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NOTES AND COMMENTS

MOTOR VEHICLES AND TRANSPORTATION

The trade barrier problem involving motor vehicles and transportation arises from a lack of reciprocity between states with respect to fees and taxes, and the cumulative diversity of state statutes restricting the size and weight of motor vehicles, specifying minimum equipment, and promulgating safety regulations. Strictly speaking, therefore, the problem is not one of "barriers," but of "burdens" on motor vehicles operating between states.¹ The nature and extent of the burdens thus placed on interstate carriers will be clearly manifest upon study of motor vehicle regulation in the East North Central states² and bordering states.³

Constitutionality of state regulation.—The constitutionality of state statutes regulating motor vehicles on state highways is scarcely controverted. Highways are state instrumentalities and as such are protected as state sovereignty is protected. Regulation of state highways emanates from the power to tax,⁴ the police power,⁵ the licensing and general regulatory power,⁶ and the power to conserve public property.⁷

The federal courts have repeatedly sustained the power of the state to tax motor vehicles on its highways, whether in intrastate or interstate movement,⁸ calculated on the basis of carrying capacity,⁹ the mileage traveled in the state,¹⁰ a combination of both,¹¹ the net

¹ The distinction, while perhaps one of form and not of substance, is important because "barrier" is defined as discrimination between resident and non-resident, whereas the difficulty actually arises because the laws of one state differ so from those of other states that an advantage is inadvertently given to one non-resident over a second non-resident of a different state, if the laws of the state of the first non-resident are substantially the same as, and the laws of the state of the second non-resident are substantially different from the laws of the regulating state.

² Ohio, Illinois, Indiana, Michigan, and Wisconsin.

³ Pennsylvania, West Virginia, Kentucky, Missouri, Iowa, Minnesota, and Tennessee.

⁴ *Hendrick v. Maryland*, 235 U.S. 610 (1915); *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1931); *Prouty v. Coyne*, 55 F.(2d) 289 (1932).

⁵ *Reo Bus Lines v. Southern Bus Line Co.*, 209 Ky. 40, 272 S.W. 18 (1925).

⁶ *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1931).

⁷ *Stephenson v. Binford*, 287 U.S. 251 (1932); *Interstate Transit v. Lindsey*, 283 U.S. 183 (1931).

⁸ Jurisdiction over interstate commerce is, in fact, concurrent. *J. P. Grubb Co. v. Ohio*, 281 U.S. 470 (1930).

⁹ *Clark v. Poor*, 274 U.S. 554 (1927); *Hicklin v. Coney*, 290 U.S. 169 (1933).

¹⁰ *Interstate Buses Corp. v. Blodgett*, 276 U.S. 25 (1928); *Roadway Express Co. v. Murray*, 60 F.(2d) 293 (W.D.Okla.1932).

¹¹ *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1932); *Johnson Transfer Lines v. Perry*, 47 F.(2d) 900 (N.D. Ga.1931).

weight of the vehicle,¹² a combination of weight and capacity,¹³ and a flat annual fee per vehicle.¹⁴ Statutes enacted under the police power which have been universally sustained include limitations on maximum weights and lengths of carriers,¹⁵ regulation of speed,¹⁶ exclusion of additional carriers over congested routes,¹⁷ compulsory annual licenses,¹⁸ requirements for filing bond or taking out liability insurance against damages to person or property within the state,¹⁹ required minimum equipment,²⁰ and appointment of an agent within the state upon whom process may be served.²¹ The use of state highways by a motor carrier is a special "privilege" as distinguished from a "right" of common user by the public in general and it may be subjected to such conditions as public authorities deem proper.²² But it is clear also that any statute is invalid which restricts interstate business as such or exacts revenue greater than the added expense of maintaining and policing the highways caused by interstate traffic.²³

Federal Regulation of Interstate Carriers.—In 1935, Congress passed the Motor Carrier Act,²⁴ announcing a policy of non-interference with state regulation except as such prejudiced common and contract carriers in interstate commerce. The act authorized the Interstate Commerce Commission to fix requirements for "safety of operation and equipment"²⁵ and to "investigate and report"²⁶ on the need for federal regulation of sizes and weights of motor vehicles. Neither authority imposes a duty nor confers a power on the Commission to regulate the sizes and weights of motor carriers, leaving that power in the states.²⁷

¹² *Liberty Highway Co. v. Michigan*, 294 Fed. 703 (E.D. Michigan 1923).

¹³ *Consolidated Freight Lines v. Pfost*, 7 F. Supp. 629 (D. Idaho 1934).

¹⁴ *Aero Mayflower Transit Co. v. Georgia*, 295 U.S. 295 (1935).

