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COAL MINING A PUBLIC UTILITY

By FRANK A. WACHOB of the Denver Bar

WHETHER N. R. A. is alive or dead, whether the Colorado Industrial Recovery Act, sometimes known as Senate Bill 171, is constitutional or unconstitutional, whether or not the Guffey Bill is enacted, the fact remains that the coal mining industry within the State is rapidly degenerating into a chaotic condition.

This was one industry that benefited materially under N. R. A. and its codes. This is true nationally as well as within the State. That the coal operators recognize the demise of N. R. A. seems apparent, inasmuch as the Code Authorities, including Division 5 and the District code groups thereunder, are being rapidly liquidated. In lieu of the N. R. A. Codes some of the districts within the State have submitted a draft of a new code to the Colorado Industrial Recovery Board. However, action under the codes will doubtless be suspended pending a decision of the State Supreme Court as to the constitutionality of the State Recovery Act.

All codes, whether voluntary or forced, depend upon two things for their ultimate success, i. e., first, control of production, and second, control of selling prices. Both elements must be controlled for the entire industry, otherwise the code or monopoly set up under the code can be broken down and its effectiveness destroyed by a minority of those engaged in the industry.

With the dissolution of the N. R. A. codes and the return to previous competitive conditions, the gains made under the codes are rapidly being lost, due to the fact that in recent months new mines have been brought into production and the production from the old mines has been increased to some extent. In order to move this increased production, prices are being slashed and many of the evils attendant on

price reductions are again creeping into the industry. The operators are finding that they cannot meet their payrolls on this decreased revenue, and it is only natural to expect that within a short time, unless something is done to restore conditions which have obtained during the past two years, the operators will attempt to reduce their production expense by increasing the hours of labor or by cutting wages, probably both. If continued to any length this will precipitate serious labor troubles. Colorado's history is replete with coal strikes, and no one wishes to experience a repetition of those useless struggles where the laborers always suffer disastrous losses, the operators come out of the strike bankrupt, and the citizens of the State are taxed for years to come to pay the costs incident to the strike.

Since the lack of control in production, or in this instance, the mining of coal, seems to be the crux of the problem, it would seem advisable to evolve some State agency to exercise the police power of the State and to control production. That coal mining is intrastate and not interstate commerce seems incontrovertible in view of the holding of the United States Supreme Court in the case of *United Mine Workers of America v. Coronado Coal Co.*, 259 U. S. 345, wherein the court said:

"Coal mining is not interstate commerce and the power of Congress does not extend to its regulation."

Also to the same effect are *Hammer v. Dagenhart*, 247 U. S. 251, and *Delaware L. & W. R. R. Co. v. Yurkonis*, 238 U. S. 439.

Being an intrastate business and subject to the police power of the State, is any regulation possible under existing laws, and if so, to what extent do they provide for regulation?

In 1913 the General Assembly passed Senate Bill No. 1, being Chapter 46, C. L. 1921. Section 2913 of the statute, in defining the jurisdiction of the Commission, declares:

"* * * and every corporation, or person now or hereafter declared by law to be affected with a public interest, and each thereof, is hereby declared to be a public utility and to be subject to the jurisdic-

tion, control and regulation of the Commission and to the provisions of this Act.”

In 1922, in the case of *People v. United Mine Workers of America*, 70 Colo. 269, the Supreme Court said:

“* * * unless coal mining may be said to be affected with a public interest its regulation by statute to the extent attempted by said chapter is unconstitutional, see cases cited below. The words ‘affected with a public interest’ were no doubt used by the General Assembly to keep the statute within constitutional limits. It becomes necessary then, not only in order to construe the statute but to decide whether it is constitutional, to determine whether coal mining is so affected, and it seems self-evident that it is. * * *

“There can be no question that the production of coal is at present time affected with a public interest, to a certainty and an extent not less than any other industry.”

Thus having been declared by the courts of this State to be an industry affected with a public interest, it seems self-evident that it comes within the purview of the State Public Utilities Act, and is subject to the jurisdiction of the Colorado Public Utilities Commission.

As pointed out above, over-production of coal is the prime evil in the industry. This over-production brings about price cuts, rebates, discrimination, short weights, mis-branding, wage cuts, and all of the other evils that have always attended the industry. Section 2946 of the Utilities Act provides:

“No public utility shall henceforth begin the construction of a new facility, plant or system or of any extension of its facility, plant or system without first having obtained from the Commission a certificate that the present or future public convenience and necessity requires or will require such construction,” etc.

It would seem that by requiring this certificate of convenience and necessity for new construction of mines (plants, facilities or systems) or extension thereof, the coal resources of the State can be advantageously conserved and the wholesale waste and destruction thereof prevented.

Section 2924 of the Act requires that all charges made, demanded or received by any public utility for any rate, fare, product or commodity furnished or to be furnished, etc., shall

be just and reasonable. Section 2925 of the Act provides that the Commission shall regulate rates and correct abuses. Section 2926 provides that the utility shall file a schedule of its rates, terms, rentals, charges and classifications, etc., and that the same cannot be changed except on thirty days' notice, unless the Commission orders otherwise. Section 2929 of the Act prohibits the granting of preferences, rebates and advantages and would eliminate a number of those evils which the codes have tried to remove.

By reason of the various provisions of the Act relative to supervision and inspection, it may be possible as well as advisable to consolidate the office of State Coal Mine Inspector with that of the Public Utilities Commission, making the office of the Inspector a department of the Commission.

The enforcing provisions of the Act are set forth in Section 2970. These penal provisions seem sufficient to insure compliance with the Act and certainly provide a more effective means of enforcement than those provided in the codes.

Those who are familiar with the coal mining industry may see certain disadvantages that will result to the industry by such regulation. However, in view of all parties concerned, including the general public for once, it would seem that the advantages far outnumber the disadvantages. The industry itself should not fear regulation of this character, as it has voluntarily submitted to regulation under the codes and has generally profited thereby. Regulation under the Utilities Act would merely take the place of that lost by reason of the abandonment of the codes, and would have an additional protection not provided in the codes, namely, control of production. I therefore submit that in view of the importance of the industry to the State, its past history, and the outlook for its future, regulation is absolutely necessary in the interest of all concerned. The Supreme Court has found that coal mining is a business affected with a public interest, and as a result of this finding coal mining is a public utility within the purview of the Public Utilities Act. As it is a public utility and subject to the provisions of the Act, the Public Utilities Commission should immediately assume jurisdiction of the industry and require compliance with the applicable provisions of the Colorado Utilities Act.