

Coordination of Motor Transportation

BEFORE THE

Interstate Commerce Commission

**COORDINATION OF MOTOR
TRANSPORTATION.**

} **No. 23400.**

**EXCEPTIONS FOR THE NATIONAL INDUSTRIAL
TRAFFIC LEAGUE TO REPORT PROPOSED BY
ATTORNEY-EXAMINER LEO J. FLYNN.**

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The National Industrial Traffic League respectfully presents its exceptions to the conclusions and recommendations in the report proposed by Attorney-Examiner Leo J. Flynn, in the above entitled investigation.

Introductory or explanatory statement.

The National Industrial Traffic League, (hereinafter for brevity referred to as the League), in speaking for its members, does not profess to commit all of them to its views. (Rec., 5067.)

Upon many questions there is a diversity of interest, and individual members of the League may be in disagreement and in such case they are at liberty to appear in opposition to the policies expressed or principles

avored by the League. The constitution of the organization specifically states "the right of individual action by any member even though such action may be contrary to the League's position, is not abridged."

The position taken by the League and the principles which it advocates in this investigation, were stated on its behalf by the Chairman of the Highway Transportation Committee, Mr. C. E. Childe, who testified at the session in Washington on March 6, 1931. (Rec., 5066-5072.) As he then explained, the principles which he advocated and which are the foundation of these exceptions had been considered in a careful study and investigation by his committee extending over a period of more than five years, had been approved from time to time by the Executive Committee of the organization and by the membership at the annual meetings held year after year during that period.

The views herein expressed are further based on resolutions adopted at the last annual meeting of the League on November 20, 1931, at Chicago.

Individual members of the League are not unanimous in favoring every feature of this presentation, which should not be surprising, in view of the great difficulty and many angles of the problem now before the Commission.

General principles advocated by the League.

The basic objections which the League desires to express against the conclusions and recommendations in the tentative report are occasioned by the failure of the Attorney-Examiner to recognize and apply certain fundamental principles which the League has adopted and to restrain his recommendations within limits wherein they are supported by experience or demonstrated by the record to be reasonably necessary.

It seems appropriate, therefore, before stating the basic exceptions to the tentative report, that we set forth the principles or considerations which the League urges the Commission to adopt and approve.

The following principles have been approved by the membership of the League, upon the recommendation of its various regular and special committees, in the light of their study of these matters, and form the present platform of the League:

The public is entitled to the benefit of the most economical and efficient means of transportation of commerce by any instrumentalities of transportation which may be suited to such purpose.

No legislation should be attempted which has for its purpose the stifling of any legitimate form of transportation.

To the extent that any governmental regulation of the rates and charges of any form of transportation is under-

taken, the determination of maximum reasonable rates and charges should be based upon the operating conditions in that particular field of transportation, together with other pertinent conditions, and should not be determined by mere relation to the rates and charges of competing agencies of transportation, but this should not be construed as prohibiting permissive authority to meet the rates of competing agencies under proper conditions.

Efficient railroad transportation is essential to the commerce and welfare of the country as a whole, but this declaration does not mean that efficient highway and water transportation is not also essential to modern commerce.

Any permanent policy of governmental operation of transportation agencies is contrary to the public interest.

Reasonable compensation should be paid for the use of public highways by commercial motor vehicles.

The matter of taxation or compensation for the use of highways is primarily a problem of the states. Any federal legislation on the subject is therefore opposed, unless it be necessary to enable the states to handle the problem themselves, or unless it be found that there is no hope for a solution through action by the respective states.

It is the position of the League that motor truck taxes should not be greater than an amount sufficient to pay their fair share of the cost and maintenance of improved

highways; that present taxes are on the whole sufficiently high for that purpose; that motor-vehicle taxation should be applied alike upon private and commercial vehicles of the same class; and that no penalty should be exacted upon commercial carriers; and no discrimination made in taxation of common and contract carriers as distinguished from privately operated vehicles.

In the view of the League, a requirement of certificates of convenience and necessity as a condition precedent to operations of either common carriers or contract carriers of freight in interstate commerce on the highways is contrary to the public interest.

Legislation designed to enforce rate regulation upon highway freight carriers is ill-advised and contrary to the public interest.

The League is not primarily interested in passenger transportation and has proceeded on the theory that the conditions of automobile bus transportation and those affecting motor truck transportation are substantially different and dissimilar and the two forms of highway transportation do not warrant or require the same treatment.

The League favors the development of uniform codes among the several states to govern the operations of motor carriers upon the public highways.

The position of the League is that the railroads should be permitted to operate lines of motor trucks for hire,

but no such operations should be carried into the accounts of the railroad operations proper. It would look with disfavor upon any law or system of accounting which would permit the railroads to pass the burden of unprofitable motor truck operations to the public by including such losses in the expense of railroad operation.

