

"4. *Inflation.* This topic is also covered by the recommendation made at this meeting by the Council.

"5. *Federal Insurance Deposit Corporation.* The Council expressed its opinion about the Federal Insurance Deposit Corporation in its recommendation of May 16, 1933.

"6 and 7. *Keeping Open Open Banks. Closed Banks.* The Council approves the policy of keeping open open banks, and as quickly as possible liquidating closed banks.

"8. *What will promote healthful and cooperative action on part of banks?* The Council should like to be informed when and under what circumstances banks have refused to cooperate."

The meeting adjourned at 5:30 P. M.

WALTER LICHTENSTEIN,

Secretary.

MINUTES OF MEETING OF THE FEDERAL ADVISORY COUNCIL

November 20, 1933.

At 10:15 A.M. the Federal Advisory Council reconvened in Room 836 of the Mayflower Hotel, Washington, D. C., the President, Mr. Smith, in the Chair.

Present: Mr. W. W. Smith, President; Mr. M. A. Traylor, Vice-President; Messrs. T. M. Steele, W. E. Frew, H. A. Loeb, Howard Bruce, J. K. Ottley, Theodore Wold, W. T. Kemper, J. H. Frost, H. M. Robinson, and Walter Lichtenstein, Secretary.

The discussion of the recommendation presented by Mr. Frew was continued.

Mr. Traylor presented his substitute recommendation, which is attached to these minutes as a recommendation to the Federal Reserve Board.

Dr. Goldenweiser appeared before the Council at 11:45 A.M. and presented an interesting discussion of the present business and monetary situation.

The Council entertained members of the Federal Reserve Board and the Acting Secretary of the Treasury at luncheon from one o'clock until two-thirty o'clock.

It was voted to appoint Messrs. Steele, Loeb, and Wold, together with the President and the Secretary of the Council ex officio, as a committee to attempt to harmonize conflicting opinions.

Mr. Jesse Jones appeared before the Council from 3:15 P.M. to 4:40 P.M. to discuss with the members of the Council the problem of the preferred stock to be issued by banks.

At 4:40 P.M. Messrs. Robinson and Bruce left the meeting.

It was voted that the replies to be made to the Federal Reserve Board in answer to the questions submitted be not given to member banks and not released for publication.

It was unanimously voted that the statement covering inflation and monetary policy, which is attached hereto and made part of these minutes, represents the views of the Council.

It was thereupon moved by Mr. Frew and seconded by Mr. Frost that the Council send to the member banks this statement, which is attached hereto and made part of these minutes.

A formal roll call was taken, the following voting aye: Messrs. Steele, Frew, Loeb, Smith, Wold, and Frost. The following voted no: Messrs. Ottley, Traylor, and Kemper. The motion was therefore carried by a vote of six to three.

It was unanimously voted to present the statement, drafted by Mr. Traylor, to which reference is made above and which is attached hereto and made a part of these minutes, as a regular recommendation to the Federal Reserve Board.

The meeting adjourned at 5:00 P.M.

WALTER LICHTENSTEIN,

Secretary.

MINUTES OF MEETING OF THE FEDERAL ADVISORY COUNCIL

November 21, 1933.

At 10:15 A. M. the Federal Advisory Council reconvened in the Federal Reserve Board Room, Treasury Building, Washington, D. C.

Present: Mr. W. W. Smith, President; Mr. M. A. Traylor, Vice-President; Messrs. T. M. Steele, W. E. Frew, H. A. Loeb, Howard Bruce, Theodore Wold, W. T. Kemper, J. H. Frost, H. M. Robinson, and Walter Lichtenstein, Secretary.

The Secretary presented the final forms of (1) the recommendation to be made to the Federal Reserve Board on inflation and monetary policy; (2) the replies to be made to the Federal Reserve Board in answer to the questions presented at the meeting of the Council on September 18, 1933, and (3) the statement on inflation and monetary policy, of which one copy is to be sent to each member bank of the System.

The meeting adjourned at 10:30 A. M.

WALTER LICHTENSTEIN,

Secretary.

