COPY TELEGRAM X-6966

FEDERAL RESERVE SYSTEM

52bs

Boston Sept 9 1215P

Walter Wyatt

General Counsel Washington

Referring to case of Hirning v. Federal Reserve Bank of Minneapolis think it presents unusual facts and does not necessarily incolve any legal point of importance to system as whole believe therefore that Ueland should use his own judgment as to petitioning Supreme Court for certiorari but do not think it necessary to employ system counsel

Weed

1128A

COPY TELEGRAM X-6966-a

FEDERAL RESERVE SYSTEM

116dea

Cleveland 1250p sep 9

Wyatt

Washn

Your wire september 8 after considering opinion of circuit court of appeals in hirning case but before reading Uelande's proposed petition we feel filing petition in supreme court in-advisable and if same is filed that system counsel should not participate in case in supreme court of UnitedStates.

Sterling Newell

1253p

COPY TELEGRAM X-6966-b

FEDERAL RESERVE SYSTEM

70rhu

Richmond 345p sept 9

Wyatt

Washington

Your telegram September ninth approve petition to Supreme Court Of United States for certiorari in Hirning against Federal Reserve Bank Of Minneapolis stop Think importance of case would justify employment of system counsel but somewhat doubtful as to whether system counsel would materially increase chance of success.

Wallace

352p

COPY TELEGRAM X-6966-c

FEDERAL RESERVE SYSTEM

55fy

Atlanta 1114a Sept 10

Wyatt

Washington

Referring Hirning against Reserve Bank my personal opinion is that court would not grant petition for certiorari and that even if case were reviewed neither minneapolis bank nor system as a whole would be benefited Stop Under facts of case there was in my opinion a void transfer of assets rendering Reserve Bank liable although certain portions of court's reasoning might be subject to criticism Stop In view of change in regulation J any subsequent case would necessarily differ from decided case in certain essential facts but am afraid supreme court in deciding case might lay down broad principles which would hereafter embarrass reserve banks in routine collection transactions with banks known to be weak Stop Personally I see no reason for retaining special counsel but if Judge Ueland desires counsel and you think advisable Atlanta bank will cooperate with other banks Stop Above are my personal views although I hesitate to suggest that Minneapolis bank refrain from taking further steps which might save possible monetary loss

Parker

1225pm

COPY TELEGRAM X-6966-d

FEDERAL RESERVE SYSTEM

190gmr

Chicago Sept 11 237p

Wyatt

General Counsel Federal Reserve Board Washington

Referring your telegram September eighth feel that it would be wise to have the petition for Certiorari Hirning case filed stop In case of Carson verses Federal Reserve of New York 172 Northeastern reporter 475 court of appeals of NY through cardozo held federal reserve bank merely agent and therefore liability was on its principals stop If counsel for other federal reserve banks think matter important enough I am ready to advise Chicago bank to participate in making matter a system matter.

Meyer.

248p

COPY TELEGRAM X-6966-e

FEDERAL RESERVE SYSTEM

161gb

StLouis Sept 9 1209p

Walter Wyatt,

Board Washington.

Hirning against Minneapolis bank opinion came to me yesterday morning. Your wire came after I had left the office stop. The opinion of the Circuit Court while sound on some of its points I believe to be unsound on others, which, if left unchallenged, will undoubtedly work a hardship on the system stop. I believe the writ of certiorari should be applied for and while I have the highest regard for Judge Uelands ability I believe the system should be represented.

Mcconkey

118p

COPY TELEGRAM X-6966-f

FEDERAL RESERVE SYSTEM

84gb

Kansascity 1011am Sept 9

Wyatt

Board Washington

Can see no harm in review of Hirning case by Supreme Court although it seems to me that it will be difficult to obtain writ. Believe that it is unlikely that Similar transaction will occur with any federal reserve bank in future and do not consider that case involves questions of system importance. For that reason do not believe system counsel should be employed but am sure our bank will readily join if it shouls be determined that case be handled in that manner

H G Leedy

1125am

COPY TELEGRAM X-6966-g

FEDERAL RESERVE SYSTEM

53gb

Dallas Sept 9 910am

Wyatt,

Washington

Re your wire yesterday and letter september third concerning Hirning vs. Reserve Bank Minneapolis stop. See no objection to application for writ of Certiorari but doubt that supreme court will grant same. Refusal may strengthen circuit court opinion stop. Our opinion decision circuit court probably sound unless court erroneously states facts stop. See no objection to employing system counsel if facts stated incorrectly by court or if majority bank counsel think opinion unsound.

