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MEMORANDUM RE MARRINER S. ECCLES

February 14, 1949.

Applicable statutes

Members of the Board of Governors of the Federal Reserve System are subject to removal from office "for cause" by the President. Federal Reserve Act, § 10, par. 2 (12 U. S.C. § 242).

The law provides that members "shall devote their entire time to the business of the Board." Federal Reserve Act, § 10, par 1 (12 U.S.C. § 241).

The law provides that "no member * * * shall be an officer or director of any bank, banking institution, trust company, or Federal Reserve Bank, or hold stock in any bank, banking institution, or trust company; and * * * he shall certify under oath that he has complied with this requirement." Federal Reserve Act, § 10, par. 4 (12 U.S.C. § 244).

Important relevant facts

Marriner S. Eccles has testified under oath, February 7 - 14, 1949, in public hearings held before another member of the Board of Governors in a proceeding initiated by the Board, purportedly under the Clayton Anti-Trust Act, against Transamerica corporation, to the following effect:

1. He has held the following positions in private businesses throughout the period in which he has been a member of the Board, and during the last five or six years he has been out in Utah, Idaho and Wyoming, where most of the businesses in question have their headquarters, an average of two to three times a year, staying anywhere from a few days to a few weeks on each occasion:

Stoddard Lumber Company (timber, rough lumber and milling operations) - President and director.

Anderson Lumber Company (retail lumber operation) - Director.

Amalgamated Sugar Company (a publicly owned company with thousands of shareholders, in which Mr. Eccles and members of his family own approximately 10% of the stock) - Chairman of Board and Director.

Eccles Hotels, Inc. - President.

Mountain States Implement Company - Director.

Sego Milk Products Company - President and Director.

Utah Construction Company (general contractors) - Chairman of Board and Director.

Mr. Eccles testified that Utah Construction Company "has had a great many government contracts." Among those in which he testified it participated with other companies in recent years were:

a. Geneva Steel Plant at Provo, Utah (building of foundations, roads, and heavy construction work) - a government war project contract exceeding \$200,000,000, which was not let out at bids and in which Utah Construction Company participated with two other companies in a \$25,000,000 portion of the job.

b. Davis Dam in Arizona - a \$21,000,000 government job in which Utah Construction Company participated.

c. Norfolk Dam at Mountain Home, Arkansas, in which Utah Construction Company participated.

d. Alcan Highway in which Utah Construction Company was brought in by the Army engineers and assigned a part of the work.

e. Philippine construction work for the Army - a \$20,000,000 cost-plus fixed fee contract, in which Utah Construction Company is participating as one of nine contractors.

2. Mr. Eccles admitted spending time on the affairs of the above companies when on his trips to Utah, and also admitted making "very few" long distance telephone calls from Washington with reference to his private interests. Although not charged during this testimony with neglect of his public duty, Mr. Eccles went out of his way to state that he had averaged "very much more than the forty hours a week which is the standard time in Washington for all federal employees." Demand was made by counsel for Transamerica Corporation that the Board's records of Mr. Eccles' personal long distance telephone calls (which admittedly are in the Board's files for the last seven years) be produced, but the demand was refused.

3. Mr. Eccles testified that he personally owns one-ninth of the stock of a family holding company called Eccles Investment Company, of which his eight brothers and sisters own the other eight-ninths; that Eccles Investment

Company in turn owns 44% of the voting shares of First Security Corporation, a bank holding company, which in turn owns nearly 100% of the stock of certain branch banks in Utah, Idaho, and Wyoming, which constitute and advertise themselves as the "largest inter-mountain banking organization." Mr. Eccles himself was President of First Security Corporation and an officer of the banks owned by it prior to becoming a member of the Board of Governors, and his younger brother, George Eccles, is now President of both the corporation and the banks. The bulk of the First Security bank operations are in the 12th Federal Reserve District.

4. Mr. Eccles approved the filing of a complaint by the Board of Governors against Transamerica Corporation [a bank holding Company which owns majority stock interests in 46 banks, and minority (approximately 23%) stock interests in two other banks (all operated in the 12th Federal Reserve District)] charging Transamerica with violation of the Clayton Act "by substantially lessening competition" and "tending to create a monopoly" in the banking business. He admits, however, that he did not know or consider, and did not think it necessary to consider, whether competition had actually been lessened in any community or state referred to in the complaint.

5. Mr. Eccles stated that he attempted in 1940 and again in 1943 to obtain an agreement from Transamerica Cor-

poration that it would not purchase any more banks without the advance approval of the Board of Governors of the Federal Reserve System, although he then knew and was advised by counsel that the Board "had no legal authority to require" such approval.

6. Mr. Eccles testified that his 1943 negotiations resulted in a tentative agreement with A. P. Giannini, Chairman of the Board of Transamerica, that Transamerica would submit to any restrictions which would be made equally applicable to all bank holding companies. However, when another member of the Board, John McKee, tried to change the terms of the tentative agreement and indicated that the Board saw no need to impose restrictions on other holding companies, A. P. Giannini caused the Board to be informed in writing that he could not consent to the proposed discriminatory changes. Although Mr. Giannini's letter (which was produced from the Board's files on demand of Transamerica) showed on its face that it had gone through Mr. Eccles' office in April, 1943 (Mr. Eccles' name being checked off on the face of the Board's copy), Mr. Eccles testified that he did not read the letter until it was shown to him on the witness stand on February 11, 1949, nearly six years after its receipt.

7. Instead of carrying out his public duty to support the agreements of the Board, Mr. Eccles, without further conversation on the subject with any officer of Transamerica, pub-

lively attacked Transamerica in testimony before Congressional Committees, and unsuccessfully sought bank holding company legislation from Congress on three different occasions (1945, 1946, and 1947), which would have given the Board of Governors a veto power over Transamerica's future investments. The proposed legislation sought by Mr. Eccles would also have discriminated in various ways against Transamerica and in favor of Eccles Investment Company, which was engaged in the same type of business in the same section of the country.

