

## STATE REGULATION OF INTERSTATE MOTOR CARRIERS

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### MAGNITUDE OF INTERSTATE OPERATION

As could be easily foreseen, motor transportation has not recognized the accidents of state lines. It was imperative that this transportation become interstate, especially in urban areas near state lines, such for example as New York City, Washington, Chicago, and St. Louis. Similarly, states like Massachusetts, Connecticut, New Jersey, and Rhode Island, because of smallness of area, were destined to become the scene of extensive interstate operations.<sup>1</sup>

The mileage of interstate bus routes serves as one index to the magnitude of interstate motor carriage. Of the total 263,000 of common carrier bus route mileage in the United States 48,362 or approximately one-fifth is interstate. Of this interstate mileage Oregon has 2996; California, 2895; Massachusetts, 3000; Missouri, 3491; and New Jersey, 4488. We find, expressed in percentage of entire bus route mileage (interstate and intrastate), that interstate bus route mileage constitutes 32 per cent in Oregon and Massachusetts; 40 in California; 62 in New Jersey; 70 in Rhode Island; and 93 per cent in the District of Columbia. On the other hand, states with extensive total bus route mileage but only a small interstate per centage include Ohio, with 13 per cent, and Pennsylvania, with only six per cent.<sup>2</sup>

Other indices are the number of interstate bus operators and the number of vehicles employed. There are 515 such carriers using 3012 busses. The Northeast shows the greatest proportion of these;<sup>3</sup> here are found 200 of the 515 carriers and 1339

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<sup>1</sup> Motor transportation has become even international. See *Re Barnes* (Wash.), P. U. R. 1923 E, 723, but more especially *BUS TRANSPORTATION*, November, 1927, 658, and P. U. R. 1927 D, 526. In the last citation the California commission held that it has no power to regulate motor carriers operating between a point in Mexico and a point in the United States.

<sup>2</sup> *BUS FACTS*, 1928, 8-9. See also *FACTS AND FIGURES OF THE AUTOMOBILE INDUSTRY*, 1927, 80.

<sup>3</sup> Northeast here includes Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Ohio, Michigan, Indiana, Illinois, and Wisconsin. See *BUS FACTS*, 1927, 4, and 1928, 7-8.

of the 3012 busses. Among the states in this region New Jersey leads with 63 carriers and 476 busses. Operating in Rhode Island are 60 motor carriers, 47 of whom are interstate.<sup>4</sup> Intra-state busses in Rhode Island numbered 106 in 1926, while interstate totalled 109.<sup>5</sup> More than half the busses operated in Colorado are interstate. In contrast one finds that only a small percentage of operators and vehicles are interstate in Pennsylvania, Ohio and Washington State.

It appears that in 1926 there were engaged in interstate motor commerce approximately 25,000 trucks.<sup>6</sup>

But the "exclusive interstate" figures tend to minimize the magnitude of interstate carrier business, for often an interstate carrier engages the same vehicle in both interstate and intrastate carriage. As early as 1924 it appeared that only one-fourth of the motor transportation was interstate.<sup>7</sup> Because of decisions of the United States Supreme Court in 1925 barring State denial of certificates to interstate carriers, the last four years have seen rapid increase in the number and volume of business of interstate carriers. Within one year after the *Buck* decision fifty-four interstate lines sprang into existence between New Jersey and New York City, and between New Jersey and the city of Philadelphia.

#### EARLY EFFORTS AT REGULATION

The regulation of interstate motor transportation has undergone some rather discouraging vicissitudes already, and the experience seems by no means to be at an end. Until 1925 the states took toward interstate carriers pretty much the same regulatory attitude as toward purely intrastate carriers; since 1925 the states have been denied authority to refuse an interstate carrier a certificate to operate. Consequently, since there has been instituted no Federal regulation, state efforts at regulation represent the sum total of control over interstate carriage; unexpectedly enough there have been placed in the path of these

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<sup>4</sup> *Ibid.*

<sup>5</sup> Rhode Island Public Utilities Commission, LETTER, February 25, 1926.

<sup>6</sup> T. D. Pratt (representing 21 truck associations and 14 corporations and individuals), statement before the Interstate Commerce Committee, March 26, 1926.

<sup>7</sup> Rosenbaum and Lilienthal, in JOURNAL OF LAND AND PUBLIC UTILITY ECONOMICS, July, 1926.

state efforts constitutional hurdles barring at least one phase of regulation and leaving those phases which went over the hurdles unnerved and uncertain. Today interstate motor transportation enjoys an immunity from effective regulation not dissimilar to that experienced by railroad transportation between the Wabash decision<sup>8</sup> in 1886 and the passage of the Interstate Commerce Act of 1887.

Before 1925 the authority of the states to regulate interstate motor transportation was not seriously questioned. That authority rested on the doctrine in the leading case of *Gibbons v. Ogden*<sup>9</sup> (1824) reinforced by the decisions in *Minnesota Rate Cases*<sup>10</sup> (1913), *Hendrick v. Maryland*<sup>11</sup> (1915), and *Kane v. New Jersey*<sup>12</sup> (1916). As it stood till 1925 that doctrine permitted the states in the absence of Federal legislation to prescribe for those phases of interstate commerce not demanding general or uniform regulation "reasonable provisions for local needs."<sup>13</sup> Under this authority has been built up whatever regulation is applicable to interstate operation today.

#### POWER OF STATE TO DENY CERTIFICATES

By 1925 it was a well-established administrative fact that an interstate carrier must have a certificate of public convenience and necessity to operate in a given state. This is attested by the decisions in both courts and state commissions.<sup>14</sup> Failure to meet state terms resulted in denial of certificate in Pennsylvania in 1921.<sup>15</sup> And twice the Illinois commission denied certificates

<sup>8</sup> 118 U. S. 557.

<sup>9</sup> 9 Wheat. 1.

<sup>10</sup> 230 U. S. 352.

<sup>11</sup> 235 U. S. 610.

<sup>12</sup> 242 U. S. 160. See also (1927), 11 MINN. L. REV. 157-62.