The League proposes that the Interstate Commerce Act be amended to permit rail carriers to make joint rates with passenger or freight motor-vehicle lines and place such motor-vehicle lines under the jurisdiction of the Commission to the extent that the two agencies of transportation make joint rates, that is to say, substantially to the same extent that water lines are now subject to the Act.

The League approves the principle that joint rail-and-highway rates and routes will be in the public interest and endorses whatever change in federal legislation may be appropriate and necessary to permit the rail carriers to establish joint rail-and-highway rates and routes.

The League favors an amendment of the fourth section to grant authority to depart from the long-and-short-haul clause to meet motor truck competition, provided the Commission finds, after due investigation, that the rates to be authorized for the rail lines are compensatory and will not constitute a burden upon other traffic and will not result in the destruction of the competitive agency of transportation, but no departures

from the aggregate of intermediates clause should be authorized.

The League advocates a liberal attitude by the Interstate Commerce Commission and other regulatory bodies toward all experiments in this new field of coordinated rail-truck transportation to encourage its maximum development in the public interest, with a minimum of restriction by regulatory rules. We commend the awakened attitude of railroads throughout the country in dealing with these problems.

Fundamental errors in tentative report.

There are certain fundamental errors which seem to underlie the broad conclusions of the Attorney-Examiner and by reason of them the League urges the Commission not to adopt the recommendations in the tentative report. These may be stated in the following general exceptions, which we shall later amplify by detailed exceptions to each of the separately numbered conclusions or recommendations with which the tentative report concludes, save certain ones which we accept or acquiesce in as correct.

Stated broadly, the foregoing declarations of policy and platform of principle adopted by the League lead to the following assignment of fundamental errors in the proposed report:

(a) The Attorney-Examiner errs in concluding that the Commission would be justified in recommending to

the Congress drastic and restrictive federal legislation against the agencies and instrumentalities of highway transportation.

(b) The Attorney-Examiner errs in unqualifiedly recommending requirement of certificates of convenience and necessity as condition precedent to engaging in interstate highway transportation for hire by contract carriers and by common carriers.

(c) The Attorney-Examiner errs in concluding that the Commission would be justified in recommending legislation to enforce rate regulation upon highway freight carriers. This would be ill-advised and contrary to the public interest.

(d) The Attorney-Examiner errs in concluding that the Commission would be justified in recommending federal legislation governing all features of the operations of motor vehicles for hire in interstate commerce.

(e) The Attorney-Examiner errs in not recommending that the Commission adopt a liberal attitude in the new field of coordinated rail-truck transportation to encourage its maximum development, in the public interest, with a minimum restriction by regulatory rules.

Errors and omissions of statements of fact.

Other interested parties are planning to file detailed exceptions covering recitals of facts in the tentative report which are thought to be erroneous, or bringing attention to other facts of record not reflected in the report or apparently overlooked by the Attorney-Examiner. Therefore these exceptions for the League will be addressed only to the conclusions and final recommendations, which involve principles in which the League is particularly interested on behalf of its members generally.

Detailed exceptions to erroneous conclusions and recommendations of the Attorney-Examiner.

In view of the foregoing principles adopted by the League, exceptions are appropriate to many of the detailed conclusions in the fifty numbered paragraphs on sheets 125 to 131 of the tentative report.

We therefore respectfully submit that the following numbered conclusions are erroneous and should not be approved or adopted by the Commission in its final report, or made the basis for any recommendations to the Congress of new legislation:

1.* The conclusion is fundamentally unsound that the national transportation machine cannot function with

*The numbers here coincide with the Attorney-Examiner's numbering of his conclusions and recommendations in the tentative report.

progressive efficiency, part regulated, part unregulated; and that coordination of transportation agencies cannot reach its economic possibilities under this anomalous condition. This is a conclusion not justified or required by the facts of record and stated in the report. It is the introductory paragraph to the detailed conclusions, and apparently reflects an erroneous attitude of regarding governmental regulation as the sole panacea for all ills.

6. The Attorney-Examiner errs in stating as *quaere* and not deciding the simple question whether the substitution of station-to-station motor-vehicle service for rail service is lawful. Such substitution is not in violation of the laws which this Commission administers.

9. The conclusion is erroneous and not justified by the record that certificates of public convenience and necessity should be required of a carrier subject to the Act before it engages in motor-vehicle operations.

15. The broad observation that Congress should declare that the business of operating motor vehicles for hire on the public highways is affected with public interest and so interrelated with transportation by other agencies that it must be considered a part of the national transportation system, does not require definite exception. The only importance of such assertion lies in the significance that may be attached to it in terms of ensuing legislation. The term "national transportation system" is misleading if it is intended to convey any

thought other than the fact that there are numerous forms of transportation,—by railroad, water, highway, pipe line, air,—in all of which the public has an interest; but it by no means follows that it should be put into a strait-jacket of government regulation.

