

Proceedings of Meeting No. 23
of the
SPECIAL INDUSTRIAL RECOVERY BOARD
held in

The Conference Room, No. 5842

Department of Commerce

Nov. 13, 1933

PERSONAL AND CONFIDENTIAL

Copy No. 6

For Hon. Frances Perkins

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ATTENDANCE AT MEETING NO. 23

Nov. 13, 1933

Hon. Daniel C. Roper, Secretary of Commerce, Chairman

Hon. Harold M. Stephens, Assistant Attorney General

Hon. Rex Tugwell, Assistant Secretary of Agriculture

Hon. Turner Battle, Assistant Secretary of Labor (present only
a short time)

Hon. Charles Wyzanski, representing the Secretary of Labor

Hon. Charles H. March, Chairman Federal Trade Commission

Hon. Charles H. Fullaway, representing Director of the Budget

Hon. Alvin Brown, Assistant Administrator

Mr. E. Willard Jensen, Assistant Secretary

Mr. Russell Hardy, Assistant to Judge Stephens

Mr. B. P. Foote, Reporter

SPECIAL INDUSTRIAL RECOVERY BOARD

AGENDA

Meeting No. 23, Nov. 13, 1933

1. Approval of minutes of Meeting No. 22, held Nov. 6, 1933.
2. Discussion of major activities during the past week.
3. Discussion of the Standard Code.
4. What are the NRA suggestions to States with reference to coordinating legislation?
5. Discussion of relationship between the Ford Motor Company and the NRA.
6. Request for additional space.
7. Approval of Personnel Journals by the Board once a week.
8. Submission for the Board's approval of all increases in salaries.
9. Consideration of the Building and Construction Code.
10. Approval of additional personnel.

Proceedings of Meeting No. 23
of the
SPECIAL INDUSTRIAL RECOVERY BOARD

November 13, 1933

2:30 P. M.

CHAIRMAN ROPER: We have quite a number of things to go through with.

Are there any corrections in the minutes?

MR. BROWN: Just one small thing. In speaking of Mr. Handler, I am reported to have called him a "well instructed" lawyer. I did not assume to pass on his ability. I think I said "well respected,"

CHAIRMAN ROPER: That correction will be made, and with that correction we approve of the minutes.

We will call on Mr. Brown next to give us a little report on the activities of the week.

MR. BROWN: The only comment I can offer is that we are getting through a large number of codes now. It seems that a great many of these hearings which involved so much work are now budding forth into codes. Besides that, there have been no major activities. The General, of course, has been in the West during the week.

CHAIRMAN ROPER: The next item is "Discussion of the Standard Code."
The Secretary of Labor has something to say on that.

MR. BATTLE: This is Mr. Wyzanski, who will represent the Secretary.
I am going to have to leave before the meeting is over and

he went into this matter thoroughly with Miss Perkins before she left and he will represent her.

MR. WYZANSKI: Mr. Secretary, I think letters have been sent by the Secretary of Labor to the various members of the Board outlining her position in regard to the Standard Code. There are certain features that she wished me to report on. The first one is the question of collection of statistics. I think this has been up a number of times before, and I think it may be helpful if we review the situation before the NRA went into effect. I think there is a misunderstanding -- not a real conflict -- as to what those services were and why they should be continued. I understand that in twelve states statistics were collected and various Federal Departments -- the Bureau of Labor Statistics and the Bureau of the Census, for example -- collected statistics. None of those were compulsory so far as I know. The decennial census is the only one which is compulsory. The Department of Labor does not compel people to submit figures at all. I think the Treasury Department does in certain tax matters.

We have a large record of statistics for the past ten years. These are very valuable for comparative purposes and we are anxious to keep up voluntary reporting. The method by which we collect statistics in the Department of Labor is by taking samples. We don't necessarily survey the whole of the industry. With that background I think the provision in the standard code can better be understood, and our objection to it better understood.

On page 10 of the Code, as I have it --- I assume it is the same copy, Mr. Brown, that members of the Board have?

MR. BROWN: Yes, they were furnished copies.

MR. WYZANSKI: Subdivision (c) provides that the Code Authority shall collect the statistics and transmit them to Government agencies. I think as it is phrased here it is inadequate for the purposes of the Department of Labor. Moreover, the way it is worded at the present time, apparently the Code Authority could only call for statistics from the whole of the industry, not from any part. It could not take samples. The sampling method is somewhat like the Literary Digest poll. We get results before you could get them from all the people in the industry. It not only is quicker, but I think the reports which we have already, having been taken on this sampling basis, can be used as a basis of comparison with sampling in the future better than they could be used as a basis of comparison with a general survey in the future.

I don't think it is necessary to go into the adequacy of the Code Authority's method of collecting statistics, but there seems to be some question as to the accuracy. I know there was one case in which a raise of 150% was reported, whereas our figures found they had been raised only 50%; hence, I think it is important to keep the governmental services going as a check.

CHAIRMAN ROPER: What is the suggestion you are making there?

MR. WYZANSKI: The suggestion is in the Secretary's letter. I have a

carbon copy and I believe everyone here received a copy. Her suggestion is that in place of this provision in Subsection (c) of the Standard Code, there shall be inserted a provision which reads:

"In addition to information required to be submitted to the Code Authority, all or any of the persons subject to this Code shall furnish such statistical information as the President may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act to such Federal and State agencies as the President may designate."

That preserves the state of affairs which existed prior to the time of the NRA in regard to statistics. I understand that the President, by Executive Order, has virtually provided that this provision shall go into all codes. There is a slight change in the provision as suggested by the Secretary, but not a material one.

JUDGE STEPHENS: I understand from the Secretary's letter that Madam Secretary is willing to leave in the first four lines down to and including the word "Code" and then to strike out down to the word "agency," substitute the provision which you read and leave the balance.

MR. WYZANSKI: No, not exactly that.

COMMISSIONER MARCH: She wants to cut out the whole section?

MR. WYZANSKI: No.

CHAIRMAN ROPER: She wants to add another proviso.

JUDGE STEPHENS: In the letter she says:

"I suggest, therefore, that Article VI, Section 7 (c), be amended by placing a period after the word 'Code' in the fourth line thereof, and by striking out the ensuing passage down to the end of the sentence in the sixteenth line."

The sixteenth line ends with the word "agency." Then, in addition to that she wants a separate article set up.

MR. WYZANSKI: That's right.

CHAIRMAN ROPER: Mr. Brown, do you see any objections to that?

MR. BROWN: Let me say on the whole subject of the statistical clause that it seems to me it was settled sometime ago. I would like to read from the minutes of meeting of September 11, in which at the close of a rather extensive discussion of the subject, General Johnson said:

"How would it do to include in all subsequent codes that, in addition to the information reported to trade associations, all such information as may be required by the President to be reported direct to him shall be so reported?"

"SECRETARY PERKINS: Not direct to him--to any agency of government.

"GENERAL JOHNSON: That is pretty loose.

"SECRETARY PERKINS: The agencies of the government have to gather it. The NRA and the agencies of the government must do the collecting.

"GENERAL JOHNSON: Suppose we say, be required to report as the Administrator shall prescribe such information as he may deem necessary for the purposes stated in Section 3 (a)?"

"SECRETARY PERKINS: Can you also get that accepted on the amendments of the codes?"

"GENERAL JOHNSON: It would be a terrific task.

"SECRETARY WALLACE: You could see that there is a letter sent out."

As I read those minutes, and as I understand the attitude taken toward it since, that was an acceptance by the Secretary of Labor of General Johnson's suggestion. There has been no detailed discussion on the statistics provision since that, so far as I understand it. The Secretary of Labor has said several times that she feared the statistics provision might suffer some change; but I understood that she accepted it as it stood. That provision was issued the next day as an Office Order, the whole of which reads as follows:

"OFFICE ORDER NO. 34
September 12, 1933

"All industries should be advised that no provision of any code relieves any industry from the obligation of continuing to make customary statistical reports to Government Departments.

