

1967

The United States Department of Transportation

Alan S. Boyd

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Alan S. Boyd, *The United States Department of Transportation*, 33 J. Air L. & Com. 225 (1967)
<https://scholar.smu.edu/jalc/vol33/iss2/2>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

THE UNITED STATES DEPARTMENT OF TRANSPORTATION

BY ALAN S. BOYD†

THE IDEA OF A Department of Transportation is not new. In 1874 Congressman Woodworth of New York introduced a proposal to establish a Bureau of Transportation. No further action was taken after this bill was referred to the Committee on Railways, but the idea had entered political consciousness. It was to reappear in numerous variations, responding to an increasingly compelling need.

At the beginning of the 19th Century there was little in the United States that could be dignified with the name "Transportation System." Many of our towns were isolated and had to be self-supporting. The cost of moving freight was high and there was minimal passenger movement of any kind. For large parts of this country, transportation came to a virtual standstill during the winter months or the rainy season. In the terms of the economist, there was little of the social overhead capital which is vital to economic growth.

Transportation development had a number of false starts but also was marked by some notable achievements. At virtually every step of the way there was federal involvement. This involvement has taken different forms for different modes of transportation and has changed significantly to meet the needs of technology and the times. Throughout the course of our economic history, however, its objectives have been reasonably consistent—fostering transportation facilities which provided economically efficient mobility with reasonable safety. In the past, our federal government followed an incremental approach—establishing a new federal agency to deal with the problems associated with each new mode of transportation as an advancing technology brought each into prominence. This made sense before the full sweep and rapid pace of technological change became apparent. Much credit is due those responsible for these governmental programs which stimulated and encouraged substantial progress and growth under continued private ownership and operation of our transportation system.

The United States' accomplishments in the field of transportation are impressive—a network of waterways, highways, railroads, and airways unites the entire nation. Economic, social, political, and cultural isolation

† Alan S. Boyd was sworn in by President Johnson as the first Cabinet-level Secretary of Transportation on 16 January 1967. Prior to this appointment, Mr. Boyd served as Under Secretary of Commerce for Transportation, Chairman of the Civil Aeronautics Board and a former member of the Florida Railroad and Public Utilities Commission.

In the preparation of this article, assistance was received from Richard D. Copaken, White House Fellow to the Department of Transportation.

have virtually ended. Our transportation system has transformed the United States from a narrow coastal economy to one of a continental whole. Today this country has three million miles of paved roads and ninety million motor vehicles which use them, more than two hundred thousand miles of commercially navigable waterways, and a system of commercial air routes serving six hundred and sixty cities over which domestic airlines fly more than one billion miles a year. In 1966, the carriers of the United States moved more than one and one-half trillion ton miles of freight and its citizens traveled more than nine hundred and forty billion intercity passenger miles. More than two and one-half million people make their living as a result of work directly involved in the transportation of people and goods.

Over the years this nation has seen rapid technological development, economic growth, and the simultaneous development of a vast and complex transportation system. Each of these three factors, in feedback fashion, has been both a cause and a result of the other two. Our transportation system has become so complex and its relationship with all aspects of our increasingly interdependent society so intimate that what was a reasonable incremental approach in the past must be judged as inadequate and stopgap by today's standards. While the program-oriented organization which we have accepted for so long has provided us with remarkable accomplishments when viewed primarily from a modally oriented standpoint, it has clearly failed organizationally, administratively, and from the program and policy standpoint, to develop the kind of systems approach to transportation that our present and future needs demand.

The Doyle Report,¹ an exhaustive study on national transportation policy prepared in 1961 by a special study group of the Senate Commerce Committee, concluded that our greatest need was for coordination of transportation policy and programs.² Tracing through the implications of this conclusion for reorganization in all branches of the federal government, this report prophetically suggested:

Application of the concept of organization by major purpose to the executive agencies having responsibilities for transportation activities inexorably leads to the need for a focal point which should be responsible directly to the President for coordinating the administration of promotional programs in the public interest, and for the conduct of related functions including executive leadership in the formation of a national transportation system. We recommend that this focal point be a Department of Transportation. To safeguard against clientele government, we recommend also that at Assistant Secretary level this new Department be organized along functional lines rather than according to modes of transportation.³

Finally, after more than ninety years, the increasingly cogent idea of a Department of Transportation was transformed into law by President Johnson's leadership and the wisdom of the Eighty-ninth Congress. The

¹ S. Rep. No. 445, 87th Cong., 1st Sess. (1961).

