November 22, 1915.

My dear Governor: -

On March 1st, 1915, this office filed with the Board an opinion dealing generally with the subject of the right of the Federal Reserve Board to review the determination of the Organization Committee, to adjust from time to time the Federal reserve districts created by that Committee, and to establish new districts. In that opinion the question was incidentally considered whether or not the Federal Reserve Board, under its power to review, or under its power to readjust the districts created, could legally reduce the number of districts by consolidation or otherwise.

The Board has requested that this subject be further considered but it is understood that it desires at this time to have counsel reconsider only that part of the opinion of March 1, 1915, which deals with the following question:

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

The powers of the Board relating to the modification of Federal reserve districts are contained in Section 2 of the Federal Reserve Act. This section provides

in part as follows:

> "As soon as practicable, the Secretary of the Treasury, the Secretary of Agriculture and the Comptroller of the Currency, acting as 'The Reserve Bank Organization Committee', shall designate not less than eight nor more than twelve cities to be known as Federal reserve cities, and shall divide the continental United States, excluding Alaska, into districts, each district to contain only one of such Federal reserve cities. 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 and shall not necessarily be coterminous with any State or States. The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all. Such districts shall be known as Federal reserve districts and may be designated by number. A majority of the organization committee shall constitute a quorum with authority to act".

It will be observed that the organization committee is empowered -

(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 . . . . into districts, each district to contain only one of such Federal reserve cities.

Section 2 further provides that -

> "Said organization committee shall be 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. The said committee shall supervise the organization in each of the cities designated of a Federal reserve bank, which shall include in its title the name of the city in which it is situated, as 'Federal Reserve Bank of Chicago'".

The Federal Reserve Board is authorized -

(a) To review the determination of the organization committee,

(b) To readjust the districts created, and

(c) To create from time to time new districts, not to exceed twelve in all.

Whatever power the Board has in the matter of redistricting the continental United States must, therefore, rest upon the interpretation to be given to the language -

> "The determination of said organization committee shall not be subject to review except by the Federal Reserve Board . . . . The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board not to exceed twelve in all".

The question under consideration is - can this language be reasonably construed to give the Board power to reduce the number of Federal reserve districts and to liquidate or dissolve one or more of the Federal reserve banks organized by the organization committee?

If we consider the language above quoted without reference to any other part of the Act and attempt merely to give the usual or ordinary meaning to the words used it becomes immediately obvious that at least two different interpretations are possible and it is, therefore, not free from ambiguity. It is accordingly necessary to consider both possible interpretations in order to determine which one is consistent with other parts of the Act and is in accord with the intent of Congress.

On the one hand it may be argued that the power vested in the Board to "readjust the districts created" gives the Board the power not merely to change the lines of each and every district (preserving, however, the entity of each individual district) but that it may in its discretion consider the whole subject de novo and may divide the continental United States into an entirely new set of districts.

This interpretation is based upon the assumption that when Congress provided that "the districts thus created may be readjusted" it meant that the complete whole might be readjusted and not merely that each individual district was subject to change. If this be true, the certificate showing the Federal reserve cities and the geographical limits of each Federal reserve district which the organization committee is required to file with the Comptroller may be modified at any time by the Federal Reserve Board in any way that it deems necessary or advisable.

In this view it may be contended that the language which follows, namely, "and new districts may from time to time be created by the Federal Reserve Board, not to exceed twelve in all", was not intended to mean that additional districts may be created but merely that districts with new lines and new territorial extent may be created without reference to the entity of those districts created by the organization committee.

Construing this general language to mean that the Board has an expressed power to alter at will the entire plan of districts created by the organization committee, it may then be argued that this expressed power carries with it such incidental powers as may be necessary to carry out the intent of Congress in the matter. That is to say, if it becomes necessary as an incident of any readjustment made by the Board to change or cancel the designation of a Federal reserve city or to dissolve or liquidate a Federal reserve bank, the Board has an implied power to do these things as incidents of the expressed power to readjust the districts.

If, therefore, this interpretation can be sustained under the usual rules of construction of statutes the question submitted -- has the Board the power to reduce the number of Federal reserve districts, may be answered in the affirmative.

Before applying the usual rules of construction to this interpretation (which, for convenience, will be referred to as interpretation No. 1) attention is called to an alternative interpretation which is equally possible when the language in question is considered without reference to other parts of the Act.

Under this second interpretation it may be argued that the power to readjust the districts created vests in the Board the power only to readjust or to change the lines of each district created by the organization committee. That the power to create new districts not to exceed twelve in all was intended to give the Board the right to increase the number of districts if the organization committee had created less than twelve; that Congress did not intend that the districts created by the Organization committee should have merely a temporary or experimental status as districts but while subject to modification as to size and shape were nevertheless intended to have a permanent status as entities.