<sup>13</sup> Invaluable on the question of interstate regulation is the article by C. M. Kneier in (1927) *National Municipal Review* 510-19. See also Ivan Bowen, "Danger Ahead from Federal Regulation," in *BUS TRANSPORTATION*, Sep., 1927, 489.

<sup>14</sup> *Chambersburg G. & W. St. Ry. v. Hardman* (Pa.), P. U. R. 1921 C, 628; *Geneseo-Rock Island Bus Co. v. Hilbert* (Ill.), P. U. R. 1923 E, 311; *East St. L. C. & W. R. Co. v. Dingerson*, (Ill.), P. U. R. 1924 C, 127; *Interstate Motor Transit Co. v. Derr* (Mont., 1924), 288 P. 624; *Northern Pacific Ry. v. Schoenfeldt* (Wash., 1923), 213 P. 26; *Schmidt v. Dept. of P. W.* (Wash., 1923), 213 P. 31; *Re Engelke* (N. Y.), P. U. R. 1921 C, 71; *People v. Barbuas* (1923), 230 Ill. A. 560.

<sup>15</sup> First case in note 14.

to interstate carriers during the next three years.<sup>16</sup> But as early as 1922 California sensed the possible conflict over interstate carriage and exempted from the commission order directing cessation of illegal operation of a motor line that part of the service furnished by the carrier which extended from a point in California to a point in Oregon.<sup>17</sup>

In 1923 Buck, a carrier of Oregon, applied to the Washington Department of Public Works for a certificate to extend his motor transportation line into Washington. The Washington statute empowers the commission to grant a competitive certificate only when the existing motor carrier or carriers are not furnishing adequate service and will not do so.<sup>18</sup> Under this provision the commission decided existing service sufficient and consequently denied Buck's application to operate into Washington. Buck took the matter to the United States District Court which upheld the commission.<sup>19</sup> From this decision Buck appealed to the Supreme Court, which on March 2, 1925, rendered a decision reversing the lower court and held that a state cannot deny a certificate to an interstate carrier on the ground that existing service is adequate. Mr. Justice Brandeis, speaking for the court, said that such denial was not to preserve the highways, but to prevent competition; that the requirement did not regulate the manner of use of the highways, but the persons who might use them.<sup>20</sup> The same day the court passed upon the validity of a Maryland denial<sup>21</sup> of certificate to an interstate carrier. The Maryland act gives the commission power to investigate the question of granting a certificate and to deny or grant according to its findings.<sup>22</sup> The commission had investigated and denied the certificate to an exclusively interstate carrier, who appealed. The Supreme Court held this denial an undue interference with interstate commerce and unconstitutional.

These two decisions destroyed the former doctrine of reasonable state regulation of interstate commerce in the absence of Federal regulation insofar as the power of the state to deny a

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<sup>16</sup> Geneseo case and East St. Louis case, *supra*, note 14.

<sup>17</sup> Nevada-California-Oregon Ry. Co. v. Pinneo, P. U. R. 1925 E, 421.

<sup>18</sup> Laws of 1921, Ch. 111, as amended 1923, Sec. 4.

<sup>19</sup> (1928), 295 F. 197.

<sup>20</sup> Buck v. Kuykendall, 267 U. S. 308.

<sup>21</sup> George W. Bush & Sons v. Maloy (1925), 267 U. S. 317.

<sup>22</sup> Acts of 1916, Ch. 610, Sec. 4, as amended, Acts of 1922, Ch. 401, Sec. 3.

certificate is concerned. Since then no state has been able to deny an interstate carrier the privilege of operation over its highways.<sup>23</sup> Under the exigencies of interstate commerce a state has no more authority to deny admittance to an interstate carrier who comes to use state highways for private profit than to exclude from its territory a citizen of another state who wishes to establish residence within its limits. The state is directed to say "Whosoever will use my highways in interstate transportation, let him come."

Varying attitudes are expressed by different states today as to whether a certificate must be secured by an interstate carrier. One group represented by Kentucky,<sup>24</sup> New York,<sup>25</sup> and Ohio<sup>26</sup> hold that the interstate carrier must secure the certificate. The Colorado commission has ruled that since the Supreme Court decisions have not denied the power of state commissions to grant certificates to interstate carriers, such power remains. The commission exercised this power in August, 1927.<sup>27</sup> Like Colorado is Montana, whose commission has declared its jurisdiction over the applications for certificates by interstate carriers;<sup>28</sup> and similarly South Dakota.<sup>29</sup>

A third group take a practical view of the question of certification of interstate carriers and declare that there is no use in going through the motion of certification; they make no pretense at requiring certification. In this group we find Massachusetts, whose statute specifically exempting from the local

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<sup>23</sup> The commissions have not been slow to recognize the significance of these two decisions. See for example *Cannon Ball Transportation Co. v. Pub. Utils. Com.* (Ohio, 1925), 149 N. E. 713, affirming commission order; *Re Schappi Bus Lines (Ind.)*, P. U. R. 1925 E, 401; *Re Hart Motor Coach Co. and Re Spooner (N. H.)*, P. U. R. 1927 C, 603; *Re Strait (S. D.)*, P. U. R. 1926 B, 503; *Newport Electric Corporation v. Oakley (R. I., 1925)*, 129 A. 613; *People v. Yahme (Cal., 1925)*, 235 P. 50.

<sup>24</sup> *Crigger & Stepp v. Allen (Ky., 1927)*, 292 S. W. 1. c. 811. An interstate carrier without a certificate to operate in Kentucky cannot claim protection against unfair state or municipal impositions against him. *Northern Kentucky Transportation Co. v. City of Bellevue (Ky., 1926)*, 285 S. W. 241.

<sup>25</sup> *Re Brewster-Danbury Motor Bus*, P. U. R. 1925 D, 307.

<sup>26</sup> *Cannon Ball Transportation Co. v. Pub. Utils. Com.* (Ohio, 1925), 149 N. E. 713.

<sup>27</sup> *Paradox Land and Transport Co.*, Decision 1399.

