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The Atomic Energy Commission

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NOTES AND COMMENTS

THE ATOMIC ENERGY COMMISSION

“... The significance of the atomic bomb for military purposes is evident. The effect of the use of atomic energy for civilian purposes upon the social, economic, and political structures of today cannot now be determined. It is a field in which unknown factors are involved. Therefore, any legislation will necessarily be subject to revision from time to time. It is reasonable to anticipate, however, that tapping this new source of energy will cause profound changes in our present way of life. Accordingly, it is hereby declared to be the policy of the people of the United States that, subject at all times to the paramount objective of assuring the common defense and security, the development and utilization of atomic energy shall, so far as practicable, be directed toward improving the public welfare, increasing the standard of living, strengthening free competition in private enterprise, and promoting world peace.”¹

CONGRESS wrote this basic declaration of policy into the Atomic Energy Act of 1946. Since the passage of the Act and the transfer on January 1, 1947, of the properties and responsibility for administration of the atomic energy program from the military (Manhattan District of Army Engineers) to the Atomic Energy Commission, private industry and the Commission have worked together to carry out this policy. Thousands of individuals and private groups work with the Commission as contractors and subcontractors and as members of advisory committees. The Commission's Third Semiannual Report to the Congress states, “It is the policy of the Commission, subject to Congressional supervision as provided in the Act, to move away from present government monopoly provided by law as rapidly as feasible, having in mind the paramount consideration of the national security.”²

¹ 60 STAT. 755 (1946), 42 U.S.C. 1946 ed. §§ 1801-1819.

² THIRD SEMIANNUAL REPORT OF THE ATOMIC ENERGY COMMISSION (1948) 7.

With the expansion and development of the atomic energy program along these policy lines, there is an ever-increasing number of private persons and groups whose rights are affected by the Act and by the regulations which the Commission is authorized to promulgate. For this reason it is felt that a brief review of certain phases of the organization and powers of the Commission would be of interest to the Bar.

ORGANIZATION

The Act establishes an Atomic Energy Commission to be composed of five members appointed by the President by and with the advice and consent of the Senate. (These members will be referred to as Commissioners, and the entire organization will be called the Commission.) Three Commissioners constitute a quorum, and the President designates which member shall be Chairman. The term of office of each Commissioner is five years, with certain exceptions designed to effect an expiration of one Commissioner's term each year. The President has the authority to remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office. The Chairman receives \$20,000 per year and the other Commissioners \$18,000. The Act specifies that no Commissioner shall engage in any other business, vocation, or employment. The Commissioners act as a policy board.

The Act also creates the office of General Manager who discharges such of the administrative and executive functions as the Commission may direct. The General Manager is appointed by the Commissioners at a salary not to exceed \$20,000. The essential managerial and staff functions of the Commission are performed under the General Manager by the Deputy General Manager, Secretary to the Commission, Director of Intelligence, Director of Classification, General Counsel, and Controller.

For long range program planning, and staff judgment on the technical and scientific aspects of the program, the General Manager and Commissioners rely largely upon the Directors of eight

divisions—Division of Research, Division of Production, Division of Military Application, Division of Biology and Medicine, Division of Reactor Development (to which functions of the old Division of Engineering have been transferred), Division of Organization and Personnel, Division of Information Services, and Division of Security. The first three of these divisions were created by the Act, and the others have been added by the Commissioners. The Act specifies that the Director of the Division of Military Application shall be a member of the armed forces.

The actual operational work of the Commission is carried on by the Operations Offices and their subsidiary area offices. These are highly decentralized field offices. The managers of the Operations Offices report directly to the General Manager and are given varying authority, depending upon the nature of the functions being carried out under their direction. They negotiate contracts for program work which has been approved by the General Manager, establish positions and make appointments, issue certificates and licenses where appropriate, and perform other similar services.

Advisory committees play an important part in the organization of the Commission. Since 1946 the Commissioners have established additional advisory committees on such matters as biology and medicine, chemistry, isotope distribution, raw materials, and others.³

The General Advisory Committee, the Joint Committee on Atomic Energy, and the Military Liaison Committee were created by the Act. The first named committee advises the Commission on "scientific and technical matters relating to materials, production, and research and development."⁴ There are nine members appointed from civilian life by the President for a term of six years, with certain exceptions to effect an expiration of the term

³ For a complete list of the advisory committees and panels and their members see NINTH SEMI-ANNUAL REPORT OF THE ATOMIC ENERGY COMMISSION (1951) Appendix 1, p. 91.