8. Mr. Eccles testified that in February, 1942, the Board, of which he was then Chairman, made an agreement (confirmed in writing) with the Comptroller of the Currency and the Federal Deposit Insurance Corporation. The agreement provided that the Reserve Board and the other two agencies would thereafter decline permission for the acquisition of any additional banking offices or any substantial interest therein by Transamerica Corporation or Bank of America National Trust and Savings Association. Pursuant to that agreement, the Reserve Board, from February 14, 1942, to date, has refused every application presented to it, which related to banks or banking offices in the State of California in which Transamerica Corporation had any interest. The Board has not even followed its normal procedure for processing applications where the applications related to banks in which Transamerica Corporation had an investment. When asked if the agreement with

the other agencies was in effect an agreement that the Board would disregard its duty under the law and deny all Trans-america applications, regardless of the merits, Mr. Eccles referred to the above-mentioned letter of February, 1942, confirming the fact of the agreement and said, "I have nothing further to say." [The agreement in question and a condition of membership imposed by the Board pursuant to it, were expressly held illegal by the United States Court of Appeals for the District of Columbia in Peoples Bank v. Eccles, 161 F. 2d 636 (1947). The United States Supreme Court subsequently held that the Board's threat of enforcement of its condition was not sufficiently imminent to give the court jurisdiction, but did not, in its opinion, question the correctness of the Court of Appeals determination of illegality.]

9. Mr. Eccles testified that prior to 1944, the Board had never been advised that it had any duties or responsibilities under the Clayton Act, although throughout the period of thirty years preceding 1944 in which the Clayton Act had been on the books, the Board had had counsel who were charged with the duty of advising it as to its legal responsibilities. He stated that in 1944 he sought the advice of an attorney then in the employ of the Board and obtained an opinion which raised certain doubts respecting the Board's jurisdiction under the Clayton Act, and which suggested that the Board "explore the questions raised with the Attorney

General, with a view possibly of obtaining an opinion with respect to the Board's authority and responsibility." He stated that in 1944 and 1945, the Attorney General conducted an anti-trust investigation of Transamerica Corporation with the Board's cooperation, and that at the end of a two year investigation, in the latter part of 1945, the Attorney General conferred with him and declined to undertake a prosecution of Transamerica under the Anti-Trust Laws. Also, in 1945, the Board employed as Assistant General Counsel a man who had been engaged for some years in unsuccessfully prosecuting Transamerica Corporation in an administrative proceeding before the SEC. Thereafter, in February, 1947, Mr. Eccles urged the Attorney General to reconsider his previous opinion that no prosecution of Transamerica was warranted, but the Attorney General never changed his previous opinion. Mr. Eccles also admitted that it was after all of the foregoing acts that he asked the Board's new Assistant General Counsel, in the fall of 1947, for a further opinion on the matter and obtained a three page memorandum recommending that the Board initiate an anti-trust proceeding before itself as prosecutor, judge, and jury, and that upon the basis of that opinion, and a subsequent investigation by the Board's own staff, the Board did so in June, 1948.

10. Mr. Eccles has publicly espoused the principles and policies followed both by Transamerica Corporation and by

First Security Corporation (in which Eccles Investment Company has a large interest), as well as by other bank holding companies as being definitely in the public interest and calculated to produce a much safer and sounder banking structure than has existed in the United States in the past. In spite of those beliefs, which he admitted in his testimony he still holds, he has continued to press the complaint against Transamerica Corporation, designed to prevent its continued operation in accordance with these admittedly sound principles. When Transamerica demanded his disqualification for bias and prejudice, Mr. Eccles immediately disqualified himself from participating in the decision. However, he is still publicly pressing the charges by his testimony.

11. Mr. Eccles testified that he feels that the unit banks need protection from competition if they are to stay in business because of their inability to provide the same character and quality of services to the public as are provided by their branch bank competitors. This testimony is tantamount to an admission that the purpose of the pending proceeding against Transamerica Corporation is to restrain Transamerica from providing additional competition to existing unit banks rather than to prevent any lessening of competition.

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The foregoing merely outlines the facts which have

been spelled out in several hundred pages of testimony and numerous exhibits, all of which are now on file with the Board of Governors and available for public inspection. It is believed that these facts provide the President with adequate "cause" for dismissal of Marriner S. Eccles from his position as a member of the Board of Governors of the Federal Reserve System, in that they show that:

1. Mr. Eccles has devoted such attention and maintained such interest in numerous private businesses during his membership on the Board as to preclude his giving to his public duties his "entire time", as required by law.

2. His large financial interest (through a family holding company) in the "largest inter-mountain banking organization") constitutes a definite violation of the spirit, if not the letter, of the statutory prohibition against members of the Board owning stock or maintaining official positions in banking institutions, and the maintenance of such interest by Mr. Eccles has influenced him to perform his public duties in a biased and prejudiced manner, wholly inconsistent with the public interest. The situation is certainly one calculated to impair public confidence in the fairness and impartiality of a government agency charged by law with important responsibilities affecting the economic welfare of the entire nation.

3. He has influenced and publicly pressed the initiation and prosecution of a proceeding against Transamerica Cor-

poration without adequate reason to believe that there has been any violation of law, and contrary to the advice of the United States Attorney General whom he consulted. The continuation of such proceeding is not only calculated to force the respondent (a publicly owned company with more than 145,000 shareholders) to incur great expense for a long period of time, but is also calculated to interfere with the efforts of that corporation and banks in which it is interested to provide the most rapidly growing section of the United States with adequate and safe banking service in the public interest.