

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

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WASHINGTON

SUBJECT: Review of determination of Organization Committee, modification of districts created and change in designation of Federal Reserve Cities.

My dear Governor:-

I have the honor to acknowledge receipt of a copy of the resolution of the Board requesting an opinion on the following questions:

- I. What are the general powers and duties of the Federal Reserve Board in reviewing the determination of the Organization Committee?
- II. Can the Federal Reserve Board, under the terms of the Federal Reserve Act, designate other Federal reserve cities in place of those selected by the Organization Committee?
- III. Can the Federal Reserve Board alter the geographical limits of the districts created by the Organization Committee?
- IV. Can the Federal Reserve Board, by the consolidation of two or more districts, reduce the number of Federal reserve districts?

The provisions of the Federal Reserve Act which it is necessary to construe in considering the foregoing questions are contained in Section 2 of the Act and are as follows:

(a) "The determination of said organization committee shall not be subject to review except by the Federal Reserve Board when organized: Provided, That the districts shall be apportioned with due regard to the convenience and customary course of business."

(b) "The districts thus created may be readjusted", and

(c) "New districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all".

A discussion of the general powers of the Board to review the determination of the Organization Committee necessarily involves a consideration of the other questions submitted, but as far as possible the several questions will be discussed separately in the order above indicated.

I. What are the general powers and duties of the Federal Reserve Board in reviewing the determination of the Organization Committee?

The scope of the power of the Federal Reserve Board to review the determination of the Organization Committee will depend very largely upon the construction to be placed upon the language "subject to review".

It is necessary to determine from the context, and from a general consideration of the circumstances under which the Act was passed, whether Congress intended (a) to vest in the Board the power to consider de novo the whole subject of determining Federal reserve districts and designating Federal reserve cities without reference to the decision of the Organization Committee, or (b) to vest in the Board the right to review the determination of the Committee in the same manner and to the same extent that an appellate court reviews a decision of the lower court.

If the former view is adopted it is necessary to conclude that Congress intended to vest no independent powers in the Organization Committee but to limit its functions to collecting and analyzing information to be submitted to the Federal Reserve Board for its consideration in designating the Federal reserve cities and in defining the geographical limits of the districts to be served. In other words, if no weight is to be given to the decision of the Committee and the Board is to consider the whole subject anew with reference to the determination of the Committee and without restriction, the work of the Committee is necessarily of no effect.

In view of the general character of the language used in vesting this power of review in the Board, and of the absence of any details as to the method of procedure to be followed, it is important to analyze the powers apparently vested in the Organization Committee and those vested in the Federal Reserve Board in order to determine what weight should be given to the decision of the Committee and to what extent and under what circumstances it is subject to modification by the Federal Reserve Board.

Powers of the Organization Committee.

From an examination of the Act it appears that, briefly summarized, the Organization Committee is empowered

and directed -

- (a) To designate not less than eight nor more than twelve cities to be known as Federal reserve cities.
- (b) To divide the continental United States, exclusive of Alaska, into districts, each district to contain only one of such Federal reserve cities, and
- (c) to supervise the organization in each of the cities so designated of a Federal reserve bank.

In performing these duties, the Organization Committee is authorized -

"To employ counsel and expert aid, to take testimony, to send for persons and papers, to administer oaths, and to make such investigation as may be deemed necessary by the said committee in determining the reserve districts and in designating the cities within such districts where such Federal reserve banks shall be severally located."

Powers of the Federal Reserve Board.

The Federal Reserve Board is empowered, in so far as the organization of the several Federal reserve banks is concerned -

- (a) To appoint three of the nine directors of each bank and to designate one as the Federal reserve agent and chairman, and one as deputy Federal reserve agent, the three directors so appointed to be known as Class "C" directors.
- (b) To call for payment of the first installment of subscription of the member banks.

This last power is vested alternatively in the Organization Committee and the Federal Reserve Board, and while the Organization Committee is not empowered to appoint the Class "C" directors, it is authorized to act as chairman of the Board of Directors (pending the appointment of such chairman by the Federal Reserve Board), in holding the election of the three Class "A" and three Class "B" directors of each bank. The remaining powers of the Federal Reserve Board, with the exception of certain duties in reference to the transfer of public stock, relate to the supervision of the Federal reserve banks when organized rather than to their organization.