<sup>28</sup> *Re Bennett*, P. U. R. 1927 C, 595.

<sup>29</sup> *Re Babcock (1926)*, P. U. R. 1927 C, 603.

license and state certificate requirements has been upheld<sup>30</sup> by the Supreme Judicial Court. Arizona is another representative of this third group. Recognizing that it could not deny the certificate, its commission dismissed a petition from an interstate carrier.<sup>31</sup> The Maine commission has ruled that the *Bush* and *Buck* decisions make a certificate for interstate operation unnecessary.<sup>32</sup> Indiana is a fourth representative of the group holding that no certificate is necessary for interstate operation.<sup>33</sup> New Hampshire has stressed its inability to handle the interstate question as affected by the *Buck* and *Bush* decisions, the commission declaring January 4, 1926, that it has no jurisdiction over interstate motor carriers.<sup>34</sup> This commission ruled similarly on August 10, 1926, and dismissed a petition for certificate to operate a vehicle in interstate commerce.<sup>35</sup> While the commissions may vary in their attitude toward the necessity of securing the certificate, the essential point to be observed is that no state has authority to *deny a certificate* for interstate motor transportation. But the United States Supreme Court on May 31, 1927, ruled that a state may require the interstate carrier to take out a certificate.<sup>36</sup>

#### SCOPE OF INTERSTATE OPERATION

When is a motor carrier operation interstate in character? The New York Supreme Court sees as valid interstate operation the movement of a bus line beginning in New York City, going into New Jersey and thence back into Ulster County, New York.<sup>37</sup> Where a motor carrier operates twenty-two

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<sup>30</sup> *Barrows v. Farnum's Stage Lines* (1926), 150 N. E. 206. Similarly, the decision in *Commonwealth v. Potter*, 150 N. E. 213. This act has been held valid also by the U. S. District Court in *Holyoke St. Ry. Co. v. Interstate Busses Corp.* (1926), 11 F. (2d) 161. See also *Boston & Maine R. v. Cate* (1926), 150 N. E. 210.

<sup>31</sup> *Re Arizona Storage and Distributing Co.*, P. U. R. 1926 D, 467.

<sup>32</sup> *Re Maine Motor Coaches*, P. U. R. 1926 B, 561.

<sup>33</sup> Statement of Chairman Singleton, June 7, 1927.

<sup>34</sup> *Re Hart Motor Coach Co.*, P. U. R. 1927 C, 603.

<sup>35</sup> *Re Spooner*, *Ibid.*

<sup>36</sup> *Clark v. Poor*, 274 U. S. 554. On inability to deny certificates see further *Re Strait* (S. D.), P. U. R. 1926 B, 503; cases decided by New Hampshire and Maryland commissions, P. U. R. 1927 C, 603-4; *Cannon Ball Transportation Co. v. Pub. Utils. Com.* (Ohio, 1925), 149 N. E. 713.

<sup>37</sup> *Garrison v. Paramount Bus Corp.* (1928), 223 App. Div. 75, 227 N. Y. S. 510.

miles in Rhode Island and runs three and one-third miles into another state for the primary if not sole purpose of avoiding changing busses between points within the state of Rhode Island, the operation was held not to be interstate in the sense of the interstate commerce clause of the Constitution.<sup>38</sup> A carrier authorized to do only interstate business acts illegally when he takes a passenger from one point in a state to another in the same state, but just near state line, and sells him a ticket over an authorized line which takes the passenger across a river to a point a few hundred feet into another state. Such operation is not validly interstate.<sup>39</sup>

Hauling a few interstate passengers at one end of his route does not transform the holder of an intrastate certificate into an interstate carrier, the Pennsylvania commission has ruled.<sup>40</sup> Taking St. Louis passengers destined to Kansas City, Missouri, first to East St. Louis, Illinois, and thence back to Kansas City, Missouri, or taking Kansas City passengers destined to St. Louis first to Kansas City, Kansas, and thence back to St. Louis is only a subterfuge and is illegal.<sup>41</sup> Subterfuges similar to those in the above case, practiced by the Detroit-Cincinnati Coach Line, led the Ohio commission to cancel the certificate to do interstate business.<sup>42</sup>

#### STATE'S POWER OVER INTRASTATE OPERATION BY INTERSTATE CARRIER

The *Buck* and *Bush* decisions failed to show the effect of the state certificate requirement on the intrastate phase of business of an interstate carrier.<sup>43</sup> Several cases involving this question have subsequently arisen.

The order of the Maryland commission denying to an interstate carrier a certificate to engage in intrastate carriage has been upheld.<sup>44</sup> Likewise in New Hampshire a certificate is

<sup>38</sup> Re Intercity Coach Co. (R. I.), P. U. R. 1927 E., 421-5.

<sup>39</sup> Scioto Valley R. & P. Co. v. Interstate Motor Transit Co., P. U. R. 1927 D, 720.

<sup>40</sup> P. S. Com. v. Highway Motor Coach Co., P. U. R. 1927 D, 309.

<sup>41</sup> Re Detroit-Chicago Motor Bus Co., P. U. R. 1928 C, 103, 105.

<sup>42</sup> Re Detroit-Cincinnati Coach Line, P. U. R. 1928 C, 571-75.

<sup>43</sup> (1927), 11 MINN. L. REV. 157-62.