¹⁵ *South Carolina v. Barnwell Bros.*, 303 U.S. 177 (1938); *Sproles v. Binford* 286 U.S. 374 (1932); *Morris v. Duby*, 274 U.S. 135 (1927); *Snyder v. State*, 204 Ind. 666, 185 N.E. 507 (1933).

¹⁶ *Detroit-Cincinnati Coach Line v. Ohio*, 119 Ohio St. 324, 164 N.E. 356 (1928).

¹⁷ *Bradley v. Ohio*, 289 U.S. 92 (1932); *Packard v. Benton*, 264 U.S. 140 (1923).

¹⁸ *American Transit Co. v. Philadelphia*, 18 F. (2d) 991 (E.D. Pa. 1927); *Smith v. Cahoon*, 283 U.S. 553 (1931).

¹⁹ *Clark v. Poor*, 274 U.S. 554 (1927); *Hicklin v. Coney*, 290 U.S. 169 (1933). But a state may not require indemnity to protect the shipper. *Continental Baking Co. v. Woodring*, 286 U.S. 352 (1931).

²⁰ See note 15 *supra*.

²¹ *Hess v. Pawloski*, 274 U.S. 352 (1927); *Kane v. New Jersey*, 242 U.S. 160 (1916).

²² *Packard v. Benton*, 264 U.S. 140 (1924).

²³ See note 6 *supra*. *Interstate Transit v. Lindsey*, 283 U.S. 183 (1931); *Sprout v. South Bend*, 277 U.S. 163 (1927).

²⁴ 49 STAT. 543 (1935), 49 U.S.C. §301 (1936).

²⁵ 49 U.S.C. §304 (1936).

²⁶ 49 U.S.C. §325 (1936).

²⁷ *Maurer v. Hamilton*, 309 U.S. 598 (1940); *Barnwell Bros. v. State*, 17 F. Supp. 803 (E.D.S.C. 1937) *rev'd on other grounds*, 303 U.S. 177 (1938).

Thus, federal intervention has affected none of the regulations alleged as burdens, save maximum hours, lights, and equipment,²⁸ and then only as to those contract and common carriers subject to the authority of the Commission.

Fees, Taxes and Reciprocity.—Every motor vehicle operating on the highways of Indiana is required to pay a registration fee of \$6 to \$200 based on carrying capacity.²⁹ Indiana also requires that all common carriers whether operated intrastate or interstate, must procure certificates of convenience and necessity from the Public Service Commission,³⁰ and all common and contract carriers must pay regular registration fees of \$12 and a filing fee of \$25.³¹ Indiana assesses against all motor carriers an additional weight tax based on the size of tires,³² a gasoline tax,³³ and a gross income tax of one percent on all income derived from sources in Indiana.³⁴

Indiana has full reciprocity agreements as to registration fees and taxes with Illinois, Pennsylvania, Iowa, and Ohio, including both the private carrier and carrier for hire,³⁵ requiring only that the carrier secure operating authority from the public service commissions of those states in which it wishes to operate. An agreement with Michigan grants reciprocity with the exception of an annual filing fee of \$10 necessary to procure operating authority. By compact with West Virginia, private carriers are exempt from registration and filing fees; vehicles for hire owned by residents of Indiana pay a one dollar fee.

The Illinois mileage tax is in lieu of registration fees for non-resident carriers and the Indiana carrier is extended full reciprocity as to both. Full reciprocity is also granted to Indiana carriers, both private and for hire, as to the Pennsylvania excise tax on gross receipts, the Iowa ton-mile tax levied on carriers over regular routes, the Michigan ton-mile tax, and the West Virginia mileage tax, gross income tax on business beginning and ending within the state, net income tax on income earned within the state, and surtax on the gross and/or net income taxes. Ohio imposes no additional tax other than registration, and Ohio carriers are exempt from the Indiana tire tax.

Some of the agreements extend only partial reciprocity. The reciprocity agreement with Kentucky exempts Indiana private carriers

²⁸ Motor Carrier Safety Regulation (1937) 2 Code Fed. Reg., 113 et seq.

²⁹ IND. STAT. ANN. (Burns Supp. 1933) §47-110.

³⁰ But a state may no longer refuse to grant a certificate of convenience and necessity to an interstate carrier on the ground that existing service is adequate. *Buck v. Kuykendall*, 267 U.S. 307 (1925). But as to interstate carriers operating intrastate, see *Interstate Buses v. Holyoke Street Ry.*, 273 U.S. 45 (1927).

³¹ IND. STAT. ANN. (Burns Supp. 1933) §§47-1224-47-1246.

³² *Richmond Baking Co. v. Dept. of Treasury*, 215 Ind. 110, 18 N.E. (2d) 778 (1939).

³³ IND. STAT. ANN. (Burns Supp. 1933) §47-1501.

