

COPY

X-6212

January 4, 1929.

TO: The Federal Reserve Board.
FROM: Mr. Wyatt - General Counsel.

SUBJECT: Report to Senator Norbeck on
S-4662 for signature of Secretary
of the Treasury.

I respectfully submit herewith a draft of a letter for the signature of the Secretary of the Treasury to Senator Norbeck of the Banking and Currency Committee of the Senate, in response to a request for a report on S-4662, a bill to amend the Federal Reserve Act with respect to venue of civil suits against Federal reserve banks.

This bill is so inartistically and ambiguously drawn that it is impossible clearly to understand its purpose or effect. In view of the fact, however, that it was introduced by Senator Brookhart of Iowa, and in view of the further fact that certain suits were recently brought in the State Courts of Iowa against the Federal Reserve Bank of Chicago and objections to the jurisdiction were made by the Federal Reserve Bank of Chicago both on the ground that the Federal Reserve Bank of Chicago is not doing business in the State of Iowa and on the ground that process was not properly served on the Federal Reserve Bank, I am confident that the intent of this bill is to make it possible to bring suit against, and to obtain service of process upon any Federal reserve bank in any State Court anywhere within the Federal Reserve District served by such Federal reserve bank.

As soon as this bill was introduced I sent copies to Counsel for all the Federal reserve banks and requested an informal expression of their views on the subject. Two or three of them misunderstood the purpose of the bill, but those which understood it strongly opposed its enactment. Their letters, however, are not in suitable form for transmission to Congress; and opposition to this bill by the Secretary of the Treasury and by the Federal Reserve Board would have much more force than opposition by the Federal reserve banks.

For the reasons stated in the attached letter, I feel very strongly that this bill should not be enacted and that both the Board and the Secretary of the Treasury should go on record as opposing its enactment. It is possible, however, that notwithstanding this opposition the Committee will favor the enactment of the bill. To cover this contingency I have incorporated in the attached letter recommendations for certain changes which should be made in the text of the bill and also recommendations for additional provisions restoring to the Federal Courts jurisdiction of suits by and against Federal reserve banks where such suits actually involve the validity or interpretation of any provision of the Federal Reserve Act or the Board's Regulations, and also a provision exempting the Federal reserve banks from the issuance of an attachment, injunction or execution prior to the rendition of final judgment in any case. These amendments would accomplish in part the purpose of similar amendments recommended in the Board's last Annual Report; but this would seem to be a favorable opportunity to recommend the enactment of those amendments as separate bills, and I have drafted the letter accordingly.

The statement with regard to the number of State Judicial Districts in the United States is based upon reports received from Counsel to various Federal reserve banks and is believed to be fairly accurate.

It is necessary that three carbon copies of the attached letter and enclosures be furnished to the Secretary of the Treasury.

Respectfully,

Walter Wyatt,
General Counsel

WW OMC

Enclosures attached

COPY

January 4, 1929.

Honorable Peter Norbeck, Chairman,
Committee on Banking and Currency,
United States Senate,
Washington, D. C.

My dear Mr. Chairman:

In accordance with the request contained in your letter of December 15th, I have conferred with the Federal Reserve Board and take pleasure in submitting the following report on S. 4662, a bill to amend the Federal Reserve Act with respect to venue of civil suits against Federal reserve banks.

It would appear that the general purpose of this bill is to make it possible to bring suit against, and to obtain service of process upon, any Federal reserve bank in any court anywhere within the Federal reserve district in which such Federal reserve bank is located. To this end it provides that each Federal reserve bank shall be deemed to be an inhabitant of each judicial district within the geographical limits of its Federal reserve district and shall appoint an agent upon whom process may be served in each such judicial district. It is not clear, however, whether it is intended to refer to State judicial districts or to Federal judicial districts.

If it is intended to refer to Federal judicial districts it would have little effect; because, as explained on page 48 of the Annual Report of the Federal Reserve Board for the year 1927, since the passage of the Act of February 13, 1926, amending the Judicial

Code, the Federal courts have jurisdiction of very few suits brought against Federal reserve banks. It is assumed, therefore, that this bill is intended to refer to State judicial districts. If so, its constitutionality is doubtful; because it is in substance an attempt to enlarge the jurisdiction of the State courts and it is doubtful whether Congress has any such power.

Assuming, however, that the bill is intended to refer to State judicial districts and assuming that, notwithstanding this fact, it is constitutional, it is nevertheless open to serious objections. It would fail to give recognition to what should be considered to be a principle of law, namely, that a corporation not domiciled in a certain State can only be sued in a jurisdiction within such State in which it voluntarily accepts service or in which it is actually doing business and where service of process is made upon an actual agent or officer. The disregard of such a fundamental principle would not only be unjust to Federal reserve banks but would subject them to serious inconvenience and unnecessary expense.

To require the Federal reserve banks to defend numerous petty suits in local courts scattered throughout their Federal reserve districts would necessitate the attendance of officers and employees of the Federal reserve banks as witnesses and the production of their books and records, and would very seriously interfere with the performance of their important public duties.