<sup>44</sup> Washington Motor Coach Co. v. West, P. U. R. 1927 C, 603. Also (1926), N. A. R. & U. C., Bulletin 71.

necessary for an interstate carrier to engage in intrastate business.<sup>45</sup> Nor, it has been ruled, is it a burden on interstate commerce to deny authorization to an agency engaged in interstate operation to carry intrastate passengers.<sup>46</sup> In considering applications for intrastate operation by interstate carriers, the commissions of Maryland, Washington, and Colorado will be guided by factors of public convenience and necessity as if the applicant were not already engaged in interstate operation.<sup>47</sup> The Massachusetts act requiring local license and state certificates for intrastate operation is valid even when applied to interstate carriers desiring to engage in intrastate operation.<sup>48</sup>

When an interstate operator makes application for an intrastate certificate it is irrelevant that the community concerned has asked that interstate service be established,<sup>49</sup> the Indiana commission has said. An order of the Colorado commission for a court injunction against an interstate carrier's proposal to engage in intrastate business does not affect his continuing to do interstate business. Had the commission order sought to apply to the interstate part of the enterprise, such effort would have amounted to an interference with interstate commerce. But in the case at hand the Colorado Supreme Court made it clear that the state may prohibit an interstate carrier from doing intrastate business without thereby violating the commerce clause of the Constitution.<sup>50</sup> The South Dakota commission has withheld from an interstate carrier a certificate to engage in intrastate commerce.<sup>51</sup> Similarly the Missouri commission has said that an interstate operator cannot demand the privilege of engaging in intrastate activity and that authority to do so will not be granted where existing motor carriers and railways are furnish-

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<sup>45</sup> *Haselton v. Interstate Stages*, (N. H. 1926), 133 A. l. c. 457.

<sup>46</sup> See Cannon Ball case, *supra*, note 36.

<sup>47</sup> *Re Application of Red Star Line*, case 2515, Nov. 29, 1926; *Re Townsend*, (Colo.) P. U. R. 1928 A, 180; *Columbia Gorge Motor Coach System (Wash.)*, P. U. R. 1928 A, 119.

<sup>48</sup> *Barrows v. Farnum's Stage Line (Mass., 1926)*, 150 N. E. 206, and similarly the same court in *Commonwealth v. Potter (Mass., 1926)*, 150 N. E. 213.

<sup>49</sup> *Re Gold Seal Transit Co.*, P. U. R. 1927 D, 166.

<sup>50</sup> *Western Transportation Co. v. People*, 261 P. 1.

<sup>51</sup> *Re Seemon*, P. U. R. 1927 E, 534.



ing adequate service and would suffer decreased traffic by the establishment of more intrastate competition.<sup>52</sup>

The question of an interstate carrier's enter into intrastate carriage reached an early high point in *Interstate Busses Corporation v. Holyoke Street Railway*, decided by the United States Supreme Court on January 3, 1927. The appellant had resisted the Massachusetts law requiring certificates for intrastate operation. On having its drivers arrested at the instigation of defendant's employees for operating intrastate without the certificate, the appellant sought from the United States District Court an injunction against the enforcement of the Massachusetts act. The injunction was denied, whereupon the bus company appealed to the Supreme Court. The reasoning of the highest tribunal was substantially this: (1) If the act "directly interferes with or burdens appellant's interstate commerce," it cannot be upheld; (2) the act, existing in some form before interstate operation developed aims to apply to motor bus operation intrastate and local; (3) the statute does not demand the certificates of only interstate carriers, but of all seeking to engage in intrastate business; (4) it is necessary for appellant to show that the state requirement prejudices his interstate commerce, which he has failed to do; (5) appellant has failed to show that it could not economically carry its intrastate passengers in separate busses. The Court concludes that the act is not arbitrary or unreasonable; that due process of law has not been denied; and that an interstate carrier cannot evade state regulation of intrastate carriage by connecting its intrastate transportation to its interstate or by unnecessarily comingling the two types of business. In affirming the decree of the district court denying an injunction the Supreme Court rebukes the appellant for not having tried to comply with the provisions of the statute.<sup>53</sup>

Thus it follows unmistakably that to engage in intrastate operation, an interstate carrier must meet the terms of the state,

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<sup>52</sup> Re Pickwick Stages System, P. U. R. 1928 B, 1.

<sup>53</sup> *Interstate Busses Corporation v. Holyoke Street Railway* (1927), 273 U. S. 45. See also (1927), N. A. R. & U. C., Bulletin. The decision of the District Court is reported in 11 F. (2d) 161. See also decision of Pennsylvania commission relative to state control of intrastate operation by interstate carrier in Re E. H. Scott, P. U. R. 1925 D, 529.

so long as those terms impose no burden on interstate commerce.<sup>54</sup>

In so holding, the Court was merely emphasizing a point which had already been stressed by several state agencies. The Indiana commission had earlier granted an intrastate certificate to an interstate carrier on the condition that the latter not charge less than the pre-existing carrier operating on the same intrastate route was charging.<sup>55</sup> In *Interstate Motor Transit Co. v. Deer*, the Montana supreme court had held that all regulations by the state which are reasonable, arise from the police power, and which are not violative of any act of Congress, can be applied to interstate carriage.<sup>56</sup> Similar was the declaration made by the Arizona commission the same year.<sup>57</sup>

#### POWER OF STATE TO REGULATE

While deprived of its authority to deny certificates for interstate operation over its highways, the state yet enjoys power to establish proper regulations for the preservation of those highways, and to prescribe regulations for safety in the use thereof, so long as those regulations do not put on interstate commerce any unreasonable burden.<sup>58</sup> Our concern now is to inquire into the applicability of these state regulations which have been established and questioned as applicable to interstate operation.

The general authority to so regulate has been expressed, subsequent to the great decisions, by several leading states. The California act was so amended in 1925 as to exempt therefrom interstate and foreign commerce,<sup>59</sup> but specifically reserved to the commission its power to prescribe such uniform, reasonable and non-discriminatory regulations as the commission deems warranted for public health, safety, convenience, and welfare.<sup>60</sup> The supreme court of Ohio has had occasion to stress the

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<sup>54</sup> On state regulation of interstate commerce (by motor vehicles) so long as not burdensome, see such earlier cases as *Packard v. Banton* (1923), 264 U. S. 140; *Kane v. New Jersey* (1916), 242 U. S. 160; *Hendrick v. Maryland* (1914), 235 U. S. 610.

<sup>55</sup> *Re Indianapolis-Cincinnati Bus Co.*, P. U. R. 1926 D, 362.

<sup>56</sup> (1924), 228 P. 624.

<sup>57</sup> *Re Arizona Pacific Transit Co.*, P. U. R. 1925 C, 501.

