

**REPORT**

OF THE

**COMMISSIONER OF CORPORATIONS**

DECEMBER, 1904

DECEMBER 21, 1904.—Message and accompanying papers ordered printed  
and referred to Committee on Interstate and  
Foreign Commerce



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DEPARTMENT OF COMMERCE AND LABOR  
Document No. 27  
BUREAU OF CORPORATIONS

*To the Senate and House of Representatives:*

I transmit herewith the report of the Commissioner of Corporations covering the period from the organization of the Bureau to June 30, 1904.

THEODORE ROOSEVELT.

WHITE HOUSE, *December 21, 1904.*

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## LETTER OF TRANSMITTAL.

DEPARTMENT OF COMMERCE AND LABOR,  
OFFICE OF THE SECRETARY,  
*Washington, December 19, 1904.*

SIR: I have the honor to transmit herewith the first general report of the Commissioner of Corporations, covering the period from the organization of the Bureau to June 30, 1904.

Very respectfully,

V. H. METCALF,  
*Secretary.*

The PRESIDENT.

**REPORT**  
OF THE  
**COMMISSIONER OF CORPORATIONS**

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DEPARTMENT OF COMMERCE AND LABOR,  
BUREAU OF CORPORATIONS,  
*Washington, December 19, 1904.*

SIR: I have the honor to submit the first general report of the Commissioner of Corporations, covering the period from the organization of the Bureau to June 30, 1904.

The law under which the Bureau of Corporations was created is section 6 of the act of Congress establishing the Department of Commerce and Labor, approved February 14, 1903, reading as follows:

SEC. 6. That there shall be in the Department of Commerce and Labor a bureau to be called the Bureau of Corporations, and a Commissioner of Corporations who shall be the head of said bureau, to be appointed by the President, who shall receive a salary of five thousand dollars per annum. There shall also be in said bureau a deputy commissioner who shall receive a salary of three thousand five hundred dollars per annum, and who shall in the absence of the Commissioner act as, and perform the duties of, the Commissioner of Corporations, and who shall also perform such other duties as may be assigned to him by the Secretary of Commerce and Labor or by the said Commissioner. There shall also be in the said bureau a chief clerk and such special agents, clerks, and other employees as may be authorized by law.

The said Commissioner shall have power and authority to make, under the direction and control of the Secretary of Commerce and Labor, diligent investigation into the organization, conduct, and management of the business of any corporation, joint stock company or corporate combination engaged in commerce among the several States and with foreign nations excepting common carriers subject to "An Act to regulate commerce," approved February fourth, eighteen hundred and eighty-seven, and to gather such information and data as will enable the President of the United States to make recommendations to Congress for legislation for the regulation of such commerce, and to report such data to the President from time to time as he shall require; and the information so obtained or as much thereof as the President may direct shall be made public.

In order to accomplish the purposes declared in the foregoing part of this section, the said Commissioner shall have and exercise the same power and authority in respect to corporations, joint stock companies and combinations subject to the provisions hereof, as is conferred on the Interstate Commerce Commission in said "Act to regulate commerce" and the amendments thereto in respect to common carriers so far as the same may be applicable, including the right to subpoena and compel the attendance and testimony of witnesses and the production of documentary evidence and to administer oaths. All the requirements, obligations, liabilities, and immunities imposed or conferred by said "Act to regulate commerce" and by "An Act in relation to testimony before the Interstate Commerce Commission," and so forth, approved February eleventh, eighteen hundred and ninety-three, supplemental to said "Act to regulate commerce," shall also apply to all persons who may be subpoenaed to testify as witnesses or to produce documentary evidence in pursuance of the authority conferred by this section.

It shall also be the province and duty of said Bureau, under the direction of the Secretary of Commerce and Labor, to gather, compile, publish, and supply useful information concerning corporations doing business within the limits of the United States as shall engage in interstate commerce or in commerce between the United States and any foreign country, including corporations engaged in insurance, and to attend to such other duties as may be hereafter provided by law.

The Commissioner was nominated by the President on February 17, confirmed by the Senate on February 21, and took the oath of office on February 25, 1903, and the organization of the Bureau proceeded as rapidly as was consistent with the proper development of work in an entirely new field.

The growth of the Bureau is shown by the following statement, which gives the number of persons actually employed in its service and the total expenditures on account of the salaries, per diem, and traveling expenses of the employees from month to month from the beginning of the Bureau's history. This includes the salary of employees detailed from other bureaus or offices, and excludes salary of employees carried on the Bureau of Corporations roll but detailed for duty in other bureaus or offices, and hence represents the actual cost of all service rendered directly to the Bureau of Corporations.

NUMBER OF EMPLOYEES AND TOTAL SALARY AND EXPENSES, BUREAU OF CORPORATIONS, FROM THE ESTABLISHMENT OF THE BUREAU, FEBRUARY, 1903, TO JUNE 30, 1904, INCLUSIVE

Month.	Number of employees.	Expenditures.		
		Salaries.	Expenses.	Total.
1903.				
February.....	1	\$55.56		\$55.56
March.....	6	613.10		613.10
April.....	10	1,155.52		1,155.52
May.....	13	1,820.92		1,820.92
June.....	14	1,904.47		1,904.47
July.....	14	2,149.70	\$110.59	2,260.29
August.....	20	2,549.13	157.57	2,706.70
September.....	23	2,887.36	146.75	3,034.11
October.....	26	3,493.02	120.47	3,613.49
November.....	28	3,630.64	34.85	3,665.49
December.....	31	4,121.66	21.04	4,142.70
1904.				
January.....	31	4,377.20	3.10	4,380.30
February.....	33	4,044.48	19.25	4,063.73
March.....	38	5,053.71	17.00	5,070.71
April.....	49	5,701.25	1,439.35	7,140.60
May.....	58	6,361.72	3,405.55	9,767.27
June.....	64	7,115.97	3,063.03	10,179.00
Paid since June 30, 1904.....		93	424.36	425.29
Outstanding Oct. 31, 1904.....			72.45	72.45
Total.....		57,135.34	9,725.36	66,860.70
Less work on Department history.....		741.65		741.65
Total.....		56,393.69	9,725.36	66,119.05

From the establishment of the Bureau to June 30, 1904, other expenses were as follows:

Furniture (as per inventory June 30, 1904).....	\$5,472.72
Books on hand (as per inventory June 30, 1904).....	775.80
Supplies (in part estimated).....	3,512.48
Printing (in part estimated).....	823.40
Total.....	10,584.40

In order to show in full the actual cost of the operation of the Bureau, the items of rent, janitor and watchman service, telephone service, light and heat, should be added. As these expenses are borne by the Department out of general appropriations for that purpose, and no distribution thereof is made among the several bureaus and offices, these items can only be estimated, and for the purpose of this statement they are estimated at \$5,000.

We may, therefore, summarize as follows:

Salaries, traveling expenses, and per diem.....	\$66,119.05
Furniture, books, miscellaneous supplies, and printing.....	10,584.40
Rent, etc., as above estimated.....	5,000.00

Total expense of operation of Bureau of Corporations from  
February 25, 1903, to June 30, 1904..... 81,703.45

This statement of the cost of the Bureau has been made without regard to the appropriation drawn upon. Certain employees of other bureaus and of the Secretary's office have been detailed to this Bureau; the expenses of such details have been included in the above,

although not paid from appropriations specifically made for this Bureau. On the other hand, certain employees of this Bureau have been detailed to the Secretary's office and to other bureaus of the Department; and the expenses of such, although paid from appropriations for this Bureau, have not been included in the above. The object is to show the actual cost to the Government of the operation of the Bureau of Corporations. Under normal conditions—after the exigencies incident to the organization of the new Department have ceased—there will be no need for the exchange or use of details.

#### LIBRARY OF THE BUREAU.

The Bureau's library consists of the following books:

	Volume.
Law: Text-books, reports, and digests.....	416
State codes and sessions laws (including 132 pamphlet constitutions and laws).....	409
Statistical publications, chiefly United States public documents (including 62 unbound).....	229
Insurance publications, State laws, and reports (including 118 pamphlets).....	630
Reports of State officers, boards, and bureaus (including 59 pamphlets).....	256
Works on economics.....	22
Cases: Printed pleadings, etc. (pamphlets).....	20
Total.....	1,982

Only such books as may be termed "tools of trade" have been purchased. The Congressional Library is used for all books of casual reference or needed for special investigation.

#### THE PERSONNEL OF THE BUREAU.

Special care has been exercised in the selection of the employees of the Bureau, in order to obtain specially qualified and technically trained men. They have been chosen from the certifications of the United States Civil Service Commission, or by the approval of the Commission, or by transfer from other bureaus and Departments of the Government. The satisfactory results obtained prove the efficiency of the present administration of the civil-service act.

The routine administrative work of the Bureau has been organized in accordance with the most improved business methods, the purpose being to obtain the highest degree of efficiency, accuracy, and promptness in daily work, and at the same time to exercise strict business economy. Not only have the expenditures been within the appropriations, but the work is worth what it cost.

During the period of the organization of the Department of Commerce and Labor the Secretary was obliged to detail the Commissioner, the Deputy Commissioner, and various employees of the Bureau of Corporations upon purely departmental work. This necessity arose from the fact that the first appropriations were insufficient to meet the absolute needs of the Department.

The appropriations for the year ending June 30, 1905, are \$156,220.

The estimate for the year ending June 30, 1906, are \$236,420, being an increase of \$80,200, or about 51 per cent.

The request is made that the wording of the appropriation be changed so that there will be no statutory division of the sum appropriated among special agents, special attorneys, and special examiners. The need of this change cannot be too strongly urged. The work of the Bureau can not be conducted along fixed lines of employment for the reason that in one investigation legal work will predominate, and in another, financial or economic, and hence the specific character of employment should be left to the discretion of the Secretary and the Commissioner. As shown by experience, much work in a special investigation is temporary, the character of which can not be foreseen. A great advantage in the use of the appropriation as requested in the estimates is that field and office men can readily be exchanged in accordance with the needs of special investigations. It has been found that better results and greater economy are possible by requiring field officers to work up in the office the reports of their own investigations and examinations.

#### PURPOSE AND SCOPE OF ORGANIC LAW.

The first work of the Bureau was a thorough study of the purposes and scope of its organic law, the jurisdiction and powers of the Commissioner, and methods of procedure. Such study of necessity covered a wide range of legal research, including both Federal and State legislation and judicial decision.

The Bureau is in a measure an arm of the legislative branch of government, charged with the duty of obtaining information to which Congress is entitled on the subject of interstate and foreign commerce. It is placed under the executive branch of the government for the purpose of administration and continuity of action.

Congress, having the constitutional authority to legislate in regard to interstate and foreign commerce, has the power to obtain all information necessary to make such legislation adequate and appropriate. Congress has in this case created the Bureau of Corporations as a specific means of carrying out the purpose desired, prescribing the method of investigation by the Bureau and of transmission of the information obtained to Congress through the Executive.

A system of reports made through the President is obviously appropriate because of the necessity of voluminous and extensive investigations involving the private affairs of citizens. Such reports must needs be passed through some sifting process and presented to Congress in such form as to afford a basis for legislation, and with as great a degree of publicity of detail as may be consistent with the proper protection of private rights. It appears, therefore, that the means provided by Congress are constitutional and peculiarly appropriate for carrying

out the intricate, far-reaching, and delicate work that the proper execution of this constitutional power calls for.

The powers of the Bureau of Corporations are described largely by reference to those of the Interstate Commerce Commission. The chief difference between the two administrative bodies is that while information is collected by the Interstate Commerce Commission mainly for the purpose of *enforcing* a law, the information to be collected by the Bureau of Corporations is to be used for the purpose of *making* law—a more fundamental and primary corollary of the legislative function, more intimately connected with the constitutional power of regulating interstate commerce, and carrying with it therefore as great, if not greater, authority for the obtaining of information over the subject-matter in question.

That the end—the regulation of interstate commerce—is legitimate and within the scope of the Constitution, and that the means—the Bureau of Corporations and its powers—are appropriate, are adapted to that end, are not prohibited, and are consistent with the letter and spirit of the Constitution, is indisputable; and the creation of the Bureau of Corporations for the purpose specified and with the powers given in its organic act, is a constitutional exercise of the legislative power of Congress.

The jurisdiction of the Bureau, by the organic act, extends over all agencies, other than individuals, engaged in interstate and foreign commerce, except common carriers under the jurisdiction of the Interstate Commerce Commission, and is limited only by the decisions of the Supreme Court of the United States defining "interstate and foreign commerce." It is unwise, even were it possible, to attempt here to summarize or restate such definitions. From the earliest opinion of Chief Justice Marshall, i. e., "that commerce is intercourse," there has been a gradual development or elaboration of the definition in accordance with the growth and change of commercial conditions, until now practically all the great industries may be considered subject to Federal authority for certain purposes under the commerce clause of the Constitution.

#### WORK OF THE BUREAU.

The work of the Bureau falls naturally into the following divisions:

(a) *Special investigations* of particular corporations, joint stock companies, or corporate combinations engaged in interstate and foreign commerce. For this purpose the Commissioner is given power to compel the production of testimony.

(b) The collection and publication of *useful information* regarding corporations engaged in interstate and foreign commerce.

(c) *Insurance companies* are included specifically under the work of obtaining useful information; but because of the decisions of our courts

regarding insurance the question of the power of the Commissioner over insurance companies requires special consideration.

Federal control over insurance and the exercise over insurance corporations of the compulsory powers of the Commissioner rest upon the same legal basis, raising at the outset the question whether insurance is in any of its forms interstate commerce.

A long line of decisions of the Supreme Court of the United States, commencing with *Paul v. Virginia* (8 Wall., 168), established the legal proposition that insurance was not interstate commerce in any of its forms—fire, life, or marine—as presented to the court. This line of decisions has been further supported by the uniform holdings of State courts.

If this legal proposition is irrevocably settled, the powers of the Commissioner relative to insurance are purely of a statistical, voluntary, non-compulsory nature. He may collect, compile, and publish such information as may be voluntarily furnished to him, but he can not compel the production of such information, nor would he be justified in recommending any Federal legislation directed at Federal control of insurance. The rapid development of insurance business, its extent, the enormous amount of money and the diversity of interests involved, and the present business methods suggest that under existing conditions insurance is commerce, and may be subjected to Federal regulations through affirmative action by Congress. The whole question is receiving most careful consideration upon both legal and economic grounds.

(d) *Legal research*.—A most important branch of work is the determination of the entire legal situation applicable to the Bureau, to its powers, and to its present and future work, developing the same along the following lines:

1. Compiling and digesting court decisions applicable to the Bureau, to its powers of investigation, its legal status and the means by which it shall perform its functions, and to the great questions and problems which are before the Bureau.