17. The conclusion is erroneous that regulation† of interstate transportation of property by motor vehicles for hire, operating on the public highways in interstate commerce should be provided for by federal law and that the respective agencies so regulated should be classified as (a) operating over regular routes or between fixed termini; (b) operating anywhere-for-hire; and (c) contract motor-vehicle carriers.

18. The recommendation is erroneous that legislation for the federal regulation of motor-vehicle lines, except anywhere-for-hire carriers, should provide as prerequisites to the commencement of such operation: (a) certificate of convenience and necessity; and (b) liability insurance, indemnity bond or assurance of adequate protection for the responsibility assumed.†

19-20-21. The League excepts to the conclusions of the Examiner as to the basic principles to be considered and the tests to be applied in issuance of certificates of convenience and necessity, and as to the specific directions which Congress ought to give as to the manner in which the Commission shall exercise its discretion for

†Exception is here taken to the broad and sweeping regulation contemplated by the Attorney-Examiner's recommendations.

the granting or withholding of proposed certificates of public convenience and necessity for the operation of motor-vehicles on the highways in interstate commerce.

22. The recommendation is erroneous that common carriers operating motor-vehicles on the public highways should be authorized but not required, to participate in through routes with other common carrier motor-vehicle operators or with steam railroads, electric railways, or water lines, only when they have been granted certificates of public convenience and necessity by a regulatory board.

23, 24. The recommendations are erroneous respecting transfers and revocations of certificates of convenience and necessity, and as to the conditions under which the rights may be exercised which are granted under such certificates.

25. The recommendation is erroneous and not warranted by the record that the rates and fares charged by common carriers by motor-vehicle should be regulated and should be filed and posted in tariffs.

26. The recommendation is erroneous of legislation for the filing of complaints against the rates, charges, practices and services of interstate motor-vehicles.

27. The recommendation is erroneous and unwarranted by the record for the registration of so-called contract carriers engaged in interstate transportation by motor-vehicle for hire, and of the issuance by the Commission of permits to such operators.

NOTE: In this recommendation for permits to contract carriers, as well as in the recommendation under finding 30, concerning registration of anywhere-for-hire common carriers, we assume the Attorney-Examiner has in mind licenses or permits which go far beyond questions of safety and responsibility. The League favors uniform code of regulations on the part of all of the states, rather than federal regulations, as to the safety and responsibility of motor vehicle operators. These comments also apply to the exceptions to paragraphs 28 and 31.

28. The recommendation is erroneous and unwarranted that no contract carrier shall operate on public highways in interstate commerce without a permit.

29. The recommendation is erroneous and unwarranted that the Commission should be authorized to fix minimum rates to be charged by contract carriers.

30. The recommendation is erroneous and unwarranted that anywhere-for-hire common carriers engaged in interstate transportation by motor-vehicles should be required to register with the Commission.

31. The recommendation is erroneous and unwarranted that no anywhere-for-hire common carrier shall engage in interstate transportation by motor-vehicle without obtaining a permit from the Commission.

32. The recommendation is erroneous and ill-advised that the administration of the regulation of motor vehicles operating in interstate commerce over the pub-

lic highways should be vested in the Interstate Commerce Commission, with partial jurisdiction and action by joint boards representing interested states.

33. The recommendation is erroneous and premature that the Commission should be authorized to confer and hold joint hearings or cooperate with state authorities in the regulation of motor-vehicle transportation.

34. The recommendation that a uniform system of accounts for all motor-vehicle operators in interstate commerce for hire shall be prescribed, is subordinate to preceding recommendations and is ill-advised until regulation is extended over these operators.

35. The recommendation is erroneous that broad discretionary power should be provided in the law for administration of the various features of regulation of motor-vehicle operators.

36. The recommendation is erroneous and not warranted by the record that issuance of securities of motor-vehicle companies operating in interstate commerce should be subject to the supervision of the Commission.

42. The conclusion is erroneous because purely a matter of social economy that the hours of service, working conditions, training, and wages of employees engaged in the operation of interstate common carrier motor-vehicles should be on a basis substantially similar to those of railroad operating employees, difference in the two services considered. The Attorney-Examiner does not say

whether this means that legislation should be recommended to accomplish his idea.

44. The recommendation is erroneous and not warranted by the record, of uniform regulation as to sizes, weights, speed, loads, lights, and safety devices of all motor vehicles carrying persons for hire and of all motor vehicles carrying property over the public highways.

46. The conclusion is erroneous that common carriers by motor vehicle should be required by law to transport the United States mail if they hold certificates from some regulatory body operating over regular routes or between fixed termini.

Correct conclusions and proper recommendations of the Attorney-Examiner.

