

REPORT OF THE
COMMERCE COMMISSION SUBCOMMITTEE
OF THE
STANDING COMMITTEES ON COMMERCE

Submitted to the Members of the
Second Session of the Sixty-fourth General Assembly
Meeting in the Year 1972

F I N A L R E P O R T
COMMERCE COMMISSION SUBCOMMITTEE
OF THE
STANDING COMMITTEES ON COMMERCE

January 10, 1971

A written request by Senator John L. Mowry and Representative Harold O. Fischer, Chairmen of the Senate and House Standing Committees on Commerce, for the establishment of a subcommittee of the Committees on Commerce was approved by the Legislative Council at its July 19 Council meeting. The Subcommittee was authorized to conduct a study of the Iowa State Commerce Commission and the several divisions of the Commission pursuant to section 2.15 of the Code of Iowa (1971). The Council gave the Subcommittee the authority to call witnesses, administer oaths, issue subpoenas, and cite for contempt as authorized in the Code under section 2.15. The Subcommittee was required to make monthly reports and to submit a final report to the Legislative Council.

In addition to themselves, Chairmen Mowry and Fischer selected the following members of the Committees on Commerce to serve on the Subcommittee:

Senator William D. Palmer, Des Moines
Senator W. R. Rabedeaux, Wilton Junction
Senator Harold A. Thordsen, Davenport
Representative Warren E. Curtis, Cherokee
Representative Tom Dougherty, Albia
Representative Floyd H. Millen, Farmington

At its organizational meeting held July 22, 1971 the Subcommittee elected Senator Mowry to serve as Chairman and Representative Fischer to serve as Vice Chairman and agreed to employ Mr. Thomas Renda, Attorney at Law, as legal counsel. The Subcommittee determined that it would review and make recommendations for each area of jurisdiction of the Commerce Commission.

The next two meetings of the Commerce Commission Subcommittee were held in the Commerce Commission offices in one of the hearing rooms and Commerce Commission personnel were available for discussion with the Subcommittee. Additional meetings were held in the State House and in the Fisher Community Center in Marshalltown. The Subcommittee heard testimony from:

Commissioner Maurice Van Nostrand, Chairman of the Commerce Commission
Commissioner Howard Bell
Commissioner Dick A. Witt
Mr. Dean Briley, Executive Secretary of the Commerce Commission
Mr. Ed Storey, Former Executive Secretary, Commerce Commission
Mr. Kenneth Benda, Former Commissioner

Mr. Frank Means, Former Commissioner
Mr. Tom Bolton, Former Superintendent of the Utilities Division
Mr. Ralph Pilger, Superintendent of Railroad Safety and Service
Mr. Wallace Dick, Superintendent of the Warehouse Division
Mr. Dan Fay, Assistant Commerce Counsel
Mr. Don C. Uthus, Commerce Counsel
Mr. Philip B. Malter, Commerce Solicitor
Mr. Robert Powell, Superintendent of the Motor Transportation
Division
Mr. LaVerne Heithoff, Chief Utility Auditor
Mr. Robert Osborn, Chief Rate Analyst
Persons from the Motor Transportation Division of the Greater
Des Moines Chamber of Commerce
Persons from the Greater Cedar Rapids-Marion Chamber of Commerce

The Iowa State Commerce Commission has jurisdiction over railroads, motor carrier transportation, bonded grain warehouses, motor vehicle franchises, and utilities. The Commission is divided into four divisions for budgeting purposes:

1. Administration, which includes the Commissioners, the Executive Secretary, the Commerce Counsel, and their secretarial employees.
2. Motor Transportation, which includes railroads and the motor carriers.
3. Warehouse Division.
4. Utilities Division, which includes regulation of pipelines, gas utilities, telephone utilities, electric utilities, and water utilities.

With regard to the administration of the Commerce Commission, the Subcommittee believes that a dichotomy exists in the functions of the Commerce Commissioners. The Commerce Commission staff is responsible for representing the general public in the name of the state in any rate regulation or other regulatory functions, and the Commerce Commissioners in their quasi-judicial capacity are required to act as impartial judges, but they must also rely upon their staff for information. According to the testimony presented, it appears that this requirement has been abused.

At the beginning of the study, there existed vacancies in the legal staff of the Commerce Commission, including the position of Commerce Counsel, which had been vacant for nearly one year. The Commerce Commissioners believed that the salary which the Merit System authorized was inadequate. The Code of Iowa (1971) was unclear which positions under the Commerce Commission were classified positions under the merit system and which were not. The Subcommittee requested an Attorney General's Opinion regarding the positions under the merit system and a copy of the Opinion is attached and by this reference made a part of this report. The

Attorney General's Opinion states that the position of Commerce Counsel is subject to the merit system and the salary of the office is fixed in accordance with the provisions of Chapter 19A of the Code, the Merit Employment Chapter. The Commerce Commission does not have the power to fix the salaries of professional personnel. Although section 490A.2 of the Code authorizes the Commission to employ personnel for utility regulation "at rates of compensation consistent with current standards in industry" providing the qualifications and abilities are also on a comparable level, the Attorney General states that the Merit Employment Chapter of the Code supersedes the provisions of section 490A.2.

By November 1, 1971 many of the vacancies in the professional staff of the Commerce Commission had been filled, including the position of Commerce Counsel and the number of attorneys on the legal staff had been increased. The Merit Employment Commission and the Executive Council had agreed to increase salaries for these positions. Attached is a salary schedule for merit system positions in the Commerce Commission.

Another problem area in the administration of the Commerce Commission is the salary paid Commerce Commissioners and the Executive Secretary. In the eleven-state midwest area, only the states of Nebraska at \$14,000 and South Dakota at \$13,000 pay an annual salary of less than \$15,000 per year for their commissioners. The Subcommittee recommends that the salary paid to Commerce Commissioners be increased from \$15,000 to \$19,500 per year with the stipulation that section 474.8 of the Code, which requires the Commerce Commissioners to serve full time, be enforced. The Subcommittee further recommends that the salary of the Executive Secretary be increased from \$13,500 to \$15,000. A copy of Bill I is attached.

In order to lessen the work load of the Commerce Commissioners, the Subcommittee recommends that hearing examiners be used for all hearings held away from the seat of government as authorized in section 474.19 of the Code. The Commerce Commissioners have stated that the use of hearing examiners has vastly increased since July 1, 1971. The Commissioners emphasized that even though hearing examiners are used, they must study transcripts of the hearings in order to render the decisions.

The Subcommittee heard testimony from representatives from the Greater Des Moines Chamber of Commerce and the Greater Cedar Rapids-Marion Chamber of Commerce which indicates that the motor carriers believe that the Commerce Commission has been preoccupied with the regulation of utilities to the detriment of the regulation of motor transportation. The Commerce Commissioners assured the Subcommittee that they are administering and enforcing the motor transportation laws in a competent manner.

The Railroad Safety and Service Division consists of only the superintendent and a secretary to carry out the functions of inspecting all of the roadbed, rolling stock, and facilities of the

railroads in Iowa. Mr. Pilger, Superintendent of the Railroad Safety and Service Division, indicated that effective October 16, 1972 state inspectors will begin enforcing federal railroad safety standards and this transfer of authority will require employing additional state inspectors. At this time the Subcommittee does not recommend any changes in laws governing railroad regulation.

With regard to the Warehouse Division, the Subcommittee was informed that the Warehouse Division has recently entered into a contract with the federal government which provides that state inspectors can perform the federal inspections of warehouses which store Commodity Credit Corporation grain, and additional inspectors will be needed. Not only are the fees collected for licensing state bonded warehouses inadequate for paying the cost of the inspections and maintenance of the Division, but also the fee collected does not depend upon the capacity of the warehouse. The Subcommittee recommends that the licensing fees for bonded warehouses be increased to cover the cost of inspections. At the recommendation of Mr. Wallace Dick, Superintendent of the Warehouse Division, the Subcommittee recommends the passage of legislation which sets a procedure to be followed when a warehouse becomes insolvent. A copy of Bill II is attached to this Report.

With regard to the Motor Transportation Division, the Subcommittee believes that some clarification of present statutes is needed. The Commerce Commission presently regulates motor vehicle certificated carriers, motor vehicle truck operators, and liquid transport carriers.

The Subcommittee recommends, at the request of the Commerce Counsel, that the chapter of the Code which relates to liquid transport carriers be clarified to ensure that any rights granted to a liquid transport carrier be nontransferable without the approval of the Commerce Commission after holding public hearings. It recommends that the chapter be amended to prohibit the direct or indirect control of one liquid transport carrier without the written approval of the Commerce Commission. A copy of Bill III is attached to this report.

The Subcommittee recommends, at the request of the Commerce Counsel, that the chapter of the Code relating to Interstate Commerce Commission authority of motor carriers be amended to set a penalty provision for failure of a carrier which performs an interstate transportation service for compensation to register its Interstate Commerce Commission authority, or the fact that Interstate Commerce Commission authority is not needed, with the Iowa State Commerce Commission. A copy of Bill IV is attached to this report.

