

"No statement relating to smoking and health shall be required in the advertising of any cigarette the packages of which are labeled in conformity with the provisions of this Act." It is clear from the wording of this section that neither the FCC nor the FTC could require cigarette advertisements to contain statements of health warnings. However, this does not mean that the FCC or the FTC cannot regulate in other respects concerning smoking and health. The section does not read, as petitioners would have it, that no statement by others interested in informing the public of the potential hazard from smoking may be required "because of the advertising of any cigarette"—i.e., not in or adjacent to the advertising but at some other time period, by others or the licensee, because the advertising has presented but one face of this important issue to the public. Moreover, although the Senate debate on the Labeling Act is not wholly clear in this respect,⁹ the House debate indicates that the FTC is still free to regulate with respect to misleading or deceptive advertising concerning smoking and health under section 5 of the Federal Trade Commission Act.¹⁰ For example, if an advertisement said that cigarette smoking was not a health hazard, the FTC could act to prevent such advertising. The Chairman of the House Commerce Committee explained that the Labeling Act did not purport to change the present authority of the FTC, only to limit that authority with respect to compulsory inclusion of statements concerning smoking and health in cigarette labels and advertising.¹¹ See section 5(c) of the Act. The FCC's regulatory authority was not discussed in the committee reports on the proposed legislation or in the legislative debates. Nevertheless the background and legislative history of the Labeling Act furnish some basis for judging what impact, if any, that Act has on the FCC's authority in this field, particularly under the Fairness Doctrine.

LEGISLATIVE HISTORY

17. The pertinent background to the 1965 Act is set out in Appendix A. We turn here to the relevant legislative history. Prior to 1964 a number of bills had been introduced without enactment by Congress in an effort to compel cigarette manufacturers to acquaint the public in various fashions with the health hazards of smoking. With the Advisory Committee's Report as a catalyst, many bills were introduced during the second session of the 88th Congress embodying several approaches to acquaint the public with the hazards of smoking: (1) To require that cigarettes sold in interstate commerce be labeled with a health warning; and/or with a disclosure of nicotine and tar content (H.R. 4168; H.R. 7476; H.R. 9693); (2) to confer on the FTC the power and duty to regulate advertising and labeling of cigarettes (H.R. 9655; H.R. 9657; H.R. 9808; S. 2429); (3) to amend the Federal Food, Drug and Cosmetic Act so as to make that Act applicable to smoking (H.R. 5973; H.R. 9512); (4) to provide for informational and educational campaigns by HEW to acquaint the public with the health hazards involved in the use of cigarettes and to provide for continued research in this field (H.R. 9668; S. 2430); and (5) to enjoin all Government agencies, etc., from taking any action or pursuing any policy which encourages or promotes the public to buy or use cigarettes (S. 2430).

18. As a result of the submission of these bills, Chairman Harris conducted hearings from June 23, 1964, through July 1, 1964, before the House Commerce Committee concerning possible action by Congress. The purposes of the hearings were to review the scientific evidence of the causal link between smoking and cancer and, if Federal action was found to be required in the interest of public health, to determine what approach would be most desirable. Chairman Harris commented later that the closing days of that session of Congress had not permitted sufficient time for further hearings and for the preparation and consideration of carefully drawn legislation in this field. These hearings before the House Commerce Committee were the only hearings conducted on the subject of cigarette labeling and advertising by either side of Congress during the second session of the 88th Congress.

19. Legislative activity resumed in the first session of the 89th Congress with consideration of bills taking three basic approaches to the smoking health hazard problem: (1) To amend the Federal Food, Drug and Cosmetic Act to regulate smoking products (H.R. 2248); (2) to provide for a health warning and/or

⁹ 111 Cong. Rec. 15597-15598 (1965).

¹⁰ 111 Cong. Rec. 16541-16544 (1965).

¹¹ Remarks of Chairman Harris, 111 Cong. Rec., p. 16544 (1965).