

REPORT
of the
**COMMISSION TO STUDY
THE RAILROAD AND
WAREHOUSE COMMISSION**



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ACKNOWLEDGMENT

We thank all who gave generously of their time and thought to present their views in the various hearings and conferences.

Members of the Senate

JOHN A. JOHNSON
J. R. (Jim) KELLER
LOUIS A. MURRAY
GORDON ROSENMEIER
DONALD O. WRIGHT

State of Minnesota

Railroad and Warehouse Study Commission

State Capitol - St. Paul 1, Minnesota

JOHN A. JOHNSON, Chairman CLIFTON PARKS, Vice Chairman
LEONARD E. LINDQUIST, Secretary

March 1957

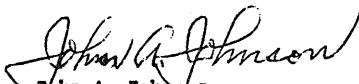
Members of the House

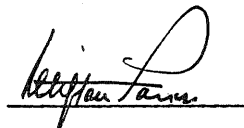
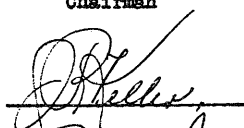
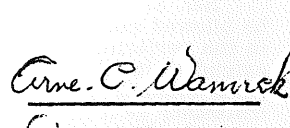
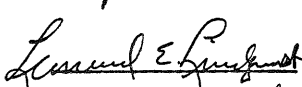
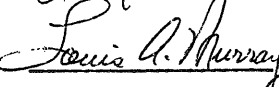
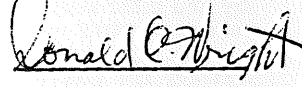
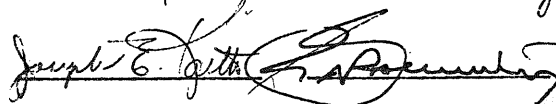
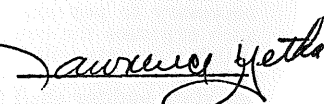
JOSEPH E. KARTH
LEONARD E. LINDQUIST
CLIFTON PARKS
ARNE C. WANVICK
LAWRENCE YETKA

TO THE GOVERNOR OF THE STATE OF MINNESOTA
AND THE MEMBERS OF THE 1957 LEGISLATURE

Gentlemen:

In accordance with the Laws of Minnesota, 1955,
Chapter 607, creating this Commission to investigate and
study all duties and functions of the Railroad and Warehouse
Commission, the laws relating thereto, and any other matters
which should be reported in the public interest, the follow-
ing report and recommendations are hereby respectfully sub-
mitted.


John A. Johnson
Chairman

LAWS OF MINNESOTA 1955, CHAPTER 607

AN ACT

CREATING A COMMISSION TO INVESTIGATE AND STUDY ALL DUTIES AND FUNCTIONS OF THE RAILROAD AND WAREHOUSE COMMISSION, THE LAWS RELATING THERETO, AND DEFINING THE POWERS AND DUTIES OF SUCH COMMISSION, AND APPROPRIATING MONEY THEREFOR.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. There is created a commission to be called Legislative Commission to Report on the Railroad and Warehouse Commission. The Commission shall consist of five members of the Senate to be appointed by the Committee on Committees of the Senate and five members of the House of Representatives to be appointed by the Speaker.

Sec. 2. The commission shall study and investigate the functions, jurisdiction, organization, and procedures of the Railroad and Warehouse Commission, the law administered by it, and such related matters as the commission deems proper.

The commission shall report fully to the Governor and to the legislature on the methods and efficacy of the Railroad and Warehouse Commission, the need for change in its organization and jurisdiction, the sufficiency of present regulation of carriers of person and property, warehouses and public utilities, and of marketing and inspection of coal, grain, and livestock, the advisability of transferring any of its functions to any other division of government and of making it a part of any other division of government, and on any other matter which such commission believes should be reported in the public interest, and its recommendations in respect to matters reported.

Sec. 3. Said legislative commission shall make its report to the Governor and the Sixtieth session of the legislature between November 15, 1956, and February 1, 1957, and until formal report its findings and recommendations shall not be disclosed.

Sec. 4. For the accomplishment of its purpose and the performance of its duty the commission and its committees may hold hearings at such times and places as may be convenient for the purpose of receiving evidence, and the commission and its committees may issue subpoenas in the manner provided by its rules. The commission is authorized to secure directly from the Railroad and Warehouse Commission and from any executive department or agency of government, or from any official or employee of the state, such information as it may require, and all such departments and agencies, officials, and employees are authorized and directed to furnish such information directly to the commission or to a committee thereof upon request made by the chairman.

Sec. 5. Members of the commission will serve without pay but they shall be allowed and paid for their actual and necessary expenses incurred by them in the performance of their duty. The Legislative Research Commission shall extend to it all practicable assistance. It shall have the authority to employ legal counsel, a secretary, and such other expert, professional, and clerical assistance as it may deem necessary to pay therefor; it may purchase stationery and other supplies, and it may do all things reasonably necessary and convenient to carry out the purpose of this act.

Sec. 6. There is hereby appropriated out of any money in the state treasury not otherwise appropriated \$25,000, or so much thereof as may be necessary to pay expenses incurred by the commission. For the payment of such expenses the commission shall draw its warrant upon the state treasurer, which warrants will be signed by the chairman or by such other or additional member of the commission as the rules of the commission may provide, and the state auditor shall then approve and the state treasurer pay such warrants as and when presented.

Approved April 20, 1955.

**LEGISLATIVE INTERIM COMMISSION
TO REPORT ON
THE RAILROAD AND WAREHOUSE COMMISSION**

Senate Members

John A. Johnson, Chairman
Preston

J. R. (Jim) Keller
Winona

Louis A. Murray
East Grand Forks

Gordon Rosenmeier
Little Falls

Donald O. Wright
Minneapolis

House Members

Clifton Parks, Vice-chairman
St. Paul

Leonard E. Lindquist, Secretary
Minneapolis

Joseph E. Karth
St. Paul

Arne C. Wanvick
Duluth

Lawrence Yetka
Cloquet

Edmund A. Nightingale, Ph.D., Consultant
Ralph L. Norgaard, LL.B., Adviser on Carrier Laws

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FOREWORD

The ten members of the Railroad and Warehouse Study Commission held their first meeting on July 14, 1955, for purposes of organization. Senator John A. Johnson was elected chairman, Representative Clifton Parks vice-chairman, and Representative Leonard E. Lindquist secretary. An Executive Committee, consisting of the chairman, vice-chairman and secretary was established.

The Study Commission, in February, 1956, retained Dr. Edmund A. Nightingale, Professor of Economics and Transportation, School of Business Administration, University of Minnesota, as consultant. Mr. Ralph L. Norgaard, a lawyer and supervisor of the Bus and Truck Division, was asked in March, 1956, to advise the Study Commission on carrier laws, outside of his regular duties and hours.

We met a total of 60 days.¹ A number of these meetings were public hearings at which representatives of the regulated industries, members and heads of departments of the Railroad and Warehouse Commission,² and other interested parties, appeared and testified.

We authorized the attendance of two of our members and the consultant at the annual meeting of the Midwest Association of Railroad and Utilities Commissioners in Omaha, Nebraska, on May 24-26, 1956.

Three members and the consultant attended the annual meeting of the National Association of Railroad and Utilities Commissioners in San Francisco on July 24-27, 1956.