⁴ Atomic Energy Act of 1946, § 2(b).

of three every two years. The committee designates its own chairman and is required to meet at least four times in each calendar year. The committee held its first meeting in January, 1947, and to date has averaged six meetings a year.⁵

The Joint Committee on Atomic Energy is composed of nine members of the Senate appointed by the President of the Senate and nine members of the House of Representatives appointed by the Speaker of the House. The Act provides that in each instance not more than five members shall be members of the same political party. The Joint Committee makes "continuing studies of the activities of the Atomic Energy Commission and of problems relating to the development, use, and control of atomic energy."⁶

The Military Liaison Committee is composed of representatives of the Army, Navy, and Air Force. The Commission advises and consults with the committee on all atomic energy matters which the Commission deems to relate to military applications, including the development, manufacture, use, and storage of bombs, the allocation of fissionable material for military research, and the control of information relating to the manufacture or utilization of atomic weapons.

POWERS OF THE PRESIDENT AND THE COMMISSION

The President, in addition to the power to appoint the Commissioners with the consent of the Senate, has the power to determine a least once each year the quantities of fissionable materials to be produced. The production of atomic bombs is subject to his consent and direction. He may direct the Commission to deliver such quantities of fissionable materials or weapons to the armed forces as he deems necessary in the interest of national defense.

The Commission is authorized by the Act to make arrangements (including contracts, agreements and loans) for the conduct of research; to take ownership of facilities for the production of

⁵ NINTH SEMIANNUAL REPORT OF THE ATOMIC ENERGY COMMISSION (1951) 29.

⁶ Atomic Energy Act of 1946, § 15.

fissionable materials; to take ownership of all fissionable materials; to distribute fissionable materials to suitable applicants; to license source material after it has been mined; to make atomic bombs; to control the release of information both scientific and technical, and industrial; and to declare any patent useful in the production of fissionable materials to be vested in the Commission. Two of these powers which are of particular interest to lawyers are the controls over the release of information and over patents.

The Act declares the policy of the Commission to be to control the dissemination of restricted data "in such a manner as to assure the common defense and security."⁷ The Act states that "restricted data" shall be "all data concerning the manufacture or utilization of atomic weapons, the production of fissionable material, or the use of fissionable material in the production of power, but shall not include any data which the Commission from time to time determines may be published without adversely affecting the common defense and security."⁸ Thus, the Commission alone determines what restricted data shall be removed from that category, thereafter to be freely disseminated. The Commission has laid down three fundamental guides to be followed in making this determination:

- a) Weapons information, including design, production, and stock-piles, should be kept secret.
- b) Basic science should be kept free except where it is directly related to weapons.
- c) Until international control is attained, there shall be no information exchanged with other nations on the use of atomic energy for industrial purposes."⁹

The Act sets out the actions involving restricted data which give rise to criminal penalties. Violators are subject to prosecution in

⁷ *Id.* § 10(a).

⁸ *Id.* § 10(b)(1).

⁹ EIGHTH SEMI-ANNUAL REPORT OF THE ATOMIC ENERGY COMMISSION (1950) Appendix 10, p. 222.

the federal courts. The Act contains a provision that no prosecution shall be commenced except upon the direction of the Attorney General and then only after the Attorney General has advised the Commission with respect to the prosecution.

The provisions in the Act concerning patents represent a departure from our traditional system of free enterprise and private ownership. The Act specifies that patents shall not be issued for any inventions "useful solely in the production of fissionable material or in the utilization of fissionable material or atomic energy for a military weapon"¹⁰ and that patents shall not confer "any rights with respect to any invention or discovery to the extent that such invention or discovery is used"¹¹ for such purposes. Also, future patents shall not confer any rights to the extent that the invention "is used in the conduct of research or development activities"¹² in certain specified fields. There is a provision for just compensation for patents revoked by the Act and for awards by the Commission insofar as the Act prevents future inventions from coming within the regular patent system. A broad power is stated permitting the Commission to declare a patent "affected with the public interest"¹³ under certain circumstances and to use the patent on a reasonable royalty basis.

PROCEDURE IN PATENT COMPENSATION CASES

In view of the broad powers of the Commission over patents, it is important to consider the procedures outlined in the Act and the regulations to be followed by persons making application for the determination of reasonable royalty fees, just compensation, or the grant of an award.

The Act requires that the Commission designate a Patent Compensation Board to pass upon applications, sets forth who the claimants may be, authorizes claimants to be represented by coun-

¹⁰ Atomic Energy Act of 1946, § 11(a) (1).

¹¹ *Id.* § 11(a) (2).

¹² *Id.* § 11(b).