³⁴ IND. STAT. ANN. (Burns Supp. 1933) §§64-2601, 64-2603.

³⁵ A private carrier transports only the property of its owner; a carrier for hire transports the property of others for compensation.

from all fees and taxes and exempts Indiana carriers for hire, with the exception of an application fee, only so long as they do not operate over a greater distance than ten miles from the point of entry. If they travel more than ten miles into Kentucky, they are not exempt at all, and must pay registration and license fees, and the Kentucky excise tax on weight.³⁶ Under the same conditions in Indiana, Kentucky carriers for hire pay all Indiana fees and the tire tax. Indiana private carriers are granted full reciprocity in Tennessee and Wisconsin, but Indiana carriers for hire and carriers operating on a fixed schedule through either state must purchase license plates and pay all other fees.³⁷ In Tennessee they must also pay the mileage tax,³⁸ if operating on a fixed schedule; in Wisconsin they may elect to pay the weight tax (registration fee) or a mileage tax, and an election to pay the mileage tax requires an additional fee.³⁹

Indiana has no reciprocity agreements with Minnesota and Missouri. Indiana carriers must pay the Minnesota registration fee, or may pay \$5 per vehicle and a ton-mile tax graduated on the basis of weight in lieu of the registration fee.⁴⁰ In Missouri, they must pay a registration fee based on tonnage and a license fee based on weight;⁴¹ no additional taxes are levied.

In all states, carriers for hire from Indiana must procure operating authority from the public service commissions of the states through which they operate. Private carriers need not. Non-resident carriers operating in intrastate commerce are not of course exempt by the reciprocity agreements.

Sizes, weights and equipment.—Reciprocity agreements do not exempt non-resident carriers from complying with size, weight and equipment requirements. A compact among the states and the federal government permits carriers complying with the equipment requirements of the Interstate Commerce Commission and bearing ICC plates to operate unmolested through their states, although the ICC equipment requirements differ from theirs; other carriers are not included in the exemption, however. Size⁴² and weight⁴³ limitations in each state,

³⁶ KY. STAT. ANN. (Carroll's 1936) §2739j-45, 63, 69, 94; (1938) §2739j-76.

³⁷ Tennessee: TENN. CODE ANN. (Williams Supp. 1938) c.1152-3-4; *idem.* 5501.1-5501.8, 5501.14.

Wisconsin: WIS. STATS. (1937) §194.03, .94, .19, .23.

³⁸ TENN. CODE ANN. (Williams 1934) §1166.6; Supp. (1938) §1166.2

³⁹ WIS. STATS. (1937) §194.04, .49.

⁴⁰ MINN. STAT. ANN. (Mason's Supp. 1938) §2674 (A) (3); *idem.* §2684-6; *idem.* §5015-21, 5015-24, 5015-31, 5015-46.

⁴¹ MO. STAT. ANN. (1938) c. 41, §7761, 7762, 7768; MO. STAT. ANN. (Perm. Ed. 1938) c. 33, §5272; *idem.* §5144, 5267-70.

⁴² For a single unit carrier, the overall length is limited to 33 feet by Indiana, Wisconsin, Pennsylvania, Missouri, and Iowa. Ohio, Illinois, Tennessee, Michigan, and West Virginia allow 35 feet. Minnesota allows 40 feet and Kentucky allowed only 26½ feet. For a tractor and semi-trailer combination, Indiana, Ohio, Missouri, and Minnesota allow 40 feet; Wisconsin, Pennsylvania, West Vir-

therefore, still apply to all carriers; and equipment requirements apply to all carriers not subject to the safety requirements of the ICC. Private carriers and carriers for hire not under the authority of the Interstate Commerce Commission find diversity in equipment requirements a vexing and perhaps expensive problem. The requirements are too extensive to be reviewed here.⁴⁴

Cumulative Effects of Diversity. The effect of fees and taxes of the states here under consideration upon non-resident carriers has been over-estimated. Indiana private carriers are unharassed by fees and taxes, except when they operate through Minnesota and Missouri, with whom Indiana has no reciprocity. Even with those states, Indiana carriers have encountered no difficulties great enough to evoke protest. Indiana carriers for hire encounter inconvenience in the three states with whom Indiana has only partial reciprocity. Only Kentucky presents problems with respect to vehicle size; the requirements in other states are fairly uniform. Weight requirements are less uniform and

ginia, and Iowa allow 45 feet; Michigan allows 50 feet; Illinois allows 35 feet; and Kentucky allows only 30 feet.