From an inquiry as to the number of State judicial districts in each Federal reserve district it appears that this bill would make it necessary for the Federal reserve banks to appoint approximately 1047

agents whose sole purpose would be to receive service of process in suits brought against Federal reserve banks. This alone would be an unnecessary and unjustifiable expense to the Federal reserve banks. In addition thereto it would compel the Federal reserve banks to defend suits in the most remote corners of their Federal reserve districts and to retain local attorneys in such cases in addition to their regular counsel, who now handle practically all of their litigation. Moreover, the rights of the Federal reserve banks in such suits would be prejudiced by local influence and the natural inclination of rural juries to regard Federal reserve banks as enormously wealthy foreign corporations instead of semi-Governmental institutions created solely for the purpose of performing a public service.

For these reasons the Treasury Department and the Federal Reserve Board are strongly opposed to the enactment of this bill or any other bill having a similar purpose.

If, notwithstanding these objections, your Committee should decide to report this bill with a recommendation for favorable action, it is earnestly requested that the bill be amended so as to clarify its provisions and so as to relieve to some extent the distinct disadvantages under which the Federal reserve banks are now laboring, as pointed out on page 48 of the Annual Report of the Federal Reserve Board for the year 1927. A proposed revised draft of the bill incorporating amendments which would be necessary to accomplish these purposes is enclosed herewith, and the more important amendments will be explained briefly.

The changes suggested in the text of the bill are intended

to make it clear that the bill refers to both State and Federal judicial districts and that it is intended to affect the jurisdiction as well as the venue of suits brought by or against Federal reserve banks. To this end, it would make such banks citizens of the States in which their head offices are located and inhabitants of each Federal and State judicial district within the geographical limits of their Federal reserve district, and would provide that they shall be deemed to be doing business in each such judicial district. It is believed that these provisions are necessary to accomplish the original purposes of the bill. As a matter of simple justice, the bill would also be amended so as to apply to suits brought by Federal reserve banks as well as to suits brought against them.

In addition to these amendments, it is suggested that there be added at the end of the bill three provisos which would accomplish in part the purpose of the recommendations contained on pages 48 and 49 of the Annual Report of the Federal Reserve Board for the year 1927.

The first proviso would give the District Courts of the United States jurisdiction of all suits brought by or against any Federal reserve bank which actually involve the validity or construction of any provision of the Federal Reserve Act, any amendment thereto, or any regulation prescribed pursuant thereto by the Federal Reserve Board. This is clearly in accordance with the policy of the Constitution to have the validity and interpretation of Federal statutes passed upon by Federal rather than State courts. Adherence to this policy is especially important with respect to the Federal Reserve Act, because of the technical nature of its provisions and the technical nature of the subjects with which it deals and also because

of the unfortunate fact that the nature, functions and purposes of the Federal Reserve System are not generally understood by either the State judges or the lawyers practicing in the State courts.

The second proviso would make it possible to remove from the State courts to the United States District Courts suits of the character of those described in the first proviso, in accordance with the provisions of the Judicial Code providing for the removal of suits brought in the State courts of which the United States District Courts would have original jurisdiction.

The third proviso would exempt the Federal reserve banks from attachment, injunction or execution before final judgment in any case, as national banks are now exempted under the provisions of section 5242 of the Revised Statutes. Such an exemption is clearly warranted by the unquestioned credit standing of the Federal reserve banks and their financial ability to pay any judgment which may be rendered against them; and such an exemption is necessary in order to prevent the Federal reserve banks from being hampered in the performance of their public duties through the issuance of attachments, injunctions or executions before final judgment on the merits of any litigation in which they may be involved.

As stated above, both the Federal Reserve Board and the Treasury Department are strongly opposed to the enactment of Senate Bill 4632 or any other bill having the effect which this bill in its present form apparently is intended to have. Both the Board and the Treasury Department, however, are in favor of the enactment of bills exempting Federal reserve banks from attachment, injunction or execution before final judgment in any suit, action or proceeding and restoring to the Federal courts jurisdiction over

suits brought by and against Federal reserve banks. Separate bills covering these subjects are, therefore, enclosed; and it is requested that your Committee give them favorable consideration.

Very truly yours,

Secretary of the Treasury.

Enclosures.

(Revised Draft of
S-4662.)

A BILL

To amend the Federal Reserve Act, as amended, with respect to venue
of civil suits against Federal reserve banks.