"Every code hereafter submitted for the approval of the Administrator will contain the following provision:

'In addition to information required to be submitted to the code authority, there shall be furnished to government agencies such statistical information as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.'

"A letter to the following effect should be sent by Deputy Administrators to each Code Authority under codes now approved:

'The Administrator requests that for the purposes of the proper administration of the National Industrial Recovery Act, each member of your industry be asked to furnish to Government agencies such statistical information as the Administrator may from time to time deem necessary for the purposes recited in Section 3 (a) of the National Industrial Recovery Act.'

When the so-called Model Code was drafted and this provision was included, the only change made was to make it an integral part of the codes. As it reads now, it makes it a duty of the Code Authority "to provide for submission by members of such information and reports as the Administrator may deem necessary for the purposes recited in Section 3 (a) of the Act, which information and reports shall be submitted by members to such administrative and/or Government agencies as the Administrator may designate"; and we have even gone further in this and included in the Codes the requirement that nothing here shall relieve industries of submitting reports which they customarily have in the past. The Solicitor's use of the word "obligation" puts that in a new light. It was not intended to make any limitation. Of course I do hold to the opinion that there is nothing in the Recovery Act which permits the Government to require information other than for the purposes of the Act, so I do not see how a code could require an industry to furnish information which

they have customarily furnished in the past, which would not be required for the purposes of the Act. As I understand it, there is nothing objectionable in the draft of language proposed here, except that it is provided that the person subject to this Code shall furnish such statistical information as the President may deem necessary. My understanding is that the President has delegated that power to the Administrator in an Executive Order. I understand the Secretary of Labor to have acquiesced in this proposed wording as far back as September 11. I do not perceive the reason for making any change now.

CHAIRMAN ROPER: What you would like to have said here, I suppose, is that the Administrator will authorize the Secretary of Labor to continue collection of statistics such as, in her judgment, are necessary for the protection of the statistical situation.

MR. WYZANSKI: We would be very glad to have that promise. I don't think we are going to quarrel with Mr. Brown.

MR. BROWN: Isn't the only objection to the language contained in the Model Code the location of it?

MR. WYZANSKI: That is No. 1.

MR. BROWN: Or is it one of form? I differ many times over the form of language used by our Legal Division.

MR. WYZANSKI: The Secretary is very anxious to have the public impressed with the fact that the statistics do not come through the Code Authority. I think a hasty reader would

get that impression. I think it would be demonstrated more clearly if it were a separate section.

The second point in the Secretary's mind is the sampling practice. That is a much quicker method.

MR. BROWN: May I not ask you to agree that this language does not exclude sampling? That this provision is as broad as the law? If the law permits sampling, then this provision permits sampling.

MR. WYZANSKI: No, I don't agree with that.

CHAIRMAN ROPER: In view of this situation, does the Board think it would be well to refer this to our Executive Committee for study and report? Judge Stephens, aren't you the Chairman?

JUDGE STEPHENS: Yes, sir.

CHAIRMAN ROPER: Are the other members of the Committee here?

JUDGE STEPHENS: Dr. Tugwell is a member and Mr. Battle; also General Johnson, and therefore Mr. Brown.

DR. TUGWELL: Are we still on the Model Code?

CHAIRMAN ROPER: Yes, but if you give the Executive Committee power to act in determining this matter, wouldn't that be satisfactory?

MR. WYZANSKI: I would not want to bind the Secretary in that. I think she feels very strongly on this point. I think she would be perfectly willing to stand on the language Mr. Brown read.

CHAIRMAN ROPER: When will she be back?

MR. BATTLE: Tonight.

MR. WYZANSKI: At least 20 codes were approved in the month of October and I don't know how many in September which have no provision similar to the one which this Committee has agreed upon.

JUDGE STEPHENS: It seems to me that Mr. Brown and Mr. Wyzanski are almost agreed on this matter.

CHAIRMAN ROPER: It is almost a matter of phrasing. I thought if we could get these gentlemen to work on this we might proceed and later accept your report. You might be thinking about that phraseology and we will refer this to the Executive Committee in the hope that the Executive Committee will be able to report before we actually adjourn this meeting. Is there anything else touching the Model Code?

MR. WYZANSKI: Yes, one of the other questions is the position of the Code Authority. The Code Authority has more or less governmental authority to lay down rules for majorities as well as for minorities. It seems very important to the Secretary that labor should be represented. At least three codes -- the Garment Code, Men's Clothing and Cloak and Suit Codes -- have provision for labor representation. As this is merely a suggestion for particular things to include in the codes, it seems possible to include labor among those people to be on the Code Authority. It is a mere suggestion.

CHAIRMAN ROPER: May we hear from you on that, Mr. Brown?

MR. BROWN: This Office Order governs the Constitution of Code Authorities:

"October 24, 1933

OFFICE ORDER NO. 38

A. CONSTITUTION OF CODE AUTHORITIES

"Hereafter codes are to make the following provisions for the constitution of code authorities:

"1. Members of the code authority representing the industry are to be chosen by the industry by a method properly devised in each case to insure representation of all interests. If, however, in any case, by reason of conditions peculiar to the industry, selection by the industry is impossible, it may be provided that appointment shall be by the President.

"2. The Government is to be represented on code authorities by from one to three members without vote to be appointed by the President. At least one of these members is to have a background of experience in the industry or in an allied industry, but without present interest therein or embarrassing previous connection therewith. In the case of each code, the question how many members shall represent the Government, and the question what qualifications will be required for such membership, are to be referred to the Administrator for decision."

I understand it to be General Johnson's viewpoint that there are so many varying conditions affecting different industries that a general policy, if not impracticable, is at least undesirable. He feels that in order to secure the best administration in each case, he should exercise his judgment in each case.

CHAIRMAN ROPER: Isn't that provision satisfactory?

MR. WYZANSKI: I think that what Mr. Brown said is absolutely satisfactory. I think the difficulty is that the code itself does not reveal that attitude.

COMMISSIONER MARCH: The code itself does not reveal any attitude on that particular subject except to leave it to the Administrator.

MR. WYZANSKI: I think people have generally thought that only management and not the rest of industry is embraced in the Code Authority.

MR. BROWN: That can hardly be so, because the Coal Code, for instance, has labor members. Certainly there is no precedent which has been set which could lead the public to form a settled conclusion as to the policy.

JUDGE STEPHENS: Are there some instances in which labor should not be represented?

MR. BROWN: I conceive that there probably are, because it is a matter that General Johnson has reserved for his judgment in each case.

MR. WYZANSKI: I think that is a general question which should be settled, whether labor should be represented on every code. I will admit that the proportions of labor representation vary and it might be much higher in coal than in some other industry.

MR. BROWN: I am merely presenting General Johnson's viewpoint on that matter.

JUDGE STEPHENS: I suppose in the vast majority of codes labor would be entitled to representation. What would be the objection, Mr. Brown, to not putting in a clause that would require labor to be included, but to suggest various types of industry which would ordinarily be represented, such as management, employers, labor, etc. in order that the reader may not conclude that labor need not be included?

MR. BROWN: The General wants to reserve the decision in each case to himself.

JUDGE STEPHENS: My idea was to suggest that labor, among others, might be represented and might be considered, nevertheless leaving the final decision to the General.

COMMISSIONER MARCH: Isn't that implied by the wording now?

JUDGE STEPHENS: What is the section number?

MR. BROWN: Page 8, Section 2.

JUDGE STEPHENS: What do you say to that, Mr. Wyzanski?

