

Washington, D. C.

December 19, 1914.

Secretary McAdoo today made public the following opinion
from the Attorney General:

OFFICE OF THE ATTORNEY GENERAL

Washington, D. C.

The Honorable

The Secretary of the Treasury,

Washington, D. C.

Sir:

I have the honor to acknowledge your letter of October 29th, 1914, wherein you request my opinion (a) whether accounts of moneys derived from the semi-annual assessment to be levied on Federal Reserve Banks by the Federal Reserve Board, are subject to audit by one of the auditors of the Treasury Department, and (b) as to the status of the Federal Reserve Board, particularly with reference to the Treasury Department.

Section 10 of the "Federal Reserve Act" of December 23, 1913 (the act authorizing the assessment), provides:

"The Federal Reserve Board shall have power to levy semi-annually, upon the Federal Reserve Banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated expenses and the salaries of its members and employees for the half year succeeding the levy of such assessment, together with any deficit carried forward from the preceding half year."

The answer to your first question depends on whether the moneys so levied by the Federal Reserve Board are, when received, "public moneys." If so, they are clearly to be audited under Sections 7 and 10 of the Act of July 31, 1894, (28 Stat. 207) either by the auditor provided for in the first paragraph of said Section 7 or by the audi-

tor provided in the fifth paragraph, such paragraphs (so far as material) reading as follows:

FIRST. "The Auditor for the Treasury Department shall receive and examine all accounts of salaries and incidental expenses of the office of the Secretary of the Treasury and all bureaus and offices under his direction, all accounts relating to . . . and all other business within the jurisdiction of the Department of the Treasury and certify the balances arising thereon to the Division of Bookkeeping and Warrants."

FIFTH. "The Auditor for the State and other departments shall receive and examine all accounts of . . . and accounts of all boards, commissions and establishments of the Government not within the jurisdiction of any of the Executive Departments. He shall certify the balances arising thereon to the Division of Bookkeeping and Warrants."

Section 10 (so far as material), provides for a Division of Bookkeeping and Warrants, and that:

"Upon the books of this division shall be kept all accounts of receipts and expenditures of public money" etc.

Reference is also to be made to the Act of February 19, 1897

(29 Stat. 550), reading (so far as material) as follows:

"All books, papers and other matters relating to the office or accounts of . . . commissions, boards and establishments of the Government in the District of Columbia, shall at all times be subject to inspection and examination by the Comptroller of the Treasury and the Auditor of the Treasury authorized to settle such accounts, or by the duly authorized agents of either of said officials."

(This statute plainly applying to boards etc., located within the District of Columbia, rather than to boards of the District Government; and the Federal Reserve Board being located within the District.)

I am of opinion that moneys received by the Federal Reserve Board, under Section 10 of the Act of December 23, 1913, are "public moneys" within the meaning of these auditing statutes, for the following reasons, among others:

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(1) The assessments are levied by a board whose members in respect to appointment, tenure, duties, and compensation meet all requirements of the definition "public officers" and "officers of the United States".

(2) The assessments are levied by such officers pursuant to the provision of a Federal statute and are devoted to the payment of official salaries and the expenses of this official board.

(3) These moneys after collection, are no longer the property of the paying banks, and must be viewed as moneys belonging to the United States, and therefore public moneys as defined by the Supreme Court of the United States in Branch v. United States, 100 U. S. 673. In United States v. Bromley 12 How. 88, it was held, that postal collections from stamp sales are public revenues:

"The revenue of the Post Office Department being raised by a tax on mailable matter conveyed in the mail and which is disbursed in the public service, is as much a part of the income of the Government as moneys collected for duties on imports."

The analogy is marked for the reason that in like manner as the money assessed by the Federal Reserve Board is for the special purpose of meeting the salaries and expenses of the Board, so the use of the postal collections is confined to sustaining the specific service by and in which they are collected.

(4) Other provisions of the Federal Reserve Act (Secs. 11-c and 16), dealing with interest charges, taxes and penalties, can only be satisfied by deposit in the Treasury of the levies, taxes and penalties so imposed,

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and there seems to be no logical ground for distinction between such assessments and the ones in question. The idea of necessary public control is also strengthened by the requirements of Rev. Stat. Sec. 3639.

The moneys received by the Federal Reserve Board under Section 10 of the Act of December 23, 1913, being thus, in my opinion, public moneys and consequently subject to audit by one of the auditors of the Treasury Department, the question is then directly presented under which paragraph of the Act of July 31, 1894, supra, the audit is to be made. This involves the further question on which you have asked my opinion: namely, whether the Federal Reserve Board is an independent board, commission or Government establishment or whether it is a bureau, office or division or otherwise a part of the Treasury Department.

That the Federal Reserve Board is a "board" or "establishment" of the Government within the meaning and intent of those words as used in the Fifth Paragraph of Section 7 of the Act of July 31, 1894, is plain from the provisions of the Federal Reserve Act and the explanation of the status of the Board contained in the Reports accompanying the original bills in Congress. This conclusion is sustained by reason and analogy, when reference is had to the considerable number of boards or establishments of far less general or National scope which have been so esteemed and uniformly treated. (See Report of Joint Commission to Inquire into Executive Departments, October 9, 1893. House Reports, 1st Session, 53rd Congress, Report No. 88).