⁴³ The myriad of weight restrictions almost defy comparison, their methods of calculation vary so widely. Ohio, Illinois, Wisconsin, and Missouri* in actual operation limit single units to 24,000 pounds; Indiana,* West Virginia,* and Iowa* limit them to 32,000 pounds; Michigan* and Minnesota* specify 36,000 pounds; Pennsylvania* sets the maximum at 26,000 pounds; and Kentucky and Tennessee at 18,000 pounds. For a tractor and semi-trailer combination, the practical gross weight limit for Indiana and Illinois is 40,000 pounds; for Michigan* and Minnesota,* 54,000; for Ohio, 42,000; for Wisconsin,* 43,000; for Pennsylvania, 39,000; for West Virginia,* 48,000; for Missouri, 38,000; for Iowa,* 40,000; and for Kentucky and Tennessee, 18,000. All states authorize temporary excess weight and size permits, but only under such conditions that the effect of the diversity on ordinary carriers is relieved but slightly, if at all.

*Indicates the estimation was made on the basis of allowable wheel or axle loads and spacing, where that figure delimits any gross maximum weight which may have been specified or where no gross maximum weight is specified. The single unit maximum weight is estimated on the basis of a 4-wheel truck. The combination maximum weight is estimated on the basis of a 4-wheel tractor and a 2-wheel trailer.

It should be made clear, however, that these figures are not the absolute maximum weights allowed. The maximum allowed for 4-wheel trailers, for example, would be higher in, say, Illinois or Wisconsin (approx. 72,000) or Ohio (approx. 63,000); diversity would then run from 18,000 in Kentucky to 72,000 in Illinois or Wisconsin. The comparison used here, however, seems a fairer one because a definite vehicle is taken as a standard and a comparison made on that basis.

⁴⁴ For example, clearance lights are not mandatory in Ohio or Illinois. Indiana, Michigan, and Wisconsin require them. Indiana and Michigan require two amber lights at the front of the vehicle, while Wisconsin requires one light, and it may be green, blue, or amber. The result is that Ohio and Illinois carriers are in violation of the law if they visit any of the other three states. Similarly the Wisconsin carrier violates the law when he enters Indiana or Michigan.

do cause considerable difficulty, with Kentucky and Tennessee again specifying the lowest maximum weight.⁴⁵ With respect to the diversity of equipment and traffic regulations, there is real cause for criticism.

Conclusions and Recommendations. The fees and taxes themselves, and not their diversity, is the burden of which the carrier complains. Reciprocity, and not uniformity, is therefore the solution, from the standpoint of the carrier. But a state may be justified in refusing to enter into reciprocal agreements; whether the state considers non-resident taxing necessary for the protection of its property and the preservation of its revenue is for its legislature to decide. Just compensation for a privilege, which may incidentally add to the expense of operating interstate, should not be labelled a "trade barrier" or a burden on free commerce.

In size and weight restrictions and in equipment requirements, diversity is the ill and *substantial* uniformity is the cure. The right to regulate the size and weight of carriers using its highways and to protect the safety of its citizens belongs to the states,⁴⁶ and though the problem of attaining *substantial* uniformity be long and laborious, the right should remain in the state. No blanket federal regulation can do justice to the varying topography, economic conditions, and road capacity and quality throughout the land.⁴⁷ As to equipment and traffic laws, diversity seems unjustified and unnecessary, and uniformity is desirable though concededly difficult. From this melee of regulation has come a welter of proposals directed toward uniform state regulations.⁴⁸

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⁴⁵ Much discussion centers around whether gross weight limits are justifiable at all, or whether wheel and axle loads are the chief factor in preservation of highways. *Barnwell Bros. v. South Carolina*, 17 F. Supp. 803, (E.D.S.C. 1937) rev'd, for other reasons in 303 U. S. 177 (1939).

⁴⁶ *Sproles v. Binford*, 286 U. S. 374 (1932). The problem being one for the state legislature, it is no concern of the courts, unless patently unreasonable. *State v. Barnwell Bros.*, 303 U. S. 177 (1938).

⁴⁷ Substantial uniformity in state regulation of sizes and weights must also consider these conditions. By virtue thereof, it may well be that Rhode Island, with a weight limit of 120,000 pounds, should be the object of more criticism than Kentucky or Tennessee, which stipulate 18,000 pounds as the maximum. But of course the carriers make no such objection. There is a primary responsibility on the state to preserve its property and protect the safety of its citizens which transcends the convenience of any special interest group.

⁴⁸ The proposals are too numerous to list. Organizations active in the field are the National Conference on Street and Highway Safety; National Conference of Commissioners on Uniform State Laws; American Association of State Highway Officials; American Association of Motor Vehicle Administrators; Council of State Governments and Commission on Interstate Cooperation; Interstate Commerce Commission in Ex Parte MC-15; Committee on Uniform Traffic Laws and Ordinances; National Highway Users' Conference.