Stroud.

1025am.

COPY TELEGRAM X-6966-h

FEDERAL RESERVE SYSTEM

203gb

Sanfrancisco Sept 10 1139am

Wyatt

Washington.

Your letter September 3 regarding Hirning receiver against Minneapolis and your wire September 8 stop. Yesterday being state holiday have today thoroughly discussed this matter with officers this bank stop. They feel as I do that district court decision adopting theory of peters case under circumstances existing was improper and that decision circuit court appeals constitutes sound law stop. This conclusion predicated first upon fact that at time remittance drafts were received reserve balance was insufficient and second when reserve balance became sufficient through remittance of cash and collection items reserve bank had actual notice of insolvency stop. In neither case we believe could remittance drafts be properly functioned. We therefore feel that no petition for certiorari should be filed. This conclusion is predicated upon particular facts recited in opinion circuit court appeals and upon general rule which we believe sound that federal reserve bank should refuse to function remittance drafts on reserve balances after actual notice of insolvency.

Agnew

323p

COPY FEDERAL RESERVE BANK X-6966-i

OF NEW YORK

September 12, 1931.

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

Dear Mr. Wyatt:

I have received your letters and telegrams regarding the case of Hirning v. Federal Reserve Bank of Minneapolis, and I am writing you now in order to indicate briefly what my views are although I have not been able to study as carefully as I would like the opinion and other papers which you have sent me.

From the standpoint of the Federal Reserve System as a whole, it seems to me that it would be better if no application for a writ of certiorari to the Supreme Court were made in the case. I believe the chances are against a reversal even if such an application were granted, and we have found from experience in other cases that there is always the danger that an opinion may contain dictum which goes beyond the facts of the immediate case. I recognize the importance of establishing the principle that Federal Reserve Banks are not liable to refund remittances received from banks which subsequently close, but I think this case is an unfavorable one from the standpoint of Federal Reserve Banks in which to test that principle, because at the time the remittance was received a definite decision to close the remitting bank had been made and was known to the Federal Reserve Bank. I think there is a real distinction on this ground between this case and a case in which at the time the remittance is received no steps have been taken to close the remitting bank, and the alleged liability of the Federal Reserve Bank is predicated merely on the ground that it had sufficient information regarding the affairs of the remitting bank to constitute knowledge of an insolvent condition.

These comments are offered merely for what they may be worth. The Federal Reserve Bank of Minneapolis and its counsel are of course in a much better position than anyone else to make the decision as to whether or not it is advisable to apply for a writ of certiorari, and I am sure that whichever they decide their decision will be the sound one under all the circumstances.

As a matter of principle, I think the employment of System counsel is always advisable in cases which are of particular importance to all Federal Reserve Banks, and I believe that this is such a case. If application for writ of certiorari is made, therefore, I think it would be appropriate to follow the usual procedure in regard

to the employment of System counsel as Judge Ueland has already suggested, and I am sure that this bank will be glad to pay its pro rata share of the expense involved.

Yours faithfully,

(Signed) Walter S. Logan,
Deputy Governor and General Counsel.

COPY X-6966-j

Squire, Sanders & Dempsey

Counsellors at Law

Cleveland September 9, 1931.

In re: Hirning, Receiver of Farmers National Bank of Brookings vs. Federal Reserve Bank of Minneapolis.

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

Dear Mr. Wyatt:

I have just wired you as per copy enclosed, with respect to the above case.

It seems to me that the opinion of the District Court, upholding the position taken by the Federal Reserve Bank of Minneapolis, is unsound, and that the opinion of the United States Circuit Court of Appeals, reversing the District Court, is proper unless there are facts which are not disclosed in either the opinion of the District Court or of the Circuit Court of Appeals.

