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Trade Regulation

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A middle ground has found favor in Connecticut,[12] Illinois[13] and California.[14] These states require that employment advertisements describe, and applicants be told of, any labor dispute. These statutes are finely detailed as to the sufficiency of such notice. Akin to this solution is that enacted by the legislatures of Ohio,[15] Pennsylvania[16] and Indiana[17]: requiring that notice be given to the employee but not necessarily to the public.

It is apparent that no plan has been completely satisfactory. With its registration law Massachusetts will try the unique.

PAUL G. DELANEY

TRADE REGULATION

LEGISLATION

There has been relatively little in the way of actual legislation during this period, but publication of the Landis Report[1] in December, 1960, is deserving of some comment. A major portion of the report was devoted to problems common among all the regulatory agencies.[2] It also dealt with specific agencies, and recommended certain changes aimed at their more efficient operation. These recommendations should be of particular interest in view of the fact that, in most instances, their adoption would require legislative action. Concerning the internal operation of the FTC, the report calls for an increase in the powers of the chairman;[3] consolidation of its investigation and litigation activities; and elimination of the "project attorneys."[4] In false and deceptive practice cases, the report recommends adoption of a more flexible procedure, together with more effective sanctions, particularly the use of an interlocutory cease and desist order.[5] With the full realization that ultimate relief must be had from the Congress, the FTC is called upon to formulate some decipherable pattern in its administrative interpretation of the Robinson-Patman Act.[6] In order to eliminate areas of overlapping jurisdiction, it is recommended that the antitrust activities of the FTC (exclusive of its Robinson-Patman Act jurisdiction) be transferred to the Department of Justice.[7] The latter has unquestionably proven more effective in this field than the FTC because of the Department's broader

12 Conn. Gen. Stat. Rev. § 31-121 (1958).
13 Ill. Rev. Stat. ch. 48, § 2c (1959).
14 Cal. Lab. Code §§ 973-74.
15 Ohio Rev. Code Ann. § 4143.12 (Baldwin 1953).
16 Pa. Stat. tit. 43, § 557 (1936).
17 Ind. Ann. Stat. § 40-712 (1956).

1 Landis, Report on Regulatory Agencies To The President-Elect (1960).
2 Id. at 1-35 and 65-87.
3 Id. at 48.
4 Id. at 49.
5 Id. at 50.
6 Id. at 51.
7 Id. at 51-52.

grant of statutory authority, and its ability to invoke far more powerful sanctions. In addition, the report calls for the elimination of other less important jurisdictional conflicts by transferring to the FTC the duties of the Food and Drug Administration, now in the Department of Health, Education and Welfare,[8] and by returning to the FTC full jurisdiction over unfair trade practices in the meat packing industry, some of which is now in the Department of Agriculture.[9]

The Federal Aviation Act of 1958[10] had required a mandatory hearing on all applications for approval of a consolidation, merger, acquisition of control or related transactions involving an air carrier. Section 408(b)[11] has been amended[12] to permit the CAB to eliminate the mandatory hearing in those cases where the public interest does not require it. As a blanket requirement, the mandatory hearing produced costly delays in many instances. It has been retained where the transaction is one affecting control of a direct air carrier, creating a monopoly or tending to restrain competition. It has been eliminated where the transaction is a relatively simple one involving none of these factors, and where retention would serve no useful purpose, as in the purchase or lease of a limited number of aircraft, or in a transaction affecting only a small airfreight forwarder.[13] Congress has granted similar discretion to the ICC[14] and the FCC.[15]

The Wisconsin Supreme Court[16] has reversed a lower court decision[17] that a Wisconsin statute,[18] prohibiting discrimination in the purchase of dairy products, must be held unconstitutional on the basis of *Fairmont Creamery Co. v. Minnesota,*[19] in which the U.S. Supreme Court invalidated a Minnesota law of identical substance. The Wisconsin Court concluded that the *Fairmont* case has been severely limited, if not repudiated, by subsequent decisions of the Supreme Court.

The 1958 Virginia Fair Trade Act[20] has been held constitutional by the highest court of that state.[21] The decision rejected every argument against the validity of the act, including the contentions that the law was a

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[8] Ibid.