The Subcommittee recommends that a fee of fifteen dollars be collected on each tractor or truck-tractor operated under a truck operator or contract carrier permit, and on each tractor or truck-tractor operated by a certificated carrier, instead of a six dollar fee for each trailer or semitrailer. The change in fees will provide a more equitable assessment consistent with the in-

dustry practice of interchanging equipment. Copies of Bills V and VI are attached to this Report.

The Subcommittee recommends no changes in the laws relating to the regulation of motor vehicle franchises at this time.

One member of the Commerce Commission serves as a member of the Reciprocity Board, together with the Commissioner of Public Safety and a member of the State Highway Commission. Since the Reciprocity Board recently employed a new Executive Secretary and has begun computerizing its operations pertaining to the registration of interstate carriers, the Subcommittee recommends at this time that no changes be made in the organization of the Reciprocity Board.

The regulation of utilities by the Commerce Commission was begun in 1963, but for a number of years no applications for rate increases were filed. Within the last three years, many investor-owned utilities have petitioned the Commerce Commission for permission to increase their rates. Iowa law presently provides that new rates can take effect thirty days after they are filed unless the Commission suspends them and may set a public hearing. However, the suspension of new rates can last for only ninety days, after which the higher charges can be collected without the Commission's approval. The utility is required to post a bond guaranteeing that it will be able to refund any fees later found to be excessive. An explanation of the procedure followed and reasoning behind the collection of increased rates under bond has been prepared by the Commerce Commission and is attached to this Report. The Subcommittee is in accord with the attached explanation.

Four cases for rate increases have been pending for more than two years and increased rates have been collected by the public utilities. Of these four cases, a decision has been rendered for one, hearings have been held for two, and the hearing date has been set for February for the fourth case.

The Davenport Water Company case, decided by the Iowa Supreme Court during the Subcommittee's study, set forth that the original cost factor can be used when computing rate of return for utilities. The Supreme Court ruled that ". . . Iowa Constitution, Article I, section 9, as it relates to the administrative fixing of utility rates, does not alone preclude use by Commission of the 'original cost or prudent investment' standard." The Supreme Court also ruled in the Davenport Water Company case that the utility company must pay five percent annual rate of interest on refunds to customers. Since there are presently no provisions in the Code to require the payment of interest on refunds, the Subcommittee recommends that the Commerce Commission be authorized to set the rate of interest to be paid by utility companies on refunds. A copy of Bill VII is attached to this report.

There is no uniform method for disposition of fees collected by the various divisions of the Commission. Fees collected from motor vehicle certificated carriers, truck operators, liquid transport carriers, and carriers performing an interstate transportation service are deposited in special trust funds, but fees collected from pipeline companies, utility companies, and bonded agricultural warehouses are deposited in the State General Fund. The Subcommittee recommends that all fees collected by the Commerce Commission be deposited directly into the State General Fund and the separate trust funds be eliminated. A copy of Bill VIII is attached to this report.

The Subcommittee discussed various amendments to the Commerce Commission laws, including the transfer of jurisdiction over motor vehicle franchises to the Department of Public Safety and the Department of Public Safety and the transfer of jurisdiction over bonded agricultural warehouses to the Department of Agriculture. It also discussed the feasibility of a division of jurisdictional responsibilities among the commissioners and a change in title from Executive Secretary of Director of Administration. However, because the present Commerce Commissioners, the Commerce Counsel, and the Superintendent of Utilities have served six months or less in their positions, the Subcommittee believes these persons should be given an opportunity to function under the present laws for one year and to make recommendations for amendment to present laws to the Committees on Commerce at the end of this year.

In addition the Subcommittee reports the following findings:

1. The Executive branch of government has been responsible for the appointment of some Commerce Commissioners who have failed in the proper exercise of their office in directing the affairs of the Commission, and particularly the Utility Division, in a businesslike, orderly manner.

2. The Commerce Commission could have caused to be used Federal Power Commission records as a starting rate base to be periodically updated in the past eight years for those utility companies subject to Federal Power Commission regulation and saved valuable time and money in current rate case deliberations.

3. At a hearing of the full Committee on Commerce of the House of Representatives in April of 1971, it was definitely determined that the Chairman of the Commerce Commission was not making any effort to expedite decisions in utility rate cases and was doing nothing to correct other reported inefficiencies in the Commission. A copy of the minutes of that hearing was hand-delivered to the Governor's Office by the Chairman of the House Committee on Commerce.

4. The investigative report submitted by Professor Dorsey D. Ellis, Jr., of the School of Law, University of Iowa, and a member of the Attorney General's staff, Bennett Cullison, was

inadvertantly made public and the Subcommittee believes was based on hearsay, personal opinions of witnesses, suppositions and contained very little factual worth.

5. The Des Moines Register has performed a disservice by sensationalizing and coloring its news by editorializing in their news reporting relating to the Utility Division of the Commerce Commission.

6. There is a distinct and serious difference between secrecy in government, which we all deplore, and the classified or confidential status of negotiated settlements as used in cases in equity and by the Federal Power Commission in utility rate cases, and Iowa has the same procedural rules as does the Federal Power Commission. A copy of an explanation of the use of negotiated settlements written by the Commerce Counsel is attached to this Report.

7. Because of serious health problems involving several of the principal witnesses, it has not been possible to properly pursue and evaluate the evidence received from the Auditor of State who has cooperated with and has been most helpful to this Subcommittee.

8. A careful evaluation of appropriation requests of the Commerce Commission reveals that ever since the inception of the Utility Division in 1963 the General Assembly appropriated as much or more than the amount requested. Further, that every biennium since 1963, funds were reverted to the General Fund. In 1965 the General Assembly appropriated additional funds to establish initial rate base information but the Commerce Commission was derelict in pursuing rate base findings and consequently was wholly unprepared upon the filing of rate increase applications which they failed to expeditiously handle.

9. Any irresponsibility, incompetence, inefficiencies, or lack of action by the Utility Division cannot be attributed to a lack of legislative appropriation or in failure by the General Assembly to act favorably on any legislative change or request by the Commerce Commission.

10. There is an excessive time lag between the filing date for a utility rate increase and the decision date.

The Subcommittee makes the following additional recommendations:

1. The Senate should exercise increased caution in confirming appointments to the Commerce Commission who have not had extensive business or legal experience which qualifies them to make important decisions as members of a quasi judicial body.

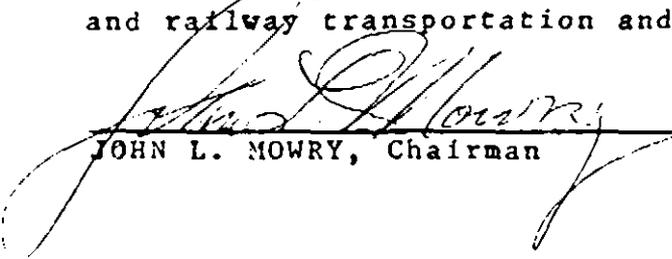
2. The Commerce Commissioners should always be expected to uphold the respect of their office and refrain from engaging in

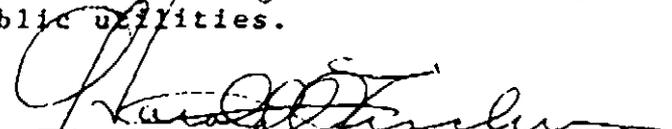
other business ventures or activities on a part-time basis, which could or might interfere directly or indirectly with their official position or such as might reflect upon their office.

3. The General Assembly should accept the report of this Subcommittee of the Standing Committees on Commerce and authorize the Subcommittee to continue on a standby basis for the balance of the current biennium to meet at the call of the Chairman to act as a liaison committee with the Commerce Commission and the Office of the Governor.

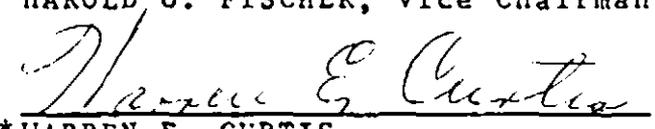
4. The enumeration of findings and recommendations does not necessarily appear in the order of importance.

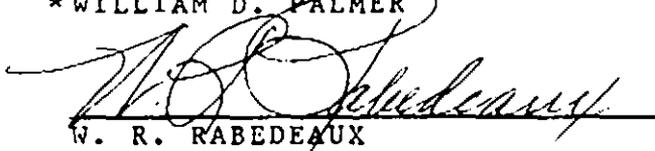
The Subcommittee believes that with the hiring of additional qualified personnel, increased awareness of the functions and duties of the Commerce Commission by the public, and the implementation of the Subcommittee's recommendations, the Commerce Commission can become a viable force in the regulation of motor and railway transportation and public utilities.

