The Evolution of the Virginia's State Corporation Commission

Preston C. Shannon

Repository Citation
THE EVOLUTION OF VIRGINIA'S STATE CORPORATION COMMISSION

PRESTON C. SHANNON*

Originally organized to deal with the rapid growth of mass transportation and transmission companies in the Commonwealth, the State Corporation Commission has constantly kept pace with the changing socioeconomic and industrial phenomena that have affected Virginia's citizens during the past several decades. Although the SCC currently regulates a variety of activities ranging from insurance sales to parachute jumping, its 157-year history began with the regulation of only waterways and roads by what was known as the Board of Public Works. With the advent of railroad transportation in the late 1820's, the Board, aided by constitutional and statutory authority, began to expand its influence over a larger number of regulated industries. The social revolution of the twentieth century provided added impetus to this trend, bringing an increasing need for administrative supervision of the numerous activities that involved the public and were inherently subject to abuse. In the wake of these developments, the 1902 Virginia Constitution created the State Corporation Commission.

THE BEGINNING YEARS

According to one leading authority, public regulation originated about 2300 B.C., when the Hammurabi Code specified "the price at which a swift ship might be hired" and fixed "the yearly rate for which a working ox could be rented." 1 Today, businesses "affected with a public interest" are regulated in varying degrees at state and federal levels under the aegis of the commerce power delegated to Congress and the police power inherent in state governments. Much has been written about state and federal regulatory agencies, but because the State Corporation Commission of Virginia is so extraordinary in the scope of its duties and responsibilities, it merits special attention.

The evolution of the State Corporation Commission was similar to that of the federal regulatory agencies. Its origin is traced to "an Act

---


to create a Fund for Internal Improvement," passed in 1816, which was
to be administered by "[t]he President and Directors of the Board of
Public Works." This Board was a corporate body created for the
purpose of "preserving, ... improving, ... [and] disbursing" the Fund,
which was to be applied only to the improvement of transportation by
water and public highways. The Governor of the Commonwealth was
President ex officio of the Board, and its directors consisted of the At-
torney General, the state Treasurer, and 10 citizens selected by the
General Assembly.

The Act of 1816 was repealed in 1831 by new legislation which reor-
 ganized the Board of Public Works; the Board then consisted of the
Governor, Lieutenant Governor, and Treasurer, and was authorized
to employ an engineer or surveyor, and two auditors. This body thus
began to acquire some of the dimensions of an administrative agency.
The general powers of the Board were expanded in 1849, when it was
given supervision of that part of the Cumberland Road within Vir-
ginia and was empowered to regulate tolls and the weight of loads
transported over state roads.

Three years later, the composition of the Board was altered again,
this time by the Virginia Constitution of 1851, which provided that
"[t]here shall be a Board of public works, to consist of three commis-
sioners." For the first time, a Virginia regulatory agency had been
created directly by the people, although the enumeration of its duties
was to be determined by the legislature. Provision "for the election
and compensation of the commissioners, and the organization of the
board" was to be made by the first General Assembly to convene under
the new Constitution. The legislation necessary to breathe life into
the new Board of Public Works was enacted on March 9, 1853. The
general duties of the Board were set forth and steps were taken to im-
plement the constitutional objectives. The state was divided into three

2. 1 Proceedings of the Board of Public Works 57-58 (1816-18).
3. Id. at 57.
4. Id. at 58.
6. Va. Code tit. 20, ch. 69 § 1 (1849). A footnote to this section reads as follows:
"Congress, by an act approved the 2d of March 1833, gave its assent to the act of
assembly passed the 7th of February 1832, concerning the Cumberland road. See Acts
of Congress 1832-3, p. 82, ch. 78."
9. Id. § 15.
districts, and the voters of each district elected one commissioner to sit on the Board.10

On July 16, 1861, the General Assembly, meeting in the City of Wheeling (now West Virginia), passed the following act: "The present board of public works be . . . hereby abolished, and the powers and duties of said office shall hereafter be performed by the governor, lieutenant-governor and council."11 The 1851 Constitution authorized such action when it was shown that three-fifths of the members of both houses of the General Assembly felt the Board was no longer necessary.12 Subsequently, under the so-called Underwood Constitution, "adopted" in 1869 in conformity with the Reconstruction Acts of 1867, the composition of the Board of Public Works reverted to three state officials consisting of the Governor, Auditor, and Treasurer of the Commonwealth.13 Regular meetings were to be held once a month at the Board's office in Richmond.14 The Board was required to appoint a secretary at an annual salary of $1300, who was charged with the responsibility of keeping a record of its official acts. By law, the proceedings of the Board were to be open to public inspection.15

**RAILROAD REGULATION: A PRELUDE TO THE SCC**

In 1816, when the first Board of Public Works was created, transportation was by water or road and was slow and primitive. The advent of the railroad foreshadowed an end to canal building. The Baltimore and Ohio Railroad, incorporated February 28, 1827,16 was the first major railroad in the United States, and railroading in Virginia began soon thereafter, when the Baltimore and Ohio was chartered in Virginia by the General Assembly on March 8th of that year.17 By 1835 over 1000 miles of railroad were in operation,18 and more than 200 railway charters had been issued in 11 states, including the charter granted to the B & O by the Virginia Legislature to construct a line from Winchester to Harpers Ferry, where it was to connect with the B & O main line. This expansion of the B & O into the Commonwealth brought the

15. Id. § 5.
subject of railroad transportation to the front of public awareness, and precipitated rivalry between state and out-of-state interests, with local sentiment rapidly developing for strong Virginia railroads. This period from 1830 to the Civil War has been characterized as the first railroad era of the Commonwealth.  

Although the General Assembly prescribed certain general regulations for railroad companies as early as March 11, 1837, it was not until 30 years later that the Board of Public Works was given limited authority to investigate the railroad and canal companies operating in Virginia; the legislation provided that:

It shall be the duty of the Board of public works to make inquiry and examination, from time to time, into acts and proceedings of the railroad and canal companies within this state, their officers and agents, for the purpose of ascertaining whether anything shall have been done, or omitted to have been done, in violation or contravention of this act, and if such shall be the case, to report the same to the general assembly.

