

american Landmark Legislation

PRIMARY MATERIALS

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To my Harvard Law School 1950 classmates:
Herbert Glaser, Richard K. Fink, Gerald Halpern
and Robert B. Ross on the occasion of our
twenty-fifth anniversary, 1975.

INTRODUCTION TO THE SERIES

The legislative background of our country reflects its past, its critical events, conflicts, and problems. More than this, legislation has a central place in America's governmental system. Acts of Congress increasingly control every citizen's political, social, and economic life. In selecting the laws for this series of *Landmark Legislation*, the editor used two criteria. The first of these was the important national significance they had at the time Congress passed them. Secondly, these laws carry principles that continue to be of great import to one dimension or another of American life. Even when particular laws are no longer in effect, either because they accomplished their purpose (*viz.*, the Homestead Act of 1862) or were declared unconstitutional at a later point by the judiciary (*viz.*, the Civil Rights Act of 1875), their legislative history helps us deal with contemporary issues. Thus public land use and civil rights have something of their genesis in the Homestead and Civil Rights Acts of the nineteenth century.

This series will provide general readers and students, as well as professional workers, with primary legislative materials not now readily available except in the largest library systems. And even there, the task of sifting out and distilling the specific and relevant materials takes skills, time, and energy a very limited number of people have. Hopefully, the *Landmark Legislation* series will make a study or investigation of these important pieces of legislation a pleasurable as well as a viable pursuit.

Reproducing as we have the actual legislative and judicially-related materials will give readers a sense of authenticity as well as "flavor" that cannot be conveyed with ordinary narrative texts.

The full, unabridged, and unedited primary sources are offered for each of the statutes covered. Editing or abridging would have resulted in selection, which in turn reflects an editor's point of view. While unedited accounts require the reader to wade through more than he may be looking for or wants to know, they have the advantage to alerting him to information he did not know existed and should have! In any case, the full reproduction of the congressional debates during the session of the Congress that passed the law is a feature of this series that distinguishes it from anything presently available.

Each "landmark" statute is preceded by a detailed narrative legislative history prepared either by the editor or adapted from an authoritative source. Following the statute are a variety of pertinent documentary sources. In addition to the complete congressional debates already mentioned, there are committee reports, presidential messages, contemporary news or editorial accounts, and finally, judicial decisions that either interpret the legislation or some part of it or deal with its constitutionality. Together, such a set of materials relating to America's leading legislative enactments will fulfill a great variety of needs and purposes among our citizenry.

Irving J. Sloan
Scarsdale, New York

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TENNESSEE VALLEY AUTHORITY ACT OF 1933

SOURCE NOTES

Legislative History of the Act

“The Muscles Shoals Problem,” *The Tennessee Valley Authority: A Study in Public Administration*, C. Herman Pritchett

The Statute

Statutes at Large, 73rd Cong., 1st Sess. Ch. 32 (1933)

House Reports

73rd Cong., 1st Sess., Report No. 48, “Muscles Shoals,” pp. 1-18
_____, Report No. 130, “Operation of Muscles Shoals Properties, Etc.,” (Conference Report), pp. 1-70

The Congressional Debates, 1933

Congressional Record, 72nd Cong., 2nd Sess.: pp. 2176-2205, 2339-2345, 2563, 2623-2638, 2661-2672, 2675-2690, 2777-2809, 2984-2986, 3084-3085, 3114, 3125, 3374-3381, 3474-3475, 3554-3554-3602, 3764.

The Constitutionality of the TVA as a Power Development Program

“Constitutionality of the TVA as a Power Development Program,”
48 *Harvard Law Review* 806-815

Ashwander et al v. Tennessee Valley Authority et al

297 U.S. 288

LEGISLATIVE HISTORY OF THE ACT*

"The continued idleness of a great national investment in the Tennessee Valley leads me to ask the Congress for legislation necessary to enlist this project in the service of the people."

