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COMMON CARRIERS; CONTRACT CARRIERS 221.01

Where the railroad and warehouse commission is not a party to a rate proceeding it has no right to appeal from a district court decision. OAG March 14, 1952 (371-B-11).

220.19 PERMITS, TO WHOM GRANTED

An exercise by the railroad and warehouse commission of its power under section 220.13 to find the value of street railway property and fix a rate of fare based thereon is a legislative function involving exercise of police power of a continuing nature and is not exhausted by a single exercise thereof. The fact that the commission made within a year a temporary rate order and provided in the order "after the expiration of one year" an application to modify it might be made, does not bar an application within the year. Application of Minneapolis Street Ry. Co., 228 M 435, 37 NW(2d) 533.

In fixing a rate, based upon the facts disclosed, the commission has the power to fix it in such an amount as will produce revenue not only necessary to meet fixed charges and operating expenses but also sufficient to yield a reasonable return on the fair value of the property devoted to the use of the utility. Application of Minneapolis Street Ry. Co., 228 M 435, 37 NW(2d) 533.

CHAPTER 221

COMMON CARRIERS; CONTRACT CARRIERS

221.01 DEFINITIONS

HISTORY. 1925 c 185 s 1, 2; Mason's 1927 s 5015-1, 5015-2; 1933 c 170 s 1; 1937 c 411 s 1; 1937 c 431 s 3; 1939 c 433 s 1; Mason's Supp s 5015-2, 5015-20, 5015-47; 1943 c 100 s 1; 1943 c 225 s 1; 1947 c 299 s 3; 1949 c 474 s 1.

Private carrier distinguished from common and contract carriers under the Interstate Commerce Act. 35 MLR 596.

Restrictive provisions of Laws 1933, Chapter 170, which forbid issuance of a permit thereunder to railroads or wholly owned subsidiaries thereof, does not relate to common carriers by motor vehicle between fixed termini or over regular routes, and governed by Laws 1925, Chapter 185, and containing no such restrictions. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, 229 M 291, 40 NW(2d) 896.

Railroad and warehouse commission has jurisdiction to hear an application for a certificate of public convenience and necessity to operate an automobile common carrier of less than carload lots of freight of a certain railway company between stations of the company, and to make determination in connection therewith, provided the order did not exceed the prescribed powers of the commission. *State ex rel v Railroad and Warehouse Commission*, 236 M 339, 52 NW(2d) 769.

Where the railroad and warehouse commission has authority to issue an unrestricted certificate of public convenience and necessity for a motor carrier, the commission may issue a restricted certificate if restriction is in conformity with law and does not exceed the commission's jurisdiction, and where the certificate of public convenience and necessity is set aside and vacated by the court on appeal, the manner in which the application should thereafter be disposed of is a procedural matter which rests with the commission as long as it does not proceed contrary to the statutory provision. *Rock Island Motor Transit Co. v Murphy Motor Freight Lines*, M, 58 NW(2d) 723.

A motor tractor to which a shovel or scoop is attached and which is equipped with rubber tires, and is capable of driving at slow speeds over the highways is a "motor vehicle" within the meaning of New Hampshire financial responsibility law and was therefor an "automobile" within a liability policy endorsement relating to

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the use of automobiles. *American Mutual Liability Insurance Co. v Chaput*, 95 NH 200, 60 A(2d) 118.

A taxicab licensee has no vested right in a taxicab space assigned to him by the chief of police or by the city council under an ordinance. OAG April 5, 1948 (59-A-27).

Motor vehicles engaged in the moving of grain and flaxseed from country elevators to Duluth or Minneapolis are carriers under the jurisdiction of the railroad and warehouse commission. OAG March 31, 1949 (371-B-4).

Intrastate auto transportation companies operating in Minnesota may be required by the railroad and warehouse commission to make annual reports. OAG Jan. 29, 1947 (633-A-16).

221.02 Renumbered 221.01, subdivisions 2 to 22.

221.03 OPERATION BY AUTO TRANSPORTATION COMPANIES ONLY AS PROVIDED

A country elevator is not a point of production within the meaning of the exemption provision contained in section 221.02, hence the commission has jurisdiction over the fixing of rates for transportation for grain and flax seed in bulk by motor vehicles operating from country elevators to primary markets. OAG March 31, 1949 (371-B-4).

