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MOTOR CARRIER REGULATION IN MISSOURI

The motor transportation problem in Missouri has become acute within the last two years, especially over the routes between St. Louis and Kansas City. Price-cutting by competing carriers has constituted a veritable rate war, the most emphatic evidence of which is revealed in accepting in lieu of the published \$7 one-way fare, for the 280 miles, the sum of 75 cents.¹ Such conduct was not only injurious to the motor carriers, but detrimental to the railroads serving the same territory. The seriousness of the situation was recognized by the legislature in 1927, and the Motor Bus Act is the result.

Section 13a states the purpose of the act to be the preservation and promotion of the interests of the traveling public. Contrasted to the regulatory statutes in 44 states instituting regulation earlier, the Missouri Act is short. The broad outline of regulation is sketched, and more than the usual detail is left to be supplied by commission interpretation, rules and regulations. Nothing unusual appears in the definition of the terms "motor vehicle" and "motor carrier", but "public highway" is so comprehensively defined as to leave practically *ne plus ultra*.

Regulatory power is vested in the Public Service Commission; this agency possesses no jurisdiction over motor transportation beyond that conferred by the 1927 act.²

The scope of regulation can be viewed from several angles. Only motor carriers transporting *persons* for hire are subject to regulation. Haulers of freight or express are not included.³ In this respect Missouri is like eight other states, chiefly on the Atlantic seaboard; unlike thirty-six states in which both passenger and property carriers are subject to regulation.⁴

As is true in all other states, school busses are exempted in Missouri.⁵ Public Motor vehicles operating entirely within municipalities and those the major portion of whose operation lies within municipal limits constitute another exempted class.

While no specific provisions single out the interstate motor carriers as the object of the regulation, these may be and are being subjected to limited control.⁶ A final exempted class is the irregular carriers, those whose operations are not confined to any definite points of departure and arrival but which may begin and end anywhere in the State.⁷

Motor carriers transporting passengers between fixed termini and over regular routes are subject to regulation. All such carriers are declared common carriers. All phases of motor carrier activity affecting the public are put under commission jurisdiction. The act mentions specifically the fixing or approving of rates, issuing rules and regulations, examining accounts, setting up compulsory uniform accounting system, and requiring of annual and special reports.

All motor common carriers must procure from the commission authorization to operate. Those carriers established before December 1, 1926 and furnishing

1. For treatment of this "rate war" see *Public Utility Reports*, 1928 A, No. 2, XII-XV, hereafter referred to as P. U. R.

2. Re Springfield Traction Co., November 5, 1927; P. U. R. 1928 A, 675.

3. Section 1 of act. Administrative application is found in Re Capitol Stage Lines, November 29, 1927; P. U. R. 1928 A, 677 and Re Pickwick Stages System, December 22, 1927; P. U. R. 1928 B, 1.

4. Baggage in connection with passengers may, of course, be carried.

5. California for a short time required school busses to secure certificates.

6. See below for the question of interstate transportation.

7. The exemption of irregular carriers has been stated repeatedly by the commission. Re Worrel, November 16, 1927; P. U. R. 1928 A, 793; Re Kansas City Public Service Company, November 18, 1927; P. U. R. 1928 A, 582; also Re Harvey, December 20, 1927.

dependable and satisfactory service on that date are entitled to a certificate of public convenience and necessity by virtue of that operation.⁸ Where operator had owned a line for only 30 days before December 1, 1926, but the line had been functioning satisfactorily for nine years, a certificate was granted, without requiring applicant to prove public convenience and necessity, as in all cases of bona fide operation on date specified.⁹ In the absence of evidence to the contrary the commission presumes that a carrier operating on December 1, 1926 was operating in good faith.¹⁰ Such presumption demands granting the certificate sought.¹¹ But the commission has ruled that where the claim of applicant that he was operating in good faith on December 1, 1926 is not accompanied by evidence that the service was satisfactory and dependable, the applicant is not entitled to the certificate.¹²

For securing a certificate to establish motor service after regulation was instituted a more detailed procedure is prescribed. Application to the commission must give information as to property and equipment owned and financial status of applicant, the route proposed, and rate schedule to be effectuated. This filed, the commission appoints a time for hearing on the application, notice of which must be communicated at least ten days in advance to every common carrier operating in the proposed territory. At the hearing those common carriers may appear as parties in interest. Other parties in interest include the clerk of any municipality through which the proposed route would run, and any other persons deemed by the commission to be sufficiently interested. This last fact puts in the hands of the commission a powerful discretion in admitting evidence aiding or hindering the consideration of the application.