² *Id.* at 98.

³ *Id.* at 111.

absence of major disagreement with the concept reflects the awareness throughout the government, the transportation industry, and the nation as a whole that our transportation problems have outgrown a fragmentary approach.

To put the matter in the simplest terms, we can no longer afford to think in isolation of what is the best air or rail or highway route for transporting people and goods between A and B. We must have the institutional capacity to redefine our issue in terms of the best way to increase mobility between A and B. Or, more fundamentally, how can we best accomplish the end goals of such mobility with due regard for those competing interests which might be undermined by any such effort? In some instances the best solution to transportation problems may entail resort to transportation substitutes such as electronic communication or new concepts of land use. If people are encouraged to live in close proximity to important destinations transportation becomes less of a problem. The Department must have the flexibility, imagination, and courage to follow wherever sound judgment leads.

The Department of Transportation brings together in one place the Federal Government's major promotional and safety responsibility in the field of transportation—approximately thirty independent programs. Congress established the Department:

[T]o assure the coordinated effective administration of the transportation programs of the Federal Government; to facilitate the development and improvement of coordinated transportation service, to be provided by private enterprise to the maximum extent feasible; to encourage cooperation of Federal, State, and local governments, carriers, labor, and other interested parties toward the achievement of national transportation objectives; to stimulate technological advances in transportation; to provide general leadership in the identification and solution of transportation problems; and to develop and recommend to the President and the Congress for approval national transportation policies and programs to accomplish these objectives with full and appropriate consideration of the needs of the public, users, carriers, industry, labor, and national defense.⁴

Reposed in the new Department, which officially opened its doors on 1 April 1967, are: (1) the Federal Aviation Agency in its entirety with all of its broad safety and promotional functions; (2) the Bureau of Public Roads charged with the overall supervision of our federal highway planning and federal aid highway programs; (3) the office of the Under Secretary of Commerce for Transportation together with other transportation functions formerly vested in the Department of Commerce, including the High Speed Ground Transportation Program, the Great Lakes Pilotage Administration, the St. Lawrence Seaway Development Corporation, and those functions and powers created by the National Traffic and Motor Vehicle Safety Act of 1966 and the Highway Safety Act of 1966; (4) the Interstate Commerce Commission functions relating to railroad and pipe-

⁴Department of Transportation Act, § 2(b)(1), 80 Stat. 931 (1966), 49 U.S.C.A. § 1651(b)(1) (1966).

line safety laws, hours of service of employees, motor carrier safety laws, transportation of explosives and other dangerous materials, standard time zones, and daylight saving time; (5) functions performed by the Army Corps of Engineers involving anchorages, bridges and tolls; (6) the Alaska Railroad, transferred from the Secretary of Interior; (7) the United States Coast Guard transferred from the Treasury Department; and (8) the safety functions of the Civil Aeronautics Board.

The only major federal promotional activity in the field of transportation that remains outside of the Department is the Federal Maritime Administration. Initially, it was proposed that the Federal Maritime Administration be included in the Department. While the controversial transportation investment standards authority in Section 7 of the Act⁵ was being debated in the Senate Committee, however, the maritime forces organized successfully to keep the Maritime Administration out. I believe this was an error and am confident that the maritime interests eventually will see that it is in their own best interest to become a part of the Department of Transportation. A comprehensive systems approach to transportation simply cannot end abruptly at the water's edge. Policy developed for domestic and international transportation will necessarily have an impact on this intermediate leg of the journey. Conversely, the impact of maritime policy will be felt in domestic transportation. It makes little sense to develop improved access from the nation's heartland to its great ports and improve technology for rapid transfer of goods at these points unless a merchant marine capability adequate for the needs generated by these improvements is also developed.