If this view can be supported by the application of the usual rules of construction the question under consideration - whether the Federal Reserve Board may reduce the number of districts - may be answered in the negative.

It will be observed that to make effective the power vested in the Board under interpretation No. 1, it is necessary to imply that it has power as an incident of "readjustment" to change or cancel the designation of Federal reserve cities and to liquidate Federal reserve banks.

It is, therefore, necessary to consider whether these implied or incidental powers are in conflict with any expressed provisions of the Act.

Upon an examination of the statute we find that the organization committee is expressly authorized to designate not less than eight nor more than twelve Federal reserve cities. Let us assume that the power in the Board to create new districts is equivalent to an expressed power to designate Federal reserve cities.

In support of this assumption the Act provides that "the districts thus created may be readjusted" and when we turn to the context to learn how the districts were "thus created" we find that the organization committee is required to first designate a Federal reserve city and then to define the geographical limits of the district to be served. It is, therefore, clearly necessary in order to create a district to designate a city and to define the limits of the district.

Accordingly if the power in the Board to create new districts is construed to mean to create additional districts or districts other than those previously created by the organization committee, it is clear that the Board has an expressed power to designate Federal reserve cities for such districts and that this power to designate cities in those districts created by the Board does

not conflict with the power of the committee to designate cities in districts which it has created.

On the other hand, if we construe this power to mean that the Federal Reserve Board may create new districts out of two or more districts created by the organization committee, we must assume that the Board has the power to nullify the designation of Federal reserve cities made by the committee.

It is significant in this connection that in defining the power of the Board to create new districts the Board is limited to a maximum number of twelve but is not limited to any minimum.

The organization committee is required to create in the manner above shown not less than eight nor more than twelve Federal reserve districts.

Under the power vested in the Board "new districts may be created from time to time not to exceed twelve in all." If, therefore, this power to create new districts is to be interpreted as giving the Board the right to reduce and to eliminate there would seem to be no limitation on the Board's power to reduce and it might create a number less than eight. It is hardly reasonable to say that the power to create new districts gives the Board the power to create such districts without reference to the action of the organization committee since in this event they might abolish all but one or two banks.

On the other hand, the fact that a maximum is placed on the new districts to be created by the Board but no minimum is expressed in the provision which deals with this power of the Board, indicates very strongly that Congress intended the number of districts created by the organization committee to have a fixed and permanent status and to constitute the minimum number to be established. That it merely intended to give the Board the power to increase the number to the maximum. This view appears to be sustained by the history of this legislation which will be dealt with later.

Considering the second implied power under the interpretation No. 1, we are here confronted with a conflict with an expressed power which is even more clear.

As above shown, if we assume that the Board may make an entirely new map of the districts and may reduce the number, we must assume that it has, as an incidental power, the right to liquidate one or more Federal reserve banks. Upon referring to Section 4, however, we find that when the necessary formalities have been complied with and a certificate of organization has been filed each bank becomes a corporation with certain specified powers, including the power -

> " To have succession for a period of twenty years from its organization unless it is sooner dissolved by an Act of Congress, or unless its franchise becomes forfeited by some violation of law."

To adopt interpretation No. 1, therefore, we must assume that the implied power in the Board to liquidate these banks as an incident of readjustment is sufficient to overcome this expressed power in the bank to have succession for a period of twenty years " unless sooner dissolved by an Act of Congress,or unless its franchise is forfeited by some violation of law." Such an assumption is clearly contrary to the established rules of construction laid down by our courts. For example, in the case of In re Rouse,Hazard & Co., 91 Fed. Rep. 100, the court in quoting with approval the decision in the case of State v. Inhabitants of Trenton, 38 N. J., Law 67, says :

> " The legislature must be presumed to have intended what it expressly stated, rather than that which might be inferred from the use of general terms. "

It may be said to be a cardinal rule of construction that when two interpretations are possible, one of which is in harmony with other provisions of the Act, and the other repugnant to other provisions, that which is in harmony must be adopted. Inasmuch, therefore, as interpretation No. 1 involves the necessity of vesting implied or incidental powers in the Board which are repugnant to other expressed provisions in the Act, while interpretation No.2 is in harmony with these provisions, the second interpretation should be adopted.

While this rule is so uniform it needs little citation of authority to sustain it, the language of the court used in a few cases in which this question arose is called to the Board's attention,

In the case of Montclair v. Ramsdell, 107 U.S. 152, the court said :

> " It is the duty of the court to give effect if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."

Following this decision of the Supreme Court of the United States, it is, of course, necessary to give effect to the provision which gives banks a period of twenty years succession as well as to other provisions which are inconsistent with interpretation No. 1.

Again in the case of United States v. Baltimore & O S W R Co., 159 Fed. Rep., 37, the court says -

> " The maxims and rules adopted for the purpose of interpreting the meaning of a statute require that we attend to all its provisions, and, if possible, attribute to the language in which each is expressed a meaning which will permit other provisions to have their due effect."

