

MEMO ON and ANALYSIS OF
O'MAHONEY-BORAH bill. S. 3072.

My particular interest in this bill arises out of my desire to be helpful in furnishing a practical method to control monopoly and monopolistic prices in interstate commerce.

Sec. I. paragraph 1, defines interstate commerce - the definition is practically the language of Chief Justice MARSHALL, as approved and construed by the SUPREME COURT in other cases.

This definition defines interstate commerce, fixes and limits the scope of the measure - that is, to regulate interstate commerce.

Sec. I. paragraph 2 declares that the franchise powers and privileges of corporations are derived from the people and not granted by the government, state or national, as the agents of the people to achieve the public good and general welfare. This paragraph also calls attention to the fact that commerce with foreign nations and among the states is carried on through the instrumentality of corporations created by the several states which are without jurisdiction in such fields in which such corporations principally operate, and that it is the right and duty of Congress to control and regulate all corporations engaged in such commerce, to the end it is necessary to provide a national licensing system.

Sec. II. a. defines commerce, that is, trade or commerce among the several states, and so forth.

b. defines corporations as including anybody, corporates, associations, trusts, joint stock company, limited partnership, syndicate, pool, joint venture, or other unincorporated venture.

Sec. III. a. increases the Federal Trade Commission from 5 to 9.

This sub-division a will likely be stricken out.

b. provides that the Federal Trade Commission is authorized and directed to develop a general program for the coordination, stabilization, and orderly development of the basic industries of the United States and for a more equitable distribution of the earnings of commerce, trade and industry, and so forth. This is simply for the purpose of making a report to Congress.

c. provides that the Commission is further authorized and directed to investigate basic trades and industries of the United States, and to submit to the Congress its findings concerning the general economic conditions prevailing in these industries.

d. provides the Commission shall submit to the Congress its recommendation with respect to a Federal law providing for the incorporation of corporations engaged in commerce.

This is very important, as the licensing system is the preliminary step, as I see it, to the ultimate Federal incorporation of all business engaged in interstate commerce.

Sec. IV. provides that after a certain time it shall be unlawful for any corporation to engage, directly or indirectly, in commerce without first obtaining a license therefor from the Commission. This license is limited to corporations.

b. provides that before any license shall be issued to corporations, they shall file with the Commission a sworn statement with respect to its operations, which shall include information concerning its organization and financial structure; the character of its transactions in interstate and foreign commerce; the terms, position, rights, and privileges of the different

classes of its securities outstanding; the terms on which its securities have been offered to the public,; its bonded indebtedness; and so forth.

Sub-division c provides that such license shall be made and issued in such manner as the Commission shall by regulation prescribe. The Commission is authorized to incorporate in the license such terms and conditions as are necessary to carry out the purposes of this Act.

d. provides that the Commission shall deny applications for licenses where the corporation fails to comply with the provisions of sub-division a.; or, if the Commission finds the applicant corporation is an unlawful trust or combination in violation of the antitrust laws.

Sec. V provides, or deals with labor and fair trade conditions. This Section, I leave to the discussion by Senator O'Mahoney.