221.04 COMMISSION, POWERS

Plaintiff heretofore operating under a temporary certificate as a wartime emergency carrier applied for a certificate of public convenience and necessity under the provisions of sections 221.01 to 221.17 which subjects common carriers between fixed termini or over regular routes by motor vehicle to the regulations of the railroad and warehouse commission. Applicant planned to carry only property received by railroad company for transportation from its railroad at railroad rates. Applicant was to be compensated by the railroad at agreed rates. Opponents of the application are companies who were already certificate holders and serving the public over the same route and whose service had not been declared inadequate. In deciding the issue the necessities of the public are to be considered rather than those of either party; whether present transportation is adequate; whether the proposed service is likely to be permanent; and the effect of such service upon present service, existing travel conditions, and the cost of highway maintenance. As these factors were taken into consideration by the commission, the commission's findings upon the issue of public convenience and necessity cannot be disturbed, but it is the duty of the commission to fix just, reasonable and nondiscriminatory rates, fares, charges and qualifications. The order in question permits plaintiff to operate at rail rates fixed by the railroad. The challenge certificate is therefore contrary to the entire object and purpose of Laws 1925, Chapter 185, and in excess of the commission's power and in direct conflict with the statutory provisions governing the regulations of auto transportation companies. *Rock Island Motor Transp. Co. v Murphy Motor Freight Lines*, 229 M 291, 40 NW(2d) 896.

An automobile transportation company bus service cannot be abandoned or discontinued without an order of the railroad and warehouse commission. OAG Jan. 6, 1950 (493-D).

221.05 CERTIFICATES FOR OPERATION

Where a petitioner filed with the railroad and warehouse commission his application praying that the commission, pursuant to Laws 1925, Chapter 185, as amended, issue to him a certificate of public convenience and necessity authorizing him to operate as an auto transportation company and to transport L.C.L. freight of the Great Northern Railway Company between stations of that company and along the route of that company, and that "the schedule of rates, fares and charges to be collected for the transportation service are the tariff of rates, fares and charges filed and published by applicant, and in accordance with the law and the rules and regula-

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tions of the commission pertaining to an auto transportation company," the commission has jurisdiction to hear applicant's petition and to make its determination in connection therewith, provided that order made does not exceed its prescribed powers. *State v Railroad and Warehouse Commission*, 236 M 339, 52 NW(2d) 770.

In an action by the interstate commerce commission to enjoin a contract motor carrier and its customers from violation of the federal statutes, the evidence showed that the carrier was operating as a contract carrier by motor vehicle without a certificate of public convenience and necessity or a permit issued by the interstate commerce commission and that the commission was entitled to an injunction against the carrier and the alleged paper company employer. *Interstate Commerce Commission v Cheesebrough*, 77 F Supp 441.

The statute requiring operators of motor vehicles in interstate commerce on public highways for compensation to obtain a certificate of public convenience and necessity from the interstate commerce commission is a highly remedial statute. Its terms are to be broadly construed to bring within all who are engaged in the business of interstate or foreign transportation of property on public highways for hire. *U.S. v LaTuff Transfer Service*, 95 F Supp 375.

221.06 HEARINGS ON PETITIONS FOR CERTIFICATES

The railroad and warehouse commission has jurisdiction to hear an application by a wholly owned subsidiary of a railroad for a certificate of public convenience and necessity to operate as a common carrier of property by motor vehicle between fixed termini or over regular routes and to make its determination in connection with such application provided the order made did not exceed the prescribed powers of the commission. *Rock Island Motor Transit Co. v Murphy Freight Lines*, 229 M 291, 40 NW(2d) 896.

221.07 Repealed, 1947 c 266 s 6.

221.08 CERTIFICATES; WHEN GRANTED

Concurrent state and federal power of regulation as applied to motor carriers. 34 MLR 338.

On appeal from an order of the railroad and warehouse commission the district court may not substitute its findings and judgment for those of the commission if there is evidence reasonably sustaining the latter. The district court may receive additional evidence but only for the purpose of determining whether in the light thereof the commission's order is illegal or unlawful as unsupported by the evidence at the time of its making. In the instant case where the evidence before the commission clearly established the need for bus service covered by its order of convenience and necessity, and the commission in making its order gave reasonable consideration to the factors prescribed in section 221.08, the district court erred in vacating the commission's order substituting its own findings and conclusions for those of the commission. *Twin City Motor Bus v Rehtziegel*, 229 M 196, 38 NW(2d) 825.

Plaintiff heretofore operating under a temporary certificate as a wartime emergency carrier applied for a certificate of public convenience and necessity under the provisions of sections 221.01 to 221.17 which subjects common carriers between fixed termini or over regular routes by motor vehicle to the regulations of the railroad and warehouse commission. Applicant planned to carry only property received by railroad company for transportation from its railroad at railroad rates. Applicant was to be compensated by the railroad at agreed rates. Opponents of the application are companies who were already certificate holders and serving the public over the same route and whose service had not been declared inadequate. In deciding the issue the necessities of the public are to be considered rather than those of either party; whether present transportation is adequate; whether the proposed service is likely to be permanent; and the effect of such service upon present service, existing travel conditions, and the cost of highway maintenance. As these factors were taken into consideration by the commission, the commission's findings upon the issue of public convenience and necessity cannot be disturbed, but it is the duty of the commission to fix just, reasonable and nondiscriminatory rates, fares, charges and quali-

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fications. The order in question permits plaintiff to operate at rail rates fixed by the railroad. The challenge certificate is therefore contrary to the entire object and purpose of Laws 1925, Chapter 185, and in excess of the commission's power and in direct conflict with the statutory provisions governing the regulations of auto transportation companies. *Rock Island Motor Transp. Co. v Murphy Motor Freight Lines*, 229 M 291, 40 NW(2d) 896.

