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Book Reviews

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BOOK REVIEWS

THE FEDERAL REGULATION OF TRANSPORTATION — by Carl A. Auerbach, Professor of Law, University of Wisconsin, and Nathaniel L. Nathanson, Professor of Law, Northwestern University. American Casebook Series. Warren A. Seavey, General Editor. St. Paul, Minn. West Publishing Co. 1953.

This casebook contains the most modern, up-to-the-minute compilation of materials and cases illustrating problems of public utility control. Although the authors have concentrated exclusively upon the problems of a related group of utilities, the transportation industries, their casebook could be used profitably in a course upon Public Utilities or Federal Regulations in general.

Professors of these latter general courses usually complain of the mass of materials that must be covered and of the impossibility of imparting to the student in the usual course anything more than the barest outline of the fundamental principles of utility regulation and the source of materials where they may find a solution to the specific problems that may arise. That is the inevitable result of an attempt to draw upon the whole field of utility regulation to teach a student the principles of control of public utilities.

Even in the field of transportation, the authors have omitted problems which have a more remote bearing upon control and which can best be left within the scope of other courses in law. Thus, the tort liability of the carrier to the shipper and to the public, the legal attributes of the contract between shipper and carrier and the problems of finance in the transport industries are not even broached, because they may well be left to the usual law school courses in Torts, Contracts, Corporation Finance and Corporate Reorganizations.

Excerpts from congressional reports and other authoritative materials are interspersed among the cases to give the reader a broad understanding of the economic conditions and other factors which led to the control of the various utilities. These materials are noteworthy because of their unerring pertinency and conciseness. They attest to the almost superhuman task and years of research devoted to this subject by the authors. These excerpts alone should prove invaluable to the practitioner in the field of transportation law.

Because federal regulation pioneered in the transportation industries, the student gains a deep insight into the historical development of federal regulation and the problems and causes which led to varying controls of the various transportation industries. The reader cannot escape the conclusion, at times, that some of the legislative controls and the consequent administrative policies and techniques have outlived their usefulness. While the administrative process is considered an improvement in our jural system because of its pliability and ability to adjust itself to changing conditions, it is still dependent upon the legislative will. The legislature has shown less readiness than the common law courts of old to adhere to the principle of *cessante ratione cessat et ipsa lex*. For instance, one wonders if some of the restrictions upon the activities of railroads which were imposed upon them when they were wealthy monopolies should still plague them today when they are subject to the deadly competition of trucking and aviation companies. One becomes convinced that the Civil Aeronautics Act, although relatively young, needs revamping to adjust the powers of the Civil Aeronautics Board to the new problems of this fast growing industry. The comparison and analysis of the various legislative and administrative policies

and techniques applied to the various transportation industries, all furnishing essentially the same service of transportation, will give the student of transportation law a better understanding of the subject of public utility regulation. It does more than that. The comparison brings out in bold relief the vast differences in treatment of competing carriers. The student and the expert will question the reasons for these differences and logical answers will not always be forthcoming.

While this casebook concentrates upon federal regulation to the exclusion of state regulation, the student need but apply his knowledge of constitutional law to isolate the field of state regulation. He will find that all the important problems which present themselves in the field of intrastate transportation have a counterpart and a solution in analogous cases treated by the authors.

As a casebook upon Federal Regulation of Transportation, this work has but one minor defect. It omits pipe line transportation. The authors explain this omission as follows:

"Though the transportation of oil by pipe line is subject to regulation under part 1 of the Interstate Commerce Act, it cannot be studied, adequately, except in the context of the structure and problems of the petroleum industry, which lie outside the scope of this work. We have therefore dealt only incidentally with pipe line transportation. For similar reasons, the regulation by the Federal Power Commission of the transportation of natural gas by pipe line is not included."

One cannot escape the feeling that the authors could have selected pertinent and concise materials to acquaint the student with the structure and problems of the oil and natural gas industries, as they have so exceptionally well done with respect to the other industries which they have covered. If used as a course in Public Utilities or Federal Regulations, the casebook will not suffer from the omission of materials and cases pertaining to pipe lines. However, if it is used as a course in Federal Transportation Law, the professor and the student will undoubtedly remark as they close the book: "If only the authors had covered the pipe line field as they have other transportation industries, we would know everything we have to know about federal transportation law!" With that admittedly minor omission this casebook contains within its 1223 pages (omitting 93 pages of pertinent statutes and maps in the Appendix), the most timely, compact and complete course yet organized upon this subject. The judge and the practitioner, as well as the administrative agencies, would do well to keep this opus within their easy reach.

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HELICOPTER OPERATION AND DESIGN REQUIREMENTS — A condensed record of the Symposium on the Operation and Design Requirements of Helicopters, held during the Sixth Annual Technical Conference of IATA at Puerto Rico in April, 1953. Technical Secretariat, International Air Transport Association, Montreal 3, P. Q. Canada, 184 pp. \$6.00.