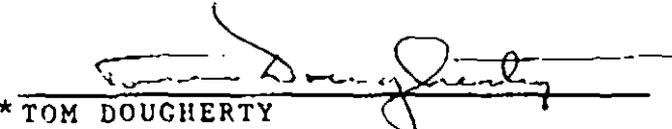

JOHN L. MOWRY, Chairman


HAROLD O. FISCHER, Vice Chairman

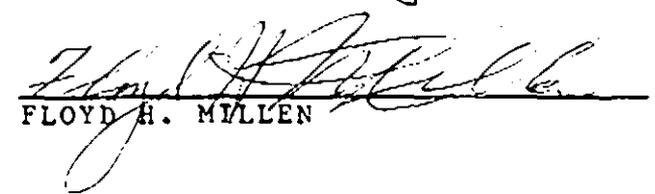
*WILLIAM D. PALMER


*WARREN E. CURTIS


W. R. RABEDEAUX


*TOM DOUGHERTY


HAROLD THORSEN


FLOYD H. MILLEN

*Minority Report attached.

M I N O R I T Y R E P O R T

In the hearings conducted by the Commerce Commission Subcommittee of the Standing Committees on Commerce, it is quite apparent from the testimony given at these hearings by former Commission Chairman, Kenneth Benda, former Commissioner Frank Means, and former Commissioner Dick Witt, that the Commission for the past several years has been functioning without any formal table of organization; thereby resulting in the Commissioners being charged with a multitude of insignificant duties, as well as involving themselves in functions that should normally be the total responsibility of the staff. The Commerce Commission staff should be responsible solely to representing the public in all rate cases, as well as representing the public in charges brought against the utilities, insomuch as to the way they are currently providing the services to the consumer. The Commissioners should work as a quasi-judicial body, neither concerning themselves with the preparation of the public's case in any rate matter, nor shall they be involved in the preparation of any private utilities' case, but should sit only as a quasi-judicial body and study each case and render a decision on the merits.

The next session of the legislature should give consideration to increasing the compensation of the Commerce Commissioners. The present salary is now \$15,000 per year, and it should be increased to no less than \$18,000 per year. Section 474.8 of the Code, which requires the Commerce Commissioners to serve full time, should be enforced.

The Railroad Safety Division consists of only a superintendent and his secretary. The responsibility of this Division of the Commerce Commission has been totally inadequate since its inception. This Division is responsible for the annual inspections of over 1,500 railway crossings and the inspection of 11,595 miles of track, as well as the processing of all complaints from the public involving railroads and railroad right-of-way. Immediate steps should be taken by the Commissioners to see that sufficient personnel are employed to assure that the responsibilities of this Division to the public are met.

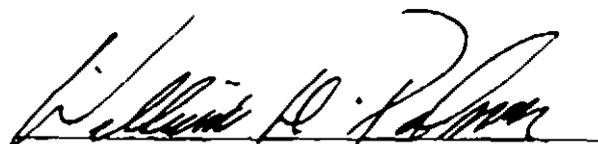
I also want to take exception to the Subcommittee's recommendation that a fee of \$15.00 be collected on each tractor or truck-tractor operated under a truck operator or contract carrier permit and on each tractor or truck-tractor operated by a certificated carrier and repeal of the \$6.00 fee for each trailer or semitrailer. This would only be a benefit to large transportation companies of the state who have a substantial number of trailers and would be transferring the tax support from those who have the ability to pay to, in many cases, the small contractor.

Within the last three years many of the investor-owned utilities have petitioned the Commerce Commission for permission to increase their rates. Iowa law presently provides the new rates can take effect 30 days after they are filed unless the Commission suspends them and may set a public hearing. However, suspension of the new rates can last for only 90 days. After which, the higher rates can be collected without Commission approval. The utility company is required to post a bond guaranteeing that it will refund any fees later found to be excessive. I feel this provision of the law should be repealed because it does not provide a situation that is conducive to working with the Commission staff every way possible to expedite all matters involving the pending rate case and bring the case to hearing as soon as possible when the utility companies are collecting the requested rate increase under bond. If the case is later decided that those rates being charged under bond are excessive, the only penalty to the investor-owned utility company would be 5% interest on the excessive portion of the rates. During the period of time these monies are being collected, the utility company may use this money, resulting in a substantial profit to the investor-owned utility company in periods of high money cost.

The former Commerce Commissioners, Chairman Benda and Commissioners Means and Witt, acted very imprudently in their handling of the Iowa Telephone rate case and have been somewhat derelict in their efforts to utilize the Federal Power Commission's records as a starting rate base to be periodically updated for those companies subject to the Federal Power Commission's regulations and would save valuable time and money in current rate case deliberations.

I feel that the Des Moines Register & Tribune provided a real service to the citizens of Iowa through their reporting of the Iowa Telephone case, which subsequently led to an investigation by the Governor's office, the Attorney General's office and the Commerce Commission Subcommittee. I feel through the utilization of the information obtained through these committees' work, that we are now on the threshold of considerable improvement in the operation of the Iowa Commerce Commission. I feel also that the practices of granting requests for rate increases through the process of private negotiations between the Commission staff and investor-owned utility companies without the benefit of public hearings should be immediately discontinued. I can see no way this can be in the best interest of the public.

The comments listed in my Minority Report do not necessarily appear in the order of their importance.



William D. Palmer
State Senator

M I N O R I T Y R E P O R T

I concur with the Final Report of the Commerce Commission Subcommittee of the Standing Committees on Commerce with the following exceptions:

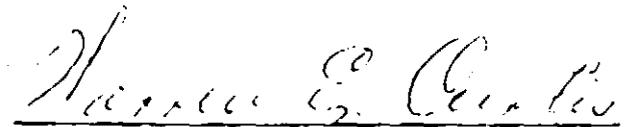
1. Page 6, paragraph 2, part 1. It is my belief that the responsibility for the failure of the Commerce Commissioners to properly exercise their duties lies with the Commissioners themselves. I believe that the individual commissioners possessed considerably more capabilities than they used in exercising the duties for which they were appointed.
2. Page 6, paragraph 2, part 4. I believe that the investigative report prepared by Professor Dorsey D. Ellis, Jr. and Bennett Cullison contains some valid conclusions and information which can be useful to both present and future Commerce Commissioners. It is my understanding that the investigative report was prepared solely for Governor Ray and not for general release.
3. Page 7, paragraph 1, part 6. I disagree with this entire part and recommend that Rule 15.9(2) of the Iowa State Commerce Commission Rules, which relates to offers of settlement, be eliminated. I concur in the following portion of the Report on the Iowa State Commerce Commission issued by Governor Ray:

"Believing that open public hearings will best serve the interests of the public and all concerned, we recommend that Section 15.9(2) of the Departmental Rules be eliminated except that proposed stipulation of fact should be permitted to be offered without prejudice if not accepted.

This Section 15.9(2) has in the past given parties an excuse to decide cases without conducting open public hearings. Behind the scenes settlements are not in the best interest of the public and should not be allowed.

Rule 15.9(1) provides for prehearing conferences to simplify issues, to admit or stipulate facts, to determine the necessity of amending pleadings, to set procedure at the hearing, to determine the propriety of mutual exchange of prepared testimony and exhibits, as well as to identify such other matters which aid in the simplification of the evidence and disposition of the proceedings. It is important to note that the results of a prehearing conference are subject to approval of the Commission and made a part of the record and therefore open to public scrutiny. It would seem that 15.9(1) allows ample opportunity for the determination of nonjusticiable issues and that 15.9(2) is an unnecessary provision."

4. It is my further belief that Rule 15.9(2) is one of the major factors causing inefficiency within the Commerce Commission, and I believe that the continued use of this rule will eventually deter the operations of the investor-owned utilities in the State of Iowa. I believe that the people of Iowa do not understand the use of negotiated settlements and, as a result of their use, limitations on the operations of investor-owned utilities may be imposed which would be unfair. In theory Rule 15.9(2) works well, but in practice, it provides the opportunity for abuses.



Warren E. Curtis
State Representative

M I N O R I T Y R E P O R T

I concur with the Final Report of the Commerce Commission Subcommittee of the Standing Committee on Commerce with the following exceptions:

1. Page 6, paragraph 2, part 1. I concur with the minority opinion expressed by Representative Warren E. Curtis and attached to this Report.
2. Page 7, paragraph 2, part 2. I believe that as long as the Commerce Commissioners perform their assigned duties during the week from Monday morning until Friday evening, they should be allowed to engage in any activities which they desire during the weekends.
3. I do not condone the use of secret meetings and believe that open public hearings will best serve the interest of the public and all concerned.
4. I further hope that the confidence of the people of Iowa in the Iowa State Commerce Commission can be restored.



Tom Dougherty
State Representative

STATE OFFICERS AND DEPARTMENTS: Commerce Counsel, subject to merit system - Ch. 19A, Ch. 475, §§490A.2, 490A.10, Code of Iowa, 1971. The office of the commerce counsel is not exempt from the merit employment provisions of Ch. 19A of the 1971 Code and the salary of this office may be fixed in accordance therewith. There are no funds available to executive council to supplement the commerce commission's appropriation to pay for the commerce counsel. The commerce commission would be entirely justified in charging for services of its regular permanent employees under the charge back provisions of Ch. 490A, but any funds received would be deposited in the general fund and unavailable to augment the commission's regular appropriation. (Haesemeyer to Mowry, State Senator, 8/11/71) #71-8-12

August 11, 1971

The Honorable John L. Mowry
State Senator
25 No. Center Street
Marshalltown, Iowa 50158

Dear Senator Mowry:

Reference is made to your letter of July 31, 1971, in which you state:

"The Joint Legislative Committee making inquiry as to the Iowa Commerce Commission by motion on July 29 directed that I request of your office a formal opinion on the following subjects.