Be it enacted by the Senate and House of Representatives
of the United States of America in Congress assembled, That the
fourth subdivision of the fourth paragraph of section 4 of the Fed-
eral Reserve Act, as amended, is amended by adding at the end there-
of the following: "For the purposes of JURISDICTION AND venue of civil
suits BY AND against Federal reserve banks, each Federal reserve bank
shall be deemed to be a A CITIZEN OF THE STATE IN WHICH ITS HEAD OFFICE
IS LOCATED AND an inhabitant of, AND TO BE DOING BUSINESS IN, each
FEDERAL AND STATE judicial district within the geographical limits of
the Federal reserve district in which such bank is located. The board
of directors of each such bank shall appoint, in each such judicial
district, an agent upon whom process may be served. PROVIDED, HOWEVER,
THAT THE DISTRICT COURTS OF THE UNITED STATES SHALL HAVE JURISDICTION
OF ALL SUITS OF A CIVIL NATURE AT LAW OR IN EQUITY, BROUGHT BY OR
AGAINST ANY FEDERAL RESERVE BANK WHICH ACTUALLY INVOLVE THE VALIDITY
OR CONSTRUCTION OF ANY PROVISION OF THE FEDERAL RESERVE ACT, ANY AMEND-
MENT THERETO, OR ANY REGULATION PRESCRIBED PURSUANT THERETO BY THE
FEDERAL RESERVE BOARD, REGARDLESS OF WHETHER SUCH QUESTION ARISES FROM
THE PLEADINGS OF THE PLAINTIFF OR FROM DEFENSES INTERPOSED IN GOOD FAITH
BY THE DEFENDANT; PROVIDED, FURTHER, THAT ANY SUCH SUIT INSTITUTED IN
A STATE COURT MAY BE REMOVED BY THE DEFENDANT OR DEFENDANTS INTO THE

DISTRICT COURT OF THE UNITED STATES FOR THE PROPER DISTRICT, AS PROVIDED IN CHAPTER 3 OF THE JUDICIAL CODE (UNITED STATES CODE, TITLE 28, CHAPTER 3); AND PROVIDED FURTHER, THAT NO ATTACHMENT, INJUNCTION, OR EXECUTION SHALL BE ISSUED AGAINST ANY FEDERAL RESERVE BANK OR THE PROPERTY OF ANY FEDERAL RESERVE BANK BEFORE FINAL JUDGMENT IN ANY SUIT, ACTION, OR PROCEEDING IN ANY STATE, COUNTY, MUNICIPAL, OR UNITED STATES COURT."

COPY

X-6212-c

A BILL

To amend section 4 of the Federal Reserve Act and for other purposes.

BE IT ENACTED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN CONGRESS ASSEMBLED, That the Fourth subdivision of the fourth paragraph of section 4 of the Federal Reserve Act (the fourth subdivision of Section 341, Chap. 3, Title 12, of the United States Code) be amended to read as follows:

"Fourth. To sue and be sued, complain and defend, in any court of law or equity; but no attachment, injunction or execution, shall be issued against such bank or its property before final judgment in any suit, action or proceeding in any State, county, municipal or United States court."

COPY

X-6212-d

A BILL

To amend section 12 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit courts of appeals and of the Supreme Court, and for other purposes," approved February 13, 1925, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 12 of the Act entitled "An Act to amend the Judicial Code, and to further define the jurisdiction of the circuit courts of appeals and of the Supreme Court, and for other purposes," approved February 13, 1925, Section 42 of Title 28 of United States Code, be amended and reenacted to read as follows:

"Sec. 12. That no district court shall have jurisdiction of any action or suit by or against any corporation upon the ground that it was incorporated by or under an Act of Congress: Provided, That this section shall not apply to any suit, action, or proceeding brought by or against a Federal Land Bank, Joint Stock Land Bank, Federal reserve bank or any corporation incorporated by or under an Act of Congress wherein the Government of the United States is the owner of more than one-half of its capital stock."

COPY

X-6212-e

December 19, 1928.

MEMORANDUM FOR THE FILES:

Subject: Mr. Weed's views on S. 4662.

Mr. Weed, Counsel to the Federal Reserve Bank of Boston, just called me on the telephone and advised me that he is opposed to the enactment of S. 4662 on the ground that it will result in unnecessary and unjustifiable inconvenience and hardship on the Federal reserve banks.

(S) Walter Wyatt.

WW-sad

COPY

X-6212-f

FEDERAL RESERVE BANK
OF NEW YORK

December 12, 1928.

Walter Wyatt, Esq., General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Walter:

I enclose a copy of the digest I prepared referring to S. 4662, copy of which you sent me with your letter of December 8. You will recall that I showed this digest to you when we were discussing the bill in my office yesterday.

Yours faithfully,

(S)

Walter S. Logan,
General Counsel.

Encl.

FEDERAL RESERVE BANK
OF NEW YORK

OFFICE CORRESPONDENCE

DATE: December 11, 1928.

TO: _____

SUBJECT: FEDERAL LEGISLATION - PENDINGFROM: Legal Department(Digest No. 1 - 70th Cong., 2nd session)

The following bill which is of interest to Federal Reserve Banks

has been introduced:

Senate 4662, introduced by Mr. Brookhart, December 5, to amend Section 4 of the Federal Reserve Act by adding the following provision at the end of the fourth subdivision of the fourth paragraph thereof:

"For the purposes of venue of civil suits against Federal reserve banks, each Federal reserve bank shall be deemed to be an inhabitant of each judicial district within the geographical limits of the Federal reserve district in which such bank is located. The board of directors of each such bank shall appoint, in each such judicial district, an agent upon whom process may be served."