Counsel for the League accepts on its behalf as in accordance with its platform and as sound and supported by the record, the following conclusions and recommendations among the same fifty numbered paragraphs in the concluding sheets of the tentative report. We commend them for incorporation in the final decision:

2.* The statement that the past ten years have been an era of changing methods of distribution, of merchandising, and of business practices, is obviously true, and the further statement that transportation by motor ve-

* These numbers correspond to the Attorney-Examiner's numbering of his final conclusions in the proposed report.

hicle is one of the greatest contributing factors to these changes also appears to be correct.

3. The conclusion that steam and electric railroads no longer have a virtual monopoly of transportation, is obviously true; and it is partially true that regulatory laws, to the extent that they are based on the theory of a railroad monopoly in transportation, should be revised in the light of the changed conditions referred to by the Attorney-Examiner. *Query*: Does the Attorney-Examiner infer that section 500 of the Transportation Act, 1920, is a reflection of the theory that railroads then had a virtual monopoly of transportation, or that paragraph (2) of section 4 of the Act is based on such theory?

4. The conclusion is correct that carriers subject to the Interstate Commerce Act are increasingly engaging in motor-vehicle operations supplementary to their rail operations.

5. The conclusion is approved that carriers subject to the Interstate Commerce Act (*i. e.*, the railroads, or water lines operated in conjunction with railroads) should be authorized specifically by law to engage in transportation by motor vehicles on the public highways, and when so engaged, should be subject to said Act.

7. The conclusion is approved that railways and water lines should supplement their transportation services by using motor-vehicle transportation in coordination with their rail or water services wherever this will result in economies of operation or betterment of service or both.

8. The recommendation is approved that the control of motor-vehicle operations by carriers now subject to the Act, should be brought under the supervision of the Commission.

9. The conclusion is correct (when subordinated to other conclusions), that a carrier subject to the Act should be required to obtain a certificate of public convenience and necessity before engaging in motor-vehicle operations, if and to the extent that such certificate is antecedent to the operation of independently operated motor vehicles, but not otherwise.

10. The conclusion is correct that a railroad should not be required to secure a certificate of public convenience and necessity before engaging in strictly terminal operation.

13. The recommendation is approved that carriers subject to the Act should be authorized, but not required, by law at this time to participate in through routes and joint rates with common carrier bus or truck lines, subject to the provisions of the Act.

14. The suggestion is approved that present railroad classifications, in respect of packing requirements, mixture rules, etc., should be studied with a view to liberalization and the reduction of transportation costs to the shipper, where possible without undue increase of loss and damage claims.

39. The conclusion is approved, although not clearly

expressed in the language of this paragraph of the report, that through rail and motor-vehicle traffic arrangements which result in the receipt by the rail carrier of any amount other than its published rate, fare or charge for the rail service as shown by its tariffs on file with the Commission is a violation of section 6 of the Act.

40. The conclusion seems obviously correct that the transportation of baggage of a passenger traveling by motor bus, by a carrier subject to the Interstate Commerce Act without the collection of tariff rates for the baggage service performed by the railroad or water line is a violation of section 6 of the Act.

48. The recommendation is probably fair that any federal legislation for the regulation of motor vehicles within the United States should include regulation of the transportation to or from a foreign country to the extent that the service is performed within the United States.

49. The conclusion is sound that the Commission has no jurisdiction over matters of taxation, and the thought is approved that attention may well be directed by the Commission to the propriety of ascertaining whether commercial motor vehicles pay their fair share of the cost of construction and operation of highways. But motor-vehicle taxation should be applied alike upon private and commercial vehicles of the same class. No penalty taxation should be exacted on carriers for hire and no discrimination made in taxation of common and contract carriers, as distinguished from private carriers.

50. The recommendation is approved that section 500 of the Transportation Act should be amended to include motor-vehicle transportation in the declaration of policy there made.

Other recommendations which are neither criticised nor accepted.

The League has taken a neutral attitude on certain questions of the regulation or legislative treatment of highway transportation. For that reason, or because in the opinion of counsel not necessary to be discussed for purposes of the League's intervention in the inquiry, the following among the conclusions and recommendations in the fifty numbered paragraphs on sheets 125 to 131 of the tentative report are neither approved nor disapproved and no exception is herein taken against them.

11. The suggested modification of the Clayton Anti-trust Act, to the extent that carriers now subject to that Act should be permitted to acquire motor-vehicle lines already in operation wherever such action is in the interest of economy and efficiency of operation, and not adverse to the public interest, depends upon and is made subordinate to the legislation to be adopted for the regulation of motor vehicles engaged in interstate commerce.

12. The Attorney-Examiner concludes that the railroads ought to consider whether economy and efficiency of transportation could be promoted by utilizing the Railway Express Agency as a medium for handling all less-

than-carload freight with expedition in service and reduction in charges to the shipper.