This enactment entitled "An ACT to Provide for the Regulation of Railroads and Canals within the State," was passed approximately 20 years before the federal Interstate Commerce Act. The 1867 Virginia legislation required all railroad and canal companies to publish tariffs of rates and charges; this forward-looking enactment provided for greater regulatory flexibility than was available under the 1837 legislation, which established fixed rates to be charged for shipment of specified commodities. Unfortunately, the Board was not vested with authority to correct the abuses inherent in violations of the act. Instead, the aggrieved party could apply to a circuit court for injunctive relief. Proceeding before a local circuit court was not only cumbersome, but often involved interpretation of complicated railroad tariffs and consideration of technical questions involving preference and prejudice which were beyond the expertise of the usual circuit judge. In any event, by comparison with

22. Id.  
the first Congressional attempt to regulate through a Commission exercising quasi-legislative and quasi-judicial powers, Virginia’s 1867 Railroad Act vesting the Board of Public Works with investigative powers was one of the first real attempts to provide for the regulation of railroad and canal transportation, its limitations notwithstanding.\(^{25}\)

The 1867 Railroad Act contained provisions strikingly similar to present Virginia statutes. For example, it provided:

No railroad or canal company in this state, or its officers or agents, shall transport, or contract to transport, freight or passengers at a greater or less charge than is fixed in such published tariff of such company; and it shall be unlawful for any such company to evade, or attempt to evade, by drawback, or in any other manner, the provisions of this section.\(^{26}\)

This section can be compared with present Code sections 56-98.1 and 56-102—the former requiring every transportation company to file with the Commission, and keep open for public inspection, schedules showing its rates and charges for all transportation services, and the latter making it unlawful for a carrier to charge a rate other than the published tariff rate.\(^{27}\) The 1867 Act also provided:

No such company shall charge a greater sum for the transportation of freight over a part of its line than is charged for the transportation of similar freight over the whole length of its line; and all freight and all passengers of the same class, transported over the

\(^{25}\) It is well known that certain states created railroad commissions prior to 1867. In C. PHILLIPS, JR., THE ECONOMICS OF REGULATION (1969), the following pertinent observation is made:

The initial state commissions, generally those created prior to 1870, were largely fact-finding and advisory bodies, with jurisdiction limited to the railroads. Six states set up such commissions before the Civil War: Rhode Island in 1839, New Hampshire in 1844, Connecticut in 1853, New York and Vermont in 1855, and Maine in 1858. Ohio, in 1867, and Massachusetts, in 1869, followed right after the war. These commissions made recommendations to their state legislatures and to railroad managements, appraised property taken by railroads under the right of eminent domain, and enforced railroad safety standards, but they had no control over rates. Thus, they had to rely heavily on publicity and public opinion to obtain enforcement of their orders.

Id. at 88.


\(^{27}\) See Interstate Commerce Act, 49 U.S.C. § 6 (1970), which imposes similar prohibitions on interstate carriers.
entire length of any railroad or canal within this state, shall pay the same rate of charge.\textsuperscript{28}

This generally is referred to as the "long and short haul clause." In regard to both intrastate\textsuperscript{29} and interstate traffic, it is still in effect.\textsuperscript{30} Moreover, railroad and canal companies were prohibited from giving undue preference or advantage to any particular person, company, or description of traffic. Both the Interstate Commerce Act\textsuperscript{31} and the Code of Virginia\textsuperscript{32} impose similar obligations on railroad companies today.

The conclusion of the Civil War began a new railroad era in Virginia, the principal lines extending from Norfolk to Bristol, Richmond to Covington, Richmond to Danville into North Carolina, and Richmond to Aquia Creek, and included the lines of the Orange and Alexandria Railroad.\textsuperscript{33}

During the War Between the States, the railroads carried the material of war. Because of their strategic importance, their destruction was almost inevitable. Consequently, when peace returned, Virginia's railroads, like most of the tangible property of her citizens and institutions, were in a state of utter ruin.

In 1870, Virginia was financially destitute. This, plus the fact that the state held about three-fifths of the stock in practically all pre-War railroads,\textsuperscript{34} no doubt contributed to the adoption of a new railroad policy. This was described by Professor Moger as follows:

In general, the policy followed by the legislature was to pass acts suitable to each case by which reorganizations and consolidations were permitted. The new companies were allowed to raise money by executing first mortgages on their franchise and property, 'the State relinquishing all prior claims she might have as stockholder or creditor, and accepting a deferred stock or a second and subordinate lien for the millions of money she and her citizens had invested in these works in the palmy days of their prosperity and wealth.' Some roads were sold outright and all claims relinquished.

\textsuperscript{28} Virginia Acts of Assembly 1866-67, ch. 294, ¶ 2, at 725.
\textsuperscript{31} Id. § 3.
\textsuperscript{33} Moger, supra note 19, at 426.
\textsuperscript{34} Id.
In the process the state lost enormous sums for most of the roads came to be so burdened with obligations whose claims came prior to those of the state that the latter turned out to be practically worthless. The notable exception is the stock held by the state in the Richmond, Fredericksburg, and Potomac which still gives Virginia a substantial annual income.\textsuperscript{38}

The second era of railroad building in Virginia had begun, and for the next 30 years the power and influence of Virginia railroads virtually dominated railroad legislation. Professor Moger described the situation thusly:

Practically every session of the General Assembly from 1870 on saw numerous lobbyists, some representing railroads directly, others representing business interests which were dependent on railroads, and still others representing sections of the state which particularly desired a liberal charter for a new road. There were many able men who had no direct interests but who felt that a liberal policy toward the roads was essential for the recovery and prosperity of the state. Regardless of what might have been the motive, and many lobbyists had several motives, the large number of Negroes and radicals in the Assembly made it fertile ground for the operation of this new lobby species in the Old Dominion. Before long the railroads and those who represented their interests in the government itself had gained control of the state to such an extent that restrictive legislation could not be passed and the roads could get almost any generous concessions they might desire.\textsuperscript{38}

