1932

# Proposed Federal Regulation of Interstate Carriers by Motor Vehicle

Karl Stecher

# MINNESOTA LAW REVIEW

*Journal of the State Bar Association*

VOLUME XVII DECEMBER, 1932 No. 1


## PROPOSED FEDERAL REGULATION OF INTERSTATE CARRIERS BY MOTOR VEHICLE[1]


By KARL STECHER*


THE rise of the motor vehicle from the experimental state to its present commanding position in the field of transportation has occurred within the compass of the present generation. Its growth and development have revolutionized the transportation situation and made antiquated many of the theories upon which the regulation of transportation agencies has been based. The fact that the change has occurred within such a comparatively few years has resulted in the failure of a great part of the national legislation (and lack of legislation) to take cognizance of present-day facts. The first important case dealing with motor vehicle regulation to be decided by the Supreme Court of the United States was that of *Hendrick v. Maryland*[2] in 1914. Transportation by motor vehicle was then in its infancy. With the statement that:

"In the absence of national legislation covering the subject, a state may rightfully prescribe uniform regulations necessary for the public safety and order in respect to the operation upon its highways of all motor vehicles,—those moving in interstate commerce as well as others."[3]

and

" . . . where a state at its own expense furnishes special fa-


* Professor of Law, Mercer University School of Law, Macon, Georgia; attorney for the Interstate Commerce Commission, 1925-1928.


[1]This does not purport to be a detailed analysis of the decisions on the subject of motor vehicle regulation. Cases are referred to only in so far as they throw light on the necessity for federal regulation.

[2](1914) 235 U. S. 610, 35 Sup Ct. 140, 59 L. Ed. 385.

[3](1914) 235 U. S. 610, 622, 35 Sup. Ct. 140, 59 L. Ed. 385.

cilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor."[4]
and with no clear limitation upon the power of the states to act in the absence of legislation by Congress, the regulation of motor vehicles proceeded in a relatively quiet and orderly manner. The corner-stone of all regulation of common carrier operations by motor vehicle was laid in the requirement of a certificate of public convenience and necessity. In general, the states simply applied the same regulations to interstate carriers that were applied to those operating wholly intrastate. They required a certificate for interstate as well as intrastate carriers.[5]

In 1925, however, the situation changed completely as a result of the decision of the Supreme Court of the United States in the case of *Buck v. Kuykendall*.[6] Buck, a citizen of Washington, was denied a certificate to operate an auto stage between Seattle, Washington, and Portland, Oregon, as a common carrier for hire, on the ground that the territory was already adequately served.

Mr. Justice Brandeis, after pointing out some of the types of state regulation of interstate commerce which may be sustained under the police power, stated:

" . . . The provision here in question is of a different character. Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition. It determines not the manner of use, but the persons by whom the highways may be used. . . . Thus, the provision of the Washington statute is a regulation, not of the use of its own highways, but of interstate commerce. Its effect upon such commerce is not merely to burden but to obstruct it. Such state action is forbidden by the commerce clause. It also defeats the purpose of Congress expressed in the legislation giving federal aid[7] for the construction of interstate highways."[8]

---

[4](1914) 235 U. S. 610, 623-24, 35 Sup. Ct. 140, 59 L. Ed. 385.

[5]See Northern Pac. Ry. Co. v. Schoenfeldt, (1923) 123 Wash. 579, 213 Pac. 26; State v. Department of Public Works, (1923) 123 Wash. 705, 213 Pac. 31; and Interstate Motor Transit Co. v. Kuykendall, (D.C. Wash. 1922) 284 Fed. 882, holding a state could require an interstate motor carrier to procure a certificate of public convenience and necessity from the state.

[6](1925) 267 U. S. 307, 45 Sup. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286.

[7]The part of the Pacific Highway which lies within the state of Washington was built by it with federal aid. Buck v. Kuykendall, (1925) 267 U. S. 307, 314, 45 Sup. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286. It seems that the federal aid legislation was not a material factor in influencing the decision of the court, however, for on the same day it arrived at the same conclusion in Bush & Sons Co. v. Maloy, (1925) 267 U. S. 317, 45 Sup. Ct. 327, 69 L. Ed. 627, a similar case in which the question of federal aid was not involved.

[8](1925) 267 U. S. 307, 315-316, 45 Sup. Ct. 324, 69 L. Ed. 623. See

The result of this decision was to leave interstate motor carriers free from all regulation other than of a purely police nature, while the competing rail carriers were subject to the most stringent regulation.