¹"We" in this report means the Railroad and Warehouse Study Commission.

²Hereinafter referred to as "commission" unless the context indicates otherwise.

PART I

Minnesota Railroad and Warehouse Commission: Brief Legislative History; Present Organization and Functions

The commission influences the daily activities of most of the people of the state. Whoever uses the telephone, ships or receives freight hauled by railroad or regulated motor carrier, rides buses, deals in grain or livestock, uses scales, or warehouses commodities, is affected by its orders, rules, and regulations.

Effective commission regulation of railroads began in Illinois, Minnesota, Iowa, Wisconsin, and Missouri in the early 1870's some fifteen years before Congress established the Interstate Commerce Commission in 1887. The Minnesota legislature created in 1871 the office of "Railroad Commissioner", appointed by the governor for a two-year term. He was required to report to the legislature annually on the neglect or infringement of any laws for regulation of railroads, to examine and inspect the condition, state of repair and sufficiency, manner of conduct, safety, and financial management of each and every railroad in this state. (Laws 1871, Ch. 24).

The Board of Railroad Commissioners, an enlarged body of three persons appointed by the governor by and with the advice and consent of the Senate for two-year terms, was created by the legislature in 1874. (Laws 1874, Ch. 26). Railroads were declared to be public highways. The legislature delegated to the board the duty of prescribing reasonable maximum rates and charges for transportation and handling of freight and passengers. Rebates and other kinds of discrimination were forbidden.

In 1875 this board was replaced by one elected commissioner. The powers of the commissioner were weakened, especially by the repeal of the power to prescribe maximum rates. (Laws 1875, Ch. 103).

In 1885 the Railroad and Warehouse Commission was established, consisting of three persons to be appointed by the governor for two-year terms, one of whom was required to be from the leading political party opposite to the governor. This commission, among other things, was given power to examine books of the railroads, issue subpoenas, administer oaths, and remove unjust discrimination in rates, or unequal rate treatment of persons, towns, villages or locations. (Laws 1885, Ch. 188).

In 1899 a new law provided for the election of three commissioners on a political party ballot, and thereafter the commission became known as the "Railroad and Warehouse Commission of the State of Minnesota." (Laws 1899, Ch. 36). Twelve years later the term was extended to six years, and regulation of express companies and warehouses was added to its duties, including a provision for staggering the term of office so that one commissioner would be elected at each general election. (Laws 1911, Ch. 140).

There has been no change since 1911 in the number, term, or manner of selection of commissioners.

In much of its responsibility a regulatory commission is an arm of the legislative branch of the government. Its organization depends fundamentally upon the duties assigned to it by the legislature. Given duties, the commission must be organized in a manner that enables it to perform them efficiently.

The functions delegated to the commission under existing statutes logically fall into the following three main groups:

Transportation regulation

Commission general power — Chapter 216
 Railroad — freight and passenger — Chapter 216 to 219,
 Secs. 164.30 and 164.31
 Highway — freight and passenger, including urban bus
 transportation — Chapter 221
 Street railways and interurban railways — Chapter 220
 Pipelines — crude oil — Section 221.54

Communications regulation

Telephone and telegraph companies — Chapter 237

Commerce regulation and inspection (not included in preceding groups)

Commission merchants (grain, hay or straw) — Chapter 223
 Livestock buyers or dealers licenses — Section 239.18 to
 239.21
 Livestock weighing — Section 239.05, 239.13, 216.46 to
 216.52
 Public hay tracks — Chapter 229
 Sites for public warehouses, elevators, and coal sheds —
 Chapter 230
 Public storage warehouses in certain cities and villages (other
 than grain and cold storage) — Chapter 231
 Public local grain warehouses — Chapter 232
 Public terminal warehouses — grain inspection — Chapter 233
 Storage of grain on farms — Chapter 234, used only in 1935-
 36
 General provisions relating to grain — Chapter 235
 Dock coal weighing — Duluth — Section 216.42 to 216.45
 Weights and measures — Chapters 239, 325, 620

The present organization of the Minnesota Railroad and Warehouse Commission is shown in Figure I, page 4.

The authorized personnel of the nine divisions as of August 1, 1956, is given in Table I.

TABLE I
Distribution of Railroad and Warehouse Commission Staff,
August 1, 1956

Commissioners	3
Secretary	1
Administrator	1
Commissioners' Secretaries	3
Hearings Reporters	4
Accounting Staff	5

Divisions

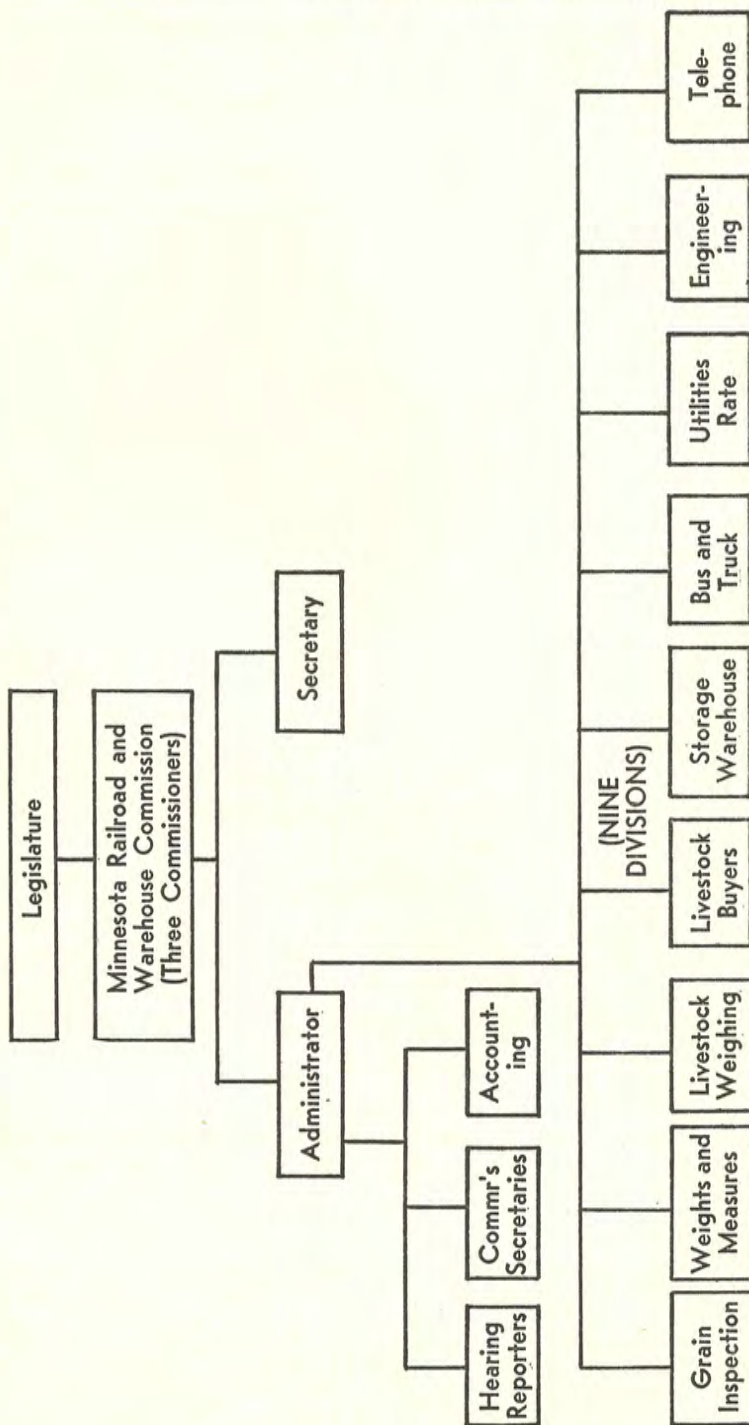
Grain Inspection	411
Weights and Measures	38
Livestock Weighing	60
Livestock Buyers and Dealers.....	2.6
Storage Warehouse	1
Bus and Truck.....	19
Utilities Rate	9.4
Engineering	11
Telephone	3
	572

Eight vacancies existed in the foregoing tabulation as of August 1. These vacancies were located as follows: livestock weighing, 1; bus and truck, 2; weights and measures, 1; engineering, 3; hearings reporters, 1.

