

LAW AND ECONOMIC REGULATION IN TRANSPORTATION: Paul Stephen Dempsey and William E. Thoms. Westport, Ct.: Quorum Books, 1986, 349 pp., \$55.00.

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This text is a new entry and contribution to the study of transportation law and economics. It traces the evolution of transportation regulation from the Granger Laws of the 1860's to the deregulation legislation of the 70's. The text is oriented to the graduate introductory level and can be used by advanced undergraduate transportation majors. Case references with decision dates provide a source guide for the researcher.

There are eight chapters in the text; five trace the development of economic regulation for each mode, and the last three are concerned with the increasing role of the government's direct involvement with transportation labor and with the ownership and operation of transportation facilities—AMTRAK, CONRAIL, and public transit.

Chapter 1 presents a brief historical survey of the development of transportation agencies and the events which led to the enactment of public regulation to protect the economic welfare of carrier service areas against undue discrimination. The authors trace evolution of several transportation agencies and the reasons for the development of state and federal legislation to protect persons and places against undue discrimination and economic damage.

Chapter 2 is the "heart" of the book. It relates to the recent legislation and rules which rail carriers must observe under the Staggers Act to inaugurate new services or to effect changes in existing levels, and in abandonment procedures. Recent amendments to the Interstate Commerce Act have reduced the degree of ICC authority over carrier management decision making and have speeded up the ability of carriers to effect economic changes in operations without the time and expense of lengthy Commission hearings.

The Motor Carrier Act has eased entry requirements for new carriers to obtain certificates and thus increase competition within the industry. The agricultural exemptions are expanded to encourage greater participation in this service. In spite of deregulation, motor carriers remain the most regulated of all modes. The Airline Deregulation Act of 1978 set into

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motion the gradual elimination of all economic regulation for air transportation by 1985. Safety regulation was transferred to the DOT. The results are more competition from new entrants, lower fares, and improved service.

Chapter 3 is a clear and detailed presentation of rate principles, a survey of the legal aspects of tariff publication, and of the conditions under which the ICC will suspend and review under the new rules of the Staggers Act. Rail carriers now have greater rate making freedom and a corresponding ability to introduce pricing innovations in order to remain competitive with other modes.

The Rule of Rate Making deletes the umbrella feature designed to protect traffic of competing higher cost modes. New rules have been promulgated for household good carriers to govern customer-carrier relations (a much needed change). Tariff provisions allow for the quotation of binding cost estimates, with guaranteed pick-up and delivery dates in lieu of scale weights at time of departure.

The Air Cargo Act of 1977 initiated the deregulation process for the airline industry which was completed January 1, 1985. Carrier liability for air cargo now appears to be a matter of shipper concern; liability for passengers is narrowly limited by ticket language. The authors indicate that litigation will be necessary to clarify the situation.

Chapter 4 explores the application of the anti-trust laws with regard to carrier actions that may reduce competition. The structure and activities of rate bureaus are examined in order to indicate whether concerted carrier action would have anti-competitive results. The law does recognize, however, the benefits of collective rate making to both carriers and to the public.

Part II examines the legal aspects of mergers, consolidations, and acquisitions of control. Applicable legislation is reviewed from 1920 to the present. The chapter describes the increase in railroad merger activity as a result of long-term deterioration in traffic and earnings. Elimination of duplicating facilities strengthens the remaining lines.

The final section relates to airline merger activity. Cases now come directly under the Department of Justice, following the demise of the CAB. The Justice Department appears to have taken a lenient position with regard to mergers. Weak carriers are being absorbed by the larger.

Carrier liability for the safe carriage of goods is traced from the times of Roman law (200 B.C.) through modifications into British common law which eventually became the basis for the American body of laws. Chapter 5 explores these concepts in depth. Common carriers are liable for the full value of all goods carried, with stated exceptions. The Carmack Amendment allows for rates to be based on a declaration of value, in

cases where the goods have a wide range of values, such as, show cattle vs. ordinary livestock; the Cummins Amendments permit a claimant to recover from any participating carrier in the haul. Motor carriers of airfreight in terminal delivery are subject to the same liability rules as the air carriers. Following deregulation, customer actions against air carriers for recovery of damages must be pursued through the courts.

Chapter 6 highlights the development of the railroad situation in the northeast which was precipitated by the bankruptcy of seven major carriers in the early 70's. Among the basic causes were (1) the rapid growth of motor truck competition fueled by the Interstate Highway program, (2) the loss of passenger traffic to autos and planes, (3) the high cost of commuter services which drained overall carrier revenues and (4) lax or indifferent railroad management.

The seriousness of the problem and its national implications, especially for the economies of the northeast required prompt and urgent action to prevent the total collapse of the freight and commuter operations. The sequence of events is clearly developed on a step by step basis. In 1976 Congress legislated CONRAIL into existence to assume operation of freight services and to rehabilitate the deteriorated properties. Responsibility for intercity passenger service was transferred to AMTRAK which had been created by the federal government to operate passenger trains on a nationwide basis. Local rail commuter services were assumed by local and regional transit authorities with federal subsidies.

CONRAIL's financial success has made it an attractive merger partner, or a viable operation in its own right; it is one of the three financially strong roads in the east.

Railway transportation labor has enjoyed, for many years, preferential status over their counterparts in the manufacturing and service industries. Chapter 7 explains how many of these advantages were legislated into law years ago that placed railroad employees in a more preferred status as to wages and working conditions when compared with other segments of the labor force. The nationwide economic importance of airlines and railroads, and the strong bargaining powers developed by the unions along with their ability to cripple the operations of any one carrier or of the entire mode has serious implications on the mainstreams of national commerce.

The political clout of labor and its strategic importance in transportation are described with particular reference to rail and transit labor. As a result of economic, political and legislative changes, the strategic power of transportation labor has weakened somewhat. Employees of water, motor, pipeline, and freight forwarder industries remain subject to the provisions of the National Labor Relations Act. They may request the NLRB to certify their union for purposes of bargaining with employers. This

chapter provides a good basis for the researcher who may wish to pursue some aspects of transportation labor relations at greater length.

Chapter 8 describes the trends in federal aid to urban mass transit. This mode has suffered a severe loss in ridership due to declines in central city populations, the growth of the suburbs, and the increased dependence on the automobile. Since many properties were under private ownership, they either went out of business or their operations were assumed by public agencies.

The authors present the rationale for federal assistance because local and state government entities are unable to generate sufficient resources to supply and to operate a modern, efficient, acceptable level of public transportation. Beginning with the passage of the Urban Mass Transportation Act of 1964, the federal government provided for capital grants to purchase equipment and to construct facilities and, subsequently, to subsidize operations.

One result of federal largess to urban transit has been high cost and inefficient operations on some of the larger systems, as the authors relate the situation at the Chicago Regional Transit Authority where labor costs went out of control because of local political pressures. Also, a number of cities have received capital grants to inaugurate services where no surface or rapid transit existed previously. However, not all aid has been misused as occurred on the CTA. As the size of transit systems decrease, management control and efficiency seem to improve.

The text is professionally constructed. Examples and illustrations of concepts are adequate. This work is a significant and worthy contribution to the study of transportation law.