

and we are faced squarely with the question as to whether or not the preservation of their independent editorial views justifies, in the San Francisco Bay area, the higher advertising costs to the public. I am satisfied, that had the joint operating agreement not been entered into in San Francisco, the Examiner would ultimately have gone out of business, leaving its competitor free to increase such advertising rates anyway. Likewise, I am not convinced that potential competitors for either the Chronicle or the Examiner would have been inhibited by competition against only the survivor of such competitors, rather than under the present circumstances where any new newspaper will have to compete two existing dailies.

For these reasons, then, I believe it appropriate to provide an exception to the antitrust laws to permit competing urban newspapers to operate under joint operating agreements in the manner set forth in the act. I feel that the problems involved in "the one-newspaper town" outweigh the single problem generated by granting the exception to this single type of business which plays so important a part in the Nation's search for truth.

The CHAIRMAN. All time has expired. Pursuant to the rule, the Clerk will now read the substitute committee amendment printed in the reported bill as an original bill for the purpose of amendment.

The Clerk read as follows:

H.R. 279

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This Act may be cited as the "Newspaper Preservation Act".

DECLARATION OF POLICY

SEC. 2. In the public interest of maintaining a newspaper press editorially and reportorially independent and competitive in all parts of the United States, it is hereby declared to be the public policy of the United States to preserve the publication of newspapers in any city, community, or metropolitan area where a joint operating arrangement has been heretofore entered into because of economic distress or is hereafter effected in accordance with the provisions of this Act.

DEFINITIONS

SEC. 3. As used in this Act—

(1) The term "antitrust law" means the Federal Trade Commission Act and each statute defined by section 4 thereof (15 U.S.C. 44) as "Antitrust Acts" and all amendments to such Act and such statutes and any other Acts in pari materia.

(2) The term "joint newspaper operating arrangement" means any contract, agreement, joint venture (whether or not incorporated), or other arrangement entered into by two or more newspaper owners for the publication of two or more newspaper publications, pursuant to which joint or common production facilities are established or operated and joint or unified action is taken or agreed to be taken with respect to any one or more of the following: printing; time, method, and field of publication; allocation of production facilities; distribution; advertising solicitation; circulation solicitation; business department; establishment of advertising rates; establishment of circulation rates and revenue distribution: *Provided*, That there is no merger, combination, or

amalgamation of editorial or reportorial staffs, and that editorial policies be independently determined.

(3) The term "newspaper owner" means any person who owns or controls directly, or indirectly through separate or subsidiary corporations, one or more newspaper publications.

(4) The term "newspaper publication" means a publication produced on newsprint paper which is published in one or more issues weekly (including as one publication any daily newspaper and any Sunday newspaper published by the same owner in the same city, community, or metropolitan area), and in which a substantial portion of the content is devoted to the dissemination of news and editorial opinion.

(5) The term "failing newspaper" means a newspaper publication which, regardless of its ownership or affiliations, is in probable danger of financial failure.

(6) The term "person" means any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any foreign country.

ANTITRUST EXEMPTION

SEC. 4 (a) It shall not be unlawful under any antitrust law for any person to perform, enforce, renew, or amend any joint newspaper operating arrangement entered into prior to the effective date of this Act, if at the time at which such arrangement was first entered into, regardless of ownership or affiliations, not more than one of the newspaper publications involved in the performance of such arrangement was likely to remain or become a financially sound publication: *Provided*, That the terms of a renewal or amendment to a joint operating arrangement must be filed with the Department of Justice.

(b) It shall be unlawful for any person to enter into, perform, or enforce a joint operating arrangement, not already in effect, except with the prior written consent of the Attorney General of the United States. Prior to granting such approval, the Attorney General shall determine that not more than one of the newspaper publications involved in the arrangement is a publication other than a failing newspaper, and that approval of such arrangement would effectuate the policy and purpose of this Act.

(c) Nothing contained in this Act shall be construed to exempt from any antitrust law any predatory pricing, any predatory practice, or any other conduct in the otherwise lawful operations of a joint newspaper operating arrangement which would be unlawful under any antitrust law if engaged in by a single entity. Except as provided in this Act, no joint newspaper operating arrangement or any party thereto shall be exempt from any antitrust law.