In the case of Bate Refrigerating Co.v Sulzberger 157 U. S., 37, the court says :

> " Where the language of the act is explicit, this court has said, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature. It is not for the court to say, where the language of the statute is clear, that it shall be so construed

> as to embrace cases, because no good reason can be assigned why they were excluded from its provisions. Scott v. Reid, 10 Pet. 524, 527."

Applying this doctrine to the present case, if it is clear under interpretation No. 2 that the Board may modify the districts but can not reduce the number, it would seem to be inconsistant with the rules of construction to extend this power to include the right to reduce the number if such a construction is inconsistent with other parts of the Act. As said in the case of In re Matthews, 109 Fed. Rep. 615,

> " It is the cardinal rule of interpretation that a statute should be construed not only so that every part of it should stand, but so as to give force, meaning, and effect to every part of it."

In United States v. Jackson, 143 Fed. Rep. 785, the court said -

> " Another canon of construction is that every part of a statute must be viewed in connection with the whole, so as to make all the parts harmonious, if practicable, and to give a sensible and intelligible effect to each; nor should it ever be presumed that the Legislature meant that any part of a statute should be without meaning or without force and effect. "

Many other cases to the same effect might be cited but in view of the uniformity of decisions on this subject this is considered unnecessary.

Inasmuch, therefore, as it will be necessary to fail to give effect to other provisions of the Act if interpretation No. 1 is adopted, it remains only to be considered whether interpretation No. 2 is consistent with the context and with other parts of the Act.

From an examination of the hearings held by the House and Senate Committees while the bill was pending it will be found that the question of the number of districts to be established was the subject of much discussion and of deliberate consideration. There were many who advocated a very small number of banks and others who contended for a large number. It was finally determined to fix a maximum and a minimum and to vest the power in a committee to be known as the Organization Committee, to establish not less than eight nor more than twelve districts with the power in the Federal Reserve Board to create new districts not to exceed twelve in all.

The House bill provided that the organization committee should designate "from among the reserve and central reserve cities " a number of Federal reserve cities , the total number so designated not to be less than twelve.

The House bill further provided that -

> " The districts thus created may be readjusted and new districts may from time to time be created by the Federal Reserve Board hereinafter established, acting upon a joint application made by not less than ten member banks desiring to be organized into a new district. "

Later in the same Section the bill provided that -

> " No Federal reserve district, shall be abolished nor the location of a Federal reserve bank changed, except upon the application of three-fourths of the member banks. "

From this it appears that according to the House bill the Federal Reserve Board might alter the limits of any given district, upon the application of ten member banks, or it might abolish a district and change the location of a Federal reserve bank upon the application of three-fourths of the member banks in such district.

When the bill reached the Senate it modified the power vested in the Board to alter the lines of a given district by striking out the provision that such alterations should be made only upon the application of ten member banks. The effect of this amendment in the Senate was clearly to vest in the Board the power to alter the lines of a given district on its own motion.

The power, however, to abolish districts and to change the location of Federal reserve banks upon the application of three-fourths of the member banks was eliminated in toto by the Senate and this elimination was agreed to in conference.

If any inference may be drawn from the history of these amendments, therefore, it seems clear that the

conferees agreed that no district should be abolished, even upon the application of three-fourths of the member banks.

Interpretation No. 2, therefore, seems to be consistent with the intent of Congress as indicated by the history of the bill and since a modification of the individual districts does not involve the elimination of a district nor of a Federal reserve city, and does not necessitate the liquidation of a Federal reserve bank, it is possible , under this interpretation, to give effect to all other provisions of the Act in accordance with the accepted rules of construction in such cases.

In considering the question submitted, I am conscious of the great public importance of the Board's decision in this matter and realize that the question is one upon which counsel may, and in fact do, differ. I have endeavored, therefore, to call the Board's attention to the two possible view-points and to explain at some length the reasons for conclusions reached.

Briefly summarized, it appears to me that any interpretation which vests in the Board the power to reduce the number of districts makes it necessary to also vest in the Board implied or incidental powers which are repugnant to other expressed provisions of the Act.

That, on the other hand, the provisions in question are susceptible of another equally reasonable interpretation which is in harmony with the spirit and purpose of the Act and which will give effect to all other provisions.

I am, therefore, of the opinion that this second interpretation must be given effect and that following the usual rules of construction in such cases the Board is without power to reduce the number of districts by consolidation, or otherwise, and that each Federal reserve bank now organized is entitled to have succession for a period of twenty years unless sooner dissolved by an Act of Congress or unless its franchise is forfeited by some violation of law.

Respectfully,

M. C. ELLIOTT

Counsel.

Hon. Charles S. Hamlin,
Governor.

11/29/15