Approved: 1-17-95
Date

MINUTES OF THE HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

The meeting was called to order by Chairperson Bob Miller at 3:30 p.m. on January 12, 1995 in Room 423-S of the Capitol.

All members were present except: Rep. Jo Ann Pottorff - excused
Rep. Broderick Henderson - excused
Rep. Lisa Benlon - excused

Committee staff present: Lynne Holt, Legislative Research Department
Bob Nugent, Revisor of Statutes
Bonnie Fritts, Committee Secretary

Conferees appearing before the committee: Carla Stovall, Attorney General
Mary Turkington, Kansas Motor Carriers Association

Others attending: See attached list

The meeting was called to order at 3:30 p.m. by the Chairperson Bob Miller. The minutes of January 11, 1995 were distributed and approved.

Kansas Attorney General Carla Stovall gave testimony regarding the case of:
OKLAHOMA CORPORATION COMMISION ET AL V. THE UNITED STATES OF AMERICA
(Attachment 1)

Mary Turkington addressed the committee and presented written testimony outlining background information on Regulatory Reform Developments (Attachment 2)

Meeting was adjourned at 4:25 p.m.

The next meeting is scheduled for January 17, 1995.

HOUSE ECONOMIC DEVELOPMENT COMMITTEE
GUEST LIST

DATE: 1-12

NAME	REPRESENTING
Jamie Clover Adams	KS Grain & Feed Assn
Erin J. Riemann	Rep. Freeborn's Intern
Matthew Holt	KCC / Student
Donald Snodgrass	Ks Ford Dealer Assn.
BOB ALDERSON	SPEC. ASST. A.G.
John Campbell	KS Atty Gen Off.
Ron Gaide	KCC
JACK TIERCE	ICCC
Mary Horsch	AG
Martha Neu	KMHA
George Hutchins	Kansas Motor Carriers Assn.
TOM WHITAKER	KS MOTOR CARRIERS ASSN.
MARY E. TURKINGTON	"
Carla Stovall	AG
Nancy Lindberg	AG office
Tracy Cook	A.P.
Rich McKee	KLA

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TESTIMONY OF ATTORNEY GENERAL
CARLA J. STOVALL

BEFORE THE
HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT

REGARDING THE CASE OF
OKLAHOMA CORPORATION COMMISSION ET AL

V.

THE UNITED STATES OF AMERICA

Mr. Chairman, members of the Committee:

I would like to thank this Committee for my first opportunity to testify before a committee of the Kansas Legislature in my new role as Attorney General of the State of Kansas. I hope to work closely with the Legislature. If my office can be of assistance to you in the performance of your duties, please never hesitate to call upon me.

I appear here today as the State's lawyer. I am seeking guidance from the people's representatives regarding the prosecution of the case of Oklahoma Corporation Commission et al v. the United States of America.

As you may know, in August of last year the President signed into law Section 601 of the Federal Aviation Administration Authorization Act of 1994 (Act), known as the F.A.A.A.A! The language of Section 601 of the Act reads: A state (or subdivision) may not enact or enforce a law...related to a price, route or service of any motor carrier. In addition, the various state laws dealing with safety regulations for and taxation of motor carriers may have been damaged.

HOUSE ECO. DEVO. COMMITTEE
1-12-95
ATTACHMENT 1

It is important to take a moment to lay out the chronology of the passage of this legislation. In June of 1994, the Senate approved the Airport and Airway Improvement Authorization Act. It had previously been passed by the House but with no preemption of air and motor carrier issues. The Senate amended the House version to preempt the regulation of all "intermodal all-cargo air carriers." An example of such carriers would be Federal Express and UPS.

There were NO Senate hearings on the amendments and in July, the House Surface Transportation Committee passed it with only one day of hearings.

The amended Act was then broadened by a conference committee to preempt regulation by states of ALL motor carriers. This became the infamous Section 601.

