

(Confidential)

RECORD OF THE CONFERENCE OF COUNSEL OF FEDERAL RESERVE BANKS
HELD AT WASHINGTON, D. C., ON FEBRUARY 9 AND 10, 1928.

The conference convened on February 9th at 10:00 A.M. in the Board room of the Federal Reserve Board, Treasury Department, Washington, D.C. Those present were:

Mr. A. H. Weed,	Federal Reserve Bank of Boston
K. K. Carrick,	" " " " Boston
L. R. Mason,	" " " " New York
J. S. Sinclair,	" " " " Philadelphia
Sterling B. Newell,	" " " " Cleveland
M. G. Wallace	" " " " Richmond
R. S. Parker,	" " " " Atlanta
C. L. Powell,	" " " " Chicago
J. G. McConkey,	" " " " St. Louis
A. Ueland,	" " " " Minneapolis
Sigurd Ueland,	" " " " Minneapolis
H. G. Leedy,	" " " " Kansas City
E. B. Stroud, Jr.,	" " " " Dallas
A. C. Agnew,	" " " " San Francisco.

Mr. Newton D. Baker was present during the morning session on February 9th.

Mr. Walter Wyatt, Mr. B. M. Wingfield, and Mr. George B. Vest from the Federal Reserve Board.

Governor Young of the Federal Reserve Board addressed the conference briefly upon its opening. Mr. Wyatt was then elected permanent Chairman of the conference and he appointed Mr. Vest as Secretary.

The following is a record of the action taken by the conference on the various matters on the program.

TOPIC NUMBER 1.

What effect will ruling of Supreme Court of Texas that trade acceptances are non-negotiable which bear the legend - "The obligation of the acceptor hereof arises out of the purchase of goods from the drawer, maturity being in conformity with the original terms of purchase"- have upon the negotiability of bankers' acceptances containing similar language, e. g., "This acceptance arises from the domestic storage of cotton and was secured at time of acceptance by documents securing and conveying title to --- bales and will remain so secured throughout the life of this acceptance."

After a discussion of this subject a committee consisting of Messrs. Mason, Weed and Stroud was appointed to consider a report with reference thereto. The committee later submitted its report which, after amendment, was adopted in the following form:

"RESOLVED, That it is the opinion of this conference that the following certificate now appearing on bankers' acceptances, namely -

"This bill was secured at the time of acceptance by independent warehouse, terminal, or other similar receipt conveying security title to (name of readily marketable staple) stored in (country where stored) and the acceptor will remain secured throughout the life of the bill."

may render the instrument non-negotiable, and, therefore, it is recommended that the following words be eliminated from the certificate -

"and the acceptor will remain secured throughout the life of the bill."

"FURTHER RESOLVED, That in the event this elimination is made from the certificate, it is the opinion of this conference that Regulation A, Article B, Section XI, Subsection 3, will be sufficient to give effect to the policy of requiring the acceptor to remain secured throughout the life of the bill. It is recognized, however, that for practical reasons the operating officials may desire to adopt other means to assure the continued security of such bills, in which case it is recommended that the matter be referred to the General Counsel of the Federal Reserve Board to devise further ways and means."

The conference then voted to approve the recommendations of Mr. Wyatt contained in his opinion dated October 7, 1927, with reference to the clauses to be used in bankers acceptances covering domestic shipments and import and export transactions. These recommendations are as follows:

"1. That no change be made in the form of certificate to be used on acceptances covering domestic shipments.

"2. That the form of certificate to be used on acceptances covering import and export transactions be changed to read as follows:

"The transaction which gives rise to this instrument is the (importation) of (name of commodity) (exportation) from (point of shipment) to (place of destination).

Name of Acceptor."

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TOPIC NUMBER 2.

In view of recent decision of Supreme Court of Kansas (Colorado and So. Railway Co. vs. Docking, Receiver of American State Bank, 124 Kansas, 48) , in which it was held that directions contained in cash letters to remit by draft, changed the relationship between the forwarding bank and collecting bank from principal and agent to that of creditor and debtor: What change, if any, should be made in methods of procedure now followed to obtain immediately available remittances for cash letters?

