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THE INTERSTATE COMMERCE COMMISSION

THE
INTERSTATE COMMERCE
COMMISSION

A STUDY IN ADMINISTRATIVE LAW
AND PROCEDURE

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UNIVERSITY OF MICHIGAN

PART TWO

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FOREWORD

THE Legal Research Committee of the Commonwealth Fund has continued the work, begun about ten years ago, of an examination of the field of administrative law. It was intended to secure a general survey of administrative powers revealing, so far as the face of legislation can reveal it, the extent to which administrative control has, by modern legislation, been in fact conferred. It was intended to follow this with a series of special studies disclosing the actual workings of carefully selected administrative organs, it being deemed that such intensive studies in administrative law and practice are the prerequisite to an appraisal of what administrative law really does and a guide to what ought yet to be done. Two notable contributions have been made. The general survey above referred to resulted in the publication of the study by Professor Ernst Freund, *Administrative Powers Over Persons and Property*. The first of the intensive studies was that of *The Federal Trade Commission*, by Gerard C. Henderson. There now follows a special study of *The Interstate Commerce Commission*, by Professor I. L. Sharfman. This is the result of research continued for more than five years past. It will consist of four volumes, of which the second is now published. While the study has been conducted under the auspices of the Legal Research Committee and is published by the Commonwealth Fund, the author has been allowed entire freedom and the responsibility for the opinions expressed is fully and solely his own.

September, 1931.

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INTRODUCTORY NOTE

BROADLY speaking, the jurisdiction of an administrative tribunal charged with control over commerce or industry comprehends the entire complex of power which that body lawfully exercises. It embraces not only the kinds of enterprises subject to regulation and, under our dual form of government, the territorial extent of these enterprises, but the limits of the general authority which is invoked and the specific directions through which this authority is asserted. It might even include, perhaps, the procedural processes whereby this entire sweep of power is enforced. In such an approach, an inquiry into jurisdictional scope would traverse the entire field of the tribunal's activity. For purposes of analysis and appraisal, however, it is desirable that the problem of jurisdiction be more narrowly conceived. With reference to railroad and public service commissions, it is generally confined to the classes of utilities subject to control and to the state or interstate character of the services which they render. Section 1 of the Interstate Commerce Act, for example, which specifies the carriers and the commerce to which the statute applies, is commonly designated "the jurisdictional section." In examining the scope of the Commission's jurisdiction, as asserted in practice, we shall necessarily be concerned with the principal types of utilities, especially in their interrelationships, over which the Commission exercises some measure of power, and with the legal and practical problems arising from the numerous intimate contacts between intrastate and interstate commerce. But the character of the Commission's authority—of its administrative power as such—may likewise be deemed an essential manifestation of its jurisdictional scope. This authority springs from its general status as an administrative agency—from the statutory structure as a whole, rather than from any distinct grant of power—and involves the Commission's relationship to both the Congress and the courts, as well as the important practical issue of the maintenance of administrative independence. An analysis of the extent and limits of this administrative power will throw light upon the Commission's status in the regulatory scheme, and will thus provide a necessary background for our subsequent survey

of the character of its activities and of the safeguards against arbitrary or improper determinations provided by its organization and procedure.

In this volume, then, on the scope of the Commission's jurisdiction, we shall deal, successively, with railroad regulation and the control of allied utilities, with the assertion of federal power over intrastate commerce, and with the exercise of administrative discretion.

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