The burden of proof rests on the applicant to show that public convenience and necessity demand the granting of a certificate to him. The statute enumerates three factors the commission must take into consideration:

(1) Nature and character of the transportation already offered by steam and electric lines, and by motor carriers; (2) prospects for continuous and permanent service from the applicant; (3) probable effects granting the certificate would have on existing transportation agencies.

While these legislative instructions to the commission are much more specific than in many regulating states, especially the earlier ones, they are by no means definite as to what constitutes public convenience and necessity. Inevitably that must be determined by the commission as occasion arises. A general approach has been made in a recent decision to the effect that the rapid development of bus transportation to large proportions is distinct and ample evidence that public convenience and necessity demands motor transportation.¹³ Public convenience and necessity means the rights, welfare, and interests of the general public and not the private benefit of any carrier.¹⁴ The statute contemplates "reasonable convenience of the

8. This point has been elaborately stressed in the following cases: *Re McDavid-Silver Coach Co.*, case 5385, December 30, 1927 and *Re Steele*, 5456, December 29, 1927, P. U. R. 1928 B, 674. (Annot.) Similarly in *Re Public Swan Safety Coach Lines*, 5373, December 2, 1927. *Re Scofield Bus Lines*, case 5382, December 9, 1927; *Re Akin Bus Line*, 5440, December 16; *Re Bitzer*, 5416, December 16; *Re Mitchell*, 5444, December 15; *Re T-C Bus Co.*, 5477, December 12; *Re Combs*, 5375, December 10, 1927.

9. *Re Williams*, January 16, 1928; P. U. R. 1928 B, 675.

10. *Re Yellowway*, October 13, 1927; P. U. R. 1928 A, 217.

11. *Re Purple Swan Safety Coach Lines*, September 20, 1927; P. U. R., 1928 A, 193.

See also *Re McCartney*, November 30, 1927; P. U. R. 1928 B, 525.

12. *Re Midwest Transit Co.*, December 1, 1927; P. U. R. 1928 C, 320.

13. First case in Note 11.

14. *Re McCartney*, P. U. R. 1928 C, 182.

public generally, and not that of a particular locality, community, or class.¹⁵ "Necessity" does not mean indispensability, and "convenience" is attached to "necessity" to prevent too strict interpretation of the latter term. Again, public convenience and necessity is viewed as reasonable public convenience that would meet a reasonable public necessity.¹⁶ A two-fold significance attaches to the above illustrations of commission effort to define the term public convenience and necessity. First, the impossibility of exact delimitation of the term; secondly, stressing the paramount importance of "necessity" of motor transportation over the mere "convenience" of it. The experience in Missouri and in other states shows that no more exact or comprehensive meaning can be attached to "public convenience and necessity" than to the term "equal protection of "law", "due process of law" or "police power".

Having considered the evidence adduced, the commission decides whether public convenience and necessity justifies the granting of the certificate, and enters an order accordingly. The certificate sought may be granted in whole or in part; this is the usual rule among the states, though the New York commission cannot grant a certificate for a part of a route.¹⁷

The specific grounds on which certificates have been granted and refused illuminate the meaning of public convenience and necessity. Doubt that the operator had sufficient equipment to take care of all the traffic and uncertainty that the equipment was comfortable for passengers caused the commission to adjudge existing service inadequate and to grant a certificate for additional and competitive service.¹⁸ Failure of any other applicants to show that they would give better service than that proposed by a particular applicant resulted in granting the certificate to the latter;¹⁹ thus relative acceptability of service offered may constitute a factor in establishing public convenience and necessity.