Where a petitioner filed with the railroad and warehouse commission his application praying that the commission, pursuant to Laws 1925, Chapter 185, as amended, issue to him a certificate of public convenience and necessity authorizing him to operate as an auto transportation company and to transport L.C.L. freight of the Great Northern Railway Company between stations of that company and along the route of that company, and that "the schedule of rates, fares and charges to be collected for the transportation service are the tariff of rates, fares and charges filed and published by applicant, and in accordance with the law and the rules and regulations of the commission pertaining to an auto transportation company," the commission has jurisdiction to hear applicant's petition and to make its determination in connection therewith, provided the order made does not exceed its prescribed powers. *State v Railroad and Warehouse Commission*, 236 M 339, 52 NW(2d) 770.

221.10 BONDS OF TRANSPORTATION COMPANIES; INDEMNITY INSURANCE

HISTORY. 1925 c 185 s 10, 11; MS 1927 s 5015-10, 5015-11; 1947 c 266 s 4.

A contract of indemnity may provide for indemnity against loss or damages and also indemnity against liability and a single contract may indemnify against both actual loss or damages and liability; and in case of a strict contract of indemnity, no action accrues thereon until the indemnitee has suffered a loss against which the covenant runs by being compelled to pay and paying. *Aetna Casualty & Surety Co. v Bros*, 226 M 466, 33 NW(2d) 46.

221.12 INTERSTATE COMMERCE EXCEPTED

Concurrent state and federal power of regulation as applied to motor carriers. 34 MLR 338.

In an action by the interstate commerce commission to enjoin a contract motor carrier and its customers from violation of the federal statutes, the evidence showed that the carrier was operated as a contract carrier by motor vehicle without a certificate of public convenience and necessity or a permit issued by the interstate commerce commission and that the commission was entitled to an injunction against the carrier and the alleged paper company employer. *Interstate Commerce Commission v Cheesebrough*, 77 F Supp 441.

221.15 NOT TO AFFECT CHARTER LIMITATIONS

This section does not restore the right to exact a license fee or tax prescribed by section 168.06, nor was the right to exact a license fee or tax prescribed by section 168.06 restored by the enactment of section 168.013. *City of Duluth v Northland Greyhound Lines*, 236 M 260, 52 NW(2d) 774.

A city is authorized to adopt a reasonable ordinance relating to the loading and unloading of passenger buses on streets. OAG April 21, 1952 (477-B-4).

221.175 Repealed, 1947 c 266 s 7.

221.18 PERMITS; COMMISSION TO REGULATE AND SUPERVISE TRUCKS

"Little truckers" law. 31 MLR 61; 33 MLR 46.

A contract motor carrier which had been notified that it was misinterpreting its operating authority and which had requested the commission to take legal action leading to a final determination of the scope of its authority, is in no condition to complain that the examiner refused to confine the evidence to shipments of the kind

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specifically mentioned in the commissioner's order instituting the investigation. The litigant was already aware of the issues to be tried. *Dart Transit Co. v Interstate Commerce Commission*, 110 F Supp 876.

Where livestock haulers through lack of publication had no knowledge of the provisions of 221.02, subdivision 14, and 221.24, there not being time within which the commission could promulgate rules or rates, the carriers might transport livestock and make charges pursuant to the law in effect prior to the passage of such sections. OAG July 11, 1947 (365-Q-9).

Where a company had been granted a permit by the railroad and warehouse commission to operate as a contract carrier, and had on file a list of ten customers which it served, on proposal by the company to serve more than the ten listed customers, the commission under its Rule No. 33 would determine whether the company was an auto transportation company. OAG April 10, 1952 (633).

221.21 DURATION OF PERMITS; REGISTRATION FEES; PLATES; SUSPENDED OR REVOKED PERMITS

HISTORY. 1933 c 170 s 5; Mason's Supp s 5015-24; 1937 c 411 s 2; 1943 c 210 s 4; 1947 c 266 s 5; 1953 c 743 s 1.

Where the same carrier engages as a common carrier (irregular route) and as a contract carrier, the vehicle must have a permit for each service and must pay two fees. OAG Jan. 23, 1948 (633-A-13).