—Franklin D. Roosevelt (1933)

ON MAY 18, 1933, Congress created what was in many ways the most unique government agency ever set up in the United States. Its program and its organization differed in important respects from traditional governmental patterns. It was a strange hybrid among the regular departments, bureaus, and commissions in Washington—a semi-independent, quasi-autonomous government corporation. While it was a federal agency, yet it had a local habitation and name, its direct sphere of operations being the 40,000 square mile watershed of the Tennessee River and its tributaries.

Its task was in broadest terms one of regional development. It was directed to promote, by its own efforts and by its example, the control, conservation, and wise utilization of the natural resources of the Tennessee Valley. It was authorized to build dams, and to operate them for the promotion of navigation, the control of floods, and the generation of power. It was directed to concern itself with conservation of the Valley's soil, to experiment with the manufacture of fertilizer and to use the product in a program of education toward improved soil-preserving agricultural practices. It was envisaged as an agency which, unhampered by state lines or departmental jurisdictions, would examine into the peculiar economic and social problems of its area, considering all the factors that go to pro-

*Published originally as Chapter 1, "The Muscles Shoals Problem," of *The Tennessee Valley Authority: A Study in Public Administration*. (Chapel Hill, NC: University of North Carolina Press, 1943; reissued, New York: Russell & Russell, 1971). Reprinted by permission.

duce human well-being, and would then build out of the abundant resources available an integrated program of regional rehabilitation. Its name came from President Franklin D. Roosevelt, who recommended the creation of this agency in a message to Congress on April 10, 1933. It was called the Tennessee Valley Authority.

In the years since 1933 the reputation of the T.V.A. has gone around the world. It has built great and beautiful dams, which have made of the Tennessee River a chain of inland lakes. It operates the most comprehensive system of water control ever developed in a major watershed. It runs one of the biggest power businesses in the nation. But it is not only what the T.V.A. has done that has made it famous; it is also *how* it has been done. Indeed, the major emphasis of this book is upon the administrative achievements of the T.V.A., which are in their way as spectacular as the dams and powerhouses. These achievements include the demonstrations which the Authority has given in use of the business corporation for public purposes, in non-political management of a major public service, in wholesome federal decentralization, in a dynamic personnel program, in cooperation rather than competition with state and local government agencies—in short, in the meaning and potentialities of able and effective public management.

But before discussing either the what or the how of the T.V.A., some attention must be given to the why. Why was an organization set up with this unusual form and wide range of responsibilities? Why was the Tennessee Valley selected as the area of its operations? The answer to these questions requires the telling of a complicated story. For the T.V.A. Act of 1933 was the end product of a chain of circumstances set in motion by the National Defense Act of 1916. The span between those two dates was in a real sense the formative period of the T.V.A., when under the name of the "Muscle Shoals problem" congressional debate and public discussion shaped the solution which was ultimately adopted. It is impossible to understand the T.V.A. without knowing what went on during that period.

THE MUSCLE SHOALS PROJECT

The basic factor in the situation was one of geography and topography—the fact that the Tennessee River drops 134 feet in a stretch of 37 miles near Florence, Alabama. The rapids, pools, and exposed rocks of this section of the river were known from the time of white settlement as the Muscle Shoals. Because it constituted an obstruction to navigation on the Tennessee River, Muscle Shoals received national attention as early as 1824 from Secretary of War John C. Calhoun. The water power potentialities of the site were recognized before the turn of the century.

For a long time circumstances prevented an effective attack on either of these problems. It is true that between 1828 and 1890 various canal projects aiming to circumvent the shoals were undertaken under both federal and state auspices, but none of them was completely successful. In 1899 Congress gave its consent to construction of a dam at the shoals for a private power development, but this authorization was allowed to lapse unused. In 1906 the Muscle Shoals Hydroelectric Power Company (later taken over by the Alabama Power Company) began an attempt to secure congressional approval for a joint navigation and power project there, in which the government was to bear a substantial portion of the cost. The company, however, ran into the conservationist temper of the times, newly aroused under President Theodore Roosevelt, and despite a ten-year campaign failed to get control of this important water power site.¹