2. Compiling and digesting Federal and State statute laws relating to the purposes of the Bureau.

3. Compiling and comparing the laws of foreign countries upon kindred subjects.

4. Compiling and digesting in summarized and available form facts showing the actual operation of such laws now in existence.

5. Preparing in outline such possible and desirable modifications of existing laws relating to the subject-matter of the Bureau's work as may be from time to time indicated by development of that work.

6. Determining the legal relations that would be established by the enactment of such possible modifications with especial reference to the effects thereof on State laws, and the inter-relation of Federal and State jurisdictions.



(e) *Economic and statistical work.*—In this work there will be the greatest possible use of all material available from other Government offices in order to avoid unnecessary duplication of effort, expense, and almost inevitable conflict in results. Statistics will be compiled and published only for the purpose of properly presenting the special problems with which the Bureau is dealing. The economic work will necessarily be of vital importance in preparing and presenting the results of special investigations, and in rightly interpreting the mass of information obtained.

#### POWERS OF THE COMMISSIONER.

The powers of the Bureau are vested in the Commissioner of Corporations; he is the head of the Bureau, has all the usual powers necessary for its administration, and upon him is conferred the authority for carrying out the purposes of the Bureau's creation.

The power of investigation and report is stated directly, but in general terms, in the organic act.

The details, exact extent, and machinery for exercising these general powers are established by reference in said act to the statutory powers of the Interstate Commerce Commission.

To determine fully the powers of the Commissioner it is necessary, therefore, to consider the powers of the Interstate Commerce Commission, with reference to their applicability to the character and purpose of the Bureau of Corporations.

From this it appears that the powers of the Commissioner are as follows:

Subject to the direction of the Secretary of Commerce and Labor, to investigate the organization, conduct, and management of corporations (other than common carriers) engaged in interstate commerce; to compel by subpoena the attendance of witnesses, and the production of books, papers, and documents for such purpose; to administer oaths; to obtain the aid of the Federal courts in the procuring of such testimony; to require reports from such corporations; to investigate the legal conditions applicable to such corporations, and the legal questions raised thereby; and to report to the President the information so acquired. The Commissioner may determine the form of procedure in investigations, subject to the qualification that hearings may not be in public.

The Commissioner has no judicial powers, nor can he make or enforce any orders against corporations or private individuals other than those directly necessitated in procuring information. He can impose no fines or penalties. Even within the scope of his duties, he must invoke the aid of a Federal court for the enforcement of his proper orders or requirements.

Many specific powers of the Interstate Commerce Commission, relating to (a) the issuance of orders for remedial action, (b) enforcement of such orders, (c) decisions on contests between individuals, (d) matters exclusively concerning railroads and common carriers, and (e) details as to composition, salary, and internal administration of the Commission, are clearly inapplicable to the character and purpose of the Bureau of Corporations, and may not be exercised by the Commissioner.

He can not make investigations, or procure or furnish information by means of his compulsory powers, for the purpose of enforcing penal provisions other than those contained in the organic act of the Bureau, nor can he furnish information so procured to private individuals for their personal use.

His compulsory investigatory powers are further limited by the rights of privacy of the citizen, which may not be invaded by inquiry except for a definite constitutional and legal object, and only such matters may be investigated as relate to and give information upon the objects of the Bureau and its work.

His entire compulsory powers of inquiry are further confined to the consideration of facts relating to corporations, joint stock companies, or corporate combinations.

A more general, though non-compulsory power is also conferred upon the Commissioner to collect, compile, and publish, under direction of the Secretary of Commerce and Labor, useful information concerning corporations in the United States engaging in interstate or foreign commerce, including those engaged in insurance.

He shall also perform such other duties as may hereafter be provided by law.

#### LEGAL WORK OF THE YEAR.

The objects toward which the legal work of the Bureau has been directed are as follows:

(1) To ascertain as fully as possible and present in available form the legal conditions under which corporate business is now being carried on, in so far as such conditions are peculiar to such corporate business.

(2) To ascertain and develop fully, from court decisions and otherwise, those constitutional powers and restrictions upon which present conditions are based, and also those which must necessarily be involved in any future legislation for the improvement of the present legal corporate conditions.

In pursuance of these general purposes, the legal work of the year has been as follows:

I. INVESTIGATION OF STATE AND TERRITORIAL CORPORATION LAWS  
AND RECORDS.

To determine the legal conditions of corporate business, it was necessary to obtain a complete record of the statute law governing the creation and operation of corporations, reduced to such shape that the statutory provision relating to a given topic, in any State, would be immediately available. An early undertaking, therefore, was a compilation of State and Territorial statute law relating to industrial corporations. The plan of this compilation differs in several particulars from the plan followed in other compilations of the same general character.

From the whole body of corporation law, the provisions relating to selected topics only were extracted; but the topics selected were intended to embrace every statutory provision that goes to make up all the *substantive* law of private corporations of the ordinary business or industrial type, and only such topics were omitted as relate to matters of practice and matters of form or detail. Thus, the heads under which the various provisions were collected are: "Structure and organization;" "Purposes and powers;" "Limitations and restrictions;" "Management;" "Amendments and changes;" "Rights and liabilities;" "Corporation and State;" "Intercorporate relations;" "Trusts and monopolies;" "Foreign corporations;" "General property tax," and "License tax." Under these general heads fall others, which are more specific, and these in turn embrace the particular topics selected (aggregating a total of 106). The various topics are numbered consecutively, and while the laws of each State are separately compiled, the same arrangement and enumeration is preserved in every case, in order to facilitate reference and comparison.

The following is the structural arrangement adopted by the Bureau:

*State and Territorial statute law relating to industrial corporations.*

— (Name of State).

ART. I.—STRUCTURE and ORGANIZATION.

SEC. A. *Charter.*

(1) Nature and contents.

SEC. B. *By-laws.*

(2) When adopted.

(3) By whom.

(4) Scope.

(5) Assent prescribed.

SEC. C. *Membership.*

(6) How constituted.

(7) Evidence of—when required.

ART. I.—STRUCTURE and ORGANIZATION—Continued.

SEC. D. *Promotion.*

(8) Promoters' powers and liabilities.

(9) Promoters' acts and engagements.

(10) Dummy corporators.

ART. II.—PURPOSES and POWERS.

SEC. A. *Purposes.*

(11) Provision.

SEC. B. *Powers.*

(12) Provision.

ART. III.—LIMITATIONS and RESTRICTIONS.

SEC. A. *Corporate existence.*

(13) Duration.

(14) Dissolution—Rights affected by.

(15) Forfeiture.

SEC. B. *Corporate indebtedness.*

(16) Provision.

SEC. C. *Corporate stock.*

(17) Amount authorized.

(18) Amount with which may begin business.

(19) Classes.

(20) Consideration.

(21) Payment.

(22) Subscription.

(23) Installments.

(24) Dividend.

(25) Transfer.

(26) Corporate lien.

(27) Increase.

(28) Decrease.

(29) Voting.

(30) Held by corporation.

ART. IV.—MANAGEMENT.

SEC. A. *In whom vested.*

(31) Provision.

(32) Receivership.

SEC. B. *Election of officers.*

(33) Provision.

SEC. C. *Meetings.*

(34) Of directors.

(35) Of stockholders.

ART. V.—AMENDMENTS and CHANGES in CHARTER.

SEC. A. *Changes authorized.*

(36) Provision.

(37) Assent prescribed.

(38) Certificate of amendment.

ART. VI.—RIGHTS and LIABILITIES.

SEC. A. *Officers and directors.*

(39) Rights.

(40) Duties.

(41) Limitations or prohibitions.

(42) Liabilities.

## ART. VI.—RIGHTS and LIABILITIES—Continued.

SEC. B. *Stockholders.*

- (43) Rights.
- (44) Limitations or prohibitions.
- (45) Liabilities.

SEC. C. *Conditions of liability.*

- (46) Provision.

SEC. D. *Employees.*

- (47) Provision.

## ART. VII.—CORPORATION AND STATE.

SEC. A. *General provisions.*

- (48) Registered office—Agent.
- (49) Books—Inspection.
- (50) Receivership.

SEC. B. *Repeal or amendment of corporate law.*

- (51) Provision.

SEC. C. *Constitutional provisions.*

- (52) Creation by general or special act.
- (53) State aid.
- (54) Holdings of real estate.
- (55) Rights and privileges.
- (56) Limitations or restrictions.
- (57) Trusts and monopolies.
- (58) Taxation.
- (59) Foreign corporations.
- (60) Constitutional amendments.
- (61) Full text.

SEC. D. *State records of corporations—Reports, and returns.*

- (62) Tabulated sheet.

## ART. VIII.—INTERCORPORATE RELATIONS.

SEC. A. *Merger or consolidation.*

- (63) Provision.

SEC. B. *Holdings in other corporations.*

- (64) Provision.

SEC. C. *Sale of franchise.*

- (65) Provision.
- (66) Minority rights.

SEC. D. *Reorganization, succession, or extension.*

- (67) Provision.

## ART. IX.—TRUSTS AND MONOPOLIES.

SEC. A. *Acts forbidden.*

- (68) Provision.
- (69) Enforcement of laws.

SEC. B. *Penalties.*

- (70) Provision.

## ART. X.—FOREIGN CORPORATIONS.

SEC. A. *Conditions of admission.*

- (71) Filing charters.
- (72) Filing statement.
- (73) Appointment of attorney.
- (74) Express powers or restrictions.
- (75) Reports or returns.

SEC. B. *Taxation.*

- (76) See Art. XI.

## ART. XI.—PART I. GENERAL PROPERTY TAX.

SEC. A. *Real estate.*

- (77) Nature.
- (78) Application.
- (79) Assessment.
- (80) Purposes.

SEC. B. *Personal property—Tangible and intangible.*

- (81) Nature.
- (82) Application.
- (83) Assessment.
- (84) Purposes.

SEC. C. *Personal property—Tangible only.*

- (85) Nature.
- (86) Application.
- (87) Assessment.
- (88) Purposes.

SEC. D. *Corporate property as represented by stock or shares.*

- (89) Nature.
- (90) Determination.
- (91) Application.
- (92) Collection.
- (93) Distribution.

SEC. E. *Corporate bonds.*

- (94) Provision.

SEC. F. *Exemptions.*

- (95) Provision.

## ART. XI.—PART II. LICENSE TAX.

SEC. A. *Charter fee.*

- (96) Domestic.
- (97) Foreign.

SEC. B. *Franchise tax.*

- (98) Nature.
- (99) Determination.
- (100) Application.
- (101) Collection.
- (102) Distribution.

SEC. C. *Occupation tax.*

- (103) Nature.
- (104) Application.
- (105) Purposes.

SEC. D. *Exemptions.*

- (106) Provision.

## CORPORATE RECORDS.

The important matters of corporate reports and returns received a special supplementary treatment. The several instruments, beginning with the charter, or certificate of incorporation, which, under the laws of the State, go to make up what may be termed the State or official record of corporations, domestic or foreign, were set down in order, and, in connection with each document listed, notes in tabulated form

were made showing when and where the same is filed or recorded, and its contents, as required by law. An example of such table follows:

State records of corporations.

(Name of State.)

Domestic.				Foreign.		
Document filed.	Where filed.	When filed.	Contents.	Where filed.	When filed.	Contents.
Charter, certificate, articles.	Secretary of state.	Time of incorporation.	Name; object; capital stock; number of shares; location of principal office; duration. (Statute cited.)	Secretary of state.	Before commencing business.	Copy of charter and statement of proportion of capital stock represented in State and name and address of agent; also to report changes in the same. (Statute cited.)
Certificate of organization.	Secretary of state.	Before proceeding to do business.	Copy of statutory notice for meeting for organization; copy of subscription list; names of directors; terms of office. (Statute cited.)			
Certificate of organization.	Recorder of deeds in county where principal office is located.	Before proceeding to do business.	Copy of all papers hitherto filed with secretary of state. (Statute cited.)			
Statement of real estate.	Secretary of state and county recorder.	Annually before Dec. 21.	Description of all real estate acquired as security for debts, etc. (Statute cited.)			
Certificate of dissolution.	Recorder of deeds and secretary of state.	With secretary of state within 3 months after agreeing to dissolve.	Copy of record of all proceedings; reciting adoption of resolution for dissolution; showing debts to have been paid and assets distributed. (Statute cited.)			
Certificate of amendment.	Secretary of state and recorder of deeds.	Before given effect.	Nature of change and certificate of two-thirds vote; change of name; place of business; object; increase or decrease of stock; increase or decrease of directors; consolidation. (Statute cited.)			
Annual report.	Secretary of state.	Annually in February.	Location of principal office in State; names and residences of officers and expiration of terms of office; whether pursuing active business and kind of business. (Statute cited.)			

State records of corporations—Continued.

Domestic.				Foreign.		
Document filed.	Where filed.	When filed.	Contents.	Where filed.	When filed.	Contents.
Returns for taxation.	To assessor or who returns same to the county clerk; the latter forwards it to State auditor.	Annually in April or May.	Name; location; amount of capital authorized; number of shares; amount of capital stock paid up; market value or actual value; indebtedness; assessed valuation of all tangible property. (Statute cited.)	Assessor...	Annually in April or May.	Foreign corporations make return of tangible property in State in same manner as individuals. (Statute cited.)

CORPORATE TAXATION

A similar treatment was given to the subject of taxation, and a similar table prepared for each State with regard to corporate taxes and tax records. This table is designed to show, in briefest form, the entire scheme of corporate taxation in force in the State, together with the nature, contents, and custody of all records or returns required for purposes of taxation. An example of such table follows:

Corporation taxes and tax records.

(Name of State.)

A. Subject taxed.	B. Purpose.	C. Where listed, returned, recorded.	D. Nature of record.	E. Corporations affected.	F. Remarks.
1. Real estate.	State and local.	Where located.	List filed with assessor.	Domestic, foreign.	Valuation every fourth year (1903), at one-fifth fair value.
2. Personality.	do.	County, town, or district of principal place of business.	do.	do.	Tangible property only, except in making newspaper, coal-mining, and stock-breeding companies. These are assessed on tangible and intangible values, including franchise and tax on corporate excess. On one-fifth fair value.
3. Stock per se (taxed to the corporation).	do.	do.	Detailed return to assessor, who forwards to county clerk, who forwards to State auditor.	Domestic.	On one-fifth of fair value of corporate excess. This tax does not apply to manufacturing, newspaper, coal-mining, and stock-breeding companies.
4. (Taxed to holders.) (Individual tax list here.)	do.	Where holder resides.	List filed with assessor.	Foreign.	Foreign stock taxed under 2.
5. Bonds.	do.	do.	do.	Domestic, foreign.	Taxed under 2.
6. Initial charter fee or license.	State.	Secretary of State.	Application for charter.	do.	Domestic: Graded on authorized stock. Foreign: Graded on proportion of stock represented by property and business in State.
7. Franchise.					None.
8. Occupation.					None.