Section 601 substantially affects what the Kansas Legislature enacted in 1988 and 1989 after numerous legislative hearings and thorough review to ensure that the degree of economic motor carrier intrastate regulation best meets the needs of Kansas public and business interests. This Legislature has previously considered deregulation, but found that it would not adequately serve the best interests of Kansans and refused to remove itself from the business of regulating this industry.

Because of Section 601, Kansas (and 41 other states) loses its ability to ensure that common motor carrier rates are "just and reasonable". Kansas consumers will not have an administrative forum to determine the reasonableness of charges. No state protection from predatory pricing will exist because even state antitrust and unfair trade laws will be impotent. Shippers and consumers will lose the protection and certainty created by tariff rate filings. Rural communities in Kansas will lose their ability to ensure service is provided and maintained. We will lose our ability to ensure that common and contract carriers are financially sound and stable companies.

For these reasons, in December, the State of Kansas and the State of Michigan, along with the Kansas Corporation Commission and its Oklahoma and Montana equivalents, as well as several private organizations filed suit in the United States District Court for the Western District of Oklahoma. That suit was an attempt to at least delay the effects of the Act until such time as the States' policymakers had an opportunity to convene in session and reconsider the issue of motor carrier deregulation.

In the suit we alleged that the Act violates the Commerce Clause, the Tenth Amendment and the Guarantee Clause of the United States Constitution. Through the use of special procedures, a trial on the merits of the Act was held in late December.

Unfortunately, the federal district court disagreed with our position and has upheld the Act. The Judge found that Congress was justified in determining that the states, in the regulation of intrastate transportation, had imposed an unreasonable burden on commerce, impeded the free flow of trade, traffic and transportation, and placed an unreasonable cost on consumers. We disagree and in response, on January 9, 1995, in my first act as Attorney General, I joined in an Emergency Appeal of that decision to the 10th Circuit.

As the State's lawyer it is my duty to uphold state law whenever possible and I find the action of Congress more than distasteful; it is a willful abrogation of the rights of this Kansas Legislature and our Governor to protect its citizens and business.

There are benefits to deregulation--but that is not the issue in this case or the crux of my testimony. I take offense to Congress stripping Kansas of its ability to decide what is in the best interests of its people and disregarding our carefully thought out statutory and regulatory schemes. This is especially offensive when Congressional preemption occurs without full hearings.

All of my actions in this case have been designed to preserve the state's legal options. However, with the Legislature now in session and the Governor in office the time has come for me to consult with the representatives of the people of Kansas.

For the time being, I plan continue to prosecute the appeal of the district court decision. While appeals can always be dropped, they cannot always be filed. I will consult with the Legislature and the Governor on the merits of our case and the advisability of continuing the appellate process.

I look forward to working with you in the upcoming session.

STATEMENT

By The

KANSAS MOTOR CARRIERS ASSOCIATION

Outlining background information on Regulatory Reform Developments.

Presented to the House Economic Development Committee, Rep. Robert H. Miller, Chairman; Statehouse, Topeka, Thursday, January 12, 1995.

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

I am Mary E. Turkington, Executive Director of the Kansas Motor Carriers Association with offices in Topeka. I am here today along with Tom Whitaker, our Governmental Relations Director, representing our member-firms and the highway transportation industry.

I have been asked to provide your committee with some background information on the regulatory reforms involving the trucking industry.

Legislation fundamentally changing motor carrier state and Federal regulatory relationships was adopted by the Congress in August, 1994. The regulatory reform issue was brought to a head by Federal Express which did not wish to have its intrastate trucking movements involving air cargo regulated.

The 9th Circuit Court of Appeals of California ruled that the State of California could not regulate such intrastate trucking movements. The U.S. Supreme Court affirmed this circuit court decision and a catalyst was created for change that ultimately reached to the Congress.