<sup>58</sup> Justice Brandeis speaking for the Court in the *Buck* case, 267 U. S. 308.

<sup>59</sup> *Supra*, Note 1.

<sup>60</sup> Stat. 1925, Ch. 254, p. 433.

validity of reasonable state regulation of interstate transportation by motor carriers.<sup>61</sup> Likewise has the South Dakota commission.<sup>62</sup> If the interstate transportation fails to meet the valid regulations set up by the state, it clearly appears that such transportation can be excluded from the highways of the state.<sup>63</sup> In the state of Washington the commission has cancelled a certificate for interstate operation because of failure to meet the terms of the certificate, and this was done subsequent to the *Buck* decision.<sup>64</sup> The most important case of cancellation of an interstate certificate to date is that of the Detroit-Cincinnati Coach Line, decided by the Public Utilities Commission of Ohio, March 26, 1928. The company was charged with seeking to avoid intrastate regulation by selling interstate tickets from Cincinnati to Monroe, Michigan, a small town just across the Ohio line, with the understanding that passengers could get out at Toledo. It was further charged that to passengers stating they wished passage from Toledo to Cincinnati the company answered that they must get a ticket to Covington, Kentucky. These charges were substantiated by witnesses. The Commission viewed this part of the conduct complained of as actually operating an intrastate business under an interstate certificate.

The Commission also found that the company had violated state laws and rules by driving busses "at an excessive and dangerous rate of speed." Hearings were held at different points along the route and the company failed to refute the charges made against it. Supporting its view by five United States Supreme Court decisions in point, by one of its own previous decisions, and by one of the Ohio Supreme Court, the Commission declared the certificate revoked, and ordered the line to cease operation within fifteen days.<sup>65</sup>

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<sup>61</sup> *Scioto Valley Ry. Co. v. Interstate Motor Transit Co.* (Ohio, 1927), cited in P. U. R. 1927 D, 720; also in Cannon Ball case, *supra*.

<sup>62</sup> *Re Strait*, P. U. R. 1926 B, 503.

<sup>63</sup> *Charles B. Elder* (1926), 21 Ill. L. Rev. 166-70, citing *Red Ball Transit Co. v. Marshall*, 8 F. (2d) 635, and the *Duke* case, 266 U. S. 570.

<sup>64</sup> *Re C. W. Lefors*, P. U. R. 1926 D, 615.

<sup>65</sup> *Re Detroit-Cincinnati Coach Line*, P. U. R. 1928 C, 571-75. Nor can a carrier convert intrastate commerce into interstate commerce by exacting of passengers between points in the same state the fare applicable to passage to or from a more distant point in another state. *Sprout v. South Bend* (1928), 72 L. Ed. 529.

In this decision revoking an interstate certificate on the double grounds of subterfuge to evade intrastate regulation and persistent violation of the state speed laws, the Ohio commission lays down several points of significance. First, it was held that state law and regulations can be applied to interstate motor operation so long they are reasonable. This is no new doctrine in motor carrier regulation, for it had been announced in the *Buck* decision. Secondly, it was held that no carrier authorized to do interstate business shall evade intrastate regulation by a mere subterfuge. Thirdly, the Commission ruled that state police regulations must be observed by motor busses, interstate as well as intrastate. And finally it was decided that the authority granting a certificate has power to revoke it if the reasonable terms of the certificate are not met.

#### POWER OF STATE TO REQUIRE INSURANCE

Before 1925 there appeared a tendency to apply the insurance requirement to interstate motor transportation as well as to intrastate. Such an exaction was upheld in Illinois<sup>66</sup> and Montana.<sup>67</sup> But in the *Liberty Highway* case in 1923 the United States District Court ruled that indemnity insurance constituted an unreasonable burden on interstate commerce and was therefore invalid.<sup>68</sup> Shortly after this the Ohio act requiring property insurance of interstate truck transportation was declared invalid by the same grade of tribunal.<sup>69</sup> The supreme tribunal has held invalid a state requirement of indemnity insurance on goods handled in interstate commerce under private contract.<sup>70</sup>

All the above cases arising since 1925 involved the state requirement of insurance as applied to carriers of property. The insurance requirement as applicable to carriers of passengers in interstate commerce bade fair to be passed upon in *Clark v. Public Utilities Commission*,<sup>71</sup> decided by the United States Supreme Court on May 31, 1927. The validity of Ohio requirements, in-

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<sup>66</sup> *People v. Barbuas* (1923), 230 Ill. A. 560.

<sup>67</sup> *Interstate Transit Co. v. Derr*, (Mont., 1924) 228 P. 624. In a note, *National Municipal Review*, 515, C. M. Kneier erroneously refers to this case as a California case.

<sup>68</sup> 294 F. 703.

<sup>69</sup> *Red Ball Transit Co. v. Marshall*, 8 F. (2d) 635.

<sup>70</sup> *Michigan Public Utilities Com. v. Duke* (1924), 266 U. S. 570.

<sup>71</sup> 274 U. S. 554.

cluding the insurance feature, was assailed by an interstate passenger carrier in the United States District Court, in which court the counsel of the Ohio commission answered that the State would not insist on the insurance provision. On appeal the Supreme Court said that the insurance feature was therefore not before it for consideration. In this manner a valuable opportunity to get a ruling from the highest court on the validity of insurance as applied to carriers of interstate passengers was frustrated. The "waiving" of the feature by the Ohio commission indicated clearly the view that previous rulings as applied to insurance on property carried in interstate commerce would be applied to passenger carriers were the state to insist on the point.