The agencies concerned with the *economic* regulation of transportation—the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission—also were not included in the Department. They continue to operate as independent agencies. The Department, however, will appear before these agencies, selectively, when issues with important policy implications are raised.

A new entity, the National Transportation Safety Board, also was created in the same act that established the Department of Transportation. This Board is within the Department for administrative purposes only and functions independently of the Secretary. The five members of the Board have the responsibility for determining the probable cause of transportation accidents and making recommendations to the Secretary or to the modal Administrators, which, in their opinions, will tend to prevent transportation accidents and promote transportation safety. The CAB safety functions are effectively transferred by the Department of Transportation Act to the Secretary and immediately through him to the National Transportation Safety Board. This investigative activity in aviation safety, although under a new administrative head, will continue very much as it has before. The National Transportation Safety Board also will concern itself with accidents in other modes of transportation, but it prob-

⁵ Department of Transportation Act, § 7, 80 Stat. 941 (1966), 49 U.S.C.A. § 1656 (1966).

ably will limit its non-aviation investigations to those accidents which constitute major catastrophes.

The job of melding into a new and workable institution all of these diverse programs, approximately ninety-two thousand employees and an annual budget of close to six billion dollars is a momentous undertaking. The organizational strategy employed accepts the continued existence of modal oriented agencies, that is component operating agencies which will continue promoting and focusing primarily upon a single mode of transportation—air, highway or rail, respectively. Superimposed over these line agencies, however, there are four newly created assistant secretary positions in addition to the General Counsel and the usual career appointment, the Assistant Secretary for Administration. As was recommended in the Doyle Report these assistant secretaries will serve the Secretary in a staff capacity and will have functional responsibilities cutting across all modes.

To illustrate: The Assistant Secretary for Transportation Policy Development will have the difficult task of helping the Secretary articulate national transportation goals and review the programs in each operating administration to insure that they consistently contribute to the implementation of these goals. Bigger and faster planes can be built but nothing is gained unless airports and airport-to-urban-center access routes are simultaneously improved. A successful high speed train linking Boston, New York, and Washington may well have implications for highway planning along the same northeastern corridor. Now for the first time, there is an institution in the Federal Government with charter, staff competence, and the responsibility for taking a broad look at the whole picture. This assistant secretary will help the Secretary maintain this expanded focus.

The Assistant Secretary for Public Affairs serves as the principal staff advisor to the Secretary on all matters involving public information, legislative relations, congressional liaison, liaison with Federal agencies, State and local governments, industry, labor, conservation organizations, and the general public. A communication link between the Department and the general public is highly important. The Department is organized around a function, transportation, which intersects extensively with the missions of other government agencies, Federal, State, and local, with private industry and labor as well as with individual citizens. The Act establishing the Department specifically and repeatedly directs our attention to this interaction responsibility.

The Assistant Secretary for Research and Technology has not yet been appointed. He will conduct relatively little direct in-house research, although he may concentrate some research effort in those aspects of transportation which are peculiarly inter-modal in nature and consequently not the clear responsibility or priority of any one modal oriented agency. Technological improvement at the transfer point where people or goods move from a rail or highway is illustrative of this area of research. This assistant secretary will have two major responsibilities: (1) to review and

coordinate, from the viewpoint of an overall transportation system, the research activities conducted within the modal administrations. In this role, he will serve as a catalyst and gadfly, channelling federal research dollars into those efforts which make the greatest sense from the viewpoint of a transportation system goal. (2) to identify transportation technological and research needs. In this role, the assistant secretary will stimulate research within the Department and in the private sector. This assistant secretary will have an Office of Hazardous Materials, which, hopefully, will achieve consistent policies and regulations for the safe transportation of hazardous materials by all modes. Also, there will be an Office of Noise Abatement. Its mission will be to provide Department level leadership in the development of public and private programs for the abatement of environmental noise caused by transportation systems.⁶ The operating elements, however, will retain primary responsibility for such programs with respect to each mode. Finally, there will be an Office of Transportation Information Planning. The Assistant Secretary for Transportation Policy Development will have a separate statistical information capability to serve his current and pressing needs. The state of the art in transportation data collection and analysis, however, is rather primitive. Therefore, this office under the Assistant Secretary for Research and Technology will have the distinguishable and quite unique job of perfecting the art by evaluating the long range needs for transportation information and attempting to develop a program to meet these needs through the cooperative efforts of government and private industry.