Almost immediately interstate motor vehicle operations sprang up all over the country.[9] That some regulation was necessary, both in the interest of the responsible operators and for the protection of the public, was evident.

During the following session of Congress a bill to regulate carriers of persons and of property by motor vehicle in interstate commerce was introduced in the House by Representative Parker, Chairman of the Committee on Interstate and Foreign Commerce.[10]

The administration of the act was to be placed in the state commissions or boards, acting either singly or jointly as the case might require, with the right of appeal to the Interstate Commerce Commission.[11] A certificate of public convenience was required, application for which was to be made to the state commission or commissions. Provision was made for protection of passengers and the general public through the requirement of a suitable bond, policy of insurance, or proof of financial responsibility.

The bill was modeled along lines somewhat similar to the usual state statute covering the subject. It failed to pass Congress.

An extensive investigation into the subject of motor bus and motor truck transportation and its relation to transportation subject to its jurisdiction was entered into by the commission on June 15, 1926. In its report issued April 10, 1928,[12] it followed broadly the provisions of the bill introduced by Representative Parker, except for the very important recommendation that the regulation should be limited to carriers of persons. Shortly before the issuance of this report a bill following its recommendations generally was introduced in Congress, but it was never enacted.[13]

---

also Michigan Public Utilities Commission v. Duke, (1925) 266 U. S. 570, 45 Sup. Ct. 191, 69 L. Ed. 445, 36 A. L. R. 1105.

[9]See Motor Bus and Motor Truck Operation, (1928) 140 I. C. C. 685, 697.

[10]H. R. 8266, 69th Congress, 1st Session. On December 6, 1927, Senator Watson introduced S. 1252 (70th Congress, 1st Session) in the Senate. It was substantially the same as H. R. 8266.

[11]Referred to hereinafter as the commission.

[12](1928) 140 I. C. C. 685.

[13]H. R. 12380, 70th Congress, 1st Session, introduced March 24, 1928. Senator Watson introduced in the Senate S. 3992 (70th Congress, 1st Session). This was the same as H. R. 12380.

*Sprout v. South Bend.* The city of South Bend, Indiana enacted an ordinance requiring everyone using the streets or highways of the city for the indiscriminate solicitation of passengers for transportation into or out of the city to pay a license fee and to obtain a contract of liability insurance.

Sprout operated a 12-passenger bus between South Bend, Indiana, and Niles, Michigan. While he would stop to discharge passengers before reaching the state line, he always insisted that they pay transportation to some point in Michigan.

In an action brought by the City of South Bend against Sprout[14] the supreme court of Indiana held that neither the requirement of an indemnity bond nor a license as a condition precedent to doing business in the city streets violated the federal constitution.

The case was carried on writ of error to the Supreme Court of the United States, and was decided on May 14, 1928.[15] Mr. Justice Brandeis, delivering the opinion of the court, stated:

(1) "The legal character of this suburban bus traffic was not affected by the device of requiring the payment of a fare fixed for some Michigan point, or by Sprout professing that he sought only passengers destined to that state. The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey, and known by the carrier, determines the character of the commerce."[16]

(2) "In the absence of federal legislation covering the subject, the state[17] may require licensing or registration of busses used in interstate commerce; but the license fee must be no larger in amount than is reasonably required to defray the expense of administering the regulations."[18]

(3) "A state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways. . . . "[19]

[14](1926) 198 Ind. 563, 153 N. E. 504, 154 N. E. 309, 49 A. L. R. 1198.

[15]Sprout v. City of South Bend, Ind., (1928) 277 U. S. 163, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45.

[16](1928) 277 U. S. 163, 168, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45. See also Inter-City Coach Co. v. Atwood, (D.C.R.I. 20, 1927) 21 F. (2d) 83.

[17]It was pointed out that the state might delegate the power to a municipality.

[18]" . . . But it does not appear that the license fee here in question was imposed as an incident of such a scheme of municipal regulation; nor that the proceeds were applied to defray the expenses of such regulation; nor that the amount collected under the ordinance was no more than was reasonably required for such a purpose. It follows that the exaction of the license fee can not be sustained as a police measure. . . . " (1928) 277 U. S. 163, 169-70, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45.

[19](1928) 277 U. S. 163, 170, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R.

(4) "A state may . . . require payment of an occupation tax from one engaged in both intrastate and interstate commerce . . . ."[20]

But it may do so only if it is imposed solely on account of the intrastate business; the amount is not increased because of the interstate business done; and the person taxed could discontinue the intrastate business without withdrawing also from the interstate business.