An applicant having allowed an illegal use of a motor license plate, the commission decided he had slight regard for law, and concluded that "the motor carrier who will operate two months without regard to the law will most likely continue to do so if granted a certificate of public convenience."²⁰

A competitive certificate was denied a motor applicant where the railroad was serving its territory adequately.²¹ A competitive certificate was denied between St. Louis and Kansas City on the ground that the existing bus line was receiving only one-third as many passengers as it could handle, and the railroad showed a lack of business. Here the commission states that to authorize further service where proper provision for necessary transportation exists would be "demoralizing and harmful". Further, the commission emphasizes a doctrine established by statute in Ohio five years ago and applied repeatedly, that existing carriers, rail or motor, should be allowed an opportunity to furnish whatever additional service is necessary to public demands.²²

A certificate for motor transportation between Joplin and Nevada was denied in view of evidence that the Missouri Pacific Railroad could carry three times the passengers seeking service, that this railroad paid \$726,000 taxes annually to the

15. *Ibid.*

16. *Ibid.*

17. Re Tostanoski, August 4, 1927; P. U. R. 1928 A, 187.

18. Re Hatfield, case 5439, January 5, 1928.

19. Re Packard, February 29, 1928; P. U. R. 1928 C, 189-92.

20. Re Davis, December 19, 1927; P. U. R. 1928 B, Special Section, 22.

21. Re Fulton-Mexico Bus Line, December 14, 1927; P. U. R. 1928 B, 660 (Annot.)

22. Re Midwest Transit Co., December 1, 1927; P. U. R. 1928 C, 319-320. See also Section 8 of the Act.

state, and employed 14,600 persons in Missouri, the payroll for whom amounted to \$20,000,000 a year.²³ From the viewpoint of economic justice to this established carrier and its employees this decision cannot be attacked.

Although the commission is under statutory obligation to consider existing transportation service, it will not hesitate to grant a certificate competitive with a railroad, unless such granting would be detrimental to public interests.²⁴

Motor transportation has assumed measurable proportions in Missouri so suddenly that the rail lines have been taken unawares; consequently the latter have had little opportunity either to absorb the motor carrier enterprise or to devise means of successful competition therewith. The effect of this sudden appearance on the "essential and indispensable services of the steam and electric lines" has produced a serious problem the solution of which cannot yet be predicted.²⁵

Financial ability of applicant to furnish "permanent, satisfactory and dependable service" has proved an important factor in granting certificates.²⁶

The character of the applicant is an important factor, but mere accusations that applicant has carried intoxicating liquors and engaged in reckless driving are insufficient grounds for denying his application. Only judicial findings to the affirmative are sufficient basis for denial.²⁷

The public is entitled to protection against misleading labels on vehicles indicating that the vehicles are all owned by the same firm when in reality they are separately owned by two entirely distinct persons.²⁸

Section 1 of the regulatory act considers "future convenience" of the public as a ground for granting certificates. Very few indeed of the other states so provide, but the element of futurity has figured prominently in some decisions.

What is the nature of this certificate granted by the commission? It confers no vested right, privilege or permit.²⁹ Section 4 providing for the transfer of a certificate speaks of the *purchaser* of the certificate. The commission informs me that the law means that no cash value attaches to the certificate, the only value recognized by the commission in transfer of certificates being ownership of the bus line itself.³⁰

Since legislative power to repeal or modify the act is specially reserved,³¹ the commission's power to grant certificates depends entirely upon the legislature; no perpetual monopoly is conferred by a certificate.³²

"For good cause" the commission may suspend, and on ten days notice to the holder and an opportunity to be heard, revoke or amend any certificate granted.³³ The certificated operator may discontinue or abandon service only on approval of the commission, except that commission approval is not necessary where operator gives three months notice to the commission of his intention to abandon or discontinue.³⁴

23. Re McCartney, P. U. R. 1928 C, 182-88.

24. Re Purple Swan Safety Coach Lines, September 20, 1927; P. U. R. 1928 A, 193.

25. Address of Supervisor E. S. Austin before the convention of the State Utility Association, Jefferson City, April 27, 1928 and published in *Bus Transportation*, June 1928, 357.

