

## TRADE REGULATION

## LEGISLATION

As a result of the Television quiz and payola scandals the Communications Act of 1934<sup>1</sup> was amended to eliminate deceptive practices in the Television industry. Section 4 of the amendments<sup>2</sup> establishes a new pre-grant procedure for licenses under which petitions to deny an application for a license are to be filed prior to Commission action on the application. Hearings on such a petition will be combined with any hearing required on the application for the license. Public notice is required to be given by the Commission of the filing of an application and it may not grant a license for a period of 30 days following such public notice. It is anticipated that the new procedure will speed up the granting of licenses.<sup>3</sup> The amendments also provide for local hearings on applications for licenses,<sup>4</sup> restrict "payoffs" and "swapoffs" between competing applicants by requiring Commission approval of any agreement to withdraw an application,<sup>5</sup> authorize the suspension of licenses for brief periods,<sup>6</sup> provide for the imposition of fines<sup>7</sup> for violation of the Communications Act, and prohibit deceptive practices in contests of intellectual skill or knowledge as well as the advance disclosure of answers to quiz contestants.<sup>8</sup>

Section 317 of the Communications Act of 1934,<sup>9</sup> requiring the disclosure of payments made for broadcasting of certain matter, was amended to avoid some of the hardships resulting from the Commission's interpretation of it<sup>10</sup> and a new section was added<sup>11</sup> which requires announcement of payments made not only to licensees (the scope of § 317) but also to any other individual for inserting "plugs" on behalf of third persons on sponsored programs. Provision is also made to prohibit payment to any person for

<sup>1</sup> 48 Stat. 1064, as amended, 47 U.S.C. §§ 151-609 (1958).

<sup>2</sup> Pub. L. No. 752, 86th Cong., 2d Sess. (Sept. 13, 1960), 74 Stat. 889 (1960).

<sup>3</sup> See H. R. Rep. No. 1800, 86th Cong., 2d Sess. (1960). U.S. Code Cong. & Ad. News, Pamphlet No. 16 p. 4729 (Oct. 5, 1960).

<sup>4</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 5 (Sept. 13, 1960), 74 Stat. 889 (1960).

<sup>5</sup> *Ibid.*

<sup>6</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 6 (Sept. 13, 1960), 74 Stat. 889 (1960).

<sup>7</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 7 (Sept. 13, 1960), 74 Stat. 889 (1960).

Prior to these amendments the principal sanctions of the FCC were revocation of license, often considered too severe, and cease and desist orders. These are congressional attempts to make the FCC's sanctions more flexible and effective; see H. R. Rep. No. 1800, 86th Cong., 2d Sess. (1960), U.S. Code Cong. & Ad. News, Pamphlet No. 16 p. 4736 (Oct. 5, 1960).

<sup>8</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 9 (Sept. 13, 1960), 74 Stat. 889 (1960).

<sup>9</sup> 48 Stat. 1089, as amended, 47 U.S.C. § 317 (1958).

<sup>10</sup> Public Notice of FCC, "Sponsorship Identification of Broadcast Material" (Mar. 16, 1960), interprets § 317 as requiring an announcement of any gifts to licensees of records, transcriptions or other matter to be exposed in the course of broadcasts.

<sup>11</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 8(a) (Sept. 13, 1960), 74 Stat. 889 (1960). H.R. Rep. No. 1800, 86th Cong., 2d Sess. (1960), U.S. Code Cong. & Ad. News, Pamphlet No. 16 p. 4729 (Oct. 5, 1960) explains the intended coverage of this amendment and could very likely be important in its interpretation.

the purpose of having included in a broadcast any material without having an announcement made to this effect on the program.<sup>12</sup> Violations are made subject to criminal penalties.<sup>13</sup>

There has been little significant state legislation during 1960. The N.Y. legislature passed an act making discrimination in insurance rates, already prohibited,<sup>14</sup> an unfair method of competition.<sup>15</sup> Georgia has extended the scope of its Fair Trade Act to cover the business of insurance.<sup>16</sup> Kentucky<sup>17</sup> and Mississippi<sup>18</sup> have prohibited price discrimination in the sale of milk and other dairy products as well as their sale below cost.

The 1959 Ohio Fair Trade Law<sup>19</sup> which was enacted to remedy the 1933 law, declared unconstitutional in *Union Carbide v. Bargain Fair Inc.*,<sup>20</sup> has been held unconstitutional by two Common Pleas Courts in two Ohio counties.<sup>21</sup> Both decisions assert that the act was an unconstitutional delegation of legislative authority to private individuals and it would appear from the *Union Carbide* case that the Ohio Supreme Court would sustain this position.

#### ADMINISTRATIVE REGULATIONS

There has been considerable activity on the part of the Federal Trade Commission since our last comment. New and considerably more comprehensive trade practice rules were issued for the Woodworking Machinery Industry.<sup>22</sup> Rules were also issued for the Hosiery Industry.<sup>23</sup> The trade practice rules for the Silk,<sup>24</sup> Linen,<sup>25</sup> and Rayon & Acetate<sup>26</sup> Industries were rescinded.

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<sup>12</sup> Pub. L. No. 752, 86th Cong., 2d Sess. § 8(b) (Sep. 13, 1960), 74 Stat. 889 (1960).

<sup>13</sup> *Ibid.*

<sup>14</sup> N.Y. Laws of 1958 ch. 665, § 1 (eff. Feb. 12, 1960).

<sup>15</sup> N.Y. Laws of 1960 ch. 558.

<sup>16</sup> Geo. Laws of 1960 Act No. 589, ch. 56-7, § 56-704 (eff. Jan. 1, 1961).

<sup>17</sup> Ky. Laws of 1960, H.B. No. 207.

<sup>18</sup> Miss. Laws of 1960, H.B. No. 324.

<sup>19</sup> Ohio Rev. Code Ann. § 1333.27-34 (Baldwin 1960).

<sup>20</sup> 167 Ohio St. 182, 147 N.E.2d 481 (1958).

<sup>21</sup> *Helena Rubenstein v. Cincinnati Vitamin and Cosmetic Dist. Co.*, No. A-174963, 1960 Trade Cas. ¶ 69,720 (Hamilton Cty. C.P. 1960); *Hudson Distributors Inc. v. Upjohn Co.*, No. 727,805, 1960 Trade Cas. ¶ 69,778 (Cuyahoga Cty. C.P. 1960).

<sup>22</sup> 25 Fed. Reg. 5835 (1960) superceding 16 C.F.R. 92 (1960).

<sup>23</sup> 25 Fed. Reg. 8250 (1960).

<sup>24</sup> 25 Fed. Reg. 2835 (1960) rescinding 3 Fed. Reg. 2624 (1938).

<sup>25</sup> 25 Fed. Reg. 2836 (1960) rescinding 6 Fed. Reg. 707 (1941).

<sup>26</sup> 25 Fed. Reg. 2836 (1960) rescinding 16 Fed. Reg. 12424 (1951).