The present organization chart of the commission does not mean that the nine divisions are of equal significance. Table I gives an indication of the number of people presently assigned to the administration of the several duties and functions. The public storage warehouse inspection function is currently handled by one employee; livestock buyers and dealers licenses and matters pertaining thereto are handled by two men with part-time stenographic help. Grain inspection, on the other hand, is carried on by a division numbering over 400 employees.

Number of employees is by no means the sole test of the importance of a division or the work performed thereby; in some cases certain divisions may be badly undermanned. The present utilities rate, bus and truck, telephone, and engineering divisions of the commission, which are concerned with the regulation of transportation and communications, have less than 60 people.

FIGURE I
 Minnesota Railroad and Warehouse Commission:
 Organization Chart as of June 4, 1956



These divisions, however, are the key divisions upon which the commission must depend for its staff assistance in regulation of rates and service, granting of operating authorities, safety, and enforcement.

The commission, functioning in the transportation, communications, and utilities regulatory fields, presently lacks jurisdiction over the electric light, power, gas, and water utilities, and is among four states which still have no jurisdiction in these fields. We have given some consideration to extending its jurisdiction to the area of electric light, power, and gas utilities, but in view of the wide breadth of our study, in the short time we have had, have not assumed to come to a conclusion.

The Railroad and Warehouse Commission

The commission consists of three members, one of whom is chosen at each general election for a six-year term. Chairmanship is rotated. The commission is ultimately responsible for the administration of all the duties and functions delegated to it. Many matters brought to its attention can be settled informally; others require a formal hearing. Ordinarily, the commissioners conduct hearings in major cases; minor hearings are assigned to designated staff members. The commission is authorized to appear and participate in proceedings before the Interstate Commerce Commission when it considers such appearance to be in the best interests of the people of our state.

According to the commission's report for the biennial period ended June 30, 1956, 426 hearings were conducted by the commission and its examiners. Each of these hearings took one to eight days. The commission also held 107 informal conferences. The formal orders in motor carrier matters alone totaled 650.

The Administrator

The position of administrator was established on March 15, 1951, by the commission with the approval of the director of Civil Service, with the intention of accomplishing the following objectives:

"To free the commissioners from day-to-day administrative problems concerning personnel, budget, and housekeeping of the commission, thereby enabling the commissioners to concentrate on the regulatory functions, to rate-making, rule-making, granting of operating rights (certificates of convenience and necessity and permits), formulation of long range policies and related matters."

The administrator's authority and jurisdiction is commission-wide and is limited only by certain duties reserved to the secretary. He has performed his duties in a satisfactory manner, but as the commissioners have retained direction in most administrative matters, he can only advise them and carry out their decisions.

The Secretary

Sec. 216.08 provides that "the commission shall appoint a secretary, not a member, . . ." He keeps the commission's official minutes and records, is custodian of the commission's seal, keeps the commission's docket, enters orders, helps prepare the commission's biennial report, conducts certain hearings, acts as legal adviser to the warehouse division, and performs other duties as assigned to him by the commission.

Grain Inspection

Early in the history of the commission, the legislature began to delegate additional duties and functions to the commission. A law regulating grain elevators and warehouses and making it a misdemeanor to charge more than two cents a bushel for warehousing grain showed a growing public concern in the practices of this business. (Laws 1875).

The grain inspection division was created in 1885. For the protection of the public the commission was charged with the responsibility of weighing and grading grains, hay, and straw, and of supervising country elevators. In this Minnesota pioneered. This division, largest of the commission with 450 employees, is more than self-supporting. Grading, inspection and weighing of grain is an integral part of transportation and marketing. It is of vital importance to both producer and buyer. Most of its staff are at Minneapolis, the largest cash grain market in the world, and a sizeable organization is maintained at Duluth, the largest wheat-shipping port in the nation. Representatives of the Minneapolis Terminal Elevator Association, Grain Exchange, Northwest Country Elevator Association, Minnesota Farmers Elevator Association, and others interested in grain marketing commended its work. Minnesota grain grades have been respected and generally accepted in national and international commerce since 1885. These witnesses emphasized that grain inspection is a commercial rather than an agricultural function. Knowing that previous studies recommended the division to be transferred to another department of state, they

asked that it remain within the commission, and we recommend that it remain there.

Duluth dock coal weighing is done by this division.

Engineering

The engineering division provides the commission with technical advice. It is in charge of a chief engineer and is divided into three sections: valuation; signal and safety; and general engineering.

In 1907 the commission was authorized to investigate railroad crossings and order the railroad companies to install signal systems or interlocking plants in instances where such measures were deemed essential to public safety. The signal engineering division of the commission was thereafter established. Similar powers relating to rail-highway crossings were delegated in later years.

Weights and Measures

In response to demands to protect the public from losses through inaccurate weighing and measuring devices, the department of weights and measures was created under the jurisdiction of the commission. All weighing devices from the smallest apothecary scale to the huge scales used in livestock receiving yards, and every measuring instrument used for retail sales, is periodically checked, inspected, and, if necessary, corrected under the supervision of the department of weights and measures (Laws 1911, Ch. 156). At the same time the commission was directed to weigh all coal shipped in carload lots from any coal dock or coal distributing point in the state, except coal shipped therefrom by any person, company, or corporation for their own use or consumption (Laws 1911, Ch. 326).

The weights and measures division carries out its functions under Chapter 239 with 38 employees. A testing laboratory is maintained at Minneapolis, and inspectors are stationed at and operate from 14 strategically located points in Minnesota, including the Twin Cities. This division tested 44,599 pieces of equipment on regular inspections, 22,860 pieces of equipment on special inspections, check weighed 15,738 items, and made 570 tests and inspections of state-weight livestock scales at 11 locations in the fiscal year ended June 30, 1956. There was no testimony recommending changes in the duties or work of this division, or for a transfer of the location of this division to any other state department. The work of this division is generally regarded as outstand-

ing. In view of the large growth of pre-packaging of meats, fruits, and vegetables in the retail trade in recent years, more inspectors may be needed to provide regular and special inspections of weighing and measuring devices and in check-weighing. New methods of testing are being developed to cope with new types of scales and measuring devices.