"1. Under Chapter 475 Commerce Counsel, which office is presently vacant, does the commerce commission have the power to fix the salary for commerce counsel and if it does is there any limitation on the amount of salary under the merit system, and if the commerce commission has inadequate funds to pay for commerce counsel can the Executive Council provide money from any contingency fund? If the Executive Council can provide funds from a contingency fund can the Executive Council in doing so impose a limitation on the commerce counsel's salary more or less different from the salary either requested or fixed by the commerce commission?

"2. Under Chapter 490A.2, paragraph 2, does the merit system have the power to fix salaries for professional personnel, etc. under the second paragraph, or does the commerce commission have the power to fix such salaries "consistent with current standards in industry" irrespective of any other standards, particularly those dealing

with the merit system? Stated another way, did the statutes dealing with the merit system specifically repeal or by implication repeal paragraph 2 wherein it is stated 'the commission shall employ at rates of compensation consistent with current standards of industry etc'?

"3. Under Chapter 490A.2 paragraph 2 and Chapter 490A.10 are public utilities required to pay the 'expenses reasonably attributable to investigation, appraisal or services' only through the employment of consultants for these services or can these services be done by permanent employees of the commission with a charge-back to the several utilities for the 'expenses reasonably attributable to such investigation, appraisal, or service'? If the commission can engage its permanent employees with a charge-back for such services, is it possible for these employees to be paid out of the general fund of the State of Iowa and the charge-back when collected be deposited in the general fund? Stated another way, can not the public treasury be used as a revolving fund for the purpose of performance of Chapter 490.A as same relate to 'public utility regulations'?"

As you point out Chapter 475, Code of Iowa, 1971, contains statutory provisions relative to the office of commerce counsel. Section 475.1 thereof provides:

"475.1 Appointment - term. Within sixty days after the general assembly convenes in 1927, and every four years thereafter, the state commerce commission shall appoint a competent attorney to the office of commerce counsel, subject to the approval of two-thirds of the members of the senate. His term of office shall be for four years and till his successor is appointed, and shall begin on the first day of July of the year he is appointed."

It is to be observed that there is no reference in this section nor elsewhere in Chapter 475 to the manner in which the compensation of the commerce counsel is to be determined. Moreover, it has not been the practice for the legislature to

make a line item appropriation for the salary of the commerce counsel.

Section 490A.2 provides in relevant part:

"The commission shall employ at rates of compensation consistent with current standards in industry such professionally trained engineers, accountants, attorneys, and skilled examiners and inspectors, secretaries, clerks, and other employees as it may find necessary for the full and efficient discharge of its duties and responsibilities as required by this chapter." Ch. 286, §2, 60th G.A. (1963).

Were it not for the existence of the merit system and the statutes concerning the same this language from §490A.2 would appear to furnish ample authority for the commerce commission to fix and determine the salary of the commerce counsel "consistent with current standards in industry". Accordingly, we must next consider and determine whether the office of commerce counsel is subject to the merit system law.

The present merit system was established by Chapter 95, 62nd G.A. (1967), now codified as Chapter 19A of the 1971 Code. Chapter 19A provides for an Iowa merit employment commission and a director of the merit employment department.

The merit system law also makes provision for certain exemptions which are found in §19A.3. This section starts out by saying, "The merit system shall apply to all employees of the state and to all positions in the state government now existing or hereafter established except the following:". Thereafter are listed some sixteen categories of employees who are not subject to the coverage of the merit system. Among these are:

"2. All board members and commissions whose appointments are otherwise provided for by the statutes of the state of Iowa, and one (1) stenographer or secretary for each member of each board and commission, and one (1) principal assistant or deputy in each department.

"3. Three (3) principal assistants or deputies for each elective official and one (1) stenographer or secretary for each elective official and each principal assistant or deputy thereof.

* * *

"10. Part-time professional employees who are paid a fee or who are under contract for service basis and are not engaged in administrative duties.

* * *

"14. All appointments which are by law made by the governor or executive council; one (1) stenographer or secretary for each; one (1) principal assistant or deputy for each; and all administrative assistants or deputies employed by the director of the Iowa Development Commission."

The commerce counsel is not a board member or commission and thus would not fall within the exemption created by 19A.3(2), nor is he a principal assistant or deputy for an elective official and therefore exempt under §19A.3(3). Inasmuch as §475.4 requires that the commerce counsel devote his entire time to the duties of his office he could not qualify for the exemption given to part-time professional employees, §19A.3(10), and since he is appointed by the commerce commission the commerce counsel would not come under the exemption given to all appointments which are by law made by the governor or executive council under §19A.3(14).

As originally enacted what is now §19A.3 of the code contained the following additional exemption: "Any other position or positions excluded by law." §3(15), Chapter 95, 62nd G.A. (1967). Similar language is still found in §19A.9(1). In part because of this language in §3(15) of the original act we stated in three earlier opinions that it was our opinion that the merit system did not apply to employees of the conservation commission, the department of public safety and the highway commission. 1970 OAG 120, 1970 OAG 78 and 1970 OAG 104. However, there were other reasons for the conclusions we reached in these earlier opinions. They were founded in part on the general rule that repeals by implication are not favored and will not be upheld particularly when public statutes of long standing are under consideration, unless the intent to repeal clearly and unmistakably appears from the language used. Radosevich v. City of Ottumwa, 1970, Iowa, 173 N.W.2d 522; Kruse v. Gaines, 1966, 258 Iowa 983, 139 N.W.2d 535; Taschner v. Iowa Electric Power and Light Company, 1957, 249 Iowa 673, 86 N.W.2d 915. At the time those opinions were written the only specific section of law repealed by Chapter 95 was §8.5(6). In Smaha v. Simmons, 1953, 245 Iowa 163, 60 N.W.2d 100, the supreme court observed: "It is hard to draw an implied legislative intent to

to repeal an unmentioned law from the statutes specifying certain numbered statutes that are amended and repealed. As bearing thereon see Bennett v. Greenwalt, 226 Iowa 1113, 286 N.W. 722; Hahn v. Clayton County, 218 Iowa 543, 255 N.W. 695."

Subsequent to the issuance of these opinions, however, the 63rd General Assembly enacted Chapter 79, effective July 1, 1969, §6 of which deleted §3(15) of Chapter 95 and §8 of which added the following new section to Chapter 95:

"The provisions of this Act, including but not limited to its provisions on employees and positions to which the merit system apply, shall prevail over any inconsistent provisions of the Code, including the Acts of the Sixty-second General Assembly, and all subsequent Acts unless such subsequent Acts provide a specific exemption from the merit system."

Thus, we no longer have a situation where we are seeking to find a legislative intent to repeal an unmentioned law from a statute specifying a specific statute which was amended and repealed. The 1969 addition of a new section to Chapter 95 amounted to an express repeal of all prior and subsequent inconsistent acts except those containing a specific exemption from the merit system.

Moreover, the three prior attorney general's opinions were grounded primarily on the proposition that subsequent to the enactment of Chapter 95 the general assembly had amended the pertinent provisions of law relating to the department of public safety, the highway commission and conservation commission, and that these provisions of law were repugnant to and inconsistent with Chapter 95. Because of this it was our opinion that the statute last passed or amended must prevail observing in the March 27, 1969 opinion, for example, that:

"In the case of Casey vs. Harned, 5 Iowa 1, 5 Clark 1 (1857), the Supreme Court, at page 9, had the following to say with regard to enactments at the same session of the general assembly:

"Where two acts of the general assembly are repugnant to, or in conflict with each other, the last passed, being the latest expression of the legislative will, must govern. But this rule is no better settled than the further one, that if by any fair and reasonable construction, a prior and later statute can be reconciled, both shall stand. Under these

two rules the act of the 24th of January, if in conflict with that of the 22d of the same month, would govern, unless by some fair and legitimate reasoning, any seeming conflict may be reconciled."

In the case you presented there has been no amendment to Chapter 475 or §490A.2 since the enactment of Chapter 95 and certainly there has been none since the matter of implied repeal was disposed of by the 1969 enactment of Chapter 79. Accordingly, it is our opinion that the office of the commerce counsel is not exempt from the merit employment provisions of Chapter 19A of the 1971 Code.

Concluding as we have that the office of commerce counsel is subject to the merit system, we next must consider what provision is made in the law for establishing a pay scale for the office. Section 19A.9 provides in part:

"The merit employment commission shall adopt and may amend rules for the administration and implementation of this chapter in accordance with chapter seventeen A (17A) of the Code. The director shall prepare and submit proposed rules to the commission. The rules shall provide:

"1. For the preparation, maintenance, and revision of a position classification plan from a schedule by separate department for each position and type of employment not otherwise provided by law in state government as approved by the executive council for all positions in the merit system, based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class, in the same geographical area.