At the present time the United States District Courts have no jurisdiction over suits by or against Federal Reserve Banks except in cases in which the construction of a Federal statute or of the United States Constitution is involved. Jurisdiction of United States courts over suits against Federal Reserve Banks cannot be maintained on the ground of Federal incorporation or on the ground of diversity of citizenship. Presumably, the purpose of the bill is to permit suits to be brought against Federal Reserve Banks in the Federal Courts on the ground of diversity of citizenship. The scope of the bill, however, is not clear. For example, under the terms of the bill this bank would be a citizen of New York, New Jersey, and Connecticut and it is not clear whether a Federal court of New York would have jurisdiction over a suit brought against this bank by a citizen of New Jersey. Moreover, the bill relates to suits "against" Federal Reserve Banks and does not appear to give the Federal Reserve Banks any additional rights with respect to suits brought by them.

The following bills have also been introduced.

S. 4602, introduced by Mr. McNary, December 5.

H. R. 14940, introduced by Mr. Cannon, December 6.

Both are entitled "A bill to establish a Federal Farm Board to aid in the orderly marketing and in the control and disposition of the surplus of agricultural commodities in interstate and foreign commerce."

WILLIAMS AND SINKLER
Attorneys at Law
601 Commercial Trust Building
Philadelphia.

December 21, 1928

Walter Wyatt, Esq., General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

We are writing concerning Senate Bill No. 4662 entitled "A Bill to amend the Federal Reserve Act as amended, with respect to venue of civil suits against Federal reserve banks".

It is our view that any legislation intended to determine definitely the jurisdictions within which suits may be brought against Federal reserve banks in the Federal courts should be limited to such provisions as would make Federal reserve banks subject to suit only in those Federal judicial districts within which are located their principal offices or branches. The Bill if adopted in its present form would go much further and make each Federal reserve bank subject to suit in each judicial district within the geographical limits of its reserve district regardless of the fact that such bank might not be conducting its business or operations in such judicial district and that also neither its principal offices or branch might be located therein. It also fails to give recognition to what should be considered to be a principle of law, namely, that a corporation not domiciled in any state can only be sued in a jurisdiction within such state in which it voluntarily accepts service or in which it is actually doing business and service of process is made on its agent or officer.

We do not believe that the disregard of such a fundamental principle would be warranted in view of the fact that little substantial advantage would result to those persons bringing suits against Federal reserve banks inasmuch as the Bill should probably be construed not to apply to suits brought in State courts, where the great majority of suits against Federal reserve banks are commenced.

More constructive results could possibly be accomplished if the reserve banks were made subject to suit only in the judicial district in which their principal offices or branches are located, and were permitted at their discretion in the proper jurisdictional instances to remove suits brought in State courts to the Federal courts on the sole ground of their Federal incorporation. This is in accord with one of the suggestions contained in your memorandum to the Federal Reserve Board under date of March 9, 1926.

Our view must necessarily be based on theory, inasmuch, as in many other instances, the absence of litigation in this district has not given us the benefit of actual experience in such matters. We should, of course, be influenced by the views of counsel for the other banks whose districts cover much wider territory than the third district and whose experiences in actual litigation have brought home to them more emphatically the problems involved.

Apart, however, from being opposed to the principle upon which the Bill is based, we believe that its adoption would not only result in great confusion without any substantial advantage to any one class of litigants, but would require judicial construction at the outset.

The Act would seem to disregard the fact that all Federal judicial districts are not wholly included within the geographical limits of any particular Federal reserve district - For instance, Pennsylvania is divided into three Federal judicial districts, the eastern, middle and western districts.

Twenty-five counties comprise the western district, of which six are included within the Philadelphia district and nineteen in the Cleveland district. The offices of the Clerks of the Courts in this district are located in Pittsburgh and Erie, neither of which cities lies within the Philadelphia district. A question might possibly arise as to whether or not a Federal reserve bank would be considered an inhabitant of a judicial district, part of which only lies within the reserve district, or whether the entire judicial district must be within the geographical limits of the reserve district. Furthermore, if the western district could be said to be in the Philadelphia district for the purpose of litigation, then the Philadelphia Bank might possibly have to defend a suit at Pittsburgh or Erie, both of which would, of course, be out of its district. A similar situation might arise in New Jersey, which constitutes only one Federal judicial district but part of which lies within the New York district and part in the Philadelphia district.

The direction in the Act that the Board of Directors of each bank shall appoint in each judicial district an agent upon whom process may be served would in our opinion be inadequate and of little value, in the absence of further provisions specifying the manner in which notice of such appointments shall be given to the public and some limitation on the places of residence of the agent appointed for accepting service of process in any particular district. As you know, the State Acts with respect to service of process on foreign corporations are always quite explicit in these respects and require the appointment of either the Secretary of State or some other public official as agent for the acceptance of service of process.

In this district we have always considered that the Philadelphia Bank is conducting business only within that jurisdiction either State or Federal,

in which its principal office is located and where all of its operations are carried on, but, of course, there has been no legislation for the purpose of determining this point.

We appreciate the difficulties with which you are faced in opposing such legislation as the proposed Bill, but feel decidedly that it should not be adopted in its present form. If we can be of any help to you in this respect we shall be glad to do so upon your request.

Very truly yours,

(S) Williams and Sinkler.

EMS.