But in 1928 there appear four instances of state application of the passenger insurance requirement to interstate carriers. The Missouri commission has held that statutory requirements and administrative regulations relative to insurance must be met by interstate carriers as well as by intrastate.<sup>72</sup> Holding that the statute requiring insurance of "motor vehicle common carriers" included interstate as well as intrastate carriers, the Indiana commission conditioned a certificate to an interstate applicant upon applicant's complying with motor carrier insurance requirements.<sup>73</sup> On April 2, 1928, the Nebraska commission reasoned that passengers on interstate busses are entitled to the same degree of safety and protection as are those on an intrastate vehicle, concluded the state was under constitutional obligation to protect the two types of passenger equally, and ordered interstate carriers to comply with the insurance requirement.<sup>74</sup> Communications from the Indiana and Nebraska commissions in late October, 1928, state that the interstate carriers are meeting the requirement and are seeking no appeals from the commission decisions requiring insurance of them. Thus these state commissions are doing what the Ohio commission a year ago was afraid to insist on doing.

In 1928 an exclusively interstate carrier was validly required

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<sup>72</sup> Re Pickwick Stages System, P. U. R. 1928 B, 1.

<sup>73</sup> Re Shore Line Motor Coach Co., P. U. R. 1928 C, 175.

<sup>74</sup> Re Insurance Requirement for Motor Transportation Companies, P. U. R. 1928 D, 396-7. Letter from Indiana Public Service Commission, October 26, 1928, and one from Nebraska State Railway Commission, October 30, 1928, state that interstate carriers are complying.

by the state to furnish liability insurance against injuring persons other than the passengers carried.<sup>75</sup> Interstate carriers are becoming convinced that good business demands their furnishing passenger liability protection.

#### ROUTING, SERVICE, AND SAFETY REQUIREMENTS

Under the *Buck* and *Duke* decisions state regulations primarily to promote highway safety are a valid exercise of the police power; consequently it appears that licensing of drivers may be required.<sup>76</sup> But it has been held that a city cannot require the licensing of interstate drivers.<sup>77</sup> Routes of interstate carriers are specified in Kentucky, and the practice has been held valid in Rhode Island.<sup>78</sup> Not only routes, but also time schedules and speed are regulated in Kentucky. Where public safety so demands, speed may be regulated under the state police power.<sup>79</sup> The Michigan commission has been advised that under the Supreme Court ruling in *Clark v. Poor* safety regulations applicable to intrastate carriers can be applied to interstate.<sup>80</sup>

An unreasonable requirement appears in the *Schappi Bus Lines* case, decided by the United States Circuit Court of Appeals for the Seventh Circuit on March 12, 1928. An ordinance of the City of Hammond, Indiana, forbade the operation of motor vehicles on certain streets, and prohibited their stopping within several miles of the business center to load or unload passengers. General parking on both sides of the street was allowed, and a local motor bus was allowed by contract with the city to do that which the ordinance in question prohibited. The district court had refused the interstate carrier an injunction against the enforcement of the ordinance, whereupon the carrier appealed. The Circuit Court of Appeals declared the ordinance "unreasonable, discriminatory, and invalid as a police

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<sup>75</sup> *Sprout v. South Bend* (1928), 48 S. Ct. 502, 72 L. Ed. (Adv.) 529.

<sup>76</sup> Further evidence that such requirements are valid can be seen in *Smith v. Alabama* (1888), 124 U. S. 465; *Hendrick v. Maryland* (1915), 235 U. S. 610; and *Kane v. New Jersey* (1916), 242 U. S. 160.

<sup>77</sup> *International Motor Transit Co. v. City of Seattle*, (Wash., 1926), 251 P. 120.

<sup>78</sup> *Newport Electric Corporation v. Oakley* (1925), 129 A. 613.

<sup>79</sup> *Southern Ry. Co. v. King*, (1910), 217 U. S. 524.

<sup>80</sup> BUS TRANSPORTATION, Oct., 1927, 597.

regulation," and ordered the District Court to grant the injunctive relief sought.<sup>81</sup>

#### STATE TAXATION OF INTERSTATE CARRIERS

From the beginning the Federal Courts have displayed a liberal attitude toward state exactions of fees from those operating motor vehicles in interstate commerce. A tax on horsepower of vehicles in interstate travel was justified by the Supreme Court on the basis of compensation for service rendered to the motorist and for the wear he put upon the highway.<sup>82</sup> In 1922 the United States District Court upheld a Washington statute demanding a minimum license fee of ten dollars per vehicle plus fifty cents per seat for a vehicle of greater than eight capacity. The fee was required of all common carrier vehicles operated within the state.<sup>83</sup> A fee of one dollar per hundred weight, required of all motor vehicles, was valid as applied to interstate carrier vehicles, ruled the district court in a Michigan case in 1923.<sup>84</sup> The state could tax interstate carriers not only for cost of regulation, but for anticipated repairs to the highway, it was declared in an Ohio case.<sup>85</sup> But in the Michigan case the court gave warning that the state could not demand a license to engage an interstate commerce as such.<sup>86</sup>

A state may exact a reasonable graduated license tax from vehicles engaged in interstate commerce for the use of its highways; such is not an unreasonable burden on interstate commerce, said the Supreme Court in the *Duke* case.<sup>87</sup> A state tax on interstate carriers exacting no more than is reasonably required is valid.<sup>88</sup>

Reasoning that the state may properly classify motor carriers into interstate and intrastate and tax each differently, the

<sup>81</sup> (1926), 11 F. (2d) 940. A similar case decided similarly the same day by this court is *Farina Bus Line and Transportation Co. v. City of Hammond*, *ibid.*, 943.

<sup>82</sup> *Kane v. New Jersey* (1916), 242 U. S. 160.

<sup>83</sup> *Interstate Motor Transit Co. v. Kuykendall* (1922), 284 F. 882.

<sup>84</sup> *Liberty Highway Co. v. Michigan Pub. Utils.* (1923), 294 F. 703.

<sup>85</sup> *Red Ball Transit Co. v. Marshall* (1925), 8 F. (2d) 635. But a gross receipts tax as instituted by Idaho could not be applied constitutionally to interstate carriers. *BUS TRANSPORTATION*, Feb., 1927, 52.

<sup>86</sup> *Supra*, note 84.

<sup>87</sup> 266 U. S. 570.

<sup>88</sup> *Supra*, note 75.

