



# COLORADO'S FALSE SUNSET

*Colorado's pioneering effort  
to kill outmoded agencies  
has left most of them  
basking in the noonday sun.*

BY PETER BLAKE

**C**OLORADO SENATE PRESIDENT Fred Anderson was bragging recently about the success of the state's "sunset law." A prototype for this new sort of statute, Colorado's law requires that all 41 regulatory agencies justify their existence every six years or go out of business. "We kayoed the athletic commission, flushed the sanitary engineers, and clipped the barbers," he told a conference that met last November to discuss the relative merits of the two dozen state sunset laws passed since Colorado led the way in April 1976.

But Anderson, a sponsor of the bill, overstated the case. The athletic commission never did much anyway, since there is virtually no professional boxing

in Colorado. The main function of the board for professional sanitarians was to bestow honorary appendages on certain government employees, like "Esq." for a lawyer. And as for the barber board, it was not clipped at all; it was merely combined with the cosmetology board (which controls hairdressers), and it is stronger than ever. In short, all the Colorado legislature has done so far is put a few dying animals out of their misery. Most regulatory agencies continue to bask in the noonday sun.

The experiment began nobly enough. Although the idea of putting a statute of limitations on government agencies is not new, it took a catchy title to make it popular. The term "sunset law" was dreamed up in the spring of 1975 by Craig Barnes, a Denver attorney connected with Colorado Common Cause. He was trading on the popularity of the so-called sunshine law, which

Common Cause had promoted in 1972 as an initiative on the Colorado ballot. That proposal required that all legislative meetings, even party caucuses, be open to the public; it also provided for financial disclosures by lawmakers and lobbyists alike. It passed easily and has been working well ever since.

Barnes originally wanted to make "sunset" an amendment to the state constitution. But that would have required a two-thirds passage by the legislature as well as a majority vote by the people. Fearing that would be too difficult to obtain, Barnes's fellow Common Causers opted to go for a simple statute—a decision he now regrets.

In any case, just as the legislature convened in January 1976, the sunset proposal got a big boost from Raul Rodriguez, head of the Department of Regulatory Agencies. Complaining

PETER BLAKE is a reporter for the Rocky Mountain News in Denver, Colorado.

that the agencies he was in charge of "limit entry in the free enterprise system," Rodriguez said he hoped the law could be used to abolish at least 10 agencies over the next two or three years. Rodriguez was even frank about his ultimate goal. "I would hope for a manageable size of zero," he said.

When a bureaucrat proposes the abolition of his own department, he gets attention. Rodriguez's support certainly made the job of Representative Gerald Kopel, the House sponsor that much easier. The bill cleared a House committee despite strong opposition from the Colorado Medical Society, which apparently feared deregulation would mean hundreds of unlicensed physicians administering acupuncture in the streets. "The lobbying you have seen so far is a tiny gnat in the universe compared to what is coming," predicted Kopel, a Denver Democrat.

But he was wrong. Apparently the regulated businesses and professions decided to let the basic concept go by and hold their fire until their particular agencies came up for review. The bill passed the House handily, 51 to 11. What opposition there was came mostly from Republicans, who didn't like the Democrats stealing their after-dinner thunder about too much government regulation and the virtues of free enterprise. Nonetheless, the most cogent argument against the bill was made by Republican Larry Hobbs. He called it a "bureaucrat's dream" because every six years otherwise comatose agencies would wake up and devise grandiose new schemes in order to justify their continued existence.

**W**ITH ANDERSON AT the helm, the bill breezed through the GOP-controlled Senate and was enthusiastically signed by Democratic Governor Richard Lamm on April 22, 1976. It required that a third of the state's 41 regulatory agencies be reviewed in 1977, a third in 1979, and the last third in 1981. The cycle would start again in 1983. The bill also stipulated that there would be no agency termination without legislative consideration and gave every board not renewed a year of grace in which to wind up its affairs.