SQUIRE, SANDERS & DEMPSEY
COUNSELLORS AT LAW
THE UNION TRUST BUILDING
CLEVELAND

December 22, 1928.

Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Sir:

We acknowledge receipt of your letter of December 8, enclosing copy of Senate Bill No. 4662, introduced by Mr. Brookhart of Iowa.

We believe that this is objectionable legislation, as it will place each Federal Reserve Bank in the position of being subject to the annoyance of litigation throughout its district, and will, we believe, encourage the filing of suits on small claims. It will furthermore restrict the Federal Reserve Banks in exercising the right of removing cases to the Federal courts, except in cases involving a construction of the Federal Constitution or Federal laws. Such legislation will also subject the Federal Reserve Banks to attachment or injunction before judgment or final hearing.

We feel that, if passed, the proposed bill should at least contain an amendment exempting Federal Reserve Banks from attachment or from injunction, except after judgment or final hearing.

Yours very truly,

(S) Squire, Sanders & Dempsey.

SN:D

FEDERAL RESERVE BANK
OF RICHMOND

December 13, 1928.

Mr. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

Mr. Wallace has turned over to me his reply to your letter of December 8 asking for the expression of views upon the bill of Senator Brookhart to amend the Federal Reserve Act with respect to venue of civil suits against Federal reserve banks, and I am sending his reply to you herewith.

My own opinion is that Senator Brookhart's bill is too broad and would be likely to subject us to expensive and vexatious suits in the different parts of the district for trifling sums in cases which might involve a principle of operation. I do not think this should be the case, but am inclined to think that it would be better if Federal reserve banks were regarded as being present only in those parts of the district at which the main office or branches are located.

Very truly yours,

(S) GEO. J. SEAY,
Governor.

GJS-CCP

1 Encl.

FEDERAL RESERVE BANK OF RICHMOND

DATE December 12,, 1928TO Mr. George J. Seay, Governor.SUBJECT Senate Bill S-4662 with
respect to Venue of Civil
Suits against Federal Reserve Banks.FROM M. G. Wallace, Counsel.

My dear Mr. Seay:

I hand you herewith a letter from Mr. Walter Wyatt, General Counsel of the Federal Reserve Board, to myself, enclosing a copy of the above mentioned bill, which was introduced in Congress by Senator Brookhart, of Iowa.

You will see that the object of this bill is to amend Section 4 of the Federal Reserve Act by providing that the several Federal Reserve banks shall be deemed to be inhabitants of each judicial district in their respective Federal Reserve districts, and that the Board of Directors of each bank shall appoint a person in each such judicial district upon whom process may be served.

Under the present law it is by no means clear whether or not a Federal Reserve bank should be regarded as present in every part of its Federal Reserve district, and therefore subject to civil suits in each state of its district, or whether the bank should be regarded as present only in the state in which it has a main office or branch. The question has arisen several times in our experience. Upon two such occasions the lower courts decided that we were present and doing business in North Carolina before we had a branch in that state, but in both of the suits which I mentioned it was never necessary to carry the case to an appellate court as the suit was decided in our favor upon other grounds. In a third case in North Carolina the same question was raised, but that case is still pending.

From the standpoint of a lawyer, therefore, I can say only that at present the law is uncertain and that an amendment which would remove that uncertainty would be desirable. I cannot, however, see why the proposed bill should require an agent for the service of process in each judicial district. I think that this means Federal judicial districts. In this Federal Reserve district the judicial districts are as follows: One in Maryland, two in Virginia, two in West Virginia, three in North Carolina, and two in South Carolina. The District of Columbia is not, strictly speaking, a Federal judicial district, but I imagine that within the contemplation of this Act it would be classified as a judicial district.

I can see no reason for the requirement of a separate agent in each judicial district because the Federal courts have no jurisdiction of suits by and against Federal Reserve banks unless some question of Federal law is involved in that suit other than the mere fact that the bank is

-2-

incorporated under Federal law. It therefore seems to me that if Congress desires to declare that the banks shall be regarded as inhabitants of their entire Federal Reserve district, the most reasonable requirements would be the appointment of an agent in each state of the district upon whom process could be served in any suit brought in the courts of that state.

Whether or not it would be advisable to declare the Federal Reserve banks liable to service of process in all parts of their district or restrict service of process to those states in which the banks have established offices is of course a matter of public policy. There are certain advantages and disadvantages, however, in either case.

If we are deemed an inhabitant in each state in our Federal Reserve district, we may be vexed with suits in remote and inaccessible places; but, upon the other hand, we would be entitled to the benefit of statutes of limitation and similar statutes which apply only to resident defendants. Upon the other hand, if we are resident and doing business only in those states in which we have established offices, we will be relieved in many cases of suits in inaccessible points in our Federal Reserve district; but we will be subject to attachment as non-resident in those states in which we are not doing business, and when money or property is attached as that of a non-resident, such non-residents are not usually entitled to statutes of limitation; and, also, if we cannot be sued in states in which we have no offices, persons who have, or think they have, small claims against us will be compelled to abandon them rather than to litigate them. This might at first appear of some benefit to us, but the feeling of irritation which would follow from such a condition might well outweigh the annoyance which we would suffer if we were sometimes sued in remote or inaccessible points.