After discussion Mr. Agnew moved that it be the sense of the conference in view of the conflicting statutory requirements, and in view of the conflicting judicial decisions on the question of the status of remittance draft claims, that no uniform or concerted action can be taken on this problem, and it must be left for solution to the Federal reserve banks in their respective jurisdictions.

This motion was adopted by the conference.

TOPICS NUMBERS 3 & 4.

The action of certain member banks in stamping on cashier's checks the phrase "not payable through Federal reserve banks."

The action of member banks in stamping on cashier's checks the phrase "Payable in New York Exchange."

These topics were considered together and after a discussion Mr. Wallace moved that it is the opinion of this conference that the handling of the matters covered in Topics Numbers 3 and 4 by the Federal Reserve Bank of Atlanta, under the advice of Mr. Baker, Mr. Wyatt and Mr. Parker, is entirely proper and that the conference approve of the methods followed.

This motion was adopted by the conference.

TOPIC NUMBER 5.

The par clearance case of the State Bank of Hugo, Minn.

Mr. Baker made a brief statement with reference to this matter and the legal aspects of the case were generally discussed. No formal action was taken.

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TOPIC NUMBER 6.

The individual reports by each Federal reserve bank outlining the procedure followed by each bank in handling cash and non-cash collections. These reports were prepared as a result of a request made at the Spring Conference of Governors to be submitted to Mr. Baker for his review and recommendations.

Mr. Baker stated that the reports referred to had not yet been submitted to him, and accordingly were not available for consideration at this time. No formal action was taken.

TOPIC NUMBER 7.

The right of a Federal reserve bank to charge to the reserve account of an insolvent member bank checks received by the Federal reserve bank for collection and transmitted to the member bank for payment prior to the insolvency. (See Board Letter (X-4976) dated October 1927).

After a full discussion of this topic, upon vote of the conference a committee consisting of Messrs. Agnew, Stroud and Mason was appointed to draft a resolution expressing the views of the conference. The committee later reported, submitting two resolutions. The first of these was as follows:

"RESOLVED, That after thorough discussion and consideration of the subject it is the opinion of this conference that the inclusion by the Federal reserve banks in their check collection circulars of provisions giving to such Federal reserve banks the right to charge cash items to the reserve account or clearing account of banks 'at any time when in any particular case such Federal reserve bank deems it necessary so to do,' is a dangerous policy involving legal complications and that such provisions should be eliminated from the check collection circulars of the Federal reserve banks."

"BE IT FURTHER RESOLVED, That in the opinion of this conference, uniformity among all reserve banks in the method of handling reserve balances in relation to outstanding cash letter obligations is most desirable."

This resolution was adopted by the conference, Mr. Sinclair and Mr. Wallace voting in the negative.

Mr. Sinclair, on behalf of Counsel for the Federal Reserve

Bank of Philadelphia, desired to be recorded as voting in the negative on the foregoing resolution in view of the present collection procedure followed by the Federal Reserve Bank of Philadelphia, and its present check collection circular issued pursuant to Regulation J.

The second resolution proposed by the committee was as follows:

"BE IT RESOLVED, That after careful consideration of the facts involved and the law applicable it is the opinion of this conference that the pursuit by the Federal Reserve Bank of Richmond of the litigation contemplated between that bank and the Receiver of the Farmers and Merchants National Bank of Lake City, South Carolina, is fraught with most dangerous consequences to the entire Federal reserve collection system."

This resolution was adopted by the conference with Mr. Wallace, Mr. Ueland and Mr. Weed voting in the negative, and Mr. Sinclair not voting. Mr. Weed stated that he voted "No" on the ground that the resolution was a direction to the Federal Reserve Bank of Richmond.

TOPIC NUMBER 8.

Liability of Federal reserve banks on Federal reserve exchange draft before such draft is presented and accepted.