After the 1976 session, both the state auditor and the Department of Regulatory Agencies began an evaluation of the boards up for review the following year. One of the most vulnerable

targets was the barber board, which the auditor said should either be abolished or combined with the cosmetology board. The barber board's executive secretary, Thomas G. Patton, did not have enough to do, said the auditor. "We noted much of his time appears to be spent in idle conversation with other staff members. We have also observed this person playing solitaire on one occasion, and working on Civil Air Patrol business [as a volunteer] on two other occasions, all during normal working hours." As for the barber examination, it not only lacked uniform standards as to how to cut hair and shave beards, but 90 percent of the written questions supposedly related to the "science of barbering" (sample question: "How many bones are in the human hand?").

In early 1977 Rodriguez recommended that six of the 13 boards up for review that year be abolished. Those controlling cosmetologists, barbers, shorthand reporters, morticians, sanitarians, and professional boxers were all superfluous, he said, since they "have done more to promote the welfare of the trade than the health, safety, and welfare of the public." Furthermore, "they have probably subjected the people of this state to considerable indirect costs."

The agencies did not take the criticism lying down. "I'm going up to the legislature to fight until the last dog is dead," said 75-year-old Eddie Bohn, the Denver restaurateur who had headed the athletic commission the past 20 years. But he fought in vain. At a Senate hearing, members of the boxing community blasted Bohn and the commission for requiring amateur boxing clubs to pay the same fees as professionals, and for refusing to license black and Chicano referees.

The Senate, offended by Bohn's apparent racism, voted not only to kill the athletic commission but to wipe out most of the laws governing boxing and wrestling. Nor did the commission get its year of grace. The angry Bohn predicted an influx of "bootleg promoters—people who have fighters who are fakers and frauds and use alias names." He even predicted "there are going to be little children fighting in the amateur shows." None of this happened, and Bohn has since calmed down. "I don't think the elimination of the athletic commission is going to make any difference," he said in a recent interview. "Boxing is nothing anymore."

Also abolished was the sanitarians'

board, which Rodriguez noted had not had a complaint filed with it in 19 years. The barbers' board, as mentioned above, was combined with the cosmetologists' board and ended up stronger than ever. Nominally killed was the board of shorthand reporters, whose high-priced lobbyists had successfully fought off a separate bill to do away with it in 1976. Testimony then had showed that of the 84 people taking the board's exams in June and August 1975, only three had passed—which may explain why it is so expensive to get transcripts of court testimony. But although the board was finally done away with in 1977, its functions were turned over to the court administrator for Colorado.

**T**HE COLLECTION AGEN-  
cies board, which theoretically protects debtors from the cruder collection and repossession tactics, was transferred from the Department of Regulatory Agencies to the attorney general's office. And it was actually made larger with the addition of two "public" members.

The legislature did not vote to renew the board of mortuary sciences, but did agree to appoint an interim committee to study it during the summer and fall. Because it has a year of grace under "sunset" anyway, it remains alive at least through June 1978. The funeral board likes to talk of its role in preserving the public health, but in fact it is primarily concerned with limiting competition. As a lobbyist, it has hired an attractive woman who heretofore labored on behalf of the dog track interests. In November she helped convince the interim committee to vote 6 to 5 to recommend continuing the board. Those supporting it were all Republicans, who in this state never let their theories on free enterprise interfere with their practice. Now the lobbyist is working on Governor Lamm, because if he does not put renewal legislation on his "call" in January, the board will die in June.

Two boards were strengthened when they were renewed last spring—the passenger tramway safety board and the racing commission. The tramway board, which inspects Colorado's more than 200 ski lifts, is relatively harmless in that it does not restrict competition. It does not do perfect work—a falling gondola at Vail killed four persons in 1976—but it does at least provide a minimal check on some of the sloppier



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operations. Whether it provides a net benefit to the public is another question.

No strengthening of the racing commission is going to be able to protect the race track bettor from himself—not that he deserves such protection anyway. In the first place, he should know that the state and the track are taking 15 to 16 percent off the top of the parimutuel pool. Furthermore, the quality of horse racing in Colorado is so low that track regulars insist they can actually see the jockeys pulling their mounts back when the fix is in.