MINUTES OF JOINT CONFERENCE OF THE FEDERAL ADVISORY COUNCIL AND THE FEDERAL RESERVE BOARD

November 21, 1933.

At 10:35 A. M. a joint conference of the Federal Advisory Council and the Federal Reserve Board was held in the Federal Reserve Board Room, Treasury Building, Washington, D. C.

Present: Members of the Federal Reserve Board:

Governor Eugene R. Black; Messrs. C. S. Hamlin, A. C. Miller, G. R. James, and M. S. Szymczak; also Messrs. H. Warner Martin, Assistant to the Governor; Walter Wyatt, General Counsel of the Federal Reserve Board; Chester Morrill, Secretary of the Board; L. P. Bethea, Assistant Secretary of the Board; S. R. Carpenter, Assistant Secretary of the Board; E. A. Goldenweiser, Director, Division of Research and Statistics, Federal Reserve Board; E. L. Smead, Chief of Division of Bank Operations, and Leo H. Paulger, Chief of Division of Examinations, Federal Reserve Board.

Present: Members of the Federal Advisory Council:

Mr. Walter W. Smith, President; Mr. M. A. Traylor, Vice-President; Messrs. T. M. Steele, W. E. Frew, H. A. Loeb, Howard Bruce, J. K. Ottley, Theodore Wold, W. T. Kemper, J. H. Frost, H. M. Robinson, and Walter Lichtenstein, Secretary.

The Secretary of the Council read the answers to the questions presented by the Governor of the Federal Reserve Board on September 18, 1933, as follows:

"1. *Federal Reserve:*

"(a) Open Market Operations. In view of the fact that the policy has presumably been changed since the last meeting of the Council, the Council before being able to reply to the inquiry desires to know what the present policy of the Open Market Committee is.

"(b) Loans to Individuals, Partnerships and Corporations. The Council regards the present provision as meeting the situation. If an applicant cannot obtain accommodation at a regular bank, or because such banking facilities in his district are lacking, it is very well that there should be some provision as the present one.

"2. *Reconstruction Finance Corporation.* The Council believes that under present circumstances such loans *properly safeguarded* may be useful.

"3. *Commercial Banks.*

"Restricted credits, due to

"(a) Condition of capital market (see recommendation of Council presented at last meeting).

"(b) Uncertainty about Federal Insurance Deposit Corporation. It seems to the Council that the Federal Insurance Deposit Corporation adds one more uncertainty to others, which at times causes loaning officers in banks to hesitate, expecially in such banks as have not been examined and where possibly fear exists as to the results of such examination.

"(c) Monetary situation. See answer under '4.'

"4. *Inflation.*

"In view of this request the Federal Advisory Council offers the following observations:

"The Council sympathizes with the fundamental purposes of the Administration in its expressed determination to bring about an increase in employment, to increase purchasing power, to raise price levels, and generally to return our citizenship to a condition of economic and social well-being consistent with the great wealth and resources of the country; it feels, however, that the attainment of these ends is certain to be seriously retarded by the widespread and increasing concern for the value and stability of the Nation's currency. Without an enduring faith in the steady purchasing power of the dollar, the laborer is without security of his hire, capital is exposed to loss, and the entire economic structure is undermined by doubt and fear.

"The Council, therefore, believes that an early return to a gold standard basis for our currency is of the greatest importance and an imperative necessity to the success of the Administration's Recovery Program.

"It strongly urges the Federal Reserve Board to exert its utmost influence to bring about early stabilization of the currency, together with a commitment for the reasonable and definite limitation of the Federal debt, to the end that confidence in the dollar may be restored, that flight of American capital be halted, that decline in the price of Government securities be arrested, and the welfare of all our people preserved.

"5. *Federal Insurance Deposit Corporation.* The Council expressed its opinion about the Federal Insurance Deposit Corporation in its recommendation of May 16, 1933.

"6 and 7. *Keeping Open Open Banks. Closed Banks.* The Council approves the policy of keeping open open banks, and as quickly as possible liquidating closed banks.

"8. *What will promote healthful and cooperative action on part of banks?* The Council should like to be informed when and under what circumstances banks have refused to cooperate."