9. General remarks: The corporate excess return is made to assessor, who returns it to county clerk, who sends it to State auditor, who lays it before State board of equalization, who thereupon values such corporate excess and certifies same to local tax officers. Telegraph companies are taxed on corporate excess, but return to State auditor.

Thus far compilations and tabulations of the character described have been made for the following States and Territories:

Arizona.	Maine.	North Dakota.
Arkansas.	Maryland.	North Carolina.
Connecticut.	Massachusetts.	Oklahoma.
Delaware.	Michigan.	Rhode Island.
District of Columbia.	Minnesota.	South Dakota.
Georgia.	Mississippi.	Texas.
Idaho.	Missouri.	Utah.
Illinois.	Montana.	Vermont.
Kansas.	Nebraska.	Washington.
Kentucky.	Nevada.	Wisconsin.
Louisiana.	New Jersey.	

#### FIELD INVESTIGATIONS.

The foregoing outline describes the work of the Bureau in collecting, digesting, and tabulating the statute law relating to corporations.

But to understand fully existing corporate conditions, it was necessary also to consider the actual enforcement of this statute law, as illustrated by the practical operation of the corporation laws of given States.

Accordingly early in the year an investigation was begun, and has since been carried on, by special agents of the Bureau of Corporations at the several State and Territorial capitals. The specific objects of this investigation, which have been in a large measure achieved, were as follows:

First. The collection of every item of information concerning the more important corporations, joint stock companies, and corporate combinations presumptively engaged in interstate or foreign commerce, chartered by a given State, and disclosed by the official records of the State.

Second. The ascertainment of the actual workings and practical efficiency of the State laws, so far as they are designed to secure an official record showing the character, organization, membership, control, capitalization, property, or operations of corporations within the State.

Third. To show the exact nature and extent of the information concerning corporations to be had from official sources.

Fourth. The general course of incorporation in the State, and all legislation affecting the same; also the general policy of the State toward corporations, domestic and foreign, as exemplified by its laws and the manner of their enforcement; and further, such special or unusual laws, if any, regarding corporations, as might be found in operation.

#### EXAMINATION OF RECORDS.

The official record of any given corporation will be found usually to consist of any one or more of the following documents, filed or recorded with the proper officer of the State:

1. Articles of association, certificate of incorporation, charter.
2. Certificate of change—
  - in the name;
  - statutory agent or attorney;
  - location of statutory office;
  - location of place of business.
3. Certificate of amendment—
  - relating to classes of stock or par value of shares;
  - increase or decrease of stock;
  - nature and amount of indebtedness;
  - number, powers, or duties of directors or officers;
  - objects, purposes, or business;
  - charter provisions or powers in other particulars.
4. Certificate of sale or transfer—
  - either voluntary, by agreement, or consent;
  - or involuntary, by foreclosure, forfeiture, or otherwise;
  - of franchises;
  - of property.
5. Certificate of merger or consolidation.
6. Certificates, miscellaneous—
  - showing issue of corporate stock;
  - payment of capital stock;
  - creation or increase of indebtedness;
  - appointment of statutory agent or attorney;
  - location of principal office or place of business;
  - acceptance of statutes and constitution;
  - renewal or extension of charter rights;
  - dissolution or surrender of charter.
7. Reports or returns, general—
  - to secretary of state;
  - other State officers.
8. Reports or returns, for purposes of taxation—
  - to State officers;
  - county officers;
  - municipal officers.

The agent was instructed to examine the laws of the State to which he was assigned, and note all provisions relating to the form, contents, and custody of such of the above-mentioned documents as might be required by that State, and then, with regard to the principal corporations chosen for investigation, to examine every paper and document, filed or recorded, concerning each corporation separately, taking up each paper in chronological order, noting the date of filing and making an abstract of its contents under appropriate heads. By this means all the information relating to each corporation examined disclosed by the official record of the State was collected, and in such form as to exhibit the force and effect of the State laws in actual practice.

## SPECIFIC CORPORATIONS EXAMINED.

For every State visited a list of corporations organized therein was prepared and furnished to the agent for examination. This list was designed to include, so far as could be ascertained in advance, all the more important corporations organized in the State and engaged in interstate or foreign commerce, typical either of the State's industries or laws. Common carriers subject to the jurisdiction of the Interstate Commerce Commission were not embraced in the investigation: Public-service corporations, so called, trust companies, and banks were considered only incidentally, chiefly with regard to matters of taxation. The corporations thus selected, for all the States visited, whose official records have been examined and abstracted, number over 1,500, and include the larger part of the more important industrial and commercial corporations, joint stock companies, and corporate combinations in the United States.

## CORPORATE TAXATION.

That part of the investigation devoted to the matter of corporate taxation was made as thorough and exhaustive as the subject allowed. It was designed to secure the fullest possible information concerning each of the various systems of taxation in use in the several States and Territories, so far as corporations, both domestic and foreign, were affected thereby. It comprehended a careful compilation of the tax laws and a study of their actual operations in each State, as a whole, and in its various political and territorial divisions. The agents of the Bureau were instructed to obtain copies of reports or returns of every kind required of corporations for the purposes of taxation, both State and local, and copies of tax lists, levies, appraisals, receipts, certifications, or other documents forming part of the machinery used in the laying and collection of taxes.

These directions have been carefully followed, and the Bureau is in possession of a complete set of such papers from every State visited. The amount of revenue derived from corporate taxation in the State or Territory, the sources of such revenue, and the amount received from each source were also ascertained. In every State or Territory visited the exact character and extent of the information to be had from any statements, reports, or returns of some of the more important of such corporations, particularly those required for the purposes of taxation, were copied or abstracted. In addition to this, a complete list of foreign corporations admitted to the State to do business was prepared, showing the name, capital stock, and home State of each corporation listed. These lists are valuable in this, that they will aid the Bureau in discovering what corporations are engaged in interstate commerce, and, therefore, within the jurisdiction of the Bureau of Corporations.

The material, therefore, collected from each State visited in the course of the investigation consists of—

First. Abstracts of the records of specific domestic corporations.

Second. Abstracts of the records of specific foreign corporations.

Third. List of foreign corporations admitted to the State to do business.

Fourth. Official forms of all corporate documents required or permitted to be filed.

Fifth. Official publications of every kind dealing with corporations.

Sixth. Transcripts of all records or returns used in connection with corporate taxation, taken from typical originals.

Seventh. A special report made by the agent, covering every feature of the work in detail, and containing, among other things, an account of the general course of incorporation in the State, an account of the practical effect and operation of the various statutes in force, and an account of the system of taxation, general and local, in its actual operation.

## STATES VISITED.

Beginning with those States whose laws are most frequently resorted to by promoters of corporate enterprises, the following States and Territories have been visited in the course of the investigation above described:

Arizona.	Kentucky.	Ohio.
California.	Maine.	Pennsylvania.
Colorado.	Massachusetts.	Rhode Island.
Connecticut.	Michigan.	South Dakota.
Delaware.	Minnesota.	Texas.
Illinois.	Missouri.	West Virginia.
Indiana.	Montana.	Wisconsin.
Iowa.	New Jersey.	
Kansas.	New York.	

## II. CONSIDERATION OF CONSTITUTIONAL POWERS AND RESTRICTIONS.

With this end in view the attorneys of the Bureau have made exhaustive examination and research of judicial decisions bearing upon such constitutional questions, and have prepared a large number of memoranda thereon. The more important of the subjects thus treated are as follows:

## 1. POWERS OF THE BUREAU.

Province and duty of the Bureau of Corporations, and the power and authority of the Commissioner.

Procedure by the Commissioner of Corporations to compel attendance of witnesses and the production of documentary evidence.

Analysis of decisions of the United States Supreme Court in cases involving provisions of section 12 of the interstate commerce act: *Interstate Commerce Commission v. Brimson* (154 U. S. 447); *Brown v. Walker* (161 U. S., 591); and *Interstate Commerce Commission v. Baird* (194 U. S., 25), all relative to the power to compel attendance of witnesses.

Examination and annotation of the interstate commerce act, section 12, and an act in relation to testimony, etc., relative to the power therein given to compel attendance of witnesses.

## 2. INTERSTATE COMMERCE.

Judicial definitions of interstate commerce; examination of the question, What is interstate commerce, as determined by the courts.

Memorandum showing corporations subject to provisions of act creating Bureau of Corporations.

Digest of cases reported in Interstate Commerce Commission reports on points relating to the work of the Bureau.

Cases showing the relation between commerce and production or manufacture.

Power of Congress as to foreign commerce.

Prohibitions and restrictions of commerce, as exemplified by Federal statutes, applying and decisions upholding these powers.

Statutes actually prohibiting commerce.

## 3. UNITED STATES CORPORATIONS.

The power of Congress to create corporations.

The power of Congress to create corporations, and the right of the States to tax national corporations.

The power of Congress to create corporations engaged in foreign and interstate commerce, and to regulate all corporations so engaged.

Rights of national corporations in the States: Manufacturing corporations.

Digest of national-bank cases in United States and Federal reports (omitting tax cases).

Power of Congress to grant to its corporations the right of eminent domain.

Digest of cases of Federal taxation and State-bank issues.

National regulation of interstate commerce, based upon a license system.

## 4. STATE POWERS IN RELATION TO INTERSTATE COMMERCE AND UNITED STATES CORPORATIONS.

State taxation and regulation of corporations: National banks, railroad companies, and telegraph companies.

State control of interstate commerce by stipulations in charters.

State regulation of foreign corporations.

Maximum limits of the police powers of the States in connection with interstate commerce.

Abstract of United States Supreme Court decisions involving question of State taxation of corporations engaged in foreign and interstate commerce, with digest.

State's right of taxation of corporations engaged in interstate and foreign commerce; how affected by Federal organization, and control of such corporations.

State taxation of franchises of corporations engaged in interstate commerce.

State control of interstate commerce and corporations engaged therein.

Delegation to the several States of power to regulate commerce.

## 5. FOREIGN CORPORATION LAW.

Origin, organization, powers, and duties of Board of Trade of England.

Management and control of corporations and organizations: England and the United States.

English companies' acts: Topical analysis, with schedules and tables; orders and rules for winding up companies.

## DIGEST OF "ANTI-TRUST" LEGISLATION.

The Bureau has considered carefully and at length the various Federal and State statutes dealing with illegal industrial combinations, the so-called "anti-trust" laws, and has prepared for publication a volume upon this subject.

Summarized briefly, this publication will contain the following subject-matter:

A general survey of Federal and State "anti-trust" laws, with especial reference to their historical growth and operation.

Tables of "anti-trust" laws, showing in tabular and condensed form, so as to be readily available and easily comparable, the provisions of such laws, including the sectional distribution of State laws; Federal decisions under the Sherman anti-trust act, and cases arising in Federal and State courts under State "anti-trust" laws.

A detailed description of Federal and State "anti-trust" legislation by States, with a discussion of their operation and effect.

A compilation in full of Federal and State "anti-trust" laws.

The Sherman anti-trust act annotated and discussed.

Digest of cases arising under the Sherman anti-trust act.

A digest and discussion of cases involving common-law principles as to combinations in restraint of trade.

Federal and State laws against conspiracy.

A bibliography of the literature upon this entire subject.

## ECONOMIC INVESTIGATIONS.

Prior to the beginning, in March, 1904, of the investigation of the meat-packing industry, the Commissioner did not undertake to secure information regarding corporations and industrial combinations by addressing inquiries directly to them. It was considered necessary to lay a foundation on which such direct investigations could be intelligently and effectively conducted. With this object the Bureau has aimed to compile from sources already existing all available information regarding certain leading combinations, and to analyze carefully the material so gathered. In this way it has been possible to form preliminary judgments regarding the economic and financial practices and effects of the combinations investigated, and to determine the lines of further original inquiry, both with respect to the combinations studied in this special manner and, more broadly, with respect to combinations in general.

Digests of information of the character described have already been prepared, or are in course of preparation, concerning several cor-

porations and combinations. The general scope of these digests is shown in the condensed outline below. This outline is followed generally in each investigation, with such modifications as the special nature of the material may dictate.

#### OUTLINE FOR DIGESTS OF INFORMATION.

##### Organization:

Formal description of present corporation or combination—State of incorporation, charter, form of organization, nature of business, officers, and directors. History of organization, constituent or antecedent corporations, etc.

##### Capitalization:

Formal statement of amount of securities, dividends, and market value of shares.

History of promotion and capitalization—basis of issue of securities, profits of promoters, etc.

Capitalization in relation to tangible value and earning capacity of plants.

##### Financial reports of the corporation.

##### Control of plants and production—competition:

History and general description of concerns and plants controlled.

Control of output. Character and effectiveness of competition.

Restriction of output.

Competitive methods—local price cutting, railroad discriminations, etc.

##### Prices and cost of production:

Prices—statistics and analysis; comparison with raw material and by-products; effect of combinations and of other influences.

Cost of production and profits.

Economies effected by combination.

##### Tariff, exports and imports:

Description of present and earlier duties.

Imports and exports.

Production, costs, and productive conditions in foreign countries.

Tariff policy of foreign countries.

Comparative foreign and domestic prices.

Export prices of American products.

##### Labor conditions:

On the basis of the general study of available information concerning their business, preliminary outlines of inquiries to be addressed directly to the companies have been prepared.

In addition to these more extended investigations many briefer reports and memoranda have been prepared regarding individual corporations, or regarding methods of investigation, sources of information, and the like.

#### INVESTIGATION OF BEEF INDUSTRY.

On March 18, 1904, a resolution was passed by the House of Representatives, directing the Secretary of Commerce and Labor to investigate the alleged beef combination. The Secretary of Commerce and Labor directed the Bureau of Corporations to conduct the inquiry called for in the resolution. An extended special report on this subject will shortly be submitted.

Special agents, with clerical assistants, have been constantly in the field since April. They have secured comprehensive statistics, chiefly relating to the prices of cattle and of beef, from the records of all the companies in the alleged combination, and also from independent packers, commission men, retail dealers, and other sources. They have interviewed a large number of independent packers, commission men, cattle raisers, meat dealers, and other persons, with a view to ascertaining facts and opinions relating to the existence of a combination, the movements of prices, the causes of such movements, and the general conditions of the cattle and beef industry.