(5) A state may require operators of interstate busses to provide adequate insurance for the payment of judgments recovered against them, "if limited to damages suffered within the state by persons other than the passenger."[21]

While the effect of this decision was to clarify the situation somewhat, it tended to contract rather than to expand the power of the states.

Bills applicable to carriers of persons only have been introduced at each succeeding session of Congress.[22] The trend in these bills has been toward greater centralization of control in the commission

45. See also Clark v. Poor, (1927) 274 U. S. 554, 47 Sup. Ct. 702, 71 L. Ed. 1199; Interstate Busses Corporation v. Blodgett, (1928) 276 U. S. 245, 48 Sup. Ct. 230, 72 L. Ed. 551; Carley & Hamilton v. Snook, (1930) 281 U. S. 66, 50 Sup. Ct. 204, 74 L. Ed. 704; Interstate Transit v. Lindsey, (1931) 283 U. S. 183, 51 Sup. Ct. 380, 75 L. Ed. 953; Red Ball Transit Co. v. Marshall, (D.C. Ohio 1925) 8 F. (2d) 635; American Transit Co. v. Philadelphia, (D.C. Pa. 1927) 18 F. (2d) 991; Sanger v. Lukens, (D.C. Idaho 1927) 24 F. (2d) 226; American Motor Coach System v. Philadelphia, (C.C.A. 3rd Cir. 1928) 28 F. (2d) 736; Atlantic-Pacific Stages v. Stahl, (D.C. Mo. 1929) 36 F. (2d) 260; Johnson Transfer & Freight Lines v. Perry, (D.C. Ga. 1931) 47 F. (2d) 900; Alkazin v. Wells, (D.C. Fla. 1931) 47 F. (2d) 904; Prouty v. Coyne, (D.C. So. Dak. 1932) 55 F. (2d) 289; Continental Baking Co. v. Woodring, (D.C. Kan. 1931) 55 F. (2d) 347, upholding the imposition by a state of a mileage tax on interstate operators.

But it was not found that any part of the license fee here in question had been prescribed for that purpose; so its exaction could not be sustained either as an inspection fee or as an excise for the use of the streets of the city.

20(1928) 277 U. S. 163, 170-171, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45.

21(1928) 277 U. S. 163, 171-172, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45. See Williams v. Denny, (1929) 151 Wash. 630, 276 Pac. 858. On February 19, 1929, Representative Huddleston introduced H. R. 17189 (70th Congress, 2d Session) "To protect the right of recovery for damage in connection with the operation for hire of passenger motor vehicles in interstate and foreign commerce," but it failed of passage. He also introduced the same bill in the next Congress, as H. R. 7630 (71st Congress, 2d Session). Representative Hoch likewise introduced it as H. R. 7699 (71st Congress, 2d Session). Neither bill passed.

22H. R. 15621, 70th Congress, 2d Session, introduced December 20, 1928. S. 1351, 71st Congress, 1st Session, introduced June 4, 1929. Substantially the same as H. R. 15621.

H. R. 3822, 71st Congress, 1st Session, introduced June 10, 1929. Sub-

and toward granting it powers analogous to those it now possesses over rail carriers.

## THE PRESENT SITUATION

While more than seven years have elapsed since the decision of the Supreme Court in the case of *Buck v. Kuykendall*,[23] Congress has up to the present time enacted no legislation. Bills have been pending continuously since the beginning of 1926.[24] While no one of them would have offered an adequate solution of the problem of motor vehicle regulation, any one of the bills mentioned would have been a start in the right direction and would have been better than no regulation at all.

At the present time bills are pending in each house of Congress.

*S. 2793.* Senator Couzens, Chairman of the Committee on Interstate Commerce, introduced the pending Senate bill on January 7, 1932.[25] It begins in the usual manner, and provides for the regulation of both the "common carrier by motor vehicle"[26] and the "charter carrier by motor vehicle."[27]

The commission is given power over qualifications of employees, safety, and equipment of all common and charter carriers; accounts of all common carriers; and service and rates of common

---

stantially the same as H. R. 15621.

H. R. 7954, 71st Congress, 2d Session, introduced January 6, 1930. Substantially the same as H. R. 15621.

H. R. 10202, 71st Congress, 2d Session, introduced February 22, 1930. Similar to its predecessors but centering more authority in the commission.

H. R. 10288, 71st Congress, 2d Session, passed the House March 24, 1930. Similar to H. R. 10202.

[23](1925) 267 U. S. 307, 45 Sup. Ct. 324, 69 L. Ed. 623, 38 A. L. R. 286.

