

Corporate Personality Involves Commerce Clause

By CALVIN CRUMBAKER

Most interesting development of the division of commerce into state and interstate has arisen through corporation laws rather than through attempts by either Congress or state legislatures to burden the commerce under the jurisdiction of the others. Frequently this type of clash arises out of an attempt by a state to regulate corporations, in their capacity of artificial persons, in business carried on by them in the state.

The difficulty centers in the peculiar use of the terms person and citizens in the Constitution. Corporations are "persons" and have the constitutional rights of persons. They are not "citizens" and cannot receive the rights of citizens.

So when the Constitution says in the Fourteenth Amendment that no state "shall abridge the privileges or immunities of citizens of the United States," it is understood that any citizen may go where he will in any state and thus claim every right, privilege and immunity set up for that state for citizens. No state may favor its citizens over citizens of another state.

The same amendment says further, "nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." Interpretation of these clauses throws considerable light on the present attempt of the Federal Government to take over the regulation of business, wages, and so forth, whether in intrastate or interstate commerce.

Courts have held that a corporation, not being a natural person which can secure its citizenship by birth or naturalization, cannot migrate, as a citizen, whenever it chooses, and demand in the place to which it moves the full rights of citizens and the equal protection of the laws.

Being a person created by law, it has a legal standing only in the state creating it, or in such states as shall by comity, or otherwise, through legislative action, recognize its personality.

The attempts of corporations to circumvent the power of a state to exclude them from operation in the state has led to some fine distinctions between interstate and intrastate commerce.

Under the Constitution the state cannot prevent a corporation from carrying out interstate business in the state. A state cannot in any way obstruct or burden interstate commerce, regardless of whether it is carried on by a natural person or by a corporation having legal existence only in some other state.

On the other hand, a state can prevent any foreign corporation from carrying on intrastate commerce of any kind whatsoever. The decision on some of these disputes will go far in helping decide what Congress can and cannot do.

In one case a tea company sent its solicitors throughout a state to receive orders for its products. It had no right to do intrastate business. It could sell its products by the carload through the personal solicitation of agents so long as it filled the orders from outside the state.

One salesman, finding a sample box or two of toilet cream left over, sold and delivered them to a customer. He was promptly fined for doing business without a city license. The case was taken through all the courts until finally the Supreme Court of the United States upheld the verdict.

A deal of trouble over two cans of toilet cream, to be sure, but not too much trouble to define a basic law. Both the salesman and the corporation were guilty of doing intrastate business without proper authority from the state. Carloads of toilet cream could be sold in the state by the same persons by following the rules applying to interstate commerce.

The balance between intrastate and interstate commerce is delicate as you get closer to the boundary line.

A corporation may actually set up an office within a state and maintain it as headquarters for salesmen and a repository for samples without engaging in intrastate commerce in spite of state laws declaring this to be doing business in the state.

Such a corporation lays itself liable to severe penalties if it gives evidence, by inadvertent acts, that it is doing business in the state. It must not maintain a local bank account, deliver repair parts out of stock, sell and deliver a sample, confirm an order, accept a payment on account, or do many other simple acts which could be construed as maintaining a place of business.

Portland discovered that though agents of Real Silk hosiery and agents for Curtis publications were local residents who solicited orders and accepted payments, they were doing interstate business for the reason that all shipments were from out of the state. A state cannot enforce laws against a foreign corporation which does nothing but interstate commerce within the state.

Usually keeping goods in a warehouse for delivery upon order, even where the order is confirmed out of the state, has been ruled to be doing business in the state and subject to the regulation of the state. This might put such business beyond the control of Congress under the interstate commerce powers.

In some cases states have denied the right of a corporation making conditional sales contract from enforcing collection in state courts for the reason that the corporation was illegally doing business within the state.

On the other hand, if a corporation consigns goods to a commis-

sion merchant who takes full responsibility for sales and delivery, he is doing business in the state while the corporation owning the goods is not. The commission merchant may be a natural person, a partnership, or a domestic corporation. If the consignee were an "agent" of the out-of-state corporation it may be assumed that the court would rule that the corporation, not the agent, was doing business in the state.

For a long time past states were anxious to extend their jurisdiction over corporations aspiring to do business in the state. In general peculiar opinion favored the extension of such authority.

Today when so much dependence is put in national legislation as an aid to recovery these precedents are very troublesome, especially since the court has shown the tendency to follow the constitutional restrictions against interference by either Congress or state legislation in the respective jurisdiction of the other.

It has been pointed out that it was next to impossible for a corporation to carry on a nationwide business without falling into the meshes of state law. Most of them found it necessary to make terms with the states in order to protect themselves against liability for unlawfully doing business in the state.

It is also next to impossible for Congress to pass a law of general application for the reason that a small part of business is either exclusively inter- or exclusively intrastate. Mixed jurisdictions will make any general law impracticable, and in recovery legislation general laws universal in application appear to be necessary.

THE FEDERAL CONSTITUTION AND THE CONTROL OF RAILROADS AND TRUSTS.