In these circumstances, I feel that the Federal Reserve System should not support the Federal Reserve Bank of Minneapolis in attempting to have this case reviewed by the Supreme Court of the United States, and it is, therefore, not a case in which the System should participate in the expense of the trial in the Supreme Court of the United States or in any way sponsor the attempt to procure a reversal of the Circuit Court of Appeals.

Very truly yours,

SN:RG
-enclosure.

(Signed) Sterling Newell

COPY X-6966-k

FEDERAL RESERVE BANK

OF RICHMOND

September 9, 1931

Federal Reserve Board,
Washington, D. C.

Attention: Mr. Walter Wyatt, General Counsel.

Dear Mr. Wyatt:

I received your letter of September 3rd enclosing a copy of the opinion of the Circuit Court of Appeals for the Eighth Circuit in the case of Hirning, Receiver, v. Federal Reserve Bank of Minneapolis. I deferred my reply to your letter because Mr. Seay was absent on vacation and Mr. Peple had met with a slight accident which kept him in bed. I have now talked with Mr. Peple and enclose a confirmation of my wire of today.

I heartily approve of applying to the Supreme Court for a petition for certiorari to review this decision, which I think involves several important questions. However, I read with a great deal of care and interest the brief filed by Judge Ueland in the Circuit Court of Appeals, and I am in some doubt as to whether or not the employment of System counsel would materially increase the possibility of success. Of course, my only argument against the employment of System counsel is the advisability of incurring additional expense, and I suppose that this matter is one which the governors of the banks are better able to decide. You may record me as thinking that it is most desirable to petition the Supreme Court for a certiorari and the employment of System counsel is desirable but not necessary.

Very truly yours,

(Signed) M. G. Wallace,
Counsel.

MGW R

COPY X-6966-1 375

COLQUITT, PARKER, TROUTMAN & ARKWRIGHT

ATTORNEYS AT LAW

ATLANTA, GA.

September 10, 1931.

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

Dear Mr. Wyatt:

Re: John Hirning, Receiver, etc.
v. Federal Reserve Bank of
Minneapolis

I have today telegraphed you, stating, in effect, that, in my opinion, it would not be desirable to petition the Supreme Court for a writ of certiorari in this case and that I, personally, saw no reason for retaining special counsel on behalf of the Federal Reserve Banks. I further stated, however, that if Judge Ueland desired special counsel and if you felt that the retaining of such counsel were desirable, the Federal Reserve Bank of Atlanta would, in my opinion, be glad to do its part.

It appears from the opinion of the court that the Brookings bank, knowing itself to be insolvent and within a few hours of suspension, drew its remittance draft, covering two cash letters, against its reserve balance and then undertook, in contemplation of insolvency, to build up its balance in order that the draft might be paid. The collection items and the cash which were to be sent for credit to the reserve account were not even deposited in the mails until after the directors had passed a resolution suspending operations. While the remittance draft was drawn prior to the passage of the aforementioned resolution, it likewise was not mailed until after the drawer, to all intents and purposes, had closed. The Reserve Bank had actual notice of the closing prior to the receipt of the remittance draft and of the items and cash which were to be placed to the credit of the Brookings bank.

I cannot escape the conviction that the Circuit Court of Appeals was right in holding that the transfers of the cash and of the collection items by the Brookings bank were void because violative of the Federal statute cited. You will understand, of course, that I am not even suggesting any criticism of the Federal Reserve Bank of Minneapolis. It was doing what it could to protect its endorsers and was collecting checks under a Check Collection Circular which reserved the right to make charges for outstanding cash letters against the reserve accounts of its members at any time. Furthermore, as pointed out by Judge Ueland in his letter of September 5th, the Reserve Bank did nothing with the checks and currency, sought to be recovered as a preference, until it had received what it regarded as the consent of the

Receiver and of the Supervising Receiver to charge the draft against the reserve account.

Regarded as a strict matter of law, however, I think that the inevitable result of the transaction was to work a preference within the meaning of the Federal statute and that the Receiver could recover from the Reserve bank under the particular facts of the case notwithstanding the fact that the latter had merely acted as an agent for collection.