#### THE INSURANCE WORK OF THE YEAR.

In the last paragraph of section 6 of the act there is included a clause in which a special direction is contained covering the question of insurance. A careful compilation of the insurance laws of the various States is being made, based upon a uniform outline. For this purpose the following outline was prepared. Under it the laws relating to insurance in each State are being compiled, and a given topic in insurance can be readily compared for every State by reason of the arrangement of the plan under which each is compiled.

*General outline adapted to all of the States, covering the important provisions relating to insurance legislation.*

#### ARTICLE I.

#### SUPERVISION.

Index No.	I. In whom reposed.
1	(a) Official title.
2	(b) Qualifications.
3	(c) How selected.
4	(d) Term of office.
5	(e) Compensation.
6	(f) Bond.
7	(g) Seal of office.
8	(h) Office force and duties.
9	II. Expense of.
	(a) How defrayed.
	III. Powers and duties of commissioner.
	(a) Certificate of authority.
10	(1) To agents.
11	(2) To companies.
12	(3) Revocation of.
	(b) Examination of companies.
13	(1) Scope of.
14	(2) When made.
15	(3) Publication of.
16	(4) Expense of.
17	(5) Penalty for refusal to submit to.



Index No. III: Powers and duties of commissioner—Continued.

18 (c) Fees, taxes, and charges.

19 (d) Statements of companies, blank forms for.

20 (1) To prescribe.

21 (2) To furnish.

22 (e) Report of commissioner.

23 (1) To whom and when made.

24 (2) Contents of.

25 (f) Proceedings against companies.

ARTICLE II.

PROVISIONS APPLICABLE TO ALL COMPANIES.

24 I. Advertisements, requirements as to.

25 II. Agent.

26 (a) Definition of.

27 (b) Embezzlement by.

28 (c) Personal liability of.

29 (d) Resident agent law.

30 III. Capital.

31 (a) Amount of.

32 (b) Investment of.

33 (c) Impairment of.

34 IV. Contract of insurance defined.

35 V. Corporate name and location.

36 VI. Deposits.

37 (a) Amount of.

38 (b) Investment of.

39 (c) With whom made.

40 (d) Withdrawal of.

41 VII. Insurable interest.

42 VIII. Limit of single risk.

43 IX. Misrepresentation and fraud.

44 X. Real property, restrictions as to holding.

45 XI. Reinsurance, requirements as to.

46 XII. Emergency, reinsurance reserve, or guaranty fund, and the valuation of policies.

47 XIII. Restrictions as to engaging in any business other than insurance.

48 XIV. Service of process.

49 XV. Statements and reports by companies.

50 (a) With whom and when filed.

51 (b) Contents of.

52 (c) Publication of.

53 XVI. Suits, limitation of time of instituting.

54 XVII. Taxation.

55 XVIII. General penalties.

ARTICLE III.

PROVISIONS APPLICABLE TO FOREIGN COMPANIES.

52 I. Admission of, requirements as to.

53 (a) Capital.

54 (b) Deposits.

55 (c) Documents to be filed with the commissioner.

56 (d) Appointment of attorney.

57 (e) Restriction as to removal of suits.

58 (f) Other requirements.

ARTICLE IV.

PROVISIONS APPLICABLE TO DOMESTIC COMPANIES

Index No.

58 I. Organization and incorporation.

59 II. Subject to general pertinent incorporation law.

60 III. Dividends, or distribution of surplus.

61 IV. Consolidation of.

62 V. Personal liabilities of members, stockholders, directors, trustees, or officers.

63 VI. Insolvency and receiverships.

ARTICLE V.

PROVISIONS APPLICABLE TO FIRE AND MARINE INSURANCE COMPANIES.

64 I. Definitions of, or limitations as to business.

65 II. Anti-coinsurance.

66 III. Anti-compact or anti-trust.

67 IV. Cancellation of policy.

68 (a) Prohibited without notice.

69 (b) Premiums to be returned.

70 V. Duration of policy, limitation as to.

71 VI. Fire, notification in case of.

72 VII. Insurance in unauthorized companies.

73 VIII. Policy must designate the kind of company.

74 IX. Policy to contain conditions in full.

75 X. Standard policy.

76 XI. Valued policy law.

ARTICLE V (A).

PROVISIONS APPLICABLE TO LLOYD'S COMPANIES.

77 I. Definitions of, or limitations as to business.

78 II. Application, copy of, to be furnished applicants.

79 III. Beneficiary's exemption.

80 IV. Change of beneficiary.

81 V. Discriminations prohibited.

82 (a) Anti-rebate.

83 (b) Against negroes.

84 (c) Other discriminations.

85 VI. Forfeiture of policies without notice.

86 VII. Incontestibility of policies.

87 VIII. Medical examination, requirements as to.

88 IX. Minimum premium to be charged.

89 X. Registered policies and annuity bonds, requirements as to.

90 XI. Surrender value of lapsed or forfeited policies.

ARTICLE VI (A).

PROVISIONS APPLICABLE TO ASSESSMENT LIFE COMPANIES.

90 I. Definition of, or limitations as to business.

91 II. Designation of principal office.

92 III. Exemption of certain societies.

93 IV. Age limit.

94 V. Notice of assessment.

95 VI. Policy to state maximum amount.

## ARTICLE VI (b).

## PROVISIONS APPLICABLE TO FRATERNAL BENEFICIARY SOCIETIES.

- Index No. 96 I. Definition of, or limitations as to business.  
 97 II. Age limit.  
 98 III. Constitution and by-laws.  
 IV. Exemptions.  
 99 (a) From general insurance law.  
 100 (b) Of certain societies.  
 101 V. Payments of benefits, endowments, etc., regulation as to.

## ARTICLE VII

## SPECIAL LAWS:

- 102 I. Anti-coinsurance.  
 103 II. Anti-compact, or anti-trust.  
 104 III. Anti-rebate.  
 105 IV. Fire marshal.  
 106 V. Reciprocal or retaliatory.  
 107 VI. Resident agents.  
 108 VII. Standard policy.  
 109 VIII. Valued policy.

## ARTICLE VIII.

## SCHEDULES.

- 110 I. Schedule showing the amount of capital, deposits, and the date on which the annual reports are required.  
 111 II. Schedule showing the amount of fees, taxes, and charges required.

Under this plan compilations have been made of the laws of the following States:

Connecticut.	Massachusetts.	New York.
District of Columbia.	Michigan.	Ohio.
Florida.	New Hampshire.	Oklahoma.
Kansas.		

Letters in the following form were sent to the commissioners of insurance, or other insurance officials, of the several States:

Under the provisions of the act of Congress establishing the Department of Commerce and Labor—a copy of which is herewith inclosed—it is the duty of the Bureau of Corporations to gather, compile, publish, and supply useful information concerning certain corporations, specific mention being made of corporations engaged in insurance.

In pursuance of these requirements it is desired to obtain certain information from the constituted authorities of the several States and Territories, and you are requested to supply the following:

- (1) In what official board or commission is reposed the supervision and regulation of insurance in the State of \_\_\_\_\_?
- (2) What are the powers and duties of said official or body?
- (3) What distinctions are made between the several kinds of insurance in regard to the duties and obligations of the companies writing the same and their supervision and regulation by the State?

(4) What distinctions are made between foreign and domestic companies, respecting fees, taxes, and regulations?

(5) Copies of existing statutory enactments relating to the organization, conduct, management, and requirements of insurance corporations and the supervision and regulation of the same by the State.

(6) Publications of the State containing the reports or returns made by or regarding such corporations, and copies of the blank forms used; or, if there are no such publications, what is required of such corporations respecting reports or returns.

(7) A list of insurance companies, foreign and domestic, within the State, giving the name, location, and character of each, and the officer to whom correspondence should be addressed.

(8) Information is requested and reference thereto is desired, if there are any of the following insurance laws in force in the State of \_\_\_\_\_: Valued policy laws, anti-compact or anti-trust laws, standard policy laws, resident agent laws, retaliation or reciprocal laws.

It is further desired to obtain for the Bureau of Corporations all the information respecting the subject of insurance as dealt with in the State of \_\_\_\_\_ that may be in the possession of the various State officers and which may be properly afforded. Attention is invited especially to section 6 of the inclosed act, which authorizes the Bureau to obtain the information asked.

Inclosed you will find frank envelopes for replies, and franks under which can be sent such printed matter herein requested as you may have.

This met with general response and placed the Bureau, so far as the insurance world is concerned, in an attitude that met the approval of those interested in this great business. These replies contain items of information of great value.

With a view of making an investigation of the effects of the valued policy law agents of the Bureau visited several States which have such law. The individuals interviewed included not only the officials of insurance companies, but also State insurance commissioners, officers of boards of underwriters and of associations of business men, bankers, insurance agents, etc. Their main object was to ascertain, if possible, the practical effects of the valued policy law as in force in the several States. This, however, was not the only object intended to be achieved.

This investigation served to bring this Bureau into closer touch with the prominent insurance officials and the interests that they represent. The interviews served the purpose of acquainting these officials with the general purposes for which the Bureau was organized, and its jurisdiction in gathering information relating to insurance. A great deal of information was secured, having both a positive and a negative value. It acquainted the Bureau with the methods of operation of certain great companies, their systems of keeping books, the character of the information possessed by them, and those things that they lack.

This Bureau has also made an investigation in other branches of the Government to ascertain what publications, statistical or otherwise, have already been prepared that may be useful for its work. Reports

The facts upon which remedial legislation must be based are in the possession of persons and corporations engaged in business—some have been given to the public, others have been incidentally furnished through judicial and legislative proceedings, and others have been held as business secrets. As to the first two classes the Bureau has been systematically collecting them from all available sources; as to the last class special inquiries have been made or are being made from particular corporations. In dealing with this class of facts it is recognized that there is a fair ground for discussion as to whether certain questions are infringements upon private rights; hence the following method of procedure has been adopted:

Inquiry is made directly from the persons or corporations under investigation; if it be determined that the Government is entitled to the information, it must be given voluntarily or the compulsory process of the statute will be invoked; if the Government is not entitled to the information, then no detective method will be used to discover it.

There has been no attempt to define the scope of the inquiry to be made, nor to limit it to certain classes of facts. All facts which will give information regarding interstate and foreign commerce, or will assist Congress in regulating such commerce, are subjects of legitimate inquiry.

One line of inquiry concerning which question has been raised is as to the cost of production of articles used in or subjects of interstate and foreign commerce. So far it has not been necessary to test this question in court, but it is believed that aside from any other reason the question is proper because of the power of Congress to impose tariff duties in the regulation of commerce. The ideal tariff duty is the difference between the cost of production at home and abroad; hence Congress has the right to know what is the cost of production. Furthermore, it is claimed that the tariff gives an unfair advantage to corporations and persons engaged in the manufacture and distribution of protected articles which are the subjects of interstate and foreign commerce. Congress has the right to know whether this be true or not, and this Bureau affords a most appropriate and efficient means for obtaining such information.

In brief, the policy of the Bureau in the accomplishment of the purposes of its creation is to cooperate with, not antagonize, the business world; the immediate object of its inquiries is the suggestion of constructive legislation, not the institution of criminal prosecutions. Its purposes, through exhaustive investigations of law and fact, to secure conservative action, and to avoid ill-considered attack upon corporations charged with unfair or dishonest practices. Legitimate business—law-respecting persons and corporations—have nothing to fear from the proposed exercise of this great governmental power of inquiry.

The above outlined general statement of the objects, powers, and work of the Bureau leads to the consideration of the legal conditions which constitute the problems before the Bureau.

#### LAWS AFFECTING COMMERCIAL CONDITIONS.

A number of classes of statutes are now applicable to commercial conditions. These classes are considered in detail as follows:

- (a) Corporation law.
- (b) Anti-trust laws.
- (c) Unfair competition laws.
- (d) Tax laws.
- (e) General laws, including police regulations, factory legislation, and rate-fixing commissions.

#### CORPORATION LAW.

The greater portion of business is transacted under the corporate form. It is obvious that the corporate form is the result of economic necessity, and that its present predominance will inevitably tend to increase.

*Historical development of corporation law.*—The need of essential reform in corporation law is admitted. Compared with other branches of law, corporation law is relatively new and untried—an experiment only just begun—while general business laws have passed through a long process of evolution. Its development has been abnormally rapid in some directions by imperative economic forces. In the haste of its creation it has been molded disproportionately by special interests, has grown extensively in special directions, and has not taken the form necessary to adapt it permanently for the proper protection of all the interests involved.

A study of the present body of corporation law shows the impress of the forces that have shaped it. First in prominence is the force represented by the masters of industry, the interests that are peculiarly connected with production, transportation, and exchange. Second, the purely financial interests as distinguished from production, in which class the organizer or promoter, so called, is conspicuous. Third, the creditor class, whose interest is in the security for loans or credit; and in somewhat similar position those stockholders who under present forms of combination, by preference or other device, have taken stock in exchange for property, and, in effect, consider themselves creditors rather than responsible owners of corporate stock. Fourth, the labor interests, and finally, the State as a taxing body and, to a very limited extent, as a guardian of public welfare. The interests of the consumer have so far had very little effect upon legislation of this sort.

In brief, the evolution of corporation law, as regards the properly balanced interests of the entire community, has been accidental rather than designed.

*Fundamental theory of corporation law.*—The law of corporations is based upon the establishment of a *form* of doing business; *i. e.*, the creation of an artificial entity, the conferring upon it of such powers as are necessary to give it proper business efficiency, while placing upon it such restrictions as will properly safeguard the interests of those peculiarly concerned in the corporation, as well as the public.

*Peculiar characteristics resulting in peculiar evils.*—A study of corporation law makes it clear that many of the existing evils of commercial conditions are directly due to certain features of corporation law peculiarly characteristic of the corporate form. The peculiarities may be summarized as follows:

- (a) Legal immortality, or permanence of succession.
- (b) Impersonal nature.
- (c) Divisibility of interest by creation of stock.
- (d) Limited liability.
- (e) Artificial character; existence by act of the State.

Of these features the divisibility of interest and limited liability have far-reaching effects on commercial conditions, as follows:

*Divisibility of interest.* This is of primary importance. It results in majority rule; allows the abuse of minority interests; greatly reduces, and often eliminates, the sense of personal responsibility on the part of the managers; allows the exploiting of one company for the benefit of another; permits divergent and clashing interests within the company; by the creation of special classes of stock, in connection with the limitation of liability it has brought into existence the small investor he who has no accurate source of information, and whose necessary ignorance of business affairs is a standing temptation to "insiders"; permits the creation of stock and its use as a sort of currency; taken in connection also with the transferability of stock interests; it allows speculative manipulation; creates great practical confusion in the incidence of taxation.