[24]H. R. 8266 was introduced January 23, 1926. See supra note 10.

[25]S. 2793, 72d Congress, 1st Session, "To regulate the transportation of persons and property in interstate and foreign commerce by motor carriers operating on the public highways," to be cited as the "Federal Motor Carrier Act, 1932."

For convenience S. 2793 will be referred to hereinafter as the Senate bill.

[26]"The term 'common carrier by motor vehicle' includes any common carrier of persons and any common carrier of property operating motor vehicles for compensation in interstate or foreign commerce over fixed routes or between fixed termini." Sec. 1(a)(10).

School busses, taxicabs, hotel busses, and some vehicles used by the Secretary of the Interior are excluded. Sec. 1(b).

[27]"The term 'charter carrier by motor vehicle' includes any carrier of persons and any carrier of property operating motor vehicles for compensation in interstate or foreign commerce other than those included in paragraph (a) (10) and in subdivision (b) of this section." Sec. 1(a)(11).

For a discussion of legal problems involved in regulation of charter carriers see *Coordination of Motor Transportation*, (1932) 182 I. C. C. 263, 381-382.

carriers of persons.[28] The matter of safety of operation in gone into in detail.[29]

The procedure with respect to the handling of complaints is much the same as under the Interstate Commerce Act.[30] In practically all material matters,[31] however, the functions of the examiner either must or may be exercised by a joint board, composed of men from the interested states.[32] The appointment of such a board is mandatory when three or less states are involved, and optional when the number is greater.

---

[28]*Common carriers of persons*: "continuous and adequate service at just and reasonable rates, a uniform system of accounts and reports, qualifications, and maximum hours of service of employees, safety of operation and equipment" (size of equipment), comfort of passengers, and pick-up and delivery points. Sec. 2(a).

*Common carriers of property*: "a uniform system of accounts and reports, qualifications, and maximum hours of service of employees, and safety of operation and equipment" (size of equipment). No power is given over rates. Sec. 2(a)(2).

*Charter carriers*: "qualifications and maximum hours of service of employees, safety of operation and equipment" (size of equipment) and comfort of passengers. Sec. 2(a)(3).

[29]No operator of any motor vehicle is to be permitted to remain on duty for a longer period than eight consecutive hours, and he shall not be called for duty again until he has had eight hours rest, suitable provision being made for emergencies. Sec. 2(b)(1). Motor vehicles with a capacity of more than twenty passengers must have at least two operators on duty. Sec. 2(b)(2).

On December 8, 1931, Representative McClintic introduced H. R. 221 (72d Congress, 1st Session) providing: "That the legislature of each state shall have the right to regulate the size, speed, and license fee of all intrastate and interstate busses or trucks engaged in public business with its citizens."

[30]Final orders entered under this act are subject to the same court review as orders of the commission made under the Interstate Commerce Act. Sec. 3(h).

Provision is made for service of notices and process, for fines, and for redress by injunction or otherwise. Sec. 12.

[31]Applications for certificates of public convenience and necessity; the suspension, change or revocation of such certificates; consolidations, mergers, acquisitions of control; rates, fares, and charges; approval of surety bonds, policies of insurance, or other securities for the protection of the public. Sec. 3(d).

[32]Members of joint boards are to be chosen as follows: First, the state commission may choose a member. If there is no such commission, or it fails to make an appointment, then the governor of the state shall do so. The commission is authorized to appoint such choice on the board. The joint board shall be "composed solely of one member from each state within which the motor-carrier operations involved in the matter referred are or are proposed to be conducted, unless it is necessary for the commission to appoint one of its own members or examiners in order to avoid a joint board with an even number of members." In cases in which the states fail or refuse to appoint members of a board, or in which the members can not agree, the commission is free to decide the issue the same as in a case in which no board is provided for. The joint board shall be an agency of the federal government while so acting, and the members shall receive expenses but no salary. See Sec. 3.

This plan[33] of having joint boards exercise the functions of the examiner seems open to grave question. If there is no unanimity on the part of the members of the board, a state whose representative is in the minority will feel that its rights have been disregarded. If, on the other hand, the commission on appeal should decide in favor of the minority, the dissatisfaction would be even greater. Is this not in reality merely an idle show of giving to the states something which they in fact will not have? It certainly cannot act as a sharing of responsibility. What good can come of it? It will add to the delay, expense[34] and cumbersomeness of the procedural machinery, to say nothing of the possibilities of dissatisfaction, with no apparent compensating advantages at all. This procedure has not been found necessary or advisable with respect to carriers now subject to the Interstate Commerce Act. Joint hearings and cooperation with state commissions and officials, when desirable, can furnish all the advantages of local knowledge and representation, without the disadvantages inherent in joint boards.[35]

It is provided in the bill that no common carrier of persons may operate in interstate or foreign commerce on any highway without a certificate of public convenience and necessity.[36] Suitable protection is afforded those already in bona fide operation.