Very truly yours,

(S) M. G. Wallace,
Counsel.

MGW:L

FEDERAL RESERVE BANK
OF ATLANTA

December 18, 1928.

Mr. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

We have your letter of December 8, enclosing for our information a copy of Senate Bill 4662, introduced by Senator Brookhart "To amend the Federal Reserve Act, as amended, with respect to venue of civil suits against Federal reserve banks."

We do not believe that this legislation should be enacted. It might be advisable to so amend the Act as to provide that, for the purposes of venue of civil suits against Federal reserve banks, each Federal reserve bank should be deemed to be an inhabitant of the judicial district within the geographical limits of which its main office is located, and we would see no particular objection to a bill providing that it should also be deemed to be an inhabitant of each judicial district within the geographical limits of which might be located a branch. Legislation to this effect might place Federal reserve banks in the category, for jurisdictional purposes, with national banks. There would seem to be no reason, however, for making a Federal reserve bank suable anywhere within the geographical limits of its Federal Reserve District.

Such legislation would be discriminatory, unfair and uncalled for as we see it.

Very truly yours,

RANDOLPH & PARKER,

By (S)
Robt. S. Parker.

RSP/w.

FEDERAL RESERVE BANK OF CHICAGO

CHICAGO December 12, 1928.

MR. WALTER WYATT, General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

I received your letter of 8th inst. enclosing copy of Senate File 4662 which is a Bill to amend the Federal Reserve Act with respect to venue of civil suits against Federal Reserve Banks. In your letter you ask me to give you my views on the Bill at an early date.

I am of the view that the enactment of this Bill into law would seriously embarrass the operations of Federal Reserve Banks. It is a well known fact that prejudice exists in the minds of a great many poorly informed people against Federal Reserve Banks and their operations; and if these people who have pretended grievances against the Banks were enabled to institute suit in any court within the Reserve District, great numbers of such suits are bound to be brought, many without foundation, which will have to be unjustly settled or defended against at ruinous expense.

I am decidedly of the view that the enactment of such legislation would be a grave mistake and would in the long run very seriously affect the operation of Federal Reserve Banks; would especially embarrass them in the performance of their clearing house functions and would place upon them a useless, needless and expensive burden.

In this connection, if there is to be legislation affecting the jurisdiction of courts over Federal Reserve Banks, I should like to see the Judiciary Act amended so as to restore to Federal Courts jurisdiction of suits by and against Federal Reserve Banks on account of their Federal incorporation; and if this latter cannot be done, at least I would like to see legislation to the effect that the several Federal Reserve Banks for jurisdictional purposes may, like national banks, be considered residents of the state in which their principal office is located.

And while we are on this subject, I suggest further that Federal Reserve Banks, like national banks ought to be free from attachment prior to final judgment.

With regards, I am

Yours very truly,

(S) CHAS. L. POWELL,
Counsel.

FEDERAL RESERVE BANK

of

ST. LOUIS

December 11, 1928.

Mr. Walter Wyatt,
General Counsel,
Federal Reserve Board,
Washington, D. C.

My dear Mr. Wyatt:

I have your letter of 12/8/28 and copy of Senate Bill S-4662 accompanying it.

As you would naturally infer, as Counsel for one of the Federal Reserve Banks I hope the Bill referred to will not be favorably reported out of the Committee on Banking; for, if reported out, it would be popular with the country lawyer and the country banker whose influence as vote getters might have considerable influence on the votes of the Legislators when the Bill comes up for passage.

The Bill, if passed, would add greatly to the expense of the Federal Reserve Banks in that we could not afford (when we have a Jury case) to go into the District of the Plaintiff and defend a suit without the employment of local Counsel; and, even in equity cases or jury cases tried before the Court, it would be nearly imperative to have some local Attorney to look after the filing of pleadings and to attend to informal motions and the setting of the case.

If the bill becomes a law, we would have to defend in the atmosphere of Court and Jury both, in most cases, favorable to plaintiff, our Circuit Court Judges being elected by the voters of the particular district.

I further fear that the enactment of the bill would encourage the bringing of a great many suits of doubtful merit for the purpose of forcing a payment in compromise rather than to be put to the expense of defending a suit at a distant point having in mind the gamble against us in having to defend before a Jury friendly to the local plaintiff.

Having in mind that if this bill becomes a law, there will be one introduced (if it has not already been introduced) affecting the Federal Land Banks in the same way, I, therefore, called in the Counsel for the Federal Land Bank, and, without disclosing to him that you had sent the bill to me, asked for his opinion as to how it would affect the legal department in the Land Banks - who have even more litigation that would be affected by a similar bill than do the Federal Reserve Banks. He was very much interested in the Bill, and, suggested that he was personally acquainted with Senators Robinson and Carraway, and, that if either of them were on the Banking Committee, he would be very glad to do what he could towards seeing that the Bill was not reported out.

I am fairly close to Senator Hawes of this District, and, if he is on the Banking Committee, I would not hesitate to go to him with a view of attempting to have the bill not reported out of the Committee. However, neither Counsel for the Land Bank nor I will take any steps towards seeing these gentlemen until I have heard from you.