The Secretary of the Council read the resolution adopted on November 20. (See page 5.) The President of the Council stated that the Council intended to send to member banks a statement covering the subject of monetary policy and inflation and that it was the intention of the Council to see to the distribution of this document itself to which the Governor of the Federal Reserve Board replied "all right."

In answer to a question raised by Dr. Miller, the President of the Council stated that it was not the intention of the Council to give this statement out to the press.

Dr. Miller and Mr. James criticized the statement of the Council, claiming that it would not be of any assistance to the Administration in solving its problems, and that it might even do harm.

The meeting adjourned at 12:30 P. M.

WALTER LICHTENSTEIN,

Secretary.

MINUTES OF MEETING OF THE FEDERAL ADVISORY COUNCIL

November 21, 1933.

At 12:30 P. M. the Federal Advisory Council reconvened in the Federal Reserve Board Room, Treasury Building, Washington, D. C., the President, Mr. Smith, in the Chair.

Present: Mr. Walter W. Smith, President; Mr. M. A. Traylor, Vice President; Messrs. T. M. Steele, W. E. Frew, H. A. Loeb, Howard Bruce, J. K. Ottley, Theodore Wold, W. T. Kemper, J. H. Frost, H. M. Robinson, and Walter Lichtenstein, Secretary.

Mr. Frew repeated his motion of November 20 that a statement (attached hereto and forming a part of these minutes) covering monetary policy and inflation be sent to the member banks of the Federal Reserve System. Mr. Steele seconded the motion. A vote was taken, the following members of the Council voting aye: Messrs. Steele, Frew, Loeb, Bruce, Wold, and Frost. The following members of the Council voted no: Messrs. Ottley, Traylor, and Kemper. Messrs. Smith and Robinson did not vote. The motion was therefore carried by a vote of six to three.

The meeting adjourned at one o'clock.

WALTER LICHTENSTEIN,

Secretary.

FEDERAL ADVISORY COUNCIL

TO THE MEMBER BANK ADDRESSED:

The Federal Advisory Council at a meeting held in Washington, D. C. on November 21, 1933, agreed unanimously on a statement in reference to current monetary policy. Futhermore, by a majority vote, the following resolution was adopted:

"The Secretary is hereby instructed to send to each member bank a copy of the following statement in reference to current monetary policy."

(Signed) WALTER LICHTENSTEIN,
Secretary.

STATEMENT

One of the functions of the Federal Reserve System, of which the Federal Advisory Council is an integral part, is to furnish an elastic currency to the country. The Council has specifically imposed upon it by the Federal Reserve Act the duty: "(1) to confer directly with the Federal Reserve Board on general business conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said Board; (3) to call for information and to make recommendations in regard to discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system."

The members of the Council have a sense of responsibility collectively as regards the Federal Reserve System and individually as regards the districts and business communities which they represent and for these reasons make the following statement:

While the Council is in sympathy with the general purposes of the Administration, it believes these are not to be accomplished by a currency of fluctuating value.

The members of the Federal Advisory Council believe:

1. That a higher price-level is beneficial only if accompanied by higher national income, and that this can only be brought about by increased volume of business and increased employment.
2. That a depreciating and fluctuating currency value will not adjust existing discrepancies in the price-level.
3. That as long as there is uncertainty in regard to the future value of the monetary unit, there can be no lasting or fundamental improvement in business.
4. That this uncertainty tends and has tended to depress the market price of Government securities and corporate and municipal bonds, which in turn has affected and will continue to affect adversely the entire economic structure, and thus stand in the way of recovery.
5. That unless there is monetary stabilization it will become increasingly difficult for the Government to finance its large commitments for reconstruction purposes and to refinance its maturing obligations. The resulting uncertainty will especially affect and cause great uneasiness among the millions of wage earners, savings depositors and holders of insurance policies. It will further diminish the flow of capital into the investment field and it is this money which is used largely for the purpose of financing the production of capital and durable goods. It is in these fields that unemployment has been most difficult to overcome. The existing uncertainty has already caused capital funds to leave the country to be invested in foreign securities and deposited in foreign banks.
6. That no monetary standard can be finally and permanently satisfactory until other important nations have taken similar action and that such international action is extremely improbable on any other than a gold basis.
7. That history shows that the further currency inflation goes, the more difficult it becomes to control and that it inevitably results in untold losses to great masses of the people and the ruin of national credit.

