

REC'D IN RECORDS SECTION

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CONFIDENTIAL (F.R.)

Board of Governors

Mr. Vest

Employment of Manager by
Open Market Committee.

Carder

In accordance with a discussion at the Board meeting on December 30, 1954, I have reviewed the memorandum which I prepared under date of October 13, 1954, regarding methods of employment of a Manager and other employees by the Federal Open Market Committee. As a result, I have slightly revised the memorandum to make a few changes in phraseology and also to add an alternative draft of possible legislation which would be in briefer form and would provide for the appointment of a Manager by the Committee, who would be paid by the Board. Also, a provision would be added to both drafts of the legislation authorizing the Manager actually to make purchases and sales on behalf of the Federal Reserve Banks in carrying out the instructions of the Committee.

METHODS OF EMPLOYMENT OF MANAGER AND OTHER
EMPLOYEES BY FEDERAL OPEN MARKET COMMITTEE

This memorandum undertakes to consider methods by which the Federal Open Market Committee might employ a Manager of the System Open Market Account and possibly other employees who would be responsible only to it.

REPORT OF AD HOC SUBCOMMITTEE IN 1952

The report of the ad hoc subcommittee of the Federal Open Market Committee on the Government securities market, dated November 1952, contains, at pages 68 to 76, a discussion of the "housekeeping" procedures of the Federal Open Market Committee. The report raised the question for consideration whether all or part of the staff of the Open Market Committee should be separate and distinct from the staffs of the Board and the Reserve Banks and whether the present arrangement delegating the management of the Account to the Federal Reserve Bank of New York should be retained or the Manager of the Account should be made directly responsible to the Federal Open Market Committee. After stating some of the considerations pro and con with respect to these questions, the report urged that serious consideration be given to the suggestion that the Manager of the Account be employed by the Committee rather than by the New York Bank. The suggestion contemplated that the Account would continue to be operated in the Federal Reserve Bank of New York but that the Manager would be solely responsible to the Committee and have no responsibilities other than those imposed by the Committee.

POSSIBLE LEGISLATIVE PROPOSAL

There is attached hereto a draft (Draft A) of a possible amendment to section 12A of the Federal Reserve Act which would authorize the Federal Open Market Committee to employ a Manager of the Account and such other employees as it deems necessary, who will be responsible solely to the Committee. Under this draft of possible legislation, certain other changes would also be made in the law:

(1) Authority would be given to the Manager to execute or see to the execution of purchases, sales or other transactions for the Federal Reserve Banks in carrying out the instructions of the Committee or executive committee.

(2) Space needed for its operation could be furnished to the Committee by the Board or by a Federal Reserve Bank, free of charge, or the Committee could lease necessary space from a Federal Reserve Bank or elsewhere.

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(3) The Manager, but not other employees, of the Committee would be prohibited from being a member or employee of the Board or an officer or employee of a Federal Reserve Bank.

(4) The funds of the Committee would be derived from assessments on the Federal Reserve Banks, like the funds of the Board. These funds could be deposited with a Federal Reserve Bank. The Committee would be given authority over its own expenditures so that it would not be subject to audit by the General Accounting Office, and the Manager and employees of the Committee, like employees of the Board, would not be subject to other statutes relating to Civil Service, salaries and leave.

(5) The executive committee of the Federal Open Market Committee, not now specifically provided for by law, would be expressly authorized. Moreover, the present situation in which the Chairman of the Board of Governors is the Chairman of the Federal Open Market Committee and of its executive committee would be written into the law.

There is also attached hereto an alternative draft (Draft B) of a much shorter amendment to section 12A of the Federal Reserve Act. This would authorize the employment by the Committee of a Manager and other employees whose compensation would be fixed by the Committee but paid by the Board. Other expenses of the Committee would also be paid by the Board. This draft does not attempt to cover some of the numerous points which would be covered in Draft A.

POSSIBILITY OF MAKING THE ARRANGEMENT WITHOUT LEGISLATION

If it should be considered undesirable or inexpedient to request legislation on this subject, it is possible that without legislation arrangements could be made under which the Federal Open Market Committee would appoint its own Manager or other employees, if needed, but there would undoubtedly be certain practical difficulties attendant upon such a course. These will be briefly related below.

Right to Employ Own Staff. - Section 12A of the Federal Reserve Act does not specify any method or manner by which open market operations shall be carried out and does not require the appointment or designation of any Federal Reserve Bank to execute transactions for the Account, nor does it provide for the appointment or designation of a Manager of the Account or any other employees of the Federal Open Market Committee. Thus the Committee is neither specifically authorized nor forbidden to employ its own staff.