*Limited liability.* This renders possible very large enterprises; encourages over-capitalization; taken in connection with divisibility of interest, reduces greatly, and often destroys, the interest of the managers in the success of the business and their feeling of personal responsibility therefor, and affects greatly the moral factor in business management; allows extreme concentration of commercial power; reduces the security of creditors.

*Ground for governmental regulation.*—Governmental action having created the artificial corporate form with the above outlined peculiar characteristics, it is logical and necessary that governmental regulation of corporations should be much more stringent and detailed than the

regulation of individual businesses. The concentration of business that has resulted from the use of the corporate form has produced entities that are almost equal in power to the state itself; that can meet the state on equal terms and influence it accordingly. By their size and legal permanence and their peculiar privileges they have crossed the line that divides private from public interests and their operations affect the public in much the same manner as the operations of government.

The great reduction of personal responsibility that has followed the corporate form, the divisibility of stock interests, and the separation of the laborer, stockholder, and creditor from contact with and control of the instruments of industry, has left a very large gap to be filled by government control, and has left more or less unprotected various important interests which must have the supervision and intervention of the state for the following purposes:

- (a) To protect property rights in corporations held by those now unable to protect themselves by reason of lack of information or power.
- (b) To protect those dealing with corporations as employees, creditors, or consumers.

(c) To protect the public from the abuse of great economic power coupled with little personal responsibility.

The economic powers of the Government and of public officers are checked by a corresponding publicity and responsibility to the voters, while the economic powers of great corporations, although often governmental in their size and scope, have no such publicity or responsibility.

(d) To protect the Government itself from the pressure of great commercial and financial powers directed upon it for the attainment of purely private ends.

#### THE PRESENT SYSTEM OF INCORPORATION BY STATES.

Investigation of the State corporation laws has not been completed, but enough facts have been gathered to make possible a number of general conclusions as to this system. Substantially all the corporations of to-day are the creatures of the different States. This is so to such an extent that for all practical purposes it is proper to say that the corporate business of the country is carried on under the "State system."

The present situation of corporation law may be summed up roughly by saying that its diversity is such that in operation it amounts to anarchy. The States which by reason of their commercial activity are important differ very widely in the principles upon which their corporation legislation is based.

This situation, taken in connection with the principle of the comity of States, has had a singular and far-reaching effect on commercial

conditions. This principle of comity has had the practical result of giving to the organizers of a proposed corporation the choice of all the corporation laws of the various States. Many such organizers represent one of the peculiar interests above referred to, namely, that of the financial or speculative type. Each State naturally desires, chiefly for the purpose of revenue, to attract incorporation to itself by lax corporation laws. The ground has been cut from under the feet of objectors to such laws by the unanswerable proposition that if incorporators or organizers were not accommodated in the given State they could incorporate in a more complacent State and easily come back to the first State to do business. The logical result has been an inevitable tendency of State legislation toward the lowest level of tax regulation and of extreme favor toward this special class of incorporators, regardless of the interests of the other classes properly concerned.

A further peculiar phenomenon also arises—that, as to the vast majority of business done, the corporation doing it is a *foreign* corporation. The ordinary large corporation does only a small proportion of its entire business in the State which chartered it. All the rest of its business it does as a foreign corporation, and under the peculiar conditions applicable thereto.

This is largely the natural result of subjecting concerns whose area of operations covers many States to the legal conditions imposed by *one* out of those many States. In other words, matters which rightly affect the *whole* are, to a certain extent, directed and shaped by a *small part* of the community.

The net result of this State system is thoroughly vicious. In the bidding of State against State for corporation revenue, only one of the numerous interests involved in corporate business is regarded. The proper relation of the corporation to the State is almost wholly lost sight of in "broad" corporation laws. Corporations themselves are hampered by the "foreign corporation" relation which they must hold toward most of their business. Constant change and instability of law is inevitable, and finally, in the struggle for preferences, privileges, and discriminations, the two contestants, to-wit, the corporation which seeks and the State which should withhold, are unequally balanced, and upon the wisdom and patriotism of a single State is placed the pressure of forces that are national in their power.

#### ANTI-TRUST LAWS.

A careful compilation and tabular summary has been made of all the Federal and State "anti-trust" legislation. The word "anti-trust" in this connection has of necessity been loosely used. This legislation can be divided into two classes of subject-matter, the one which is

aimed at the prohibition of monopoly and restraint of trade, and which is more properly "anti-trust," and the other, which is aimed at improper rebates, discrimination, and unfair competition, and which has no necessary connection with combinations.

The theory of the first class of "anti-trust" legislation is the prevention of monopoly and the maintenance of a condition of competition.

Taken as a whole, this legislation (with a few marked exceptions) has been singularly futile. It seems likely that the reason for its failure is due to two facts, (a) that it is an attempt to stop the operation of strictly economic law by statutory enactment, and (b) the attempt to maintain a state of competition by prohibiting all combination, reasonable or unreasonable, is wrong in principle.

Apparently the only exceptions to this conclusion lie in the case of public-service corporations which are, by their nature, largely agents of the State, and exercise powers not granted to the ordinary corporation or individual.

#### UNFAIR-COMPETITION LAWS.

The second class of legislation, usually a part of "anti-trust" laws, but having no necessary connection with combinations or trusts, is that which prohibits rebates, discriminations, and unfair competition. This legislation is based on an entirely different principle and is fundamentally correct. It is aimed not at the restraint of combination as such, or the maintenance of competition, but at regulating the *methods* of competition. It recognizes the irresistible tendency toward combination, and its purposes are to make certain that combination is reached only through just, fair, and proper means. Recognizing that the tendency to combine can not be stopped by statute, its object is to see that this process shall be attended with as little injustice as may be, and to this extent is correct in theory.

#### TAX LAWS.

Other general laws affecting corporate business are State tax laws, which are at present in a state of great confusion, based upon wrong or conflicting principles, resulting frequently either in double taxation or in total escape from taxation, and being often so obscure and complex as to defy interpretation, even by the State officials charged with their execution.

#### MISCELLANEOUS LAWS.

A further class includes the general and miscellaneous legislation, instances of which are laws establishing rate-fixing commissions, "factory acts," general forms of business, etc., and a large class of legislation that is based upon the police power.

## COMPARATIVE EFFICIENCY OF VARIOUS CLASSES OF STATUTES.

While this study of the laws affecting corporations makes it apparent that many of the evils of the present situation have been created by statute and can be remedied by statute, yet it is necessary to recognize frankly the limits within which statute law can affect economic conditions, and to admit that there is a very large area of business within which legislation is not only inefficient but productive of positive evil, however well intended. A review of the history of legislation on economic questions seems to show two classes of such statutes, the one effective and the other the reverse. Examples of the first are "factory acts," compulsory education, forms of business, regulation of corporate organization and management, safety appliances, prevention of fraud, etc., all of which have worked well. Examples of the other class are usury laws, absolute regulation of prices, anti-trust laws as heretofore explained, and anti-speculation laws, all of which have been essentially unenforceable (with some marked exceptions) and have, in the case of the usury laws and regulation of prices, actually accomplished results the reverse of those intended.

In dealing with the remedial force of statutes, it must be remembered that the law is merely, in the final analysis, a crystallization of public opinion, and a statute which too far precedes or diverges from public opinion will be ineffective. The use of the two forces must therefore proceed together.

Furthermore, it is necessary to consider the varying degrees of efficiency of given laws as dependent upon their form. Certain statutes are easily enforced—are practically self-enforcing—and owe their efficiency merely to their form, while others directed to the same end are unenforceable. The most important reason for this difference probably lies in the "sanction" of the given act—i. e. whether the impelling force thereof is a criminal penalty or a private right of the individual. It may be stated conclusively, as a general rule, that that statute which relies for its enforcement upon the interest of private individuals will be much more effective than that which is based purely upon a criminal penalty. This distinction has a very important bearing upon the form of corporation law.

## CONSTITUTIONAL POWERS OF CONGRESS OVER CORPORATE BUSINESS.

The Federal powers which are available to meet the conditions above outlined and to carry out the purposes above indicated are based almost wholly on the "Commerce Clause" of the Constitution, as follows:

Article 1, section 8: "To regulate commerce with foreign nations, and among the several States, and with the Indian tribes."

Subordinate powers which may be sometimes available for the same purposes are the power to establish post-offices and post-roads, to lay and collect taxes, etc., and to coin money and regulate the value thereof.

It may be considered as established that under these powers Congress may—

(1) Create corporations as a means of regulating interstate commerce.

(2) Give to such corporations the power to engage in interstate or foreign commerce.

(3) Prohibit any other corporations or individuals from engaging in the same.

(4) As a condition precedent to the grant of such corporate powers, lay any restrictions it chooses upon the organization, conduct, or management of such corporation.

(5) Tax interstate commerce at will and the instrumentalities and corporations engaged therein.

(6) Provide regulations for the carrying on of interstate commerce generally and in such local affairs as are now left to the States in the "silence of Congress" under the principle established in *Cooley v. Port Wardens* (12 How., 299), and in the carrying out of such powers it may use any or all means "which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution."

Furthermore, the individual States are restrained by the Federal Constitution from laying any burdens upon interstate or foreign commerce or from regulating or controlling the same, except in the case of local matters and in the "silence of Congress" aforesaid. This does not exclude the rights of the States to exercise their ordinary police power as applied to the persons engaged in, or the instrumentalities used for, interstate commerce so long as the exercise of such powers does not constitute a direct interference with that commerce itself, but is applied only indirectly, and is appropriate for the general purposes of local police regulation.

As a corollary from the above, the States can lay no tax upon interstate commerce as such, or upon the subject-matter thereof as such, nor can any State discriminate against interstate commerce as such, nor can it lay any burdens upon the exercise of a constitutional Federal franchise or impose taxes thereon, except by direct permission of Congress.

Briefly, as to interstate and foreign commerce, the United States is one country, one legislative area, and when Federal regulation of such commerce enters any given State for the purpose of operating on such commerce it enters it not as foreign territory but as a part of its own jurisdiction.

REMEDIAL LEGISLATION SUGGESTED BY THE ABOVE-DESCRIBED WORK OF THE BUREAU.

#### 1. ADDITIONAL STATE ACTION.

This is wholly inadequate. The same objections apply to this suggestion on general principles as have already been made to the present condition of State corporation laws. There is now a strong positive motive leading the State legislatures toward lax and improper corporation laws, and even if all the States were actuated by most correct motives, nevertheless, it is obviously impossible that forty-five different jurisdictions should agree on anything like a uniform system in so important a matter as corporation law.

#### 2. DELEGATION BY THE UNITED STATES TO THE INDIVIDUAL STATES OF THE CONTROL OF INTERSTATE COMMERCE.

Two objections, each conclusive in itself, can be made to this suggestion:

(a) Such action is believed to be unconstitutional. Congress has no power to divest itself of its constitutional powers or to delegate the same to any other legislative body.

(b) Even supposing that this could be legally done, the results would be open to the same objections as have been referred to just above.

#### 3. FEDERAL INCORPORATION.

This is one of the two more practical methods suggested. It assumes the passage by Congress of a complete corporation law with the compulsory requirement that all corporations engaged in interstate commerce shall be organized under such law. It contemplates that such corporation law shall be so drawn as to embody all the necessary and proper features to provide an efficient form for the carrying on of corporate business, and at the same time to safeguard properly all the interests involved therein. Such a law should have three principal features.

(a) The creation by Congress of corporations with power to engage in interstate commerce.

(b) The prohibition upon all other corporations from engaging in such commerce.

(c) The granting to such Federal corporations of the right to *manufacture* and *produce* within the several States.

The first two powers are subject to no vital legal objections, nor can a State make any essential opposition to them even by the right of taxation. The chief difficulty in the Federal corporation law, as above indicated, arises in connection with the third of the foregoing essential features, to-wit., the question: Can Congress give to

an "interstate commerce corporation" the additional power to *produce* or *manufacture* in any State so that that grant of power shall be valid as against the States or individuals? In the absence of direct judicial decision on this point, it is impossible now to determine this question conclusively, and the answer to it must be made by reasoning from inference and on general principles.

Furthermore, there would be the practical difficulty of giving to the States power of taxation over such corporations in such manner as to permit the States to obtain the amount of revenue which they now collect from corporations domestic and foreign. The suggestion that the Federal incorporation law be made optional fails to meet the difficulties, for the reason that it would not be taken advantage of unless its conditions were more satisfactory to the corporations, and especially their promoters, than offered by existing State laws; and if such were the conditions, there would be no benefit to the public and no remedy of existing evils.

A more complete discussion of the power of Congress to grant to Federal corporations the right to *manufacture* and *produce* within the several States is contained in Appendix A, hereinafter.

#### 4. FEDERAL FRANCHISE OR LICENSE SYSTEM FOR INTERSTATE COMMERCE.

The principal features of such a system would be:

(a) The granting of a Federal franchise or license to engage in interstate commerce.

(b) The imposition of all necessary requirements as to corporate organization and management as a condition precedent to the grant of such franchise or license.

(c) The requirement of such reports and returns as may be desired, as a condition of the retention of such franchise or license.

(d) The prohibition of all corporations and corporate agencies from engaging in interstate and foreign commerce without such Federal franchise or license.

(e) The full protection of the grantees of such franchise or license who obey the laws applicable thereto.

(f) The right to refuse or withdraw such franchise or license in case of violation of law, with appropriate right of judicial appeal to prevent the abuse of power by the administrative officer.

No fundamental legal difficulty can be discovered in this plan. Congress would grant to corporations that meet the proper conditions power to engage in interstate commerce; would fix the conditions under which their business should be done in such manner as to remedy the present defects in the State corporation law, and would require all corporations and corporate agencies engaged in interstate commerce to make returns to a Federal bureau, showing the amount

and nature of the business done, and such other facts as may be desired. Furthermore, this plan obviates the difficulty regarding State taxation.

Inasmuch as practically all the important corporations of the present time are engaged in interstate commerce, and as the United States has the right to fix conditions to this license to engage in interstate commerce, this system would enable the Federal Government to reform the present condition of corporate business in all its important features.

A discussion of the details of the franchise or license system is contained in Appendix B, and a comparison of this system with that of compulsory Federal incorporation is contained in Appendix C, hereinafter.

#### SUMMARY

As shown by this report, the work of the Bureau has thus been almost entirely the laying of a foundation of accurate knowledge of the legal and general business conditions with which it must deal and a clear definition of the problems for the consideration of which it was created.

The result of the work may be thus summarized:

1. Commercial and industrial conditions present the foremost problems of to-day. There exists a deep-rooted general feeling of dissatisfaction with existing conditions. Some causes of dissatisfaction are apparent, and the evils very real and great.