In view of the opinions above recorded, the Federal Advisory Council believes in the reestablishment of our currency based on gold which may well be coupled with safeguards to be agreed upon by international action.

RECOMMENDATION OF THE FEDERAL ADVISORY COUNCIL TO THE FEDERAL RESERVE BOARD

November 20, 1933.

TOPIC No. 1. Monetary Situation.

RECOMMENDATION: On September 18, 1933, the Governor of the Federal Reserve Board requested the opinion of the Federal Advisory Council with respect to certain features of the monetary situation having specific reference to inflation.

In view of this request the Federal Advisory Council offers the following observations:

The Council sympathizes with the fundamental purposes of the Administration in its expressed determination to bring about an increase in employment, to increase purchasing power, to raise price levels, and generally to return our citizenship to a condition of economic and social well-being consistent with the great wealth and resources of the country; it feels, however, that the attainment of these ends is certain to be seriously retarded by the widespread and increasing concern for the value and stability of the Nation's currency. Without an enduring faith in the steady purchasing power of the dollar, the laborer is without security of his hire, capital is exposed to loss, and the entire economic structure is undermined by doubt and fear.

The Council, therefore, believes that an early return to a gold standard basis for our currency is of the greatest importance and an imperative necessity to the success of the Administration's Recovery Program.

It strongly urges the Federal Reserve Board to exert its utmost influence to bring about early stabilization of the currency, together with a commitment for the reasonable and definite limitation of the Federal debt, to the end that confidence in the dollar may be restored, that flight of American capital be halted, that decline in the price of Government securities be arrested, and the welfare of all our people preserved.

THE FEDERAL ADVISORY COUNCIL

Its status as an independent body

This memorandum is concerned with the right of the Federal Advisory Council to give publicity to its proceedings. It has nothing to do with the question of expediency. The conclusion reached is that the Council has the same right to give publicity to its proceedings as has any independent body created by law, such as the Federal Reserve Board or the Federal Deposit Insurance Corporation, created by the Federal Reserve Act, and the Reconstruction Finance Corporation, the Federal Trade Commission or the Interstate Commerce Commission, created by separate Acts. Whether or not it should do so in any given case depends upon considerations of policy, determinable by the Council itself. These conclusions follow from a consideration of three sources of interpretation.

(1) The language of the Federal Reserve Act

(2) The history in Congress of Section 12 which creates the Council

(3) The events leading up to the adoption of Section 12 and the interpretation which has been put upon it by those who were in the best position to know how it came about and what it sought to accomplish.

These points will be taken up in order.

(1) The Council is an independent body created by law and free from the control of any other body.

The Federal Reserve Act, approved December 23, 1913, creates a Federal Reserve System made up of three parts: (a) The Federal Reserve Banks, (b) The Federal Reserve Board, and (c)

The Federal Advisory Council. This division of the component parts of the System is clear from the wording of the Act, and the precise degree of control which each of these bodies may exercise over the other is definite and specific.

The first nine sections of the Act are devoted to the organization and the functions of the Federal Reserve Banks. It is then provided in Section 10 that "a Federal Reserve Board is hereby created" to which certain very broad powers are given in Section 11. In Section 12 it is provided that "there is hereby created a Federal Advisory Council" upon which certain powers are conferred.

Note: When Congress, in 1933, amended the Act it created two new bodies by similarly providing in Section 12A that "there is hereby created a Federal Open Market Committee" and in Section 12B "there is hereby created a Federal Deposit Insurance Corporation"; the Federal Reserve Board being given a large measure of control over the former but no control whatever over the latter.

That the System, as devised, consisted of these three component parts is recognized by an authoritative source, namely, the Federal Reserve Bank of Atlanta, in a book entitled "Questions and Answers on the Federal Reserve System", issued in October 1926 by that bank.

"7. Of what elements does the Federal Reserve System consist?