Public Storage Warehouses (other than grain and cold storage)

The regulation, licensing, and bonding of public storage warehouses in cities of the first class was placed under the commission's jurisdiction in 1915, and later such warehouses in municipalities of 5,000 or over were included. The commission has jurisdiction over the licensing, rates, regulations, and accounts of such warehousemen. (Laws 1915, Ch. 210; Laws 1925, Ch. 129; Laws 1941, Ch. 139).

The warehousing of merchandise has always been considered to be a necessary adjunct to transportation and merchandising. Public warehouses, other than grain and cold storage, in municipalities of 5,000 and over, are regulated and licensed by the commission. A bond for public protection is required. The license fee is \$100 per year. Their rates must be filed with and approved by the commission. According to the commission's biennial report for the period ended June 30, 1956, there were 108 licensed warehousemen who operate a total of 244 warehouses. Most of these warehouses are in Minneapolis, St. Paul, and Duluth, but in 1956 there were 25 rural warehouse points and 46 licenses, compared with only 9 rural points and 14 licenses in 1944.

Telephone Companies

In order to eliminate duplications of service and establish fair, just, and reasonable rates, all telephone companies were placed under supervision and regulation of the commission in 1915. The commission's present authority is broad; it includes regulation of rates, service, facilities, system of accounting, annual reports, physical connection between telephone companies, filing of tariffs of exchange and toll rates, franchises, and sale and transfer of telephone companies, valuation for rate-making purposes, contracts with other telephone companies, and rules and regulations pertaining to operation of such companies, but the division, with only three employees, is hopelessly understaffed.

In 1916, one year after telephone regulation began in Minnesota, 1,734 companies reported to the commission in response to

requirements of the new law. By 1952, there were 1,832 associations and companies in operation, ranging from only four to several hundred subscribers. By 1956 the number had declined to 1,541. The number of telephones in Minnesota increased from 583,116 on December 31, 1941 to 1,260,212 on June 30, 1956, a gain of 116 per cent.

Financial demands for increased facilities and replacement of outmoded equipment in the rapid expansion of our economy call for legislative attention to the rate-making formula. The statute does not prescribe a rule for rate-making, but merely says that the rates shall be reasonable. This is inadequate. A rule for determining the reasonableness of rates should be clearly stated.

The services performed by telephone companies go far beyond the definitions contained in the law, and the statute should be amended to encompass all of their operations. The statute should give authority to the commission to determine territorial disputes where necessary to fix exchange boundaries, and should also prohibit abandonment of service without authority of the commission. As some doubt exists concerning authority of the commission to order extension of service in the public interest, its jurisdiction to so act should be clarified.

Livestock Weighing

In 1919 the jurisdiction of the commission was extended to the weighing of all livestock passing through the principal receiving centers of the state. This service has been rendered continuously since that time. While the South St. Paul public stockyards are under the jurisdiction of the U. S. Department of Agriculture, the State of Minnesota has been permitted to conduct this weighing activity.

The livestock weighing division's headquarters are located at the St. Paul Union Stockyards in South St. Paul, and most of the staff are stationed there on account of the volume of business at that market. Other weighing stations are at Austin, Albert Lea, Winona, and Montevideo. The Union Stockyards rated highly the work of this division, and other testimony tended to show it maintains somewhat higher standards than does the U. S. Department of Agriculture. There were no suggestions for either discontinuance of this function or transfer of it to another department, and we see no reason for either. Like grain inspection, it is a part of transportation and marketing.

Street Railways

Under the Brooks-Coleman Act of 1921, the commission was given jurisdiction over street railways in all of the municipalities in Minnesota with respect to rates of fare, schedules, valuation and issuance of securities. Street railways no longer operate in Minnesota. We recommend that Chapter 220, M.S.A. 1953, be repealed.

Utilities Rates, Accounts and Statistics

The work of this division involves staff assistance to the commission in all rate and accounting matters, research, and statistics for all proceedings in which the interests of the state are involved, and maintenance of a tariff file of some 8,000 railroad and motor carrier tariffs. It receives and reviews required annual reports of railroads and motor common carriers and utilities operating in Minnesota.

Meter Inspection; Electric, Gas, or Water

In 1927 the commission was given the responsibility of inspecting electric, gas, and water meters upon application of consumers.

Livestock Buyers and Dealers

The Livestock Buyers Act of 1935 was directed against fraud. It compels all buyers of livestock for slaughter purposes to be licensed with the commission and to procure an indemnity bond for the protection of those with whom they deal. Approximately 1,500 livestock buyers are now licensed. This law was amended in 1949 to include those dealing in livestock.

The present surety bond requirement of \$5,000 is not high enough to cover all losses. We recommend that the amount of the bond requirement be increased to \$8,000.

Highway Regular Route Carriers

The improvement of state highways and other roads and the increasing use of motor vehicles for carrying freight and passengers for hire presented a new regulatory problem in Minnesota, as elsewhere. In 1925, the law popularly known as "Chapter 185" placed the regulation and supervision of regular route common carriers, called "Auto Transportation Companies", in the commission and delegated to it jurisdiction over rates, service, schedules, classifications, and safety measures.

Irregular Route Highway Carriers

By 1933 an increasing number of truckers, not regular route common carriers, were operating over the highways without regulation. To protect the public, Chapter 170, Laws of 1933, was enacted. This law placed all irregular route common carriers and contract carriers of freight, but not of passengers, under the commission's regulatory jurisdiction. These carriers may operate only after being granted a permit by the commission. They must carry adequate public liability and property damage insurance, file tariffs or schedules of minimum rates, and abide by the commission's regulations for safe operation on the highways. At the present time there are approximately 4,000 permit carriers (largely livestock haulers) paying registration fees on approximately 7,300 motor vehicles.

Bus and Truck Division

The bus and truck division enforces the rules and regulations of all for-hire transportation of passengers and property by motor vehicle included within the scope of Chapter 221. Four general classes of motor carriers are subject to regulation: (1) regular route common carriers, termed auto transportation companies in the statute, which operate over regular routes under certificates of public convenience and necessity, transporting passengers and/or property; (2) irregular route common carriers engaged in the transportation of livestock, household goods, and limited hauling of general commodities; (3) contract carriers engaged in the transportation of commodities requiring specialized service; and (4) carriers of petroleum products in bulk. Taxicab service, transportation of school children, transportation of passengers other than by auto transportation companies, and for-hire transportation of property (except household goods and petroleum products) wholly within a city or village of contiguous cities or villages are not regulated.

Field inspectors check regulated carriers for compliance with the commission's safety rules, operation within limits of authority, rates, and required insurance. Regulated carriers pay an annual filing fee of \$12.50 per vehicle. The number of motor carriers of various classifications is shown in Table II, page 14.