16. The League has adopted a neutral position with regard to regulation of highway passenger transportation by motor bus and therefore expresses neither approval nor criticism of the conclusion that regulation of such transportation should be provided for by law, and that carriers so engaged should be classified on the basis suggested by the Attorney-Examiner. There are broad differences between bus transportation of passengers and truck transportation of property which justify the application of different principles.

37. The League has not considered the question of a prohibition of brokerage in interstate transportation of passengers for hire by motor vehicle.

38. The League has not considered the question of a prohibition against free passes or free transportation of passengers by motor vehicle in interstate commerce.

41. The League has not considered the question of amendment of the transportation of explosives Act to apply to all motor vehicles transporting explosives or inflammables under all circumstances on the public highways.

45. The recommendation that freight forwarding companies should be brought under the supervision of the Commission is one that seems hardly within the proper scope of this inquiry.

47. The League has not passed upon the question whether motor vehicle competition should be considered, if the facts warrant, as constituting substantially dissimilar conditions in the construction of sections 2 and 3 of the Act relating to unjust discrimination and undue prejudice.

ARGUMENT.

The foregoing exceptions have been prepared by counsel for the League, under authority of definite directions to acquaint the Commission fully with the principles approved and advocated by the League membership. Manifestly these exceptions in themselves have not been presented to the League membership for ratification. But they represent the conception of counsel, upon a study of the report and intimate familiarity with the history and detail of the League's study and recorded resolutions dealing with this problem, of the respects in which the tentative report is erroneous and not warranted by the record. This we shall endeavor briefly to develop further in the ensuing argument, under two simple headings or propositions:

I.

THE ATTORNEY-EXAMINER'S DRASTIC RECOMMENDATIONS ARE NOT WARRANTED BY THE RECORD OR BASED ON SOUND EXPERIENCE.

The tentative report appears to reflect an attitude of mind which we regard as erroneous and as not founded squarely on experience and enlightened judgment, that federal governmental regulation is the sole panacea for all ills. The Attorney-Examiner's first numbered con-

clusion, on sheet 125, and which he emphasizes by making it the first headnote to the report is:

“The national transportation machine cannot function with progressive efficiency, part regulated, part unregulated; coordination of transportation agencies cannot reach its economic possibilities under this anomalous condition.”

There is really no such thing as a “national transportation machine” in the United States. There are numerous forms or agencies of transportation, some performed by public carriers, some by private carriers, some regulated and some unregulated. It is indeed a paternalistic attitude to consider all of these separate, and to a large extent competitive, forms of transportation as a *national machine* over which the government should exercise control, whether or not the public demands it.

It may be that the Attorney-Examiner, having directed his whole energy and attention for a decade in the service of the Commission to the regulation of the railroads, a regulation which he is convinced has been highly successful, and having had no direct experience with unregulated fields of commerce, is naturally inclined to think that any and all evils may be cured by a complete and all-inclusive federal regulation of competitive modes of transportation in general and specifically of highway transportation. Or it may be that he has put forth his recommendations only tentatively, as something to shoot

at. Whatever may have been his approach to the problem, certain it is that the Attorney-Examiner has gone the extreme limit in favoring every detailed phase of regulation which the most ardent disciple of the railroads or the most implacable foe of highway transportation could devise, short of a prohibitory enactment that would end the discussion by abolishing the highway transportation itself.

In reaching these drastic conclusions, which the Attorney-Examiner says, are warranted by the record (sheet 125), there is a failure to demonstrate by a sensible discussion as to many features of the proposed recommendations, either the reasons or the processes of logic by which it is thought that the conclusions necessarily follow the premises or are supported by the facts developed in the investigation and stated in the tentative report.

It is rather striking that the Attorney-Examiner recognizes the absence of any great and pressing demand by the public for drastic regulation of highway transportation. Rather he points out, on sheet 109, that there is *a public need* (which he impliedly confesses the public does not realize), for such regulation and he wishes the regulation itself to be anticipatory of the public demand which would follow if the highway transportation were allowed to develop without such regulation.

The Commission conducted protracted hearings in an investigation of highway vehicle transportation some four years ago in Docket No. 18300, as the result of

which it issued its report of April 10, 1928, *Motor Bus and Motor Truck Operation*, 140 I. C. C. 685. This report is cited by the Attorney-Examiner in the beginning of the tentative report in the present case. The former investigation was described by the Commission in its report thereon as quite comprehensive and the fact was mentioned that more than four hundred witnesses had been heard, a much larger number than testified in the present investigation. The former inquiry was nationwide and as the appearances of counsel are enumerated in the respective reports, it will be observed that practically all interests who have participated in the present investigation likewise took an active part in the former investigation. As to the thoroughness or lack of completeness of the inquiry, we shall have more to say on later pages hereof.