The bill is not always wholly consistent. After solemnly stating that:

"Nothing contained in this Act shall be construed as a declaration by Congress of the relative importance to the public of the several kinds of transportation."[37]

it provides that:

" . . . . the commission shall, so far as is consistent with the public interest, preserve competition in service."[38]

and apparently to that end:

---

[33]It is contained also in H. R. 12229, introduced by Representative Stewart. See post note 75.

[34]The net saving to the commission by reason of the fact that the salaries of the members of the joint boards are to be paid by the states would be small.

[35]The commission is authorized to hold joint hearings with state commissions and authorities. Sec. 3(g).

[36]The certificate must "specify the routes over which, and/or the fixed termini between which, the carrier is authorized to operate." Certain reasonable conditions, including those providing for additional service, shall be attached to the certificate. Sec. 6(a). The carrier may occasionally deviate from its route to provide special service, subject to such regulations as the commission may prescribe. Sec. 6(b).

[37]Sec. 5(c).

[38]Sec. 5(e).

"If . . . there is no adequate service by a common carrier of persons by motor vehicle . . . the absence of such adequate service shall be sufficient evidence that the public convenience and necessity [require motor vehicle service]; and a certificate shall be issued accordingly if the applicant is found to be qualified. . . ."[39]

It is difficult to see how this is not a declaration of preference. Adequate existing service would justify the commission in refusing a certificate to a rail carrier.[40]

No common carrier of property or charter carrier is to be allowed to operate without a permit,[41] the only prerequisite to securing which is a showing "that the applicant is fit and able properly to perform the service proposed."[42] The commission is given authority to prescribe "reasonable limitations in respect to service while operating over any regular route of a common carrier by motor vehicle." The important matter of rates is left untouched. Charter carriers thus seem to be free to engage in cut-throat competition with all common carriers of persons. There is one saving provision, however. Certificates and permits may be suspended, changed or revoked for failure to comply with the Act, or with lawful orders of the commission "or whenever the public interest shall so require."[43] Perhaps the latter provision might be construed to give the commission some power of check against harmful practices by common carriers of property and charter carriers, but it is clearly inadequate.

The matter of consolidations and mergers involving a common carrier by motor vehicle is strictly regulated under the supervision of the commission. When permitted, relief is granted from the antitrust laws. Charter carriers are not included.[44] Railroad corporations may organize and operate motor carriers where no consolidation or merger of motor carriers is involved.[45]

---

[39]Sec. 5(f).

[40]See Sec. 1(18)(19)(20) of the Interstate Commerce Act.

[41]Sec. 7(a).

[42]Sec. 7(b).

[43]Sec. 8(a).

[44]Consolidations and/or mergers of two or more carriers, one or more of which is a common carrier by motor vehicle, are prohibited unless authorized by the commission. Those which involve the union of two or more railroads or the acquisition of control of one railroad by another are prohibited absolutely; and the same is true "if one or more of the corporations involved is engaged, directly or indirectly, in the transportation of persons by railroad." Sec. 9.

[45]"*Provided,* That nothing herein shall be construed to prevent railroad corporations from organizing or operating motor carriers where no consolidation or merger of motor carriers is involved in such organization or operation." Sec. 9(c).

Security for the protection of the public is provided for, in the case of all carriers subject to the Act, through the filing of surety bonds or policies of insurance.[46] Such a provision is urgently needed in view of the decision of the Supreme Court in *Sprout v. City of South Bend, Ind.*,[47] denying the states the right to require interstate carriers to provide for the protection of interstate passengers and property.

The tariffs of common carriers of persons must be filed with the commission and observed strictly.[48] Rates, fares and charges must be just and reasonable, but:

"No such rate, fare, or charge shall be held to be unjust or unreasonable by the commission or by any joint board, under this Act, on the ground that it is unjust to a competing carrier engaged in a different kind of transportation."[49]

In valuations for rate-making purposes good will, earning power, going value, and the certificate under which the carrier is operating are not to be considered, and in applying for a certificate the carrier is deemed to have agreed to this provision.[50]

A lamentable fact is that outside of the matter of financial responsibility and safety practically no control whatever is given the commission over common carriers of property or charter carriers.