[9] Id. at 52.

[10] 72 Stat. 737, 49 U.S.C. §§ 1301-1542 (1958).

[11] 72 Stat. 767,49 U.S.C. § 1378(b) (1958).

[12] Pub. L. No. 758, 86th Cong., 2d Sess. (Sept. 13, 1960), 74 Stat. 901 (1960).

[13] H.R. Rep. No. 2171, 86th Cong., 2d Sess. (1960). U.S. Code & Ad. News, Pamphlet No. 16 p. 4769 (Oct. 5, 1960).

[14] Interstate Commerce Act, 24 Stat. 380 (1887), as amended, 49 U.S.C. § 5 (1958).

[15] Federal Communications Act of 1934, 48 Stat. 1080 (1934), as amended, 47 U.S.C. § 221 (1958).

[16] White House Milk Co. v. Reynolds, 106 N.W.2d 441 (Wis. 1960).

[17] White House Milk Co. v. Reynolds, No. 170 B, 1960 Trade Cas. ¶ 69,646 (Dane Cty. Cir. Ct. 1959).

[18] Wis. Stat. § 100.22 (1957).

[19] 274 U.S. 1 (1927).

[20] Va. Code Ann. §§ 59-8.1 to 59-8.9 (Supp. 1960).

[21] Standard Drug Co. v. General Electric Co., 117 S.E.2d 289 (Va. 1960).

delegation of legislative power, and that it authorized price fixing without contractual agreement of any kind, in violation of the Sherman Act.[22]

In a very recent case,[23] the Montana Fair Trade Act[24] has been held to constitute "price fixing," an activity expressly prohibited by Art. XV § 20 of the state constitution.

ADMINISTRATIVE REGULATIONS

The FTC's Rules of Practice for Adjudicative Proceedings[25] have been amended[26] so as to allow the hearing examiner to defer ruling on a motion to dismiss, made at the end of the complainant's evidence, until the close of all the evidence. The FTC has announced proposed amendments[27] to the twelve rules established under authority of the Fur Products Labelling Act.[28] Proposed Trade Practice Rules for the Pleasure Boat Industry have also been announced by the FTC.[29] If approved, they would include rules covering representations as to length of a boat, speed claims, maintenance, construction materials and capacity.

RICHARD T. COLMAN

UNIFORM COMMERCIAL CODE

LEGISLATIVE DEVELOPMENTS

The Uniform Commercial Code has already been enacted in the following jurisdictions: Pennsylvania (1953), Massachusetts (1957), Kentucky (1958), Connecticut (1959), New Hampshire (1959), Rhode Island (1960), Arkansas (1961), New Mexico (1961) and Wyoming (1961). Further legislative activity concerning the UCC is expected to reach an all time high in 1961. According to the Uniform Commercial Code Committee, National Conference of Commissioners on Uniform State Laws, the Code has been or will be introduced in the 1961 session of the legislature in twelve additional states. These states are: California,[1] Illinois,[2] Maine,[3] Missouri,[4]

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22 26 Stat. 209 (1890), as amended, 15 U.S.C. §§ 1-7 (1958).

23 Shaggs Drug Center, Inc. v. Union Carbide and Carbon Corp., No. 10067, 1961 Trade Cas. ¶ 69,930 (Mont. Sup. Ct. 1961).

24 Mont. Rev. Codes Ann. §§ 85-201 to 85-208 (1947).

25 16 C.F.R. § 3 (1960).

26 25 Fed. Reg. 9530 (1960), amending 16 C.F.R. § 3.8(e) (1960).

27 25 Fed. Reg. 10554, 10779 (1960), proposed amendment to 16 C.F.R. § 301 (1960).

28 65 Stat. 179 (1951), 15 U.S.C. § 69f.(b) (1958).

29 25 Fed. Reg. 13245 (1960), proposed 16 C.F.R. § 56.

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1 Code has been introduced and hearings were scheduled for late February. Committees of the State Bar Association and State Bankers Associations have been working on their final recommendations.

2 The Code was introduced in the Illinois Senate by 18 prominent Senators.

3 In Maine, the Code was introduced in the legislature on February 7, 1961.

4 Very little authoritative information available.