It was clearly contemplated by Congress, therefore, that the organization of the several Federal reserve banks should be proceeded with immediately upon the passage of the Act, and that such organization might be carried to practical completion before the Federal Reserve Board, under the terms of the Act, should be called upon to exercise

any specific powers in reference thereto. This is indicated not only by an analysis of the Act as it passed but also by the history of the particular provisions of the Act under consideration, as shown by the language in the House bill, the modifications made by the Senate, and the language agreed to by the Conference Committee.

It seems clear, therefore, that Congress expected that the right of review might be exercised by the Federal Reserve Board after, as well as before, the establishment of the Federal reserve banks. Consequently it must be assumed that the power to review the determination of the Committee is the same in either case.

The Act in terms vests a broad discretion in the Organization Committee, and the power to employ expert aid, to take testimony, to send for witnesses, etc., is vested exclusively in that Committee. Furthermore, it is required, under the provisions of the Act, after completing the work of designating the cities and determining the districts, to proceed immediately with the organization of the banks.

The conclusion appears to be fully justified, therefore, that Congress did not intend that the Committee should merely collect and analyze information for submission to the Board since otherwise it would have provided that the incorporation and organization of the Federal Reserve banks should be undertaken only after the Federal Reserve Board had rendered its decision and had thus given a more definitely fixed status to the districts created and the cities designated.

On the other hand, Congress manifestly intended to vest very broad powers in the Federal Reserve Board and inasmuch as the Board is charged with the supervision of the banks when created, and the responsibility of the successful operation of the system is so largely entrusted to its care, it seems clear that the decision of the Committee was not intended to be final but that the Board should have the right to modify the districts - (a) if, upon an examination of the record consisting of evidence submitted to and information collected by the Organization Committee, the Board should conclude that the districts are not apportioned with due regard to the convenience and customary course of business, or (b) if, as a result of the operation of the system, experience should demonstrate the fact that some other apportionment will best accomplish the purposes and objects of the Act.

This view seems entirely consistent with the alternative construction suggested, namely, that the right of review vested in the Board is analagous to the right of an appellate court to review the decision of a lower court.

It is true that a court will ordinarily review a decision of a lower court only in those cases where there have been errors of law, or in the case of some newly discovered evidence, - that is, new matter which has arisen since the decision of the lower court and not evidence which might have been offered before that decision was rendered.

The failure on the part of the Organization Committee, however, to comply with the proviso of Section 2, namely, "that the districts shall be apportioned with due regard to the convenience and customary course of business", would constitute an error of law and would justify a review and modification by the Board of its determination. Unless, however, the Board finds upon its examination of the record referred to that the Committee has clearly failed to comply with the proviso quoted and has not, in its opinion, apportioned the districts as prescribed by statute, the decision of the Committee would seem to be final so far as the present proceedings are concerned.

History of Provisions Relating to Organization of Banks.

The history of the provisions of the Act under consideration furnishes additional evidence of the basis of the foregoing conclusions. The House bill conferred no power on the Board to review the decision of the Organization Committee on its own motion but provided that upon the application of not less than ten member banks a district might be readjusted. This bill provided that the Committee should consist of the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency.

The Senate bill provided that the Committee should consist of the Secretary of the Treasury and two other members of the Federal Reserve Board. The determination of this Committee, under the terms of the Senate bill, was made subject to review by the Federal Reserve Board. The Conference Committee restored the provisions of the House bill relating to the personnel of the Committee and retained the provision that the decision of the Committee should be "subject to review" by the Federal Reserve Board. The language used in the conference report was adopted when the bill became a law.

The Senate and House bills and the Act as passed all provided that the organization of the banks shall be proceeded with immediately upon the passage of the Act, evidently intending that the work of the Organization Committee should be acted upon at once and that it should not be subject to review except by the Federal Reserve Board, and then only for the reasons already stated.

- II. Can the Federal Reserve Board, under the terms of the Federal Reserve Act, designate other Federal reserve cities in place of those selected by the Organization Committee?

The power to designate other reserve cities in the place of those selected by the Organization Committee is not expressly given by the Act. In the bill as it passed the House, the Organization Committee was required to designate from the reserve cities authorized by law not less than twelve to be known as Federal reserve cities, and to divide the continental United States into Federal reserve districts. In the Senate bill the qualification that such cities should be selected from the reserve cities was removed and the selection was made entirely a matter of discretion with the Committee. The bill as it became a law left the designation of the cities a matter of discretion.

The qualification above quoted, limiting the discretion of the Organization Committee, and which provides that "the districts shall be apportioned with due regard to the convenience and customary course of business", refers specifically to districts and not to the cities designated. The Organization Committee is authorized -

"to make such investigation as may be deemed necessary by the said Committee in determining the reserve districts and in designating the cities within such districts".

