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THE INTERSTATE COMMERCE COMMISSION: ITS FUNCTION IN AIR TRANSPORTATION

NORMAN B. HALEY*

I am indeed grateful for the invitations of President Sheriff, Secretary Fagg, and Commissioner Morris, to come to Hartford and attend your convention this year. In the not too distant future I hope to have the opportunity of expressing more appropriately than is possible in a few words today appreciation for the honor you have thus bestowed upon me. It was particularly gratifying to have these evidences of cooperation from you who are out on the firing line of aviation activity, and I long ago learned that when you want to know something about a business you can get the best results in the shortest time by conferring with those who are closest to the scene of action and are "taking it on the nose," so to speak.

In the few minutes I should be consuming your time today, it occurs to me that you might be interested in a brief thumb sketch of the Interstate Commerce Commission and of the procedure under which it functions. However, on the theory that discretion is still the better part of valor, I shall not at this time attempt to discuss with you the various provisions of the Air Mail Act of 1934 and its amendments of 1935. Having read in the *JOURNAL OF AIR LAW*,¹ which we have found most helpful and informative, Mr. Logan's 1935 report in which he analyzed those acts quite fully, it seems to me that there is little I could add to what he has already told you about them. Anyway, if I should undertake the task I probably would find it necessary to join him in retirement to a bomb-proof shelter. I am, of course, looking forward to the pleasure of reading Mr. Logan's report for this year, but Mr. Inwood tells me that I am unfortunate in not arriving in time to hear Mr. Knott's presentation of it by proxy Thursday evening.

I should point out that in addition to the amendments of August 14, 1935, Congress by joint resolution directed that the files, records and property of the Federal Aviation Commission be transferred to the Interstate Commerce Commission. The Bureau

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1. 6 *JOURNAL OF AIR LAW* 514 (1935).

has indexed and filed those records in such a way as to be most convenient to those who have the right of access to them. The information contained in them has been of great value to us in reaching a better understanding of the problems confronting the aviation industry. With the knowledge they afford we also better appreciate the unanimity of favorable comment which the report of that Commission received for comprehensiveness and skill of presentation.

You, of course, know that the Interstate Commerce Commission is not new. A few days more than four months hence will mark the 50th anniversary of its beginning with the passage of the Interstate Commerce Act on February 4, 1887. It is among the oldest of the independent establishments of the Federal Government. By independent establishments we mean those agencies which were created by and report directly to the Congress, as distinguished from the Executive Departments whose administrative heads are members of the President's Cabinet.

Some believe that the age of the Commission and the fact that it has been preoccupied all those years with matters pertaining exclusively to railroads, disqualify it properly to administer the regulation of the new and rapidly developing forms of transport. The thought seems to be that somehow it would be impossible for the Interstate Commerce Commission to refrain from bringing into play the policies it has formulated for application to the older transportation agencies. But when the Commission came to take on very limited regulation of the air lines, and later regulation of motor carriers, instead of farming out the new work among its existing bureaus, the Commission created separate bureaus to handle the new work which was thus kept insulated from its railroad work. I could call these new units "watertight" compartments were it not for the fact that while the new work has been effectively isolated thereby, it is conducted under broad administrative policies which the Commission has time-tested in the field of transportation and found to be satisfactory.

A few nights ago, in reviewing a comparatively modern treatise on American transportation problems, I ran across this statement: "To those who contend that the existing Commission is *railroad-minded*, it may be answered that long years of effective service have shown the Commission to be, to an unusual degree, *duty-minded*. There is nothing in the extensive record of the Commission to suggest bias; rather, if charged with the responsibility of regulating all agencies of inland transport to the advantage of

the public, there is every reason to believe that body will discharge its responsibility with intelligence and fidelity."

As one who has been on the staff for over a quarter of a century, it seems to me that that statement is a good summary of the Commission and an accurate forecast of the manner in which it would approach the larger problem.

The Commission has always called to its service men who are qualified to deal with the technical and peculiar problems presented by the industries with which it is dealing. Moreover, the present plan is entirely logical and consistent with the practice by which the Commission distributes its responsibilities among its own members. As you know, there are at present eleven Commissioners. The membership is divided into divisions consisting of three and sometimes four members, to which are assigned matters pertaining to the various phases of the Commission's work. Thus there is a division dealing with all matters relating to air carriers, another handling those of the motor carriers and several divisions in charge of the various phases of railroad regulation. Assignments to these divisions are made with due regard to qualifications and experience. In some cases individual Commissioners are assigned to more than one division, and all eleven Commissioners participate in the deliberations and decisions of the full Commission, either initially in important cases which are not assigned to divisions or upon appeal from decisions of the latter. In addition to this work each Commissioner is charged with supervision over the administration of one or more bureaus.

In the matter of procedure, I should first say that in recent years the Commission has promulgated rules and regulations for establishing the fitness of those eligible to practice before it, a register of practitioners is established and maintained, and certificates of admission issued. While the roster of qualified practitioners quite naturally is made up largely of lawyers, the point I want to make is that the practitioners are by no means confined to members of the legal profession. Members of other professions and even persons not connected with any profession are eligible to qualify by showing their familiarity with the Commission's procedure and that they have had or will have occasion to represent others having business before that body. The Commission frequently goes out of its way to assist and hear the non-professional practitioner in order that the full merits of his case may not be lost due to any lack of skill in presentation.

All important decisions of the Commission and its divisions are reached only after formal proceedings—that is to say, a full public hearing at which all interested parties are given the opportunity to appear and present their views. All testimony is given under oath and the witnesses are subject to cross examination. In many cases hearings are held before examiners who prepare proposed reports in which the issues are discussed and recommendations made for findings thereon by the Commission. After exceptions to the examiners' proposed reports are filed by the parties and oral argument is had, if desired, the Commission or a division reviews the proposed report and renders its own report in the case which frequently differs from the examiner's report in material respects. If any interested part is dissatisfied with a finding by a division and can show that error has occurred in interpreting the evidence or the law, he may appeal the case to the full Commission for speedy review.

The promulgation of all rules and regulations for compliance by the carriers is handled in much the same way. All parties having knowledge of the subject matter are given an opportunity to present their views at a public hearing conducted under the Commission's Rules of Practice. Tentative drafts of regulations are submitted to all parties for their comments and suggestions before final adoption.

From long experience the Commission has found this practice to be the most satisfactory to all concerned, less injustice is done and the best results are obtained. Due to the size and complexity of important railroad cases in the past there has been criticism at times that the procedure is too slow. But there is no reason why that procedure can not be adapted to the needs of rapidly changing situations with satisfactory results.

In the early stages of its work dealing with the new industries the Commission has been very liberal in the matter of granting extensions of time requested by the parties who are new to Commission procedure. This has delayed final decisions in some cases which will be overcome as the parties become more familiar with the Commission's practice.

I hope that what I have said has not seemed too technical and that you have not gained from it the impression that we are trying to sell something. We have nothing to sell. Our only objective is to equip ourselves properly to render the best possible service.

We should like to cooperate with you on all matters of common

interest which explains why we decided to submit to the State Officials through this organization (even though not required by the Act) applications under Section 15 for approval of new service and complaints against existing service.

As a matter of general interest we should like to keep in touch with developments beyond our immediate jurisdiction so that we may have a better grasp of the whole problem. Our official acts, of course, must be confined within the four corners of the statutes under which we operate.