TABLE II

**Common Carrier and Permit Carrier Operations and Plate Fees:
Fiscal Year Ended June 30, 1956**

Common Carriers	Number	Plates Issued	Fees
Auto Transportation Companies:			
Passenger	57	1,672 bus	\$ 19,139.50
Freight	58	716	8,853.75
Petroleum Carriers	40	470	5,749.75
Total.....	155	2,858	\$ 33,743.00

Permit Carriers

Class	Number
Livestock Carriers	1,635
Milk and Cream Carriers....	1,164
Household Goods	184
Grain, Exclusively	137
Contract Carriers	164
Other Radial Carriers.....	670
Minnesota	
Interstate Carriers	90
Out-of-State	
Interstate Carriers	126
Carriers Authorized to op- erate into Minnesota from Reciprocal States, no fee required	900
Total.....	5,070

Permit Carrier Plate Fees

Class	Plates Issued	Fees
Intrastate	6,627	\$ 82,692.50
Interstate	2,765	34,297.50
Contract	686	8,560.00
Total	10,078	\$125,550.00
Grand Total	12,936	\$159,293.00

SOURCE: Minnesota Railroad and Warehouse Commission Report to the Governor for Biennial Period Ended June 30, 1956, pp. 48, 49, 51.

Cost of Regulation

In view of the scope of the numerous functions delegated to the commission by the legislature, the cost to general taxpayers over the years has been relatively small. The expense of some of the activities of the commission are paid by those who use these services.

The administrator of the commission has furnished us with a statement of its receipts and expenses for the fifteen-year period from July 1, 1941 to June 30, 1956.

From this it appears the grain inspection division has been more than self-supporting, raising serious question of the policy of charging higher fees for required public service than cost.

Weights and measures division activities, mostly annual inspections which are made without charge under Section 239.10, M.S.A. 1953, have resulted in an average annual net outlay of almost \$75,000; the net outlay in 1955-56 was \$114,818. Special inspections are paid for by the owner of weighing or measuring devices, if made at his request. If made at the request of some other person, and the device is found to be inaccurate, the fee is paid by the owner. Revenue from this source in 1955-56 was \$104,251.

The livestock weighing department generally breaks even. Of the \$43,959 of net receipts for the fifteen-year period, \$35,293 is attributable to 1955-56.

Main office regulatory and administrative activities cost \$2,243,850 in the period. The bus and truck division with net registration fees of \$189,036 in 1955-56 is self-supporting. Livestock buyers and dealers fees cover a large part of the expenses of that division. The rate, telephone, and engineering divisions do not collect fees. There is no separate division of railroad regulation.

Annual outlays and receipts of the commission in the past four years ended June 30, 1956 were as follows:

Year	Outlay	Receipts	
1956	\$2,722,138	\$2,806,028	\$ 33,890—net receipts
1955	2,515,483	2,449,861	65,622—net outlay
1954	2,339,749	2,026,578	313,171—net outlay
1953	2,323,004	2,022,214	300,790—net outlay

The extent to which the commission "breaks even" depends principally on the receipts of the grain inspection division, which in turn, depend upon the volume of grain inspected and graded and costs of such services. The net receipts of the commission in 1956,

\$33,890, were exceeded only in 1944 when the figure reached \$244,732. These two years were the only years in the fifteen-year period in which the commission's total receipts exceeded outlays. The favorable balance in the last year appears partly attributable to an increased fee schedule.

Some state commissions which, unlike Minnesota, do not have large fee receipts from services, have varying statutory provisions for assessing some of the costs of regulation against the regulated enterprises. In California, for example, the Transportation Rates Fund Act provides for an assessment of $\frac{1}{4}$ of 1% (0.25%) of California intrastate gross operating revenues of a carrier of property. In the fiscal year 1954-55 this statute yielded \$1,480,468.

The Wisconsin Public Service Commission apportions its disbursements to the various regulatory functions and makes two assessments: (1) a direct assessment of costs of particular investigations against the regulated railroads or utilities, limited to $\frac{4}{5}$ of 1% (0.8%) of gross intrastate revenues of the railroad or utility in the previous calendar year; (2) a remainder assessment of costs that cannot be ascribed to a particular investigation — (0.2% in the case of utilities and 0.4% in the case of railroads) — on gross operating revenues. The Wisconsin Public Service Commission in the year ended June 30, 1956, received \$399,233 from the utilities and \$106,886 from the railroads. Motor transportation regulation in that year cost the state \$207,963 which was reimbursed from the State Highway Fund. Motor carrier filing fees of \$60,355 were collected for the State Highway Fund.

We recommend that the legislature consider a method for defraying expenses of general regulatory activities.

PART II

The State Regulatory Commission—Nature and Purpose

The purpose of a state regulatory commission is to provide fair and impartial regulation at the state level of those businesses generally agreed to be substantially affected with a public interest under policies established and powers delegated by the legislature. In 1876 the United States Supreme Court declared railroads and grain warehousing to be businesses "affected with a public interest" and therefore properly subject to reasonable regulation by a state legislature. Technological developments of later years in the fields of communications, transportation, and power involved the public interest, and those supplying such services were gradually brought under regulation. In early days public utilities were usually regulated at the municipal level. In a few states today, as in Minnesota, the only regulation of certain types of utilities continues at the municipal level.

Regulatory bodies exercise legislative functions in prescribing a rate or rule, in granting a franchise, or in conducting investigations. Enforcement is administrative. Regulatory and administrative procedures are a recognized part of our governmental scheme. The complexity of modern life demands the flexibility they are popularly supposed to furnish. In court litigation the issue is primarily a determination of private rights whereas before an administrative tribunal the dominant consideration is usually the public interest to which in a sense private interest must be subordinated. In the latter there is believed to be opportunity for application of the kind of specialized knowledge with which qualified commissioners should be endowed. Prescribing rates, establishing rules and regulations, and granting franchises necessarily affect the public's interest in the maintenance of dependable and adequate utility service. Furtherance of this interest is a legislative responsibility delegated to regulatory bodies which have only the powers conferred.

Conclusions and Recommendations Pertaining to the Commission, Its Organization and Staff

Name of Commission

The name "Railroad and Warehouse Commission" is descriptive of only two of the numerous functions under the jurisdiction of the Minnesota regulatory body. Twenty-one of the state regulatory commissions which have jurisdiction over railroad, highway, and urban transportation, and one or more kinds of utilities, are designated as "Public Service Commission." Eleven states have the title "Public Utilities Commission." The name is of little importance, but it seems to have preoccupied much of the time of earlier groups studying the commission. We are willing to go along with the suggestion that the name be changed to "Minnesota Public Service Commission", or something similar.

Manner of Selection of Commissioners

Appointment

The principal argument given over the last 30 years for appointment of commissioners by the governor is that the best qualified individuals will be chosen. The most common term of office for commissioners, six years, exceeds the term of the governor making the appointment. The public benefits generally from the continuance in office of commissioners who have acquired knowledge and skill in handling difficult regulatory problems. The argument for appointment of commissioners by the governor also suggests that a desirable continuity in office of able commissioners will be assured by re-appointment.

In order to give some representation at all times to the minority political party, the statutes of some states provide that no more than two out of three, or three out of five, commissioners may be appointed from the same party. This type of provision implies that regulation must have some political connotations instead of guarding against politics in matters which affect the daily lives of all of the citizens, and it is elementary that change of political control brings pressure for appointments to keep a favorable political balance. Such appointments by the governor are frequently made from those whose qualifications lie in the direction of past partisan support instead of ability to handle the technical problems of regulation.

