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# FEDERAL RESERVE BOARD

WASHINGTON

X-3566

November 17, 1922.

SUBJECT: Employment of Hon. John W. Davis in all  
Par Clearance Litigation.

Dear Sir:

In view of certain recent developments in the so-called par clearance litigation, the Board has decided to suggest that all of the Federal Reserve Banks employ Mr. John W. Davis, of New York, former Solicitor General of the United States, and former ambassador to Great Britain, to direct the conduct of all such litigation which may now be pending against any of them or which may arise in the near future.

As you know, the Federal Reserve Bank of Atlanta, at the suggestion of the Federal Reserve Board, employed Mr. Davis as its principal counsel to conduct the trial of the case of the American Bank and Trust Company v. Federal Reserve Bank of Atlanta, which at that time had just been remanded by the Supreme Court of the United States for trial on its merits before the United States District Court for the Northern District of Georgia. In view of the fact that the questions at issue in that case had assumed a nation-wide scope and vitally affected all of the Federal Reserve Banks, the expenses of Mr. Davis' employment in that litigation were borne at the Board's suggestion by all of the Federal Reserve Banks pro rata. While Mr. Davis has acted in an advisory capacity in the other par clearance cases, he has not participated actively in the trial of any but the Atlanta case. The Board feels that, from the standpoint of the Federal Reserve System as a whole, the Richmond, San Francisco, and Cleveland cases, as well as others which may arise, are just as important as the Atlanta case, and if it was to the interest of all of the Federal Reserve Banks to employ Mr. Davis to conduct the litigation in the Atlanta case, it is equally to the interest of all of the Federal Reserve Banks to employ him in all other cases involving similar litigation. Furthermore, it seems unjust for the Federal Reserve Banks of Cleveland, San Francisco and Richmond to be called upon to contribute to the expenses of Mr. Davis' employment in the Atlanta case and not have the benefit of his active participation in the trial of their own cases.

All cases growing out of this par clearance litigation are naturally inter-dependent, and the decision in each case necessarily has its effect on the litigation in every other case. This is well illustrated by what happened in the Richmond case. That case was handled admirably by local counsel and a decision was won by the Federal Reserve Bank of Richmond in the Supreme Court of North Carolina. Quite recently, however, that court granted a petition to re-hear the case, and it appears that this action was influenced to some extent at least by the decision in the San Francisco or Brookings case. The Board understands also that the brief filed by Mr. Smith, counsel for the State banks, on the re-hearing of the Richmond case lays much stress on the decisions in the San Francisco and Cleveland cases. It is obvious that the decision in the Cleveland case also was influenced to a large extent by the language of the opinion rendered in the San Francisco case.

It appears that all the State banks involved in these cases have retained the same chief counsel, Mr. Alexander W. Smith, a very able lawyer, and thereby have achieved a uniform policy and a coordination of tactics in the several cases. By this means they have gained also a distinct advantage in being represented in each of these cases by counsel who is thoroughly familiar with every aspect of each of the other cases.

The Board believes, therefore, that it is of first importance to the successful conduct of all of the par clearance litigation that the Federal Reserve Banks employ the same principal counsel to take charge of all such litigation, and in view of his exceptional legal ability, in addition to the experience which he has already had in the Atlanta case and his splendid success in the trial of that case, the Board strongly recommends that all of the Federal Reserve Banks employ Mr. Davis in such capacity. In making this suggestion, of course, it is not the Board's idea that the Federal Reserve Banks should dispense with the services of their regular counsel or any of the special counsel whom they have retained or desire to retain in such cases. The Board realizes that the services of local counsel will be required for much of the actual conduct of such litigation, but believes that it is to the interest of all concerned that Mr. Davis be placed in a position to direct the trial of all such cases and to participate actively in the trial of each case to such extent as he deems advisable.

The Board will be pleased to learn at your early convenience of the attitude of your directors in this matter and whether or not your bank will be willing to retain Mr. Davis, jointly with the other Federal Reserve Banks, in the capacity indicated above, the expenses of such employment to be borne pro rata by all of the Federal Reserve Banks.

By order of the Federal Reserve Board.

WM. W. HOXTON  
Secretary.