2. The present legal conditions under which corporate business is carried on are extremely unsatisfactory. They admit of, and invite, extreme abuse. They are the result of forced growth under divergent pressures, and in their present anomalous state represent the needs or demands of special interests, and are not a permanent body of law adapted to provide properly for all the interests involved.

Furthermore, the "State system," applied to interstate businesses, has developed additional and peculiar evils; a diversity so great as to amount in operation to anarchy; an inevitable tendency toward the lowest level of lax regulation, and the unequal and disastrous contest between State legislatures and commercial forces of national size and power.

3. No satisfactory reform is to be expected under the "State system" of incorporation.

4. The Federal Government has at its command sufficient power to remedy these conditions in its control of interstate commerce, supplemented by subsidiary and incidental powers.

5. So far the commerce clause of the Constitution has had a negative development only, both under Congress and by judicial interpretation. With the exception of the interstate-commerce act—the force of which has been seriously weakened by judicial interpretation—and the navigation laws, there has been no really affirmative attempt

to regulate interstate commerce. The commerce clause has been chiefly used to prevent the interference by States with interstate commerce.

6. The creation of this Bureau affords a means for getting essential facts. In addition to the value to Congress of such information, the publication of facts, the dissemination of knowledge, will bring into existence the influence of an enlightened public opinion which properly applied would go far to develop the sense of public trust involved in the control of private wealth and the sense of personal responsibility on the part of officers or managers of corporations.

7. The work of the Bureau can proceed along the lines of inquiry and report, adding fact upon fact in proof of existing conditions, but no real remedy can be expected until Congress takes action by affirmative use of the great powers granted under the commerce clause of the Constitution.

8. The possible Congressional actions are:

(a) Delegation to the States of control over interstate commerce. This is believed to be unconstitutional, and secondly subject to all the objections applicable to the present "State system."

(b) *Compulsory* Federal incorporation of interstate commerce companies. This is probably legally practicable, but it involves radical industrial and political changes by the centralization of power in the Federal Government, and presents serious difficulties because of its effect upon the authority of the States over such corporations in matters of taxation and local regulation. Any optional law of this character would not overcome these difficulties.

(c) Federal license or franchise for interstate commerce. Legally this is practicable; it avoids the legal difficulties of national incorporation as well as the practical one of centralization of power, and gives the national Government direct regulation of the agencies of interstate and foreign commerce.

I therefore beg to suggest that Congress be requested to consider the advisability of enacting a law for the legislative regulation of interstate and foreign commerce under a license or franchise, which in general should provide as follows:

(a) The granting of a Federal franchise or license to engage in interstate commerce.

(b) The imposition of all necessary requirements as to corporate organization and management as a condition precedent to the grant of such franchise or license.

(c) The requirement of such reports and returns as may be desired as a condition of the retention of such franchise or license.

(d) The prohibition of all corporations and corporate agencies from engaging in interstate and foreign commerce without such Federal franchise or license.



(e) The full protection of the grantees of such franchise or license who obey the laws applicable thereto.

(f) The right to refuse or withdraw such franchise or license in case of violation of law, with appropriate right of judicial appeal to prevent abuse of power by the administrative officer.

This Bureau, under the direction of the Secretary of Commerce and Labor, affords the appropriate machinery for the administration of such a law.

It is fully appreciated that this recommendation is not new, but has been the subject of most serious and exhaustive consideration by public officials and commissions, as well as private persons technically well qualified to speak. The Industrial Commission, in its final report on this subject, recommended, among other things, the adoption of a plan quite similar to this. It is neither necessary nor wise to attempt, in this report, to elaborate the details of such an act; but the Bureau has upon its files abundant and, in many particulars, exhaustive information which would be immediately available for the use of Congress or any committee thereof which might have under consideration such a measure.

JAMES RUDOLPH GARFIELD,

Commissioner of Corporations.

The SECRETARY OF COMMERCE AND LABOR.

APPENDIX A.

FEDERAL INCORPORATION—CAN CONGRESS CREATE CORPORATIONS TO ENGAGE IN INTERSTATE COMMERCE, AND ALSO GRANT THEM FRANCHISES TO PRODUCE?

There are a number of legal principles to be considered in this question, some of them well determined and others not wholly settled. It may be asserted definitely—

(a) That Congress has the power to incorporate a company for the purpose of regulating interstate and foreign commerce.

- McCulloch v. Maryland, 4 Wheat., 315;
- California v. Pacific Ry. Co., 127 U. S., 39-40;
- Luxton v. North River Bridge Co., 153 U. S., 529.

(b) That Congress, for the purpose of regulating interstate commerce, may prohibit a State corporation from engaging in such commerce. Congress has never attempted specifically to make such prohibition, but a number of laws prohibiting commerce in various forms, especially the Embargo and Non-Intercourse Acts, have been upheld, many of which are much more radical in their nature than the said prohibition of State corporations from interstate commerce.

- Embargo and Non-Intercourse Acts; U. S. v. Brigantine William, 2 Hall's Law Journal, 255 (U. S. District Court, Massachusetts, September, 1808);
- U. S. v. Marigold, 9 Howard, 559;
- U. S. v. Joint Traffic Ass'n, 171 U. S., 505;
- Lottery Cases, 188 U. S., 321, 360.

And as to the similarity of foreign and interstate commerce on this point, see—

- Bowman v. Railroad Co., 125 U. S., 482;
- Crutcher v. Kentucky, 141 U. S., 57.

(c) That a State can not interfere with the operations of a corporation, chartered by the United States for the purpose of regulating commerce and acting within such charter, in any such manner as will hinder, impede, or burden such corporation in carrying out such purpose.

McCulloch v. Maryland, 4 Wheat., 315.

(d) That a corporation constitutionally chartered by the United States and not expressly limited in its operations to any part of the United States is not a foreign corporation as to the soil of any State, nor does its status there depend upon "the comity of States."

(e) Any State can prohibit a corporation of a foreign State from doing domestic business within the borders of the first State, or place such conditions as it chooses upon the right to do such domestic business.

- Paul v. Virginia, 8 Wall., 168;
- Pembina Mining Co. v. Pa., 125 U. S., 181.

(f) A State can lay no burden or impediment upon the interstate business of a foreign corporation doing such business within such State, subject, however, to the possible modification referred to below in (a).

- Case of the State Freight Tax, 15 Wall., 232;
- Railroad v. Peniston, 18 Wall., 5;
- Gloucester Ferry Co. v. Pa., 114 U. S., 196.

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To discuss the propositions less well settled—

(a) The question of the power of a State to tax the gross receipts of a corporation engaged within that State in interstate commerce, which receipts are derived from such commerce, is in an unsettled condition, owing to the last important decision on the subject, to-wit, the case of *Maine v. Grand Trunk Railway*, 142 U. S., 217. Up to the time of that decision it was supposed that the doctrine had been settled that gross receipts, derived from interstate commerce, could not be taxed by a State. The court, in the *Maine and Grand Trunk* case, by a majority of one, held that the franchise or right to do interstate commerce of a railway company engaged in such commerce in the State of Maine could be taxed by laying a tax upon a fraction of the entire gross receipts, determined by the ratio of the entire mileage of said road to the mileage in the State of Maine. This decision was based on the reasoning that the tax was one upon a franchise granted by the State, and was a condition of the grant of such franchise, or of its continuance; and that the basing of such tax upon a proportion of the gross receipts was merely a formal method of determining the value of such franchise. A vigorous dissenting opinion by four judges was filed. It would seem that if this case is conclusive, the old rule against the taxation of interstate commerce can be readily evaded, at least as regards domestic franchises, by a mere form of words in the statute. (For further discussion of this subject see Appendix D.)

(b) Of a similar nature to the above question is the question whether a State may practically tax the interstate commerce of its own corporations, or under its own franchises, by making it a condition of such charter or franchise that an annual tax shall be paid upon the receipts from interstate commerce by such corporation. Such a condition has been held valid.

*Railroad Co. v. Md.*, 21 Wall., 456 (1857).

It is to be noted that these last two principles are based upon the theory that a State has the right to make any condition it chooses upon its own grant or franchise. This would accordingly extend this principle of taxation only to corporations holding a franchise from the taxing State, but inasmuch as many interstate corporations must ordinarily have a State franchise to carry on their business (e. g., railroads), it gives this taxing power a wide scope, and could only be conclusively avoided by corporations taking out a franchise under Federal authority.

(c) A further principle, which, however, may be modified by future decisions, has been established in the *Knight* case (U. S. v. E. C. Knight Co., 156 U. S., 1), to-wit, that the *intent* of a manufacturer to use his manufactured articles in interstate commerce, and the great probability that he will do so, do not render such manufacturing operations interstate commerce, so as to give the United States the right to regulate such operations; that is to say, that production does not imply interstate commerce, however likely it may be that the intent of the producer and the ordinary course of business may make the articles produced the subjects of interstate commerce.

It should be noted here, as brought out later in more detail, that this is not the same thing as saying that interstate commerce does not imply production.

Cases subsequent to the *Knight* case seem to have deprived it of considerable force and to be tending to the establishment of the principle that the existence of a power to control interstate commerce, together with the *intent* to use this power, makes that power subject to Federal regulation, regardless of whether such power has been actually exercised or not.

*Northern Securities Co. v. U. S.*, 193 U. S., 197.

With these principles in view, there appears to be but one important legal difficulty in the way of a compulsory Federal incorporation act, which shall have as its three main features—

(a) The creation of corporations by Congress with power to engage in interstate commerce.

(b) The prohibition upon all other corporations from engaging in such commerce.  
(c) The granting to such Federal corporations of the right to *manufacture* and *produce* within the several States.

The first two powers can be met with no legal objections, nor can a State make any essential opposition to them, even by the right of taxation, it being unquestioned that, while a State may possibly tax its own franchise, although used for interstate commerce, it can not tax a Federal franchise.

The third proposition, (c), is the one which raises the chief legal difficulty, to the consideration of which this appendix is mainly devoted, to-wit: Can Congress give to an "interstate-commerce corporation" the valid additional power to *produce* or *manufacture* within any State? In other words, is the power to *produce* a sufficiently proper and necessary incidental to the power of regulating interstate commerce by the creation of such corporations?

Two reasons may be asserted, therefore, for the validity of such a power—

(a) That it is an appropriate incidental to the object in view.  
(b) That it is an absolutely essential means for carrying out such object.

THE POWER TO PRODUCE AS AN APPROPRIATE INCIDENTAL.

It is submitted that the power to produce to be granted by Congress to a Federal interstate-commerce corporation is a proper incidental to the powers of such corporation for the purpose of regulating interstate commerce. Congress, as in the *Knight* case, may perhaps be unable to regulate production by *State* corporations, because such corporations are not necessarily, or are only imperfectly and partially, the instruments of interstate commerce; but if Congress itself creates a corporation as an instrument expressly to carry on interstate commerce, the power of Congress over such corporation, inasmuch as it is strictly an instrument of interstate commerce, is unlimited, and the powers of such corporation must be plenary to carry out the constitutional object of its creation. And if production is a proper incidental of interstate commerce, then such corporate powers must include production.

The statement of Chief Justice Marshall, so often quoted, seems to cover completely the power to produce and the right to grant a franchise for that purpose—

Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional. (4 Wheat., 420.)

Even if it be granted that the power to produce is not an absolutely *essential* incidental to the power to engage in interstate commerce, is it not clear, however, that this power to produce comes easily and plainly within the appropriate and unprohibited means described in the said quotation? The "end" the regulation of interstate commerce, is "legitimate" and within the scope of the Constitution. The "means" a corporate franchise to produce, is "appropriate," "plainly adapted to that end" in no way "prohibited," but consistent "with the letter and spirit of the Constitution."

The power to charter a corporation to carry on interstate commerce, other than companies connected solely with transportation, means the power to charter a corporation that shall deal by sale and exchange in the subjects of commerce. A natural and appropriate part in ordinary business usage and by all commercial practice in such transactions is the manufacture and production of such articles of commerce—that is, the ordinary corporation that sells articles also usually produces them. Any complete separation of these two functions of production and exchange would be exceedingly unusual and wholly inexpedient from the economic standpoint. No business man would think of permanently dissociating them. Thus it follows that if a Federal corporation can be chartered as a means of regulating commerce, one of the usual and appropriate parts of such powers is the power to produce.

It therefore appears that the power to produce—the franchise to produce—accompanies naturally, and as a part of this appropriate means, the power—and the franchise—to exchange; that this subordinate power to produce is a natural and prima facie corollary of the power to exchange, and a natural part of this constitutional machinery for the regulation of commerce, and that any one who contests this subordinate power to produce has upon him the burden of proof of its unconstitutionality; that prima facie this subordinate power is constitutional. In short, the power or franchise to produce seems at least one of the appropriate means that Congress, in its wisdom and discretion, may consider as fairly a part of the powers of an interstate-commerce corporation chartered by Congress. As an illustration of the way in which Congress has already granted special powers to its corporations, incidental to their main powers, the case of the national banks merits consideration. These banks have been chartered under the general fiscal powers derived from those sections of the Constitution which provide as follows:

The Congress shall have power—  
To lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts, and excises shall be uniform throughout the United States.

To regulate commerce with foreign nations and among the several States, and with the Indian tribes.

To coin money, regulate the value thereof, and of foreign coin.

And as incidental to the banking system thus developed, national banks have been also granted additional powers (Rev. Stats., U. S., 5136-5137) as follows:

(1) All such incidental powers as shall be necessary to carry on the business of banking.

Under this, and evidently regarded as such incidental and necessary powers, are the following:

- (a) "Discounting \* \* \* notes, drafts, bills of exchange, \* \* \*"
- (b) "Receiving deposits."
- (c) "Buying and selling exchange, coin, and bullion."
- (d) "Loaning money on personal security."
- (e) "Obtaining, issuing, and circulating notes \* \* \*"

(2) General formal powers constituting the peculiar characteristics of a corporation.

(3) Holding land for debts as well as for actual use.

(4) Right of taking interest.

Is it not obvious that many of these powers are no more necessary to the carrying out of the aforesaid constitutional powers than production is necessary for the carrying on of interstate commerce?

A banking business might easily be carried on without "buying and selling exchange, coin, and bullion", without holding land for debts; without the full power of "discounting notes, drafts, and bills of exchange."

And yet all these powers have been upheld or have never been contested.

There is no question of the power of Congress to create and use the corporate form or machine as a means of carrying out constitutional powers, and when a particular means is constitutional, the powers of Congress relating to that means are plenary. Once granting the propriety of the general power to regulate interstate commerce by the corporate form, it then follows necessarily that the discretion of Congress in the matter is very broad, reaching to every means, form, incidental, and detail not plainly prohibited.