The Federal Open Market Committee is believed to be a Government agency or establishment, since it is created by Congress for the performance of public functions, and it has been the practice for its

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members to take the oath of office required for officers of the United States. It has been so considered under the Administrative Procedure Act, and the same indication was given in the answers made by the Board to the Patman Questionnaire.

While certain statutes suggest a Congressional policy that employees should not be employed by Government agencies unless specifically so authorized, Congress obviously contemplated that the Committee should have appropriate means of performing its functions, and a staff of employees would be one of these means. Accordingly, it is believed that there is an implied power for the employment of necessary employees, although the matter is open to some doubt. Such an implied power has been recognized by the Attorney General in certain cases with respect to other Government agencies. However, it should be mentioned that section 46 of Title 5 of the United States Code provides that "no civil officer, clerk * * * or other employee shall be employed in any of the executive departments, or subordinate bureaus or offices thereof at the seat of Government, except for services actually rendered in connection with and for the purposes of the appropriation from which payment is made, and at the rate of compensation usual and proper for such services"; and a violation of this provision is subject to criminal penalty. Although not entirely clear, it is not believed that the provision would be technically applicable to the Federal Open Market Committee, since the Committee is not an executive department or office thereof, and the reference to appropriations in the law indicates that it would not apply to payments from nonappropriated funds.

Status of Committee Employees. - Even if it be considered that the Federal Open Market Committee may legally employ a staff it might be necessary for the Committee to comply with certain statutory provisions relating to Government employees, such as the Civil Service Act, the Classification Act with respect to salaries, and other related statutes. As a practical matter, it might well be that no effort would be made by any agency of the Government to bring the Committee's staff under any of these statutes, but there would be no assurance of this, and as time went on it is quite possible that some such questions would arise.

Funds of the Committee. - If the Committee should have funds standing in its own name, derived either from the Federal Reserve Board or from the Federal Reserve Banks, the question would arise whether they are public funds, since they would not come within the purview of section 10 of the Federal Reserve Act, which provides that the Board's funds are not public funds or appropriated moneys. If public funds, it might well be that they would have to be deposited with the United States Treasury in accordance with a statute requiring all moneys of the United States to be so deposited. Moreover, the law provides that the financial transactions of each "executive, legislative and judicial agency" shall be audited by the General Accounting Office.

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While the Board is not subject to this provision because of section 10 of the Federal Reserve Act, it might well be that the General Accounting Office would contend that the financial transactions of the Federal Open Market Committee incurred in the administration of its functions were subject to audit.

It is believed that these questions regarding the deposit with the Treasury and the audit by the General Accounting Office might be kept to a minimum by utilizing funds of the Board or of the Federal Reserve Banks for the purpose instead of taking funds into the name of the Committee. Thus it might be possible for the Board to authorize the Federal Reserve Bank of Richmond to honor checks drawn by officers of the Open Market Committee up to a certain maximum limit, which could be changed from time to time. Likewise, it might be possible for eleven Federal Reserve Banks to pay funds into the twelfth Reserve Bank and to have the twelfth Bank use these funds to pay the expenses of the Open Market Committee in accordance with directions of the Committee. It cannot be said with certainty, however, that utilizing the funds of the Board or of the Federal Reserve Banks in the manner described would not run into some difficulties, because it might be that the Comptroller General or other Government agency would contend that, looking through the technicalities of the matter, the funds were really being used as Committee funds and therefore that they should be regarded as public funds and subject to the restrictions applicable thereto. While I am inclined to doubt that objections of this kind would be raised as a practical matter, it is a possibility.

Most Practical Method in Absence of Legislation. - It will be seen from the above that the matter of employing its own staff by the Committee and of providing the Committee with funds, in the absence of legislation, is open to some troublesome questions. While as a practical matter these might never arise, there is no assurance of this and, if they did arise, they might make it difficult for the Committee to operate on a practical basis.

