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BOARD OF GENERAL APPRAISERS

MAY 6 (calendar day, MAY 8), 1926.—Ordered to be printed

Mr. SHORTRIDGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 7966]

The Committee on Finance, to which was referred the bill (H. R. 7966) entitled "A bill to provide the name by which the Board of General Appraisers shall be hereafter known," having considered the same, report thereon with the recommendation that it do pass without amendment.

The bill does not propose to increase the powers or jurisdiction of the board in any way, nor will it confer any right or privilege on the members of the board not now possessed by them. Members of the board already have a life tenure of office and have the privilege of retirement upon full pay at the age of 70 years. An examination of the bill will show that it has been drawn in such a way as to specifically limit the powers, rights, and privileges of the members of the board to that which they now possess under existing law. If the bill is passed, their powers, jurisdiction, tenure of office, retirement privileges, and all other rights and privileges will remain precisely as they are at the present time.

The United States courts have repeatedly held that the boards of three general appraisers are courts. The latest decision upon that subject was handed down recently by the United States Customs Court of Appeals in the case of *United States v. Macy*. In that decision it is held:

We have uniformly held that the Board of General Appraisers is a judicial tribunal. (*U. S. v. Kurtz*, 5 Cust. Appl. 144.) With the enlarged powers which have been conferred upon the board and its members by Congress we can not doubt that the board is a court of the United States of limited and special jurisdiction. Its powers and functions are judicial, its process, forms, and practice are judicial, and its decisions and judgments have the force and conclusiveness of those of other courts.

Some foreign governments refuse to honor commissions to take testimony issued by the board upon the ground, as asserted by them,

that it bears the name of a board and not the title of a court. Both the Treasury and State Departments have made repeated representations to such foreign governments looking to a recognition of the board as a court, but such governments persist in their refusal to so recognize it because of its title. A large number of cases have accumulated wherein it is necessary to obtain evidence from abroad. These cases can not be cleared from the dockets until this bill is passed.

From the general administrative and legislative standpoints it is desirable that all governmental units should be named in such a way as to indicate their functions, otherwise ill-advised action is found to occur. For instance, when vacancies occur upon the board, the name should be such as to charge the President and his successors with knowledge that such positions are judicial and that appointments should be made with all the care exercised in the selection of United States judges.

There is also confusion and delay in the delivery of mail. Large numbers of letters are addressed to the Board of General Appraisers which should be addressed to the appraiser of the port, and many letters are addressed to the United States Court of Customs Appeals at Washington which should be addressed to the Board of General Appraisers at New York. This causes not only delay and confusion but also loss of time by court and board officials and clerks.

The Department of Justice, through its United States Assistant Attorney General in charge of customs cases in New York, indicates its attitude toward this legislation in the following letter:

OFFICE OF ASSISTANT ATTORNEY GENERAL,
New York, January 6, 1926.

HON. W. C. HAWLEY,
House Office Building, Washington, D. C.

MY DEAR CONGRESSMAN: I am in receipt of your letter of the 29th ultimo regarding a proposal pending before Congress to change the name of the Board of United States General Appraisers to that of United States Customs Court, and requesting an expression of opinion as to the public reasons which would justify a change of title.

For some time it has seemed to me that the title "Board of United States General Appraisers" has resulted in a popular misconception of the importance, functions, and duties of the board to a degree which has been prejudicial to it. Apparently it is not well recognized outside of customs circles that the board exercises a portion of the judicial power of the United States authorized under the Constitution, and that in addition to the powers given to it by Congress to hear and determine causes arising out of the administration of the tariff laws, it has been endowed with the powers of a United States district court in preserving order, compelling the attendance of witnesses, the production of evidence, and in punishing for contempt (sec. 28, subsec. 12, tariff act of 1909, and sec. 518, tariff act of 1922).

The result has been that not only litigants, but those attorneys unacquainted with the customs practice as well, have seemingly regarded the board as in the nature of a quasi judicial body before whom litigation may be conducted in a rather informal way without regard to the rules of evidence, which, as a matter of fact, now surround its proceedings. This, of course, occasions delays and expense to the Government not only in the work of the board but as well in the work of this department.