United States District Court has upheld an act of Connecticut imposing a tax of one cent per mile run by interstate busses over Connecticut highways. The state possesses the authority to exercise reasonable discretion in taxation as here exemplified, and the courts will not revise the state system of taxation in order to secure a different distribution of the tax burden. The court also pointed out that the fact of the United States having aided in construction of a highway does not deprive the state of authority to impose an excise tax on interstate carriers using that highway. On February 20, 1928, the Supreme Court affirmed the decision of the District Court.<sup>89</sup>

A recent act of New Jersey similar to that of Connecticut demands one and one-half cents per mile tax. Failure to pay this resulted in barring from the highways some 200 interstate carriers by August 25, 1927. Up to September 2, 116 had complied; but 102 carriers secured injunctions against the enforcement of the act.<sup>90</sup>

An ordinance of Philadelphia exacting an annual license fee of all busses using its streets imposes no unreasonable burden on interstate commerce, when applied to interstate carriers.<sup>91</sup>

Perhaps the most important tax case is that of *Clark v. Poor*,<sup>92</sup> decided by the Supreme Court on May 31, 1927. Clark was operating exclusively in interstate commerce between Aurora, Indiana, and Cincinnati. Under the Ohio act he was required to secure a certificate and thereupon pay a tax based on the seating capacity of the vehicles used. Clark operated for a time in violation of the act and then asked the district court for an injunction against the enforcement of the law. That tribunal denied the injunction and Clark appealed. The gist of the Supreme Court's reasoning in affirming the decree of the lower court is as follows: (1) Those who use the highways, which are public property, are subject to state regulation requiring a contribution to their upkeep and cost, although these users may be

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<sup>89</sup> *Interstate Busses v. Blodgett* (1927), 18 F. (2d) 256, affirmed, 48 S. Ct. 230, 72 L. Ed. (Adv.) 243.

<sup>90</sup> BUS TRANSPORTATION, Oct., 1927, 597.

<sup>91</sup> *American Transit Co. etc. v. City of Philadelphia* (1927), 18 F. (2d) 991. See BUS AGE, Sep., 1927, 40.

<sup>92</sup> *Supra*, note 36. Following this decision the Indiana Commission was reported as preparing to apply to interstate carriers its seat tax. BUS TRANSPORTATION, Oct., 1927, 597.



engaged exclusively in interstate commerce; (2) the tax is not discriminatory since it is levied on interstate and intrastate carriers alike; (3) the tax is not an obstruction to interstate commerce; (4) the fact that some of the tax is used to pay the expenses of the commission enforcing the law and some for purposes other than commission expenses and cost and maintenance of highways, is of no real concern to appellee. The Court concluded that the tax was "for a proper purpose and not objectionable in amount."<sup>93</sup>

The significance of the *Clark* case lies first in the recognition of the public interest in the highways and the enormous cost of construction and maintenance. Justices Brandeis, Holmes, and McReynolds just a year earlier had dissented in the *Frost* case, contending that public property in highways outweighs private property of a contract carrier operating over those highways. The *Clark* decision says in effect to common carriers in interstate commerce, "You cannot escape a fair share of the burden of financing the highway over which you carry on your business." Secondly, the tax, in contrast to the denial of a certificate, as was adjudged in the *Buck* case, does not obstruct interstate commerce. Here is clear, definite, and unmistakable permission for the states to exact a fair amount from even interstate carriers for the outlays for highways. Thirdly, the states are under no minute requirements to devote every penny of this revenue from interstate carriers to the specific purpose of highway cost, or maintenance, or even to commission expenses. Lastly, the momentous conversion of the six members from a narrow view of private property rights as against public property rights, to a liberal and progressive conception of the primacy of public property rights—this conversion taking place in less than a year—cannot be surpassed in American constitutional history. Mr. Justice Brandeis speaks for a unanimous court!

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<sup>93</sup> Although Indiana and Ohio have had a serious truck "war," the *Clark* decision was welcomed by the INDIANAPOLIS NEWS as a constructive, farseeing, and far-reaching decision. See editorial, OHIO STATE JOURNAL, June 25, 1927. A favorable editorial in the ATLANTA JOURNAL was eagerly seized upon by the Atlantic Coast Line Railroad Company and incorporated into its leaflet, TIMELY RAILROAD TOPICS, No. 187, July 4, 1927.

## STATE AND FEDERAL RIGHTS AND OBLIGATIONS WHERE FEDERAL AID TO HIGHWAYS IS INVOLVED

Whether a certificate to engage in motor transportation be a regulation to conserve the use of the highway or a regulation of the business carried on over the highway is a question which has received some critical attention, and deservedly so, since the Supreme Court decision in one case held that the denial of a certificate for intrastate operation is a regulation of the use of the highway and in another the denial of a certificate for interstate operation is not a regulation of the highway but a prohibition of competition.<sup>94</sup> That a highway, in the absence of any special claim of the Federal Government, is state property is indisputable.<sup>95</sup> Constructed at enormous cost to the state,<sup>96</sup> the highways are public property.<sup>97</sup>

Where Federal aid has been made to highway construction the right and responsibility of the state in regard to the highway problem assumes a more complicated character. The relative rights and obligations of the state and the Federal Government are to be found in the Congressional acts relative to highways, in the rules and regulations issued thereunder, and in the interpretation put upon these acts by the courts. The state legislature having indicated its acceptance of the terms of the Federal legislation, the interrelations of the two spheres of government are substantially as follows: (1) the Secretary of Agriculture and the state highway commission are to agree on what roads are to be constructed and the type and method of construction; (2) work in each state is to be done according to the laws of the state, under supervision of the state highway commission and subject to inspection and approval of the Secretary of Agriculture; (3) the state is to maintain the highway,

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<sup>94</sup> B. C. Gavit (1927), *Interstate Motor Transportation*, 22 Ill. L. Rev., 559-67. It should be observed that in *Frost v. R. R. Com.* (1925), 271 U. S. 588, the majority opinion held that the aim of the California requirement of a certificate of public convenience and necessity was not preservation of highways but regulation of the business of those transporting thereover.