"The Federal Reserve System consists of

"1. The Federal Reserve Board

"2. " " Advisory Council

"3. " " Reserve Banks."

Dr. H. Parker Willis, who has always been given a considerable share of credit for the enactment of the law, who was certainly in close touch with it and had a large part in preparing the House Committee's report, says on Page 716 of his book "The Federal Reserve System" that the Federal Reserve Board, as a matter of courtesy, sent an invitation to the Council to hold its first meeting on December 15th, 1914 although "recognizing that the Federal Advisory Council is a separate and independent body". At the time of which he speaks Dr. Willis was Secretary of the Federal Reserve Board and certainly was in a position to speak with authority.

The Council is created by Section 12 which is quoted below. Certain words are here underscored for convenience in reference at a later stage in this memorandum.

> "Sec. 12. There is hereby created a Federal Advisory Council, which shall consist of as many members as there are Federal reserve districts. Each Federal reserve bank by its board of directors shall annually select from its own Federal reserve district one member of said council, who shall receive such compensation and allowances as may be fixed by his board of directors subject to the approval of the Federal Reserve Board. The meetings of said advisory council shall be held at Washington District of Columbia, at least four times each year, and oftener if called by the Federal Reserve Board. The council <u>may in addition to the meetings above provided for hold such other meetings in Washington, District of Columbia, or elsewhere, as it may deem necessary</u>, may select its own officers and adopt its own methods of procedure, and a majority of its members shall constitute a quorum for the transaction of business. Vacancies in the council shall be filled by the respective reserve banks, and members selected to fill vacancies shall serve for the unexpired term.
>
> "The Federal Advisory Council shall have power, by itself or through its officers, (1) to confer directly with the Federal Reserve Board on general business conditions; (2) to make oral or written representations concerning matters within the jurisdiction of said board; (3) to call for information and to make recommendations in regard to discount rates, rediscount business, note issues, reserve conditions in the various districts, the purchase and sale of gold or securities by reserve banks, open-market operations by said banks, and the general affairs of the reserve banking system."

It will be seen from the language of Section 12 that although the several Federal Reserve Banks elect the members of the Council and fix their compensation, they have no other control. The compensation so fixed is subject to approval by the Federal Reserve Board and the Board may, if it chooses, summon the Council to special meetings but is given no other power over the Council whatever.

> Note: The Board might, for example, have been given power to remove members of the Council, as it may remove any officer or director of the Federal Reserve Banks under Section 11 (f). The Board might have been given power to supervise proceedings, as it is given power "to exercise general supervision over the Federal Reserve Banks" by Section 11 (j). It might have been given power to control all actions of the Council, as it can now control all open market operations under Section 12A inserted as an amendment in 1933. Or it might have been given power to attend all meetings of the Council, as it is empowered to attend all meetings of the Open Market Committee by the same section.
>
> The fact is that Congress has manifested no lack of ability to make clear to what extent any of the bodies created by the Act is under the control of any of the others, either in the original law or in the amendments. The conclusion is clear that Congress meant the Council to be free.

Not only is the Council entirely free from any control by any other body but it is expressly empowered to meet when, where and as often as it is deemed necessary and to adopt its own methods of procedure. There is no reason apparent anywhere in the Act why it may not give such publicity to its proceedings as it pleases in such manner as it pleases although it is natural to suppose that it will always exercise such right in due deference to the opinions and advice of any other agencies of the System and with careful consideration of the effect of such publicity. In this connection it is pertinent to observe that the Federal Deposit Insurance Corporation, created by Section 12B of the Act, has, from its inception, given widespread publicity to its desires, its plans and its purposes. It may also be observed that while the Federal Reserve Act itself merely calls for an annual report of its operations by the Federal Reserve Board to be made to the Speaker of the House of Representatives (Section 10), the Board has never hesitated to give such publicity to its proceedings as it has thought proper. In May 1915, for example, the Board began the publication of its monthly Federal Reserve Bulletin, making public all such information as it thought appropriate, even though it may occasionally, as in the Bulletin for October 1933, cause considerable annoyance to another governmental agency.