It has been suggested that the commerce clause led to a conflict between state and federal authority. When a state attempted to favor its citizens in competition with other states; when a state attempted to regulate and control corporations formed in other states, and when a state attempted to regulate railroads and trusts.

Though railroads were a common object of suspicion to both state and federal governments, the federal government was slower in regulating than were certain of the states, notably the granger states. The first cases to reach the Supreme Court came under state laws and involved two questions: Could a state regulate private business, and could a state regulate interstate commerce? In general, the Supreme Court, in the early cases, upheld both rights.

The right to regulate under the police power has grown and expanded with the years, but not the right to regulate interstate commerce. Beginning in 1886 with the *Wabash* case, a long series of cases ending with the Wisconsin Passenger Fares case in 1922, have expanded the concept of interstate commerce so that states have gradually been shorn of the power to regulate railroads at all. As far as railroad regulation is concerned, the several railroad commissions are virtually obsolete legal institutions. The regulatory power of the Federal government has continually increased, both relatively and absolutely.

In public utility control quite the reverse is true. The great burden of regulation has been borne by the states. This was more or less satisfactory when public utility services were essentially intrastate in nature. Only lately has the attention of Congress been directed to the fact that super-power concerns which are interstate in their commercial operations, and in their financial organizations, present problems that state commissions cannot adequately meet. The Federal Power Commission, up to the present, has remained the high sounding name of a commission with little or no power to regulate interstate rates or services.

With the regulation of highway carriers a similar set of conditions exists. Congress has toyed for several years with the regulation of interstate highway transportation. Thousands of pages of reports have resulted from Congressional study of the problem without the development of a policy of regulation. Congress has virtually abdicated its authority to control this very important branch of interstate commerce.

The states, on the other hand, have been very active in asserting their authority to regulate highway carriers. They have successfully exercised complete control of common carriers in intrastate commerce under the doctrine of public interest, and an almost equally sweeping control of contract carriers in intrastate commerce, under the state's authority to control public highways. States even exert vast authority over interstate highway carriers, under the authority to protect the health, safety, and general welfare of the people.

The weakness of state regulation lies in the absence of any co-ordinated national rate policy for highway carriers. They are keen competitors of the railroads who operate under a rate structure recognized as part of a national structure, controlled as part of a national problem. Interstate highway carriers have only such controls as they choose to take in the absence of regulation by national agencies. Intrastate transportation is regulated by state agencies with local, rather than national, interests in view. The power of Congress should be decisive, since highway carriers, in the final analysis, determine the future of railroads.

In theory Congress can exercise all power necessary to carry out its delegated control over interstate commerce. In theory highways

are solely within the control of the states. Hence an interesting question of jurisdiction is raised. What if the right of Congress to control interstate commerce in all its phases should lead to an attempt at control by the federal government of highways which belong exclusively to the states? This is what happens when an immovable body meets an irresistible force. So far the question is not important for the reason that federal regulation is inactive.

In trust regulation, conflicts in jurisdiction between the state and the federal governments developed in like manner. Most of the states passed stringent anti-trust laws. Two or three, notably Missouri and Texas, apparently made attempts to enforce the laws. Texas succeeded in ousting the Waters-Pierce Oil company, and in levying a fine of over a million and a half dollars for carrying out in Texas an arrangement for restraining trade prepared outside the state.

On the whole, state regulation was desultory and ineffective, partly because of inefficient machinery for enforcement, partly because laws were not skillfully drawn to give the state the advantage of all its legal powers, and partly because anti-trust campaigns in most states consisted in large part of "shadow fighting" carried out by politicians who found the trust bogey useful in their operations. The movement developed one fact quite clearly. States possess vast powers to control business and commerce within the state. Lack of vision and not lack of power is the source of difficulty in regulating business.

The federal anti-trust laws were designed to prevent combinations in restraint of interstate commerce. The usual question as to the division of commerce between state and interstate appeared. Some interesting variations of the term interstate were made in various cases which arose. For example, in the *E. C. Knight* case of 1895, the court ruling has been interpreted, or misinterpreted, as saying that combinations of manufacturing concerns are not subject to federal law. Later, in the so-called *Addystone* case in 1899, the court ruled that a pool of manufacturers were subject to the national act when their contracts were for delivery beyond state boundary lines. Hence a combination of manufacturers were held to be in interstate commerce, subject to the national law.

It cannot confidently be asserted that the national laws for handling the trust problem have been effective. This is partly due to the fact that laws have not been drawn to take full advantage of recognized powers, partly to the fact that important aspects of the problem are intrastate rather than interstate in nature, and partly to the fact that national political leaders cannot refrain from "shadow fighting," as in the case of state anti-trust laws.

It is surprising that in recovery legislation it is desirable to permit or to prescribe, and to enforce, in the name of public interest, the type of restraint of competition outlawed in the anti-trust period. The division of power between the state and federal governments holds over under the new legislation. The experience gained in railroad, public utility, and anti-trust laws indicates that this division of authority, while embarrassing, does not preclude the possibility of effective recovery legislation.