Naturally the Reserve Bank does not wish to pay the amount of the recovery, particularly since it may not be able to reimburse itself after having disbursed the funds to its endorsers. I do not believe, however, that any relief would be obtained even though the certiorari were granted, since, in my opinion, the Supreme Court would affirm the judgment below and I am somewhat apprehensive that the higher court might say something in its opinion which might embarrass the Federal Reserve Banks in their future routine collection transactions with banks known to be in a weakened condition. Even though under the present Regulation J a remittance draft could not be charged against the reserve account of the drawer after notice of the suspension of the latter, there might be some question raised in some future case as to whether or not the Reserve Bank, acting for its endorsers, obtained an illegal preference when it charged the reserve account of a bank known to be weak, if not actually failing, shortly prior to its closing.

In Judge Ueland's letter he states that the court's holding, to the effect that when the Brookings bank accepted the checks of the member banks and sent to their agent, the Federal Reserve Bank, the remittance draft it became a debtor to the member banks and they become its creditors, "cannot but seriously affect all Federal Reserve Banks."

I have not had the benefit of an expression in full of Judge Ueland's views on this particular phase of the question. Speaking more or less offhand, however, I do not believe that this holding would have the anticipated bad effect. As a holder for collection of checks, the Reserve Banks of course require that remittances should be made to them and that they should be accorded other rights which appertain to any bank as the holder of checks duly endorsed to it. As a matter of fact, however, Reserve Banks do act as agents in the collection of checks and, in the broad sense in which the court doubtless intended to use the language referred to, the actual owners of the checks are the real creditors of the collecting or drawee bank after such checks are collected and paid and until returns therefor in finally collected funds are in the hands of the agents of such actual owners. I doubt whether the language used was intended to mean anything except that when the Brookings bank paid or collected the checks it became a debtor to the real owners, nor do I believe that such language would be given any broader meaning.

In point of fact, whenever a Reserve Bank files with the Receiver of a closed bank a proof of claim based upon unremitted for checks it is conceded that such proof of claim is made for the account of the actual creditors, although, of course, it is taken for granted that the Federal Reserve Bank has sufficient interest, despite its representative or agency capacity, to make the proof of claim and to assert the same.

Judge Ueland also points out the danger which might inhere in a situation in which a Federal Reserve Bank had disbursed the proceeds of a cash letter to its endorsers in reliance upon what it deemed to be the consent of the Receiver to such disbursement only to learn later that its right to charge the reserve account of the bank making the "remittance," the proceeds of which had been disbursed, was being questioned. The ruling in this particular case of course works a hardship upon the Minneapolis bank in that it thought, and not unnaturally, that it was making disbursement of the fund with the approval and acquiesence of the Comptroller's office. I do not believe, however, that any court would extend the liability beyond facts similar to those which were involved in the Hirning case, nor do I anticipate that the Comptroller's office would ever question the propriety of making a charge to the reserve account in any instance where it had given explicit assent thereto.

If any bad effects to the System as a whole follow the decision of the Circuit Court of Appeals it will be, as suggested above, because of some extension of the doctrine of "illegal preferences" to states of fact other than those which the court had before it and to cases where a Federal Reserve Bank did nothing to secure such "preferences" for its endorsers beyond crediting the reserve account of a bank, known to be in a weakened condition, with amounts deposited to the account in regular routine and then charging the amount of the cash letters thereto shortly prior to suspension. As stated, I do not believe that this possible danger would be mitigated by a review of the case by the Supreme Court. I do not believe that the Supreme Court would reverse the court below for reasons set out above, and even an affirmance of the judgment below upon any ground would emphasize the importance of the case to any one desiring to utilize it in some subsequent litigation.

As stated in my telegram, the Federal Reserve Bank of Atlanta would hesitate even to suggest anything which would deprive the Federal Reserve Bank of Minneapolis of the opportunity, in the Supreme Court or elsewhere, to avoid paying to the Receiver the amount of the funds which it has in good faith disbursed. I, personally, hesitate to express any opinion which may be contrary to an opinion which the Messrs. Ueland have reached through a careful study of the case. Since, however, you have asked the opinion of all Federal Reserve Bank counsel, I am transmitting my personal views for whatever they may be worth.

With personal regards, I am

Sincerely yours,

(Signed) Robt. S. Parker.

RSP/w.