Note: The reference, of course, is to the statement in the October bulletin that the decline in industrial activity during the two months preceding had "been marked in industries in which processing taxes or codes have become effective recently." This statement stirred up considerable resentment in the N.R.A and elsewhere but no one has questioned the <u>right</u> of the Board to give out the information.

So far, then, as can be determined from the provisions of the Federal Reserve Act, the Advisory Council in its procedure and in its policies as to publicity is independent of any other body whatsoever. The fact that it is given certain definite duties to perform and that these are advisory in their nature no more limits the Council in its right as an independent body to inform the public and the banks as to what it does and thinks than any other independent body is limited by the mere fact that definite functions are given it.

(2) <u>The history of Section 12 in the passage of the bill through Congress indicates the intention that the Council shall be independent.</u>

The bill was introduced on June 27th, 1913 and, as introduced, it contained no reference to the Federal Advisory Council. It was accompanied in the Senate by a full report in the form of a statement by Hon. Robert L. Owen, Chairman of the Committee on Banking and Currency of the Senate which was printed as Senate Document No. 117 (Senate Documents, Vol. 21, 63rd Congress, 1st session 1913). This report of Senator Owen said nothing about an Advisory Council but it did devote considerable space to a history of the opposition to the bill from prominent bankers throughout the country based on the feeling that they were not given proper representation. The provision for an Advisory Council had, however, been suggested a few days previously by President Wilson, who requested the House Chairman, Mr. Glass, to set up a Federal Advisory Council, composed exclusively of bankers, as compensation to the bankers for denial of representation on the Federal Reserve Board. Mr. Glass did this and Section 12 was inserted in Committee as an amendment. (See Carter Glass "An Adventure in Constructive Finance", Pages 112 - 116, published in 1927).

After the bill had been passed by the House, which accepted Section 12 as Mr. Glass had presented it, and while it was under debate in the Senate, it was amended by the Senate by the insertion of the following words which are the words underscored in the copy of Section 12 appearing on Page 3 of this memorandum.

> (The Council) "may, in addition to the meetings above provided for, hold such other meetings in Washington, District of Columbia, or elsewhere as it may deem necessary".

Prior to the insertion of these words the Section had provided only for four regular meetings and for such other meetings as the Federal Reserve Board might ask for. There was no provision for independent action by the Council. The amendment secured the right of such independent action.

The draft of Section 12 as it first passed both Houses was practically the same except that the Senate had inserted the words above quoted. The House declined to accept the various Senate amendments and the bill was sent to conference. In conference the Senate amendment was agreed to as were numerous other changes which had been proposed by the Senate and the bill was then passed by both Houses and signed by the President. (See Congressional Record for December 1913, Pages 1144, 1300, 1307, 1308, 1310, 1316, 1352, 1356, 1430, 1464, 1468 and 1488.) Surely it cannot be without significance that the only change of importance in Section 12 made by either House after its original introduction was designed to free the Council from Reserve Board control.

Note: Simply for the sake of the record it should perhaps be said that the other changes in this Section, four in number, were unimportant for present purposes. The first was to strike out the provision that the Council members should receive no compensation for their services but might be reimbursed for actual necessary expenses and to substitute the present provision for compensation; the second was to insert the words "by itself or through its officers" in the first and second lines of the second paragraph of Section 12; the third was to strike out the words "meet and" just preceding the word "confer" in the second line of the second paragraph; and the fourth was to strike out the word "complete" before the word "information" in the sixth line of the second paragraph. (See Vol. 4, House Reports, 63rd Congress, 2nd Session 1913-14.) (References are to lines as printed on Page 36 of the copy of The Federal Reserve Act as Amended to July 1, 1933, recently compiled under direction of the Federal Reserve Board)

(3) Those most closely in touch with the Federal Reserve Act at the time of its adoption seem clearly to have understood the fact that the Council was an independent body with implied powers of its own as to publicity and as to contact with the member banks.