26. Re Midwest Transit Co., December 1, 1927; P. U. R. 1928 C, 319. Also Re Yelloway, October 13, 1927; P. U. R. 1928 A, No. 2, XII-XV.

27. Re Packard, February 29, 1928; P. U. R. 1928 C, 189.

28. Re McCartney, November 30, 1927; P. U. R. 1928 B, 525.

29. Section 13a.

30. Superintendent E. S. Austin, Motor Bus Division, Missouri Public Service Commission, *Letter*, August 21, 1928.

31. Section 13a.

32. Re Detroit-Chicago Motor Bus Co., P. U. R. 1928 C, 103.

33. Section 8.

34. Section 5.

The term of the certificate is indefinite. No certificate has yet been revoked.³⁵

The most important question involved in motor carrier regulation is service; around this all others center. Adequacy of service is of primary concern. The act directs that a carrier whose service is adjudged inadequate by the commission must be given a minimum of 60 days to make the service adequate. Only after the expiration of this sixty-day period can the commission grant a certificate for the route to someone else.³⁶

Time schedules showing frequency of service at all stations must be filed with the commission.³⁷ Schedules may be modified by this agency,³⁸ even those of bona fide operators on effective date.³⁹

Not only adequacy and frequency of service are vital, but also safety in furnishing service. To protect the traveling public the commission has promulgated a detailed and elaborate safety code for public carriers.⁴⁰ The chief features are: (1) No passenger to ride on outside of vehicle; (2) detailed requirements relative to brakes; (3) specifications for interior and exterior lighting; (4) directions for driving public vehicles down grades and across railroad tracks; (5) no greater speed than 40 miles an hour; (6) nominal qualifications for drivers, and a ten hour limit on their work day.

To some these provisions may seem petty, tedious, and over cautious; but the least familiarity with the hazards of bus operation as gleaned from experience in Missouri and other states shows these precautions well taken, and the observance of them indispensable to safe motor transportation. Racing of rival carriers to pick up prospective passengers constitutes danger and discomfort to passengers carried, and the Missouri commission in order to stop this has ordered a change in schedule.⁴¹

Since safety codes cannot eliminate accidents, provisions must be made for compensation for damages and injuries resulting in motor transportation. Practically all states⁴² require liability protection in the form of bond or insurance. As is the rule elsewhere, the commission in Missouri is empowered to determine the amount of protection to be furnished by the carrier. The range of amounts depends upon the carrying capacity of the vehicles employed, and is as follows: Seven passenger vehicle or less \$5,000 minimum for injuries to any one person, and minimum of \$10,000 total liability for injuries to all persons injured in any one accident. For the vehicle of 24 passenger capacity the respective amounts are \$5,000 and \$50,000. Amounts for vehicles of intermediate size are graduated between these extremes. For each vehicle a flat amount of \$1,000 protection for property (baggage) is required.

If the commission deems the carrier financially able to pay all losses arising in the course of operation, it may waive the liability protection requirement. The proper exercise of this discretion demands extreme caution; the power to waive has been exercised.⁴³

Closely related to service is the charge that shall be made therefor. The statute directs that rates shall be "just and reasonable" and makes unlawful those which do not meet this standard. The expression may be vague and indefinite; but it is not more so than are similar expressions in other statutes. In practice the commission either approves the rates proposed by the applicant or directs that they be modified.

35. Note 30.

36. Section 9 and 8.

37. *Re Motor Transit Co.*, November 9, 1927; P. U. R. 1928 A, 860 (Annot.)

38. *Re Basham*, January 9, 1928; P. U. R. 1928 B, 678 (Annot.)

39. *Re King*, December 15, 1927; P. U. R. 1928 B, 678 (Annot.)

