S. REP. 87-1087, S. Rep. No. 1087, 87TH Cong., 1ST Sess. 1961, 1961 U.S.C.C.A.N. 3042, 1961 WL 4854 (Leg.Hist.)

**\*3042** P.L. 87-331, PROFESSIONAL FOOTBALL, ETC. LEAGUES-- TELEVISION CONTRACTS

Senate Report No. 87-1087,

Sept. 20, 1961 (To accompany H.R. 9096)

House Report No. 87-1178,

Sept. 13, 1961 (To accompany H.R. 9096)

The Senate Report is set out.

                                                                                  (CONSULT NOTE FOLLOWING TEXT FOR INFORMATION ABOUT OMITTED MATERIAL.  EACH     COMMITTEE REPORT IS A SEPARATE DOCUMENT ON WESTLAW.)

Senate Report No. 87-1087

Sept. 20, 1961

THE Committee on the Judiciary, to which was referred the bill (H.R. 9096) to amend the antitrust laws to authorize leagues of professional football, baseball, basketball, and hockey teams to enter into certain television contracts, and for other purposes, having considered the same, reports favorably thereon, without amendment, and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to enable the member clubs of a professional football, baseball, basketball, or hockey league, to pool their separate rights in the sponsored telecasting of their games and to permit the league to sell the resulting package of pooled rights to a purchaser, such as a television network, without violating the antitrust laws. A further purpose of this legislation is to provide that such package contracts cannot be used to impair college football gate receipts through network telecasts of professional football contests at times when college games are normally played.

This legislation is needed to overrule the effect of a decision of the U.S. District Court for the Eastern District of Pennsylvania, issued July 20, 1961, in the case of United States v. National Football League. In that decision, Judge Grim ruled that a 2-year contract between the National Football League and the Columbia Broadcasting system granting CBS the exclusive right to televise league games is prohibited by the final judgment entered in the same case (116 F.Supp. 319) in 1953, and by the antitrust laws. The 1953 judgment enjoined the league and its member clubs from contracting to restrict the areas within which telecasts of league games might be made. A sole proviso permitted contracts to prohibit the telecasting of any game within the home territory of a member club on a day when that club was playing a game within its said home territory. The 1961 decision was based on the fact that by transferring their rights to the network the individual clubs unlawfully restricted themselves from determining the areas within which telecasts of games might be made.

The practical result of this decision is that the National Football League cannot enter into an agreement to sell the pooled television rights of its member clubs. Meanwhile, the American Football League, a competing professional football organization, operated under a package contract with a network during 1960 and has renewed its contract for the 1961 season. Other professional sports organizations, such as the National Basketball Association, have had the same type of television arrangements for many **\*3043** years, and the National Hockey League at one time used similar arrangements. In consequence, an apparent inequity exists in that the American Football League and other professional sports leagues continue to employ package television contracts, while the National Football League is under court order not to do so.

At hearings conducted by the Antitrust Subcommittee of the House Judiciary Committee, proponents of this legislation stated that a league needs the power to make ‘package‘ sales of the television rights of its member clubs to assure the weaker clubs of the league continuing television income and television coverage on a basis of substantial equality with the stronger clubs. Such income and coverage, they state, often mark the difference between profitable and losing operations. If the league is unable to exercise some control over the telecasting of league games, it is estimated that only a limited number of teams in the National Football League will have access to television broadcasting facilities in 1962 when present commitments expire. The result anticipated by the commissioner of the National Football League is that viewers in such communities as Green Bay, Minneapolis-St. Paul, Dallas, St. Louis, Detroit, and even such cities as San Francisco and Philadelphia may be unable to see the road games of their home team on television. This is based on the prediction that the television networks will abandon their long-time policy of televising the away-from-home games of each team back to the team's home territory unless a package sale can be negotiated. Such expected action would deprive many clubs of all access to television facilities and television income. As one witness put it, if the 14 teams of the National Football League and the 8 teams of the American Football League are required to act separately in the sale of their television rights, only a handful of these teams will hereafter be able to secure coverage on the limited network facilities now available.

In similar vein, the Commissioner of the American Football League testified that television revenues are such a significant part of the overall financial success of a professional football team that it is necessary to prevent too great disparity in the television income of the various clubs. This, the witness observed, required the pooling of revenues and a package contract. It was further stated that each individual club needs broad exposure on television, both for prestige among home territory viewers with its reflection in home attendance and for drawing power in attracting talent.

It is clear that under Judge Grim's recent ruling the members of a professional sports league cannot lawfully act in concert to assure member clubs with weak teams or limited home territory television markets an adequate amount of television income and of television coverage for games played away from home, on a basis of substantial equality with the stronger clubs. Yet should these weaker teams be allowed to founder, there is danger that the structure of the league would become impaired and its continued operation imperiled.

At hearings conducted by the House Judiciary Committee, language was proposed by the National Collegiate Athletic Association so as to prevent professional football telecasts into areas where colleges were playing games on that day. The House bill, and this language contained in the amendment to S. 2427, are designed to provide greater protection for inperson **\*3044** attendance at college football contests and carries out the recommendations of the NCAA. This it accomplished by extending the times and dates during which network telecasting of professional football games sanctioned by the antitrust exemption may not interfere with intercollegiate football games. This language contained in section 3 provides that the antitrust exemption authorized by section 1 of the bill shall not apply to a joint agreement which permits the telecasting of all or a substantial part of any professional football game on any Friday evening after 6 p.m., or on any Saturday during the period beginning on the second Friday in September and ending on the second Saturday in December within 75 miles of an intercollegiate football game scheduled to be played on that Friday evening or Saturday.

The committee believes that it is desirable to limit the proposed antitrust exemption so that broadcasts of professional football games shall not impair college football gate receipts. Both professional football leagues presently play most of their games on Sunday during the regular college season but also play a few Saturday and Friday night games made necessary by scheduling and stadium problems. While both professional leagues have assured the committee that it is their intention to continue their present Sunday scheduling practices, the committee believes that a legislative exemption of professional football from the antitrust laws should be specifically conditioned so that college football, upon which substantial educational programs depend for revenue, is not unduly prejudiced.

The committee is of the opinion that the public interest in viewing professional league sports warrants some accommodation of antitrust principles and this legislation achieves this purpose with minimal sacrifice of antitrust principles by exempting joint agreements under which a league sells or transfers pooled television rights of its member clubs to a purchaser.

The committee is of the opinion that this legislation has a meritorious purpose, and accordingly, recommends favorable consideration of H.R. 9096, without amendment.

                                                                                  (Note:  1.  PORTIONS OF THE SENATE, HOUSE AND CONFERENCE REPORTS, WHICH ARE     DUPLICATIVE OR ARE DEEMED TO BE UNNECESSARY TO THE INTERPRETATION OF THE LAWS, ARE OMITTED.  OMITTED MATERIAL IS INDICATED BY FIVE ASTERISKS:  \*\*\*\*\*.                  2.  TO RETRIEVE REPORTS ON A PUBLIC LAW, RUN A TOPIC FIELD SEARCH       USING THE PUBLIC LAW NUMBER, e.g., TO(99-495))

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