The Assistant Secretary for International Affairs will have responsibility for presenting and carrying out departmental policies involving international transportation matters, emergency transportation needs, transportation telecommunication requirements and programs,⁷ cooperation with other nations in transportation research and development, and facilitation of the international movement of goods and people.⁸ This assistant secretary has responsibility for some miscellaneous functions which do not fit appropriately into the jurisdiction of the other assistant secretaries. His designation as Assistant Secretary for International Affairs, however, recognizes the high level importance of this aspect of our transportation system and suggests the unique qualifications and background required.

In one sense, these assistant secretaries are superimposed over the continuing operating line agencies. Their roles require them to cut across all modes and observe transportation as an entire system whether it be from

⁶ The noise abatement role of the Secretary was expressly established by § 4(a) of the act creating the Department. Department of Transportation Act, § 4(a), 80 Stat. 933 (1966), 49 U.S.C.A. § 1653(a) (1966).

⁷ Next to the Department of Defense, the Department of Transportation is the greatest consumer in the federal government of communication frequencies and the Assistant Secretary for International Affairs will have the delicate task of making appropriate allocation of this scarce resource among the competing needs within the Department.

⁸ An international transportation role was directed in § 4(a) of the act. Department of Transportation Act, § 4(a), 80 Stat. 933 (1966), 49 U.S.C.A. § 1653(a) (1966).

a policy, public affairs, research, or international point of view. This organizational description, however, requires qualification.

Section 3(e)(3) of the Department of Transportation Act specifically provides that, "the Administrators and the Commandant of the Coast Guard shall report directly to the Secretary."⁹ Furthermore, Section 6(f)(2)¹⁰ and Section 6(c)(1)¹¹ seem to pass statutory authority through the Secretary to the modal administrators. A policy council comprised of the Secretary, Under-Secretary, Deputy Under-Secretary, Assistant Secretaries, and General Counsel, as well as the operating line agency administrators, will meet from time to time to sort out and implement these statutorially prescribed jurisdictional arrangements. Hopefully, this policy council will also serve as a useful vehicle for developing an overriding transportation system orientation throughout the entire department.

In addition to the Coast Guard and the St. Lawrence Seaway Development Corporation, there are three major operating administrations. (1) The Federal Aviation Administration is the Federal Aviation Agency in its entirety. (2) The Federal Highway Administration includes the Bureau of Public Roads with its annual trust fund dowry of four billion dollars, the Highway Safety Bureau which administers the Highway Safety Act of 1966, and the Traffic Safety Bureau which administers the National Traffic and Motor Vehicle Safety Act of 1966. Section 3(f)(3) of the Department of Transportation Act¹² authorizes the President to utilize the same individual director and staff to implement both the Highway Safety Act and the National Traffic and Motor Vehicle Safety Act. The President has exercised this option and the same individual presently heads both efforts. The Federal Highway Administrator and his staff oversee the programs and activities of all three bureaus. (3) The Federal Railroad Administration is an entirely new agency revolving around three major programs: (a) the operation of the Alaska Railroad, (b) the administration of the Highspeed Ground Transportation Program including the Northeast Corridor Transportation Study, and (c) the implementation of the railroad and oil pipe line safety functions formerly carried out by the Interstate Commerce Commission.

The recognition of inherent limitation may be the beginning of wisdom. Even with a highly skilled and motivated staff, the best of intentions, cooperation, and just plain luck, the Department will not be able to make over entirely anew our national transportation system. This is not even an appropriate goal. An annual budget of some six billion dollars may seem substantial in absolute terms. When measured against our total transportation investment in this country to date, four hundred twenty-five

⁹ Department of Transportation Act, § 3(e)(3), 80 Stat. 932 (1966), 49 U.S.C.A. § 1652(e)(3) (1966).