HOUSE ECO. DEVO. COMMITTEE
1-12-95
ATTACHMENT 2

The U.S. House had passed its version of the Federal Aviation Authorization Act without any regulatory provisions. The Senate added an amendment to the House version which included broad federal preemption of intrastate rates, routes and service. The legislation had to be reconciled by a House-Senate Committee. In a "closed meeting" on August 4, 1994, the broad preemption amendment was adopted by the Conference Committee; the Committee's Conference Report was released Friday, August 5; the legislation, as H.R. 2739, was placed on the Senate's and House's Consent Calendars of Monday, August 8, 1994, and, as there was no objection, discussion or debate of the Aviation Administrative Appropriations Act of 1994, it was favorably passed by the U.S. Congress. The effective date for the broad regulatory changes was January 1, 1995.

Trucking companies operating interstate (between states), are affected by another major piece of federal legislation identified as the Trucking Industry Regulatory Reform Act of 1994 which emerged as H.R. 2178. This bill eliminates the requirement that motor common carriers file individually determined rates with the ICC (Interstate Commerce Commission). Carriers which participate in collectively-made (agency) tariffs still must maintain these tariffs on file with the ICC and must document that such interstate carriers participate in these rate tariffs, freight classifications and/or mileage guides if utilized.

The individually determined rates must be maintained by the interstate carrier in the carrier's office to show to a shipper on request but are NOT required to be filed with the ICC.

Without going into the complexities of the necessity to maintain proper contractural arrangements with shippers, one readily can determine that the trucking industry and the shippers we serve face monumental changes with the implementation of this federal legislation.

It should be noted that at both the intrastate and interstate levels, those transporting household goods and passengers will continue to be regulated just as they have been by state regulatory agencies and by the ICC.

It is important to remember that the major changes involving regulatory reform for affected intrastate carriers after January 1, 1995, include rates, routes and services.

Safety, insurance, financial responsibility, the size and weight of vehicles and the hazardous nature of cargoes, including routing requirements, will continue to be regulated.

The Kansas Corporation Commission also will retain rules involving

-- uniform cargo liability rules;

-- uniform bills of lading and receipts for property being transported;

-- uniform credit rules; and

-- antitrust immunity for joint line rates or routes, classifications and mileage guides.

Carriers can choose to be governed by one or more of the four permissible rules outlined here.

One requirement that does not change is the requirement that carriers comply with the re-registration of power equipment with public service commissions for the new year.

In Kansas, carriers who hold authority from the Interstate Commerce Commission will utilize the base state, Single State Insurance Registation program to re-register power units with the KCC.

Likewise, carriers who operate within the state, those who hold "exempt" interstate licenses from the KCC and private carriers, all will continue to reregister power equipment with the KCC. Regulatory reforms do not affect this requirement.

The Kansas Motor Carriers Association and the Kansas Corporation Commission have worked together to bring to the appropriate committees of the Legislature, statutory revisions which should be considered in light of these regulatory reforms. The proposed changes are intended to be as workable as possible, yet make sure that those operating on Kansas highways comply properly with safety, insurance and financial responsibility requirements.

It will not be "open season" for anyone to do anything in terms of truck transportation effective January 1, 1995. New carriers will be required to apply for a certificate to the Commission and to be "carriers of record" insofar as such safety, insurance and financial responsibility requirements are concerned.

The economic effect of such changes will be difficult to predict. For some carriers, especially intrastate carriers, the changes may be devastating. For others with major interstate operations, the changes may not be as challenging.

Kansas, as you may know, participated in a court action to determine whether Congress had the authority to preempt intrastate regulation. The U.S. District Court in Oklahoma City, on December 30, 1994, rejected arguments that the federal statute violated the Commerce Clause, the 10th Amendment, and the Guaranty Clause of the U.S. Constitution. Similar suits challenging the statute were to be heard in Charleston, West Virginia and in East St. Louis, Illinois.

The Kansas Motor Carriers Association expects to continue to work with its members and affected shippers to provide the quality transportation service that drives the economy of this state.

We will be pleased to respond to any questions. This brief summary of events may be helpful background to you as these regulatory reforms are implemented.

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