

X-4203

RECORD OF THE
CONFERENCE OF COUNSEL OF FEDERAL RESERVE BANKS
HELD AT WASHINGTON, D.C., ON DECEMBER 5 and 6, 1924.

The Conference of Counsel of all Federal reserve banks convened on the morning of December 5, 1924, at 10 o'clock in the Board Room of the Federal Reserve Board, Treasury Department, Washington, D.C. Those present were:

From the Federal Reserve Bank of Boston	- Mr. Arthur H. Weed
From the Federal Reserve Bank of New York	- Mr. L. Randolph Mason
From the Federal Reserve Bank of Philadelphia	- Mr. Parker S. Williams
From the Federal Reserve Bank of Cleveland	- Mr. Sterling B. Newell
From the Federal Reserve Bank of Richmond	- Mr. M. G. Wallace
From the Federal Reserve Bank of Atlanta	- Mr. R. S. Parker
From the Federal Reserve Bank of Chicago	- Mr. Charles L. Powell
From the Federal Reserve Bank of St. Louis	- Mr. James G. McConkey
From the Federal Reserve Bank of Minneapolis	- Mr. A. Ueland
From the Federal Reserve Bank of Kansas City	- Mr. H. G. Leedy
From the Federal Reserve Bank of Dallas	- Mr. Paschal Dreibelbis arrived after the lunch hour on December 5 and Mr. E. B. Stroud, Jr. arrived after the lunch hour on December 6.
From the Federal Reserve Bank of San Francisco	- Mr. Albert C. Agnew
From the Federal Reserve Board	- Mr. Walter Wyatt, Mr. Edgar W. Freeman, Mr. George B. Vest and Mr. B. M. Wingfield.

In addition to the Counsel for the Federal reserve banks and the Federal Reserve Board, above listed, Honorable Newton D. Baker, Special Counsel to the Federal Reserve Bank of Atlanta in the case of Pascagoula National Bank v. Federal Reserve Bank of Atlanta et al., Mr. K. K. Carrick, Secretary to the Federal Reserve Bank of Boston, Mr. George L. Harrison, Deputy Governor of the Federal Reserve Bank of New York and Secretary to the Governors' Conference, Mr. H. F. Strater, Assistant Cashier of the Federal Reserve Bank of Cleveland and Chairman of the Standing Committee on Collections, were present upon special invitation.

Mr. Hamlin, Member of the Federal Reserve Board, made a short address of welcome to the Conference of Counsel at its opening on the morning of December 5. Mr. Wyatt was then elected Chairman of the Conference and he appointed Mr. Vest as Secretary.

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The Conference then proceeded to the consideration of the topics listed on the program which had been prepared and sent out in advance of the meeting by Counsel to the Federal Reserve Board. All matters on the program were discussed informally but formal action was taken in only a few instances. With regard to the topics which had been referred to the Conference of Counsel by the Governors' Conference, however, formal action was taken in each case.

The first question referred to the Conference by the Governors' Conference was

"Whether or not a Federal reserve bank in forwarding checks or non-cash collection items to a bank for collection, and in accepting therefor a remittance consisting of a bank draft drawn by the remitting bank upon another bank, has the right to accept still another bank draft in remittance for the first bank draft."

In answer to this question two resolutions were proposed and adopted. The first was submitted by Mr. Agnew as follows:

"RESOLVED that it is the opinion of this conference that the Federal Reserve banks are not protected legally under the terms of the Board's regulations or the uniform circulars in accepting an exchange draft or drafts in purported settlement of a first exchange draft given for transit or non-cash items".

This resolution was adopted by the Conference without dissenting vote. The second resolution in answer to this question was one offered by Mr. Weed. This resolution was as follows:

"WHEREAS, Mr. Harrison, Secretary of the Governors' Conference, has stated that in his opinion the Governors' Conference would welcome an expression of opinion from this Conference as to the advisability of amending Regulation J or taking other steps in such manner as to protect Federal reserve banks from liability in accepting another bank draft in remittance for the first bank draft;

"BE IT RESOLVED, that it is the opinion of this conference that Federal reserve banks should not seek to be protected against liability which might result from the acceptance of a second or subsequent bank draft."

