

POST OFFICE DEPARTMENT

Third Assistant Postmaster General

WASHINGTON

January 6, 1915.

Hon. C. S. Hamlin,
Governor, Federal Reserve Board,
Washington, D. C.

Sir:

Receipt is acknowledged of the letter of the 30th ultimo from the Secretary of the Federal Reserve Board, inclosing a copy of the report of a committee of your Board with respect to the "definition of duties of the Federal reserve agent," in further reference to your letter of November 24, 1914, inquiring whether Federal reserve agents who are also directors of the Federal reserve banks are entitled to the use of penalty envelopes.

The Federal Reserve Act confers on the Federal Reserve Board the power of appointing three of the directors of the respective Federal reserve banks. These directors are known as "Class C. directors," one of whom is required to be designated by the Federal Reserve Board as chairman of the board of directors of the Federal reserve bank and as Federal reserve agent. The provision of the Act authorizing the appointment of these directors and Federal reserve agents reads as follows:

"Class C directors shall be appointed by the Federal Reserve Board * * * one of whom shall be designated by said board as chairman of the board of directors of the Federal reserve bank and as 'Federal reserve agent' * * * and in addition to his duties as chairman of the board of directors of the Federal reserve bank he shall

be required to maintain under regulations to be established by the Federal Reserve Board a local office of said board on the premises of the Federal reserve bank. He shall make regular reports to the Federal Reserve Board, and shall act as its official representative for the performance of the functions conferred upon it by this Act. He shall receive an annual compensation to be fixed by the Federal Reserve Board and paid monthly by the Federal reserve bank to which he is designated."

The law governing the use of penalty envelopes, embodied in section 496, Postal Laws and Regulations, restricts their use to officers of the United States Government. The term "officer of the United States" is defined in the decisions of the Supreme Court in the cases of the United States vs. Mouat, 124 U.S., 303, and United States vs. Smith, 124 U.S., 525. In the former case the Court said:

"What is necessary to constitute a person an officer of the United States, in any of the various branches of its service, has been very fully considered by this court in United States v. Germaine, 99 U.S., 508. In that case, it was distinctly pointed out that, under the Constitution of the United States, all its officers were appointed by the President, by and with the consent of the Senate, or by a court of law, or the head of a Department; and the heads of the Departments were defined in that opinion to be what are now called the members of the Cabinet. Unless a person in the service of the Government therefore, holds his place by virtue of an appointment by the President, or of one of the courts of justice or heads of Departments authorized by law to make such an appointment, he is not, strictly speaking, an officer of the United States."

In the latter case the Court said:

"An officer of the United States can only be appointed by the President, by and with the advice and consent of the Senate, or by a court of law, or the head of a department. A person in the service of the government who does not derive his position from one of these sources is not an officer of the United States in the sense of the Constitution. This

subject was considered and determined in United States v. Germaine, 99 U.S., 506, and in the recent case of United States v. Mouat, ante, 303. What we have here said is but a repetition of what was there authoritatively declared."

Since the Federal reserve agents are appointed by the Federal Reserve Board and not by the President, or by a court of law, or by the head of a Department, it follows that, under the decisions of the Supreme Court of the United States, they are not "officers of the United States" and, therefore, are not entitled to the use of penalty envelopes.

Furthermore, the Federal Reserve Act provides that the salary of the Federal reserve agent for all his services, both as a director of the bank and as Federal reserve agent, shall be paid by the bank of which he is a director, the Act, in this respect, making a clear-cut distinction between his status and that of the members of the Federal Reserve Board and the "attorneys, experts, assistants, clerks," etc., employed by the Board to conduct its business, whose salaries are paid out of public moneys obtained by assessments on the reserve banks. It also appears that the banks are required to bear the expense of an office maintained for the Federal reserve agent. It, therefore, appears to be the clear intent of the law that each Federal reserve bank shall bear the expenses, including office expenses and postage, incurred by the Federal reserve agent, not only in his capacity as director of the bank, but as such agent as well.

In view of the foregoing, it is held that the Federal reserve agents are not entitled to use penalty envelopes to send in the mails

free any matters pertaining to their duties as either directors or
Federal reserve agents.

Respectfully,

(Signed) A. M. Dockery,

Third Assistant Postmaster General,