MR. WYZANSKI: I think if there were inserted a statement that ordinarily provision should be made so that the Code Authority will include labor representatives, they would be more inclined to come in with that in view. I don't think they should be bound.

MR. BROWN: That point of view is not extremely important in view of the fact that the appointment of these members is reserved by the President and the Administrator and he can appoint any members he wishes in any particular cases. He may appoint a labor member. It requires no provision of the code to give him that authority.

JUDGE STEPHENS: I suppose Madam Secretary's theory is that if we do not put in such a provision the impression may be gained that it is never necessary to include labor.

MR. WYZANSKI: Exactly so!

DR. TUGWELL: I wonder if we could not think over this matter a bit. I am, offhand, inclined to think Mr. Wyzanski's point is very well taken.

CHAIRMAN ROPER: May we include this item, then, with the others in the reference to the Executive Committee?

JUDGE STEPHENS: Very well.

DR. TUGWELL: I have a matter in connection with the Model Code. I do not know whether my Secretary has commented to this Board about the Model Code as yet, but we have talked it over between ourselves and we have rather violent objections to one particular point. Perhaps I shall have to be a little prolix in explaining what it is.

CHAIRMAN ROPER: Can you refer to the item?

DR. TUGWELL: Yes, it is the item with reference to taking cost of production into account.

COMMISSIONER MARCH: What page is that on?

DR. TUGWELL: Under the Section of Trade Practices, Rule 5, under Article VII, and you will find reference to the general thing I am going to mention again in Article XI, having to do with "Price Increases."

CHAIRMAN ROPER: Rule 5 begins at the bottom of page 12.

DR. TUGWELL: Our feeling about that goes back to the general theory on which this Act was based. Theoretically, this goes back into a long history of dependence upon competition and of setting standards of competition, the chief of which, of course, was brought to bear in the price field. Prices were theoretically determined by competition and were therefore made fair to all parties to a bargain -- consumers, because sellers competed, and producers because consumers competed, and so on. Industries for a long time have had areas of rigidity growing up in a growing system of flexibility and they were areas in which prices could be fixed by industry in various ways, either by monopolies, or careful buying, or by some other

method either legal or extra-legal. The theory of the NRA was that we had gone so far along the way of setting up areas of rigidity and there had been so many means of escape found from the standards and limitations imposed by the antitrust laws, that it was better to take industries out from under the antitrust Act and set up new schemes by which the public interest in such matters as price increases could be protected. If that were done and carried out in a conscientious and full manner it would mean that the industries would be forced by logic to accept public control of their prices. That would be the limit of the extent to which the thing could go. Any place between complete freedom for the industry and complete control of the industry by the public through Government agency, there could be any kind of modification or limitation imposed within that range. It is my feeling that as the Model Code is set up and as a good many of the codes now in operation are constituted, there has been a complete abrogation of either protection to the public from price increases by competition, or by public authority, so that to all intents and purposes industries are now free to set up what prices they please, and I think the results are beginning to be apparent in what is happening in the industrial field. It means that industries are turned completely loose to what has been referred to as "enlightened self-interest" --

CHAIRMAN ROPER: Always enlightened?

DR. TUGWELL: Which is not always enlightened, sir; and I think we are making a very great mistake in not reserving to the public further rights in the making of these codes with reference to prices. All these other things, from the point of view of the public, are minor compared with the injury that may be done to the consumers, and the general social system as well, through price increases. And when such a system is suggested, as is suggested in this particular section, that selling below cost may be forbidden, the door is opened to a perfect morass of suggestions from industry itself as to what cost of production is. Nobody has ever settled that. The Federal Trade has labored over it for years and they are thoroughly disillusioned about cost of production. And you get to something finally such as is illustrated in a number of the codes which have gone through and been signed already.

COMMISSIONER MARCH: The Retail Code provides against selling below cost, doesn't it?

DR. TUGWELL: Yes, but there was a modification which was the result of long effort on the part of many people.

MR. BROWN: There was no modification of the provision for cost of production. The modification was of the line above cost.

DR. TUGWELL: It defined cost of production to a certain extent.

JUDGE STEPHENS: The Retail Code was made subject to study, wasn't it?

DR. TUGWELL: Yes; of course, the Retail Code anyway is different with respect to cost of production. Cost of production

is easier to get at there for it is what the fellow paid for a thing, but that is a great deal different from manufacturing. In the Lumber Code you get the kind of thing to which I refer. First, it states the cost-of-production principle, and then it says that the Code Authority may to all intents and purposes fix prices, and then it talks about fair value and says that is based, as I remember it, on the valuation of standing timber and prices are to be determined by this valuation; and then a little farther along you will find that valuation is to be determined by the prices which can be got for the lumber, which is absolutely circular reasoning, which is always what you get into. That is the public utility dilemma in which we have always found ourselves.

I think these codes are going through with a very serious lack of attention to the problem of price control, and what is likely to happen when the industries attempt to set their prices without any relation to the probable buying power for the goods they produce is that there will be no residual power left to the Government under this Model Code, so far as I can see, which will enable us to bring industries into relation to each other which will enable the workers in the one industry to buy the things the other industry makes.

With your permission, I want to take exception to that particular thing and would like to submit a memorandum to you, sir.

CHAIRMAN ROPER: Would you like to suggest an amendment?

DR. TUGWELL: I would rather submit a memorandum in which we do suggest an amendment.

COMMISSIONER MARCH: I think what Dr. Tugwell says is a very serious matter. I think that should be considered very carefully. If you put this out as a Model Code and have that in there, I think it is going to be subject to a great deal of criticism by everybody and the consumer is going to make very serious objection to it.

DR. TUGWELL: I don't know that the consumer will, because I have never been able to locate that animal.

COMMISSIONER MARCH: We located him very definitely!

DR. TUGWELL: I am sure they will find it impossible to operate if each industry gets a price structure that is too high. They will choke on it. The larger purchasing power is lacking. Instead of reducing prices in many of the larger industries of this country during the depression, we got a percentage of capacity down as low as 15%, with a price structure maintained where it was during prosperous times, and that is a situation which cannot exist permanently.

MR. BROWN: Are we through with this, Mr. Chairman?

CHAIRMAN ROPER: If there is no objection, we will await a memorandum from Dr. Tugwell. Is there any other suggestion?

MR. BROWN: I would like to make one; this Model Code is not new -- it has been under consideration in the NRA for two months, at least. While some of the points in it may be moot

points, there are none of them new points. I will grant Secretary Tugwell that we have some price provisions in codes passed which are much worse than this one. The purpose of these provisions is to show the industry the farthest it can go and thereby try to avoid some of the exorbitant requests which have been made.

DR. TUGWELL: I will also say this, that Secretary Wallace and myself have submitted memorandums to this Board and to General Johnson -- we have copies of them in our files and we will get them out and let you see them if you like -- but still the situation remains exactly as it was. I shall submit my memorandum without feeling that anything will probably be done, but I should like to have my own records clear.

CHAIRMAN ROPER: Can you submit that this afternoon?

DR. TUGWELL: No, not this afternoon.

MR. BROWN: I was not implying any objection to Secretary Tugwell's memorandum. The point that I was coming to was that this Model Code, so-called, is necessary to our Administration -- to the expeditious consideration of codes. In sending it out or beginning to send it last week, I felt and still feel that there is nothing in it that is new. As it stands now, it is held up on instruction from the White House, originating as I understand with the Department of Labor. I simply want to point out that so long as it stands held up, so long are our operations impeded.

CHAIRMAN ROPER: That is why we are trying to expedite the work of our Committee. I am sure Dr. Tugwell will get his memorandum in as soon as he can.

JUDGE STEPHENS: I think Dr. Tugwell ought to be given reasonable time to present his memorandum. Offhand, I agree with his suggestion.