The Era of the Railroad Commissioner

One innocuous railroad bill which won legislative approval in the postwar period provided for a Railroad Commissioner for the State of Virginia.\textsuperscript{37} The Commissioner was elected by the General Assembly for a two-year term and was given general supervision over all steam railroads operating within the state. He was required to keep informed of the physical condition and manner of operation of the carriers, to give due regard to the security and accommodation of the public, and to ensure that the railroads complied with the provisions of their charters.\textsuperscript{38} The Commissioner was required to file an annual report with

\textsuperscript{35} Moger, \textit{supra} note 19, at 426.
\textsuperscript{36} \textit{Id.} at 427.
\textsuperscript{37} Virginia Acts of Assembly 1876-77, ch. 254, at 254.
\textsuperscript{38} \textit{Id.} §§ 1, 2, at 254-55.
the General Assembly, explaining “the actual working of the system of railroad transportation [and its impact] upon the business and prosperity of the commonwealth . . . .” 39 He was authorized to hire a clerk who was to keep a record of the proceedings of the Commissioner and to perform such other “official duties as may be required of him by the commissioner.” 40 The railroads operating in the state were assessed annually a pro rata amount sufficient to pay the expenses and salaries of the Railroad Commissioner and his clerk. The Commissioner also was authorized to employ an expert when necessary, presumably a person having technical knowledge of the intricacies of railroading.

Upon discovery of a violation of the charter or railroad laws of the Commonwealth, the Commissioner was required to give written notice to the railroad; if the violation continued, he was to report the matter to the Board of Public Works, which could direct him to make application to a circuit court for injunctive relief. A similar procedure was established with respect to railroad repairs, additions to rolling stock, and improvement of station facilities, with the Board of Public Works finally determining what action would be taken. 42

In 1877, Thomas H. Carter was elected the first Railroad Commissioner by the General Assembly. 43 Evidence of the ineffectiveness of his new post and his milquetoast approach to regulation appeared in Carter’s first annual report:

Among the tendencies of the times in practical politics, there is an obviously increasing inclination, both in the Federal and state governments, to take hold of the railroads with a more mastering hand than was once conceded to be allowable either under the letter or the spirit of our organic American laws. This disposition has doubtless been developed by real as well as imaginary wrongs on the part of the railroads towards the people. . . . [T]hese railroad corporations . . . have an inherent propensity for advancing their own interests, and they require restraints around them to prevent them . . . from tyrannizing and extorting. On the other hand, no fair-minded man can read dispassionately the histories of many of the great railroads of other states, embracing their embarrassments, their difficulties and the false grounds of unreasoning antagonism on

39. Id. § 9, at 256.
40. Id. § 1, at 255.
41. Id. § 13, at 257.
42. Id. §§ 3, 4, at 255-56.
43. 1877 VA. R.R. COMM’R REP. 5.
which they have sometimes been blindly assailed, without being satisfied that they have suffered more from ignorance and prejudice than could have been rationally supposed in an enlightened age like this. That the state government of Virginia has a clear, constitutional right to regulate the railroads within the borders of this commonwealth by the enactment of all such limiting laws as are required for protecting the people's interests from oppression on the part of this great power, put into operation in virtue of its charters from the state, will not be denied. But in making such laws, it is always of the gravest importance that the nicest discrimination be observed between the private rights and the public duties of the men who own the interests and direct the operations of the railroads. It is one thing to exercise an impartial and unprejudiced, but strict supervision, and quite another thing, by harsh and hostile legislation so to cramp the railroads in the performance of their functions as to depreciate the values of their properties and impair their usefulness to the public.

[In this regard] Mr. Charles F. Adams, Jr., Chairman of the Board of Railroad Commissioners in Massachusetts, says:

"I think to-day, if all the fare and freight tariffs; if all the 'Potter laws' of the west could be swept from the statute-books; if their commissioners could be compelled to study thoroughly the subjects with which they are called upon to deal, and to confine themselves to being mere formal boards of arbitration, before whom all causes of complaint on the part of the community against its railroad corporations might be brought in a cheap and easy manner, leading to careful investigation and to well-considered reports and distinct recommendations, always with legislative power in the background, ready to be brought into play if the railroads show an improper spirit of persistence when once they are clearly shown to be in the wrong; I verily believe if this system could be adopted in place of all these attempts at reforming the world through arbitrary enactments, backed by executive violence, it would be found that a great step had been made in the direction of an immediate solution, for our time, at any rate, of this railroad problem." 44

Between 1877 and 1902, during the tenure of six Railroad Commissioners, main line railroad mileage in Virginia increased to about 3,230

44. Id. at 6-8.

45. The six Railroad Commissioners were: Thomas H. Carter, 1877-80; James McDonald, 1881; Asa Rogers, Jr., 1882-83; G. A. Martin, 1884-85; H. G. Moffett, Jr., 1886-87; James C. Hill, 1888-1902.
miles, and numerous small independent lines were consolidated into such corporations as Southern Railway Company, Chesapeake and Ohio Railway Company, Norfolk and Western Railway Company, and Seaboard Air Line Railway Company. But regulation of railroads was totally ineffective. Mr. A. Caperton Braxton, Chairman of the Committee on Corporations of the 1901-02 Constitutional Convention, best characterized the public attitude concerning the interstate and Virginia railroad regulatory systems when he declared: "If there be any system known to man, if there be any system which can be devised as to the inefficiency of which there is no doubt, it is the interstate commerce system of to-day and the railroad commission system of Virginia as it exists to-day." It was time for change. With this in mind, Mr. Braxton prefaced his report to the Constitutional Convention with the statement: "[T]he question of the control and regulation of railroad companies and the fixing of their rates of charges is . . . the greatest and most important economic question before the civilized world."

