

COMMISSIONER OF CORPORATIONS

Much of Garfield's Report Devoted to Question of Solving Industrial Problems.

PUBLICITY BUREAU'S POLICY.

Preventive Rather than Remedial Measures Should be Used—Congress Must Exercise Its Power.

Department of Commerce and Labor, Bureau of Corporations, Washington, Dec. 1, 1905.—Sir: I have the honor to submit the report of the commissioner of corporations for the fiscal year ended June 30, 1905.

There has been no change in the organic law under which the bureau was organized. Further study of the law, and practical work under it, confirm the opinions expressed in the first general report of this bureau as to its purpose and scope.

The total appropriations for the bureau were \$105,220. Of this amount \$118,856.44 has been expended. An unexpended balance amounting to \$231,953.40 was reappropriated for the fiscal year 1905-6.

The work of the past year has again emphasized the advantage of a lump-sum appropriation. It has been possible to employ men when and where they were needed, and at such salaries as to command efficient men possessed of special or technical knowledge.

The general legal work of the bureau was the completion of the examination of the subject having to do with the powers and duties of the commissioner and the interpretation of the organic act, particularly as to the provisions regarding the compulsory attendance of witnesses and production of evidence.

Another criticism was directed at the accuracy of the figures and conclusions relating to prices and profits, and a few tend to disprove any specific statement in the report, and those particular criticisms were based upon figures secured by estimates, and taken from a very few isolated instances, and hence did not approve the results stated in the report, which were based on general averages obtained from figures covering the entire industry and the slaughter of several millions of animals.

The investigation developed the line of division between the work of the department of justice and the bureau. The bureau, in obtaining facts upon which the president may make recommendations to Congress, necessarily will obtain facts which might require prosecutions under the anti-trust law. As stated in my former report, such facts must be reported to the president for such action as he may deem necessary to take.

INSURANCE. The completion of state insurance laws has been finished, and some special phases of the question of federal supervision have been examined.

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and some special phases of the question of federal supervision have been examined, but in view of the decisions of the supreme court I have not felt warranted in trying to assume jurisdiction over insurance companies for the purpose of investigation. The fact that state supervision has failed to prevent great abuses in the management of some companies does not of itself justify federal action. It must be shown first, that insurance is subject to federal regulation under the commerce clause of the constitution; second, that federal supervision would be of such a character as to correct existing abuses and prevent future ones, and third, that such supervision would result not only in greater security to policyholders, but would relieve them, through their companies, of the great and unnecessary expense of duplicated inspections and investigations by different states. Secondly, the most effective way to settle the question is for Congress to so legislate upon the subject as to afford an opportunity to present to the supreme court the question whether insurance, as now conducted in interstate commerce, and hence subject to federal regulation.

POSITION OF BUREAU. The position of the bureau at the time of its creation was fairly well defined. Its existence largely to a public feeling arising from unusual industrial developments. Public opinion thereon was vigorous, but confused and divided in general, the tremendous concentration of industrial power, the obvious use, in many cases, of improper industrial methods of competition, and the instances of clearly sound and efficient finance connected with corporations, led to the general belief that there had arisen a new industrial problem, a set of conditions not adequately met by existing laws. No solution of this problem had then received general acceptance, nor had the problem itself been clearly stated. Numerous experiments at solution had been made by way of anti-trust laws, but the admitted futility of most of these laws led only to the negative conclusion that such was not the way to treat the great industrial changes of which every one was cognizant.

Upon only one point can it be said that public opinion was fairly clear and unanimous, and that point was the desire for "publicity"—in other words, the desire for information. It was not clearly understood to what use this information should be put, nor indeed what subjects it should cover; but the demand for accurate information was fundamentally sound. The policy of the bureau has been framed in accordance with this demand. Its field may be divided into subjects relating to law on the one hand, and subjects relating to economic industrial conditions on the other. It must examine and compare the statutes under which the corporations are doing business with industrial and statistical facts. A statute is the formal expression of public opinion. Hence statutes designed to improve industrial conditions will not be based upon sound economic principles unless public opinion which they express is the result of an accurate knowledge of industrial methods.