"2. For a pay plan within the purview of an appropriation made by the general assembly and not otherwise provided by law for all employees in the merit system, after consultation with appointing authorities and after a public hearing held by the commission.

Such pay plan shall become effective only after it has been approved by the executive council after submission from the commission. Review of the pay plan for revisions shall be made in the same manner at the discretion of the director, but not less than annually. Each employee shall be paid at one (1) of the rates set forth in the pay plan for the class of position in which employed and, unless otherwise designated by the commission, shall begin employment at the first step of the established range for his class.

* * *

Under this provision of law the pay plan is formulated by the director after consultation with appointing authorities, the latter's role apparently being only advisory. It is then submitted to the commission which, although the statute does not say so, presumably may then approve or disapprove of the pay plan. If the commission approves the plan it must next be approved by the executive council. Finally the pay plan goes to the legislative rules review committee pursuant to Chapter 17A. Review of any pay plan may be undertaken at any time in the discretion of the director subject, however, to the requirement that he must review all pay plans at least annually. Thus, in answer to your first question the commerce commission does not have the power to fix the salary of the commerce counsel. The director does have that power after consultation with the commerce commission and subject to the several layers of approval described above. There is no fixed dollar limitation on the amount the merit system director may establish as a salary of any particular position although as noted above the pay plan must be "within the purview of an appropriation". Additional guidelines are found in §19A.9(1) which should guide the director in his pay plan deliberations. Thus, the rules prepared by the director should be "based upon duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for and the same schedule of pay may be equitably applied to all positions in the same class, in the same geographical area."

You next inquire if the commerce commission has inadequate funds to pay for commerce counsel can the executive council provide money from any contingency fund. There is a standing contingency fund established by §19.7 of the Code but this fund would clearly be unavailable. It is designed to be used to meet unexpected expenses arising out of events of the character of force majeure. The executive council also has at its disposal the general contingent fund created by Senate File 556, Acts, 64th G.A., First Session, 1971. As is customary the legislation creating this biennial contingent fund provides that it may be used "only for contingencies arising during the biennium". We have repeatedly stated in the past that to be a contingency an event must be to

some degree unforeseen. See e.g. 68 OAG 552, 68 OAG 564 (two opinions), 68 OAG 652, 68 OAG 955, 1970 OAG 485. The need for a higher salary for the commerce counsel can hardly be said to have been unforeseen considering the length of time the office has gone unfilled and the difficulty the commission has had in finding a qualified appointee. In our opinion the biennial contingent fund is also unavailable to supplement the budget of the commerce commission. So far as we can ascertain there are no other contingent funds available to the executive council.

As noted above the power to fix the salary for the commerce counsel rests with the director of the merit employment system subject to the various approvals which the statute, §19A.9, requires, and consistent with the guidelines set forth in that section. However, while Chapter 19A operates to take away the commission's power to fix the compensation of its non-exempt professional staff we are not prepared to say that the director of the merit employment department could not consider "current standards in industry" in establishing pay plans for such personnel in accordance with §19A.9.

Finally, we come to your question concerning the availability to the commerce commission of the charge-back funds described in §490A.10. This section of the Code provides in relevant part:

"490A.10. Investigations-expense. Whenever the commission shall deem it necessary in order to carry out the duties imposed upon it by this chapter for the purpose of determining rate matters to investigate the books, accounts, practices, and activities of, or make appraisals of the property of any public utility, or to render any engineering or accounting services to any public utility, such public utility shall pay the expense reasonably attributable to such investigation, appraisal, or service. The commission shall ascertain such expenses, and shall render a bill therefor, by certified mail, to the public utility, either at the conclusion of the investigation, appraisal, or services, or from time to time during its progress, which bill shall constitute notice of said assessment and demand payment thereof. ...

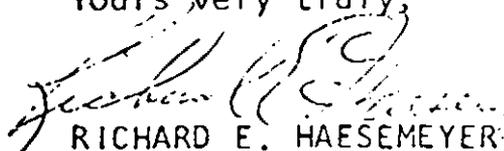
"The commission shall annually, within ninety days after the close of each fiscal year, ascertain the total of its expenditures during each year, excluding the total sum necessary to pay the salaries of the commissioners but including all

other expenses which are reasonably attributable to the performance of its duties under this chapter and shall deduct therefrom all amounts chargeable directly to any specific utility under any law. The remainder shall be assessed by the commission to the several public utilities in proportion to their respective gross operating revenues during the last calendar year derived from intrastate public utility operations. ...

"... All amounts collected by the commission pursuant to the provisions of this section shall be deposited with the state treasurer and credited to the general fund of the state. Such amounts shall be spent in accordance with the provisions of chapter 8."

There is nothing in the language of this section which would limit the charge-back authority to amounts paid to outside consultants and experts. In our opinion the commission would be entirely justified in charging for services of its regular permanent employees. However, the statute also plainly requires that any amounts collected by this process are to be deposited in the general fund of the state, there to be spent in accordance with Chapter 8 of the Code. The commerce commission receives a biennial appropriation in the same manner as other state departments and the establishment of a revolving fund such as you suggest would in our opinion require a special legislative enactment to conform to the requirements of Article III, §24 of the Constitution of Iowa which provides: "No money shall be drawn from the treasury but in consequence of appropriations made by law."

Yours very truly,


RICHARD E. HAESEMEYER
Solicitor General

REH/sc

COMMERCE COMMISSION

PAY PLAN 7-1-69 THROUGH 7-1-71

		<u>P.A.S.</u> <u>10-68</u>	<u>MERIT</u> <u>7-69</u>	<u>INTERUM</u> <u>CHANGES</u>	<u>MERIT</u> <u>7-71</u>
0485	Commodity Warehouse Investigator I	17	17 Min: 6,324 Max: 8,076		18 Min: 6,636 Max: 8,484
0486	Commodity Warehouse Investigator II	19	19 Min: 6,972 Max: 8,904		Deleted 7-71
0490	Commodity Warehouse Investigator Supervisor	22	22 Min: 8,076 Max: 10,824		23 Min: 8,484 Max: 11,364
0505	Motor Transport Investigator	15 Min: 5,736 Max: 7,320	17 Min: 6,324 Max: 8,076		18 Min: 6,636 Max: 8,484
0510	Chief Motor Transport Investigator	19 Min: 6,972 Max: 8,904	22 Min: 8,076 Max: 10,824		23 Min: 8,484 Max: 11,364
0515	Public Utility Rate Analyst I	20 Min: 7,320 Max: 9,816	25 Min: 9,348 Max: 12,528		26 Min: 9,816 Max: 13,152
0516	Public Utility Rate Analyst II	26 Min: 9,816 Max: 13,152	29 Min: 11,364 Max: 15,228		30 Min: 11,928 Max: 16,788
0520	Transportation Rate Analyst I	17 Min: 6,324 Max: 8,076	19 Min: 6,972 Max: 8,904		20 Min: 7,320 Max: 9,816
0521	Transportation Rate Analyst II	21	21 Min: 7,692 Max: 10,308		22 Min: 8,076 Max: 10,824
0525	Assistant Transport Regulation Administrator	22 Min: 8,076 Max: 10,824	23 Min: 8,484 Max: 11,364		23 Min: 8,484 Max: 11,364
0526	Transportation Regulation Administrator	26 Min: 9,816 Max: 13,152	26		27 Min: 10,308 Max: 13,812
0528	Utility Financial Examiner I (New 6-70)			6-70 22	23 Min: 8,484 Max: 11,364
				Min: 8,076 Max: 10,824	Min: 8,484 Max: 11,364

	<u>P.A.S.</u> <u>10-68</u>	<u>MERIT</u> <u>7-69</u>	<u>INTERUM</u> <u>CHANGES</u>	<u>MERIT</u> <u>7-71</u>
0529 Utility Financial Examiner II (New 6-70)			6-70 25	26 Min: 9,816 Max: 13,152
0530 Utility Auditor I	23 Min: 8,484 Max: 11,364	25 Min: 9,348 Max: 12,528	6-70 27	28 Min: 10,824 Max: 14,508
0531 Utility Auditor II	27 Min: 10,308 Max: 13,812	29 Min: 11,364 Max: 15,228		30 Min: 11,928 Max: 16,788
0533 Principal Utility Auditor (New 7-71)				33 Min: 13,812 Max: 19,428
0535 Chief Utility Auditor	30 Min: 11,928 Max: 16,788	32 Min: 13,152 Max: 18,504		35 Min: 15,228 Max: 21,420
0540 Chief, Utilities Division	35 Min: 15,228 Max: 21,420	35		37 Min: 16,788 Max: 23,616
0545 Utilities Regulation Engineer I	26 Min: 9,816 Max: 13,152	26	9-69 27	30 Min: 11,928 Max: 16,788
0546 Utilities Regulation Engineer II	29 Min: 11,364 Max: 15,228	29	9-69 31	33 Min: 13,812 Max: 19,428
0550 Chief Utilities Regulation Engineer	33 Min: 13,812 Max: 19,428	32 Min: 13,152 Max: 18,504	9-69 33	35 Min: 15,228 Max: 21,420
0555 Utilities Regulation Inspector I	16 Min: 6,024 Max: 7,692	16	6-70 18	20 Min: 7,320 Max: 9,816
0556 Utilities Regulation Inspector II	20 Min: 7,320 Max: 9,816	20	6-70 22	24 Min: 8,904 Max: 11,928