The legislature, in a hurry to go home, tried to postpone review of the four remaining agencies by extending their sunset deadlines. But Governor Lamm vetoed these bills because they would have thrown the entire review cycle out of kilter forever. Thus if the four boards are to survive, they must be renewed next session, during their “grace” year.

Two of these boards are minor—the nursing home administrators’ board and the board of examiners for institutions for aged persons. They will be renewed because they must be preserved in some form to meet federal Medicare and Medicaid requirements. The two remaining agencies are by far the largest of the 13 up for review: the Insurance Division and the Public Utilities Commission.

The state auditor called the Insurance Division “generally inefficient” and asked that it be strengthened. But changes are likely to be cosmetic at best. Arguments will rage over whether it should be headed by three or five commissioners, instead of the single commissioner it has now, and whether the commissioners should be appointed by the governor. Currently Colorado’s

insurance boss is the only one in the nation who enjoys the protection of civil service.

The Public Utilities Commission not only regulates what some might term natural monopolies, like Mountain Bell and Colorado Public Service Company, but also intrastate transportation firms, which most definitely are not monopolies. It is arguable whether the PUC even helps hold down the cost of telephones, gas, and electricity, what with the accountants, lawyers, and bureaucrats involved in the rate-setting process, but there is no question it helps maintain artificially high transportation costs.

**C**ONSIDER THE CASE OF Richard Slatten, a gypsy trucker from Denver. Two years ago Slatten, then only 22, had a single half-ton pickup truck and one helper but no PUC license because he could not prove a “need” for his moving and storage business. “I refuse to go on welfare, so I plan to keep on working illegally until this law is changed,” he said at the time.

A few months later the legislature passed the sunset law, which was advertised to be exactly what entrepreneurs like Slatten needed. Its premise was that regulatory agencies do more to limit competition than they do to help the consumer. But it seems far more likely that the sun will set on Slatten’s business before it sets on the PUC.

By July 1977, Slatten’s business had grown to include five trucks and six helpers, but he was turned down again for a license because he still couldn’t prove to the PUC’s satisfaction that he was serving the “public convenience and necessity.”

**U**NDER COLORADO LAW, the PUC would have been entitled to have criminal charges filed. But it ran into a problem: Denver District Attorney Dale Tooley. He refused to prosecute the case.

“My general feeling is there should be more competition” in the moving field, Tooley said. “We’re not very sympathetic to the commission’s position on this one.” Besides, “it’s not right to clog up our courts when we have rapes and murders to deal with.”