The State Corporation Commission

The 1902 Constitution

Ignoring the long-recognized doctrine of separation of powers, the framers of Virginia's 1902 Constitution created the State Corporation

---

46. 1902 VA. R.R. COMM'R REP., p. IX.
47. Id. at 3. The Southern Railway Company was organized June 18, 1894, pursuant to Virginia Acts of Assembly 1893-94, ch. 302, at 368-72.
48. The State Corporation Commission's Charter File No. 164 shows that the Louisa Railroad Company was incorporated by an act of the Virginia General Assembly enacted on February 18, 1836. On February 2, 1850, the name was changed to Virginia Central Railroad Company. The Covington and Ohio Railroad Company was incorporated by Virginia Acts of Assembly 1865-66, ch. 200, at 317, and consolidated with the Virginia Central and two other railroad companies under the name Chesapeake and Ohio Railroad Company by Virginia Acts of Assembly 1866-67, ch. 280, at 705-08. The present Chesapeake and Ohio Railway Company was organized pursuant to an act of the Virginia General Assembly passed on July 1, 1878.
49. 1902 VA. R.R. COMM'R REP. 78. The Norfolk and Western Railway Company was organized on September 24, 1896, under Virginia Acts of Assembly 1895-96, ch. 59 at 63-66.
50. 1902 VA. R.R. COMM'R REP. 114. The Seaboard Air Line Railway Company was organized on August 5, 1897 under the laws of the State of Virginia, February 23, 1882, as Virginia and Carolina Railroad Company. Seaboard Air Line Railway Company was the legal successor to Virginia and Carolina Railroad pursuant to Virginia Acts of Assembly 1899-1900, ch. 948 at 1057.
51. 2 DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1901-02, VIRGINIA 2151.
52. Id. at 2142.
Commission, enumerating in meticulous detail its duties and procedures, and vesting it with legislative, judicial, and executive powers. The new Commission had broad jurisdiction and influence and encompassed all the duties previously vested in the Railroad Commissioner and the Board of Public Works. A review of the Debates of the 1902 Constitutional Convention illustrates that the sole reason for the creation of the three-member commission was to protect the people of Virginia. The underlying mood of the convention members regarding the role of the regulatory body they proposed to create is shown by the remarks of Mr. Braxton:

If consumers, who ultimately bear the cost of transportation in the price of everything they use, or producers, the local value of whose products is determined by deducting from their value at the place of consumption the cost of transportation thereto, are to be protected from the rapacity of the common carriers of the country, it must be accomplished by a body organized by the government for the purpose, with due authority to administer equal justice between the two opposite interests.

There were two principal reasons why the State Corporation Commission was created by constitution rather than statute: Prior attempts by the legislature to create such a regulatory agency had been defeated by the powerful railroad lobby, and it was proposed to give the Commission all the powers of a court of record, which could be done only by constitutional provision.

With a staff of four men, the first three members of the State Corporation Commission took their oaths of office on March 2, 1903, and

53. VA. CONST. art. 12, § 155 (1902).
54. Id. § 156(a).
55. 2 DEBATES OF THE CONSTITUTIONAL CONVENTION OF 1901-02, VIRGINIA 2142-43.
56. Few people are aware that the new constitution, which became effective at noon on July 10, 1902, was never submitted to the people for ratification. As Judge Ralph T. Catterall has noted, Section 22 of the Schedule attached to the Constitution stated that any Judge failing to take an oath supporting the new document on or before July 20, 1902, would vacate automatically his office. Catterall, The State Corporation Commission of Virginia, 48 VA. L. REV. 139 (1962). The failure of the people to approve their revised organic law was challenged before the Supreme Court of Appeals in Taylor v. Commonwealth, 101 Va. 829 (1903), in which the Court stated that, since the Constitution had been acknowledged by the officers administering the government (including the Justices rendering the decision), and by the people of Virginia, it was the only rightful, valid, and existing Constitution in the state. It remained the fundamental law of Virginia, subject to certain amendments, until July 1, 1971.
commenced an innovation in the machinery of government and regulatory administration which remains unique—the Commission, unlike others of its kind, is endowed with real, rather than "quasi" legislative, judicial, and executive powers.

The SCC, as the Commission soon became known, quickly became a major regulatory body. Although it was created initially to regulate the rates and services of railroads and telephone and telegraph companies, as well as to grant charters to corporations in the Commonwealth and to administer the laws to which they are subject, between 1906 and 1971 there were more than 50 legislative enactments imposing new duties and responsibilities upon the Commission.57

57. The 1902 Constitution vested the Commission with the legislative and police power of the state to fix the rates and charges of railroads and certain other transportation and transmission companies as defined therein. Constitution of Virginia, 1902, § 156(b). It should be noted that the power of the Interstate Commerce Commission to prescribe rates for the future was challenged successfully in 1897 in ICC v. Cincinnati, New Orleans, & Tex. Pac. Ry. 167 U.S. 479 (1897). The ICO could condemn an unreasonable rate but could not prescribe the remedy. On June 29, 1906, approximately four years after the Virginia Commission was given such power over intrastate rates, the Hepburn Act was passed, ch. 3591, 34 Stat. 584. Among other things, the Act conferred upon the federal commission the power to prescribe maximum interstate rates, ch. 3591, 34 Stat. In addition to the jurisdiction conferred by the Constitution, the General Assembly, by statutes, has imposed the following duties on the Commission:

1906—Regulation of insurance.
1906—Investigate cases of suspected arson.
1910—Valuation of the property of public utilities for local taxation, and assessment of state taxes on them.
1910—Regulation of banking.
1914—Fixing the rates of public utilities, and regulating their services.
1915—Taxation of the rolling stock of car line companies.
1918—Administration of the Blue Sky Law.
1923—Regulation of transportation by motor vehicle.
1924—Fixing rates of pilotage.
1928—Regulation of aeronautics.
1928—Licensing of dams.
1930—Transferring to the Commission from the office of the Secretary of the Commonwealth the recording of corporate charters.
1932—Collection of the gross receipts tax on common carriers by motor vehicle.
1934—Regulation of the issuance of securities by public utilities.
1934—Regulation of contracts between public utilities and affiliates.
1938—Transferring from the Department of Highways to the Commission functions relating to the construction and maintenance of airports.
1940—Assessment and collection of the motor fuel road tax.
1940—Supervision of Blue Cross and Blue Shield contracts.
1946—Fixing the maximum charges of small loan companies.
1948—Registration of trade-marks.
During the 69 years\textsuperscript{68} between the proclamation and "acknowledgment" of the Constitution of 1902 and the adoption of the 1971 Constitution, the Commission grew from its original staff of four to a staff of 369, which today includes electrical, mechanical, civil, aeronautical, and safety engineers; numerous bank and insurance examiners; public utility, tax, commercial and cost accountants; enforcement and arson investigators; and a legal staff to assist the Commission and the heads of its 16 administrative divisions in administering the regulatory laws of Virginia.