	<u>P.A.S.</u> <u>10-68</u>	<u>MERIT</u> <u>7-69</u>	<u>INTERUM</u> <u>CHANGES</u>	<u>MERIT</u> <u>7-71</u>
0560 Customer Service Representative (New 6-70)			6-70 22 Min: 8,076 Max: 10,824	23 Min: 8,484 Max: 11,364
0650 Legal Counsel * (*Joint with Employment Security)		28 Min: 10,824 Max: 14,508		29 Min: 11,364 Max: 15,228
0651 Senior Legal Counsel* (*Joint with Employment Security)	31 Min: 12,528 Max: 17,628	32 Min: 13,152 Max: 18,504		33 Min: 13,812 Max: 19,428
0685 Railroad Safety Investigator (New 11-69)		11-69 24 Min: 8,904 Max: 11,928		24
0687 Railroad Safety Superintendent (New 11-69)		11-69 28 Min: 10,824 Max: 14,508		28
<u>EXEMPT (Comptroller)</u>				
14660 Commerce Commission Counsel		31 Min: 12,528 Max: 17,628		33 Min: 13,812 Max: 19,428

COLLECTION OF INCREASED RATES UNDER BOND

Under the provisions of Chapter 490A, the Commerce Commission must suspend, within 30 days of its filing, a utility company's application for increased rates. Should this not be done, the higher rates become effective automatically.

Ninety days after Commission suspension of the application (or approximately 120 after the utility has filed its request for higher rates) the utility may put those increased rates into effect, if it supplies the Commission with a bond (or other financial undertaking) in an amount equal to the revenues generated by the unapproved portion of the new, higher rates.

The provision allowing a utility to put its increased rates into effect under bond pending Commission investigation and approval plays an extremely useful--in fact a vital--role in rate regulation. It must be assumed a utility has a legitimate need for additional revenues when it files for a rate increase. To deprive the firm of those revenues until the case is fully investigated, hearings are held, deliberations completed and the final decision is rendered, would seriously jeopardize the utility's capacity to provide the public with the service it demands.

Since it is clearly impossible for a utility to collect higher rates from its customers retroactively, it must be allowed to institute those higher rates as soon as possible after it determines the necessity for expanded revenues. If the interest rate applied to the customer refunds ordered by the Commission in its decision reflects the money market, the public is not harmed by the bonding provision.

One of the rate cases now pending in the Iowa Commerce Commission illustrates the necessity of allowing a utility to put its increased rates into effect prior to final commission approval. In that case, involving a small firm, the financial plight of the utility is so serious that if it was required to wait for rate relief until the case is fully processed (following normal sequence, with seven filings still ahead of it, this is estimated to be November of 1972), bankruptcy would be a very real possibility.

The Federal Power Commission, the Federal Communications Commission, and the regulatory commissions of most states allow higher utility rates to be put into effect subject to refund. To strike this provision from the Iowa law would deter, not aid, the present move to establish firm, fair and just utility regulation in this state.

IOWA STATE COMMERCE COMMISSION

January 7, 1972

MEMORANDUM TO: Representative Harold O. Fischer,
Vice Chairman, Commerce Commission
Subcommittee of the Standing
Committees on Commerce, General
Assembly of the State of Iowa.

FROM: Office of the Commerce Counsel
Iowa State Commerce Commission

SUBJECT: Commerce Solicitor's Description
of Settlement Conference Procedure
Adopted by Federal Power Commission
Staff Attorneys

The following outline is offered in response to the Subcommittee's request of January 3, 1972, for documentation of the verbal description by Commerce Solicitor, Philip B. Malter, of the procedure followed in implementing the Federal Power Commission's rules permitting offers of settlement in contested public utility rate proceedings.

1. The Staff prepares a detailed statement of position outlining all anticipated issues and the Staff's position thereon. This statement, often referred to as a "settlement cost of service," is presented, with a verbal explanation as to its development, to all parties of record (including intervenors) in an off-the-record and privileged conference. The staff position is developed and presented with the firm understanding that if the matter were to go to hearing, that position would provide the foundation for staff testimony. The parties are then given an opportunity to review the Staff's presentation and either accept it for purposes of settlement or explain their opposition. If after discussion, the opposing party convinces the Staff that the Staff's position is erroneous to the extent that the Staff would be caused to modify that position in any subsequent public hearing, the Staff at that point in the conference does in fact modify its proposal and once again offers its position to the parties for settlement purposes.

2. If the parties can accept Staff's position, as modified, for the purposes of settlement, a settlement agreement will be drafted and transmitted to the Commission; if not, the matter proceeds to hearing. The Commission will entertain all legal arguments or motions with regard to any settlement agreement proposal tendered as a basis for its final determination of the case. If, however, the Commission does not accept the settlement agreement and proceeds to hearing, the contents of that agreement will be privileged as to all the parties, and therefore may not be introduced in evidence.

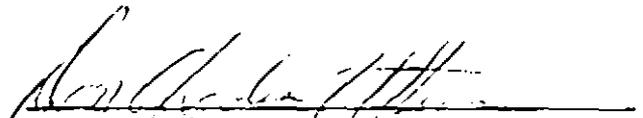
3. As indicated, at no time, during the course of a settlement conference does the Staff ever compromise or negotiate with the public interest. If the parties accept the Staff's views on a given issue, for the purposes of a trial-type hearing that issue is no longer the proper subject of argument; all issues presented to the trier of fact must be contested issues of fact.

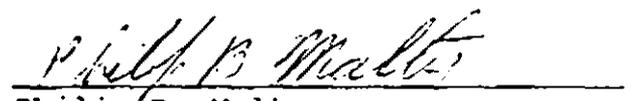
4. Similarly, the public interest is not compromised if the Commission Staff is persuaded to modify its position by information produced by other parties at the privileged conference, for it is that modified position which the Staff would present in any subsequent evidentiary hearing. The Staff is committed to no other standard; it may not compromise its position simply to settle a case and be rid of it; the public interest is every bit as protected with the Staff's modified position for settlement purposes as it would be if that modified position were expressed in the form of testimony in an evidentiary hearing.

5. The purpose of the procedure is not solely to completely resolve cases through stipulation and agreement, but also to eliminate issues between parties who would otherwise be contesting those issues on the record.

6. Under such procedure, the Staff never takes a position on settlement which it would not take in hearing. On that basis, if the other parties can accept the Staff settlement proposal, the public interest has been represented to the same extent as it would be in a full evidentiary hearing, with the additional benefit of a large savings in time and public funds expended. Yet, the Commission retains the full right to entertain oral or written arguments concerning the settlement agreement and may thereafter reject that agreement if its judgment so dictates.

7. It should be emphasized in conclusion, that the foregoing procedure can be effectively implemented only if offers of settlement are privileged, inasmuch as a Company or intervenor may accept for settlement purposes positions which might prejudice their presentation if subject to disclosure and proof in a full evidentiary hearing.


Don Charles Uthus
Commerce Counsel


Philip B. Malter
Commerce Solicitor

Date: January 7, 1972

Bill I

Prepared by the Legislative Service Bureau for use of the Commerce Commission Subcommittee of the Standing Committees on Commerce for discussion purposes only. November, 1971.

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to increase the salary of the commerce commissioners.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3 Section 1. Chapter two (2), section one (1), subsection
4 eleven (11), Acts of the Sixty-fourth General Assembly, First
5 Session, is amended to read as follows:

6 11. Iowa state commerce commission.

7 Salary of the executive secretary not exceeding:-----

8 ----- \$13,500.00 ~~\$13,500.00~~ \$15,000.00

9 Salary of each member of the Iowa state commerce commission
10 not exceeding:----- \$15,000.00 ~~\$15,000.00~~ \$19,500.00

11 Each member of the Iowa state commerce commission shall
12 comply with the provisions of section 474.8 of the Code.

13 EXPLANATION

14 This bill increases the salary of the commerce commis-
15 sioners from \$15,000 to \$19,500 with emphasis placed on the
16 full time responsibilities of the commissioners. The bill
17 also increases the salary of the executive secretary from
18 \$13,500 to \$15,000.

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Bill II

Prepared by the Legislative Service Bureau for use of the Commerce Commission Subcommittee of the Standing Committee on Commerce for discussion purposes only. November, 1971.

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to insolvent grain warehouses.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. The definitions used in chapter five hundred
2 forty-three (543) of the Code shall also apply to this Act.