An examination of the former decision of the Commission reveals a striking similarity in the make-up of the two reports and of the topics discussed and discloses no important subject or phase of the problem stated by Attorney-Examiner Flynn which was not mentioned and rather fully discussed in the former report. We are not here analyzing the tentative report in any critical spirit, but wish to commend it as a very carefully prepared document for which the Attorney-Examiner is to be very highly commended, exception being taken only to his recommended conclusions. The point we are coming to is that when the Commission considered this problem

four years ago, it arrived at certain conclusions and made certain recommendations. Some of these conclusions and recommendations are repeated in the tentative report in the present investigation. Attorney-Examiner Flynn has gone quite beyond these recommendations of the prior report, however, and reaches drastic conclusions and presents sweeping recommendations far beyond what the Commission was willing to adopt four years ago. That is his privilege or duty, yet we should consider whether his conclusions are supported by any new light afforded by the present record or any further experience of the Commission which changed the picture from that presented when the former and more moderate report was adopted.

We have suggested that the Attorney-Examiner's recommendations represent all that the most ardent advocate of the interests of the railroads could wish in the direction of tying up the competitive highway transportation by most drastic regulation. May we here remind the Commission of an expression of view in the concurring opinion of one of its members in the adoption of the prior decision of April 10, 1928. We refer to Commissioner Woodlock, a man well known for his recognition of the rights of the railroads, an earnest student of these problems who never hesitated to express his views candidly and clearly as to any principle which would preserve and benefit the railroads. He said some things about the problem as then presented to the Commission which we think should be in everyone's mind in consider-

ing the much more drastic recommendations now put forward by Attorney-Examiner Flynn. Commissioner Woodlock said:

“Regulation is not in itself a good thing. The less regulation that is necessary, other things being equal, the better for the community.”

This is hardly the point of view reflected in Attorney-Examiner Flynn's report and recommendations and it is not a point of view which would support the unnecessary extension of regulation into new fields or over a new domain; but it is the expression of a well-informed student who went on to state:

“It is necessary in the case of public-service utilities because of their semi-monopolistic nature. Transportation in general is not *per se* of such nature; transportation by railroad is. Transportation by motor bus and motor truck does not necessarily depend upon monopolistic or semi-monopolistic organization or performance. It is manifest that at the present time these services are much more largely of a competitive than of a monopolistic nature. For that reason the need for regulation, except in so far as concerns the public safety, is not wholly clear. This being so, regulation should proceed with caution and only in response to demonstrated needs.”

We interrupt the quotation to remark that an examination of the recitals of fact through the entire tentative report and an analysis of the conditions therein set forth will not disclose that what Commissioner Woodlock said four years ago is not now true, namely, that highway

transportation services are much more largely of a competitive than of a monopolistic nature, and that the need for comprehensive regulation is not wholly clear. Commissioner Woodlock continued:

“The great complexity of modern life has already compelled the centering of enormous power in regulatory bodies such as this commission. I do not view with satisfaction extension of the province in which that power is exercised, save under clearly demonstrated necessity for such extension. ‘Hasten slowly,’ it seems to me, is the only safe policy to be followed in matters such as those dealt with in this report. Let experience teach us.”

We submit that the tentative report indicates very little new and additional experience that changes the situation, other than an intensified competition of the trucks and busses with the railroads. Therefore, conclusions which the Commission considered but could not conscientiously adopt four years ago, are hardly warranted now and required simply because the matter has been considered a second time. May we direct attention in this connection to the following language of the majority report in the former decision, page 748:

“The general subject which has been considered in this report is one with which we have had little or no direct experience. The State commissions have had more such experience, and we have been favored with their cooperation and help in the preparation of the report; but even with them the public regulation of motor vehicles operating as common carriers

is a comparatively new and experimental field of activity. Under the circumstances conclusions must of necessity be of a somewhat tentative character. As experience is gained in the future it may, and probably will, be necessary to revise and modify the conclusions set forth above, and this emphasizes the desirability of proceeding gradually and with due caution in the development of a system of interstate public regulation."

There are other expressions in the former report which are worthy of quoting at this time, and which support our thought that neither experience by the Commission nor the facts developed of record in the present investigation warrant or require the drastic recommendations and sweeping conclusions in the report.

Bear in mind that the tentative report does not reveal new conditions or a substantial gain in knowledge of the problem from further observation and additional testimony that would warrant the Commission in going much farther now in its recommendations to Congress for legislation than it would have been warranted in going when the problem was discussed in the former report. It is therefore significant to note the conclusion of the Commission in the former report, on page 746:

"5. The problem of regulating motor-vehicle operations in interstate commerce is a comparatively new one, and it is too early to attempt regulation in too great detail."

We are not unmindful of the expression on page 741 of the same report:

“There are few persons, if any, familiar with the history of railroad transportation, and particularly as to its economic aspects, that will not say that the public and the railroad companies would have fared better if railway regulation had come much earlier than it did.”

