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INDIANA'S COOPERATION COMMISSION BATTLES TRADE BARRIERS

WILLIAM E. TREADWAY*

Almost from the day of organization of the Indiana Commission on Interstate Cooperation, authorized by the Acts of 1937, it has been engaged in diagnosing and combating interstate trade barriers, and thus it has been a pioneer organization in what now has become a nation-wide movement for economic betterment.

The primary function of the Commission is to permit Indiana to join with other states now having similar Commissions in the solution of problems not properly within the jurisdiction of the federal government and at the same time too large to be dealt with by states individually. These problems consist both of controversial questions and non-controversial matters of mutual benefit in achievement. In addition to its interstate activities, the Commission is charged with furthering cooperation between this state and the federal government and between this state and its subordinate units of government. It also serves as a medium of interchange of research and information within the field of inter-governmental cooperation.

The Tenth Amendment to the Constitution of the United States provides that the powers not delegated to the federal government, nor prohibited by it to the states, "are reserved to the states respectively, or to the people." Within that twilight zone in our constitutional structure, there has been conceived and developed a Council of State Governments as a joint governmental agency of cooperation created by the uniform legislative enactment of the state governments. At the present moment 44 states have become members in the Council. The other four states not yet members of the Council are cooperating with their neighbors, unofficially, through the Council. The Indiana Commission on Interstate Cooperation is designated, by statute, as the participating unit of Indiana in the Council.

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The Indiana Commission is composed of five Senators who are members of the Senate Committee on Interstate Cooperation, five members of the House of Representatives who are members of the House Committee on Interstate Cooperation, and five persons appointed by the Governor from among the administrative officials of the state. The legislative members of the Commission are appointed by the President of the Senate and Speaker of the House in like manner with the chairmen and members of other standing committees. In addition to the foregoing, the Governor, President of the Senate, and Speaker of the House are ex-officio members of the Commission.

Indiana was involved in one of the first, and perhaps the most classic, examples of interstate trade difficulties with its neighbors. The trouble arose over commerce in beer following relinquishment of control by the federal government to the states in the adoption of the Twenty-first Amendment. In 1935, Indiana had enacted a law providing for a limited number of "ports-of-entry" for the importation of out-of-state beer. While no higher tax was imposed upon "foreign" beer than that collected on local beer, a differential of \$1500.00 per year between the license fees for persons dealing in out-of-state beer in comparison to the fee for those dealing with local beer, was considered a discrimination by surrounding states. Michigan and Missouri enacted anti-discriminatory laws barring the importation of Indiana beer completely. Illinois, Ohio and Kentucky threatened to follow suit.

The situation assumed war-like proportions when Michigan adopted a regulation pursuant to its statute setting up an embargo against any further importation of Indiana beer into Michigan, effective as of March 14, 1938. Indiana breweries immediately sought to enjoin the enforcement of the Michigan regulation in the federal courts, but without success. The decision of a three-judge court of February 3, 1938, holding the Michigan action valid, was affirmed less than a year later by the United States Supreme Court. Following the adverse decision of the trial court, the Indiana Alcoholic Beverage Commission adopted a retaliatory regulation, also effective as of March 14, 1938, prohibiting the importation of Michigan beer, wine, or liquor into Indiana. What threatened to become a repetition of history analogous

to the incident of the famous "Whiskey Rebellion" was averted, after patient negotiation. On March 12, 1938, at a joint meeting of representatives of the two states held in Detroit, a "treaty" was adopted whereby Indiana liquor administrators agreed to remove the operation of "ports-of-entry" in so far as Michigan beer was concerned. Michigan, in turn, agreed to suspend the enforcement of its regulation against Indiana beer. The agreement was declared effective until March 30, 1939, a date purposely fixed beyond a period of time within which the legislatures of the two states might exercise an opportunity to change their respective laws. Similar agreements were afterwards entered into between Indiana and the other complaining states.