Our troubles in Missouri are already sufficient under a State statute which permits substituted service by filing the suit in the District of the Plaintiff, suing out summons, and, directing the local sheriff to forward the summons to the sheriff of the District where the defendant resides, and, service by the latter sheriff, in cases where the cause of action arises in the District of the Plaintiff. Fortunately not many cases come within the requirements of this statute.

Thanking you for furnishing me the Bill, I am

Very truly yours,

(S) Jas. G. McConkey,
Counsel.

COPY

X-6212-m

FEDERAL RESERVE BANK
OF MINNEAPOLIS

December 10, 1928.

Mr. Walter Wyatt
Counsel Federal Reserve Board
Washington D. C.

Dear Sir:

I have your letter of the 8th with copy of S.4662, introduced by Senator Brookhart.

It is not clear whether the words "judicial district" in the bill refer to Federal judicial districts, of which there are 7 within the limits of Ninth District, or to State judicial districts of which there are 75. Inasmuch as the district courts of the United States since the Act of Feb. 13, 1925, have not jurisdiction of civil suits by or against Federal reserve banks except when the United States or an agent thereof is plaintiff or when the matter in controversy arises under the Constitution or laws or treaties of the United States, I think the words "judicial districts" must be construed to mean State judicial districts.

From my experience as counsel for this bank the past 14 years my opinion is that nothing could be more vexatious to the Federal reserve banks than this proposed amendment to the Federal Reserve Act. This bank would have to keep agents in 75 judicial districts, and suit might be started against it in any of the districts, and would have to be tried where started regardless of convenience or expense with respect to witnesses or the records of the bank as

evidence. A suit involving transactions on the Northern Peninsula of Michigan could be started in the remotest judicial district of Montana, and vice versa. It would have to be for quite a large sum if the expense of defending should not exceed the sum sued for. Up to the present time I and my assistant at the Helena Branch have handled practically all litigation, but if this bill were passed we should not only have to travel over a wide territory but also have to employ local attorneys.

I can think of nothing more conducive to vexatious litigation or tending more to diminish the Government's share in the net earnings of the Federal reserve banks than the proposed amendment.

Yours very truly

(S) A. Ueland,
Counsel.

FEDERAL RESERVE BANK
of
KANSAS CITY

January 5, 1929.

Hon. Walter Wyatt, General Counsel,
Federal Reserve Board,
Washington, D.C.

Dear Mr. Wyatt:

This will confirm my recent telegram to you concerning Senate Bill S-4662, which has been introduced by Senator Brookhart, and which has as its purpose the amendment of the Federal Reserve Act "with respect to venue of civil suits against Federal reserve banks". As stated to you in my telegram, I see no good purpose to be served by this bill, but on the contrary I consider that it would be harmful to the Reserve banks.

As I read the bill, it would not change the present status of the Federal reserve banks with respect to their right to sue or be sued in the district courts of the United States. The right to sue or be sued in such courts is, at all events, a question of jurisdiction. The proposed amendment does not appear to affect jurisdiction, but by its express terms relates solely to the venue of actions. In all cases that might now be brought in the United States district courts against the Reserve banks, the amendment would very effectively fix the venue of such actions, but to my mind, it could not serve the purpose of creating a jurisdiction where the same does not already exist.

It is also significant that the place of habitation is fixed as being in the judicial districts rather than in the states which are embraced in the territory of the respective Reserve banks. I believe it is not necessary to consider here whether an inhabitant of a judicial district is also an inhabitant of the state in which such district is located, but unless such is the case, no diversity of citizenship could ever arise under the terms of the amendment which could give jurisdiction to the United States district courts, for as you well know, the requirement of jurisdiction on the ground of diversity of citizenship is that the parties be citizens of different states.

I am further influenced in these views by reason of the following:

FIRST. The amendment is to the Federal Reserve Act rather than to the Judicial Code. If it were the intention to make the Federal reserve banks inhabitants of the several states in their respective districts for jurisdictional purposes, the natural way to have accomplished that result would have been an amendment to the Judicial Code, by a provision similar to that which now relates to national banks.

SECOND. The word "inhabitant" is used rather than "citizen". The provisions of the Judicial Code which relate to matters affecting jurisdiction use the word "citizen", and those which relate to the question of venue use the word "inhabitant".

THIRD. There is no right conferred on the Reserve banks as inhabitants of the judicial districts to bring any action in any of such districts, but they are made inhabitants only for the purpose of actions which may be brought against them.

If I am not correct in my conclusion that the amendment would not change the status of the Federal reserve banks so far as their right to sue or be sued in the United States district courts is concerned, I still feel that the amendment is not a proper one. It would permit the Reserve banks to be sued in United States courts only in those instances where the party bringing suit is an inhabitant of some state other than the states embraced in whole or in part in the Federal reserve district of the bank involved. Actions of that kind would, of course, be rare, and the benefit, therefore, from the amendment, would be practically nothing.

I realize, of course, that you have analyzed the effect of this proposal more closely than I have been able to do, but unless I have overlooked something in it, I see nothing which I feel could be approved by the friends of the System.