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Consideration of the history of the Federal Reserve Bank Act, of the general scheme of the whole act, of the functions to be performed by the Federal Reserve Board and of the method of their performance, leads me to the clear opinion that the Board is an independent board or government establishment.

The Federal Reserve Board is not merely a supervisory, but is a distinctly administrative board with extensive powers. It is described as follows in the Report of the Committee on Banking and Currency to the House of Representatives (63d Congress, 1st Sess., Report No.69):

p.16. "In order that these banks may be effectively inspected and in order that they may pursue a banking policy which shall be uniform and harmonious for the country as a whole, the committee proposes a general board of management intrusted with the power to overlook and direct the general functions of the banks referred to. To this it assigns the title of "The Federal Reserve Board."

.....

p.18. "The only factor of centralization which has been provided in the committee's plan is found in the Federal Reserve Board, which is to be a strictly Government organization created for the purpose of inspecting existing banking institutions and of regulating relationships between Federal reserve banks and between them and the Government itself."

p.42. "Section 11. In this section provision has been made for the creation of a general board of control acting on behalf of the National Government....."

The report of Senator Owen from the Senate Committee on Banking and Currency (63d Congress, 1st Session, Report 133, part 2) says merely:

"The Federal Reserve Board consisting of the Secretary of the Treasury and six members appointed by the President of the United States and confirmed by the Senate for terms of six years, are given the following powers: "(Here follows an enumeration of powers.)"

The broad functions outlined in these Reports are assigned to the Board in twelve subdivisions of Section 11 of the Act giving to it certain powers and authority, and in various other sections containing

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specific grants of authority to exercise about forty other powers. Moreover, in subdivision (i) of Section 11 the all-embracing requirement appears that "said board shall perform the duties, functions or service specified in this Act, and make all rules and regulations necessary to enable said board effectively to perform the same."

The Act, further, contains no express provision that the Federal Reserve Board shall be considered as a bureau, division or office of the Treasury Department -- a significant omission in view of the fact that Congress had under consideration a Bureau of that Department when in Section 16 it amended the Revised Statutes relative to that "bureau" of which the Comptroller of the Currency was the "chief officer": and the provision in Section 10 that "the Secretary of the Treasury may assign offices in the Department of the Treasury for the use of the Federal Reserve Board" (a provision added to the House Bill by the Senate Committee) would be highly superfluous if the Board were a bureau of that Department for which the Secretary already possessed complete authority to assign offices in his own departmental buildings.

The history of the bill develops the following facts of significance.

In Section 11 of H. R. 7837 (Section 10 of the Act), it is provided:

"The manager of the Federal Reserve Board, subject to the supervision of the Secretary of the Treasury and Federal Reserve Board, shall be the executive officer of the Federal Reserve Board."

This clearly contemplated that the Secretary of the Treasury and the Federal Reserve Board were distinct entities.

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In the Act as passed, (Section 10) the supervision of the Secretary of the Treasury is stricken out, leaving the Governor (Manager) subject only to supervision of the Board.

In Section 16 of H. R. 7837 (Section 16 of the Act) it is provided:

"The Secretary of the Treasury shall subject to the approval of the Federal Reserve Board from time to time apportion the funds of the Government among the said Federal reserve banks, distributing them as far as practicable equitably between different sections...."

This also clearly contemplated the Secretary and the Board as coordinate officials. The whole provision was stricken from the Act as passed but nothing was substituted for it.

In Section 11 of H. R. 7837 (Section 10 of the Act) the Comptroller of the Currency was to perform his duties "under the general direction of the Secretary of the Treasury acting as chairman of the Federal Reserve Board."

In the Act as passed the words "acting as chairman of the Federal Reserve Board" were stricken out, showing an intention to distinguish clearly between placing the Comptroller under the Secretary as head of the Treasury Department and the Secretary as ex officio chairman of the Board.

The most significant change made in H. R. 7837 by the Act as passed was the insertion, in Section 10 of the Act, of the following clause:

"Nothing in this Act contained shall be construed as taking away any powers heretofore vested by law in the Secretary of the Treasury which relate to the supervision, management, and control of the Treasury Department and bureaus under such department, and wherever any power vested by this Act in the Federal Reserve Board or the Federal reserve agent appears to conflict with the powers of the Secretary of the Treasury, such powers shall be exercised subject to the supervision and control of the Secretary."

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It is evident that, while the purpose of this clause was, amongst other things, to insure the preservation and supremacy of all existing powers of the Secretary of the Treasury in all cases where it might be claimed that such powers overlapped, or conflicted with those of the Federal Reserve Board, nevertheless by this very provision the Act clearly recognized the existence of powers of the Board independent of the Secretary in cases where no such conflict existed.

Very respectfully,

(Signed) T. W. Gregory

Attorney General.