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This resolution was adopted by the Conference with one dissenting vote - Judge Ueland voting "no."

The second question submitted by the Governors' Conference to the Conference of Counsel was as follows:

"Whether or not it would be advisable as a matter of law to have the Federal reserve banks issue a uniform circular containing a form of contract between banks and their depositors, requesting member and clearing-member banks to amend their contracts (contained on deposit slips and signature cards) in accordance with the form proposed in the circular."

In reply to this question, a resolution was submitted to the conference by Mr. Powell with an amendment by Mr. Baker, in the following form:

"That it be the sense of this conference that it would not be advisable to have the Federal reserve banks issue a uniform circular containing a form of contract between banks and their depositors requesting member and non-member clearing banks to amend their contracts in accordance with the form proposed in the circular."

BE IT FURTHER RESOLVED that this conference expresses its sympathy with any publicity through the Federal Reserve Board or the Federal reserve banks which will inform member banks, non-member clearing banks and the public as to the legal effect of Regulation J."

This resolution was unanimously adopted by the Conference.

The third topic suggested by the Governors' Conference was as follows:

"Whether or not it would be advisable for the Federal reserve banks to amend their check collection circulars so as to provide that the act of submitting checks to Federal reserve banks for collection will be construed as a warranty that the depositor has lodged with the depositing bank the required agreements."

After discussion of this question, a resolution was offered to the Conference by Mr. Newell as follows:

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"It is the sense of this conference that it is not advisable for the Federal reserve banks to amend their collection circulars so as to provide that the act of submitting checks to Federal reserve banks for collection will be construed as a warranty that the depositor has lodged with the depositing banks appropriate agreements."

This resolution was thereupon unanimously adopted.

The fourth and fifth questions submitted to the Conference of Counsel by the Governors' Conference were then considered together. These questions were as follows:

"Necessity of Federal reserve banks' guaranteeing prior endorsements on non-cash collection items."

"Advisability of Federal reserve banks using words in their endorsements on both checks and non-cash items to limit their liability when guaranteeing prior endorsements."

After a short discussion these topics were referred to a committee consisting of Messrs. Wallace, Agnew and Mason, with the understanding that the committee would confer with Mr. Strater and Mr. Harrison. The committee met and drafted a report and submitted the same to the Conference. The report was as follows:

"The undersigned members of the committee appointed to consider and report upon Questions 4 and 5 submitted by the Governors' Conference, wish to report as follows:

"In many states the courts have held that a forwarding bank endorsing a non-cash item 'for collection' or in similar terms thereby warrants to its correspondent the genuineness of prior endorsements. In other states the courts have held that in such cases the forwarding bank does not warrant the genuineness of prior endorsements unless express words to that effect are added to the endorsement. There is also conflict in the authorities as to whether or not the ordinary endorsement 'Pay to the order of any bank or banker' is to be considered as equivalent to a qualified endorsement or a general endorsement.

"If the Federal reserve banks receive non-cash items without requiring a warranty of prior endorsements stated in express terms, and transmit or collect such items either with or without a warranty of prior endorsements, there is danger that the payer or some person subsequent to the Federal reserve bank may be able

to recover from the Federal reserve bank if any endorsement prior to that of such bank be found after payment to be a forgery, and the Federal reserve bank may be unable to recover from the bank which transmitted the non-cash item to the Federal reserve bank. Thus the loss will fall on the Federal reserve bank, by reason of the fact that the legal effect of an endorsement containing no express words of warranty may be different in the State in which the Federal reserve bank collected the non-cash item and the State in which it would be compelled to assert its remedy against the bank which had transmitted the item to it, and by reason of other possible complications arising under conflict of laws.

"We believe the Federal reserve banks should determine whether or not they desire to warrant the genuineness of prior endorsements upon non-cash items handled by them. The determination of this question is a matter of banking policy and must be decided by considering whether or not the business public can best be served by a rule under which the Federal reserve bank assumes responsibility to the party from which it collects or to which it remits a non-cash item and requires indemnity from the party from which it receives non-cash items. Your committee, however, believes that the policy of requiring a guaranty and guaranteeing prior endorsements is economically sound, and should be adopted as a uniform practice throughout the Federal Reserve System.