3 Sec. 2. TRUST FUND ESTABLISHED. Whenever any warehouse-
4 man, by reason of the destruction of his warehouse or for
5 any other cause, refuses or neglects, upon proper demand,
6 to redeem any receipt issued by him, the warehouseman shall
7 be deemed to be insolvent within the meaning of this Act,
8 and a trust fund for the redemption of outstanding warehouse
9 receipts shall consist of the following:

10 1. All the grain in the warehouse.

11 2. The proceeds of insurance policies upon stored grain
12 destroyed in the warehouse.

13 3. The cause of action for damages upon any bond given
14 by the warehouseman to the state of Iowa to insure faithful
15 performance of his duties as a warehouseman.

16 4. The cause of action for the conversion of grain stored
17 in the warehouse.

18 Sec. 3. APPOINTMENT OF COMMISSION AS TRUSTEE. Upon the
19 insolvency of any warehouseman, the department of agriculture
20 shall apply to the district court for appointment of itself
21 as trustee of the trust fund. Upon such notice to the ware-
22 houseman as the district court shall prescribe, but not ex-
23 ceeding ten days, or upon waiver of such notice in writing
24 by the warehouseman, the district court shall proceed to hear
25 and determine the application. If it shall appear to the
26 court that the warehouseman is insolvent within the meaning
27 of this Act and that it would be for the best interests of
28 the receipt holders that the department shall execute the
29 trust, it shall issue an order appointing the department
30 trustee, without bond, of the trust fund, whereupon the de-
31 partment shall proceed to perform its duties as trustee without
32 further direction from the court.

33 Sec. 4. NOTICE TO RECEIPT HOLDERS. Upon its appointment
34 as trustee, the department of agriculture shall take posses-
35 sion of all books and records of the warehouseman and of all

1 grain on hand in the warehouse and shall procure the delivery
2 to it of all receipts shown to be outstanding by the books
3 of the warehouseman. If the department cannot ascertain the
4 names and addresses of all the receipt holders, or if it is
5 unable to procure the possession of all the receipts, or has
6 reason to believe that all receipts have not been surrendered
7 to it, the department shall publish a notice in a newspaper
8 in the county in which the warehouse is located for three
9 successive weeks requiring receipt holders to surrender their
10 receipts. Unless within ninety days after the last publica-
11 tion of the notice the receipts are surrendered to the depart-
12 ment, the receipt holders shall be barred from participation
13 in the trust fund, and the department may proceed as though
14 it were the owner of all the stored grain in the warehouse.

15 Sec. 5. REMEDY OF RECEIPT HOLDERS. No receipt holder
16 shall have a separate cause of action upon the warehouseman's
17 bond, nor for insurance, nor against any person converting
18 the grain, nor against any other receipt holder, except through
19 the trustee, unless, upon demand of five or more receipt
20 holders, the department shall fail or refuse to apply for
21 its own appointment as trustee. Nothing contained in this
22 Act shall be construed to prohibit or prevent any receipt
23 holder, either individually or in conjunction with other
24 receipt holders, from pursuing concurrently any other remedy
25 as he may have against the person or property of the
26 warehouseman, for the whole, or any deficiency occurring in
27 the redemption, of the receipts.

28 Sec. 6. DEPARTMENT TO MARSHAL TRUST ASSETS. The depart-
29 ment of agriculture, in its capacity as trustee, upon the
30 delivery to it of the receipts issued by the insolvent ware-
31 houseman, may maintain any legal action, in the name of the
32 state of Iowa, upon its own relation, but for the benefit
33 of all receipt holders against:

- 34 1. The insurers of said stored grain.
- 35 2. The warehouseman's bond.

1 3. Any person who may have converted any stored grain.

2 4. Any receipt holder who has received more than his just
3 and pro rata share of the stored grain.

4 The legal actions may be maintained for the purpose of
5 marshaling all of the trust assets of the insolvent ware-
6 houseman and distributing the same among the receipt holders.
7 The remedy against the insurers of the stored grain shall
8 be exhausted first before recourse is had against the bond,
9 and against the bond before recourse is had against the per-
10 son honestly converting the grain, unless the department deems
11 it necessary to the redemption of the storage receipts that
12 all the above remedies be pursued at the same time.

13 Sec. 7. POWER OF DEPARTMENT TO PROSECUTE OR COMPROMISE
14 CLAIMS. The department of agriculture may:

15 1. Initiate any action provided in sections five (5) and
16 six (6) of this Act in the courts of this state or any other
17 state.

18 2. Appeal from any adverse judgment.

19 3. Settle and compromise any action whenever, in its
20 judgment, this will be for the best interests of the receipt
21 holders.

22 4. Upon payment of the amount of the compromise or of
23 the full amount of any insurance policy, bond, or conversion
24 claim, exonerate the person so compromising or paying in full
25 from further liability growing out of the action.

26 Sec. 8. MONEY RECEIVED BY TRUSTEE. All moneys collected
27 and received by the department as trustee as is provided in
28 section three (3) of this Act, pending the marshaling of the
29 fund, shall be deposited in a bank.

30 Sec. 9. REPORT OF TRUSTEE TO COURT--APPROVAL--DISTRIBU-
31 TION. Upon recovery of the trust fund mentioned in section
32 six (6) of this Act, or so much thereof as possible or as
33 shall be necessary to redeem all outstanding receipts, the
34 department shall file its report in court showing the amount
35 payable upon each receipt after recognizing:

S.F. _____

1 nor against any receipt holder, except through the trust.
2 The department has the power to prosecute and appeal and to
3 settle and compromise any action. If the fund proves insuf-
4 ficient, it can be prorated.

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LSB 3117
dd/jw/3

Bill III

Prepared by the Legislative Service Bureau for use of the Commerce Commission Subcommittee of the Standing Committees on Commerce for discussion purposes only. October, 1971.

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of liquid transport carriers.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section three hundred twenty-seven A point
2 four (327A.4), Code 1971, is repealed.

3 Sec. 2. Section three hundred twenty-seven A point fourteen
4 (327A.14), Code 1971, is amended by striking the section and
5 inserting in lieu thereof the following:

6 327A.14

7 1. Any liquid transport carrier actively and continuously
8 engaged in business as such between December 1, 1956 and Janu-
9 ary 14, 1957 shall be issued a certificate of convenience
10 and necessity covering all points in this state to all other
11 points in this state, and all routes and areas in this state,
12 provided that application therefor shall be made within sixty
13 days after May 17, 1957. No rights granted prior to and after
14 July 1, 1972 shall be sold, leased, transferred, assigned,
15 or acquired by consolidation, merger, or acquisition of control
16 to or by persons engaged directly or indirectly in the liquid
17 transportation business, except such rights as are actively
18 being exercised.

19 2. Whenever an application for the sale, lease, tranfer,
20 assignment, consolidation, merger, or acquisition of control
21 of any liquid transport carrier authority is filed with the
22 commission, the commission shall fix a date for a public
23 hearing and shall give written notice of the hearing to each
24 liquid transport carrier holding a certificate of convenience
25 and necessity issued by the commission not less than ten days
26 prior to the date set for hearing.

27 3. The commission may enter an order approving and autho-
28 rizing a sale, lease, transfer, assignment, consolidation,
29 merger, or acquisition of control upon such terms and condi-
30 tions it shall find to be just and reasonable and with such
31 modifications as it may prescribe if it finds:

32 a. That the petitioner is fit, willing, and able,

33 b. That the proposed transferor has not abandoned or dis-
34 continued operations, and

35 c. That the transaction proposed will be consistent with

1 the public interest.

2 4. No liquid transport carrier shall directly or indirectly
3 acquire an interest in another liquid transport carrier or
4 control the management of another liquid transport carrier
5 without the prior written approval of the commission.

6 5. The commission may, upon complaint, or upon its own
7 motion, after notice and hearing, investigate and determine
8 whether any person is violating the provisions of this section.
9 If the commission finds that any person is violating the
10 provisions of this section, it shall, by order, require such
11 person to take such action consistent with the provisions
12 of this chapter as may be necessary, in the opinion of the
13 commission, to prevent continued violation of such provisions.

14 EXPLANATION

15 This bill clarifies the provisions of Chapter 327A of the
16 Code.

17 The bill provides that any rights granted to a liquid
18 transport carrier are non-transferable without the approval
19 of the Iowa State Commerce Commission after holding public
20 hearings. The bill also prohibits the direct or indirect
21 control of one liquid transport carrier by another without
22 the written approval of the Commission.

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Bill IV
Prepared by the Legislative Service
Bureau for use of the Commerce Com-
mission Subcommittee of the Stand-
ing Committees on Commerce for dis-
cussion purposes only. November,
1971

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to prescribe a penalty for violation of laws relating to
2 the registration of a motor carrier's interstate transportation
3 service.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

5 Section 1. Chapter three hundred twenty-seven B (327B),
6 Code 1971, is amended by adding the following new section:

7 "Every owner, officer, agent or employee of a carrier which
8 performs an interstate transportation service for compensation
9 upon the highways of this state and which carrier has failed
10 to register with the Iowa state commerce commission in
11 compliance with the provisions of this chapter, shall be
12 guilty of a misdemeanor and upon conviction shall be punished
13 by a fine not exceeding one hundred dollars or by imprisonment
14 in the county jail for a period of not to exceed thirty days."