General election

Election of commissioners by popular vote continues to be the method of selection in eight of the Southern and Southwestern States, in five of the North Central States, and in Montana and Arizona among the Mountain-Pacific States. The main argument for popular election of regulatory commissioners is that election makes them more responsive to the needs and will of the people. Popular vote is not the way to choose those who should be technically qualified. Often candidates seeking the elective office of commissioner have only the faintest ideas of the duties of the office and none of its requirements. It is self evident that just and reasonable utility rates cannot be ascertained by ballot nor should they be decided in apprehension of popular reaction; promises of more services at lower rates should not be used to influence votes, nor should hopes for the opposite be the reason for campaign contributions.

A member of a regulatory body, regardless of his political affiliation, must adopt a state-wide viewpoint in the administration of laws and reach his determinations in the light of the public interest which transcends the concerns of the parties to the proceedings. In too many instances, the decision in an important case is delayed until after an election. It is almost too much to expect elective commissioners to be unmindful of these political pressures.

In making this argument we anticipate some objections on the ground that there is a right in the people to choose their commissioners by election, but we believe the recommendation for selection we make later is in the better tradition of representative government.

Election by legislature

Virginia and South Carolina (by virtue of constitutional provisions) elect their regulatory commissioners by vote of the joint assembly of the legislature. This method appears to have advantages over appointment by the governor or popular election. Regulatory work is legislative. The commission is the arm of the legislature exercising powers which the legislature could use directly but must delegate to a body of qualified individuals who function continuously.

This method has some obvious advantages over either popular election or appointment. No one legislator or group of legislators can have the influence over a commissioner equal to that of an appointing governor or sponsoring political organization. Legisla-

tive election is a kind of guaranty that those to whom legislative responsibility is delegated will be chosen for ability to perform an important complex task. Supervision by the members of the legislature, trained by experience to discern the detail in government, in the nature of things should be more strict than can be expected of the electorate. In Minnesota a commissioner would be chosen by 198 legislators, representative of all the people.

Recommended Method of Selection

At this point it is emphasized our proposal for a method of selection, discussion of which follows, does not contemplate shortening the term for which the present commissioners were elected. On the contrary it is assumed that each will complete his term.

We are charged by the law under which we act to study and report on the need for change in the organization of the commission. Inherently this involves an answer to the question of whether the office of commissioner should continue to be elective. This has been much discussed in recent years by people interested in government. It has been the subject of frequent editorial comment in the press and both the "Little Hoover Commission" and "Functional Task Force on Overall Structure of the Minnesota Self Survey" have made precise recommendation in respect to it. Probably the public generally and the legislature consider that inquiry to be one of the main, if not the main, aspects of our work.

In keeping with its fundamental importance this question has been given serious attention. Our conclusion involves several essential decisions. First, for reasons which appear later, we decide to separate the legislative and administrative functions of the commission. Second, we decide that the administrative division should be in charge of a person of department head stature. He should be appointed by the Governor "by and with the advice and consent of the Senate" in the manner of other executive appointments.

Our third decision is to recommend that the commission which will perform the legislative function of public utility regulation be elected by a majority of the members of the legislature in joint convention. We recognize that this departure from present practice may be a deterrent to quick acceptance, but that is not a reason for not making it, especially as we are confident that critical consideration will disclose its merit. We believe this method of selection will prove better than either of the only alternatives, popular election or appointment, and will create and assure a commission that is independent, impartial and competent, qualified to assume its delegated responsibility and worthy of public trust.

Constitutional implications are not overlooked. The Federal government, following early precedent, adheres to the practice of presidential nomination even to offices of a legislative nature. While perhaps the doctrine that nomination for appointments is solely executive is not losing its original rigidity, it is worn thin by the tolerance the courts have long shown for congressional limitations on the appointive discretion through such devices as specifications of eligibility. We know of no judicial decision in Minnesota adverse to our recommendation, and we believe there is sound distinction between it and the situations which have gained the attention of the courts in the sharp definition that the only power to be asserted by the commission will relate to delegated legislative functions.

In *State ex rel Child v. Griffin*, 69 Minn. 311, where a statute requiring the governor to make his appointment to the state board of pharmacy from those named by the association was held invalid, the court said, "It will be understood that we do not intimate that the Legislature cannot create an office, and itself appoint the officer thus provided for * * *". The legal justification for legislative appointment to an office of exclusively legislative duty lies in the doctrine of separation of powers which is the keystone of our governmental structure and the dominant characteristic of our constitutional plan. See *State ex rel Young v. Brill*, 100 Minn. 499. This proposal does not encroach on the executive's prerogatives and his control of the administration of government.

Reorganization of the Work of the Commission

Under our plan, the work of the present commission would be included in the Minnesota Department of Public Service consisting of the regulatory division and the administrative division. In requiring the administrative functions to be handled by the staff of the administrative division under the supervision of a director, we would relieve the commissioners of routine duties so they can devote full time to the tasks delegated to them. They now supervise some 550 employees concerned almost entirely with administrative matters. It is our purpose to enable the commission, freed of supervisory responsibility, to pursue and formulate long-range policies.

Our proposal should work in a practical manner. As we view it, the task of policing, including enforcement and inspection, would be the responsibility of the administrative division. Conviction for violation in enforcement cases should be in the courts. The law

should provide penalties for violation including, in proper cases, means of suspension and revocation of operating rights.

The regulatory division, consisting of three commissioners, secretary, personal secretaries, hearing examiners and reporters, should perform the legislative functions of prescribing rates, granting franchises and operating authorities, conducting investigations, and making rules and regulations for regulated business.