In the absence of legislation, it is believed that the simplest and most practical way of handling this matter from the standpoint of avoiding technicalities would be for the Board of Governors at the request of the Open Market Committee to employ on the Board's staff persons needed for the Committee's staff at salaries specified by the Committee. There is a statute, 31 U.S.C., sec. 696, which provides in effect that no fund made available by any Act shall be used to pay the expenses of any agency for which Congress has not appropriated, but it is not believed that this statute taken in its context would have application to the Board's funds. Under this method of procedure, upon request of the Committee the Board would employ on its own staff the Manager for the Committee and would likewise employ other persons that might be needed for the purposes of the Committee. They would be paid salaries from

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the Board's funds and in all technical respects would be treated like other Board employees, thus avoiding restrictive statutes that might otherwise apply. They would, however, serve as the staff of the Committee and carry out its instructions. Their salaries and other terms of employment would be fixed by the Board, but in accordance with requests of the Committee. One objection which might be made to this arrangement is, of course, the fact that normally an employee is likely to feel that his ultimate responsibility is to the institution which pays his salary.

While this method of providing a staff for the Open Market Committee would probably be the most practical in the absence of legislation, it seems clear that the most clean-cut method and the only method that would be certain of avoiding various practical difficulties and that would at the same time provide a technically satisfactory means of accomplishing the objective would be to obtain legislation on the subject, if this should be feasible.

George B. Vest

Attachments

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PROPOSED AMENDMENT RE FEDERAL OPEN MARKET COMMITTEE

DRAFT A

Section 12A of the Federal Reserve Act is hereby amended by adding at the end thereof the following paragraphs:

(d) The Committee may appoint an individual as Manager of open market operations and such other employees as it may deem necessary for the administration of its functions, and the Manager and such other employees shall be responsible solely to the Committee and shall perform such functions under the supervision of the executive committee herein provided for as may be assigned to them by the Committee or the executive committee. The Manager is authorized to make purchases and sales and otherwise to execute transactions for and on behalf of any or all Federal Reserve Banks in accordance with instructions, directions or regulations of the Committee or the executive committee, or to see to the execution of such transactions. Employees of the Committee may, if the Committee deems it advisable, also be employees of the Board of Governors of the Federal Reserve System or officers or employees of a Federal Reserve Bank, except that the Manager shall not be a member of the Committee or an employee of the Board or an officer or employee of a Federal Reserve Bank. The Board or any Federal Reserve Bank may furnish to the Committee without compensation space needed for its employees and operations, or the Committee may lease such space in a Federal Reserve Bank or elsewhere and may acquire such personal property as it may need for its operations, without regard to any other provisions of Federal law relating to the acquisition, control or lease of property. One or more employees of the Committee may be designated by the Committee as Assistant Manager or Assistant Managers, who shall under the supervision and direction of the Manager have all the powers and functions herein granted to the Manager and be subject to all the restrictions herein applicable to him.

(e) The Committee may levy semiannually upon the Federal Reserve Banks, in proportion to their capital stock and surplus, an assessment sufficient to pay its estimated expenses and the compensation of its employees for the half-year succeeding the levying of such assessment, together with any deficit carried forward from the preceding half-year, but no member of the Committee shall by reason of his service as such receive any compensation in addition to that which he receives as a member of the Board or as an officer of a Federal Reserve Bank. The Committee shall determine and prescribe the manner in which its

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obligations shall be incurred and its disbursements and expenses allowed and paid and may leave on deposit in the Federal Reserve Banks the proceeds of assessments levied upon them. Funds derived from such assessments shall not be deemed to be Government funds or appropriated moneys, and the employment, compensation, leave and expenses of the Manager and other employees of the Committee shall be governed solely by the provisions of this section, specific amendments thereof and rules and regulations of the Committee not inconsistent therewith.

(f) The Chairman of the Board of Governors of the Federal Reserve System shall be the Chairman of the Committee. The Committee may appoint an executive committee consisting of not less than three persons who are members of the Committee, including the Chairman, who shall also be chairman of the executive committee. Such executive committee shall have authority to perform such functions as may be assigned to it by the Committee and shall see to it that open market operations are carried out in accordance with the direction and regulations of the Committee or of the executive committee within such Committee direction and regulations.

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PROPOSED AMENDMENT RE FEDERAL OPEN MARKET COMMITTEE

DRAFT B

Section 12A of the Federal Reserve Act is hereby amended by adding at the end thereof the following paragraph:

(d) The Committee may employ such employees as it may deem necessary for its purposes, including a Manager who may make purchases and sales and otherwise execute transactions on behalf of any or all Federal Reserve Banks in accordance with instructions, directions or regulations of the Committee or of an executive committee thereof designated by the Committee. All such employees shall be subject to the provisions of section 10 of this Act and other provisions of law applicable to employees of the Board of Governors of the Federal Reserve System, except that conditions and incidents of their employment shall be regulated by the Committee and their compensation as fixed by the Committee, and any other expenses of the Committee, shall be paid by the Board as a part of its expenses.

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