

produced on page 9 of the Senate Committee's Report. As pertinent here, this order stated:

*"And it further appearing, That a carrier which files a notice of a proposed discontinuance with the Commission under section 13a(1) of the Interstate Commerce Act is thereby sheltered from prosecution, restriction, or other action by any State by reason of such discontinuance, but that actual discontinuance of operations other wise than pursuant to the notice filed under said section removed that shelter and exposes the carrier to the provisions of the laws and constitution of any State served by the discontinued trains;*

*"And it further appearing, That on October 30, 1967, the Commission by Division 3, acting as an Appellate Division, issued an order in each of these proceedings dismissing the notices and their supporting data filed by the Atchison, Topeka and Santa Fe Railway Company proposing discontinuance of its trains Nos. 3 and 4 and Nos. 7 and 8, respectively, for failure by the carrier to sustain the jurisdiction of this Commission, in that the carrier, by actually discontinuing operation of said trains other than in accord with its notices filed with the Commission herein vitiated our jurisdiction under section 13a(1);"*

Before I turn to my specific comments on the provisions of S. 2711, I would like to reiterate that we support the basic purposes of this bill. However, as I will point out later on, we feel that the provisions of this bill raise many serious problems of interpretation, which may lead to consequences never intended in this legislation, and, further, go beyond what is actually necessary to prevent a repetition of the situation that occurred with respect to the Santa Fe train discontinuance case; and, therefore, we believe this bill in its present form should not be enacted. Rather, we believe that a simple amendment, which I will describe later, to present section 13a making it clear beyond doubt that a carrier cannot by its own action oust the Commission's jurisdiction in cases arising under section 13a(1), will preserve the purposes and intent of S. 2711 without, at the same time, introducing a host of complicating factors.

Turning now to S. 2711, I would first briefly like to summarize the changes made in the present law by this bill. For convenience, I will deal with this bill in the context of the five changes made in the present law which are set forth on page 5 of the Senate Committee's Report. As indicated there, S. 2711 amends section 13a(1) to:

(1) Provide that a railroad may not, after the filing of a notice, discontinue or change passenger train service except upon order by the Commission.

(2) Confirm jurisdiction of the Commission upon the filing of a notice, by substituting the word "jurisdiction" for the word "authority";

(3) Provide that within 20 days after the filing by a carrier of a notice to discontinue, the Commission must either enter an order instituting an investigation or permitting the proposed discontinuance or change at the expiration of the statutory 30 days' notice period;

(4) Provide that if a carrier discontinues or changes its passenger train service in violation of the provisions of section 13a(1), the Commission may require the continuance or restoration of such service; and

(5) Delete the word "otherwise" and substitute the words "would have" to confirm that after the filing of a notice a carrier may not change or discontinue passenger train service except upon order by the Commission.

The complete working of these amendments is set forth in the revised text of section 13a on page 10 of this same report.

Taken as a whole, the intent of these five itemized changes is to foreclose the possibility of any repetition of the Santa Fe situation. Thus, in the future, a railroad upon invoking the Commission's jurisdiction could not lawfully remove or change any service subject to the notice except pursuant to a formal order of the Commission. This is the purpose and effect of item (1). Item (2) makes it clear that even if the carrier should unilaterally take action to remove the trains in question, the Commission's jurisdiction is, nevertheless, not defeated by this act but rather is expressly retained. This is confirmed by the changes described in items 4 and 5, particularly item 4 which, in effect, authorizes the Commission to order the restoration or continuance of service removed by the carriers in violation of the provisions of section 13a(1). It should be added at this point that if such a unilateral act of a carrier would be in violation of an order of the Commission, it also would possibly subject the carrier to the criminal penalties provided in section 10(1) of the act for violation of the requirements of the statute.

Although the Santa Fe cases dealt only with this first or notice phase of the Commission's jurisdiction over rail passenger discontinuances, as the Commission did not enter into an investigation, these five changes also will affect those proceed-