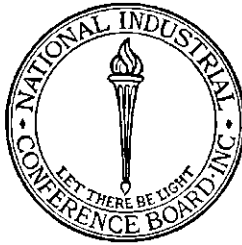


TRADE ASSOCIATIONS

THEIR ECONOMIC SIGNIFICANCE
AND
LEGAL STATUS



NATIONAL INDUSTRIAL CONFERENCE BOARD, Inc.

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THEIR ECONOMIC SIGNIFICANCE AND
LEGAL STATUS

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TOWARD BUSINESS

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FOREWORD

IT IS obvious that the industrial and commercial development of a nation is vitally influenced not only by the organization and methods of production and trade, in which the initiative and enterprise of industrial and business leadership are reflected, but by the environment of public attitudes and governmental policies in which industry and commerce live and develop. These two factors—individual enterprise and public control—are the two sides of the shield of economic progress. They must be properly related and proportioned; they must mutually sustain each other; and they must develop together in accordance with the changing needs of the times.

In pursuance of its purpose of scientific inquiry into the major economic problems affecting industrial conduct, the Conference Board undertook a comprehensive survey of the development and present position of public policy in the control of private business organization and practices, as embodied in the Sherman Act and its supplementary legislation, generally referred to as the anti-trust laws, and in the court and commission decisions and decrees based thereon. Though they do not embody the entire substance of public policy and attitude toward business enterprise, the anti-trust laws express the essential limits of private powers and rights in the field of industry and trade and, more than any other single branch of legislation, they determine the main outline of the system under which the economic processes of the nation are now organized and conducted.

It is fully recognized that there are numerous important aspects of the relation of government and public policy to industrial and commercial life which do not fall within the scope of a study of the anti-trust laws. The exercise of the police power through various kinds of social legislation, and the exercise of the taxing power through various fiscal measures, may vitally affect the conduct of business enterprise and,

indeed, radically alter the direction of national industrial development. Control of railroads and public utilities through governmental agencies, and public policy toward agriculture and toward labor organizations all present questions of wide significance for the national economic life, which are in greater or less degree distinct from those involved in the regulation of industry and trade under the so-called anti-trust laws. These questions are not included within the scope of the present study.

The purpose of the present investigation is primarily to describe the development and to test the economic soundness of the laws regulating business organization, trade relationships and market conduct in the United States. The bearing of these laws upon industry and trade is threefold. They affect the structure and organization of business enterprises; they influence the relationships of independent business concerns; and they control the business methods and practices of separate, associated or combined business interests. Accordingly the anti-trust laws must be regarded in their relation, first, to the consolidation and combination of business interests, that is, to what are usually called the "trusts"; second, to the looser forms of organization and co-operation among separate business interests, of which the trade association is the type; and third, to the specific business methods and practices of business competitors, which come under the surveillance primarily of the Federal Trade Commission.

The present volume deals with the second of the three main aspects of these laws. It relates to the question of the legitimate limits of co-operation among independent business enterprises in the form of voluntary associations among trade competitors. This part of the broad investigation of anti-trust policy was undertaken and the results issued first because of the timely interest in the difficult and unsettled questions of public policy which have been raised by this novel form of economic organization. The trade association has become an outstanding feature of modern business, and a clear understanding of its economic functions and a clear definition of its legal status are of the highest importance for American economic development.

The purpose of this volume, however, is definitely limited

in two respects: In the first place, it is not intended to furnish a guide to business executives or to trade association officials as to what may or may not be done under the existing rules of law. The analysis contained in these pages may and should prove helpful in this respect by contributing to a clearer understanding of the present state of the law; but the primary object throughout the book is to lay a firm foundation for judgment by the general public of what constitutes proper policy toward trade associations and their activities. The legal principles which have moulded trade association development and the legal problems which surround their activities are fully studied, but emphasis has been laid throughout on the basic economic considerations upon which sound policy both in trade association activity itself and in the law must be developed.

In the second place, this study is not intended to serve as a manual of trade association activities or to provide a full description of the organization, conduct and work of trade associations in general, or of specific associations. These purposes have been sufficiently served by other publications. The present volume is concerned with the economic functions which are involved in specific trade association activities rather than with the activities themselves. In short, this report is designed as part of a broad study of public policy in relation to the economic processes which underlie the organization and methods of American business, and it reviews legal doctrines and surveys the practical accomplishments of trade associations only secondarily to this general purpose.

Throughout this study references to specific activities of trade organizations or individual concerns, where not based on official records or original sources, have been verified so far as possible by correspondence with the organizations or companies concerned.

This volume is the result of an investigation conducted by the Conference Board's Research Staff, under the supervision of the Staff Economic Council.

In the preparation of its publications, the National Industrial Conference Board avails itself of the experience and judgment of the business executives who compose its membership and of the recognized authorities in special fields, in

addition to the scientific knowledge and equipment of its Research Staff. The reports of the Board thus finally represent the result of scientific investigation and broad business experience, and the conclusions expressed therein are those of the Conference Board as a body.

In this study the Conference Board has greatly benefited by the special suggestions of many leading business executives and economists, experienced trade association officials and legal authorities especially conversant with the field of law and public policy considered in this investigation. To all of these the Conference Board wishes to express its indebtedness. The Board is under special obligation to the members of its Advisory Committee, whose close cooperation has been invaluable, viz.:

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