In defining the power of review vested in the Federal Reserve Board, the language used is -

"The determination of said Organization Committee shall not be subject to review except by the Federal Reserve Board".

It appears, therefore, that the only limitation on the discretion of the Committee relates to the determination of the districts, and that the power of review likewise refers to that determination and does not refer specifically to the designation of the cities.

The power, therefore, to change the location of the Federal reserve banks is clearly not an expressed power under the terms of the Act and, if it exists, must be said to be implied -

- (a) From the fact that construing the language "subject to review" in a broad sense, it may be said that to apportion the districts "with due regard to the convenience and customary course of business", it is necessary to consider the location of the Federal reserve cities in each district, notwithstanding the facts that the designation of cities appears to be a matter of discretion, and that this qualification refers to districts rather than to cities.

or such power may be implied -

(b) From the fact that the power to "readjust" the districts created carries with it the power of designation of the Federal reserve cities, since a district may be so readjusted as to transfer a Federal reserve city to another district or as to place a Federal reserve city in an unsuitable portion of an altered district. In either case it would be necessary to designate a suitable Federal reserve city for the readjusted district.

If, therefore, the Board concludes that the districts are not apportioned according to the purpose and intent of the Act and determines that it is necessary to readjust such districts, it would seem clear that it possesses an implied power to change the designation of the Federal reserve cities. If, however, the districts are not readjusted, it seems very doubtful whether this power can be implied, and to change the designation of cities without readjusting the districts would necessitate resolving this doubt in favor of the exercise of this power against the apparent intent of Congress.

III. Can the Federal Reserve Board alter the geographical limits of the districts created by the Organization Committee?

The power to "readjust" districts, as shown above, is vested in the Board independently of the power to "review" the determination of the Organization Committee. The power to "review", as any court review, contemplates a review within a reasonable time, either before or soon after the establishment of the system, and, like a review by a court, should be limited to the evidence submitted to the Organization Committee, as suggested in the answer to Question I. The power to readjust, however, is not limited in time and would seem to be a continuing power, Congress evidently intending to provide a means for altering the districts even after the determination of the committee as such had become fixed by a lapse of time or by being affirmed by the Board.

Therefore, if, later, in the supervision of the actual operation of the several banks, it should be demonstrated that a readjustment of the geographical limits of the districts will best serve the purposes of the Act, the Board is expressly authorized to make such readjustment just as it can do so now under the power of review if, from the evidence submitted to the Organization Committee, it feels that the requirements of the Act were not complied with by that Committee.

IV. Can the Federal Reserve Board, by the consolidation of two or more districts, reduce the number of Federal reserve districts?

I am unable to find in the Act any power, either expressed or implied, by which the Board can, by consolidation reduce the number of districts. It is true that it has the power to readjust the districts created but the power to "readjust" can hardly be said to include the power to eliminate, and any change which results in the elimination of a whole district could hardly be said to have been contemplated by the Act.

If Congress had intended the power to "readjust" to be sufficiently broad to authorize an increase or a reduction in the number of districts it would have been unnecessary to grant the express power referred to above to create from time to time new districts not to exceed twelve in all. In other words, under the well settled doctrine of "expressio unius est exclusio alterius" the fact that Congress expressly granted the power to increase the number of districts but did not in terms grant the power to reduce the number indicates very clearly that it did not intend to vest this authority in the Board.

REGULATION NO. 1.

In view of the foregoing opinion, it seems proper to refer to Regulation No. 1 adopted by the Board, prescribing method of procedure in appeals from the decision of the Reserve Bank Organization Committee.

As above shown, the provision of the House Bill vesting in the member banks the right to file an application for readjustment of districts, was not incorporated in the bill as finally passed, but the matter of review and readjustment was left to the Board to consider on its own motion. In order that the Board might have the assistance of the views of the parties in interest, however, Regulation No. 1 was adopted and representatives selected by the parties interested were invited to discuss any questions of law or fact including the powers and jurisdiction of the Board.

In the discussion before the Board, the questions considered above were not argued at length. The jurisdiction of the Board to review the decision has not been questioned but Counsel for the Reserve banks have, in their arguments, taken the position that the decision of the Committee should stand unless clearly shown not to be in accordance with the purpose and intent of the Act, and have directed their arguments mainly to the merits of the case as disclosed by the record.

Respectfully,

(Signed) M. C. ELLIOTT

Counsel

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