C. C. Colt Made Chairman For Oregon R. C. Rollcall

Carnelius C. Colt, senior vice president of the First National Bank of Portland, long active in Red Cross, Boy Scout and Y. M. C. A. welfare work, has accepted the appointment of chairman of the Oregon State Roll Call committee for the American Red Cross, A. L. Schafer, manager in the Pacific Area, informed Oregon Red Cross chapters today.

As State Roll Call chairman, Mr. Colt calls upon all citizens to rally to the Red Cross flag, enrolling during the annual membership campaign which will be held from August 15 to Thanksgiving, November 11-22.

Preliminary to the actual enrollment of members six regional Roll call conferences will be held in Oregon at which Chairman Colt of the Oregon committee and Douglas H. Moore, director of Roll Call for the Pacific Branch Red Cross, will be the principal speakers.

The Oregon Roll Call conferences will be held at Grants Pass, October 14; Bend, October 16; Corvallis, October 21; Portland, October 22; The Dalles, October 23; Baker, October 25.

Thirty-four Red Cross chapters in Oregon have set as their objective, the enrollment of 55,800 members as this state's quota of the national objective of five million members.

Chairman Colt says the Oregon membership now is 44,214 or 4.64 per cent of the state's population. The national honor flag is held by the state of Nevada, which enrolled 6.79 per cent of its population in the Red Cross in the Roll Call last fall.

Achievements of the Oregon chapters will be narrated during the Roll Call conferences and emphasis will be placed on the national Red Cross campaign for the establishment of first aid stations on the principal highways and for the prevention of accidents in the homes and on the farms.

Red Cross records show that 11 of the 34 chapters handled a monthly average of 1,535 cases dealing with the problems of veterans or their families. Fourteen chapters had a monthly average of 1,548 cases in which they extended relief to civilian families.

In the field of Public Health Nursing the nurses made 2,230 visits to or in behalf of patients. Pre-school or school children inspected by doctor or nurse numbered 1,567. Physical defects found in such inspection numbered 2,163. Children treated for one or more defects numbered 516.

Ten of the Oregon chapters completed classes in Home Hygiene and Care of the Sick and issued 590 certificates to persons taking the instruction. There are fourteen active instructors.

In the field of First Aid to the injured the 34 chapters issued certificates to 5,033 persons who completed the course of instruction. There are 385 qualified first aid instructors in the state.

Twenty-three of the Oregon chapters certified 818 persons who qualified as life-savers. Since 1914, the Oregon chapters have enrolled 8,243 persons who qualified as life-savers. There are 137 life-saving instructors in the state.

Special Volunteer Service in 18 chapters included the production of 5,792 garments for needy and distressed families, the production of 1,686 surgical dressings and 2,777 pages of Braille transcription for the blind.

Twenty-six chapters enrolled 28,805 Junior Red Cross members in 154 schools of the state.

D. Bryne, secretary of the state board of higher education at Eugene by October 30. About 16 took the examination at the special mid-summer session.

Egbert Young, in town Monday from the Eight Mile section, reports seeding progressing rapidly in that section, farmers going ahead and putting the seed into the dust. The dust has made the chore quite unpleasant, he said.

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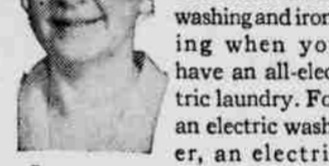
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KOAC Starts Three New Home Study Club Series

Several new home study programs designed to be of particular interest to parents and home owners of Oregon are announced for the winter months by KOAC, the state-owned radio station at Corvallis.

The first program of a series entitled "Is My Child Growing Up?" will be given Tuesday afternoon, October 1, and at the same hour on each Tuesday thereafter. This series will deal especially with problems of "teen-age" boys and girls, and will feature on alternate Tuesdays Dr. O. R. Chambers, professor of psychology at Oregon State college, and Miss Leah Finkelstein, trained librarian of Portland.

Dr. Chambers has long been a leader in the field of behavior adjustment and a popular lecturer at schools for parents held in various parts of the state by the O. S. C. extension service. Miss Finkelstein will present book reviews keyed to the interests of adolescent boys and girls.

Two other series will begin Friday, October 4. One of these, entitled "Home Furnishings," will consist of lectures each Friday by staff members of the school of architecture and allied arts at the University of Oregon, broadcast at 8:45 o'clock.

The other series, entitled "Short Story," will be presented each Wednesday and Friday evening at 8:15 o'clock by Alexander Hull, noted Oregon author. Hull is a new KOAC staff member. These two series will be offered in correlation with correspondence courses of the same names at U. of O. given thru the General Extension division.

Supplementary material for the use of groups of neighbors or others who wish to enroll as radio clubs and assemble regularly to listen to any of these series will be supplied each week by KOAC. Any group may obtain an enrollment blank from the station and will be required to pay a small fee for the club as a whole and to fill out a weekly report on radio reception, opinion of the broadcast and any questions the club may wish answered.

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