MR. BROWN: There is no policy which is not open to question, not open to argument, not open to change at any time. My point is that there are many moot questions upon which all of us will never agree, and if we must defer our operations until we can agree in some conjectural field, we will never get anywhere.

CHAIRMAN ROPER: Those have already gone out in one form or another.

MR. BROWN: Yes, 3,000 copies went out before the word came to hold it up. Some people have them and other people are asking for them and we are compelled to say we cannot give them out.

MR. WYZANSKI: May I enter a protest in behalf of the Secretary of Labor? She feels very strongly that no code should go out until this statistical question is settled. It may be settled against her, but she feels very strongly that it should be settled.

CHAIRMAN ROPER: It has been held up.

MR. WYZANSKI: Yes, but I understand that you want to expedite the matter.

MR. BROWN: I can only say that, to my point of view, it was settled on September 11; but as I said, anything settled is never

settled -- it is always open to question. But let us proceed with our Administration and then make a change when we can reach a subsequent agreement. Half the codes -- rather a number of codes -- have already gone through having contained price fixing provisions.

DR. TUGWELL: Yes, and my objection is that there has never been any adequate discussion of it. This Board has never passed on it. Of course, the President signed it -- I admit that.

MR. BROWN: There was a very extensive discussion of the Retail Code.

DR. TUGWELL: Yes, that is true, but I consider that to be in quite a different class because cost of production is so easy to find there. You agree with me that it is in a very different class.

COMMISSIONER MARCH: Yes, sir, I agree with Dr. Tugwell.

CHAIRMAN ROPER: Shall we pass on to the next item, an unfinished item on our agenda?

Mr. Brown, you were going to have something further to say in this connection (referring to No. 4 on the agenda).

MR. BROWN: I sent to each member of the Board a copy of the form of suggested legislation that our Legal Division prepared and sent to each State. I understand that that answers the question.

CHAIRMAN ROPER: It does for me.

(See Appendix "A" for the material referred to.)

MR. WYZANSKI: I wonder if your Legal Division knows that in Massachusetts there is an institute working on this subject, that

the Secretary of Labor has endorsed the work of that commission; and I wonder whether that commission has received a letter from your organization.

MR. BROWN: We have a man there who follows State legislation.

MR. WYZANSKI: There was a committee representing seven or eight States, I think.

CHAIRMAN ROOPER: We have a very interesting memorandum on the next item, namely, the relation between the Ford Motor Company and the NRA. While we are sending for that memorandum, may we pass that point and take up the question of additional space. I have a request, I think, Mr. Brown, for additional space.

MR. BROWN: I talked with Mr. Kerlin about that matter. If the Secretary wishes, I can tell the Board a little of what the situation is.

CHAIRMAN ROOPER: Yes, I regard you (speaking to the entire Board) as at the moment advisers of the Secretary of Commerce, as well as associates on this Board. I have two appeals for space -- one from the Home Owners Loan Board, and also the one from Mr. Brown. I understand that Mr. Brown is seeking now for the NRA 25,000 square feet additional space.

MR. BROWN: No, sir, I would not put it that way. I talked with Mr. Kerlin quite generally about the apparent need of space over the period of the next two or three months. I think it will be considerably in excess of 25,000 square feet. I think it may run to 100,000 feet, which is what we have now.

CHAIRMAN ROPER: Double what you have now?

MR. BROWN: Yes, I confess I have no means of estimating that. Our personnel has been increasing.

COMMISSIONER MARCH: What is your number now?

MR. BROWN: About 1300.

COMMISSIONER MARCH: How much floor space have you now?

MR. BROWN: 105,000 feet.

CHAIRMAN ROPER: This is an interesting memorandum and probably before reading it I should say that a month or six weeks ago I discussed the general situation with the President with regard to the adjustment of our facilities in the light of our space, and I said to him, and he seemed to have that view too, that we thought the NRA would probably be reducing its force. We were then up to about 1,000 or 1,100 probably. I notice, though, that the NRA now has 1,350 persons employed, utilizing 105,000 square feet of space. Now, I would like to ask Mr. Brown what he thinks will likely be the high-water mark in employment of persons.

MR. BROWN: If we are to proceed, as we understand we should, as rapidly as possible to get all industries under codes, and if we are to continue to do that as expeditiously as possible, we ought to make such increases in our force as we can assimilate as rapidly as we can.

CHAIRMAN ROPER: To that end?

MR. BROWN: To that end. I think our force might grow to as much as 2,000 within a period of three months from now. That is shooting in the dark, of course.

CHAIRMAN ROPER: How many codes do you anticipate must be consolidated?

MR. BROWN: We have 970 national codes.

CHAIRMAN ROPER: We have approved how many?

MR. BROWN: Approximately 110. The number of codes, of course, which are approved is not significant because we may find it possible to consolidate 20 codes in one, or we may find it necessary to approve those 20 codes individually. There are about a thousand national industries subject to codes.

CHAIRMAN ROPER: About 900 yet to be approved.

COMMISSIONER MARCH: How many passed, but not approved?

MR. BROWN: We have 970 national codes, of which 110 have been approved.

COMMISSIONER MARCH: They have been passed by the industries?

MR. BROWN: They are already filed with us.

COMMISSIONER MARCH: The industry has not approved them?

MR. BROWN: They may have approved the form in which the codes were presented, but of course we have various things to do with them -- like injecting statistical clauses and one thing or another.

CHAIRMAN ROPER: That brings up the proposition which we ought to take up immediately, it seems to me, with the Secretary of the Interior who controls now the distribution and allotment of space. I take it from what Mr. Brown has said that he will need some 20,000 feet at an early date.

MR. BROWN: I spoke to Mr. Kerlin in very general terms only. He said he thought it was a possibility that the Home Loan Bank might vacate and that 20,000 feet would be available there.

In view of the possibility of increasing personnel and in view also of the fact that a large part of our personnel has been working considerable overtime, which cannot last forever, and as people reduce their working hours more towards normal, a larger personnel will be required; and in view of the fact that at the present time we are in a very crowded condition -- in view of all those things I think it is reasonable to say that within a period of three months we will probably need as much additional space as we have now.

CHAIRMAN ROPER: The Home Owners have about 80,000 feet?

MR. BROWN: Mr. Kerlin said 20,000, and I heard from somebody else 30,000.

MR. JENSEN: It is 20,000.

CHAIRMAN ROPER: We are moving them into a temporary building. Suppose we move them out entirely. That would provide 20,000 feet, but that would not meet your requirements.

MR. BROWN: I am afraid not.

CHAIRMAN ROPER: Can your work be divided up so that a portion of it could be put in another building?

MR. BROWN: It is not desirable, Mr. Chairman. It involves losses in time, but if it is the only thing we can do, perhaps we could arrange it.

CHAIRMAN ROPER: Some of these new buildings along the Avenue will be available about the first of January. Will that be early enough for most of your requirements?

MR. BROWN: I would say probably not; but if we could have some temporary

accommodations in the meantime it might answer the problem.

CHAIRMAN ROPER: How much in the meantime?

MR. BROWN: It is very much like guessing to say perhaps 30,000 feet available some place else would be an assurance that we may get by.

CHAIRMAN ROPER: You may be wondering why I am taking this up and taking your time, but I told the President it was very important that this question of space be settled. This Home Owners Board was requiring considerable more space. We have their work so divided that we are putting a part of them in another temporary building. They say they must stay here for proper protection, but now they have 20,000 feet which is not sufficient; they must have four or five thousand feet more. The President thought we ought to talk it over with the Board as our primary responsibility may be to the NRA and consequently I just wanted to bring this up so I can say to the President we have done so. Perhaps you might study this problem so that we can say to Mr. Brown and probably to the Home Owners people that if they could get along with just a minimum of extra space, we would see Secretary Ickes and provide for adequate space in the new buildings at that time. That brings up the question whether we should -- and I must make an answer to this immediately after this meeting -- whether we should suggest to the Home Owners that they move out entirely so as to give you the 20,000 feet. You think you will need that probably?