So it was not until the first World War, when the United States experienced a sudden need for a domestic supply of nitrates, that the type of development to be undertaken at Muscle Shoals was finally determined. Nitrates are essential to the manufacture of explosives, and have a constant peacetime use in fertilizers. The war in Europe aroused anxiety over American dependence upon Chile

1. See Joseph S. Ransmeier, *The Tennessee Valley Authority: A Case Study in the Economics of Multiple Purpose Stream Planning* (Nashville, 1942), Chap. 2; Jerome G. Kerwin, *Federal Water-Power Legislation* (New York, 1926).

for this essential material. Fixation of atmospheric nitrogen, although comparatively new, had proved feasible, but large amounts of power were required in the only two processes then known (the arc and the cyanamid). Consequently, when the National Defense Act of 1916 was drafted, the problem of securing nitrates for munitions and fertilizers was linked with the provision of adequate hydroelectric power. Section 124 of that Act authorized the President, by investigation, to determine the best means for the production of nitrates by the use of water power or other cheap power, to designate sites on navigable or non-navigable rivers for the exclusive use of the United States, and to construct dams, locks, powerhouses, or other types of plants for the generation of power to be used in the production of nitrates. These plants were required to be operated solely by the government, and not in conjunction with any private enterprise.

Under this authority President Woodrow Wilson late in 1917 designated Muscle Shoals as the site for nitrate plant development, and authorized the construction of a gigantic dam there to supply power for the plants. Two nitrate plants were constructed at Muscle Shoals pursuant to this program. The first was an experimental plant for the production of ammonium nitrate by the Haber process. Only one of the three units in the plant was entirely completed, and continuous operation was never achieved. The second plant was designed for the production of ammonium nitrate by the cyanamid process, but it did not get into production until after the war was over. Consequently there was no occasion for full operation of the plant, and after a test run early in 1919 it was maintained in standby condition. The cost of this plant and appurtenant properties, including two steam generating plants to supply power until the dam was completed, was \$69,000,000. At Nitrate Plant No. 1 the cost was almost \$13,000,000.²

The combined navigation and power project at Muscle Shoals, the original plans for which were drawn up by the Corps of Engi-

2. The history of Muscle Shoals development up to 1925 is summarized in *Majority and Minority Reports of the Muscle Shoals Inquiry*, House Doc. 119, 69th Cong., 1st sess. (1925), pp. 11-37.

neers in 1916, called for the construction of three dams, of which the one designated as Dam No. 2 (later named Wilson Dam) was the most important.³ The first allotment of funds for acquiring the necessary lands and undertaking construction of this dam was made in November, 1917, but little progress had been made by the time of the armistice. However, the work was pushed on vigorously until April, 1921, when funds ran out with the project about 35 per cent completed. Additional money was appropriated in 1922, and the dam was then finished, the first power being generated in September, 1925. Eight hydroelectric units with a capacity of 184,000 kilowatts were installed in the powerhouse, and space was provided for the installation of ten more units. The cost of the Wilson Dam project was placed at around \$47,000,000.

Out of the nucleus of physical properties which thus came into existence there developed a 15 year struggle over the peacetime disposition to be made of the nitrate plants and dam. A complete history of the Muscle Shoals controversy would fill several volumes. Here it will be possible only to trace out the lines of development which make intelligible the product of that controversy.

MUSCLE SHOALS AS A FERTILIZER PLANT

The National Defense Act had definitely provided for the peacetime use of the nitrate plants in the manufacture of fertilizer, and this was the approach taken by the War Department after the armistice. Mr. Arthur Glasgow, fixed nitrogen director under Secretary of War Newton D. Baker, spent months in attempting to get the fertilizer industry interested in taking over and operating the plants. He found that no private interests would consider the proposition even on what he considered the most generous terms, their attitude undoubtedly being due to the fact that the first plant was an admitted failure and the second would require extensive alteration to fit it for commercial production of fertilizer.