LAWS AND PUBLIC OPINION. Not only is legislation dependent upon public opinion, but likewise moral standards in business, and the rules of daily commercial intercourse, which cannot be enforced by statute, are created and sustained by public opinion. Current events have strikingly demonstrated the tremendous reformative force of public opinion without the intervention of law. Existing business methods will be changed in accordance with public opinion. Heretofore the wide scope of corporate operations and the baffling diversities of federal and state laws have made an intelligent public opinion impossible. The average man can easily judge of an isolated commercial transaction between himself and his neighbor, but he utterly lacks the statistical and legal information necessary to view justly the operations of the great corporations doing business throughout the country.

complex, far-reaching and composed of a multitude of detailed facts. To form an intelligent opinion of permanent industrial tendencies it is necessary not only to be permanently abreast of the facts found in industrial conditions, but especially to be able to arrange these facts in their proper relations. Many mistakes in public opinion have been due to a failure to separate the essential from the non-essential, to give proper weight to the various facts. Much legislation, the actual methods which in certain and often harmful because directed either at the modification of great economic laws, which cannot be modified by statute, or at the treatment of sporadic and sensational facts. Estimates, guesses, prejudices, and limited individual experience have been the bases of action, rather than broad statistics consisting upon accurate, properly arranged masses of facts.

The bureau, therefore, has endeavored not only to obtain the most reliable information, and facts sufficient in number to be representative, but also to draw conclusions that shall represent in certain and definite ways individual instances. To this end it has, with a force of carefully trained employes, taken up given industries dealing in important staples, and has hidden industries already investigated thereto; so has then digested this information so as to obtain what might be called reliable general averages, and has presented statistics based upon those conclusions as to permanent corporate methods and tendencies.

PREVENTIVE MEASURES. It is strongly felt that preventive rather than remedial means must be used in dealing with the entire problem. The government must deal beforehand with causes, not merely afterwards with their effects. In order to ascertain the causes of the problem it is necessary to know the causes of industrial evils. The work of the bureau has brought out, to an extent not reached before, the actual methods in certain industries; their methods of competition, of economies in production and distribution, of discriminations in distribution and transportation, and also the results of certain methods in obtaining or tending to obtain monopolistic control. Its work has shown, in the case of the several industries already investigated, or now under investigation, the fact that the predominant control enjoyed by certain great concerns is based usually upon one or two important single factors, such as the control of transportation, of trade marks, of patent rights, of raw material, special legislation, or a combination of one or more of these factors.

Such information will afford the basis for an intelligent public opinion, and it will constitute "publicity" in the best sense of the word. An illustration of this principle has already been obtained in numerous cases where the bureau has been instrumental in preventing a considerable number of cases the victims of such methods have informed the bureau that the mere investigation of these facts had a disinclination of the methods, and have assured the bureau that from their individual standpoint great good has already resulted from the bureau's work.

CONGRESS MUST ACT. The year's work upon the investigation of special industries and particular corporations has strengthened my conviction that no permanent remedy for existing industrial evils can be effected unless Congress exercises more fully its power of affirmative action under the commerce clause of the Constitution. No fact of industry is more obvious than that modern business has outgrown and wholly disregards state lines, and that the jurisdictions of single states, as applied to the operations of modern interstate business, are futile and even harmful. A close study of the methods of organization and operation of the greater industrial corporations, their relation to transportation companies, both rail and water, their methods of competition, the extension of their business throughout many states, and the sale of their commodities throughout the world, proves that they have actually gone beyond the possibility of proper supervision or control by the single state which gave them corporate existence. Their relation to the transportation companies alone is a sufficient reason for bringing them under federal regulation.

BLAME FOR REBATES. It is idle to claim that the railroads are wholly at fault for rebates, discounts and other devices for favoring to one shipper improper advantages over a competitor. It is impossible to prevent such abuses by any statute unless the law which would mean that the enforcement of the anti-trust law has not been beneficial, for it

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