MR. BROWN: Very Shortly.

CHAIRMAN ROPER: Then I presume that is about the limit.

JUDGE STEPHENS: I can confirm Mr. Brown's statement that it is very inconvenient to have one department in more than one building. It is really a great nuisance if it can be avoided.

CHAIRMAN ROPER: It seems as though, due to the fact that Mr. Brown thinks he has to have 100,000 additional feet, that I can hardly see any escape from splitting up.

We will pass along to the next item. I have a memorandum on this Ford situation, and it is very interesting to me. I will get the Secretary to read it.

Mr. Jensen then read the following memorandum:

"November 13, 1933

Memorandum:

To: Mr. Roper
From: South Trimble, Jr.

Re: Bids of Ford Dealers for the supplying of motor equipment to be paid for out of Public Works Funds.

"In the Comptroller General's letter to you dated November 10 he stated that 'the mere fact that any such member had not pledged compliance should not preclude the awarding of a contract to such member if the lowest bidder and otherwise acceptable.'

"The Comptroller General calls attention to the fact that we failed to state in what respect the Ford Motor Car Company had not complied with the code approved by the President for the Automobile Manufacturing Industry and then refers to the fact that the Administrator for Industrial Recovery has reported to his office, in letter dated November 1, 1933, that the Administrator has not been advised of any proved violation of said code.

"The Comptroller General further points out that the President's Executive Order 6252, dated August 19, 1933, does not specifically delegate authority

to the Federal Emergency Administrator of Public Works to prescribe the form of contracts to be made by the departments or establishments to which national recovery funds may have been allotted. However, he thinks that it would seem proper to incorporate in such contract any reasonable provisions that may be necessary to further the purposes of the National Recovery Act.

"In the Comptroller General's letter of November 10, 1933, to the Secretary of Agriculture, which is referred to in your letter, the Comptroller General holds that the fact that the Ford Motor Company may not have signed the code is not controlling, he taking the position that it is to be assumed that the provisions of the code will be duly observed. He points out that under the act of June 16, 1933, and the procedure under which codes are prepared and approved, that no signing or affirmative assent is necessary.

"Under Executive Order 6246, it provides that the contractor shall comply with all provisions of the applicable code of fair competition for the trade or industry. There is no provision in said Executive Order requiring the contractor to sign the code.

"Section 53, of Bulletin 51, issued by the Federal Emergency Administrator of Public Works provides 'no bids will be accepted from any contractor who has not signed and complied with the applicable approved code of fair competition under Title 1 of the National Industrial Recovery Act for the trade or industry or subdivision thereof concerned, who has not signed and complied with the provisions of the President's Reemployment Agreement.'

"I have just talked with Mr. Hunt, General Counsel of the Public Works Administration, and he advises that the above section was not formally approved in writing by the President.

"As Section 52 is the only regulation that we have been able to find that excludes bids from contractors who have not signed the code, I suggest that the Comptroller General be requested to reconsider that portion of his decision which related to the authority of the Federal Emergency Administrator of Public Works to prescribe the

the conditions under which contracts are to be made by departments or establishments to which National Industrial funds may have been allotted.

(Signed) Solicitor"

CHAIRMAN ROPER: Does he mean to say that Ford is already under the code by virtue of the fact that the Automobile Code has been accepted?

MR. BROWN: There is no question about that.

CHAIRMAN ROPER: Then what are we talking about?

MR. BROWN: As I understand it, the crux of the situation is that he made the statement he would not comply with the requirements.

DR. TUGWELL: It is a very serious matter for us. We have been held up now an unconscionable length of time. Trucks and cars are very badly needed. People seem to be putting it off and referring it to somebody else. We are up against a very bad situation.

MR. BROWN: As I recall the Executive Order governing the purchase of supplies, it requires that every contract for supplies include a provision whereby the contractor agrees to comply with the terms of the code. It did not require the bidder to assent to the code, but when he signed the contract he would have to sign the provision that he would comply with the terms of the code.

DR. TUGWELL: Why could not we go forward with freedom to buy these automobiles from Ford and write into the contract which he accepts the provision that he is to comply with the code?

MR. BROWN: The trouble is you are probably not dealing directly with Ford.

DR. TUGWELL: It is the Northwest Motor Company.

CHAIRMAN ROPER: If this contract were to be signed by Ford that would end it.

DR. TUGWELL: But it is not.

CHAIRMAN ROPER: There is no question about the fact from this interpretation that Ford is already under the Code.

DR. TUGWELL: Why not put into the contract that these automobiles are furnished by a concern which complies with the code, and that they are certified to be made by a company which complies with the code. We have got to get out of this dilemma some way.

JUDGE STEPHENS: Perhaps these dealers are agents for Ford.

DR. TUGWELL: I think they buy their cars outright.

MR. BROWN: There is a very interesting point. The standard form of dealers' contract with Ford provides that any Ford dealer receiving a solicitation for bids from Government departments shall refer that to the Ford Motor Company.

DR. TUGWELL: Does that make them agents?

JUDGE STEPHENS: I am afraid not.

COMMISSIONER MARCH: They have worded those contracts so that they are not the agents of Ford.

DR. TUGWELL: As I interpret the Comptroller General's opinion we would be in awfully hot water if we bought Chevrolets.

JUDGE STEPHENS: Having heard of the Comptroller General's opinion, I called Assistant Attorney General Wideman, and he tells

me that he, acting for the Attorney General, has issued two opinions. The first, a general opinion to the effect that the Government department soliciting bids might put in as a condition precedent to the acceptance of a bid that there had been compliance with the NRA. Later, he tells me, some of the departments themselves required that there should be a signing of the Code. Another opinion was then issued that that was a proper requirement. Of course, McCarl's opinion is just to the contrary of that, according to the papers.

DR. TUGWELL: Mr. McCarl signs the checks!

MR. BROWN: My understanding is that the price on Government bids reflects a discount in excess of the discount given to dealers.

DR. TUGWELL: We have no doubt of that and we do not want to buy Fords if we can do otherwise.

CHAIRMAN ROPER: May I make this suggestion: this question is of interest to other units besides those that are represented here. It seems to me that it would be well to ask Judge Stephens to take this opinion and this memorandum of South Trimble and prepare, in the light of what they are doing over in the Department of Justice, a memorandum for consideration of the Executive Council tomorrow afternoon.

DR. TUGWELL: Would it be too much to ask that he advise us what it is we have to do?

JUDGE STEPHENS: I will try to have that arranged. It will probably have to be taken up through Mr. Wideman.

CHAIRMAN ROPER: We shall hope that we may be able to have a report from him tomorrow afternoon at that meeting.

I have here several Personnel Journals. These come in largely at daily intervals, and I have held them up not because I find any objection to the nominations or the appointments which are carried here, but because I think that it is bad policy for the Chairman to be approving of these and then asking the Board to approve of what has been done, especially as we meet at weekly intervals. The question has arisen, "What would happen in the event that we should not approve of these Journals?" The people would be left without pay. It is said that the Board would not want to do an injustice and we would need to see that such people were paid pro rata for the period they had actually served. If the Board is willing to have that understanding outstanding then I will be able to bring these Journals to the attention of the Board and not be compelled, as Chairman, to approve them and then go through the process of getting you to approve what I have already done. Would that policy be acceptable?

JUDGE STEPHENS: I move that that be done.

MR. BROWN: We cannot pay any of these people until they are approved here.

CHAIRMAN ROPER: You pay them by the week?