¹⁰ Department of Transportation Act, § 6(f)(2), 80 Stat. 940 (1966), 49 U.S.C.A. § 1655(f)(2) (1966).

¹¹ Department of Transportation Act, § 6(c)(1), 80 Stat. 938 (1966), 49 U.S.C.A. § 1655(c)(1) (1966).

¹² Department of Transportation Act, § 3(f)(3), 80 Stat. 932 (1966), 49 U.S.C.A. § 1652(f)(3) (1966).

billion dollars by conservative estimate,¹³ however, this federal contribution can be seen in more realistic perspective. The Federal Government's financial leverage is minimal.

In some sense the Department might learn profitably from the judicial role of the Supreme Court. Most decisions continue to be made privately, and the Supreme Court, with its limited resources of time and attention, can address itself only to a very minute portion of such decisions. Therefore, the Court must depend upon the reasonableness of its opinions for a significant impact upon society and the countless millions of private decisions about which its few opinions may have something to say. Similarly, the Department of Transportation must rely upon the development, rationalization, and articulation of persuasive national transportation policy for its greatest contribution and societal impact.

We must always ask what do our economy and citizenry require presently and in the long run rather than where does each individual federal program logically lead. Hopefully, the answers to both of these questions will remain closely aligned. Where they are not, however, the Department must have the knowledge and the power to force the appropriate priority of need over program. Much of this will require a great deal of time and patience. One policy issue, however, requires immediate attention and speedy resolution. We are under a congressional mandate, imposed in the Department of Transportation Act, to carry out a joint study with the Secretary of Housing and Urban Development. By 1 April 1967, the Departments' recommendations on the logical and efficient organization and location of urban mass transportation function within the executive branch must be reported to the President and the Congress. The Department of Housing and Urban Development is organized around a concept of comprehensive responsibility over a geographically delimited focus. Their authority within this jurisdiction necessarily cuts across many functions—land use determination, transportation, physical rehabilitation, etc. The Department of Transportation is built around a concept of comprehensive responsibility over a functionally delimited jurisdiction, which necessarily cuts across all geographic designations in an effort to deal with the transportation function as an entire system. The study has been begun and both Departments are presently hard at work in an effort to determine how the executive branch of the federal government can be organized best to serve the public in this important area of urban mass transportation.

One of the major thrusts of this new department will be an energetic effort to account for the social as well as the economic costs of transportation. Air pollution, noise, the loss of life and limb, dislocation of neighborhoods, the destruction of the natural beauty of our countryside—all of these must be honestly evaluated in our policy equation. To spotlight the

¹³ This estimate represents a combination of: Total government expenditures for domestic transportation in years of record of \$278 billion (ASS'N OF AMERICAN RAILROAD NEWS, 28 Apr. 1967, p. 6) and total private investment of \$147 billion (conservatively extrapolated from TRANSPORTATION Facts and Trends 25 (4th ed. 1967)).

unpleasant concomitants of "progress" is not only the best way to enlist our creative power in the task of minimizing their impact, but is also the only way of determining whether or not our actions actually constitute progress. In an earlier era of vast open spaces, seemingly limitless natural resources, and less dense population concentrations, any foreshortening of distance and time was welcomed as progress. Over the years our conception of transportation progress has changed to reflect a balancing of increasingly dear social costs against the advantages of improved mobility. In short, we have come to realize that transportation must be viewed as the incredibly potent servant of social and economic goals rather than as an end in itself. Transportation can be the way out of the urban ghetto and into a job market or it can be the very bars that bind the ghetto into a cage. Transportation can further the National policy of equalizing opportunity by equalizing access to the good things society has to offer. Or transportation investment can have the opposite impact by forcing minority groups onto discriminatory housing markets. The choice can be made only as the social implications of our transportation alternatives are realized. Meaningful quantification of social and aesthetic costs will not be easy, but a Department of Transportation cannot shy away from the task.

The Department has at present very few answers to transportation problems. We hope, however, that we are making progress in the development of an institution which for the first time is capable of addressing itself to most of the right questions.