

Beadles reflects on Governor's 2020 Rail Initiatives, the Rail Access Fund, and Virginia Rail Policy

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Virginia Rail Access Program, and public funding of private railroads generally.

Recent events in Virginia, including the Governor's December 19, 2019 announcement of a \$3.7 billion rail improvement initiative, prompts me to memorialize a bit of personal history that may have (a) ultimately led to the establishment of the Rail Access fund, and (b) contributed in some small way to breaking down the public policy "wall" that for a century or more effectively stymied any potential efforts to nurture development of rail here in the Commonwealth. For sure, the publicly-traded, "private", railroads themselves were part of the problem, as my historical incident below will demonstrate.

The so-called "credit clause of the Virginia State constitution of 1870 put a stop to prior investments by the Commonwealth in "works of internal improvements". It did not specify just which, but for three decades after was taken to mean canals, railroads and turnpikes. The Constitution of 1901 was amended to specifically exempt roads from that prohibition. Nothing was said about railroads, and it was assumed that public investment in railroads and or railway infrastructure was still prohibited. There the issue remained, with but a few minor test cases around the edges of the question, until after the turn of the 21st century when Montgomery County initiated litigation which ultimately resulted in a State Supreme Court decision which, in plain language, said that if such public investment(s) in rail operated to relieve and reduce public investment in highways, then rail investment was acceptable under the "roads" exception.

In 1973 the writer of this memo was named to a new position at the former RF&P. My portfolio of responsibilities included, among other things, "real estate and industrial development". It was in that area of responsibility that I learned of the State's industrial access road construction program, i.e. public money to extend highway access to private development. Why not a rail access funding program? Nobody seemed to have given such a comparable program any consideration.

I had also been aware of a certain reputation that our highly regarded, but sometimes a bit too tenacious, RF&P general counsel, Urchie Ellis, had acquired among members of the General Assembly for persistently pointing out to members of the Legislature that they did many favors for highway users, e.g. "the truckers", while only punitively taxing and overly regulating railroads.. One such legislator (it may have been the late Bob Ball) once said to me: "If Urchie would stop trying to make life difficult for truckers and ask for something you all (railroads) need, we might be more inclined to listen.

Bingo! Why not ask for a rail access funding program, comparable to that for highway users? I then put the suggestion on my annual response to Urchie Ellis' request for legislative issues to be taken up at the next Virginia Railway Association meeting, which he did.

Next thing I knew about my suggested legislative request was a phone call from the late I. Jay Warren, then director of real estate and Industrial development (or the equivalent) of Chessie System (C&O/B&O). My memory is vivid because it was a Friday afternoon, and I had gone to Williamsburg to attend a seminar sponsored by the Society of Industrial Realtors. In those days some individuals on our "owner" railroads would think nothing of summoning one of us to the public "pay phone", regardless of the nature of matters on their minds, great or insignificant. Jay Warren did just that. As I hung on the public phone in the meeting place lobby, he proceeded to lecture me at some length about the inappropriateness of my suggested rail access funding proposal, saying that this would set a terrible precedent, allowing "the government" to get its hands into our private railroad business. It was obvious that word had spread back up and down the chain of command. In those days, one rose or fell in railroad careers based upon compliance with corporate policy. There were, of course, people who did not march in lock step with the "party line", but Jay would not likely have been one of them.

I do not know what subsequently transpired at the next meeting of the Virginia Railway Association, but eventually a Virginia Rail Access Funding Program was authorized by the General Assembly and funded, out of highway funds as I recall. By tapping VDOT funds, where there were many "pots" from which monies could be disbursed, the policy makers of Capitol Square sought to avoid creating a constitutional problem.

From my perspective, this was just another example of why reactionary, as opposed to progressive, public policy thinking among railroads helped put the rail mode of transportation in the constrained – disadvantaged --competitive position it is today. In my opinion the reluctance of railroads to seek appropriate public assistance, as a matter of public policy, dates back to the late 19th century, to Teddy Roosevelt and his "trust busting", and particularly to the "unforgiveable" Woodrow Wilson takeover of most U.S. railroads during World War I.

Since 1973, there have been some enlightened rail policy change on both the public as well as the private rail side of some transportation policy issues, but there is still much work that needs to be done on both sides of this ledger. Meanwhile "backsliding" examples continue to come to light, including some said to involve Norfolk Southern in Virginia today.