

F E D E R A L R E S E R V E B O A R D

190

January 18, 1915.

SUBJECT: Exchange Charges.

My dear Governor:-

As requested, I have examined the provisions of Section Sixteen of the Federal Reserve Act which relate to the subject of exchange charges with the view of determining to what extent member banks and Federal reserve banks are limited by the terms of the Act in charging for collection of items received on deposit.

The provisions of the Act relating to this subject are not entirely consistent and free from ambiguity and following the usual rule of construction in such cases it is necessary to consider the several provisions as a whole in order to reach a conclusion as to the intention of Congress.

Section 16 provides in part as follows -

"Every Federal reserve bank shall receive on deposit at par from member banks or from Federal reserve banks checks and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and drafts drawn by any depositor in any other Federal reserve bank or member bank upon funds to the credit of said depositor in said reserve or member bank. Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons. The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank."

It will be observed from the foregoing that every Federal reserve bank is required (a) to receive on deposit at par from member banks or from Federal reserve banks checks and drafts drawn upon any of its depositors, and (b) when remitted by a Federal reserve bank, checks and drafts drawn by any depositor in any other Federal reserve bank

or member bank upon funds to the credit of said depositor in said reserve bank or member bank.

Without the further provisions of the Act it would seem clear that Congress intended to require Federal reserve banks to collect all checks and drafts without any charge to the depositing bank. The concluding sentence of this paragraph, however, negatives this idea since it states in terms that "The Federal Reserve Board shall, by rule, fix the charges to be collected by the member bank from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank."

The question, therefore, arises if both the member banks and Federal reserve banks are to be permitted to make some charge for the service of collection, what meaning is to be given to the words used in the first part of the paragraph "AT PAR". Ordinarily, the language to "receive on deposit at par" could only be interpreted to mean at the face value of such checks or drafts and if credit is given depositors at the face value, manifestly no deduction can be made for the service of collection.

From an examination of the bill as it passed the House and the Senate, and as it was agreed to by the Conference Committee, it appears that according to the House bill no charges of any kind were to be allowed the Federal reserve banks for making collections. The exact language used was as follows -

"It shall be the duty of every Federal reserve bank to receive on deposit at par, and without charge for exchange or collection, checks and drafts drawn upon any of its depositors or by any of its depositors upon any other depositor, and checks and drafts drawn by any depositor in any other Federal reserve bank upon funds to the credit of said depositor in said reserve bank last mentioned."

When the bill passed the Senate, however, it was amended to read as follows:

"Every Federal reserve bank shall receive on deposit from member banks or from Federal reserve banks checks and drafts drawn upon any of its depositors, and when remitted by a Federal reserve bank, checks and drafts drawn by any depositor in any other Federal reserve bank or member bank upon funds to the credit of said depositor in said reserve bank or member bank....
.....The Federal Reserve Board may, by rule, fix the charges to be collected by the member banks from its

patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank."

From this it appears that the Senate intended to eliminate the provision of the House bill requiring this service to be rendered without charge and to leave the amount of such charges to the discretion of the Federal Reserve Board.

When the bill was submitted to the Conference Committee, this Committee adopted the language quoted in the Senate bill but restored the words "AT PAR" and changed the provision giving the Federal Reserve Board power in its discretion to fix by rule the charges to be collected so as to make it mandatory on the Board to do so rather than to leave it a matter of discretion, - that is to say, it substituted the words "SHALL" for the word "MAY", and so the Act as it finally passed reads -

"The Federal Reserve Board shall, by rule, fix the charges to be collected by the member banks from its patrons whose checks are cleared through the Federal reserve bank and the charge which may be imposed for the service of clearing or collection rendered by the Federal reserve bank."

As suggested, there is an apparent inconsistency in these provisions in that the checks and drafts are to be received at par and yet the Federal Reserve Board is required to fix a charge for the services rendered in collecting such items. This being true, it is necessary to consider the express provision that charges are to be made as a qualification of the language that checks and drafts are to be received at par, and reading these two provisions together, it would seem that Congress intended to prohibit the banks from arbitrarily fixing the amount to be charged for the service of collection and to require such banks to receive the checks and drafts at par, subject to such charges as the Federal Reserve Board may authorize.

In other words, the purpose of Congress appears to have been to vest in the Federal Reserve Board the power to fix exchange charges in all cases where the Federal reserve banks are used in making collections but to leave in the member banks the power to fix such charges when collections are made through their correspondents other than the Federal reserve bank of their district. This is clearly indicated by the provision above quoted which reads -

C. S. H. No. 4.

"Nothing herein contained shall be construed as prohibiting a member bank from charging its actual expense incurred in collecting and remitting funds, or for exchange sold to its patrons."

Where member banks use their correspondents to make collections rather than to collect through the Federal reserve bank, the power to fix exchange charges is not vested in the Federal Reserve Board but is left to the member bank subject to the qualification that such charges must be limited to the actual expense incurred. Where, however, Federal reserve banks are used, the Federal Reserve Board is empowered to fix (a) the charges to be collected by the member bank from its patrons, and (b) the charge to be collected by the Federal reserve bank from the member bank whose checks are collected.

Respectfully,

(Signed) M. C. Elliott,

Counsel.

Hon. Charles S. Hamlin,
G O V E R N O R .

1/20/15.