40. General Order 25, effective July 5, 1927, rules 17 to 40 inclusive.

41. Note 38.

42. Maryland and California have no liability insurance requirement.

43. *Re Mitchell*, December 15, 1927; P. U. R. 1928 B, 680 (Annot.)

The commission has never failed to approve the rates proposed by the original application. Rates charged range from 2 cents to 5 cents per passenger mile.⁴⁴

Unsound rate-slashing as a means of destroying competitors has been condemned on the ground that in final analysis the public must suffer.⁴⁵

For all patrons rates must be uniform between the same points, and carriers are warned by the commission not to deviate from the authorized rate.⁴⁶

One operator between Joplin and Neosho sought permission to reduce his rate of fare, showing that the reduction would yet leave him a safe margin of profit. His competitor protested the proposed reduction on the ground that he could not continue operation if the request were granted. Holding that the public was entitled to the reduction and that rates on the same route must be uniform to all patrons, the commission authorized the reduction.⁴⁷

During pending injunction suits against illegal operation of "outlaw" interstate carriers who were engaged in rate cutting, the commission granted a reduction of rates sought by two certificated carriers.⁴⁸ Protection of the authorized carrier constitutes a justifiable motive for at least temporary reduction of rates.

Security issues come within commission jurisdiction. In view of the fact that motor transportation was in an experimental stage, and money for it could not be secured at a lower rate, the commission authorized an interest rate of ten per cent for money secured on motor carrier notes.⁴⁹ In the same case the use of past income to retire notes given for equipment now in use entitled the carrier to capitalize income items, his equity above liabilities amounting to \$155,514.64.⁵⁰

In addition to usual property taxes, a special license fee is levied on motor carriers according to the carrying capacity of the vehicles used. For the 7 passenger vehicle or less an annual license fee of \$40 is exacted; the vehicle above 24-passenger capacity must pay \$230. The simple basis on which the Missouri tax is levied stands in marked contrast to the multifold basis in some states.⁵¹ Money paid in as license fees to the state treasurer is apportioned to the state roads, county roads, and city streets according to the lineal distance carriers operate over each type of thoroughfare. The money is spent for road repair and maintenance.⁵² The amount arising from this source up to April 1, 1928 totaled approximately \$50,000.⁵³

A less close relationship between state and local government in regard to regulation of motor carriers is found in Missouri than in some eastern states, Massachusetts for example. Municipalities have full control over motor transportation lying wholly or chiefly within their limits. The granting of a certificate by the commission by no means deprives the municipality of its control of its streets.⁵⁴ No authority is possessed by the commission to determine which of the city streets shall be used; this is for the municipality to decide.⁵⁵ A request from the transportation company

44. Note 30.

45. Re Yellowway, P. U. R. 1928 A, 217.

46. Re Purple Swan Safety Coach Lines, P. U. R. 1928 A, 201.

47. Re Vicory, May 5, 1928; P. U. R. 1928 C 4, Special Section 44.

48. Re Greyhound Lines, June 4, 1928; P. U. R. 1928 C 5, Special Section 41.

49. Re Greyhound Lines, February 10, 1928; P. U. R. 1928 C, 324.

50. *Ibid.*, 325.

51. For examples: Seating capacity, weight of vehicle, and bus miles traveled in South Carolina, Maryland, and Oregon; horse power of vehicle, gross weight, and seating capacity constitute the special tax basis in Mississippi.

52. Section 6.

53. Note 25.

54. Note 46.

55. Re Capitol Stage Lines Co., November 29, 1927; P. U. R. 1928 A, 677.

56. Re Bitzer, December 16, 1927; P. U. R. 1928 B, 675 (Annot.)

lying chiefly within a municipality to increase its rates was dismissed by the commission for lack of jurisdiction.⁵⁷ But municipal consent is not a pre-requisite for the granting of a certificate by the commission.⁵⁸ Nor can municipalities through their control over the use of their streets nullify the authority of the commission to fix rates charged by intercity carriers.⁵⁹

No local unit can impose insurance requirements on carriers authorized by the commission.⁶⁰ Each local unit is entitled to its proportionate share of license fees.⁶¹

