

December 30, 1944

MEMORANDUM FOR THE FILES

Re: President's Power to Remove Officers of the Fund and Bank

It is contemplated that the legislation to be proposed to Congress for the carrying into effect of the International Monetary Fund and the Reconstruction Bank will contain provisions stating that the President, by and with the advice and consent of the Senate, shall appoint the United States Governors and Directors of the Fund and the Bank, who shall serve for a designated period of years. The question has been raised as to whether the President, in such circumstances, will have the power summarily to remove such officers before the expiration of their terms of office. The question has also been raised as to whether it would be advisable to insert a specific provision that the President may remove such officers for inefficiency, neglect of duty, and other specified cause.

This memorandum concludes that it would be unwise to insert a provision as to removal for cause as such a provision might be interpreted to state the only grounds for removal and thus limit the power of the President. In the absence of such a limitation it would appear that the President has authority to remove such officers without showing cause, even though their terms of office have not expired. These conclusions are based upon the following cases in the Supreme Court of the United States and in the Sixth Circuit Court of Appeals.

In Shurtleff vs. United States, (1905) 189 U.S. 311, the plaintiff, a general appraiser of merchandise, sued the United States for salary accruing after he had received notice of removal and his successor had been appointed. The applicable statute provided in part, "* * * [appraisers] may be removed from office at any time by the President for inefficiency, neglect of duty, or malfeasance in office * * *." Inasmuch as no cause was assigned, it was assumed that the President did not make the removal for any cause listed in the statute. The Court concluded that the plaintiff was not entitled to the salary claimed because the power of the President to remove an officer, even though appointed by and with the advice and consent of the Senate, should not be limited by inference or implication, but only by clear and explicit language of Congress. The Court also pointed out that inasmuch as this appointment was for an unlimited time, a contrary decision would grant the office for life except upon cause shown.

In Myers vs. United States, (1926) 272 U.S. 52, the President directed the removal of a postmaster. The statute provided, "Postmasters * * * shall be appointed and may be removed by the President by and with the advice and consent of the Senate, and shall hold their offices for four years unless sooner removed or suspended according to law."

The Court recognized that the plaintiff was entitled to the back salary for which he brought suit unless the requirement that removal shall be by and with the advice and consent of the Senate was unconstitutional. The Court so held, saying at page 176 that the provision by which "unrestricted power of removal of first-class postmasters is denied to the President, is in violation of the Constitution, and invalid."

This question next came before the Supreme Court in the case of Humphrey's Executor vs. United States, (1935) 295 U.S. 602, which involved the removal of a Federal Trade Commissioner. Federal Trade commissioners are appointed for a seven year term and it is provided that, "Any commissioner may be removed by the President for inefficiency, neglect of duty or malfeasance in office." In this case the Court held for the plaintiff stating at page 623, "* * * the fixing of a definite term subject to removal for cause, unless there be some countervailing provision or circumstance indicating the contrary, which here we are unable to find, is enough to establish the legitimate intent that the term is not to be curtailed in the absence of such cause." The Court distinguished the Shurtleff case because of the unusual circumstance that the appointment was for an indefinite time. The Court limited the Myers case to executive officers performing executive functions and distinguished the instant case because the office here involved quasi-legislative and quasi-judicial functions. The Court concluded at page 632: "To the extent that, between the decision in the Myers case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise."

The last case considering this question is Morgan vs. Tennessee Valley Authority, (1940, C.C.A., 6) 115 F 2nd 990 (cert. den. 312 U.S. 701). In that case the plaintiff brought suit for salary and for a declaratory judgment that his removal as a member and chairman of the Board of Directors of the Tennessee Valley Authority was unlawful. The applicable statute provided a nine year term and further provided that

any member of the Board may be removed from office at any time by a concurrent resolution of the Senate and the House of Representatives. In addition, any member of the Board who is found by the President to be guilty of a violation of the section requiring the appointment, selection and promotion of employees and officials solely on the basis of merit and efficiency, shall be removed from office by the President. The Court held that Congress had not indicated that the methods and grounds for removal provided in the statute were exclusive and that, as the office was predominately an executive or administrative office, it did not involve the exercise of such quasi-legislative powers as to bring the case within the doctrine of the Humphrey case.

As it is apparent that the functions of the Governors and Directors of the Fund and the Bank are executive and administrative and not legislative or judicial, it may be concluded that the President will have power summarily to remove such officials before the expiration of their designated terms of office. As any legislative statement of grounds for removal may raise the question as to whether or not the Congress intended the specified grounds to be exclusive, such a provision would appear to be undesirable.