1948—Adoption and enforcement of regulations for the prevention of fire hazards in public buildings. Appointment of Chief Fire Marshal for the state.

1948—Regulation of household goods carriers.

1950—Adoption of safety regulations for liquefied petroleum gas.

1950—Issuance of certificates of public convenience and necessity to public utilities.

1952—Regulation of petroleum tank truck carriers.

1954—Transferring from the Division of Motor Vehicles the issuance of identification tags for commercial vehicles.

1956—Issuance of certificates of convenience and advantage to small loan companies.

1956—Transferring from the Secretary of the Commonwealth to the Clerk of the Commission all functions relating to service of process on corporations.

1956—Collection of surtax on motor fuel used in the state by heavy vehicles.

1956—Regulation of transportation of explosives.

1956—Regulation of sight-seeing carriers.

1956—Licensing of automobile clubs.

1958—Administration of uninsured motorists' fund.

1958—Registration of service marks.

1958—Registration of laundry marks.

1960—Regulations for installation of boilers.

1964—Regulation of insurance premium finance companies.

1964—Regulation of the leasing of motor vehicles.


1964—Publish motor vehicle reciprocity agreements and decide whether a motor vehicle carrier is entitled to reciprocity.

1964—Register Interstate Commerce Commission authority of motor carriers.

1964—Assessment for local taxation of petroleum pipe line companies.

1966—Regulation of parachute jumping.


1968—Administration of Consumer Credit Code.

1968—Regulation of sight-seeing and charter party boats.

1968—Regulation of Basic Property Insurance Inspection and Placement Plan.


1971—Mediate controversies between public service companies and their employees and patrons.

\textsuperscript{68} Va. S.C.C. ANN. REP. (1971).

\textsuperscript{58} The 1902 Constitution of Virginia became effective July 10, 1902, and the 1971 Constitution went into effect on July 1, 1971.
Virginia. Contrary to the ominous warnings of those who opposed creation of the State Corporation Commission in 1902, an examination of history substantiates the recommendations and efforts of Caperton Braxton and his Committee on Corporations at the 1901-02 Constitutional Convention.

The 1971 Constitution

It has often been said that past practices which have survived the test of time are best left untouched. This does not always hold true in the regulatory field, however, where flexibility is necessary to adapt to changing conditions and requirements. Between 1902 and 1971, there have been dramatic changes in transportation and communication technology, as well as in demography and economics. Recognizing this, and the effect that these changes have had on the manner in which Virginia is governed, the citizens of the Commonwealth approved a new Constitution which became effective July 1, 1971.

In 1971, the need to insulate the State Corporation Commission from the possibility of crippling changes by a hostile railroad-dominated General Assembly no longer existed. The independence of the State Corporation Commission has been its major strength, and under the 1971 Constitution the essential autonomy of the Commission has been preserved. There is no change in the basic structure of the Commission, except that the legislature has the power to increase its size from three to five members. The drafters of the new Constitution deleted a mass of detailed statutory provisions pertaining to the manner of fixing rates charged by transportation and transmission companies, but retained the essential regulatory scheme by preserving the independence and basic structure of the Commission. Members of the Commission are still elected by the General Assembly for staggered six-year terms and remain subject to its scrutiny. The SCC has the authority to make its own

61. Id. § 1.
62. Initially, under the Constitution of 1902, the Commissioners were appointed by the Governor, subject to confirmation by the General Assembly in joint session. Between 1919 and 1926, members of the Commission were elected by the people. Interestingly, Judge H. Lester Hooker served on the SCC from 1924 until his retirement in 1972, a total of 48 years, having been elected to the Commission by popular vote of the people in 1924. Between 1926 and 1928, the Commissioners were appointed by the Governor, subject to confirmation by the General Assembly. Judge Hooker was
rules of practice and procedure, so long as they are not inconsistent with any which might be made by the General Assembly. The Commission is given full authority in the manner of appointing and removing its division heads. Finally, in all matters within the Commission's jurisdiction, it is vested with the powers of a court of record. As under the prior Constitution, there is a right of appeal from all final Commission actions directly to the Virginia Supreme Court, the Constitution forbids any other court of the Commonwealth to review any action of the Commission.

Obviously cognizant of the new consumerism which has gained widespread advocacy during the past few years, the Commission on Constitutional Revision included in the 1971 Constitution a provision guaranteeing consumer protection in proceedings before the State Corporation Commission; this paragraph provides that "[t]he Commission shall in proceedings before it ensure that the interests of the consumers of the Commonwealth are represented, unless the General Assembly otherwise provides for representation of such interests." In addition, the 1970 General Assembly enacted section 2.1-133, creating in the Office of the Attorney General a Division of Consumer Counsel to represent the interests of consumers before the State Corporation Commission and other agencies. Notwithstanding the role assigned to the Attorney General's Office, it is, and always has been, the responsibility of the Commission to ensure that all the people of Virginia are represented fairly and adequately in matters coming before it. The Commission's legal staff is mindful of its responsibility to Virginia consumers and its presentations are made independently of instructions from the Commissioners in all consumer-related proceedings. Many of the SCC's efforts have been focused in this direction, for its purpose is to administer justice both to the consumer and the regulated party. Adequate presentation of the public's point of view is essential if administrative justice is to be achieved and a proper balance of interest maintained.

the last member of the Commission to be elected by popular vote of the people, and the first member to be elected by the General Assembly, which method continues under the 1971 Constitution.

