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WHAT IS THE BEST KIND OF A RAILROAD
COMMISSION?

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RAILROADS are so important a factor in the prosperity of the country that public opinion long since demanded that as quasi public corporations government should exercise some supervision over them. Our federal system is such that this supervision is necessarily a divided authority. Congress having assumed and exercised its constitutional right to regulate interstate commerce, the States must exercise their authority only within State lines; but that leaves a broad field for its exercise, especially in a State whose territorial extent and varied and complex interests bring many questions to the front. It has been quite generally assumed that supervision can best be exercised by some board or commission, and a majority of the States of the Union have created State Railroad Commissions, with various powers and duties. What is the best and most useful kind of railroad commission cannot be described in a general rule suited to all States. Railroad problems in the great agricultural States of the Northwest are very few and

different from the divers questions arising in the manufacturing and commercial States, and the chief duties of the commissions are necessarily different.

Before railroad commissions were created most of the States, especially the older ones, had passed laws regulating railroads to a greater or less extent. Some of them had from the first reserved the right to alter or amend the charters of the corporations and to subject them to all general railroad laws thereafter passed. Where there was such a reservation of authority supervision by commission or otherwise naturally followed; and the functions of a commission were to some extent determined by the existing railroad code under which the roads have for a considerable time been operated.

The Massachusetts commission was the first to have a general supervision of railroads. There had been for some years railroad commissions in other States, but they were for special purposes and with very limited jurisdiction. The Massachusetts law creating the commission was taken as a model by other States with such changes or additions as seemed to be adapted to the conditions or views prevailing in those States. The granger movement, however, swept away some commissions created on this model, and substituted others based on an entirely different theory. The success of the Massachusetts commission in securing generally harmonious and satisfactory relations between the railroads and the public is admitted, and its methods and reports have been commended by competent and disinterested observers. This success is due in part, perhaps, to the comparatively small territory of the State and absence of any overshadowing corporation, but more, probably, to the fact that its direct power is limited, and it can simply make recommendations, and can issue absolute orders only in some matters concerning the safety of the public. Some measure of its success is due also to the impartiality and ability with which it has considered questions that have come before it and performed its duties.

In considering what is the most useful kind of a rail-

road commission it may be fairly assumed that a commission established and maintained for nearly twenty-five years on a theory not materially changed, having the respect of the railroad companies and the confidence of the public, possesses merits which make it to some extent a model for other like commissions.

The main theory on which the Massachusetts commission was established was that by intelligent discussion and publicity of railroad affairs public opinion would be brought to bear effectively on the corporations. By a general supervision of their affairs, so far as they concerned the public, publicity could be secured through the reports of the commission. The companies are required by law to make annual reports of their financial condition and details of operation, supplemented by quarterly financial statements; by annual or special inspection the physical condition in respect to construction, station accommodations and equipment are ascertained, while all questions between railroad companies and when necessary criticised; or between individuals or communities, and the railroads in respect to facilities, rates or safety are considered in public hearings, and the decisions of the commission are usually given at length.

The functions of the commission are various and comprehensive, but, as above stated, its authority to issue absolute orders is quite restricted, or granted only by special acts in particular cases. Its real power or influence lies in the logical conclusions of its reports, the arguments with which it supports its views, and the marshaling of facts and reasons on which it bases its recommendations. If a railroad company does not obey the laws, the commission refers the matter to the Attorney-General for his action in the premises; if it does not comply with a recommendation, the commission or the aggrieved party can apply to the legislature for a law to enforce it.

A commission established on the same general principles as that of Massachusetts, with such modifications as the laws of the State, the interests of the public and the

condition of the railroads and business may require, it is believed will prove the most useful and accomplish the most good in any manufacturing or commercial State where the interests of the public are numerous and diverse. It should be established by a just and impartial law, framed without undue influence of the railroads on the one hand, and the hostility or prejudice of private or business interests on the other, broad in the scope of its supervision, and not burdened with minute provisions.

Under such a law a commission of three or five members should be appointed by the State executive for a term of three or five years according to their number, the term of one member expiring and an appointment made each year, the first appointments being for one, two and three, or four and five years respectively. The appointments should be as free as possible from political considerations, and not subject to frequent changes in the membership. A commission composed of politicians or party "workers" would surely prove a failure, and sooner or later accomplish its own overthrow.

As questions of law are likely to arise in the consideration of many matters, the chairman, as spokesman and director of the work of the commission, should be a lawyer of acknowledged ability and large experience, and of a judicial temperament. Of the other members one should be a man of experience in business, familiar with the important interests of the State, and understanding the necessities of trade; and another should have a general knowledge of the railroad system of the State, and of the traffic and facilities, both passenger and freight, of the several railroads. If the commission is composed of more than three members, one might properly be a civil engineer, and one a student of railroad economics and finances. But, except that the larger number would allow a division of labors, it is believed that a commission of three members would be quite as efficient with these experts employed by it as occasion required. The commission should have a secretary or clerk, who should keep its records, issue its

notices or orders and perform the usual duties of such an office. The commissioners and secretary should be sworn to a faithful discharge of their duties, and should be prohibited from having any pecuniary interest in any railroad of the State as stockholders or bondholders, or as regular shippers of freight; should receive adequate compensation for their services, and in the performance of their duties should have free transportation over the railroads.