This bill specifically states that it is not to be construed as attempting to interfere with the powers of taxation of the states, with their powers over intrastate commerce, or with laws enacted by the states relating to the maintenance, protection, safety or use of the highways therein, if applicable alike to intrastate and interstate commerce.[51]

Two amendments to the Interstate Commerce Act dealing with the matter of control are appended.[52]

[46]Recovery is not limited to the amount of the policy or bond, and no United States district court shall have jurisdiction on the ground of diversity of citizenship, or that a federal law is involved. Sec. 10.

[47](1928) 277 U. S. 163, 48 Sup. Ct. 502, 72 L. Ed. 833, 62 A. L. R. 45.

[48]Sec. 11(a). No changes may be made in such tariffs except after thirty days' notice, unless a shorter period is approved by the commission. Sec. 11(c). See Sec. 6 of the Interstate Commerce Act.

[49]Sec. 11(d).

[50]Sec. 11(e).

[51]Sec. 14(a).

[52]The bill also proposes to amend paragraph (2) of section 5 of the Interstate Commerce Act in great detail. A most elaborate and comprehensive scheme is provided to prevent a carrier, or a person controlling a carrier, from obtaining control of another carrier, either directly, or indirectly, in any conceivable manner, whatsoever, without the authority of the commission, which, of course, must find that the consolidation is in the public interest. But it is specifically provided "That nothing herein shall

The bill is now before the committee. It will likely show some changes when next reported.

*H. R. 7239.* A bill[53] applicable to common carriers[54] of persons and of property alike was introduced in the House by Representative Huddleston on January 8, 1932. All authority is vested in the commission, which is given power over service, rates, accounts, qualifications of employees, safety, and equipment.[55]

The procedure in handling complaints is substantially the same as under the Interstate Commerce Act[56] and the same is true of court review.[57]

Security for the protection of the public is provided by requiring the filing and approval of "surety bonds, policies of insurance, or other securities or agreements."[58] A "certificate of approval" is to be issued by the commission, a copy of which must be posted in each motor vehicle. The protection is evidently intended for the benefit of passengers, shippers, and the general public.

---

be construed to prevent railroad corporations from organizing or operating motor carriers . . . . where no consolidation, merger, or acquisition of control of such motor carriers is involved in such organization or operation." The carriers covered by the section as amended are all those subject to the Interstate Commerce Act, now or hereafter, and common carriers by motor vehicle subject to the Federal Motor Carrier Act, 1932.

The bill also provides for the amendment of paragraph (8) of section 5 of the Interstate Commerce Act to grant relief from the provisions of the antitrust laws in cases in which the commission has permitted consolidation or merger.

[53]H. R. 7239, 72d Congress, 1st Session. On December 14, 1931, Representative Bacon introduced H. R. 5596, a bill "To provide for the regulation of common carriers by motor vehicle in the same manner as common carriers by railroad," by subjecting them to all applicable provisions of the Interstate Commerce Act.

On June 9, 1932, Representative Arnold introduced H. R. 12541 (72d Congress, 1st Session) "To place carriers by motor-propelled vehicles for compensation in interstate commerce under the jurisdiction of the Interstate Commerce Commission" and subject to the Interstate Commerce Act so far as its provisions might be applicable.

Such bills would lead to endless confusion.

[54]"The term 'common carrier by motor vehicle' means any common carrier of persons or property operating motor vehicles for compensation in interstate or foreign commerce over fixed routes or between fixed termini. Sec. 1(a)(8).

School busses and hotel busses are excluded. Sec. 1(b).

[55]To . . . . "establish reasonable requirements with respect to continuous and adequate service at just and reasonable rates, a uniform system of accounts and reports, qualifications and maximum hours of service of employees, safety of operation and equipment, comfort of passengers, and pick-up and delivery points whether on regular routes or within defined localities or districts." Sec. 2(a).

[56]Sec. 3.

[57]Sec. 3(f). Appropriate provision is made for serving orders, notices, and making service of process; for fines, and for judicial redress. Secs. 7 and 8.

The provisions with respect to rates, fares, and charges are similar to those found in the Interstate Commerce Act.[59] But no rate, fare, or charge shall be held to be unjust or unreasonable on the ground that it is unjust to a competing carrier, and the commission is specifically denied the power to increase or to fix a rate, fare, or charge.[60] The door is thus left open to all manner of cut-throat competition between carriers, and to the abuses which it was found could not be eliminated in the case of carriers subject to the Interstate Commerce Act except by giving to the commission the power to establish minimum as well as maximum rates.