3. Dam No. 1 was a small navigation dam, intended to provide a slack-water approach to the lower lock of Wilson Dam, and was completed in 1926. Dam No. 3 was to be located 15 miles upstream from Wilson Dam, completing the navigation project and adding to the power at Wilson Dam. This dam was not constructed until after the T.V.A. had taken over the project, and is the present Wheeler Dam.

Of necessity, Mr. Glasgow then turned to government operation, and recommended that all the fixed nitrogen assets of the War Department be taken over for operation by a government owned corporation. A bill was drawn up giving effect to this plan, and was introduced in both houses of Congress in November, 1919, at the request of Secretary Baker.⁴ It provided for organization of the United States Fixed-Nitrogen Corporation, to be controlled by a board of directors appointed by the Secretary of War. Under the direction of this board the corporation was to conduct a commercial fertilizer business and, after the completion of Wilson Dam, to operate the hydroelectric plant and use and sell the power developed there.

The Glasgow bill made little progress in the Sixty-sixth Congress. The Senate finally passed it, after much revision, in January, 1921, but it never reached the floor of the House. Only a few of the factors affecting the fate of the bill can be mentioned. Many Senators objected to setting up the government in competition with the private fertilizer industry. There was general doubt whether operation under the plan proposed would materially benefit the farmers. It was pointed out that the plants were of little value without cheap Wilson Dam power, and that there was no certainty the dam would be finished, a further appropriation having just been refused. A highly critical report by a House committee, charging politics in the selection of the Muscle Shoals site and gross waste under Army Ordnance officials in constructing the plants,⁵ led many to believe that the entire development was tainted.

With this failure of the first attempt to utilize the Muscle Shoals properties, the problem became one for the Harding administration, which almost immediately adopted a policy of liquidation. In March, 1921, Secretary of War John W. Weeks invited proposals from private concerns for acquisition of the plants. No offers were received. At the Secretary's request, the Chief of Engineers then advertised for bids on the properties. On July 8, 1921, Henry Ford

4. S. 3390 and H. R. 10329, 66th Cong.; text of bill, 60 *Cong. Rec.* 812-13 (1920).

5. House Report 998, 66th Cong., 2d sess. (1920).

responded with his famous offer. He proposed to buy the two nitrate plants and accompanying steam power plants for \$5,000,000,⁶ and promised to use them for the production of nitrogen and other fertilizer compounds to be sold at a profit not exceeding 8 per cent. His offer also included the completion of Wilson Dam and the construction of the proposed Dam No. 3 for the government at cost, the dams and power plants then to be leased to him for a period of 100 years.

Following the Ford proposal, and stimulated by it, a variety of other offers came to the War Department, which turned them all over to Congress for consideration. The primary interest of southern congressmen, who were most vocal on this matter, was to utilize Muscle Shoals so as to reduce the cost of fertilizer, of which the South is the country's largest consumer. Ford's representatives intimated that, operating at Muscle Shoals, he could cut the cost of commercial fertilizer in half. The magic of the Ford name was sufficient to convince many congressmen that he would achieve this purpose, although careful consideration of the proposal ought to have indicated to them that Ford was chiefly interested in the power available at Muscle Shoals, which he was proposing to obtain at a ridiculously low figure. The associated power companies of that area, who had submitted a proposal simply for utilization of the power at Muscle Shoals, saw they had no chance of competing with Ford unless they too were willing to promise fertilizers, and so they revised their offer to that effect.⁷ However, none of the offers except Ford's was able to generate any considerable congressional or popular enthusiasm, and although the Sixty-seventh Congress failed to take any action on the various Muscle Shoals proposals, the Ford proposition got a House majority in the next Congress on March 10, 1924. That it was not accepted in the Senate was due primarily to Senator George W. Norris.

6. The government subsequently realized \$3,472,487 by sale of one of the steam power plants alone. The Ford offers are contained in House Doc. 167, 67th Cong., 2d sess. (1922), and House Report 143, 68th Cong., 1st sess. (1924).