63. VA. CONSTR. ART. IX, § 3 (1971).
64. Id. § 1.
65. Id. § 3.
66. Id. § 4.
67. Id. § 2.
The Present Work of the Commission

Currently, the work of the Commission is divided among 16 administrative divisions, supervision of which is delegated among the three Commissioners. The Commissioner having supervision over a particular division presides at hearings involving that division. Additionally, the Commission recently created the position of Commission Comptroller, who is responsible for fiscal management and internal control of the funds budgeted for operations and the revenues collected by and through the Commission. Cooperating closely with the Comptroller is the Secretary of the Commission, who supervises all matters involving personnel and purchases of supplies and equipment.

Aside from those persons who regularly appear before the State Corporation Commission as attorneys and witnesses, most Virginians have only a vague idea of the work performed by the Commission. Regulation of electric and telephone rates and services is only a small part of its function and purpose, although in recent years considerable attention has been directed toward this area of the Commission's duties in consequence of rate increase applications by those utilities.

The Commission also regulates all types of insurance written in Virginia. The hundreds of insurance companies authorized to do business here, together with their salesmen and the policies they sell, are the responsibility of the Bureau of Insurance, the largest division within the Commission. At the present time, there are 87 domestic insurance companies, all of which must be examined at least once every three years to determine their solvency and the adequacy of reserves. In addition to these domestic insurers, there are, at present, 867 foreign insurance companies doing business in Virginia, each of which must file an annual statement with the Commission. The Bureau of Insurance is charged with the duty of auditing these annual statements. Rates for most types of insurance written in Virginia must be filed with and approved by the Bureau. Moreover, the Bureau is responsible for examining and licensing new agents and nonresident insurance brokers, such licenses presently numbering approximately 30,000.

The Bureau of Banking is the arm of the Commission which supervises state-chartered financial institutions consisting of banks, savings

68. The 16 administrative divisions of the Commission are: The Clerk's Office, General Counsel, Commerce Counsel, Bureau of Insurance, Bureau of Banking, Accounting, Public Utilities, Public Service Taxation, Aeronautics, Transportation, Enforcement, Motor Carrier Taxation, Securities and Retail Franchising, Uniform Commercial Code, State Fire Marshal, and Secretary of the Commission.
and loan associations, industrial loan associations, credit unions, and small loan licensees. As of December 31, 1971, there were 144 banks with 357 branches, 43 savings and loan associations with 65 branches, 18 industrial loan associations, 128 credit unions, and 395 small loan licensees doing business in Virginia. Their total resources amounted to $5,662,429,651. Since 1964, the total resources of these institutions have increased more than three billion dollars and the total number of their offices has increased from 824 to 1,150. The Bureau has 44 employees, of whom 35 are engaged in the required annual examination of the institutions subject to its supervision.

The Commission's Division of Aeronautics is charged with promoting aviation and administering the aviation laws of Virginia,69 which, among other things, provide for the licensing of airports, landing fields, drop zones, aircraft and airmen, and which establish criteria for the construction, maintenance, and improvement of public airports, landing fields, and other aviation facilities. The Division provides technical advice for the construction, maintenance and improvement of public airfields and related facilities, and may provide financial grants-in-aid for such work from the special aviation fund.

The Motor Transportation Division is responsible for the administration of the laws70 and regulations relating to motor carriers operating within the Commonwealth. This involves economic regulation, registration of vehicles for road tax purposes, and assistance in collecting such taxes. As of June 30, 1972, more than 300,000 registrations were on file with the Division, producing receipts in the amount of $958,069.21 for the 1971-72 fiscal year. Working closely with the Motor Transportation Division are the Office of Commerce Counsel and the Enforcement Division. The Commerce Counsel is the chief legal advisor in all transportation and transportation tax matters coming before the Commission. In his office are filed all applications for rate adjustments and for certificates of public convenience and necessity, together with all railroad and motor carrier tariffs. Through this office, the Commission

---

69. As previously stated, the Commission was given responsibility for regulation of aeronautics in 1928. See Virginia Acts of Assembly 1928, ch. 463, at 1170. Virginia's regulation of aviation predates the present system of federal regulation of air transportation which was established by the Civil Aeronautics Act, ch. 601, 52 Stat. 973 (1938).

70. Also, as noted earlier, regulation of transportation by motor vehicle was placed under the jurisdiction of the Commission in 1923. See Virginia Acts of Assembly 1923, ch. 161, at 195. This Act was passed approximately 12 years before the federal government commenced regulation of interstate motor carriers pursuant to the Federal Motor Carriers Act, 49 U.S.C. § 301 et seq. (1935).
regulates air common carriers and contract air carriers conducting intra-state operations in Virginia. By statute, the Commerce Counsel is charged with the responsibility for litigation before the Interstate Commerce Commission, which includes participation in railroad abandonment and rate proceedings. Such participation serves to protect Virginia communities from unwarranted railroad abandonment or unjustified rate increases.

The Enforcement Division is the Commission's police force. Its investigators and area supervisors are stationed throughout the state; they constantly check to ensure compliance with the Virginia Motor Carrier Laws. Enforcement Division investigators also assist other state lawmen in enforcing Virginia's aviation laws. Violators of either of these regulations may be cited to appear in local courts or before the Commission, and are subject to substantial fines as well as other penalties.

The Commission's Division of Public Service Taxation evaluates and assesses for local taxation all real and tangible property of public service corporations, including railroads, electric companies, telephone companies, and motor carriers. These assessments are published and furnished to the various political subdivisions of the state so that local taxes may be levied and collected. In 1972, this Division assessed the property of 23 electric companies, 26 gas and pipeline companies, 76 motor vehicle carriers, 27 railroads, one telegraph company, 29 telephone companies, and 129 water companies. The total assessed value amounted to $1,556,438,310. This Division also makes assessments for state taxes, including the state franchise tax and the tax on rolling stock of railroads and motor carriers.