MR. BROWN: No, semi-monthly. Sometimes due to unavoidable circumstances, such as investigations by the Personnel Section, their pay is

held up for a considerable period before it is submitted.

This means a maximum of a week more in some cases.

COMMISSIONER MARCH: Isn't it a little out of order to put them on pay before they have been approved? Not that I object at all, but it isn't generally done. They are generally approved before they are put on the payroll. Wouldn't we be liable to be criticised for doing that?

CHAIRMAN ROPER: I think we are liable to be criticised. In other words, if Mr. Brown could get these names up to us as soon as his Personnel Officer down there passes on them, maybe that would solve the very difficulty you have in mind.

MR. BROWN: It would hamper operations very materially when we are trying to build up an organization to deal with the codes to have to keep these people off the rolls until they were approved here. I would suggest that the Board would have done its full duty if it approved or disapproved of the Administration's actions after those actions have been taken. A person can be removed as promptly as he is put on.

CHAIRMAN ROPER: What I have suggested is that we do this at weekly intervals. I do not think there would be any serious embarrassment there. It would in some cases involve withholding pay for an additional period for some persons whose pay has already been withheld. They are not paid until they are approved by the Personnel Division.

MR. BROWN: Some of these people are already on the rolls a week before they get on the Personnel Journal.

CHAIRMAN ROPER: They are working, but not on the payroll?

MR. BROWN: They are working without compensation.

COMMISSIONER MARCH: That is a clear violation of the statute. I am not sure about the other one. It seems to me it would be well to employ, for not more than two weeks at a time, such people as are going to be considered for longer appointments. Employment of people by the Government without paying them is in direct violation of Section 665 of Title I of the United States Code.

CHAIRMAN ROPER: That is a fact. I think that is a matter for further consideration. I suggest that you permit me to approve of these and let the plan that has been suggested operate subject to working out this program within the confines of the legal requirements.

JUDGE STEPHENS: Will you be kind enough to state it again?

CHAIRMAN ROPER: The plan I am suggesting is this: that these Personnel Journal sheets be approved by the Board at the regular Monday afternoon meeting of the Board, and that in the meantime if it is, in the opinion of the Administrator of the NRA, necessary to put people on the payroll down there, and in any case if it becomes necessary for the Board to reject any of these persons appointed, in that event they will be paid pro rata for the service actually rendered.

DR. TUGWELL: Am I wrong in remembering that this Board delegated to you, sir, the power to approve personnel?

CHAIRMAN ROPER: It did.

JUDGE STEPHENS: That is correct.

DR. TUGWELL: Why can't that go on? Do you prefer not?

CHAIRMAN ROPER: I thought it was a courtesy to the Board to have them act on these sheets rather than asking you to approve of something I have done.

JUDGE STEPHENS: If you put it on that basis, if it is not an undue burden, I think the old arrangement is preferable.

DR. TUGWELL: I feel that way too.

COMMISSIONER MARCH: Let me make one observation there. Would it not protect you and the Board to have that done before people are put on the payroll?

CHAIRMAN ROPER: I understand from Mr. Brown that that would not be as satisfactory.

JUDGE STEPHENS: I don't think we ought to ask Secretary Roper to take any unfair responsibility in that matter.

COMMISSIONER MARCH: I think he does.

CHAIRMAN ROPER: I want to make sure that this plan is in line with the legal requirements, that is all. I will approve of these under the rule you have heretofore laid down, with the understanding that the Executive Committee will look into the legal phases of this situation and make sure that this plan is in accordance with the law, if you will kindly do that.

Now, let me bring to your attention cases where the salary is \$3500 or more. This sheet carries Albert J. Hettinger, Senior Economist, \$4,000 net; the next one is

Frank P. McIntyre, Assistant Attorney, \$4,600 net; is there any objection to those? I hear none. The next is Wilfred M. McFarland, Assistant Counsel, \$5,100 net; Hiland Hall, Assistant Counsel, \$4,440 net; C. Sterry Long, Assistant Deputy Administrator, \$3,825 net; that is all. Without you have some inquiry about those, the list stands approved. (See Appendix B.)

We have a fairly definite policy, subject to the investigation of the Executive Committee, with regard to the approving of the appointment of persons. Now, how about increases in salaries? That question has been asked me. Do you wish to submit cases where salaries have been increased? We are bringing to your attention now especially those cases of salaries of \$3500 and more; how about a man who has been promoted to \$3500 or more so as to get into the class which we have heretofore, and are now, bringing to your attention?

JUDGE STEPHENS: Since the Board is responsible for the salary schedule throughout, it seems to me they ought to be reported to the Board and approved.

CHAIRMAN ROPER: Without objection, then, we will ask for that. Any objection, Mr. Brown?

MR. BROWN: I see no objection.

DR. TUGWELL: May I ask a question for my own information?

CHAIRMAN ROPER: Certainly.

DR. TUGWELL: Does the Chairman of this Recovery Board approve of Codes or is it only the Administrator that approves them?

CHAIRMAN ROPER: I believe we had an understanding early in the history of this Board that these codes would be submitted for approval by this Board; but General Johnson, you will recall, was terrifically pushed for time and in an effort to expedite the work several of the codes have not been approved by this Board in advance of their going to the President. They have been approved by the Administrator and by the President, but not by this Board.

DR. TUGWELL: Is that considered now to be the regular procedure, or not?

CHAIRMAN ROPER: You mean of not approving them by this Board?

DR. TUGWELL: Yes, sir.

CHAIRMAN ROPER: No, the regular procedure would be to have them approved by this Board.

DR. TUGWELL: I feel, and I think Secretary Wallace feels, that there are some instances that we would like to have some time to consider these codes. We never see them, so we never have a chance to consider them.

MR. WYZANSKI: I am sure Secretary Perkins feels the same way.

COMMISSIONER MARCH: We have never approved a code, have we? I think it was said we should approve them, but they went direct to the President.

DR. TUGWELL: I think it is time we slowed up and considered these things more carefully.

CHAIRMAN ROPER: Mr. Brown, is there any difficulty about that? Now that

you are over the haste that characterized your work in the early days, why can not we now establish the usual procedure which, as I understand it, is that these codes, after being approved by General Johnson, would be approved by this Board and then go to the President.

MR. BROWN: I am uninformed as to what the usual procedure was.

CHAIRMAN ROPER: You mean the original procedure?

MR. BROWN: I do know the terms of the Executive Order which defined the Administrator's authority and the authority of this Board. The Executive Order says that the Administrator shall operate under the general approval of the Board. How far that expression "general approval" carries down into the operations of the Administration I do not know.

DR. TUGWELL: Codes are by far the most important thing that we have to deal with, and if we never have a chance to consider them, we are just rubber stamps. There are several codes that I have seen in the newspapers that I objected to very much, and I should like to have a chance to object to them before they become a reality.

MR. BROWN: The Secretary said we are now over the haste; but we are not over the effort to get the work done as rapidly as possible. I have not the slightest doubt that having to refer each code to this Board would slow up operations materially.

DR. TUGWELL: I submit that the need for haste is never so great that we have to take the chance of making a bad error.

CHAIRMAN ROPER: We can meet any day. We are willing to meet here in special meetings as often as may be necessary for the approval of

codes or the consideration of codes. Isn't that the feeling of the Board?

JUDGE STEPHENS: Certainly!

CHAIRMAN ROPER: That being the case, is it your desire, then, that we ask Mr. Brown to feel that this Board will assemble at the call from the Chairman any time that he wishes to submit a code for consideration, and that we think all codes from now on should be submitted to this Board in advance of having them submitted to the President?

DR. TUGWELL: Yes, sir.

MR. WYZANSKI: Yes, sir.

CHAIRMAN ROPER: Mr. Brown, is there anything you wish to say in regard to that?

MR. BROWN: No, sir.