The commission should have a general supervision of all the railroads within the State, whether operated by home or foreign corporations, for the following leading purposes:

(1) To see that the companies comply with the requirements of their charters and the laws of the State.

(2) To secure as far as practicable the safety of passengers, employees and the public at large.

(3) To secure reasonable accommodations and facilities for passengers and freight, in respect to stations, trains and cars.

(4) To see that the roads accord reasonable and equal terms and rates to all parties for the same services under like conditions.

(5) To require a uniform system of accounts and reports by all railroad companies, showing their financial condition, business and methods of operation.

(6) To investigate the causes of all train accidents resulting in injury to passengers or employees, and of such other accidents as it deems proper.

Under these several heads the commission would have an ample amount of business if the public should feel confidence in it as an able and impartial tribunal to which they could appeal by petition or complaint for redress of grievances and to obtain better facilities. For it should be remembered that no commission can have personal knowledge of all matters requiring its consideration, and must depend in great measure upon the complaints or petitions of parties interested.

(1) Under the first head, when the commission ascer-

tains that a railroad company has violated its charter or any law to which it is subject, or fails to comply with any legal requirement, it should be its duty to notify the company of such violation or neglect, and if it continues such violation to report the case to the Attorney General or other State law officer as the law might provide. There the duty of the commission would end, and any further proceedings would be in the province of the law officer.

(2) To take measures for the safety of passengers, employees and travelers on the public ways should be one of the most important functions of the commission. This involves a supervision of construction, especially of bridges, equipment in respect to safety appliances and methods of operation. In respect to construction, it may be thought that the great railroad companies, whose roads are built on scientific principles and at great cost and maintained with care, would resent such supervision; but it is believed, as has been proved elsewhere, that if the commission employs a competent and able civil engineer for such service, there would be no jealousy on the part of engineers of the railroads, but friendly conferences which would be mutually advantageous and of still greater benefit to the less important roads. It is usually the managers of the smaller or less costly and less prosperous roads that dislike supervision and criticism of their construction, and that generally is evidence that supervision is needed. A system of careful supervision is some security against disasters which result in a fearful loss of life and a heavy pecuniary loss to the corporations. In the matter of equipment, the influence of the commission should be exerted for the general adoption of approved safety appliances, advocating principles rather than particular devices, except where the latter have been approved by practical use on the best roads. Among such appliances may be mentioned the best brake power, methods of heating and lighting cars, platform gates, etc. In all these matters the action of the commission should be limited to recommendations, for which it should set forth cogent reasons. The subject of couplers and of freight

train brakes is practically removed from the jurisdiction of State commissions by Congressional legislation applying to all railroads that cross State lines.

In respect to safety at grade crossings of railroads and of railroads and highways, the commission should have more power. That is, if the railroad companies do not voluntarily provide means of protection at such crossings, the commission should have authority to require it, under a penalty for neglect or refusal to comply with the order, in addition to the liability for loss of life or danger arising from such neglect.

In Massachusetts, a law passed in 1855 required all trains to come to a stop within 500 feet of the crossing of another railroad, and then to proceed slowly over the crossing.¹ That law is still in force, "unless a system of interlocking signals and switches, approved by the railroad commissioners, is established and maintained at such crossing." As a consequence, all railroads which run express trains have provided interlocking signals and switches at such crossings in order to avoid the stop. In the absence of such a law the commission, in the interest of public safety, should have authority to order the adoption of some such measures for the protection of human life.

If grade crossings of railroads and highways are permitted, it may be taken for granted that railroad companies will not ordinarily, of their own motion, provide protection for travelers on the highway except in cases of excessive danger where there is liability of damage to their rolling stock and loss to their income. Authority should, therefore, be vested somewhere to provide protection at crossings which are shown to be dangerous on account of the number of trains and the amount of travel on the highways, or on account of obstructions to the view of the railroad. Such authority is better vested in a commission representing the State than in any local board, though the latter may properly initiate proceedings before the commission. Upon

¹ Similar laws have been enacted in other States.

representation to the commission that a crossing is especially dangerous, after notice to the railroad company and a hearing, it should have power, if it finds that public safety demands, to require the railroad to establish and maintain gates or a flagman to guard the crossing whenever a train or engine passes. Even if no penalty is provided for neglect to comply with the order, in case of accident due to such neglect and a claim for damages, the railroad company would meet with little clemency before a court and jury. In this connection it may be observed that it would be for the interest of both the public and the railroads if the law provided some means of separating the grades of the railroads and the highways with provisions for a just apportionment of the expense.