There are lessons in this book for those who are willing to read it with attention. It is a compendium—probably the only one now available—of the sort of data which will be vital to city planners, municipal authorities, transport agencies and prospective operators. If they can be persuaded to

consider it now and to act upon the conclusions of the symposium, they can save themselves many headaches and perhaps a good deal of money in the future.

The report on helicopter operation and design requirements is a condensed statement of the discussions and the conclusions reached. All points of view are fully developed, and there is no attempt to disguise the fact that on many matters divergencies of opinion still exist and that to some problems no easy answers can as yet be found. The Report covers all aspects of the helicopter—helicopter design and operation, passenger handling, construction, ownership and operation of heliports, and certain economic problems.

Only a few aspects of this Report can be singled out in this brief review. At present, the greatest interest attaches to the economic possibilities of the helicopter as a means of transport which might come into fairly general use in the foreseeable future. Many conflicting points of view were expressed both at the symposium and subsequently as to the possibility of the economic operation of helicopters currently flying or in the prototype stage. These types all exhibit operating costs of a level much higher than that of conventional aircraft and current design limitations appear as yet unable to promise substantial reductions.

This question cannot, however, be considered in the abstract but in relation to the type of traffic which the helicopter is expected to carry. Obviously, there will always be room for helicopter operations at premium fares. The helicopter has proved itself invaluable as a work-horse and means of transport in difficult terrain where it is performing functions no other single form of transport can perform. Premium fare passenger services are also successful within the limits necessarily imposed by the fares charged. In general, they take the form of air taxi services operated in circumstances where the passenger is prepared to pay a very high fare for the advantages provided by the helicopter. Occasionally, it becomes possible to operate point to point services at premium fares although it is doubtful whether such operations will continue to be a success once the novelty of helicopter transportation has worn off.

Where premium fares are not charged, a subsidy is necessary to enable the helicopter operation to break even. The subsidy might take the form of a government development grant, payment for the carriage of mail or a transfer from an airline budget to its helicopter department. Such subsidies are indispensable to the helicopter in its development stage and it is certainly not to its discredit that they should be necessary.

However, there is a possibility that the way in which helicopter development has been subsidized has tended to divert attention from the more promising type of operation to services which cannot, except in the very remote future, be operated without heavy subsidy. In particular, the emphasis on the metropolitan type of operation in the United States does not appear to accord with the economic potential of such services. At premium fares such operations will always be assured of a limited volume of traffic. They would also offer unlimited possibilities should it ever become possible to offer helicopter services at commuter frequencies and fare levels. However, the in-between market which is the only one that can be envisaged for the next couple of decades appears to offer very limited prospects.

As against this, the inter-city type of operation offers greater opportunities for the immediate future. This type of operation might take the form of helicopter services either between cities which already have airports but are unduly handicapped by long journeys between terminal and airport, or between cities which are situated so close to a large airport that fixed-wing service is impracticable and exceptionally uneconomic. The ideal territory

for this type of development is a cluster of fairly large cities, each with an independent economic existence. In this sense, a large dormitory suburb is not a city, but a market center some small distance from the metropolis is one — and may well provide considerable traffic potential which has not been tapped by air transport. Indeed, the provision of helicopter service in those cases may result in the expansion of air traffic on fixed-wing routes, since convenient communications from small cities to large air traffic hubs may render it more attractive to make an entire journey by air rather than by surface transport.

It would, however, be a mistake to consider that in the foreseeable future (or even later) the helicopter will become a solution to urban traffic problems. In any case, a careful study of the safety requirements of helicopter operations tends to dispel the popular picture of the helicopter as a vehicle that can land at alternate street-corners and fly stages of a few hundred yards. Future helicopter operations will have to be conducted from suitably constructed and equipped heliports. The cost of these — though small in comparison with that of an airport in comparable circumstances — is, nevertheless, large enough to ensure that the choice and preparation of sites will be undertaken with care and foresight.

It would appear, therefore, that the prospects of the helicopter depend largely on the rapidity with which suitable transport types can be developed. The main requirement is a cost of operation substantially below current levels but this economy must be achieved without any sacrifice of the essential safety features required for helicopter operation. It is important, however, that the safety requirements should be examined carefully by the operators and by the authorities responsible for their promulgation and enforcement to ensure that they are closely related to the needs and characteristics of helicopter operation and are not merely carried over from fixed-wing operation on the basis of criteria which may not be fully applicable. Greater economic development of helicopter operations, as well as substantial technical progress, can only be achieved if regulations are applied with moderation and discretion in order to ensure that the special advantages of the helicopter may be given their fullest scope. If this is the only lesson to be learned from the symposium, and if it is fully taken to heart by the authorities concerned, a great deal of progress will have been made.

H. E. SHENTON