PREVIOUS TRANSACTIONS

SEC. 5. (a) Notwithstanding any final judgment rendered in any action brought by the United States under which a joint operating arrangement has been held to be unlawful under any antitrust law, any party to such final judgment may reinstitute said joint newspaper operating arrangement to the extent permissible under section 4(a) hereof.

(b) The provisions of section 4 shall apply to the determination of any civil or criminal action pending in any district court of the United States on the date of enactment of this Act in which it is alleged that any such joint operating agreement is unlawful under any antitrust law.

SEPARABILITY PROVISION

SEC. 6. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this

Act, and the applicability of such provision to any other person or circumstance, shall not be affected thereby.

Mr. KASTENMEIER (during the reading). Mr. Chairman, I ask unanimous consent that further reading of the substitute committee amendment be dispensed with and that it be printed in the Record and be open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

AMENDMENT OFFERED BY MR. JACOBS

Mr. JACOBS. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. JACOBS: Page 7, line 12, strike out "enforce, renew, or amend" and insert "enforce, or renew".

Mr. JACOBS. Mr. Chairman, the purpose of this amendment obviously is, on page 7, line 12, to strike the word "amend."

I can understand, although perhaps not agree with, because I have not made up my mind yet—I can understand the philosophy of this bill to create a kind of grandfather clause for these joint operating agreements that already exist. I can understand why the authors would want to permit "the performance" and "the enforcement" and even "the renewal" of these operating agreements. I cannot understand, however, why they would want to legalize "amendments" of those agreements with what appears by the language of section 4 to be a carte blanche right to amend in any way, and I presume to add as many successful newspaper companies around the country as they might desire, merely by filing with the Department of Justice the terms of the amendment. I think this is a creep-through loophole in the announced or expressed intent of this legislation.

If there is going to be any amendment or any new agreement under the heading of an amendment, I think it should be under the other provisions of the bill, which require the Attorney General's consent to make the change.

Mr. MacGREGOR. Mr. Chairman, will the gentleman yield to me?

Mr. JACOBS. I am happy to yield to the gentleman.

Mr. MacGREGOR. I wish to commend the gentleman for his amendment. I think the reasons he has given for offering the amendment make remarkably good sense. The adoption of the amendment would make this bill considerably less undesirable than it is in its present form. I am pleased to support the gentleman from Indiana and urge my colleagues to do likewise.

Mr. JACOBS. I thank the gentleman.

I repeat, Mr. Chairman, this amendment simply does nothing more than make the bill conform to the purpose of the bill "as advertised."

Mr. BOGGS. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman and members of the committee, I am quite certain that the distinguished chairman of the subcommittee as well as the distinguished gentleman from Hawaii will handle the

merits of the amendment offered by my good friend from Indiana. I think on its face it would have a very bad effect on the purpose of this legislation.

Mr. Chairman, I rise in support of this bill. I do so largely because of the reasons stated this afternoon by the distinguished gentleman from Hawaii when he pointed out so succinctly that the purpose of this legislation is to end the trend toward newspaper monopoly, to end the trend of newspapers dying because of the fantastic costs of operating a newspaper, and to maintain, I think in some 22 cities, operations which have proved effective in keeping alive vital organs of public opinion.

Now, I see my good friend from Louisiana, my colleague (Mr. HEBERT), standing there. When he was growing up—and he is just a year or two older than I am—there were at least three separately owned newspapers in the city of New Orleans, independently owned, but gradually they were combined until today there is only one newspaper publishing company in New Orleans, with a morning and an afternoon newspaper. The editorial policies of these newspapers are set freely and independently by the local management in New Orleans.

The point I make is that today the operation of a newspaper is frightfully expensive. I cannot name—and I doubt if anyone in this Chamber can name—a newspaper which has come into existence in the last 25 years and has been successful.

I remember that Marshall Field, who had more money than he could count, tried to start a newspaper in New York City, and despite the fact that he spent millions and millions of dollars, he finally had to give up.