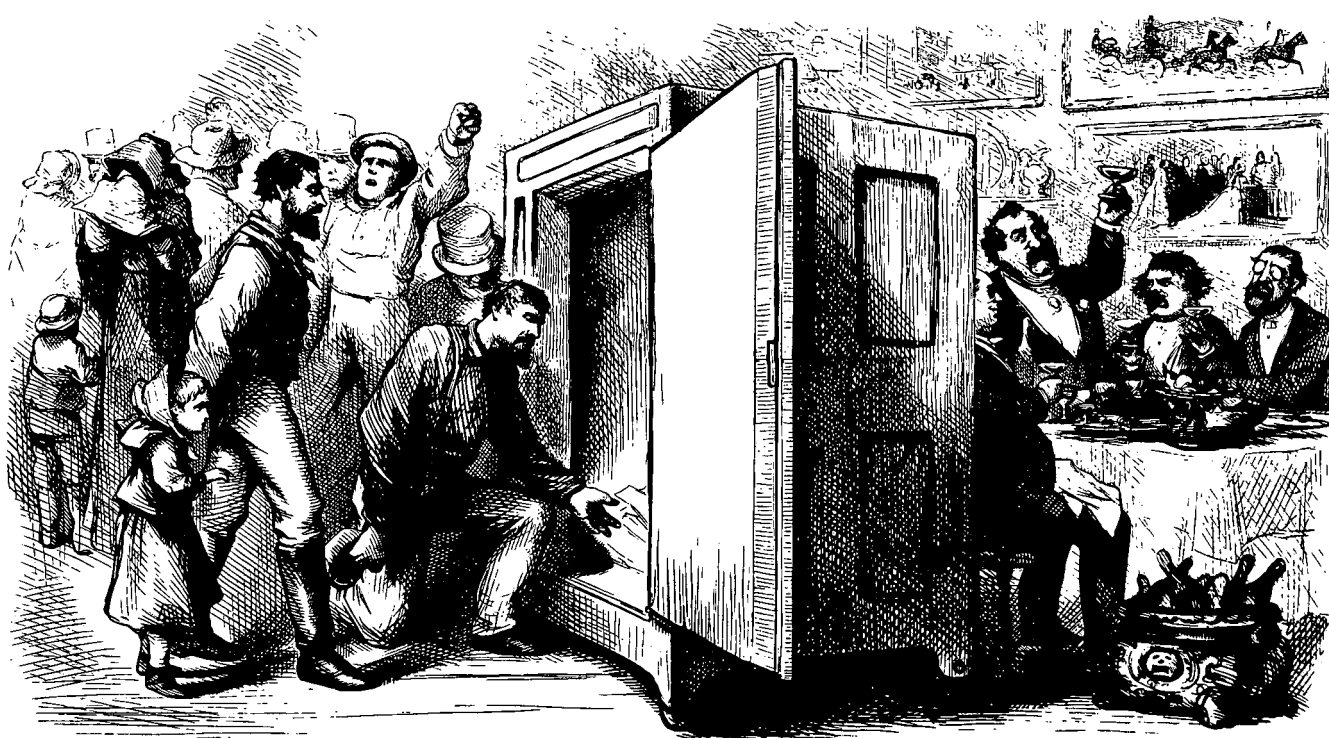
But there was nothing to prevent the PUC from clogging up the civil docket instead. In October, perhaps emboldened by legislative inaction, the PUC filed a complaint seeking to enjoin Slatten from doing business. It is also asking a \$1000 civil fine for each of six furniture moves it allegedly caught him making between October 1976 and last July. Slatten will continue to work until the case comes to trial.

Meanwhile, the PUC is prosecuting gypsy trucker Robert Hanson in Golden, one of the Denver suburbs, where the district attorneys are more cooperative. Hanson pleaded guilty and was given a suspended sentence, but he continues to work anyway, despite the fact that he’ll go to jail as soon as he’s caught again.

The interim committee studying the PUC has just finished its work and has recommended only minor changes. For instance, commercial carriers—those truck lines that haul goods for only one company—would no longer have to register with the PUC. But they have no trouble getting a certificate now.

Would-be common carriers—those that solicit business from the public—would still have to prove a need for their business in advance. This is not easy. Whenever an application comes in, the PUC automatically invites already licensed moving companies to protest, and of course they do. Most of the larger ones are represented by Denver lawyer Joseph Nigro, whose clout at the PUC is enhanced by the fact that he used to be its chairman.

The reason established movers object to new competition is that they do not want the value of their licenses diluted. A license costs only \$40—when you can get one—but once obtained it immediately takes on a sort of political equity that makes it worth thousands of dollars, depending on the type of cargo the owner is authorized to haul and the area he can operate in. The license is easily transferable, and the PUC rarely if



ever objects to a sale.

State Senator Don MacManus introduced a bill last session that, independently of the sunset law, would have deregulated common carriers, but he couldn't even get it out of committee. "There was a lot of lobbying going on from the trucking industry," he recalled. "I had people calling me and saying, 'What are you trying to do, kill me? I was going to sell that license when I retire.'"