The valuation provisions[61] are substantially the same as in the Senate bill,[62] while those pertaining to consolidations and mergers[63] are practically the same as in H. R. 12229.[64] The police power and the taxing power of the states are specifically reserved.[65] This bill was referred to the committee, where it will likely remain.

*Interstate Commerce Commission Report.* Congress having taken no action as a result of the report of the commission in Docket No. 18300, *Motor Bus and Motor Truck Operation,*[66] the commission instituted an investigation on its own motion into the coordination of motor transportation with that of carriers now subject to its jurisdiction.[67] A most extensive and intensive study of the problem was made. The report proposed by Attorney-Examiner Leo J. Flynn[68] was issued January 6, 1932. The final report of the commission[69] was issued April 6, 1932. The havoc which has been wrought by having one system of transportation bound in an antiquated legislative strait-jacket, while its com-

[58]Sec. 5.

[59]Tariffs must be filed with the commission and be strictly adhered to, and no changes shall be made except on thirty days' notice, unless permitted by the commission. Sec. 6(a)(b).

[60]Sec. 6(d).

[61]Sec. 6(e).

[62]Supra note 25.

[63]Sec. 4(a)(b).

[64]See post note 75.

[65]Sec. 9(a).

[66](1928) 140 I. C. C. 685.

[67]Order of May 12, 1930, in Docket No. 23400, *Coordination of Motor Transportation.*

[68]The proposed report circulated by the commission is mimeographed, but it has also been printed as Senate Document No. 43, 72d Congress, 1st Session. Mr. Flynn also wrote the proposed report in Docket No. 18300. See supra note 9.

[69]*Coordination of Motor Transportation,* (1932) 182 I. C. C. 263.

petitor is practically free from all restraint, is lucidly set forth in the reports.[70] The need for intelligent coordination of railroad and highway transportation is clearly shown. To achieve the desired results both forms of transportation must be placed under appropriate regulation.

Broadly, the recommendations of the original report are repeated with respect to carriers of passengers[71] but with the original jurisdiction in the commission instead of in state boards, or commissions. Joint boards, however, are recommended.

The commission recommends putting regulation of motor busses to the test right now,[72] and requiring such permits and reports from common carrier and charter carrier trucks as will make it possible to secure information on which to base recommendations for more comprehensive regulation. Through routes and joint rates with rail and water carriers should be permitted, but not required, in the case of both trucks and busses.[73] It is recommended that all police regulations for the present be left to the states.[74] Since the issuance of the final report two major bills have been introduced in the House. They are discussed below.

*H. R. 12229.* Representative Stewart introduced a bill[75] on May 21, 1932, modeled along the lines of the Senate bill[76] except that it places common carriers of persons and of property in the same class.

Charter carriers must file tariffs with the commission showing minimum rates for line haul of persons and property, and the commission is given power to prescribe systems of accounts and reports[77] and minimum rates[78] for such carriers. The commission is given power to fix both maximum and minimum rates of common carriers.[79] The issuance of interstate license tags is pro-

[70]To obtain an adequate appreciation of the situation both the proposed report and the final report must be read.

[71](1928) 140 I. C. C. 685.

[72](1932) 182 I. C. C. 263, 384.

[73](1932) 182 I. C. C. 263, 387.

[74](1932) 182 I. C. C. 263, 387.

[75]H. R. 12229, 72d Congress, 1st Session.

[76]Supra note 25.

[77]Sec. 2(a)(2).

[78]Sec. 12(d).

[79]It is further provided: "The rates, fares, charges, regulations, and practices of such [apparently all] carriers shall be just and reasonable and free from unjust discrimination, undue preference or undue prejudice . . . . " Sec. 11.

The giving or receiving of rebates is prohibited, and specific penalties are provided for violations of the act. Sec. 14.

vided for.[80] The desirability, if not necessity, of this requirement seems obvious.

In other respects than those outlined above the bill resembles the Senate bill,[81] except that the proposed amendments to the Interstate Commerce Act are omitted.[82] It is the soundest bill yet introduced.

*H. R. 12739.* Representative Rayburn, Chairman of the Committee on Interstate and Foreign Commerce, introduced the "official" bill of the committee in the House on June 21, 1932.[83] It is patterned broadly after the Senate bill.[84] Carriers are divided into two classes only: "common carrier by motor vehicle"[85] and "private carrier by motor vehicle."[86]

The matters of consolidations, mergers, acquisitions of control,[87] rates and tariffs[88] are gone into more in detail than in the Senate bill. Specific provision is made for the inspection of facilities and records of carriers subject to the act.[89]

The provisions in the Senate bill that absence of motor carrier service shall be sufficient showing of public convenience and ne-

[80]Sec. 7(c).