¹³ *Id.* § 11(c) (1).

sel, establishes the standards to be followed by the Board in making its determinations, and provides for judicial review of the Board's findings. The regulations promulgated by the Commission describe in detail the actual procedures to be followed.¹⁴

The form and content of the application are set out in the Regulations. If the applicant elects to be represented by counsel, a form obtainable from the Clerk of the Board is required. At any time following the filing of the application and prior to final determination the applicant may be requested to meet with one or more members of the Commission staff to discuss the possibility of the purchase of the invention, discovery, patent, or patent application. Within four months after the receipt of the application the Office of the General Counsel is required to file a response containing a concise statement of the facts or law constituting a defense or any other relevant matter which it believes should be considered by the Board.

A pre-hearing conference may be held at the discretion of the Board. In every case the Board provides an opportunity for a hearing for the presentation of evidence. Thirty days' notice must be given of the time and place of the hearing. Detailed rules regarding the submission and receipt of the evidence are contained in the Regulations.¹⁵ In its discretion the Board may authorize oral argument at the close of the hearing. It is required to make a record of the testimony and to furnish it to the applicant upon the payment of costs. The Board announces at the hearing a reasonable period within which either party may submit proposed findings and recommendation and written arguments.

Within a reasonable time after the hearing the Board prepares and serves upon the parties its proposed findings and determination and a statement of the reasons or basis therefor. Findings are to be supported by the greater weight of the evidence. The Board

¹⁴ Regulations of the U. S. Atomic Energy Commission, 13 Fed. Reg. 3457 (June 24, 1948), 10 C. F. R. § 80.1 *et seq.* (1949 ed.).

¹⁵ 10 C. F. R. § 80.42 (1949 ed.).

also makes a ruling upon each proposed finding and recommendation presented by the parties. Within twenty days either party is permitted to file exceptions with the Clerk of the Board. These exceptions may be accompanied by briefs.

After the expiration of the twenty days allowed for filing exceptions, the Board proceeds to a final consideration of the application on the basis of the entire record, including any exceptions. It is required to rule upon each exception. It enters an appropriate order, together with a statement of its reasons or basis, determining a reasonable royalty fee, the amount of just compensation, or the amount of an award, as the case may be. This order of the Board constitutes the final action of the Commission.

A judicial review of the Commission's action is provided for in the Act.¹⁶ Such review may be obtained by filing a petition in the Court of Appeals for the District of Columbia within thirty days after notice of the Commission's determination. The court may affirm the determination in its entirety or set it aside and remand it to the Commission for further proceedings. The findings of the Commission as to facts, if supported by substantial evidence, are conclusive. The court's judgment is final, subject, however, to review by the Supreme Court of the United States upon writ of certiorari.

Up to January 1, 1951, the Board had held six sessions, and ten cases had been filed, of which two had been finally determined.¹⁷ To date no cases of appeal have appeared in the reports.

PROCEDURE BEFORE THE ADVISORY BOARD OF CONTRACT APPEALS

Contracts entered into by the Commission and subcontracts entered into under such contracts usually contain a "disputes article" providing that disputes arising under the contract or subcontract not disposed of by mutual agreement shall be decided in the first instance by the representative of the Commission duly authorized

¹⁶ § 11(e) (4).

¹⁷ NINTH SEMIANNUAL REPORT OF THE ATOMIC ENERGY COMMISSION (1951) 29.

to supervise and administer the work under the contract. The article also provides for an appeal in writing to a designated representative of the Commission, whose decision shall be final. The designated representative is the General Manager.

In February, 1950, the Advisory Board of Contract Appeals was established to hear appeals under this "disputes article" and to make recommendations to the General Manager. Regulations to govern the handling of appeals before this Board were issued by the Commission in August, 1950. The appeal must be made within thirty days after receipt by the contractor of the contracting officer's decision, unless the contract provides for a different length of time. There is no prescribed form for the appeal, and no argument is presented in the notice of appeal. Either party may, however, file a brief. If a hearing is requested, the Board fixes a time and place and gives the parties fifteen days' notice. At the hearing, the parties may be represented by any authorized person. The Board makes specific findings of facts and conclusions and sends the findings to the General Manager, whose decision is final. As of January 1, 1951, five cases were pending before the Board.¹⁸

Only brief treatment has been made of a portion of the interesting and unusual statutes and regulations which govern the dealings of individuals and private groups with the Commission. The courts will soon be called upon to interpret these statutes and regulations. Because of the necessity for control of information, interesting problems will arise. And because of the far-reaching effects of the atomic energy program the law in this field will become more and more important.

Dowlen Shelton.

¹⁸ *Ibid.*