<sup>95</sup> Gavit, *op. cit.* citing *Sims v. City of Frankfort* (1881), 79 Ind. 446.

<sup>96</sup> Dissenting opinion of Mr. Justice McReynolds, *Bush v. Maloy*, *supra*.

<sup>97</sup> *Clark v. Poor*, *supra*. It appears that the states have invested \$834,867,058 in the highways. See *OPERATION AND MAINTENANCE*, July 15, 1927, 11. The Bureau of Public Roads indicates that the Federal Government has spent some \$500,000,000 on highways.

and failure to do so necessitates maintenance by the Federal Government, the Secretary of Agriculture charging to state allotment the amount paid out for such maintenance and refusing all the projects for further construction in that state till the latter recoups the Federal Treasury for the amount spent because of the state's defaulting.<sup>98</sup>

The extent to which the state power applies to the conservation and use of highways over which interstate carriers operate was early given a general delimitation by Justice Brandeis in the *Buck* case:

"With increase in the number and size of vehicles used upon a highway, both the danger and wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promises both safety and economy. *State regulation of that character is valid, even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject.*"<sup>99</sup>

The substance of the portion italicized above was stressed by the Court in *Morris v. Duby*, two years later. Regulations of the type permitted by the *Buck* decision looking to conservation of highways have been upheld in Rhode Island,<sup>100</sup> and the imperativeness of state conservation of highways has been more recently emphasized by the Supreme Court in the *Clark* case,<sup>101</sup> and restated in *Sprout v. South Bend*.<sup>102</sup>

State regulation of the use of the highway can be legally instituted and applied so long as it neither "interferes with" nor "directly burdens" interstate commerce, said the court in the *Holyoke* case,<sup>103</sup> relying on the doctrine in the *Hendrick* and *Kane* decisions,<sup>104</sup> and on that in *Packard v. Banton*.<sup>105</sup>

Turning now to specific applications of this general authority of the states to regulate the use of the highways, we must recall

<sup>98</sup> *Morris v. Duby* (1926), 274 U. S. 135. The court refers to the Federal Highway Act of July 11, 1926, 39 Stat. 35, as amended Feb. 28, 1919, 40 Stat. 1189, 1200, and to the act of Nov. 9, 1921, 42 Stat. 212.

<sup>99</sup> Italics are the writer's.

<sup>100</sup> *Newport Electric Corporation v. Oakley*, *supra*.

<sup>101</sup> *Supra*, note 96.

<sup>102</sup> *Supra*, note 75.

<sup>103</sup> *Interstate Busses Corporation v. Holyoke St. Ry.*, *supra*.

<sup>104</sup> (1914), 235 U. S. 610; (1916), 242 U. S. 160.

<sup>105</sup> (1923), 264 U. S. 140.

that the insurance requirement as applied to property carriers in interstate commerce has been repeatedly declared beyond the power of the states,<sup>106</sup> but that the insurance against injury to persons other than passengers carried in the interstate bus has been judicially upheld as applied to interstate passenger carriers.<sup>107</sup>

In the *Morris v. Doby*,<sup>108</sup> as in the *Buck* case, a Federal aid highway was involved. Morris, a member of the Auto Freight Association of Washington and Oregon, was hauling over a twenty-two mile section of the Columbia River Highway in the latter state. The state highway commission had by order reduced the maximum weight limit permitted on the highways from 22,000 pounds (which was the limit when Morris began operation and which had continued for four years) to 16,500 pounds. Morris, complaining that he could not compete with rail carriers under the new maximum load limit and that such order was an interference with interstate commerce, sought an injunction in the District Court, which pointed out the rights and obligations of the state and Federal Governments over Federal highways as mentioned above.<sup>109</sup> The Supreme Court reasoned that neither the state consent to operate over the highway nor anything in state or Federal statutes supported appellant's claim to a contract to operate his vehicle forever under the weight limit existing at the time he began operation; that the preservation of the highways is of more importance than a motor carrier's offering competition to a rail line. Further, that since there was no averment or definite information that the commission order reducing the load limit had been secured by fraud or abuse of power, the court would accept the commission order as proper. The tribunal concluded that the order was neither unreasonable, discriminatory, nor arbitrary, and affirmed the decree of the District Court denying an injunction against the enforcement of the order.

Summarizing now as to state regulation of interstate motor transportation, we observe first that the state cannot deny a

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<sup>106</sup> *Liberty Highway Co. v. Michigan Public Utilities Commission* (1923), 294 F. 703; *Red Ball* case, *supra*.

<sup>107</sup> *Supra*, note 75.

<sup>108</sup> *Supra*, note 98.

<sup>109</sup> Substance referred to in note 98.

certificate for interstate operation; and that much divergence of opinion prevails among the states as to whether the formality of securing such certificate must be observed. Secondly, that the state cannot demand liability insurance of carriers transporting only property in interstate commerce; but that insurance requirement as to carriers of passengers in interstate commerce protecting nonpassengers has been held valid.

Thirdly, that taxation imposed by the state on interstate carriers to recoup for facilities offered carrier by the state is valid. This may include registration of vehicles used,<sup>110</sup> as well as seat tax or tax on horsepower or bus-miles operated. State power to make these exactions is not impaired by the fact that the United States has aided in the construction of the highway involved.<sup>111</sup>

Fourthly, that weight restrictions may be imposed in order to safeguard and conserve the highways; and fifthly, that a general power to regulate may be exercised by the state so long as such is reasonable and not an undue burden on interstate commerce, there being no Federal legislation on the matter.

But in spite of the state authority to regulate interstate motor carriers, the consensus of opinion seems overwhelming that the states cannot regulate them effectively and that Federal regulation of this interstate transportation is necessary and inevitable.

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<sup>110</sup> Ivan Bowen, "Danger Ahead from Federal Regulation," in *BUS TRANSPORTATION*, September 1927, 490, citing *Hendrick v. Maryland* (1915), 235 U. S. 610.

<sup>111</sup> *Blodgett case*, 18 F (2d) 256.