In truth and in fact, what has happened is that everywhere newspapers have been going out of business. New York City is a good example—the biggest city in our country. Years ago there were a dozen newspapers in that city. Today I think there are three—there may be more when you count some of the suburban papers. However, the same thing can be said about almost every large city in this country.

This bill does not create monopolies. It does just exactly the opposite. It permits different enterprises under a totally different ownership, advocating entirely different editorial points of view, having an entirely different approach to the reporting of the news to be able to maintain themselves in one plant.

Now, we built a plant in New Orleans not very long ago and I think it cost something over \$13 million or \$14 million just for the plant alone.

Mr. Chairman, this bill is not a unique concept in our society. Many of us have argued here for a long time when we have considered matters like hospital legislation, the idea that if there were 10 hospitals in one community, each one of those hospitals had to have a kidney machine, each one of them had to have the most expensive and modern electronic devices and various accessory equipment and so forth. Well, what we have tried to do is to let these hospitals use this equip-

ment collectively. That is what is involved in this legislation.

Mr. HEBERT. Mr. Chairman, will the gentleman yield?

Mr. BOGGS. I am glad to yield to my distinguished colleague.

Mr. HEBERT. I want to say to my colleague that I certainly associate myself with the remarks he is making. I wish he would elaborate upon one situation he touched upon and that is the independence of editorial policy particularly relating to the papers in New Orleans, the Times Picayune and the States-Item.

Those papers have diametrically opposite views, and have independently supported those views, independent one from the other. I wish the gentleman from Louisiana would elaborate on that policy which I think is a healthy policy, and within the same building their spirit of competition is something that is very keen.

The CHAIRMAN. The time of the gentleman has expired.

(By unanimous consent, Mr. Boggs was allowed to proceed for 2 additional minutes.)

Mr. BOGGS. Mr. Chairman, I thank my colleagues for the additional time.

The gentleman from Louisiana has made a very significant point. These newspapers are owned by the same owner, yet they are completely independent editorially. Now, someone may say, "Well, this is only a game," but it is not. Their editorial staffs are competitive. The net result is that we have people writing editorials who have to be knowledgeable and who have to do research. And today I think that there has been a tremendous improvement in the quality of both of those newspapers because of that competition.

But the significant thing about this bill is that if we fail to act—I always like to look at alternatives—that if we fail to act, in my judgment, we are going to see the end, the death and the demise of some of the finest newspapers in the country. I have seen it happen since I came to Washington. When I first came there was the Washington Times-Herald, and it does not exist any more. I am told that Scripps-Howard is only able to maintain its fine newspaper because it is subsidized from profits made elsewhere.

So, Mr. Chairman, again I commend the committee and particularly the gentleman from Hawaii (Mr. MATSUNAGA) who has worked for this bill, who has shepherded it through the Committee on Rules, and who has shown not only knowledge of the newspaper business here this afternoon, but a keen appreciation of the antitrust laws of this country.

The Newspaper Preservation Act has been described—accurately, I believe—as a bill that chooses to preserve a free press rather than the technical sanctity of the Federal antitrust laws.

I believe that this bill is in concert with the spirit and purpose of the antitrust laws, specifically, to foster and encourage competition. What H.R. 279 proposes, is that divergent editorial voices and competition in news coverage be maintained. The basic theory of the bill

is built on a reasonable extension of the long-established "failing company" doctrine.

The Supreme Court has recognized that a merger between two competitors, one of which is failing, can have no adverse impact on competition. Whether or not the merger occurs, the failing company would disappear as a competitive factor.

Unfortunately, since to qualify as a "failing company" a newspaper must be virtually on the verge of bankruptcy, the Court-created defense has been of little value to the newspapers. An owner with other resources whose newspaper has begun spiraling downward is more likely to seek merger with, or sell his assets to, another local newspaper, than he is to put good money after bad.

Ironically, the antitrust laws would permit a merger under these conditions. An agreement to share operating expenses and revenues, however, is a per se violation, despite the fact that the latter arrangement allows the preservation of multiple, independent editorial viewpoints.

The limited exemption proposed by H.R. 279 is certainly not without precedent. Over the years, Congress has made the judgment that in certain cases the national interest would best be served by exempting farmers cooperatives, fishermen, labor unions, banks, small businesses, professional sports and certain other groups from the general framework of antitrust enforcement. The national interest in preserving a free press, I believe, deserves no less a consideration.