221.24 COMPENSATION OF CARRIERS TO BE FIXED BY COMMISSION

Private carriers distinguished from common and contract carriers under the Interstate Commerce Act. 35 MLR 596.

Where livestock haulers through lack of publication had no knowledge of the provisions of 221.02, subdivision 14, and 221.24, there not being time within which the commission could promulgate rules or rates, the carriers might transport livestock and make charges pursuant to the law in effect prior to the passage of such sections. OAG July 11, 1947 (365-Q-9).

221.28 PERMITS; INTERSTATE CARRIERS; COMMISSION TO ISSUE

In the instant case the district court denied jurisdiction in an action to enjoin defendants from transporting property in interstate commerce by a motor vehicle for compensation unless and until they have obtained from the interstate commerce commission a permit and a certificate of convenience and necessity on the grounds that such controversy can best be dealt with by administrative procedure, the machinery being set up under the interstate commerce commission. *Hildenbrand v National Butter Co.*, 107 F. Supp 890.

221.29 PERMITS MUST BE SECURED

Concurrent state and federal power of regulation as applied to motor carriers. 34 MLR 338.

Where the same carrier engages as a common carrier (irregular route) and as a contract carrier the vehicle must have a permit for each service and must pay two fees. OAG Jan. 23, 1948 (633-A-13).

221.30 POWERS OF COMMISSION TO REFUSE PERMITS

HISTORY. 1933 c 170 s 14; Mason's Supp s 5015-33; 1949 c 474 s 2.

221.34 APPEALS

On appeal from orders of the railroad and warehouse commission, the court may exercise judicial but not legislative or administrative powers. It may not direct the commission as to what orders it must make. *Arrowhead Bus Service v Black & White Cab*, 226 M 327, 32 NW(2d) 590.

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221.381 LIMITATIONS ON 221.18 TO 221.38

HISTORY. 1949 c 233 s 1.

221.39 CONTRACT OR COMMON CARRIER; BUSINESS DECLARED TO BE OF PUBLIC INTEREST

In an action by the interstate commerce commission to enjoin a contract motor carrier and its customers from violation of the federal statutes, the evidence showed that the carrier was operated as a contract carrier by motor vehicle without a certificate of public convenience and necessity or a permit issued by the interstate commerce commission and that the commission was entitled to an injunction against the carrier and the alleged paper company employer. *Interstate Commerce Commission v Cheesebrough*, 77 F Supp 441.

The interstate commerce commission's determination that the transportation of certain commodities by a contract motor carrier was not authorized by its permit was not erroneous; and the carrier cannot complain because the evidence in the proceeding was not limited to transmission of commodities of kinds specifically mentioned in the commission's order instituting the investigation. *Dart Transit Co. v Interstate Commerce Commission*, 110 F Supp 876.

221.42 CERTAIN VEHICLES NOT TO OPERATE NEAR CITIES

HISTORY. 1937 c 431 s 4; Mason's Supp s 5015-48; 1943 c 225; 1953 c 282 s 1.

221.465 Obsolete.

221.54 TRANSPORTATION BY PIPELINES

HISTORY. 1949 c 737 s 1.

221.55 CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

HISTORY. 1949 c 737 s 2.

CHAPTER 222

RAILWAYS, UTILITIES; GENERAL PROVISIONS

222.03 PLAT; PAYMENT; CONVEYANCE; RESERVATION OF MINERALS; NEW RIGHT-OF-WAY

HISTORY. 1878 c 73 s 3; GS 1878 c 34 s 45; 1879 c 45 s 3; GS 1894 s 2672; RL 1905 s 2892; 1909 c 494 s 1; GS 1913 s 6214; GS 1923 s 7503; MS 1927 s 7503.

222.06 PURCHASE, LEASE, OR CONTROL OF ONE ROAD BY ANOTHER

HISTORY. 1874 c 29 s 1; GS 1878 c 34 s 65; 1881 c 94 s 1, 3; GS 1878 Vol 2 (1888 Supp) c 34 s 68a, 68c; GS 1894 s 2714, 2716, 2717; 1899 c 229; RL 1905 s 2805; 1907 c 395 s 1; GS 1913 s 6217; GS 1923 s 7506; MS 1927 s 7506.

222.18 RECORD; NOTICE

HISTORY. 1867 c 58 s 1; 1868 c 56 s 1-3; GS 1878 c 34 s 73, 74; 1883 c 66 s 1; GS 1894 s 2725, 2726; RL 1905 s 2906; GS 1913 s 6228; GS 1923 s 7517; MS 1927 s 7517; 1945 c 250.

Mortgage covering personal property of a railroad must be recorded with the secretary of state and in the office of the register of deeds of each county through which the railroad runs. OAG Dec. 5, 1949 (418-B-20).