7. House Doc. 192, 67th Cong., 2d sess. (1922); House Docs. 158, 173, 68th Cong., 1st sess. (1924).

Senator Norris first gave evidence of his interest in Muscle Shoals in 1921, when he introduced a bill providing for government operation of the properties there. As chairman of the Senate Committee on Agriculture and Forestry, which was handling Muscle Shoals measures, he was in a strategic position to resist the turning over of Muscle Shoals to private interests, a step which he felt to be indefensible. Only a reading of the voluminous hearings before his committee can indicate the amazing degree to which he educated himself on this question. He got the opinion of experts as to what could and what could not be expected of the nitrate plants. He studied the problems of power production on the Tennessee River. He went over with a critical eye the various proposals which were laid before Congress by private interests, and the report which he wrote for his committee on the Ford offer was so devastating as to make further support of that plan almost impossible.⁸

One of the principal results of Senator Norris' activity during this early period was to debunk the extravagant conceptions widely entertained as to the fertilizer potentialities of the Muscle Shoals plants, and to contribute toward the adoption of a more realistic view. His first bill, introduced in 1921, which he admitted was only tentative, followed the Glasgow bill in providing for a government corporation to take over the properties and utilize them for fertilizer and power production.⁹ The corporation was authorized to manufacture a completed fertilizer in order to prevent a monopoly of the fertilizer business, to establish selling agencies, and if necessary to sell directly to farmers. The more Senator Norris investigated the problem, however, the more he came to doubt that the nitrate plants could be thrown into commercial production of fertilizer, or that operation at Muscle Shoals could effect a substantial reduction in nitrogenous fertilizer prices. It seemed evident to him that continued fertilizer experimentation, not commercial production, was the most promising method of aiding the farmers and utilizing the plants.

8. Senate Report 831, 67th Cong., 2d sess. (1922).

9. S. 3420, 67th Cong.

Consequently, for the Sixty-eighth Congress he drew up a new bill which entirely separated the functions of power production and fertilizer manufacture.¹⁰ He proposed to turn over the nitrate plants to the Secretary of Agriculture, by whose staff they were to be operated for experimental purposes. The Wilson Dam power plant was to be run by a separate corporation, federally owned; it would supply power to the nitrate plants, but have no other connection with them. This bill was substituted by the Senate committee for the House-approved Ford bill, and when the Senate failed to choose between them during the 1924 session, Ford withdrew his offer. Because of this effect of Senator Norris' intervention, he was bitterly denounced by professional friends of the farmer in the Senate as having betrayed the cause of agriculture.

The belief in the fertilizer potentialities of Muscle Shoals was kept alive by the report, in December, 1925, of the Muscle Shoals Inquiry, a commission appointed by President Calvin Coolidge.¹¹ The majority of this commission concluded that the Shoals properties should be dedicated to their original purpose of providing fixed nitrogen compounds, with utilization of power generated at Wilson Dam purely incidental. They recommended that all the properties be leased as a unit to a private operator for not more than 50 years, under certain safeguarding conditions. With this report before it, the Sixty-ninth Congress continued a rather half-hearted attempt to secure a satisfactory fertilizer lessee. A Joint Committee on Muscle Shoals, composed of three members from each house, was set up and directed to conduct negotiations toward leasing the plants, but the bids received were too unfavorable to the government to be considered seriously.¹²

The experience was sufficiently disillusioning to impress even

10. Senate Report 678, 68th Cong., 1st sess. (1924); bill originally numbered S. 3214.

11. House Doc. 119, 69th Cong., 1st sess.

12. During this period the power companies retired in favor of some associated chemical companies, headed by the Cyanamid Co. Officials of the American Farm Bureau Federation were enlisted in support of the Cyanamid bid, apparently by dubious methods. See Stephen Raushenbush, *The Power Fight* (New York, 1932), pp. 184-95.