If the board were denominated a court, it would not add to its jurisdiction or powers, nor to the privileges or immunities of its members, because it is already a court in which is vested, as above stated, a portion of the judicial power authorized by the United States Constitution. It has been so recognized by judicial decisions, the last decision having been handed down recently by the United States Court of Customs Appeals in the case of *United States v. Macy*, T. D. 41199. The Commissioner of Internal Revenue has also held the members of the board to be judges of the United States, and as such entitled to all the im-

munities of judges, including the constitutional provision that their salaries shall not be reduced during their term of office.

The denomination "Board of United States General Appraisers" seems to have created in the popular imagination an administrative body rather than a dignified judicial one, and this tends to diminish rather than emphasize the fact that it is a court. If the board were designated a court, I believe it would have a certain psychological effect of great importance. It would signify much more to litigants because of the added dignity and solemnity which the name carries with it. A litigant should know before he comes to trial that he is in a court where he may exercise all his constitutional rights and privileges, safeguarded by the rules of evidence by which a suit would be conducted in any district court of the United States. The present name of the board seems to mislead litigants and causes continuances and delays which are not only annoying, but add to the expense of litigation. A change of name would doubtless tend to overcome this situation.

There are a large number of cases now on the dockets at the various ports which can not be disposed of without testimony from abroad, and I understand that certain foreign countries refuse to honor commissions to take testimony issued by the board because of its name. Furthermore, I am informed that the State and Treasury Departments have been unable to rectify this situation.

I might go into this subject in greater detail, but it must be obvious to you that any governmental unit improperly or inaptly named is bound to cause more or less confusion. This is particularly true where a court is named in such a way as to indicate an administrative board. Such confusion is bound to continue with resultant loss of efficiency so long as the board is required to function under the handicap of its present very misleading name.

Yours very truly,

CHARLES D. LAWRENCE.

The attitude of the Treasury Department is indicated by the following letter, signed by Secretary Mellon, dated January 18, 1926:

TREASURY DEPARTMENT,
Washington, January 18, 1926

HON. WILLIAM R. GREEN,
Chairman Committee on Ways and Means,
House of Representatives.

MY DEAR MR. CHAIRMAN: Receipt is acknowledged of your letter of the 9th instant, inclosing a communication from United States General Appraiser George M. Young in regard to a proposed bill which has for its purpose the changing of the name of the Board of United States General Appraisers to "United States Customs Court." You state that it is probable that the bill, when introduced, will be referred to your committee, for which reason it will be desirable to have the Treasury Department viewpoint thereon.

So far as the Treasury Department is concerned, no objection is perceived to the passage of such a bill as drafted by Mr. Young. There has been some controversy as to the status of the board, which would probably be avoided in the future if the bill were enacted into law, and its passage would, therefore, seem desirable.

I note the possible objections to the bill mentioned by you. You state that if the board were made a court the President would have no control over its membership after appointment and the control of the Treasury Department would cease. Whether or not the bill if enacted would have that effect I believe can best be answered by the Attorney General. It would appear, however, that the board is already a court, having been so recognized by the Commissioner of Internal Revenue in exempting the salaries of the members of the board from the payment of income tax; and also by the United States Court of Customs Appeals.

The control of the board by the Treasury Department is merely nominal, extending only to the appointment of its clerical force and the payment of its expenses from the general customs appropriation; and in these matters the recommendations of the board are followed so far as practicable. The jurisdiction of the board to hear and determine controversies involving the customs revenue is fixed by law, and the Treasury Department has no authority to enlarge or restrict that jurisdiction, nor can it exercise any influence over the board's decisions; so that, practically, the board is now a separate and inde-

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pendent institution. I therefore do not believe that the loss of such control over the board as is now exercised by this department, if that were the effect of the proposed bill, would be of sufficient importance to justify adverse action thereon.

The inclosures of your letter are returned herewith, as requested.

Very truly yours,

A. W. MELLON,
Secretary of the Treasury.