When the bill was first introduced, it met with very strong opposition from the bankers of the country, especially Mr. Forgan, Mr. Wade, Mr. Wexler, Mr. Perrin, Mr. Howe and other members of the Currency Commission of the American Bankers Association. They insisted upon banker representation on the Federal Reserve Board. Senator Glass supported their views. Mr. Bryan was emphatically opposed to them. Senator Owen was opposed to them. Secretary McAdoo was mildly sympathetic. President Wilson was emphatically opposed. Senator Glass headed a delegation to the White House to convince the President that he was wrong but was converted by President Wilson during the resulting negotiations and from that time on supported the President's point of view. It was at this conference that the President requested Mr. Glass to set up the provision for the Federal Advisory Council. (See Carter Glass "An Adventure in Constructive Finance" above referred to). (See also "The Federal Reserve System" by H. Parker Willis, 1923, Pages 392 - 396.)

Senator Owen who had the bill in charge in the Senate and who had the entire confidence of President Wilson throughout the proceedings also indicates clearly his understanding. The Senate Committee on Banking and Currency, to which the measure had been referred, reported it back to the Senate on November 22, 1913, "without recommendation". Senator Owen, however, for himself and for Senators O'Gorman, Reed, Pomerene, Shafroth and Hollis submitted a separate report (Vol. 1, Senate Reports, 63rd Congress, 1st session 1913, Report 133, Part 1 and Part 2). In that report the following reference was made to the Federal Advisory Council and attention is particularly called to the parts which are underscored:

> "The Federal reserve board is given very broad powers of supervision and is assisted by a Federal advisory council consisting of one representative from each of the Federal reserve banks. * * * * In order to keep the Federal reserve board in intimate touch with the banking business of the country, the Federal advisory council is established consisting of one representative from each Federal reserve bank with power to confer directly with the Federal reserve board, make proper representations and recommendations, call for information, etc. Many of the big banks quite urgently insisted that the bankers should have representation upon the Federal reserve board. This was denied for the obvious reason that the function of the Federal reserve board in supervising the banking system is a governmental function

in which private persons or private interests have no right to representation except through the government itself. The precedent of all civilized government is against such a contention. It is believed that the Federal reserve board itself, consisting entirely of officers of the government, might be made more efficient if it had the advice freely available of the Federal advisory council. Moreover, <u>the operations of the Federal reserve board would in this way be subject to greater publicity and enable the banks of the country to have a greater manner of confidence in all the operations of the Federal reserve board.</u> It was further believed that the banks of the country which are invited or required to contribute a very large sum of the Federal reserve banks, would be more content by having an easy and convenient means provided by law of frequent conferences with the Federal reserve board and the opportunity to advise the board with reference to the financial, commercial and industrial needs of the country."

Note: Senator Owen certainly knew what the Advisory Council was for if anyone did. He was present when it was suggested by President Wilson. He had the bill in charge in the Senate. The President "stood steadily behind Owen", and after the bill was passed and signed President Wilson showed him his appreciation by presenting him with one of the three gold pens used in making his signature, the other two going to Glass and McAdoo. (See Glass "An Adventure in Constructive Finance", Pages 112 - 116. Also "Woodrow Wilson, Life and Letters" by Ray Stannard Baker, Vol. IV, Pages 164, 165, 187, 198.)

It seems plain that Senator Owen had it in mind that "the operations of the Federal Reserve Board" would themselves receive a degree of publicity through the Advisory Council and that the Advisory Council should serve as a medium of publicity between the Federal Reserve Board and the bankers. The Advisory Council, in other words, was not to be a one-way track. In no other way can the language of Senator Owen which is underscored above be given any meaning. The Advisory Council was designed in order to give the banks of the country an effective voice. The representation of the banks through the Council loses most of its force if the banks do not know what their representatives are doing. Publicity may therefore not only be a convenient means of informing the banks of the country what the Council is doing but it may also, at times, be necessary to make the voice of the banks effective.

Although in the nature of things the subject under discussion is unlikely to come before the courts for decision, there has been one case in a court of highest repute in which the lenguage used in the opinion is of great significance. The case was that of Raichle vs. Federal Reserve Bank of New York, decided by the Circuit Court of Appeals for the Second Circuit on July 15th, 1929 and reported in Vol. 34, Federal Reporter, 2nd Series, Page 910.

