

that are now sent to the courts that need not go there such as the de novo matters that we were speaking about. But the Conference clearly would be precluded from going into those matters insofar as they related to functions like Government contracts, like social security, and the management and proprietary functions of the Government, and possibly would be denied the privilege of inquiring into the subject of judicial review.

Now, it is all very well to draw a line between regulatory activities and nonregulatory activities and say that regulatory activities are the matters which should be the concern of this Conference.

I say it is all very well. There is sort of a logic to it on the basis that private parties have no rights in connection with these proprietary functions except to the extent that the Congress has given them the right, whereas you do have some rights of a constitutional origin with respect to the regulatory functions.

But that should be not the end of our concern with this question of administrative procedure.

It is just as important to a man in the West who has been grazing his livestock on Government reservations for a generation or so to have a fair procedure to determine whether he should be summarily deprived of that right, I will call it, or that privilege, whatever you may call it, as it is for him to have a right to due process in the conduct of the regulatory functions of the Government. The distinction is really not of any practical significance.

Mr. FENSTERWALD. Could you tell me whether you think your committee would be the only one that would be hobbled or whether other committees, as organized in the previous Conference, would be hobbled by this narrow jurisdiction?

Mr. SELLERS. Well, I can only say as to that, Mr. Fensterwald, that if you look at this last Conference in terms of the recommendations, there were a number of recommendations to which that Conference addressed itself which have been referred to here in previous testimony which would not be within the purview of this proposed Conference under S. 1664, and to that extent, therefore, I would say it would be obvious that the Conference would be hobbled.

There was a group of people presumably of the same stature and the same type of constituency in the previous Conference as you would anticipate would be in the new Conference. That body thought these matters were of great significance, else they would not have considered them, and to the extent that they would be precluded from doing that in a future Conference, I think definitely it would be hampering.

Mr. FENSTERWALD. I had one other question. This is for Mr. Russell.

Mr. Russell, did you find in the voting, either in the committees or in the Assembly, that there was generally a split along agency-non-agency lines?

Mr. RUSSELL. Mr. Fensterwald, I was not a member of the Conference then. I think you had better address that to Mr. Sellers. Mr. Sellers had better try to answer that.

Mr. FENSTERWALD. Mr. Sellers, would you like to reply to that?

Mr. SELLERS. I don't think I can say—first, it is a matter of impression because I didn't count the votes and obviously you couldn't anyway. There was no record kept of individual votes.