The question of state regulation of interstate carriers has already arisen in Missouri. Citing numerous Federal decisions on state regulation of interstate motor carriers, the commission has pointed out that state requirements relative to having a certificate, paying special license fees, observing general rules and regulations, and providing liability insurance⁶² must be met by interstate as well as by intrastate carriers.⁶³ The Missouri Commission applies to interstate carriers, as well as to intrastate carriers, the requirements concerning insurance. No judicial decision has been made on this procedure in Missouri.⁶⁴ No interstate carrier can demand certificate to do intrastate business, and where existing railroads and motor carriers would suffer as the result of granting an interstate carrier a certificate to intrastate business, the certificate was denied.⁶⁵

Another interstate carrier wishing to carry passengers between St. Louis and Kansas City sought to evade the above decision by the practice of taking passengers from St. Louis destined to Kansas City just across to East St. Louis, Illinois, thence back through St. Louis and on to Kansas City. Also passengers wishing to go from Kansas City, Missouri, to St. Louis were taken first across to Kansas City, Kansas, thence back through Kansas City, Missouri, and on to St. Louis.

The commission adjudged these "extra extensions" mere subterfuges purporting to give the transportation an interstate character and thereby to avoid state control over what in reality was intrastate carriage, and declared the conduct illegal.⁶⁶

In general it has been judicially established that a state may apply its regulations to interstate motor carriers, so long as these regulations are reasonable and do not unduly burden interstate commerce.⁶⁷ The Supreme Court has upheld the application of the Ohio seat tax to interstate carriers in the same manner as applied to intrastate carriers.⁶⁸ Likewise the same tribunal has upheld Connecticut in applying to interstate carriers a tax levied on a base entirely separate for interstate motor carriers

57. Re Springfield Traction Co., November 5, 1927; P. U. R. 1928 A, 575.

58. Notes 53 and 54.

59. Re Yellowway, P. U. R. 1928 A, 217.

60. Section 7 of Act.

61. Section 6.

62. As late as February 20, 1928 there was no Federal decision on state requirement of liability insurance from interstate passenger carriers. A Federal District Court has denied state requirement of liability insurance on interstate property carriers. *Liberty Highway* case, 294 Fed. 703.

63. Re Pickwick Stage System, P. U. R. 1928 B, 1. Under two U. S. Supreme Court decisions early in 1925 no state can deny a certificate to an interstate carrier to do interstate business. *Buck v. Kuykendall*, 267 U. S. 307; *Bush v. Maloy*, 267 U. S. 317.

64. Note 30.

65. Re Pickwick Stages System, P. U. R. 1928 B, 1. Certificate for intrastate business was here sought for route between St. Louis and Kansas City.

66. Re Detroit-Chicago Motor Bus Co., P. U. R. 1928 C, 103, 105. It is understood an appeal will be taken from this decision.

67. *Buck v. Kuykendall*, 267 U. S. 307, 45 S. Ct. 324, 69 L. Ed. 623 (1925); *Morris v. Doby*, 274 U. S. 135, 47 S. Ct. 548, 71 L. Ed. 966 (1927); *Interstate Busses Corp. v. Holyoke St. Ry.*, 273 U. S. 45, 47 S. Ct. 298, 71 L. Ed. 530 (1927).

68. *Clark v. Poor*, 274 U. S. 554, 47 S. Ct. 702, 71 L. Ed. 1199 (1927).

as a class.⁶⁹ On March 5, 1928 the Ohio commission for the first time in the history of motor carrier regulation revoked an interstate certificate, on the grounds of persistent violation of the speed laws, and resorting to subterfuges⁷⁰ similar to those practiced by the Detroit-Chicago Bus Company in Missouri.

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69. *Interstate Busses Corp. v. Blodgett*, 48 S. Ct. 230, 72 L. Ed., (Adv. 243) (1928).

70. *Re Detroit-Cincinnati Coach Line*, P. U. R. 1928 C, 571-5. An appeal from this decision is pending.