#### THE POWER TO PRODUCE AS AN ABSOLUTE ESSENTIAL.

It is submitted that the power to produce to be granted by Congress to a particular interstate-commerce corporation is also an absolute essential to the powers of such corporation for the purpose of regulating interstate commerce.

The decision that apparently stands most opposed to this proposition is of course the Knight case. The Knight case involved a very important question as to the relation of the United States with the States. If that case had been decided in a way contrary to that in which it really was decided it would have gone far toward establishing the principle that the United States had control of all State business, whether domestic or foreign, on the ground that the same *might*, in the ordinary course of trade, involve the subjects of interstate commerce, and that the articles produced by State manufacturing concerns might have become the subjects of such commerce. The court probably must have considered that a decision of such nature would have swept all important domestic manufacturing business under Federal control, because any business may have an interstate feature or may at any time develop one. In the case of *Kidd v. Pearson* (128 U. S., 1), the court actually gave this reason at length: "It is probable that this point had a strong influence on the decision in the Knight case. A decision for the United States in that case would have gone a long way in breaking down State power. The remarks of Mr. Justice Lamar in *Kidd v. Pearson*, *supra*, indicate the views of the court on this point. This latter case involved the refusal by the State to allow the manufacture within that State of certain goods, even though they might be intended for interstate commerce. The refusal was held valid on the ground that the intent did not govern."

But it seems a fair assumption that if the United States in the Knight case could have shown positively that the domestic production of sugar there in question *must necessarily* and *inevitably* have involved interstate commerce the decision would have been the opposite of what it was, for the connection between such commerce and such production would then have been absolute and not contingent—a necessity instead of a mere possibility or probability.

In other words, the force of the Knight case must not be extended beyond the actual facts therein involved. This case established the principle that production does not imply interstate commerce (no matter what the intent of the producer may be or the probability as to the future use of the goods produced).

But this is a very different thing from saying that interstate commerce does not imply production. On the contrary, it is submitted that it does imply production to such an extent that the power to produce is a necessary constitutional incidental of the powers of such proposed "interstate-commerce corporations."

Production is an indispensable prerequisite of commerce, whether interstate or otherwise. Production may exist without commerce, certainly without a specified form of commerce, such as interstate commerce. All the articles produced by a manufacturer within a given State may be sold or consumed within that State, and no interstate commerce need be the result of such production. On the other hand, interstate commerce can not exist without production. The existence of commerce implies necessarily the existence of production. Commerce is, in point of time, a secondary act; it is the doing of certain acts and the engaging in certain transactions which relate to certain articles, to-wit, the subjects of commerce, and unless such articles exist such acts and transactions and such commerce can not exist. Production is necessary for the existence of the subjects of commerce. Commerce depends upon production. All the powers for the transaction of commerce might be granted by Federal franchise; and yet they would be wholly null, valueless, and inoperative unless there were also means of bringing into existence the subjects upon which such powers shall act.

Production, therefore, being a necessary prerequisite of commerce, the right to carry on interstate commerce must ultimately involve the right to produce the subjects thereof, not only as a proper and usual incidental, but as an absolutely necessary one.

As Congress has, for the purpose of regulating interstate commerce, the unquestioned right to create a corporation, and to that end can grant it a franchise to

carry on such commerce; it must also, therefore, be able to grant a franchise to produce the necessary subjects of such commerce. Otherwise the first franchise is useless; and Congress would therefore be unable to so regulate commerce and so exercise one of its constitutional powers by means of interstate-commerce corporations.

For example, let it be assumed that Congress should incorporate companies with power to carry on interstate commerce; let it be also assumed that there should exist legal power to prohibit such corporations from producing within the States; let it be also assumed that all the States should thereupon prohibit all domestic producers from selling to such Federal corporations (the legal status of this latter prohibition against sales to Federal corporations is discussed below); then obviously the Federal franchise so granted to engage in interstate commerce would be wholly inoperative and useless, because of the practical lack of the subjects of commerce, and the States would continue to control interstate commerce.

Of course Congress, as a retaliatory measure, might then prohibit State corporations from engaging in interstate commerce, but the result of this would then be a mere negative situation, a deadlock, in which neither set of corporations could carry on interstate commerce, and neither power could regulate it, thereby. If such were the case, we should have to admit the possibility of such a deadlock as well as the legal fact that each of the two powers may absolutely debar the other from the effective administration of interstate commerce, and that no power exists anywhere to effectively, and in the final conclusion, regulate such commerce by means of corporations. It cannot be granted, as a legal proposition, that this power does not exist somewhere, either in the States or in the United States; and if it exists somewhere, as it must to make our governmental system complete, it should be held to exist in the United States, to which is given the power by its Constitution to regulate interstate commerce. Unquestionably the founders of the Constitution meant that the National, rather than the State governments, should control national commerce, and if this complete power exists anywhere, as it must, it must have been their intention to have it exist in the Federal Government.

It seems, therefore, that Congress must have this power to grant producing franchises; as otherwise an absolute deadlock as to interstate commerce might result.

It is said that the power to produce the subjects of commerce is an absolute essential and prerequisite to the carrying on of interstate commerce.

The opponents to the fundamental proposition might reply thereto by saying that such power to produce is not a necessary prerequisite to the power to carry on interstate commerce, because such "interstate-commerce corporations" might obtain their subjects of commerce by purchasing them from State corporations or individuals producing within the State, and accordingly would not be obliged to produce them themselves. But this power to purchase from State producers stands in the same legal relation to the power of the State as does the proposed power to produce. The transaction of purchase and sale between a State vendor and an "interstate-commerce corporation" purchaser is purely a domestic transaction. The "interstate-commerce corporation" is not engaged in interstate commerce when making that purchase. It might presumably use the purchased articles in domestic commerce, and reasoning from the Knight case, neither the intent of the said Federal corporation nor the extreme probability that such articles will be used in interstate commerce is sufficient to make them legally the subjects of interstate commerce, and thus to make the transaction a part of interstate commerce.

Reasoning on this ground, it therefore appears that the State has as much right to prohibit purchases by such Federal corporations within the State, as it has to prohibit production; and if it can do both, obviously it has the power to wholly

annihilate any possibility of interstate commerce by such Federal corporations. Any such legal position can not, of course, be admitted. It is a flat denial of one of the great constitutional powers. We are therefore forced to the conclusion that the State can not prohibit production by such Federal corporations because it is one of the two possible alternatives that would enable such corporations to carry on their business. These alternatives stand on the same legal footing as regards the power of the State. If the State can prohibit one it can prohibit both. Obviously it can not prohibit both. Therefore it can prohibit neither.

A test of this validity of the entire Federal franchise to produce would probably first and most naturally arise in a private suit on the ground of *ultra vires*. The action would probably be brought, or defense made by, individuals against such corporation to set aside a contract made by said corporation under such "producing" power on the ground that the contract was *ultra vires*, thus raising the fundamental question whether the franchise to produce given by Congress was a valid franchise and whether the exercise of such power could be properly had in making a purely manufacturing or producing contract. Until the Supreme Court shall have rendered a decision involving the questions thus to be raised it is impossible to say, as a matter of definite law, whether or not this franchise can be constitutionally given by Congress, and its validity must be argued, as above, by inference and analogy.

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## APPENDIX B.

FEDERAL FRANCHISE SYSTEM FOR INTERSTATE COMMERCE—  
CONSIDERATION OF DETAILS

It is not desired to definitely put forward in this appendix any specific detailed outline of such system as being the particular means of carrying out the general conclusions set forth in the body of the report. The particular object is rather to develop as far as possible the legal questions that will be raised, in general, by such a system, and it is obvious that that purpose can best be obtained by outlining in a tentative way the possible features of such system and observing the legal propositions that would be involved therein.

## I. FUNDAMENTAL PURPOSE OF THE ACT

Briefly, its object would be to remedy, so far as is possible by legislation, those corporate evils the existence of which this Bureau is considering. A full statement in detail of those evils is not necessary here, and the matter has already been treated in some detail in the body of this report.

In general, however, it is sufficient to maintain the distinction established in the case of *Cooley v. Board of Port Wardens* (12 Howard, 299), namely, that while Congress has complete control over interstate commerce it practically exercises this power only over its national features, leaving local matters to the regulation of the States. Applying this rule to corporate business, the system in question should deal with the following features of that business.

(a) Where the organization or management of the corporation affects persons or interests in more than one State, as, for instance, in the furnishing of public-service facilities or necessities between two or more States; in the offering of securities to the general public; in the seeking of credit or loans from the general public; in affecting labor conditions in two or more States; in affecting prices of goods or raw materials in two or more States, and in the controlling or coordinating, by merger or otherwise, of businesses in different States.

(b) Where such corporate conditions affect strictly the governmental agencies of the United States and the operation thereof.

(c) Where such conditions affect business wholly outside of State control—for instance, navigation and foreign commerce.

(d) Where the existing State incorporation laws are essentially an abuse of the comity of States and have, as their primary object, the chartering of corporations whose two chief characteristics shall be (1) the power to do business in other States and (2) the duty to pay taxes to the chartering State.

(e) Where the legislative power of a given State has been so far misused under the present tendency toward lax corporation laws that it has resulted in a distinct degeneration in standards of commercial ethics and wholly insufficient protection is given thereby to large classes of its citizens.

(f) Also, within these limits such a Federal law should endeavor to correct, as far as may be, those peculiar evils inherent in the corporate form as such, and referred

to specifically in the body of this report; for instance, lack of personal responsibility of managers, improper use of stock as a kind of currency, lack of proper publicity as to terms of organization, over-capitalization, etc.

## II. QUESTIONS OF ADMINISTRATION AND ENFORCEMENT

1. *System should be compulsory.*—As part of this discussion it may be remarked that a compulsory rather than an optional franchise system is necessary. There must be a positive prohibition against engaging in corporate interstate commerce without a Federal franchise in order to make the system effective.

It has been often suggested that a Federal license law or, more particularly, a Federal incorporation law, might be made *optional*; that this law might require such publicity and fairness on the part of those coming under it that public opinion would force corporations to comply with it in order to gain the reputation of being substantial business entities. This was the basis upon which the proposed "New York business companies act" was drawn. No such optional law has been tried, so far as is known, and it is extremely doubtful whether it would be used. In order to have a Federal law of any public benefit, it must impose conditions upon corporations which from the strict standpoint of those interested in the corporation would be objectionable, inasmuch as the law must protect the public as well as the corporation. To this extent, therefore, those about to form a corporation would prefer the State law. Any such arrangement would reduce the United States practically to the position that an individual State holds now. The United States would merely offer one form of corporation law; forty-five different forms are offered now by the different States.

If corporations now do not choose to avail themselves of the known merits of the Massachusetts law for instance, rather than the piratical possibilities of the laws of certain other States, it is hardly likely that they would avail themselves of a properly drawn Federal law. It has been especially obvious that within the last two or three years the majority, perhaps, of the great corporations have been formed, not with a view to their future or to their business stability, but with a view to the stock market and the issue of stock; and a promoter having this latter purpose in mind would care nothing about the enhanced reputation given by a sound corporate act, but would care a great deal about the enlarged possibilities of stock manipulation given by loose State law. In short, it is believed that the optional plan would fail.

2. *Determination of jurisdictional facts.*—The first point is the determination or definition of the corporations to which the system is to be applied; that is to say, By what practical method shall the fact be established that a given corporation is engaged in interstate commerce? This fact is, of course, the basis of all jurisdiction in the matter and must be clearly and positively fixed by some method which will admit of being adjusted to a routine and applied readily to any corporation by some Federal authority; for instance, the Bureau of Corporations. It must be as nearly automatic as possible, involving as little expense, annoyance, uncertainty, and disturbance of traffic as may be.

There are two ways, at least, in which this fact may be established:

(a) By reference to the *commerce itself* during its transit, or at some time between its inception and close, and most naturally at the time when it crosses the State line.

The obvious and weighty objection to this State line basis is that it is almost impossible to make it automatic; that it would require, apparently, a custom-house system, which would be very expensive, involving great interference with business, and be wholly impracticable. It seems clear, therefore, that the establishment of the jurisdictional fact at the State line, taking the commerce itself as a basis, is a method which must be laid out of the discussion.

(b) The only practical alternative is, by test applied, not to the commerce itself, but to the parties. This would, naturally, be operated by means of returns by corporations to the Bureau under a general law. Two difficulties appear here:

(1) Possibility of false returns by the corporation or its officers. This is not a serious danger, as the making of such false returns should subject the falsifier to severe penalty, and a violation of this rule could be rather easily proven in any given case.

(2) The second difficulty—a more troublesome one—is the possibility of evasion by the company—that is, the carrying on of its business under such form that its real interstate business would be concealed under the guise of a domestic business. This would naturally be attempted by making all its sales and purchases through an individual resident in the same State as the corporation, which individual should then sell to another individual resident in another State and where the other end of the transaction is desired to take place, so that the actual interstate commerce would apparently be between individuals only.

In other words, the corporation would attempt to change its interstate commerce from a corporate to an individual business, taking advantage of the fact that it is desired to apply this franchise system only to corporations. As a matter of law, it is of course possible to apply this franchise system to individuals; but the purpose of such a system is to remedy corporate evils, and present conditions do not call for any such regulation of ordinary individual interstate trade.

But the practical danger of effective evasion by such a plan is much more apparent than real. There are two reasons: In the first place, the main distinction between the real individual trade, with which no interference is intended, and the evasive trade suggested above, would be the difference between bona fide contracts of purchase and sale, and contracts of agency or consignment under the fictitious guise of sales. The legal difference between these two conditions is considerable, and it will be decidedly difficult to completely cover the fictitious nature of such evasive transactions. Second, it is obvious that such a system would in practice be exceedingly cumbrous, costly, and disadvantageous to the evading corporation. In most cases it would be easy to establish the fact that the individual seller or buyer was merely the agent of the corporation, and his status can be thus described in the act.

There would, however, remain a number of cases close to the line, especially with small corporations doing their business wholly through jobbers, where it might be hard to determine whether the contract made by the corporation with the jobber was a part of interstate commerce in disguise, or a purely separate contract and a bona fide domestic transaction.

In this connection it should be noted that either a Federal incorporation law or a Federal license law involves a practical difficulty, which is substantially new to our governmental operations; i. e., either system requires the dividing of the business of the country into two great classes, interstate and domestic, for the purpose of jurisdiction over corporations. This has never been done before, administratively. All that has been done so far is for the court to say in specific cases, with all the facts before it after a long trial, that such and such an act was or was not interstate commerce.

