

FEDERAL RESERVE BOARD

WASHINGTON

ADDRESS OFFICIAL CORRESPONDENCE TO
THE FEDERAL RESERVE BOARDMarch 3, 1924.
X-3983

Subject: Collection of notes containing
provision for payment of Attorneys'
fees.

Dear Sir:-

The Federal Reserve Board has recently considered the question whether or not a Federal reserve bank in collecting an overdue note, is justified in retaining an amount received under a provision in the note for the payment of attorneys' fees, in addition to the principal and interest of the note. The question arose out of the practice of one of the Federal reserve banks in receiving and retaining such amounts; in the case of this bank the counsel is employed on an annual retainer basis and he, of course, handles the collection of notes and other items which the bank is unable to collect through the regular channels.

The law on this question is not definitely settled but there are many cases which indicate very strongly that the courts would not permit the holder of a note containing such a provision to recover and retain any sum greater than that sufficient to cover principal and interest and to indemnify the holder for reasonable attorneys' fees expended. The provision is intended to save the holder from loss, but he is not entitled to make any profit by reason of the stipulation. Even if the practice can be considered legal it would seem to be an unwise policy for Federal reserve banks to exact attorney's fees under such circumstances unless there has been an expenditure in the particular case for the employment of attorneys.

In view of the doubt as to the legality of the practice and the considerations of policy involved, the Board recommends the following principles for the guidance of Federal reserve banks hereafter in such cases:

- (1) In a case where special counsel are employed in connection with the collection of a certain note, containing a stipulation for the payment of attorneys' fees by the maker in case of default, judgment should be obtained for the full amount due including all attorneys' fees recoverable according to the terms of the note, but a refund should be made to the debtor for any amount not actually paid or contracted to be paid to the attorney for his services.

- (2) Where the collection is made through the regular Federal reserve bank counsel employed on an annual salary or retainer, judgment should be obtained for the full amount due, including the stipulated attorneys' fees (if possible), but the Federal reserve bank should refund to the debtor the entire amount of attorneys' fees recovered.

By direction of the Federal Reserve Board.

Yours very truly,

Walter L. Eddy
Secretary.

TO ALL FEDERAL RESERVE AGENTS.