CHAIRMAN ROPER: You feel it can be complied with?

MR. BROWN: I would rather let General Johnson speak as to that.

CHAIRMAN ROPER: There would certainly be no objection if we say we are subject to call. We can meet any minute.

MR. BROWN: After all, that is a basic matter and I prefer to leave it for General Johnson.

CHAIRMAN ROPER: Whether the codes should be submitted to the Board?

MR. BROWN: It seems so to me.

MR. WYZANSKI: Hasn't that been as much settled as the statistical question?

COMMISSIONER MARCH: I think each and every member of the Board so considered at the first meeting.

CHAIRMAN ROPER: Let me read what General Johnson said at the third meeting of the Board:

"Only one thing I want to add: I said in the first meeting I would not think of submitting the code to the President without submitting it first to the Attorney General. We had intended, and arranged everything, to submit that code here today. In fact, I had a formal meeting called of our advisory committees--labor, industrial, consumers--in order to present it to them. But last Saturday night the White House called and said that on account of the tremendous pressure on the President he wanted to pass on that thing yesterday when he came back from that sail. I said I did not feel I could do that without this Board seeing it first, and Mr. McIntyre told me they would attend to that over there, which I believe they did. But I want to make my apologies to Mr. Attorney General because I did not intend to do that. In fact, I would not have submitted it without your seeing it."

MR. JENSEN: That was in response to a request by the Attorney General that he wanted to be heard on all codes.

JUDGE STEPHENS: If the President is holding this Board responsible, I think we ought to have a chance to see the codes. If there is any doubt about it, that should certainly be determined by the President.

CHAIRMAN ROPER: Would you wish me to put that question up to the President?

DR. TUGWELL: I think it would be a very appropriate matter to bring up at the Council.

CHAIRMAN ROPER: Will you frame that, then, so we can have it in the minutes?

DR. TUGWELL: Yes, sir.

CHAIRMAN ROPER: While Dr. Tugwell is getting his suggestion ready, here is a matter pertaining to the Construction Code. This is not before us at all, Mr. Brown--it is still with your people. I don't believe it is proper for me to bring that up now, as it is still

with your unit, so I will turn this letter over to you.

MR. BROWN: Very well.

CHAIRMAN ROPER: What I try to do is this: When these people come to see me about matters that are before you, I listen to them and try to appear wise and do not advise, except to direct them back to the N.R.A., because I do not believe that this Board, or I as chairman, or any member of the Board, has any responsibility in the matter until it has received the detailed consideration of the people in the N.R.A. Most of the troubles that these excited people have in mind will be threshed out down there, and for us to undertake to do any more than refer them would lead to confusion.

DR. TUGWELL: I suppose you want a simple reference to the Executive Council, so I have put it this way:

"The question whether all codes should be considered by the Recovery Board in advance of their submission to the President has been raised. The regular procedure, as indicated by the terms of reference of the Board, would seem to hold it responsible for approval or rejection. This procedure is not usually being complied with, and the Board would like to have a definition of its responsibilities in the matter."

CHAIRMAN ROPER: Is that the sense of the Board?

JUDGE STEPHENS: I move that a request in those terms be made for a definition of the responsibilities of the Board. My view is that if we are not responsible for approving these codes, we ought to know we are not; and if we are responsible for them, then they ought to be submitted to us.

DR. TUGWELL: This is a simple request for a definition of responsibilities without prejudicing the matter either way.

CHAIRMAN ROPER: Whether we are expected to pass upon these codes in advance of their being presented to the President.

COMMISSIONER MARCH: Correct!

CHAIRMAN ROPER: And if we are not, whether that exception should be made by the President himself.

COMMISSIONER MARCH: Yes, sir.

CHAIRMAN ROPER: In other words, there would be no objection on the part of this Board if General Johnson got up against an emergency and went direct to the President and stated to the President that the matter had not been passed upon by the Board.

JUDGE STEPHENS: I don't think we ought to be in the position of inviting this responsibility. I certainly do not want to bear it. In my opinion, it will be an extraordinarily difficult thing. There will be hundreds of these codes, and there would need to be a committee appointed with little else to do.

DR. TUGWELL: A code is passed, and we see it in the newspapers, and people ask us about it, and we have to say we never heard of it.

CHAIRMAN ROPER: Will you see, Mr. Secretary, that a copy of the Executive Order is attached to the memorandum and brought to the meeting tomorrow?

Meeting adjourned at 4:07, and the Executive Committee immediately went into session.

APPENDIX A

November 7, 1933.

Honorable Daniel C. Roper
Secretary of Commerce
Washington, D. C.

My dear Mr. Secretary:

Pursuant to the request made at the board meeting yesterday, I am inclosing a copy of the communication we sent to the states suggesting legislation to make the National Industrial Recovery Act more effective locally.

Very truly yours,

Alvin Brown
Assistant Administrator and Executive Officer

NATIONAL RECOVERY ADMINISTRATION

To the Governor of _____:

The National Recovery Administration is deeply interested in the passage of State legislation providing for state cooperation with the National Recovery Administration and the elimination of any conflicts in the carrying out of the purposes and policies of the National Industrial Recovery Act which might arise by virtue of existing state laws.

The National Recovery Administration does not presume to give definite advice as to the particular provisions which such legislation should include in any particular state which elects to cooperate by the enactment of such a statute. However, it is thought that a substantial uniformity in the character of the various acts of the several states would prevent confusion and conflicts and aid in the coordination of the efforts of the nation and the states. With this thought in mind, the following is submitted as a form for a statute which provides for full cooperation with the National Recovery Administration in this emergency. This may be used as an aid in drafting, or in any way you see fit.

HUGH S. JOHNSON
National Recovery Administrator.

AN ACT

TO ENCOURAGE STATE AND NATIONAL INDUSTRIAL
RECOVERY BY COOPERATING WITH THE NATIONAL
GOVERNMENT IN FOSTERING FAIR COMPETITION
AND FOR OTHER PURPOSES.

Section 1. A state-wide emergency productive of widespread unemployment and disorganization of industry, which burdens commerce, affects the public welfare, and undermines the standards of living of the people of this state is hereby declared to exist, and it is hereby recognized that such an emergency exists throughout the nation. It is hereby declared to be the policy of this state to provide for the general welfare by cooperating with and assisting the national government in promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industry, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and conserve natural resources, and otherwise as announced in the Act of Congress entitled: "An Act to encourage national industrial recovery, to foster fair competition, and to provide for the construction of certain useful public works, and for other purposes" approved June 16, 1933, and commonly known as the "National

Industrial Recovery Act."

Section 2. To effectuate the policy of this Act, the Governor is hereby authorized to consent to the President of the United States utilizing State and local officers and employees in effectuating the policies of the National Industrial Recovery Act in accordance with the provisions of Section 2 (a) of that Act.

Section 3. (a) No person, natural or artificial, shall refrain from complying with the provisions of any code of fair competition, agreement or license, approved, prescribed, or issued under the terms of the National Industrial Recovery Act on the ground that he is not engaged in transactions in, or affecting "interstate or foreign commerce" as defined in paragraph (d) of Section 7 of Title I of the National Industrial Recovery Act.

Section 3. (b) The terms and conditions of any Code of fair competition, agreement, or license approved, prescribed, or issued under the terms of the National Industrial Recovery Act for any trade or industry or subdivision thereof, shall be considered as the standards of fair competition for such trade or industry or subdivision thereof in all its transactions within this state. The violation of such standards by any person engaged in such trade or industry or subdivision thereof within this state shall be deemed the use of unfair methods of competition.