This subject was discussed by the conference and views exchanged but no formal action was taken.

TOPIC NUMBER 9.

Terms on which non-cash collections should be handled by Federal reserve banks.

After consideration of this subject the conference voted that a committee be appointed to report on the form of paragraph which the conference should recommend be adopted by the Standing Committee on Collections. Messrs. Newell, Mason, Parker and Stroud were appointed on this committee. The committee submitted its report as follows:

"Your Committee, appointed for the purpose of considering a form of conditions under which Federal reserve banks will receive non-cash items for collection, makes the following report:

"It is the opinion of all members of the Committee that the Federal reserve banks may, if they so desire, by appropriate provisions of their circular letters, secure the right to accept drafts or checks in payment of non-cash items accompanied by documents or other things of value and avoid liability for having accepted something in purported payment which may prove to be non-collectible, provided the Federal reserve bank in accepting the check or other form of payment used due care.

"It is the opinion of three members of the Committee that the Federal reserve banks should not incorporate in their circulars language exempting them from liability where they accept anything other than cash in payment of non-cash items accompanied by documents or other things of value where these non-cash items are collected by the Federal reserve bank or its branches in their own cities. If it be determined as a matter of policy by the Standing Committee on Collections that the Federal reserve banks should not exempt themselves from liability as stated above the Committee is unanimously of the opinion that a statement of conditions substantially in the form set forth below will accomplish the purpose, placing upon the Federal reserve banks the obligation of procuring actual payment for non-cash collection items accompanied by documents or other things of value when presented to the Federal reserve bank or its branch in the city where same is located, and will adequately protect the Federal reserve banks and their branches from liability where presentation of such items is made by or through collecting agents.

"The Committee calls the attention of the conference to the fact that Mr. Strater has not yet completed his study of the provisions in the collection circulars of the several banks and it is quite possible that there may be a necessity for making some additions or amendments to the form of conditions submitted herewith to the conference by reason of newly discovered matters not now considered which may later be brought to light by Mr. Strater's study. Therefore, it is the recommendation of the Committee that the conference approve the statement of conditions submitted herewith, with the understanding that it may be subject to some modifications and additions before the report is made by the Standing Committee on Collections to the next conference of Governors.

"PROPOSED CONDITIONS UNDER WHICH FEDERAL RESERVE BANKS WILL RECEIVE NON-CASH ITEMS FOR COLLECTION.

Every member or non-member clearing bank which send maturing notes and bills or other non-cash items to any Federal reserve bank for

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"collection shall, by such action, be deemed:

- (a) To have agreed to all the terms and conditions of this circular;
- (b) To have warranted to the Federal reserve bank that it has authority to empower the Federal reserve bank to handle such items in the manner hereinafter provided;
- (c) To have agreed to indemnify any Federal reserve bank for any loss resulting from the failure of such sending bank to have such authority;
- (d) To have guaranteed all prior endorsements on such items whether or not a specific guaranty is incorporated in the endorsement of the sending bank;

the said terms and conditions so agreed to being as follows:

- (1) A Federal reserve bank will act only as agent of the bank from which it receives such notes, bills or other non-cash items, and will assume no liability except for its own negligence and its guaranty of prior endorsement;
- (2) A Federal reserve bank may present such items with any accompanying documents for payment or send the same for collection direct to the bank on which they are drawn, at which they are payable, or through which they are payable or collectible; or, in its discretion, may forward them to another agent with authority to make presentation or to send them for collection direct to the bank on which they are drawn, at which they are payable, or through which they are payable or collectible;
- (3) No Federal reserve bank will be responsible for the default, omissions or negligence of any such agent for collection selected by it with reasonable care (the bank upon which any such items may be drawn, or at which the same may be payable, or through which the same are payable or collectible being deemed to be an agent for collection within the meaning of this circular); and any such Federal reserve bank may accept either cash or bank drafts from any such agent

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"in payment of or in remittance for such items and shall not be liable for any loss resulting from such acceptance of bank drafts, nor for the failure of the drawee bank or any agent to remit for such items, nor for the non-payment of any bank draft accepted in payment or in remittance from the drawee bank or any agent."