As for Denver cab companies, they make the infamous New York City system look like a role model for free enterprise. In New York, it was recently reported, a taxi medallion now goes for \$50,000, or more than the price of a seat on the New York Stock Exchange. But in Denver you can't get a medallion at any price. Licenses are issued not to individuals but to companies, and there are only three in town. Their lawyers are working hard to see that nothing is done to upset this cozy oligopoly.

The early line is, in short, that the legislature will reenact the PUC next spring for six more years, with only minor fixes.

It should be noted that while the legislature was grabbing off favorable headlines across the country with its sunset law, it was quietly establishing yet another regulatory body—the Hospital Charge Commission. A sort of PUC for the medical business, complete with commissioners and staff, it is supposed to review hospital budgets in advance. The avowed purpose is to hold

down costs. Whether it will in the long run remains to be seen. What is certain is that the commission itself will cost something, and that the hospitals will have to bear that extra burden.

And the legislature also decided to strew flowers in the path of those regulatory board members who in the future might be put out of business because of the sunset law—they raised their per diem pay to \$35. Another irony of the sunset law is that three of its most ardent supporters—Rodriguez, Barnes, and Kopel—are attorneys, who belong to one of the most regulated professions of all. The fact that lawyers are exempt from sunset provisions was bitterly and repeatedly pointed out by shorthand reporters, barbers, and others whose boards faced extinction.

Rodriguez, by the way, recently left the state to take a better-paying job in Washington as inspector general of Action, which is headed by former antiwar activist (and Colorado state treasurer) Sam Brown. Rodriguez was in large part responsible for what little success the sunset law has enjoyed, and whether his successor can keep the pressure on is debatable.

The law's supporters stress that one of the keys to its success is its limited scope. It covers only regulatory agencies, which are a small portion of the executive branch of government. Left untouched are, for example, the attorney general's office and the welfare department, which no one would think of disbanding. If a sunset law were too

broad, say supporters, agencies would be routinely re-created because there wouldn't be time for adequate legislative review. This, apparently, is what is happening in Alabama, where the legislature bit off more than it could chew.

The biggest hazard to the Colorado law, however, is that it is not a constitutional provision. It is a well-established principle that one legislature cannot bind another; therefore the law can easily be modified or abandoned as soon as the thrill wears off.

**I**T WILL BECOME NO EASIER to get rid of agencies that enjoy the support of the industries they theoretically regulate. How many politicians, after all, can vote in favor of an abstract principle when the committee room is full of vocal flesh-and-blood voters urging them to vote against it? Abstract principle rarely attracts its own constituency. Not many consumers are going to show up in a committee room to urge support of a bill liberalizing entry into the trucking field, for instance. The fact that it may help reduce moving rates by 10 percent or so is too little a part of their lives. Yet the issue is crucial to truckers, who will show up in force. Deregulation is likely to come only when the laws restricting entry are widely disobeyed. People like Richard Slatten, who are willing to go to jail for their right to go into business, will do more to make sunset a reality than all the theoretical arguments put together. □

**NO COMPROMISE: Selected Writings of Karl Kraus,**  
**edited by Frederick Ungar.**  
**Frederick Ungar Publishing Co., 260 pp., \$10.50.**

## The penman-crusader of Vienna

C. J. FOX

**T**HE VIEWS OF VIENNA'S Karl Kraus on militarism and many other issues still have the ring of relevance many years after he first enunciated them. For instance: "If the statesman allows the military man to control him, he has fallen under the spell of a grade-school idol which has had its day and which, in our day, can be allowed to rule over life and death only at our peril." With America still emerging from the dual trauma of Vietnam and Watergate, it is no wonder that publishers feel there must be a wide potential readership for translations of Kraus—legendary scourge of the warmongers and the corrupt of Vienna half a century ago.