(3) Reasonable accommodation and facilities for passengers and freight in respect to stations, trains and cars. These subjects would be brought before the commission mainly on petition or complaint, and after notice to the railroad company concerned and a public hearing, the commission, impartially considering the evidence and arguments adduced, should recommend that the petition be granted or the grievance removed, or should dismiss the petition or complaint, in both cases stating the grounds of its decision. Should the railroad company refuse or unreasonably neglect to comply with such recommendation, the aggrieved party might have recourse to some higher authority. In Massachusetts, where the legislature holds annual sessions, and the people are much inclined to seek legislation for the cure of alleged evils or the promotion of their desires, aggrieved parties have applied to the legislature for relief, and secured the passage of an act authorizing the railroad commissioners, after due notice and a further public hearing, to prescribe absolutely what they have previously recommended or deem proper in the premises. Where the legislative sessions are biennial, or there are obstacles to securing special laws concerning local interests, it might be advisable to provide by general law for an appeal to one of the courts to approve and enforce a recommendation of the commis-

sion. Of course, the judgment of the court affirming or overruling a recommendation would be rendered after a hearing of the parties.

(4) Similar process would be had in relation to reasonable and equal terms and facilities in respect to passenger fares, and the classification of, and rates for, freight. No commission, however, if properly constituted for the performance of all its other duties, would be competent to prescribe a general classification of freight and a system of rates which would prove satisfactory to shippers and fair for all the railroads or for different classes of railroads. But the commission may opportunely advocate general principles applicable to these questions and properly consider special cases, and make recommendations based on the evidence adduced and the practice of the road in analogous cases, or the practice of other roads under like conditions, which would have weight as being just and reasonable.

It may be asked, why not authorize the commission to issue absolute orders requiring the railroad to furnish the accommodations or reduce the rates as asked for, instead of simply making recommendations? In reply, it may be said that a commission, in order to satisfactorily perform its various functions, should be on fairly good terms with the railroad managers, and in some cases have their coöperation. But if a commission has authority to require them to do what they are averse to doing and regard as an infringement of their rights, a feeling of antagonism is at once created. They will obey unwillingly so far as they are obliged to, or will resist the orders and resort to litigation; and they will not aid the commission in matters where their coöperation is desirable. Moreover, a hostile combination of all the railroads might overthrow the commission or bring about a state of affairs worse than if no supervision were attempted. Railroad managers are human, and while they may be persuaded, they do not like to be driven to do a thing by the orders of a party having some brief authority. They will consider the evidence and arguments on which a recommendation is founded, and if not clearly unjust will gener-

ally comply with it, or if not accepting all the conclusions of the commission, will sometimes offer a compromise satisfactory to all parties. But they will regard an absolute order as an infringement of their rights and adverse to their interests without regarding the reasons on which it is founded. On the other hand, the ill-feeling on the part of railroad managers will react on the commission (whose members are also human), and the strained relations will be unfavorable to the best performance of its duties and the accomplishment of public good.

(5) To secure a uniform system of accounts and annual reports of the railroads, showing their financial and in some measure their physical condition and certain details of operation, is an important function of a commission. All or most of the States, whether having railroad commissions or not, have required some sort of annual reports. But under the supervision of a commission, with a proper system of accounts the reports are likely to be more correct, and, therefore, more valuable. A competent railroad accountant, under the direction of the commission, might discover any defects or errors in the reports, and could prepare statistics and comparative tables, which would be of service not only to the public but to the railroad companies as well.

At present, under the National law, the Interstate Commerce Commission prescribes the form of report and the system of accounts for the same, for all railroads crossing State lines; and for the sake of uniformity a State commission may wisely adopt that form, in its essential features, for the roads entirely within its jurisdiction. A uniform system of classifying operating expenses is important for the purposes of tabulation and comparison. This can best be accomplished, not by an arbitrary order of the commission prescribing a system according to its own ideas of what is desirable, but by a conference of the auditors of the more important roads with the commission, at which the matter may be fully discussed, and upon agreement of the ablest and most experienced officials that

system should be prescribed for all the companies, and most likely would be willingly followed.

The railroad companies should also be required to file with the commission copies of all leases and contracts with other railroads or transportation companies, and to furnish information specially asked for by the commission on any subject which concerns the public. In cases of difference between companies as to the interchange of traffic or the terms on which one shall haul the trains of the other, the commission might properly act as arbitrator.

(6) An important function of the commission is to investigate the causes of train accidents resulting in loss of life or injury, and such other accidents as it may consider proper, including accidents at stations due to construction or methods of operation, and serious, preventable accidents at highway crossings. Such investigations should not be mere perfunctory inquiries, but thorough and searching, according to the circumstances of the accident; seeking not only the immediate, but remote or contributory causes, with a view to providing means for the prevention of similar accidents. Such careful investigations will often prove salutary and instructive, not only to the railroad specially concerned, but to other roads also, and will give the public more satisfaction and a greater sense of security than the inquest of a coroner or magistrate and the verdict of a jury gathered at random from the vicinage.

Such are some of the important functions of a railroad commission, which would include many minor matters not alluded to. When once established in the respect of the railroad companies and the confidence of the people, its jurisdiction would naturally be enlarged. But its usefulness and success depend not so much upon the scope of its duties as upon the spirit in which they are performed. It must be fair and impartial in all its decisions. It should be a board of arbitration and conciliation between the railroads and the public—a "buffer" to mitigate the shock of collision between excited popular demands and unyielding corporate power. It should not hesitate to condemn the evils it dis-