15 EXPLANATION

16 This bill sets a penalty provision for the chapter that
17 requires that carriers which perform an interstate
18 transportation service for compensation must register with
19 the Iowa State Commerce Commission their Interstate Commerce
20 Commission authority or the fact that Interstate Commerce
21 Commission authority is not needed.

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Bill V
Prepared by the Legislative Service
Bureau for use of the Commerce Com-
mission Subcommittee of the Stand-
ing Committees on Commerce for dis-
cussion purposes only. November,
1971

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to motor vehicle truck operators fees.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3 Section 1. Section three hundred twenty-seven point nine
4 (327.9), unnumbered paragraph one (1), Code 1971, is amended
5 to read as follows:

6 No motor truck engaged in the transportation of property
7 under a truck operator or contract carrier permit issued un-
8 der the provisions of this chapter shall be operated on the
9 highways of this state unless there shall have been paid to
10 the commission for the administration of this chapter an an-
11 nual fee in the amount of five dollars, ~~provided, however,~~
12 ~~that the fee herein provided shall not be imposed on any~~
13 ~~tractor or truck tractor, provided, however, that the fee~~
14 ~~herein provided for each semitrailer shall be in the amount~~
15 of six dollars. The annual fee for a tractor or truck tractor
16 shall be fifteen dollars and no fee shall be imposed under
17 this section on any semitrailer.

18 EXPLANATION

19 This bill imposes a fee of fifteen dollars on each tractor
20 or truck-tractor operated under a truck operator or contract
21 carrier permit, while abolishing the present fee of six dol-
22 lars for each semitrailer. It will provide a more equitable
23 assessment consistent with the industry practice of
24 interchanging equipment.

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LSB 3215
dd/jw/3

Bill VI
Prepared by the Legislative Service
Bureau for use of the Commerce Com-
mission Subcommittee of the Stand-
ing Committees on Commerce for dis-
cussion purposes only. November,
1971

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to motor vehicle certificated carrier fees.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

3 Section 1. Section three hundred twenty-five point thirty-
4 five (325.35), unnumbered paragraph one (1), Code 1971, is
5 amended to read as follows:

6 No motor vehicle engaged in the transportation of prop-
7 erty under a certificate of convenience and necessity issued
8 under the provisions of this chapter shall be operated on
9 the highways of this state unless there shall have been paid
10 to the commission for the administration of this chapter an
11 annual fee in the amount of five dollars, ~~provided, however,~~
12 ~~that the fee herein provided shall not be imposed on any~~
13 ~~tractor or truck-tractor, provided, however, that the fee~~
14 ~~herein provided for each semitrailer shall be in the amount~~
15 ~~of six dollars.~~ The annual fee for a tractor or truck-tractor
16 shall be fifteen dollars and no fee shall be imposed under
17 this section on any semitrailer.

18 EXPLANATION

19 This bill imposes a fee of fifteen dollars on each tractor
20 or truck-tractor operated by a certificated carrier and abol-
21 ishes the present fee of six dollars for each semitrailer.
22 It will provide a more equitable assessment consistent with
23 the industry practice of interchanging equipment.

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LSB 3214
dd/jw/3

Bill VII

Prepared by the Legislative Service Bureau for use of the Commerce Commission Subcommittee of the Standing Committees on Commerce for discussion purposes only. November, 1971

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the rate of interest on public utility refunds
2 to customers.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

4 Section 1. Section four hundred ninety A point six (490A.6),
5 unnumbered paragraph six (6), Code 1971, is amended to read as
6 follows:

7 However, a public utility shall have the right at any time
8 after said rates, charges, schedules or regulations have been
9 suspended for ninety days to place in effect any or all of such
10 suspended rates, charges, schedules or regulations by filing with
11 the commission a bond or other undertaking approved by the commis-
12 sion conditioned upon the refund in a manner to be prescribed
13 by the commission of any amounts collected thereunder in excess
14 of the amounts which would have been collected under rates,
15 charges, schedules or regulations finally approved by the
16 commission. The commission shall establish a rate of interest
17 to be paid by a public utility to persons receiving refunds.

18 EXPLANATION

19 The law presently allows public utilities to impose new utility
20 rates prior to the approval of these rates by the Iowa State
21 Commerce Commission. If the Commission finds these rates to be
22 excessive, it may order the public utility to refund all or part
23 of the moneys collected from the public utility's customers.
24 This bill provides that when moneys are refunded, the Commission
25 shall set the rate of interest to be paid on the refunds.

Bill VIII

Prepared by the Legislative Service Bureau for use of the Commerce Commission Subcommittee of the Standing Committees on Commerce for discussion purposes only. October, 1971.

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the deposit and use of fees collected by
2 the Iowa state commerce commission.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section three hundred twenty-five point thirty-
2 six (325.36), Code 1971, is amended to read as follows:

3 325.36 USE OF FEES. All moneys received under the provi-
4 sions of this chapter, ~~or so much thereof as may be neces-~~
5 ~~sary, shall be used for the administration and enforcement~~
6 ~~of the provisions of this chapter and the regulation of cer-~~
7 ~~tified motor carriers, and shall be paid to the commission~~
8 ~~by warrant drawn from time to time by the state comptroller~~
9 ~~upon the treasurer of state. Unexpended balances on June~~
10 ~~30 of each year shall be remitted to the treasurer of state~~
11 and credited to the general fund of the state by December
12 31 following.

13 Sec. 2. Section three hundred twenty-seven point thirteen
14 (327.13), Code 1971, is amended to read as follows:

15 327.13 EXPENDITURE OF FUNDS. All moneys received under
16 the provisions of this chapter ~~or so much thereof as may be~~
17 ~~necessary shall be used for the administration and enforcement~~
18 ~~of the provisions of this chapter and the regulation of truck~~
19 ~~operators, and shall be paid to the commission by warrant~~
20 ~~drawn from time to time by the state comptroller upon the~~
21 ~~treasurer of state. Unexpended balances on June 30 of each~~
22 year shall be remitted to the treasurer of state and credited
23 to the general fund of the state by December 31 following.

24 Sec. 3. Section three hundred twenty-seven A point nine-
25 teen (327A.19), Code 1971, is amended to read as follows:

26 327A.19 FEE FOR OPERATION. No certificate of convenience
27 and necessity shall be issued nor continued in force until
28 the holder thereof shall have paid to the commission for the
29 administration of this chapter an annual certificate fee for
30 each motor vehicle operated thereunder in the amount of five
31 dollars, except that the fee for a tractor or truck tractor
32 shall be fifteen dollars, and except that the fee herein pro-
33 vided shall not be imposed on any trailer or semitrailer.
34 Fees collected pursuant to the provisions of this section
35 shall be remitted to the treasurer of state and credited to

1 the general fund of the state.

2 Sec. 4. Section three hundred twenty-seven B point three
3 (327B.3), Code 1971, is amended to read as follows:

4 327B.3 FEES--USE. All fees paid under the provisions
5 of this chapter ~~or so much thereof as may be necessary shall~~
6 ~~be used for the administration of this chapter and shall be~~
7 ~~paid to the commission by warrant drawn from time to time~~
8 ~~upon the treasurer of state--Unexpended balances on June~~
9 ~~30 of each year shall be~~ remitted to the treasurer of state
10 and credited to the general fund of the state by ~~December~~
11 ~~31 following.~~

12 Sec. 5. Section four hundred ninety point seventeen
13 (490.17), Code 1971, is amended to read as follows:

14 490.17 USE OF FUNDS. All moneys received under the pro-
15 visions of this chapter ~~or so much thereof as may be neces-~~
16 ~~sary shall be used for the administration and enforcement~~
17 ~~of the provisions of this chapter and the regulation of pipe-~~
18 ~~line companies and shall be paid to the commission by warrant~~
19 ~~drawn from time to time by the comptroller of state upon the~~
20 ~~treasurer of state--Unexpended balances on December 31 of~~
21 ~~each year shall be~~ remitted to the treasurer of state and
22 credited to the general fund of the state by ~~June 30 follow-~~
23 ~~ing.~~

24 Sec. 6. The provisions of this Act shall become effective
25 July 1, 1973.

26 EXPLANATION

27 This bill eliminates special funds of the Iowa State
28 Commerce Commission resulting from the collection of fees
29 for regulation of certificated motor carriers, truck operators,
30 liquid transport carriers, interstate transportation carriers,
31 and pipeline companies. Fees will continue to be collected
32 but will be deposited directly to the credit of the general
33 fund and will have to be appropriated. Thus the Commerce
34 Commission will have to be totally financed pursuant to a
35 legislative appropriation in regard to regulation of the areas

H.F. _____

1 indicated.

2 The effective date clause allows the Commerce Commission
3 to continue to use the fees indicated until the appropriation
4 to the Commerce Commission commencing in the fiscal year 1973
5 becomes effective, which appropriation should cover the ex-
6 penses normally paid for by the fees.

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