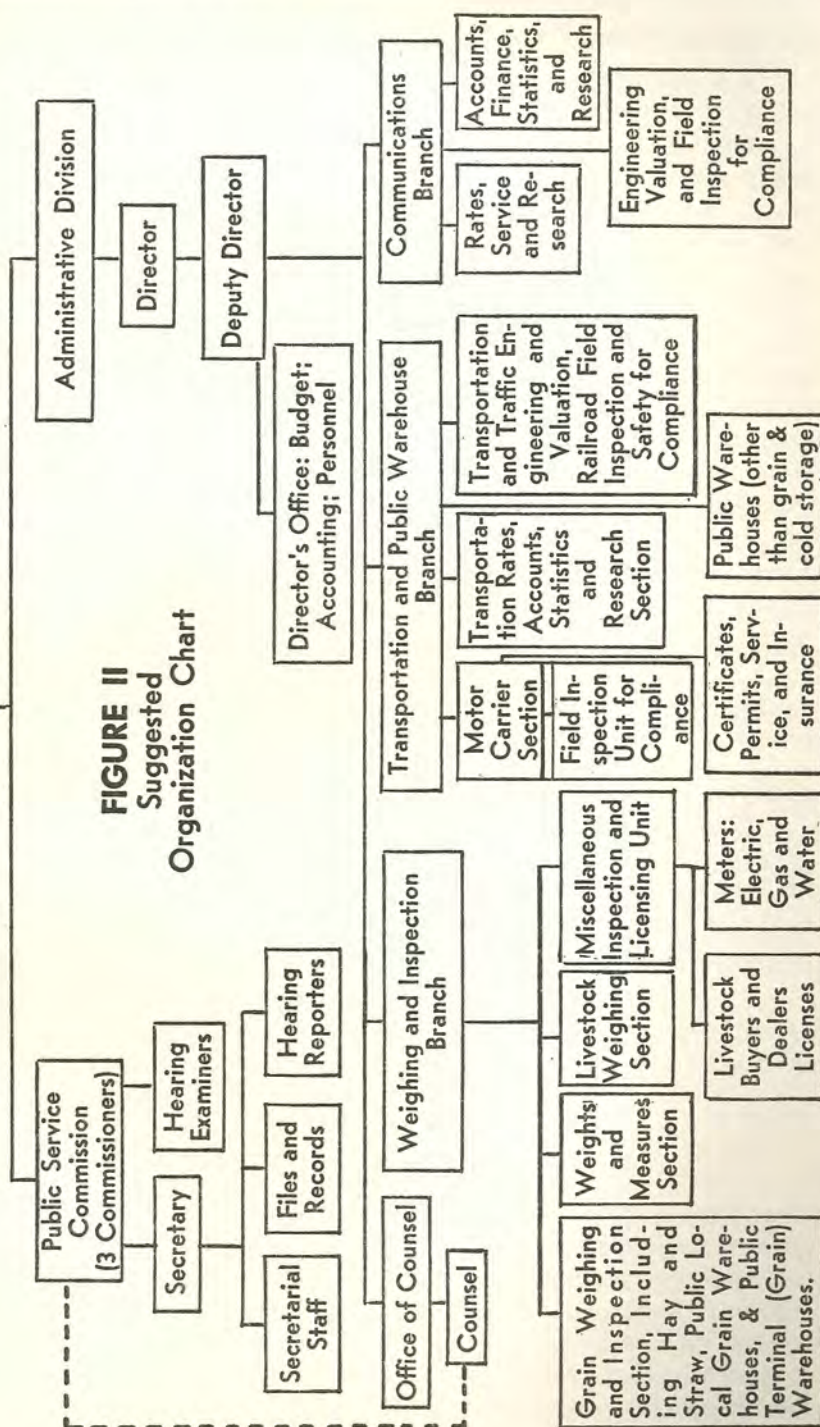
It requires no explanation that in a matter for decision by the commissioners they should have had no part in obtaining the evidence and there should have been no discussion with them about it in advance of formal hearing and final decision. It should be equally clear to the commissioners and all employees of the department that they are exercising a public trust and should not accept favors from any persons dealing with them. It is our hope that the office of commissioner will carry with it the stature and dignity in the field of regulatory law that we attribute to the judiciary and give to all who appear before them the fair play which we call due process of law.

We believe that the administrative division should be in charge of a director appointed by the governor for a six-year term with the advice and consent of the senate, removable only for cause after hearing. He would be responsible for the administration of the laws as set forth in the statute and of the rules and regulations of the commission made pursuant thereto. He would investigate as the commission may require, keep statistical and accounting data, and administer the functions and personnel of the grain inspection, livestock weighing, weights and measures, public warehouses, livestock buyers and other divisions, including motor carrier, engineering, telephone and all other administrative activities required by law. A suggested organization chart, Figure II, page 21, indicates our thinking in this respect.

Within the administrative division there should be the office of legal counsel, with qualifications and duties assigned by law. Although the attorney general now acts for the commission under statute, this occasional work does not develop the special skills in governmental regulatory law that come only with continuity of service. The counsel will prepare and present evidence for hearings and advise the commission, thus relieving the commission and other staff members from these tasks which are primarily legal in nature.

MINNESOTA DEPARTMENT OF PUBLIC SERVICE

FIGURE II
Suggested
Organization Chart



Salaries of Commissioners

A study of salaries of the public service commission members as of 1955 indicates that 21 states, including smaller and less populous states, have salaries for commissioners which are generally much higher than the \$9,000 salary which has been paid to Minnesota Railroad and Warehouse Commission members since 1951. New York leads the states with appointive commissioners with a salary of \$19,500 for the chairman, and \$18,500 for the other members. The Wisconsin chairman receives \$12,500 and the other two commissioners are paid \$11,500. Texas leads the popular-election states with salaries of \$17,500 for the members. Virginia pays \$14,000 to the chairman and \$13,500 to the other members. In view of the responsibilities of the Minnesota commission we recommend that salaries be increased to the salary of major state department heads.

Term of Office and Number of Members

We recommend continuance of the present six-year term of office, the staggering of the terms so that one commissioner will be elected every two years, and a commission of three members. This is consistent with the national trend.

Secretary

We recommend that the office of secretary to the commission as now established by law be continued: that a vacancy in this office be filled by the commissioners outside of the classified service; that the secretary be a lawyer, and that one ineligible to be commissioner be ineligible as secretary. His salary should be \$9,000.

PART III

Other Conclusions and Recommendations

Staffing Problems of the Commission

There is a serious staffing problem within the present commission. The telephone division consists only of the telephone rate engineer, one telephone rate aide, and a clerk-stenographer. This is an inadequate staff for the task of regulating 1,541 telephone companies of various sizes. The chief of this department is well past the retirement age, and no competent understudies have been trained.

The utilities rate division is supervised by the utilities rate expert who will be eligible for retirement in a few years. No competent replacement is ready.

Consideration should be given to the need for additional staff in the statistical section which, though competent, operates with only four employees.

We doubt that the engineering division should be kept at present strength. Some staff members here could be better utilized in other work.

The bus and truck division has had difficulty in acquiring and retaining competent inspectors. This position should be evaluated with a view to the adequacy of salary. Also, there should probably be more inspectors, as there are now only seven to carry on field inspection of the 155 common carriers and 5,070 permit carriers, including 1,026 out-of-state carriers, authorized to operate for hire on the highways of this state.

To some extent, at least, the unattractive salaries in all of these positions have been recognized, and recently there have been reassignments in salary ranges.

Dock Coal Weighing at Duluth

The law now requires coal shipped in carload lots by rail from docks to be weighed by a state employee. The statute is so written that, in practice, only coal so shipped from Duluth is thus weighed and coal hauled from other points or by other means of transportation is not. All the evidence indicates this practice is an unwarranted duplication of work being done with adequate protection to the public by Western Weighing and Inspection Bureau whose

weights are accepted by buyers, sellers, and carriers. Six to eight employees now assigned to this activity can be reassigned within the grain inspection division. We recommend that Duluth dock coal weighing be discontinued not later than December 31, 1958.

Urban Transit and Inter-city Bus Problems

Urban mass transportation problems are important. The continuing increase in private automobile registrations has resulted in a continuous decline of bus patronage. This trend is national. Neither increase in fares nor municipal operation appears to be the answer. Instead, relief from arbitrary laws and taxes affecting urban transit is sounder.

Transit buses operate principally on city streets and, therefore, might logically be exempted from payment of a portion of the fuel tax designated principally for highway maintenance and construction. For the same reason, they could logically be relieved of a portion of the vehicle registration fees.

Adjustments in fares should be made promptly when justified. In determining reasonableness of fares, greater weight should be given to operating ratios especially where fixed investment has been decreased by conversion from street railways to motor buses. The proportion of revenues absorbed by operating expenses, including taxes, is a proper consideration in ascertaining a fair rate.

Remedial action elsewhere is illustrative. Wisconsin (Laws 1955, Ch. 240) exempted all urban transit companies from fuel tax, reduced motor vehicle registration fees to one dollar per vehicle, and substituted a 50% income tax to become operative after a yield of 8% on the rate base.

The Iowa Governor's Transit Study Committee recommended (December, 1956) that urban bus license fees be reduced to \$25 per vehicle and fuel taxes be eliminated.