Through its Clerk's Office, the State Corporation Commission issues all charters and amendments thereto and approves mergers, consolidations, and reinstatements for domestic corporations. All foreign corporations desiring to do business in Virginia must obtain a certificate of authority through this office. The Clerk is the statutory agent for all foreign and domestic corporations which fail to maintain a registered agent and registered office within the state. Documents required by

74. Six interstate pipeline companies not otherwise subject to SCC jurisdiction and three chartered companies not yet operating were assessed.
75. One interstate company not otherwise subject to Commission regulation was assessed.
law from approximately 60,000 corporations, domestic and foreign, are on file in the Clerk's Office, and registration fees and franchise taxes amounting to about $2,500,000 are collected by this office annually.

Of obvious importance to the Commission is its Bailiff, who is vested with all the powers of a sheriff under the law. It is his job to preserve order during public sessions of the Commission, to make arrests, to serve and make return on writs awarded by the Commission, and to execute any writ, order, or process of execution awarded upon judgments of the Commission.\(^76\)

The Uniform Commercial Code Division administers Part 4 of Title 8.9 of the Code of Virginia. This Division is the central office in which financial statements, amendments, termination statements, and assignments are filed by secured parties located throughout the United States. The filings in this office pertain primarily to equipment or inventories in which the creditor has a secured interest. Currently, there are 133,252 statements on file, with approximately 25,000 additional ones being filed each year.

Through the Securities and Retail Franchising Division, the Commission administers the Virginia Securities Act,\(^77\) the Take-Over-Bid Disclosure Act,\(^78\) the laws pertaining to registering trademarks and service marks,\(^79\) and the Retail Franchising Act.\(^80\) In administering the so-called "Blue Sky Law" under the Securities Act, the Commission acts to protect the Virginia investor from fraud, as distinguished from commercial loss. It is given full power to make investigations, issue permanent and temporary injunctions, punish for contempt, and punish proven violators by fines up to $5,000 for each offense. Furthermore, this Division is the agency of the Commission administering the newly enacted Retail Franchising Act, which is designed to require franchisors to deal fairly and equitably with their franchisees.

The Motor Carrier Taxation Division administers the Virginia Road Tax Laws for the Commission. The Virginia Motor Fuel Road Tax applies to every person, firm, or corporation operating road tractors, tractor trucks, or trucks having more than two axles, whether any such operator is engaged in business as a private, for-hire, interstate, or...

\(^77\) Id. § 13.1-501 et seq.
\(^78\) Id. §§ 13.1-528 to 13.1-541. To fill a void under the then-existing Securities Law, the Take-Over-Bid Disclosure Act was passed in 1968, imposing an affirmative duty of disclosure on offerors attempting to gain control of a corporation.
\(^79\) VA. CODE ANN. §§ 59.1-77 to-92 (1950).
intrastate motor carrier. This Division is involved directly in the collection and processing of quarterly tax returns filed by some 27,000 taxpayers throughout the United States and Canada. Included on its staff of 36 persons are 16 field auditors who travel to the home offices of the taxpayers to make audit determinations to verify that Virginia is receiving the taxes due from the carriers operating on its highways. Prior to the adoption of the “over-the-road” tax, many carriers operating outside Virginia would acquire sufficient fuel before entering the state and thus use the highways without contributing toward their upkeep. Through the audit activity of the Motor Carrier Taxation Division, compliance with Virginia Road Tax Laws is assured.

The Division of Public Utilities, which directly affects more Virginians than any other division, is responsible for assisting the Commission in administering the laws pertaining to the regulation of electric, telephone, gas, and other public utilities so as to assure fair rates and adequate service to the public. All rules, regulations, and rate schedules of public utilities are on file with this Division and are available for public inspection during the Commission's regular business hours. In administering the tariff rules and regulations of utilities, the division is charged with the responsibility of processing consumer complaints. Each complaint received is investigated carefully before a written reply is sent to the consumer. In those cases in which the utility is in error, the Commission ensures that corrective action is taken promptly.

The Division of Public Utilities also administers the Utilities Facilities Act, under which each utility desiring to render service must first obtain a certificate authorizing it to operate in a specific area. This Division enforces the gas pipeline safety regulations and makes regular safety inspections of the facilities of gas utilities. Division engineers participate in proceedings before the Commission and submit testimony regarding rate design and rate base.

In the Commission's regulation of electric and telephone companies, the responsibility and functions of the State Corporation Commission's Accounting Division are extremely important. This Division, directed by the Commission's Chief Accountant, makes regular audits of the various utilities operating throughout Virginia. As of December 31, 1971, there were 68 electric, gas, and telephone utilities and 163 water and sewer companies regulated by the Commission. Exclusive of the water and sewer companies, the total investment in utility plants by these companies, within and without Virginia, was $7,650,000,000.
Duties of the Accounting Division include the review of annual reports filed by the companies with the Commission and an analysis of the applications filed for authority to issue stocks, bonds, and other securities necessary for plant construction. All securities issued by utility companies, of course, must first be approved by order of the Commission. Although these duties are important, the most vital function of the Accounting Division is the preparation and presentation of exhibits and testimony concerning the financial and operating conditions of any utility seeking to increase its rates. Detailed studies are necessary to determine the rate base, capital structure, earnings, earnings requirements, and rate of return. Such information enables the Commission to establish a fair rate of return and to determine whether the rate increases sought are just and reasonable. In this regard, the Accounting Division will play a major role in the annual rate review program adopted by the Commission in the recent VEPCO case.\textsuperscript{81}

The Fire Marshal's Division is an administrative arm of the Commission; its operations are concerned with three major public service areas assigned by the General Assembly: arson investigation, fire and life safety, and manufactured building safety. Under the 1970 Virginia Industrialized Building Unit and Mobile Home Safety Law,\textsuperscript{82} this Division operates an interstate system for acceptance of manufactured buildings and building assemblies that have been certified by Commission-accredited third-party agencies as conforming with statewide health and safety standards. The Fire Marshal's Division, under the Virginia Fire Hazards Law of 1948,\textsuperscript{83} administers statewide standards for protection against fire in all buildings used by 10 or more people. As an aid to architects and local building officials, a plans-review section examines, upon request, all plans for new public buildings. Under the same law, the Division operates a statewide investigation service for alleged offenses involving fires, bombings, or threats to commit such offenses, as well as false alarms relating to any such offense, and the handling, possession, and manufacture of explosive devices and like substances. In addition, the Division assists the Commission in carrying out its responsibilities under the Liquefied Petroleum Gas Act, the voluntary school fire inspection program, and the urban area wartime and natural disaster fire defense plan under the State Civil Defense Program.