Section 4. (a) When a code of fair competition has been approved or prescribed by the President under the National Industrial Recovery Act, any violation of any provision thereof in any transaction within

this state not in or affecting "interstate or foreign commerce" within the definition of paragraph (d) of Section 7 of Title I of the National Industrial Recovery Act, shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than five hundred (\$500.00) dollars for each offense, and each day such violation continues shall be deemed a separate offense.

Section 4. (b) Any person subject to and complying with the terms and conditions of any code of fair competition, agreement, or license, approved, prescribed, or issued under the terms of the National Industrial Recovery Act for any trade or industry or subdivision thereof within this state, or any.....attorney of this state may institute a suit to prevent and restrain any violation of any provision thereof in any transaction within this state not in, or affecting "interstate or foreign commerce" within the definition of paragraph (d) of Section 7 of Title I of the National Industrial Recovery Act. The.....
.....courts of this state are hereby invested with jurisdiction to entertain such suits.

Section 5. While this Act is in effect, (or in the case of a license while paragraph (a) of Section 4 of Title I of the National Industrial Recovery Act is in effect), and for sixty days thereafter, any code of fair competition, agreement, or license approved, prescribed, or issued under the terms of the National Industrial Recovery Act, and any action complying with the provisions thereof (including the acts of any person or persons interested in any trade or industry or subdivision thereof in meeting, conferring or agreeing upon any code of fair competition or agreement) taken during such period, shall be exempt from the provisions of the anti-trust laws of this state, or any court order or decree issued

thereunder, whether or not such trade or industry or subdivision thereof is engaged in transactions in or affecting "interstate or foreign commerce" as defined in paragraph (d) of Section 7 of Title I of the National Industrial Recovery Act.

Section 6. In furtherance of the purposes and policies of this Act and of the National Industrial Recovery Act, any department of this state and the governing body of any subdivision, municipal corporation or district and any public officer or person charged with the letting of contracts for (1) the construction, alteration or repair of public works or (2) the purchasing of materials or supplies for public use, shall let such contracts only to those persons, natural or artificial, who agree in and by the terms of such contracts to use or supply only articles, materials and supplies mined, produced, manufactured or supplied by a person who is a party or subject to a code of fair competition, agreement, or license, approved, prescribed, or issued under the terms of the National Industrial Recovery Act in every case where a code of fair competition, agreement, or license has been approved, prescribed, or issued under the terms of the National Industrial Recovery Act for the trade or industry or subdivision thereof mining, producing, manufacturing or supplying such articles, materials or supplies. Any practices in violation of such terms of such contracts shall be deemed the use of unfair methods of competition within the meaning of this Act.

Section 7. This Act shall cease to be in effect on June 16, 1935, or sooner if, as provided in paragraph (c) of Section 2 of Title I of the National Industrial Recovery Act, the President shall by proclamation or the Congress shall by joint resolution declare that

the national emergency recognized by the National Industrial Recovery Act has ended.

Section 8. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the remainder of this Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

Section 9. This Act is hereby declared to be an urgent emergency measure necessary for the immediate preservation of the general welfare of the people of the state and shall, therefore, go into effect immediately to promote cooperation with the national government in the enforcement of the National Industrial Recovery Act.

Section 10. This Act may be known and cited as the State Industrial Recovery Act.

APPENDIX B

NATIONAL RECOVERY ADMINISTRATION PERSONNEL JOURNAL

Nos. 73-75 and 77-80
covering 47 names

and bringing the total up to 1354

<u>Name</u>	<u>Position</u>	<u>Salary</u>	<u>Bureau, Div., or office</u>	<u>Effective</u>
Hettinger, Albert J.	Sr. Economist	\$4000 net	Res. & Plan.	10/1/33
Chandler, W. L.	Adviser	3400 net	Cons. Adv. Board	11/1/33
Crouch, Eleanor B.	Sr. Legal Steno.Sec'y	1620 net	Legal Division	11/1/33
Barry, Marian C.	Typist	1224 net	Division 4	10/26/33
Knerr, Grace C.	Steno.	1224 net	Division 2	10/28/33
Lyerly, J. E.	Multigraph Opr.	1440 net	Duplicating Div.	10/24/33
Barnard, Harriet	Steno.	1224 net	Corres. Div.	10/31/33
Browne, L. Haygood	Steno.	1224 net	Corres. Div.	11/1/33
Coglan, Dorothy K.	Steno.	1224 net	Corres. Div.	10/31/33
Owings, Doris L.	Steno.	1224 net	Corres. Div.	11/1/33
Nalls, Geraldine A.	Steno.	1224 net	Corres. Div.	10/30/33
Straw, Heber H. Jr.	Routing Clerk	1224 net	Tel. Office	10/26/33
Harrell, Roberta V.	Typist	1071 net	Division 4	11/1/33
Etheridge, Frank K.	Messenger	918 net	Labor Adv. Board	10/26/33
McIntyre, Frank P.	Asst. Attorney	4600 net	Legal Division	10/9/33
Morgan, Charles W.	Clerk-Typist	1260 net	Division I	11/1/33
Jones, L. Dan	Index Clerk	1377 net	Division I	10/31/33
McFarland, Wilfred M.	Asst. Counsel	5100 net	Legal Division	10/25/33
Hall, Hiland	Asst. Counsel	4440 net	Legal Division	10/23/33
Polak, David M.	Specialist	3400 net	Res. & Plan.	10/23/33
Burke, James G.	Sr. Economist	3825 net	Imports Division	11/3/33
Long, C. Sterry	Asst. Dept. Adm.	3825 net	Division 4	10/3/33
Schmidt, Gertrude	Asst. Economist	3060 net	Consumers Adv. B'rd.	11/1/33
Andrews, George G.	Aide to Deputy	2720 net	Division I	9/26/33
Griffith, Roger	Typewriter repairman	1530 net	Chief Clerk	11/16/33
Collier, Laura D.	Steno.	1224 net	Compliance Div.	10/23/33
Kimball, Charlotte	Steno.	1224 net	Division 4	11/4/33
Lockhart, Lillian L.	Steno.	1224 net	Corres. Div.	10/30/33
Minzey, Gladys	Steno.	1224 net	Division 2	11/1/33
Bowles, Edna	Typist	1071 net	Division 2	10/31/33
Stern, Beatrice M.	Executive Asst.	3200 net	Nat'l. Labor B'rd.	10/2/33
McCormick, T. J.	Code Analyst	2210 net	Division 4	11/9/33
Weiss, Harry	Expert	2210 net	Res. & Plan.	10/28/33
Atkisson, Horace G.	Court Reporting	1955 net	Public Rel. Div.	11/7/33
Stewart, Jean E.	Secretary	1530 net	Compliance Div.	11/4/33
Back, Goldie	Asst. Statistician	1700 net	Res. & Plan.	10/1/33
Moore, Margaret S.	Steno.	1581 net	Executive Div.	11/7/33

<u>Name</u>	<u>Position</u>	<u>Salary</u>	<u>Bureau, Div, or office</u>	<u>Effective</u>
Marshall, Thomas C.	Analyst	\$1530 net	Blue Eagle Div.	10/25/33
Moore, Mary E.	Steno.	1224 net	Corres. Div.	11/2/33
Davis, Florence	Steno.	1224 net	Corres. Div.	11/2/33
DuFrane, Mrs. Helen M.	Steno.	1224 net	Steno. Pool	11/3/33
Clark, Charles	Mimeo. Operator	1071 net	Duplicating Div.	11/3/33
Stup, Grace M.	Steno.	1224 net	Steno. Pool	11/8/33
Tisenbaum, Jeannette	Steno.	1224 net	Steno. Pool	11/8/33
Brunson, Hartwell	Special Adviser	3400 net	Labor Adv. B'd.	10/1/33
Little, Arthur	Messenger	918 net	Division 2	11/6/33
Maddox, John	Messenger	918 net	Blue Eagle Div.	11/2/33