The plaintiff in that case had brought suit for an injunction against the Federal Reserve Bank of New York seeking to restrain that Bank from doing various acts which he claimed were detrimental to his property rights. To summarize briefly, the plaintiff alleged that he owned various securities and had borrowed moneyfor the purpose of buying other securities and alleged that his interests were prejudiced because the Federal Reserve Bank had reported publicly that brokers' loans had increased in volume while commercial loans had decreased; that the Bank was endeavoring to effect an arbitrary reduction of brokers' loans and a general reduction of security prices; that the Bank and the Reserve System generally had spread propaganda concerning an alleged money shortage and had expressed alarm over the increasing volume of collateral loans; that the Bank had arbitrarily and unreasonably raised the re-discount rate for the purpose and with the effect of raising interest rates generally;

that it had sought to control action of member banks by coercing them to call collateral loans to customers and that through this course of action the plaintiff had suffered damage.

The action was brought in the District Court for the Southern District of New York and dismissed by that Court. An appeal was taken to the Circuit Court of Appeals where it was heard by Circuit Judges Learned Hand, Thomas W. Swan and Augustus N. Hand. The Circuit Court of Appeals affirmed the decision of the Court below upon several grounds, holding, among other things, that the Federal Reserve Bank, subject to the Federal Reserve Board, was authorized to determine reasonable re-discount rates, was authorized to make public statements of condition, that it might fix rates unreasonably high or refuse to discount eligible paper even though its policy might be mistaken and its judgment bad, especially in the absence of any showing that the Bank had acted in bad faith or had aimed to injure the plaintiff; and, lastly, that in any event the Federal Reserve Board ought to have been made a party to the proceedings.

Portions of the language of the opinion by Judge Augustus N. Hand, are significant. After reciting the general powers of the Board and of the Advisory Council as set forth in the Federal Reserve Act, Judge Hand says:

> "In view of such provisions for detailed reports on the condition of the banks and for intercommunication between the board and the council regarding the general affairs of the Reserve Banking System, we think it most unlikely that statements as to the condition of affairs cannot be made public by the board, the council, and the banks. The provisions for reports, representations, and recommendations seem to imply *public information* and, when the situation warrants it, public warning. What particular conditions may warrant is necessarily left to those clothed with responsibility for acting." (Italics are by the Court).

It appears from a number of the early Federal Reserve Bulletins that it was customary at the close of the meetings of the Council to issue statements to the press reporting rather fully on what had taken place. One of these statements to the press, issued on November 17, 1915 seems to offer some internal evidence that the Council felt free to give publicity to its own acts without reference to what might have been done by the Board. For example, on the morning of November 17, 1915 a rather elaborate statement of the proceedings of the Council on the previous day was given to the press preceded by the following paragraph:

> "The Advisory Council at its meeting held in Washington November 16th suggested several amendments to the Federal Reserve Act, the chief among which are given below. These amendments have not received consideration or action of any kind by the Federal Reserve Board."

It is, of course, quite possible that the statement above referred to was seen and approved of by the Board prior to publication but if so, it would appear somewhat unusual that the Board did not clarify the somewhat ambiguous language of the second sentence.

On the whole, it seems reasonable to conclude that the Council has proved somewhat less effective than it was thought at the outset that it would be. It may be true, as Professor Kemmerer of Princeton, says "that Congress and the President threw a sop to the opposition by inserting into the law a provision for a 'federal advisory council' of bankers."

It may be true, as he says, that

"members of the federal reserve board, who were to be 'on the job' three hundred days in the year, it was generally thought, would not be likely to be greatly influenced as to their own job by a group of advisors coming from widely separated parts of the country who would meet infrequently."

It would seem to be largely within the power of the Council itself whether or not it will justify the hope of Professor Kemmerer, implied in his next sentence, that "happily, during the last year or so, the advisory council has belied this expectation." (See Volume XCIX of the Annals of the Academy of Political and Social Science, January 1922).

In closing, it should again be mentioned that this memorandum has nothing to do with questions of expediency, each of which must be decided upon its own merits at the time that the questions arise. It is concerned solely with the <u>powers</u> of the Council.

Nov. 10, 1933