\textsuperscript{81} Application of VEPCO, S.C.C. No. 19027 (June 28, 1972). In VEPCO, the Commission announced its policy of reviewing major utility rates on an annual basis.

\textsuperscript{82} Virginia Acts of Assembly 1970, ch. 305, at 393.

\textsuperscript{83} Virginia Acts of Assembly 1948, ch. 493, at 990.
Of considerable importance to the Commission and to the public is the Office of General Counsel. This division is comprised of four experienced lawyers whose duties include the preparation and presentation to the Commission of all cases set for hearing, except those involving transportation and transportation tax matters which, as noted above, are prepared by the Office of Commerce Counsel. Both the General Counsel and Commerce Counsel represent the Commission in appeals from the Commission to the Virginia Supreme Court and in proceedings in federal courts.84 Because of the technical nature of the work involved, the offices of General Counsel and Commerce Counsel are separated administratively, but the six lawyers comprising the two divisions together constitute the legal arm of the Commission.

From the foregoing, it is manifest that the State Corporation Commission has attained greater power and wider jurisdiction than its 1902 creators ever envisioned, for no public service commission in the United States, federal or state, deals with so many services affecting so many people and industries with so few regulators.85 Practically all cases assigned for hearing before the Commission are heard by the Commissioners, rather than by a staff of hearing examiners. This control minimizes regulatory lag in Virginia. Equally important to Virginia residents is the realization that the costs of regulation by the State Corporation Commission are paid primarily by fees and special taxes imposed on corporations and individuals subject to its regulation; of the Commission's 1972-73 budget of $6,345,935, only $917,815 was appropriated from the General Fund.

An attempt has been made to outline the development and function of public service regulation in Virginia from its inception in 1816 to the present. Since all regulation necessarily is a living thing that concerns almost every facet of our economy, it seems appropriate to consider the Commission's public charge.

The State Corporation Commission's Future Role

Regulation cannot be reduced to a simple formula. It is forever changing to meet the public needs of our vibrant economic system and our expanding technology. The State Corporation Commission, in regulating public service industries, uniquely combines legislative and ad-

85. As of July, 1972, the SCC employed 378 persons.
ministrative functions, together with the powers of a court of record, into a single body. This trilogy of functions requires that the Commission's rules of practice and procedure apply to both quasi-legislative and truly judicial proceedings. Notwithstanding the problems involved, the Commission currently is at work updating and enlarging these rules.

In order to be effective and command public confidence, a regulatory commission must possess expertise; it must be absolutely impartial; it must maintain flexibility in its proceedings; and it must render its decisions promptly, stating clearly its findings and the reasons for its conclusions. Since administrative proceedings differ in material respects from the ordinary courtroom trial, differences in trial technique and procedures must be recognized and understood by members of the bar; all must remain alert to accept dynamic new standards to meet the needs of our economy. Future circumstances may demand that existing procedures be changed and that new long-range policies be developed. However, with any change, care must be taken to balance the interests of the regulated industry and the interests of those served. This is the State Corporation Commission's function.

In an effort to serve Virginia and her citizens, the Commission has embarked upon an innovative regulatory program. For the first time in its history, the Commission held formal hearings in four locations in southwest Virginia in a case involving telephone service.\(^6\) This was done to provide ready access to the hearing room to those members of the local public who wished to be heard. This hearing procedure will be repeated whenever it appears justified and practical. Recently, the Commission adopted certain procedures which it expects to expedite the administrative process: Prepared testimony is required to be served on all parties in advance of a public hearing in major rate cases, thus enabling all parties to be informed fully before the hearing and reducing the time consumed while examining witnesses at the hearing; also, informal proceedings are being used increasingly in place of expensive formal procedures when it can be done without abridging the fundamental rights of any party.

Of paramount public importance is the fact that the Commission has adopted a policy of annually reviewing the rates of all major utilities so that adjustments—upward or downward—may be made to ensure that current rates are just and reasonable.\(^7\) Apparently, an annual re-

\(^6\) United Inter-Mountain Tel. Co., S.C.C. No. 19114.

\(^7\) The 1972 session of the General Assembly of Virginia added § 56-234.2 to the Code of Virginia. This section, which is contained in Virginia Acts of Assembly 1972,
view of rates by the State Corporation Commission is a "first" for any Commission in the United States. The affected utilities will file reports covering a 12-month period subsequent to the yearly test period used in each utility's most recent rate case. This continuous surveillance of the financial condition of the utility will avoid any severe impact on the public from substantial rate increases, which can occur in inflationary periods when applications for increases are filed several years apart; conversely, if the utility's earnings are found to be excessive, rates will be adjusted accordingly.

The foregoing innovations have been instituted in order to serve Virginia's regulated industries and the consuming public. The Commission and its staff are seeking continuously to develop improved standards and procedures meeting current needs. Only in this way can the SCC implement the regulatory objectives found in the statutes and Constitution of Virginia. Just as the Board of Public Works was created in 1816 to preserve and promote internal improvements in Virginia, the present Commission was created to promote and protect the public interest. Its many functions are the best evidence that it has successfully achieved that objective.

ch. 537, provides as follows: "The Commission shall review the rates of any public utility on an annual basis when, in the opinion of the Commission, such annual review is in the public interest." It is important to note that the annual review of utility rates is discretionary. As noted above, the Commission recently decided to review utility rates of major companies annually. Application of VEPCO, S.C.C. No. 19027 (June 28, 1972).