"If the Federal reserve banks desire to assume the responsibility for the genuineness of prior endorsements, they should incorporate an express guaranty to that effect in their endorsement stamp and should require the banks from which such items are received to make a similar guaranty for the protection of the Federal reserve banks.

"If the Federal reserve banks do not desire to assume responsibility for the genuineness of prior endorsements they should protect themselves by adding to their collection endorsement express words negating their responsibility for prior endorsements.

"We believe that Questions 4 and 5 are so closely associated that it is easier to answer both of them at the same time and, therefore, in the above report we have endeavored to answer both questions at once.

(Signed) M. G. Wallace
L. R. Mason
A. C. Agnew
Committee"

This report of the committee was accepted by the Conference, and after discussion the report was on motion unanimously adopted as the report of the Conference.

On the morning of December 6, Mr. Awalt representing the Treasury Department appeared before the Conference to discuss the matter of charging back War Savings Stamps found to be counterfeit after they had been credited by the Treasury Department to the Federal Reserve banks from which they had been received and by which they had been cashed as fiscal agents of the Government. The questions considered were whether or not the Treasury Department had a right to charge back such counterfeit War Savings Stamps against the Federal reserve banks from which they were received, and whether and to what extent the Federal reserve banks should assist the Treasury Department in recovering the losses represented by cashing such counterfeit War Savings Stamps. These questions were discussed in some detail with Mr. Awalt and after he had retired, the following resolution was submitted to the Conference by Mr. Newell:

"RESOLVED That it is the opinion of this conference:

"1. That the several Federal reserve banks are under no legal obligation to reimburse the Treasurer of the United States for the amount of counterfeit War Savings Stamps now or hereafter paid by them as fiscal agents of the United States unless said Federal reserve banks have failed to use due care at the time said stamps were paid by them.

"2. That the several Federal reserve banks should not comply with the request of the Treasurer of the United States to credit him with the amount of such stamps now discovered to be counterfeit.

"3. That the several Federal reserve banks which have now or may hereafter pay such counterfeit stamps should cooperate with the Treasurer of the United States in recovering from the persons or banks by whom such stamps were presented to said banks for payment of the amounts thereof, but that such cooperation should not extend to charging to the account of any member or nonmember clearing bank with any Federal reserve bank the amount of any such stamp and no suit should be instituted by any Federal reserve bank (as Fiscal Agent of the United States) to recover back the amount paid on any such stamps.

"4. That as to the amounts for which the several Federal reserve banks have reimbursed postmasters for payments made by them on such counterfeit stamps the several Federal reserve banks, as fiscal agents of the United States

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should make counter-entries in their accounts with the Treasurer of the United States, as requested by him."

This resolution was unanimously adopted.

Topic 1 of the fifth main division of the program was discussed informally in some detail, and it was decided to make a formal recommendation to the Standing Committee on Collections with regard to this matter. This topic reads as follows:

"Incorporation into non-cash collection circulars of warranty by member and non-member clearing banks sending items to Federal reserve banks for deposit or collection that by such action they authorize the Federal reserve banks to handle checks subject to the terms and conditions of Regulation J; warrant that they have authority to give Federal reserve banks such authority; and they agree to indemnify the Federal reserve banks for any loss resulting from the failure of the sending banks to have such authority."

Mr. Mason made the following motion:

"MOVED that we recommend that the Standing Committee on Collections include in its proposed form of non-cash collection circular a provision that each member and non-member clearing bank which sends non-cash items to any Federal reserve bank for collection shall by such action be deemed to have warranted to the Federal reserve bank that it has authority to empower the reserve bank to handle the items in the manner herein provided and to have agreed to indemnify any Federal reserve bank for any loss resulting from the failure of such sending bank to have such authority."

This motion was duly seconded and unanimously adopted by the Conference.

Although all the matters on the program were considered and discussed by the Conference, formal action was taken only in the instances above noted.

The Conference adjourned on December 6th at 4:30 P.M.

(Signed) George B. Vest
Secretary.