This same thought finds very strong expression in Attorney-Examiner Flynn's report, see sheet 109:

“Certainly no one familiar with the history and development of railway transportation, and particularly as to its economic aspects, will deny that the public and the railroad companies themselves would have fared better if federal regulation of railways had come much earlier than it did.”

Further, on sheet 110 of the tentative report, the Attorney-Examiner remarks:

“It is better in the interest of the public and of the transportation industry to have regulation which forestalls, rather than regulation which results because of conditions giving rise to an unmistakable public demand.”

If, for purposes of argument, we give the fullest recognition to the wisdom of these sayings,* yet it does not follow that the first regulation ought to be extreme or

*We readily concede, from one point of view, that it is far wiser to have reasonable regulations adopted which forestall the development of evils and abuses which, if not prevented by such anticipatory legislation, would have led to an unmistakable public demand for legislation. But there is another point of view, which is, that our whole industrial system and commerce have been based upon the exercise of private initiative and individualism so that it should be

drastic or all-inclusive over every phase of the subject. The Examiner seems not to have found any wisdom in the statement of the Commission in its former report, on page 742:

“Regulation of common-carrier motor vehicles operating in interstate commerce should, at first, be simple. The problem is a comparatively new one and it is too early to attempt the regulation of such carriers in too great detail.”

The foregoing thought was covered in the fifth numbered paragraph of final conclusions in the former report, which we have already quoted.

Nor do we think the Attorney-Examiner in his broad treatment of the subject is properly imbued with the basic principle of public policy which the Commission thus expressed in its former decision, pages 736-737:

“Regulatory legislation and administration should be with the single purpose of improving transportation.”

The Examiner sweeps all difficulties aside, and conceding the lack of public demand for the legislation which he advocates, yet he has no hesitancy in stating the public need of which he speaks with assurance, notwithstanding

asserted as an American doctrine, that there should be no government interference with business unless and until such interference is clearly necessary to meet the public demand as well as the public need. Governmental regulation which is not responsive to a demonstrated need and general demand of the public is of very questionable propriety.

ing the Commission's expression in the former report, page 737:

"It is not always easy to determine what is the public interest."

These and other references which might well be quoted from the former report support our view that the Attorney-Examiner's very drastic recommendations are not warranted by this record, as he describes this record, since he has failed to reveal any broad gain in the Commission's knowledge of the subject from the further investigation and that his recommendations are not based on sound experience.

When the Commission makes recommendations to the Congress of legislation dealing with transportation matters, it supports those recommendations with reasons and with a statement of the facts which it has gained from its experience as an administrative tribunal. A member of the Commission appears before the Senate or House Committee for discussion of the problem involved and of the proposed legislation. The interested shippers and carriers present their views. In respect of the legislation recommended by Attorney-Examiner Flynn, we ask the Commission to consider whether his report *and the underlying record* afford a basis on which the Commission can, with assurance, submit to the Congress the unquestioned need for the legislation advocated by the Attorney-Examiner or the undoubted wisdom of such proposals. There are doubtless many who will speak in

favor of the various features of this program of legislation and there are many others who will speak strongly against it. We seriously doubt that the Commission would be justified in assuming that it has now gained the experience which it lacked four years ago and that it has now made such observations as warrant the definite commitment of this honored tribunal as a proponent of drastic legislation, in a field where Congress has yet to take the first simple steps.

There Has Been No Comprehensive Investigation of the Problem.

A study of the underlying record, or the transcript of testimony herein, will reveal a crazy-quilt of evidence, rather than a comprehensive investigation into all phases of the problem of highway transportation as related to and as competitive with railway transportation. There was a long parade of witnesses representing the railroads and others interested, but many important facts were not developed at all. The larger part of the proposed report is devoted to recitals of instances, or examples, or local experiences, developed here and there and in an inconclusive way. The Commission may learn very little indeed, either from the tentative report or from the underlying record herein, beyond what it learned from the former hearings, in Docket No. 18300. Before acting upon proposed legislation, the committees of the Congress undoubtedly will want information on

many important points which have not been covered by the record or proposed report herein. The Commission cannot supply that information, because it has not been developed by the Commission's investigations herein, and is not within the Commission's experience. We feel confident the Commission will not recommend to the Senate and House of Representatives, enactment of regulatory measures to govern highway transportation when it is not in possession of the facts necessary to answer with authority the questions which the committees already have asked and others which self-evidently will be raised, relating to the public need, the legal and practical difficulties of administration, and even the statistics of the commerce involved, as to which the record and report are "foggy" and far from complete.

II.

MANY OF THE ATTORNEY-EXAMINER'S RECOMMENDATIONS ARE OF DOUBTFUL VALIDITY.

It is not our purpose to undertake an extended discussion of the propriety and validity of the various recommendations in the tentative report. This is because we rest our exceptions primarily on the very broad proposition that the record in the investigation does not warrant the Attorney-Examiner's major recommendations of a complete scheme of federal regulation of highway transportation and he fails in his own recital of the facts and of the testimony to support his recommended conclusions.