Upon the invitation of the Council of State Governments a special meeting of representatives of the Commission on Interstate Cooperation, together with taxation and excise officials of Indiana and surrounding states, was held at Chicago on December 13, 1938. Thereafter, discussions were continued between the Commissions of each state, and in its Report to the Governor and to the General Assembly of 1939, the Indiana Commission on Interstate Cooperation proposed "that if the Governor and the General Assembly determine it to be to the best interests of the state to repeal the importer provisions, this Commission can, by direct negotiation with the similar Commissions of the surrounding states, bring about a repeal of the discriminatory provisions in the acts of those states."

During the 1939 Session, the Indiana General Assembly enacted an amendment to the Liquor Control Act whereby the provisions concerning beer importers and "ports-of-entry" were repealed effective March 31, 1939. By this amendment, all wholesalers are now permitted to import out-of-state beer on their existing wholesalers' licenses and at no additional fee above that which they had been required to pay previously for the handling of domestic beer. Soon after the Indiana law was amended the Missouri legislature, at the request of Governor Stark, repealed its anti-discriminatory law which had been adopted in retaliation against the provisions of the Indiana act, and the late Governor Fitzgerald promptly recommended a repeal of the Michigan retaliatory measure.

The subject of interstate trade barriers was first called to the attention of the Council of State Governments by the

Indiana Commission on Interstate Cooperation at a Midwest Regional Assembly of the Council held at Chicago on November 21-22, 1938. A resolution proposed by the Indiana Commission was adopted whereby the ensuing General Assembly of the Council was requested to call a national conference for the study of ways and means of eliminating artificial barriers to the free flow of trade between the states. At the next General Assembly held in Washington in January, 1939, the delegates representing the Indiana Commission renewed their insistence for a national study conference, and the Assembly thereupon adopted the Indiana Resolution condemning the growth of trade barriers as "detrimental to the economic welfare of the country." The Council's secretariat was instructed to make a preliminary survey of the general problems involved and thereafter to call a national conference for their consideration.

A committee of recognized economists was organized by the Council, and a special research staff was employed to determine the extent, nature, and location of trade barrier laws. In cooperation with the Department of Agriculture and the Marketing Laws Survey, which agencies were then entering into extensive research in this field on behalf of the federal government, the Council sought to assemble, classify and tabulate all available data. The material thus developed was made available through the Commissions to all state officials including the members of all legislatures then in session. An additional committee composed of a number of editors of leading newspapers and magazines was enlisted. Through their recognition of the importance of the subject, the information was furnished the general public.

The National Conference on Trade Barriers was convened under the auspices of the Council of State Governments at Chicago on April 6-7, 1939. The sessions, broken down by subject-matter into working groups, were attended by 285 delegates from 35 states and the federal government. Existing barriers were discussed and consideration given to their elimination.

For the most part, it was found that typical trade barrier legislation was born of demands on the part of every kind of business and industry, including agriculture, for the restriction of business to local trade areas in the mistaken belief that such restrictions would cure the ailments of a

nation-wide depression. Such laws usually have been disguised as an exercise of the police power in the protection of the public health. In other instances, the power of the states in matters of taxation has been used as a screen for legislation amounting to subsidies to local business. Invariably, trade barriers have proved to be injurious in the end to the economic welfare of the areas expected to be benefited thereby. Acts of one state considered discriminatory by other states have been met promptly by so-called anti-discriminatory laws seeking to offset economic disadvantages.

The Indiana Commission on Interstate Cooperation is now at work in a manner similar to that by which the Midwest beer problem was solved, seeking among other things to remove the existing Eastern barriers to Indiana dairy products, the multiple license and weight restrictions on motor vehicles in interstate transit, and the "local preference" laws which effectively deny to our citizens the privilege of engaging in business in numerous states.

The 44 Commissions on Interstate Cooperation, since the national conference, have continued their efforts both directly with one another and through the Council of State Governments. Bills proposed to the various legislatures, enactment of which would tend to create additional barriers to interstate commerce, are being exposed and their defeat sought in the interest of a national economic harmony. Legislators, public officials generally, and the press are becoming trade-barrier conscious. And in response to a constant exposure under the spot-light of public information and opinion, existing barriers are being deleted from the laws of the states.