The report made by the committee on Topic Number 9 was then duly adopted by the conference. In connection with the vote on the report of the committee on this subject Mr. Mason made the following statement:

"The Federal Reserve Bank of New York excepts to the report of the Committee and to the conclusions stated in Mr. Newell's letter of January 31, 1928, addressed to this conference, to this extent: The Federal Reserve Bank of New York holds the view that a Federal reserve bank should seek exemption from liability by contract in cases where by its own agent it presents for payment a non-cash collection item accompanied by securities, bills of lading and other things of value to be delivered upon payment by the person obligated to pay the instrument and receives in purported payment a bank check or draft which later proves worthless."

Mr. Sinclair made the following statement in this connection:

"Mr. Sinclair, on behalf of Counsel for the Federal Reserve Bank of Philadelphia wishes to be recorded as voting in favor generally of the report of the Committee and the resolution with the exception, however, that with respect to the matter covered by the foregoing statement of Mr. Mason he wishes to be recorded as not voting, inasmuch as he is not aware of the actual views of the officers of the Federal Reserve Bank of Philadelphia on the question of relieving itself by contract from liability in the case of presentation of non-cash collection items with documents attached in the city of Philadelphia, and the receipt of anything other than cash in payment thereof."

TOPIC NUMBER 10.

Proposed uniform answer for use in
check collection suits.

After discussion Mr. Powell moved that Mr. Stroud be commended

for his efforts in tendering a draft of a proposed answer which so admirably sets forth the operations of the Federal reserve collection system.

This motion was adopted by the conference.

TOPIC NUMBER 11.

Recommendation by American Bankers Association of uniform bank collection code which it is proposed to have enacted in every State of the Union.

Mr. Stroud moved that within a reasonably short time after the return of Counsel to their homes they write Mr. Wyatt their views with reference to this proposed code, Mr. Wyatt, upon receipt of communications from Counsel of all banks, to name a committee to consider the communications and reconcile and iron them out, and that the committee, as individuals, give such expression as they care to to Mr. Paton.

This motion was adopted by the conference.

TOPIC NUMBER 12.

In determining negotiability of instruments, what should be the attitude of the Federal Reserve Banks where there are no decisions on the question involved in the state under whose laws the instrument must be construed, and there is a conflict in the authorities in other jurisdictions?

This subject was discussed and views exchanged but no action taken.

TOPIC NUMBER 13.

Do State statutes providing for preference against failed banks apply to National Banks?

This subject was discussed and views exchanged but no action taken.

TOPIC NUMBER 14.

Should an effort be made to obtain a decision of the Supreme Court of the United States on the question as to right of preference against failed banks for checks drawn against such banks which are charged to drawees accounts, but proceeds of which are not finally paid over?

This subject was discussed and views exchanged but no action taken.

CONFERENCES OF COUNSEL.

Mr. Stroud offered the following resolution:

"RESOLVED, That conferences of Counsel are very beneficial to the respective attorneys for the various Federal reserve banks and should be held at least once a year. The Federal Reserve Board is respectfully requested to consider favorably a conference of Counsel at least once a year."

This resolution was adopted by the conference.

VOTE OF THANKS.

At the conclusion of the conference Mr. Parker offered the following resolution:

"WHEREAS, the members of this conference feel the same has resulted in much benefit, and

"WHEREAS, we feel that the advantages which have accrued from the conference have been in substantial measure due to the care and industry with which the material has been gathered together by our Chairman, Mr. Wyatt, and much of the pleasure and profit which we have had together has been due to his courtesy and consideration,

"THEREFORE, BE IT RESOLVED, That a hearty vote of thanks be presented and is hereby extended to Mr. Wyatt."

This resolution was adopted by the conference.

The conference adjourned on February 10th, at 5:15 P.M.

(Signed) George B. Vest,
Secretary.