In the District of Columbia, Congress exempted the transit system (Public Law 757) from gross sales, compensation, use, excise, personal property, mileage, and motor fuel taxes. The New England Governors Committee on Public Transportation, in recommending reduction of fuel taxes and registration fees, said "It is preferred, in our judgment, to grant these inducements to private management if by so doing the public can be relieved of the responsibility of purchasing and operating mass transit facilities," and further stated "New England states all make use of operating ratios in transit fare adjustments. This should be continued."

Inter-city bus operators have a serious problem with unregulated charter-type competition. We recommend that the legislature consider the effects of unregulated charter-type competition upon these operations which are facing declining patronage.

Board of Grain Appeals

There is serious doubt as to whether the cost of maintaining the board of grain appeals in relation to the service it performs warrants its continuance. We suggest that the legislature review the present duties and work of this board in light of the re-inspection service which is now available through the United States Department of Agriculture.

Storage of Grain on Farms — M.S.A. 1953, Chapter 234

The provisions relating to storage of grain on farms enacted in 1935 were used only in 1935-1936, prior to federal legislation which came into operation in 1936. Storage of grain on farms subject to federal loans is no longer under the jurisdiction of or subject to any rules of the Minnesota commission. We recommend that M.S.A. 1953, Chapter 234 be repealed.

Transportation of Nuclear Products

The safety of transportation of radioactive materials in intrastate commerce is a part of the broader problem of peace time uses of atomic energy. We recommend that the legislature give the commission broad powers to regulate the transportation of these materials in the interest of public welfare.

Filing Fees for Commission Hearings

Filing fees in commission proceedings requiring a hearing are now provided only in connection with filing applications for a certificate of convenience and necessity under Chapter 221, M.S.A. 1953. That fee is \$50. We recommend a minimum filing fee of \$50 in any matter requiring a hearing by the commission in order to help defray costs.

Commission Procedure and Appeals

The regulatory law consists of various acts having different methods of procedure on appeal. We recommend that procedures before the commission and appeals to the courts be made uniform.

Consolidation and Revision of Railroad Statutes in Chapters 216, 217, and 218

Chapters 216, 217, 218, and 219, dealing with railroads, contain provisions relating to the establishment of the railroad and warehouse commission, the commissioners' qualifications and duties, track scales, the weighing of coal, and other matters only indirectly related to railroad regulation. There is much obsolete and repetitious matter in these four chapters. They are in need of revision. The task is substantial. We have decided for the present to confine our efforts to revision of Chapters 216, 217, and 218. Chapter 219 includes highly technical railroad safety provisions, is somewhat more up to date, and contains less foreign and repetitious matter than do the other three chapters.

The provisions of these three chapters, insofar as they concern railroad regulation, should be consolidated into one chapter. Obsolete and repetitious matter should be deleted and certain changes made as hereinafter indicated. No important changes in the substance of the old law need be made. Many sections have been construed by the courts, and unnecessary changes would be undesirable. However, the present definitions of railroads, carriers and transportation are unsatisfactory. Definitions contained in the federal act and the acts of many states should be substituted.

Throughout the three chapters, wherever duty is placed upon railroads, a fine or a forfeiture is imposed in case of failure to comply. None of these penalties has been invoked for years, if ever. We suggest that these be repealed and a general penalty for a misdemeanor cover any violations of the act. There are two exceptions. The provision that rebates or other unjust discrimination by the railroads shall be subject to fine not exceeding \$5,000 should be retained, as should the penalty of \$50 a day for failure of a railroad to comply with any final order of the commission. In addition, certain minor changes are desirable.

The law governing the closing of depots requires revision. When the annual business from outgoing and inbound traffic at any station amounts to \$15,000 or more (instead of \$8,000 as at present), the company should keep an agent at such station, and the commission should be permitted to authorize abandonment of any station where the business is less than \$3,000 (instead of \$1,500 as at present) in any three consecutive months.

Revision of Highway Carrier Statutes in Chapter 221

The regulation of for-hire highway transportation of passengers and property is one of the most important functions of a public service commission. Present regulations consist of a number of acts tacked together by various legislatures and numerous amendments, making a statutory hodge-podge which is difficult to read and understand. This act must be rewritten.

We held hearings at which the industry and shipping public offered suggestions and opinions. As a result, we recommend changes as follows:

The definitions be clarified and brought up to date with present advancements in the motor carrier industry. To illustrate, the term "auto transportation company" should be dropped and the term "regular route common carrier" substituted.

Irregular-route common-carrier permits cover the household goods mover, the trucker who transports automobiles, the grain hauler, the milk hauler, the odd-job man who generally handles truckload lots, and the cattle hauler. We conclude that the livestock carrier should be in a class by himself because most of his hauling is over a regular route inbound with livestock and outbound with farm supplies, and that a separate type of permit be created for him.

The indiscriminate issuing of permits is a problem. At present the commission has no power to deny an applicant a permit whether or not he is responsible or properly equipped. As a result, many irresponsible people get permits, keep them a few months, and quit. The turnover is about 12 percent of all such registered truckers each year. Many operate on a sub-marginal basis without means to buy proper equipment or maintain insurance resulting in undue hazards to the traveling public. We feel that in cases where the commission finds there are a sufficient number of truckers in a territory to adequately meet the needs of the shippers there, it should have authority to deny applications.

The definition of a contract carrier is confusing and should be clarified. Some of the exemptions from the requirement of permit, especially the occasional hauler type, should be eliminated.

All for-hire carrying of passengers should be regulated except taxicabs and school buses when engaged in transportation involving any school activity. Charter service permits should not be granted where such service is available by common carrier.

At present only auto transportation companies (carriers holding certificates) are required to file annual reports. We believe that

all for-hire carriers should be required to file such reports.

The legislature should enact a formula based on the carrier's gross operating revenue for the establishment of passenger and freight rates. When so based, the rate should be fixed at a level sufficient to yield a return measured by a fixed percentage of gross operating receipts after deducting all operating costs and proper overhead expenses, including taxes, regulatory fees and licenses. This is a comparatively simple method for determining the proper rate of return for these motor carriers.

The commission should be authorized to make ex parte changes in tariffs where the proposed change does not justify a public hearing.

The holder of a certificate of a bus or truck company desiring to sell or transfer it should be required to set forth all outstanding claims so that the proceeding may afford some protection to creditors.

A carrier of petroleum products should be required to prove public convenience and necessity as a basis for being granted a certificate. The present basis of "not contrary to public interest" is indefinite in meaning.

When investigation discloses that a contract or permit carrier's minimum rates may not be reasonable, a hearing should be ordered and the carrier be required to justify them. The commission should have control over these carriers' tariffs, so that minimum rates will not result in unfair or destructive competitive practices.

In claims for loss or damage to freight, baggage or express, the time for adjustment should be a maximum of 90 days, and penalty and interest should be added thereafter.

Regulation of Electric Light, Power and Gas Utilities

It is recommended that the legislature continue by interim commission a study to determine the advisability of regulating power and gas utilities at the state level. Minnesota is now one of four states which does not regulate franchises, rates, finances, accounts and services of these utilities. We made some preliminary investigation of this problem but consideration of other matters covered in this report did not allow time for holding public hearings and conducting the research necessary for making recommendations.