Nevertheless, it may be well to direct attention to the fact that the Attorney-Examiner has passed over very lightly and without discussion, questions of obvious difficulty as to the validity in law of some of his principal recommendations. Furthermore, some things which may be incorporated in a statute that would not be unconstitutional, may be wholly impracticable or so difficult of enforcement as to be worse than useless.

For illustration, we need mention only the Examiner's failure to dispose of the very genuine difficulty under the fifth amendment to the constitution, of attempting to regulate the business of so-called contract carriers. He does not dispose of the practical difficulties, let alone legal embarrassments, of regulating contract carriers with the consequent burden on those who now use their services and of having to leave the shipper-owned truck to use the highways free from restrictive regulation which would be impossible of enactment and enforcement.

It is impossible to place too much emphasis on the difficulty of attempting the regulation of carriers for hire on the highways and leaving the shipper-owned trucks free from regulation, in the broader sense, other than regulations as to speed limit, size and load limits, and matters of safety and taxation. It must be manifest that since a great majority of the trucks on the highways are undoubtedly shipper-owned and operated, that restrictive regulation of common carriers on the high-

ways, or of both common and contract carriers, for that matter, would give great commercial advantages to the shipper who owns his own trucks. In other words, the big shipper with capital to own his own facilities of highway transportation, would have powerful weapons in his hand for driving out of existence the smaller competitor who is compelled to employ carriers for hire to move his goods to his customers.

There is no discussion of the enormous difficulties inherent in trying to regulate small agencies of transportation, all over the 48 states, whose investments, plants and services differ so radically from the railroads, which are fixed institutions whose facilities are fixed, stable and permanent, and who enjoy a monopoly of their particular type of transportation.

We are adverting only to a few of the typical difficulties and legal phases of the problem with which the Attorney-Examiner has failed to deal adequately.

III.

THE LEAGUE MAKES CERTAIN AFFIRMATIVE SUGGESTIONS AND CONSTRUCTIVE PROPOSALS, WHICH ARE SUPPORTED BY THE RECORD.

While the League is registering the very broad exceptions of its membership collectively, but not unanimously, to the fundamental proposals in the tentative report, it is by no means assuming merely a negative at-

titude of opposition to legislation. The Commission will observe very readily that there are certain features of regulation, quite important in themselves, as to which the League recommends changes in existing federal law. These changes are in a liberal attitude, intended to encourage the development of coordinated use of the rail and highway transportation agencies.

The League advocates the proposed amendment of section 500 of the Act, being Title V of the Transportation Act, 1920, as advocated by the Attorney-Examiner, which would express the national policy as favoring the development and fostering not only of rail transportation and of water transportation, but also of transportation by highway vehicle.

There are other features of the Attorney-Examiner's proposals which have been advocated and are now supported by the League, but which fall far short of the drastic recommendations of the report.

The League recommends appropriate amendments of the Interstate Commerce Act by which through routes and joint rates will be fully recognized, encouraged and legalized between rail carriers subject to the Act and motor truck or bus lines or joint through rail-water-highway routes, in the same manner and with similar requirements that now govern joint rail-and-water routes, the highway vehicle carrier to be subject to the Act with respect to such joint rail-and-highway or rail-

water-and-highway routes and rates, without being subject to the Act as to the all-highway transportation.

The League favors appropriate amendment of the fourth section of the Act, so that rail carriers may be relieved of the provisions of the long-and-short-haul clause in the event the Commission finds it necessary and appropriate that they make competitive rail rates to meet actual motor truck competition, subject to reasonable restrictions and limitations.

The League suggests that by amendment of section 20, and by the adoption of appropriate changes in its accounting regulations, the accounts of the rail carriers covering their operations through subsidiaries or otherwise on the public highways, shall be so kept as to prevent undisclosed charges against the public of losses sustained in highway vehicle transportation.

These and other features of the League's platform are affirmative recommendations, conservative in character and amply supported by public experience and public demand, and for the most part, supported by this Commission's recommendations in its prior report in Docket No. 18300, *supra*.

As the Commission well said in that report, this is a new problem and deals with a growing field of transportation. If Congress does not plunge ahead hastily with drastic laws, and the Commission is reasonably conservative in its legislative recommendations, it may well

be that the time will come when other features of highway transportation should be covered by Congressional enactment. It may be appropriate to broaden and strengthen the legislation, as time passes. The League, of course, will modify its position as future experience may justify. It expects the Commission will be in that same attitude of mind of awaiting the results of experience and of proceeding step by step according to its contact with and observation of the future development of the subject.

In the light of present information, we respectfully submit that the radical recommendations in the proposed report should not be accepted and adopted by the Commission, in the respects herein fully stated.

Respectfully submitted,

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