But this is quite a different thing from making a system by which an administrative bureau can, with the ease and speed essential to administrative action, test and determine this question for all corporations in the country. There are indicated above the practical difficulties of establishing, for administrative purposes, the jurisdictional fact of interstate commerce.

It would possibly be sufficient to give the Bureau power to determine *prima facie* the existence of this fact, leaving a right of appeal to the United States courts from such determination, and allowing the Bureau jurisdiction on the *prima facie* determination until reversed by the court of first instance, after which the jurisdiction should be suspended pending an appeal by the Bureau.

This power should also, of course, expressly include the power to apply in said *prima facie* manner the license requirements to any individuals who were, in the opinion of the Bureau, acting as virtual selling or purchasing agents for corporations for the purpose of evading the license law.

*Prima facie* jurisdiction having thus been established the Bureau should be given means of enforcement based upon this fact in the form of some general right to impose a penalty, or to cause the restraint of the offending corporation from engaging in interstate commerce.

### III. DEFINITION OF INTERSTATE COMMERCE.

It is believed that no serious difficulty will arise in most cases on the question as to what constitutes "interstate commerce." It is merely desired to note here that it will be unwise in the proposed act to attempt any specific definition of such commerce. It is believed that it would be better to use merely the words of the Constitution. Any attempt to define such commerce otherwise will be certain to omit features which may come into existence later. The meaning of the words "interstate commerce" is a matter of common knowledge as regards their application to the great bulk of present transactions; and in doubtful cases the determination can be secured by judicial decision. It is chiefly essential that the law should be broad enough in its scope on this point to cover any transactions which may be hereafter determined interstate commerce.

### IV. MATTERS TO BE LEFT IN CONTROL OF STATES.

Keeping in mind the logical division of corporate conditions as between the United States and the States it is obvious that there should be left in control of the States such matters as peculiarly affect local conditions—as, for instance, protecting the life and health of citizens and their morals, the governmental agencies of the State, the right of the State to tax the property within its limits, the definition of contractual rights as relating to the domestic commerce, and their enforcement in the State courts, and all matters affecting real property located in the States. The use of the phrase "police powers," though technically appropriate here, has been avoided on account of its indefiniteness.

### V. OUTLINE OF ESSENTIAL MACHINERY.

In order to accomplish the purposes of the proposed system it would, in general, be necessary for the Bureau to have full information as to corporate conditions. This would require such information as is necessary to give, in the first place, (a) a basis for jurisdiction, and (b) a basis for action in case the requirements of the law are not complied with. This would call for a regular system of annual reports from corporations, giving their form of organization; management and methods of business; financial condition; volume of trade and direction of the same; prices; cost and character of production, and all selling or buying agencies.

It is possible that some more substantial basis than need for information may be required in order to make this report full and satisfactory. It is often found that a system of reports which is based solely on the principle of publicity or of the need of information lacks the necessary "sanction" to render it properly enforceable. It is suggested that this system of reports would be much strengthened if it were based partially on a small Federal tax, largely nominal and merely sufficient to support the Bureau and to furnish a formal legal basis for the acquisition of the information desired. This tax would not be intended to accomplish any substantial change in the present system of corporate taxation.

Further, it should be noted that only certain portions of this information should be made public. The amount of publicity should be determined by the respective

(c) Are all State corporation laws broad enough in their permissive principles to allow their corporations to comply thereunder with the necessary conditions for corporate improvement that must be required by a United States license law? Can the necessary reorganization of corporations be accomplished under all the State laws? If not, what States would be omitted and what would be the practical result? Would it be to compel the States to bring their corporation laws to a uniform standard?

(d) Can the United States attach to the right to do interstate commerce the conditions under which a State corporation shall carry on its purely domestic business; and if so, how far can it thus regulate purely domestic business?

(e) How far can the United States thus extend its police power over such corporations; and what would be the irreducible minimum of State police power, if any?

(f) Questions of taxation: Apparently few especially new legal questions would be raised here by this system.

(g) How far would the desired national uniformity of corporate law and conditions be secured under this system?

*General.*—One question under both systems is the possibility of evasion presented by the use of an individual selling or purchasing agent for corporations, so that all interstate commerce, per se, would be carried on outside the corporate form. This has been treated in detail in Appendix B.

#### COMPARISON IN DETAIL OF ADVANTAGES AND OBJECTIONS.

*Federal incorporation—Advantages.*—The one merit of the Federal-incorporation plan is that it is based upon a clean-cut legal theory, that it brings the entire matter of interstate commerce under one jurisdiction, and reduces to a minimum the friction that must occur between Federal and State authorities in the attempt on the part of the Federal Government to regulate interstate commerce. Federal corporations, being corporations of the Federal Government, are wholly under its control, and, except for the necessary local police jurisdiction, are wholly removed from the control of the States.

*Objections.*—Over against this distinct advantage, there are a number of very strong objections:

(a) The legal uncertainty, already indicated (Appendix A), as to the validity of a Federal franchise to produce.

(b) The drastic nature of the change that would be brought about by a compulsory Federal incorporation law, and the intense opposition that would at once be aroused by the prospect that corporations of the Federal Government were to be placed in entire control of the most important part of commerce.

(c) The obvious reduction of State revenue from incorporation.

(d) The tremendous change toward centralization that such a system would produce. This is the most important objection, and is a very weighty one. It is hardly necessary to outline the vast and far-reaching effects upon the entire nation that would be produced by such a fundamental change in our commercial system.

For these reasons, it is believed that the plan of compulsory Federal incorporation is inadvisable.

*Federal franchise—Advantages.*—The advantages of the Interstate-Commerce-Franchise plan are:

(a) Affording sufficient Federal control to allow of uniformity and necessary improvement of the present body of corporation law.

(b) The legal nationalizing of a business system that is now commercially national.

(c) The offering of inducements to corporations to take advantage of such a plan for the reason that such a system would afford stability, uniformity, and, to the extent of their Federal franchises, would render them exempt from State control.

(d) The preservation of the right of State corporate taxation.

*Objections.*—The objections to the franchise system for interstate commerce are as follows:

(a) This system would, while Federal in its purpose and intent, have its foundation in State charters, and therefore the operations of the Federal law for a given State would, to some extent, be confined within the limits of the incorporation laws of that State. The difficulty is not a serious one, as the limits of possible action in the various State incorporation laws are usually quite broad, and in most cases these limits would not hamper the operation of the Federal system. Furthermore, there would be a salutary tendency on the part of the States to adapt their incorporation laws to the requirements of the Federal act, and a general trend toward uniformity, even in State legislation, would probably thus result.

(b) This system also contemplates a division of responsibility for control of corporations between the Federal Government on the one hand and the State on the other. A certain amount of friction would thereby result, and, furthermore, any diffusion of responsibility in general tends to lessen the total amount of responsibility and to make it more difficult to determine the causes of any given abuse. Nevertheless, it must be remembered that the present State system is a much more extreme instance of this difficulty. Under that system it is a matter of daily occurrence that corporations created by one State are regulated by another. On this particular point, therefore, the proposed Federal system would be less objectionable than the present State system.

(c) From a political standpoint there would be a certain amount of centralization of forces in corporate matters. The pressure now brought to bear by corporations almost exclusively on State legislatures would be partially transferred to Congress. This, however, is merely a transfer of such evils as may now exist and not an increase; and perhaps it may be fairly said that Congress, representing the power and public opinion of the whole people and responsible to the whole people, is better able to meet on equal terms those corporate influences whose business and power is also national in character than a State legislature, which represents only the power and public opinion of a single State.

(d) It is possible that under such a system it might be necessary to place considerable discretionary power in the hands of the bureau charged with the enforcement of the law. Opportunity might arise thereby for improper administration, but this would be guarded by the right of judicial appeal.

(e) A certain amount of interference with commerce and hindrance of the current of trade would inevitably result during the period of transition. It is submitted, however, that the net result of such interference would be less than under the present system.

(f) There would also be a number of difficulties of detail relating to the enforcement of the act; the subjects to which it shall apply, the methods of gaining information without unduly annoying business interests, and the various practical questions that arise in the enforcement of any new and fundamental legislation.

It is believed, however, that these objections are more apparent than real. Carefully drawn legislation, amended as experience may indicate and followed by a few years of judicial interpretation, would serve to define the limits of the respective jurisdictions, to establish the rights and duties under the new system, and to determine the working details thereof.

It is obvious that the bulk of the business of to-day has become national in its scope and in the interests involved, and whatever may be the inconveniences attending the change, it seems necessary that present legal conditions must be altered to correspond with commercial conditions if the corporate business of the country is to be placed upon any satisfactory, permanent basis.

**APPENDIX D:**  
**CORPORATE FRANCHISES AS NECESSARY INSTRUMENTALITIES OF INTER-STATE COMMERCE—PRESENT INSECURE POSITION OF INTERSTATE COMMERCE BASED ON STATE FRANCHISES.**

The legal principles so far developed raise one highly important question: What is the legal status of State corporate franchises used in interstate commerce? This question, to wit, the extent of the powers of the States over such franchises, approaches closely to the root of the legal propositions involved in the work of the Bureau. A thorough consideration of this question indicates the present anomalous legal basis of interstate commerce and the legal insecurity of interstate business under the present State incorporation system.

As to the powers of the States over such franchises: There are two classes of franchises, (1) corporate franchises *to be and to do*, issued by a State and exercised in that State in the carrying on of interstate commerce; (2) similar franchises issued by a foreign State.

As to the first class, it seems to be held that a State which creates a franchise may attach to it any conditions that it chooses and may even by such condition precedent tax it upon the extent to which it is used in interstate commerce.

Delaware Railway Tax, 18 Wallace, 206.  
 Henderson Bridge Co. v. Kentucky, 166 U. S., 150.  
 Louisville Ferry Co. v. Kentucky, 188 U. S., 385.

This class, however, is relatively unimportant for the present purpose.

It is the second class that is of especial interest. This class includes those corporate franchises issued by one State and used in another in interstate commerce. It is by far the most important class and includes most of the large industrial corporations, and the great majority of the business of the country is carried on under the legal conditions presented by this second class.

It is difficult to determine exactly the present state of the law as to the powers of the States over this class of franchises. Although the powers of the State are various, this discussion is confined largely to the power of taxation for the reason that this particular power is the most practical, frequent of application, and illustrates best the general principles involved.

So far as now developed, it seems to be held that a State can tax, *as property*, the corporate franchises to be or to do, issued by another State and used in the taxing State in interstate commerce. It can not, however, lay a tax upon the *privilege* of engaging in interstate commerce; or more correctly, it can tax the franchise or power, *as property*, but can not insist upon any *conditions precedent* to its use. The power can be used in spite of State objection, but being used it can be taxed as property.

Western Union Telegraph Co. v. Mass., 125 U. S., 530.  
 Maine v. Grand Trunk Ry., 142 U. S., 227.  
 Postal Telegraph Co. v. Adam, 155 U. S., 688.  
 Adams Express Co. v. Ohio, 165 U. S., 194; 166 U. S., 185.

This distinction seems more valuable abstractly than practically. If the State can tax as property such a foreign franchise, which franchise is essential for the

carrying on of interstate commerce, it can lay upon it such taxation by overvaluation as will practically destroy the value of the power and, presumably, its use. Corporate franchises being peculiarly intangible, they can practically be assessed or valued at any figure that the assessor chooses to put on them. Briefly stated, the result under the present state of the law seems to be: (1) State corporate franchises to be and to do are essential for carrying on interstate commerce in the corporate form (which is practically the prevailing form); (2) a State can so tax such franchises as to practically destroy them.

Of course, no State can, as against the United States, give the actual franchise or power to engage in interstate commerce. Such grant lies only within the power of the United States. But in the vast majority of corporations, excepting the few transcontinental railroads, the United States has not exercised its power, and the power to carry on interstate commerce is practically exercised by means of State corporate franchises used in foreign States under State comity. If, accordingly, the legal principles above set forth are correct, such franchises are, therefore, the essential elements of carrying on a corporate interstate business, and are at the mercy of State taxation under the present "State incorporation system."

A modification of the present unsatisfactory condition may be found in the unsettled theory that a State corporation franchise used for the purpose of interstate commerce is under the rule in *Cooley v. The Board of Port Wardens* (12 Howard, 299), and is subject to taxation and other regulation by the States only in the silence of Congress; that Congress might now legislate, totally forbidding or partially restricting the right of the States to tax such franchises when used in interstate commerce.

If it be admitted that such franchises are, in the present statutory condition of affairs, necessary factors in interstate commerce, it seems probable that Congress could so protect them, and probably this is the fact. But this entire suggestion has the disadvantage above referred to, namely, that of being a negative one upon which it will be difficult to develop any Federal judicial interpretation of the commerce clause in an affirmative manner, so as to bring out the full scope of the positive powers given thereby to Congress.

In general, therefore, the legal situation seems as yet undeveloped. It seems clear, however, if these legal principles are carried to their logical conclusion, that interstate commerce does not rest on any secure or unassailable legal basis so far as concerns corporations. *This line of argument would therefore lead directly to the conclusion that corporate interstate commerce must, in order to be permanently and securely established, be based on Federal franchises to engage in interstate commerce.*

If this be so, we seem to be led in the direction of a more logical and complete development of the suggested "Federal license system" as a means of regulating interstate commerce. Briefly, the United States should issue to corporations proposing to engage in interstate commerce a franchise to so engage. This franchise would, of course, be beyond the power of the States to tax or otherwise burden; would definitely place the right to engage in interstate commerce upon an unassailable Federal basis; would give a satisfactory ground, it is believed, for imposing such other Federal conditions upon these corporations as are essential for the reforming of corporate business; would establish a clear statutory distinction between the Federal and the State powers concerning interstate commerce, and allow for the development of a body of law, especially by court decisions upon Federal statutes, that would indicate just how much power can be granted by the United States in connection with such franchises, e. g., the power to manufacture, the power to purchase of State corporations or individuals, the power generally to carry on the various necessary incidentals of an interstate business, to hold real estate and to condemn the same by eminent domain; and, in brief, there



could be developed under some such Federal franchise law the full meaning and scope of the commerce clause of the Constitution from an affirmative Federal standpoint, where the real issues would be brought out and where the courts would see clearly the full need of such a Federal system. The difficulty with the decisions up to the present is that they are almost wholly negative; that is, they have been raised upon questions of the restraining of the powers of the States over interstate commerce, while very few have been raised as to the affirmative powers of the Federal Government over such commerce. It is obvious that to develop fully by judicial decision the great Federal powers under the commerce clause, action must be had under affirmative legislation, where the attention of the court will be directed to the limiting and defining of the affirmative powers of the United States, rather than to the restricting and limiting of State powers over a subject that is admittedly Federal.

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