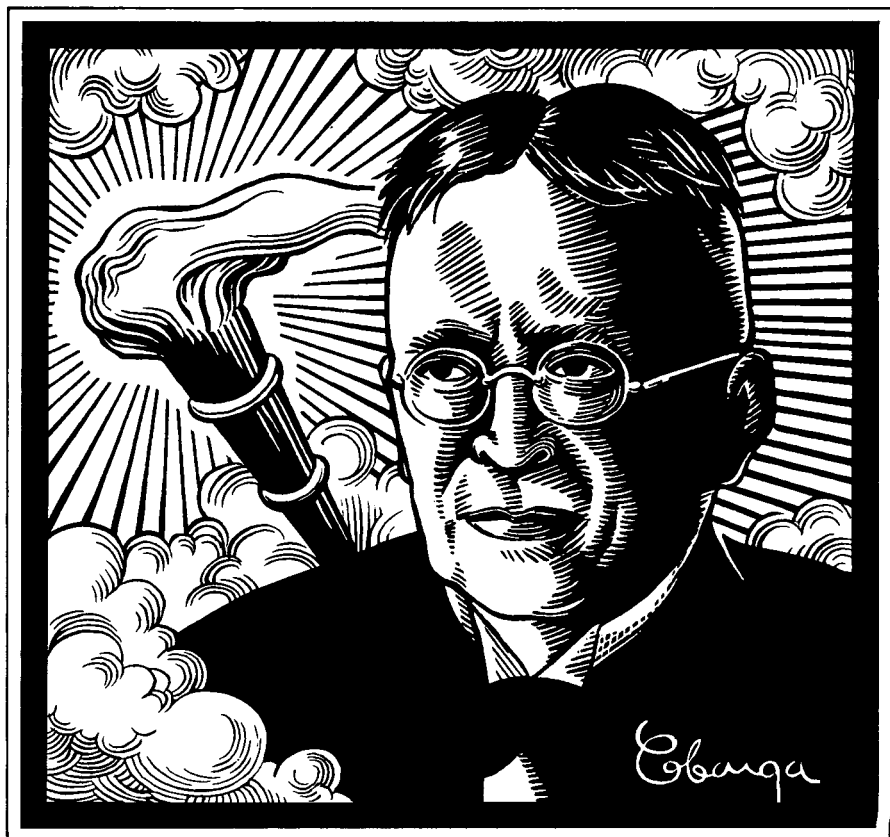
We now have had two selections of his writings and a volume of his aphorisms in less than two years, as well as an abridged version, published by Frederick Ungar, of his most famous work, *The Last Days of Mankind*. Representing another side of Kraus, arch-enemy of the psychoanalysts, is a new book by Thomas Szasz, *Karl Kraus and the Soul-Doctors*, which has sent defenders of Sigmund Freud dashing to action stations. "I understand that psychoanalysis is a big hit in the United States," Kraus once remarked. "It figures: The Americans love everything they haven't got, especially antiques and the soul."

*C. J. FOX is the editor of three collections of writings by Wyndham Lewis and has written on Karl Kraus.*

Yet all this flurry of publishing, strictly speaking, cannot be called a revival of Kraus (as another Krauslike hater of war, Robinson Jeffers, is being revived), since his works had previously been so inaccessible to readers with no knowledge of German—or the Vienna of his day. "No writer of comparable stature has ever been more deliberately rooted in and circumscribed by local terrain," George

Steiner wrote of Kraus recently. And the latest of the new Kraus books, an anthology edited by Frederick Ungar under the daunting title *No Compromise*, is somewhat lacking, unfortunately, in explanations of that complex Viennese terrain for the reader unfamiliar with either the volcanic satirist or his near-fabulous hometown.

**N**O EFFORT IS MADE, AT the outset, to suggest the seething blend of artistic brilliance (Klimt, Egon Schiele, Mahler, Schoenberg, Musil, Loos), political uproar, social ferment, sexual depravity, and imperial decay in which Kraus feverishly penned his satires. This, after all, was the "research laboratory for world destruction," as Kraus himself called it. Moreover, it is questionable whether Ungar's selection should have concentrated as much as it does on Kraus's output during the period of World War I. "These were Kraus's finest hours," the editor says in explaining his choice. And he quotes a



LESLIE CABARGA