Moreover, Mr. Chairman, the exemption proposed by this legislation is as narrow as possible. Any predatory practice or pricing by the joint arrangement is specifically prohibited.

However wistfully we might hope to the contrary, we must realize that the antitrust laws cannot create commercial competition where the market will simply not support two totally competing daily newspapers. If those laws are amended as H.R. 279 proposes, we can at least foster the competition of ideas embodied in separate news gathering staffs, separate editorial viewpoints and separate ownership.

I urge Members to vote for passage of H.R. 279.

Mr. KASTENMEIER. Mr. Chairman, I rise in opposition to the amendment.

Very briefly, Mr. Chairman, the word "amend" has to remain in the bill.

Mr. Chairman, the committee devoted considerable time to this, and decided it was absolutely necessary for the operation of those operations involved in such agreements to continue, to contain the word "amend." Newspapers do amend their agreements sometimes on an annual basis for the purpose of labor contracts and for many other operational reasons.

Both the subcommittee and the full committee considered this, and we determined that we would not require prior approval of the Attorney General to agree to such amendments because it would work a hardship on the papers that have enjoyed such agreements for

years. Accordingly, we specifically included the word "amend" to refer to changes that might take place in the course of ordinary business operations.

On the other hand, the fear of the gentleman from Indiana has been relative to the addition of other newspapers to an existing joint operating agreement. I am convinced, as far as the committee is concerned, that we did not contemplate in the renewal of the mandatory process under section 4(a) the possibility that any agreement would be amended to add additional newspapers. This would be in our view something that would come under 4(b), and would be in the nature of a new joint operating arrangement for which prior approval of the Attorney General would be required.

Mr. MIKVA. Mr. Chairman, will the gentleman yield for a question?

Mr. KASTENMEIER. I yield to the gentleman from Illinois.

Mr. MIKVA. Mr. Chairman, I would ask the gentleman from Wisconsin if I am correct that the present newspapers that are intended to be blanketed in under section (a), all involve operating agreements between two newspapers; is that correct?

Mr. KASTENMEIER. That is correct, assuming that the Sunday entity and the third-party entity are included—

Mr. MIKVA. And are treated as one.

Mr. KASTENMEIER. In the normal consideration of the word there are two papers involved.

Mr. MIKVA. Not more than two, is that correct?

Mr. KASTENMEIER. Not more than two; that is correct.

Mr. MIKVA. And is it correct that it was not the intention of the full committee to encompass by the word "amend" the possibility of adding additional newspapers under the grandfather clause; is that correct?

Mr. KASTENMEIER. The gentleman states the position of the committee correctly.

Mr. MIKVA. Subject to what happens on this amendment, I am reserving the right to offer another amendment that will clearly spell that out. It is my understanding from the committee hearings that it was intended to operate in that way.

Mr. KASTENMEIER. I think both the gentleman from Illinois and the gentleman from Indiana are doing a service in calling attention to this, what may be in the minds of some, an ambiguity. But nonetheless I must oppose the amendment because the word "amend" and the subsequent word "amendment" on line 19, page 7, is necessary for the ordinary operations of the newspapers involved.

Mr. JACOBS. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman.

Mr. JACOBS. The gentleman from Indiana understands the purpose of this language in the bill.

Amendment from time to time to arrangements are probably quite in order within the theory of this bill.

Would the gentleman agree to an amendment in the proper language that would leave in the word "amend" so that

they could amend technically but also place a restriction that while amending under this carte blanche authority no other newspaper could be added to the arrangement?

Mr. KASTENMEIER. In the opinion of the gentleman from Wisconsin, that amendment is not necessary and I would certainly reserve the right to examine such an amendment to see if it might be acceptable.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield?

Mr. KASTENMEIER. I yield to the gentleman.

Mr. EDMONDSON. I concur with the gentleman from Wisconsin that the amendment that has been offered would be both mischievous and undesirable.

I think it would severely handicap the normal operations of newspapers to have this amendment placed in the bill.