[81]Supra note 25. The provisions with respect to consolidation and merger in S. 2793 are amplified to include "any acquisition of control." Sec. 9.

[82]See supra note 52.

[83]H. R. 12739, 72d Congress, 1st Session.

[84]See supra note 25.

[85]"The term 'common carrier by motor vehicle' includes any carrier of passengers or property by motor vehicle for compensation in interstate or foreign commerce which undertakes or offers to transport passengers or property for the general public." Sec. 1(a)(11).

[86]"The term 'private carrier by motor vehicle' means any carrier by motor vehicle regularly engaged in the business of transporting passengers or property for compensation in interstate or foreign commerce under a contract, agreement, or arrangement, and which does not undertake or offer to transport passengers or property for the general public: *Provided*, That this shall not include a casual or verbal contract for the carrying of ten persons or less on a single trip." Sec. 1(a)(12).

[87]Sec. 9. Within certain limits they are encouraged.

[88]Provision is made for joint passenger tariffs with other motor carriers and with carriers by rail and by water. All of these provisions are also made applicable to joint rates by motor common carriers of property in conjunction with rail and water carriers and to through transportation by a rail or a water carrier when part of the haul is by motor carrier. Sec. 11.

Rates of passenger carriers must be "just and reasonable and free from unjust discrimination, undue preference, or undue prejudice." Sec. 12.

"Common carriers of passengers by motor vehicle may establish with other such carriers, and common carriers of passengers or property by motor vehicle may establish with carriers by railroad or by water" through routes and joint rates. The commission is given power to establish both maximum and minimum rates for such transportation. Sec. 12.

[89]Sec. 13.

cessity to authorize the issuance of a certificate,[90] and that in tort actions diversity of citizenship shall not give federal jurisdiction,[91] and also the sections amending certain parts of the Interstate Commerce Act,[92] are left out.

In other respects the bill broadly follows the Senate bill. It is now before the committee.

COMMENT

While the quality of the bills introduced at each succeeding session of Congress has been progressively better, Congress has carefully refrained from permitting any of the benefits to get through to the public. No one can read the proposed report of Attorney-Examiner Flynn and the final report of the commission in Docket No. 23400 without feeling that the failure of Congress to act is little short of calamitous. It is true no one of the bills has been perfect. Experience will show changes necessary in any one of them. But that experience can never be gained until a start is made.

The chance of any other than the official committee bill being passed by either house of Congress is very small. This narrows the proposed legislation capable of being enacted to two bills, the Senate bill, S. 2793, and the House bill, H. R. 12739. It is likely that the Senate bill when next reported by the committee will resemble the House bill.

The commission has recommended putting regulation of common carriers of persons to the test now, and of requiring reports from common carriers of property and charter carriers that will enable it to study the problem further with the thought of recommending regulatory legislation later on. This of course will mean several more years of irresponsible cut-throat competition and practices on the part of carriers of property. Congress should obviously proceed cautiously, but if present dilatory tactics are permitted to continue the day of effective regulation of motor carriers of property is far off. And naturally the transportation situation will become worse.

The bill introduced by Representative Stewart[93] placing common carriers of persons and of property under the same regulations and providing effective control of charter carriers is needed

[90]See supra note 39.
[91]See S. 2793, Sec. 10(c)—supra notes 25 and 46.
[92]See supra note 52.
[93]Supra note 75.

now. Broad discretionary power should naturally be left to the commission in order to avoid any harsh or unwise action and to permit the growth and development of all transportation agencies on a sound economic basis. This cannot take place while rail and water carriers are bound in an antiquated legislative strait-jacket and motor carriers are free from all restraint.

If conditions continue to get worse, and they are bound to in the absence of intelligent regulation, there may be a reaction which will result in drastic regulation not only detrimental to the responsible motor vehicle operators but to the public as well. Each succeeding bill introduced in Congress has been more exacting than its predecessors. This simply means that the longer regulation is delayed the more difficult the matter of adjustment will be.

In a word, the tree should be trained in the direction in which it will be permitted to live, and not be allowed to grow in a direction which will necessitate cutting off major branches after it is grown. Thus far the motor vehicle operators have not been able to realize this.

The beginning of intelligent regulation by Congress is long past due.