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Motor Carrier Regulation in the United States, by John J. George

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REVIEWS

MOTOR CARRIER REGULATION IN THE UNITED STATES*

The bus and the truck having taken their place as an important arm of our transportation system, most of our states, in order to preserve their highways, to secure proper service, and to protect the health, convenience, comfort, safety and welfare of the general public, have established regulation over this new medium. The usual agency of control is the public utility commission, an administrative body generally appointed by the governor. These commissions have on the whole been successful in preventing and remedying abuses in motor carrier operation but have so far placed slight emphasis on the subject of rates and profits, though power to fix or to approve rates and charges exists by legislation in twenty-nine states.

In the granting of certificates of public convenience and necessity the commissions take into consideration such factors as the adequacy of existing transportation facilities and the financial ability, experience and skill of the applicant in furnishing bus service. The tendency in recent years seems to be to protect rail lines against proposed motor bus competition on the grounds that numerous people are financially interested in the railroad companies and that the railroad officials possess valuable experience in the transportation field. In order to be so protected, however, the rail company must furnish adequate service, it usually possessing first right to enter the bus field if the rail service for some adequate reason cannot be extended or changed so as to meet the public needs.

The United States Supreme Court in the celebrated cases of *Buck v. Kuykendall*, 267 U. S. 308, and *George W. Bush and Sons v. Maloy*, 45 Supreme Court Reporter 327, both decided in 1925, held that a state cannot constitutionally deny a certificate to an interstate carrier on the ground that existing service is adequate, such denial being an undue interference with interstate commerce. Accordingly, state regulation of motor carriers seems to be in a position similar to that of railway transportation during the interval between the Wabash Case (1886) and the passage of the Interstate Commerce Act. The State authorities still have the power to forbid an interstate carrier to engage in intrastate commerce, to apply police regulations which are reasonable, to require interstate carriers to provide certain kinds of insurance protection, to tax interstate carriers as a compensation for the

* *Motor Carrier Regulation in the United States*. By John J. George, Spartanburg, So. Car.: Band and White, 1929. Pp. 266 and a bibliography and table of cases. Price \$3.50.

wear and tear of its highways, and to impose reasonable weight and dimension restrictions. In the absence of an act of Congress, however, adequate regulation of motor carriers is lacking in the United States.

Motor carriers, it should be pointed out, cannot resort to mere subterfuge as a means of evading the state requirements, but so far as control over rates and the certification of interstate carriers in accordance with the public convenience are concerned, the Buck and Bush decisions have created a "no man's land" in the field of transport regulation. Within one year after these two cases were decided, "fifty-four interstate lines sprang into existence between New Jersey and New York City, and between New Jersey and Philadelphia." Other sections of the country are equally adversely affected by the lack of adequate supervision, which fact not only harms the public but is detrimental to the carriers as well.

Consequently at various times five bills have been introduced into Congress providing for the federal regulation of busses and trucks. Professor George, who favors federal legislation on this subject, thinks such law should embody at least the following provisions (page 248) :

1. Utilize the state commissions as administrative agencies, with provision for joint state boards, and also for appeal to the Interstate Commerce Commission.

2. Require certificates of public convenience and necessity for common carriage of property as well as of passengers in interstate commerce. In authorizing motor service, give first consideration to established carriers, rail or motor. Allow certificates as a matter of right to interstate carriers in bona fide operation on effective date.

3. Secure adequate service from interstate carriers, acting generally on the principle of regulated monopoly and not on that of competition.

4. Institute reasonable rate regulation, with wider latitude in regard to the charges made by carriers of property.

5. Demand liability protection from carriers of property and of passengers, with administrative discretion to waive the requirement in lieu of financial ability to pay assessed damages arising in the course of operation.

This book is a noteworthy contribution to the subject of motor carrier regulation. It is very carefully annotated, containing minute references not only to 156 court reports and 331 decisions of public utility commissions, but also to periodical material and government documents. There are eighteen chapters, the enumeration of the titles of which will give some idea as to the scope of this study: I. Introduction; II. Establishing Regulation; III. The Regulatory Agency; IV. Scope of Regulation; V. Certificate of Public Convenience and Necessity; VI. Process of Securing Certificate; VII. Factors in Granting Certificate; VIII.

Safety, Drivers and Liability Protection; IX. Service and Rates; X. Special Taxation and Control Over Financial Affairs; XI. Transfer of Certificate; XII. Revocation of Certificate; XIII. Motor Carrier and Rail Carrier; XIV. Enforcement, Penalties and Review; XV. State Regulation of Interstate Motor Carriers; XVI. Federal Regulation of Interstate Motor Carriers; XVII. Principles of Regulation; XVIII. Summary and Conclusions.

The subject of motor carrier regulation involves a difficulty which Professor George recognizes. That is the lack of uniformity among the laws of the various states and the differences in their interpretation by the regulatory agencies. Decisions of other commissions prove of no or relatively little value in establishing precedents. In perusing this book, one is sometimes disappointed in not being able to ascertain with more facility the general trend in the decisions of public utility commissions in regard to specific problems. In places the book becomes a maze of citations to cases in many states, leaving the reader at a loss as to the weight of opinion.

Wherever possible, however, the author summarizes the predominant view and the trend in the opinions of commissions. Even in such instances one cannot be sure that the predominance of such administrative decisions represents the weight of judicial opinion on account of the relative infrequency with which the opinions of the regulatory agency have been appealed to the courts. Only nine times have such problems in regard to motor carriers reached the United States Supreme Court. Seven United States Supreme Court decisions in related utility fields are also discussed. A total of only eight cases in the lower Federal Courts and of 131 in the State Supreme Courts are referred to in this book. In short, motor carrier regulation is still in the formative state.

The proof mistakes are conspicuously few. The language is clear, simple, and logical.

This volume should be of interest and value to public utility commissioners, government officials, officials of motor carrier and other public utility companies, judges, and to lawyers and economists who are interested in the law and practice of government regulation.

The author of this book is professor of political science in Rutgers University, New Brunswick, New Jersey, and is in charge of courses in American Government and Constitutional Law. He has also contributed articles on motor carrier regulation to a number of legal and commercial periodicals.

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