On the other hand, it is my understanding of the position of the gentleman from Wisconsin that if it were intended to have a joint operating arrangement that brought in additional newspapers that those additional newspapers' operating arrangements would come under 4(b); is that not correct?

Mr. KASTENMEIER. That is correct.

Mr. EDMONDSON. I thank the gentleman.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Indiana (Mr. JACOBS).

The amendment was rejected.

AMENDMENT OFFERED BY MR. THOMPSON OF GEORGIA

Mr. THOMPSON of Georgia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. THOMPSON of Georgia: On page 5, line 17, after "Act," insert the following: "and require separate ownership of newspapers in any city, community or metropolitan area where the normal circulation areas are substantially identical."

On page 7, between lines 9 and 10, insert the following:

"(7) the term 'owner' means any individual, partnership, corporation, association or other legal entities who by virtue of simple or entangled financial structure exercises control over a newspaper.

"(8) 'normal circulation area' means any geographical area in which a daily or weekly newspaper dispenses more than 51 per centum of each issue of the paper."

On page 8, between lines 13 and 14 insert the following:

"(d) It shall be unlawful for any one owner to publish or offer for sale more than one daily or weekly newspaper in any one normal circulation area if the newspaper utilizes any subsidized class of U.S. mail for delivery of any of its papers anywhere or if the sale of any of the papers affect interstate commerce."

POINT OF ORDER

Mr. KASTENMEIER. Mr. Chairman, I make a point of order against the amendments.

The CHAIRMAN. The gentleman will state the point of order.

Mr. KASTENMEIER. Mr. Chairman, the amendments contemplate more than the bill as authorized by the Committee on Rules comes to us and encompasses.

The bill is for the purpose of exempting from the antitrust laws certain joint newspaper operating arrangements.

As I understand the amendments, they would go beyond the joint newspaper operating arrangements and go to general or other ownership with respect to newspapers and, in addition thereto, make reference to the U.S. mail and other matters that are not germane to this bill.

The CHAIRMAN. Does the gentleman from Georgia (Mr. THOMPSON) desire to be heard on the point of order?

Mr. THOMPSON of Georgia. Yes, Mr. Chairman; I do.

The bill we have before us is a bill to amend the antitrust laws by providing certain exemptions to certain classes of newspapers engaged in joint operation. The amendments that I have offered would prohibit the joint operation of a newspaper where there is a single ownership. In substance, it provides an additional antitrust law. For that reason I feel it would be germane.

The CHAIRMAN. The Chair is ready to rule. The bill deals with a very narrow area of joint operation of newspapers in relation to the antitrust law. The gentleman's amendment obviously goes far beyond the matter covered in the bill and brings into consideration matters of the ownership of newspapers, which is not concerned in the bill. It also brings in the involvement of subsidized mail, not covered by this bill. Because it does go so far beyond the text of the bill, the Chair rules that the amendments are not germane and therefore sustains the point of order.

AMENDMENT OFFERED BY MR. THOMPSON OF GEORGIA

Mr. THOMPSON of Georgia. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. THOMPSON of Georgia: On page 9 before line (1) add the following:

"Sec. 6. Notwithstanding anything to the contrary herein, antitrust exemptions provided by this act shall not apply to any joint operation unless separate advertising rates are published and no effort is made to require advertisers to advertise in more than one paper.

On line 2 change "Sec. 6." to "Sec. 7."

(Mr. THOMPSON of Georgia asked and was given permission to revise and extend his remarks.)

Mr. THOMPSON of Georgia. Mr. Chairman, the purpose of the amendment is very clearly stated in the amendment itself. It merely provides that if there is to be an antitrust exemption granted in the joint operation of newspapers, it shall apply only if there is no coercion by the owners to require an advertiser to advertise in both newspapers. In other words, they must publish separate advertising rates for each newspaper. If one is a morning paper and the other is an afternoon paper, they must publish the rate for the morning paper and the rate for the afternoon paper, and the joint operation may not coerce advertisers to advertise in both as opposed to one of the newspapers.

I submit that this is an amendment which is needed to the bill. If we are going to give special antitrust exemption, certainly we must look to the public interest. We must look to the interests of