Yours very truly,

(S) H. G. Leedy.

HGL:CR

Law Office of
LOCKE, LOCKE, STROUD AND RANDOLPH,
American Exchange Building,
Dallas, Texas.

December 17, 1928.

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Gentlemen:

We acknowledge receipt of your letter of December 8, 1928, enclosing copy of Senate Bill 4662, the same being a bill introduced by Senator Brookhart, providing, in substance, that the federal reserve banks shall be deemed inhabitants of each judicial district within the geographical limits of the federal reserve district in which such bank is located.

In some respects this bill appears to us satisfactory, that is to say, we have no objection to a federal reserve bank being deemed an inhabitant of the federal reserve district in which it is located, nor do we have any objection to a federal reserve bank designating an agent in each portion of its district upon which service might be had, provided the bill should go further than it now does and provide that federal courts be given jurisdiction of all suits involving federal reserve banks.

It seems to us that the introduction of this bill gives good opportunity for the federal reserve banks to raise the last mentioned question.

We notice that the bill has been referred to the Banking & Currency Committee and we are wondering whether or not the matter could not be called to the attention of Senator Glass and perhaps worked out so as to renew the jurisdiction of federal courts. We do not feel that the law should permit federal reserve banks to be sued in state courts located anywhere within the federal reserve district for many reasons with which you are familiar.

Our Mr. Stroud has several matters in Washington which are in need of attention and he is at present planning to make a trip to Washington sometime in January. If he can be of any assistance to you in connection with this matter, please advise.

Yours very truly,

EBS:lm

(S) Locke, Locke, Stroud
& Randolph.

FEDERAL RESERVE BANK
OF SAN FRANCISCO

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December 18, 1928.

Walter Wyatt, Esq.,
General Counsel,
Federal Reserve Board,
Washington, D. C.

Dear Mr. Wyatt:

This is in reply to your letter of December 8, 1928 in which you enclose a copy of Senate Bill No. 4662 introduced by Senator Brookhart and relating to venue in civil suits against Federal reserve banks.

I am frank to say that I am somewhat at a loss to know what the intent of the Bill is; that is, whether it is intended to affect jurisdiction in suits brought against Federal reserve banks in state courts, or whether it is intended to affect Federal jurisdiction. If the latter is the intention, I cannot see that the measure will be effective for the purpose for which it is intended.

By the provisions of Section 42 of the Judicial Code, Federal courts are deprived of jurisdiction in actions or suits by or against any corporation where jurisdiction is predicated upon the ground that the corporation was organized under an act of Congress. This section undoubtedly deprives the Federal courts of jurisdiction in suits by or against Federal reserve banks where such jurisdiction is predicated upon Federal incorporation and not upon the theory that the action involves an interpretation of the constitution or laws of the United States.

FEDERAL LAND BANK vs. UNITED STATES NATIONAL
BANK, 13 Fed. (2nd Ed.) 38.

This being the case, Senator Brookhart's Bill would not in my opinion change the situation or confer jurisdiction upon Federal courts where it does not now exist.

If, on the other hand, the Bill is intended to subject Federal reserve banks to the jurisdiction of all state courts within the respective Federal reserve districts, I consider the Bill an unfair measure and one which should not be enacted into the law. The purpose of the proposed legislation is doubtless to avoid the effect of such decisions as that rendered in the case of BACON vs. FEDERAL RESERVE BANK, 289 Fed. 513.

The effect of the proposed legislation would be to subject a Federal reserve bank to suit in any state court within the geographical limits of the district within which the bank is located; whether or not it was judicially held that the bank was "doing business" within the state under the terms of the state statute. In a district the size of ours, comprising approximately 20% of the area of the continental United States, the proposed legislation, conferring jurisdiction or fixing venue at any judicial district within the area, would result in great hardship to this bank.

We have five branches, located at Seattle and Spokane, Washington; Portland, Oregon; Salt Lake City, Utah; and Los Angeles, California. The distance from Seattle to our head office is 956 miles; from Salt Lake City to our head office 818 miles; from Spokane to this office 1149 miles. This district is approximately 1600 miles in length and approximately 1000 miles in width. I have no doubt that we are subject to suit within the judicial district where these branches are located, but legislation which would subject us to the inconvenience and expense of responding to a suit brought in Arizona or Nevada in which we have no branches and with which our business is transacted entirely by mail, would certainly be inequitable and unfair.

The proposed legislation would moreover involve the appointing in each judicial district of each state, an agent upon whom process might be served. In many of the judicial districts embraced within our area we have no local agent and would be forced to appoint for this purpose an officer of some member bank. In cases such as these, the agent not being familiar with our transactions or practices, would be at a serious disadvantage and might very easily so conduct himself as to jeopardize the best interests of the Federal reserve bank.

Federal reserve banks are already suffering under several serious legal disabilities with which you are familiar and of which I strongly feel they should be relieved. I can see no need for the addition of the burden proposed by Senator Brookhart and believe that every effort should be made to defeat the Bill.

Very truly yours,

(S) A. C. Agnew,
Counsel.

ACA/SW