REGULATION OF OKLAHOMA'S MOTOR CARRIERS

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Bachelor of Arts

Bachelor of Science

Oklahoma Agricultural and Mechanical College

1937, 1938

Submitted to the Department of Economics,

Oklahoma Agricultural and Mechanical College

In Partial Fulfillment of the Requirements

For the Degree of

Master of Science

1939

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PREFACE

This work was originally undertaken because search of the libraries of Oklahoma A. and M. College at Stillwater and the University of Oklahoma at Norman revealed no historical review of legislation and administrative regulation of motor carriers operating in Oklahoma. Because the historical approach to the study of railroad regulation has been generally accepted as fundamental, it was believed that the factual history of motor carrier regulation would form a needed background for those interested in research into the economics of this newer form of regulation.

Thus the work is intended principally as an introduction, not as a ready-made text book for motor carrier regulation.

For helpful suggestions in the actual preparation and for stimulating criticism of the work in progress, I am indebted to my adviser, Professor Z. B. Wallin. For the background of the problem, I owe much not only to my teachers in economics but also to those in whose history and political science classes I have sat.

Any faults in organization or errors of fact are the results of mis-interpretation on my part or mistakes in research.

David Bussell

Stillwater, Oklahoma
July, 1939

C O N T E N T S

Chapter I

INTRODUCTION

"The economic structure of the United States progresses almost directly in relation to the development and efficient functioning of its transportation facilities."[1] Throughout the history of the United States, transportation and communication have also been recognized as of more than economic importance; a nation as large as ours cannot maintain vital democratic institutions without readily available and freely used means of communication and transportation.

Transportation is necessary to the unification of a nation of people into any kind of social consciousness, whether democratic or otherwise. And a homogeneous social consciousness throughout the nation is necessary to the stability of a national political organization of any kind. The Romans, world masters of political organization, recognized the need of roads, although their need for roads differed from ours as their conceptions of political and social unity differed from ours.

Economic considerations indicating the desirability of unhindered trade throughout the world are among the widest known results of economic thought. Despite these considerations, peoples and dictators today continue to draw artificial economic boundaries to correspond with political boundaries, making the world the poorer. This world-wide

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1 Motor Bus and Truck Operation, 140 I.C.C. 685-760 (690).

situation should warn us against allowing our 48 states to draw artificial economic boundaries at their borders. Economic freedom of transportation and trade throughout the nation is essential not only to material welfare but to the preservation of the social and political unity of the nation.

The more direct economic necessities of transportation are commonplace knowledge. The average American could not eat breakfast without long-distance as well as short-haul transportation service within the past few days or hours. Without exchange of commodities throughout the nation, modern standards of economic well being would be lowered to near medieval levels. For most modern technological developments depend upon large-scale operations of some kind for their economic efficiency, and large-scale enterprises can not exist without wide markets. Transportation makes possible wide markets. Almost as obvious is the absolute dependence upon continuous and adequate transportation service of the lives of a great section of our population--those who live in cities.

The rapid rise of motor transportation has demonstrated its importance in the current situation. That phase of motor transportation conducted for hire is also of great importance in Oklahoma and throughout the nation. In Oklahoma there are some 105 Class "A" common carrier motor freight operations, operating over fixed routes and transporting commodities generally. There are 30 Class "A" passenger carriers, operating over fixed routes as common

carriers, and there are some 1,100 Class "B" carriers who transport excepted commodities requiring special handling or equipment.[2] Although some of these motor services are competitive with rail transportation, much of the "A" bus and truck service and most of the "B" freight service is not competitive with railroads. Oil field hauling, for instance, is largely supplementary to rather than competitive with rail transportation.

Purpose of the Study. It is not the purpose of this study to recount the history of motor transportation itself, interesting and valuable as this story would be. It is not even the purpose here to delineate the growth of motor carrier activities, although brief comments in this regard will be necessary from time to time.

The central purpose of this study is to give the history of motor carrier regulation which has been applied in Oklahoma and to analyze the justifications or reasons for these various regulatory measures.

Scope of the Study. In giving full treatment to this subject, it will be necessary to consider not only laws and rulings promulgated by Oklahoma state officials but also statutes and regulations of the federal government, since federal regulations have become a vital part of regulation as it applies to Oklahoma.

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2 Letter from Homer S. Hurst, director of the motor carrier division of the Oklahoma Corporation Commission, to the writer, dated June 20, 1939.

Involved in explaining the reasons and justifications of regulation will be certain fundamental economic characteristics of the motor carrier industry and the reflections of these economic bases as they are seen in our legal structure. Both of these bases of regulation will receive special treatment. Such a study would be of limited practical value if conclusions were not given in the form of suggestions concerning advisable methods and plans of regulation.

Further light will be thrown on the scope of the study by perusal in following paragraphs of the definitions of the familiar terms of regulation and motor carriers.

Plan and Method of the Study. Chapter II will recount the basic economic characteristics of the motor carrier industry which are of peculiar importance in considering its regulation and in explaining the necessity for its regulation. Chapter III takes up problems yet unsolved in the field of regulation and also enumerates commonly accepted objectives which regulation should achieve.

Turning from economic analysis to view the extent and methods with which this analysis has been accepted into our legal framework, we see in Chapter IV the legal bases upon which regulation is founded. The following two chapters, V and VI, are the body around which the remainder of the work is constructed. They are concerned with the history of regulatory statutes and administrative rulings by the Oklahoma state government and by the federal government.

The final chapter contains recommendations, suggestions, and conclusions upon some of the controversial points involved in motor carrier regulation. These recommendations are to be taken in the light of the facts presented in previous parts of the work.

Definitions. Before considering details of regulation of motor carriers, one must have certain definitions in mind. For purposes of this study, the term motor carrier includes all persons (not the vehicles) operating motor vehicles in transporting passengers for hire or for compensation or in transporting property. Only regulation of intercity carriers is considered in this study. In reviewing the history of regulation, the reader will notice that in most of the laws described the term has been defined much less inclusively.

Because the term motor carrier has a rapidly varying legal definition, it is particularly necessary in studying the history of regulation to notice carefully the definitions in each statute. In drawing distinctions between various types of carriers, a knowledge of several terms is needed.

A common carrier is any legal person (individual, partnership, corporation, etc.) who offers to the public to carry passengers, property, or some classifications of passengers, property, or both, usually over a regular route; any person so offering to serve the public is a common carrier over his route of whatever he so offers to carry.[3]

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3 Okl. St. Anno., title 13, sec. 4.

In common law, transportation businesses were divided into common carriers and private carriers, the first being subject to regulation and the latter being largely unregulated.[4] The term contract carrier was coined by state statutes to make a distinction deemed necessary in regulation of motor carriers.[5] A contract carrier is a type of what the common law considered private carrier, and in general it is a carrier who contracts with shippers individually and who chooses among shippers and who does not hold himself out to carry for the general public. In practice the definition has often become a matter of administrative ruling, and carriers are required to fit themselves to the legal definition of a contract carrier to operate as a contract carrier.[6]

As used today, the term private carrier is a loose one and usually includes all carriers except common carriers and contract carriers. There are several other classifications of carriers which are widely used and which should be noted. Carriers for hire are all those who receive money for the use or service of their vehicles, including some private as well as all common and contract carriers. At one time Oklahoma regulation included among private

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4 "The common law has in many respects been superceded, so far as motor carriers engaged in interstate or foreign commerce are concerned, by a system of statutory regulation enacted by Congress." Contracts of Contract Carriers, 1 M.C.C. 628-638. This situation is true for all carriers.

5 Ibid.

6 Contract carriers must make their contracts according to the specifications in Contracts of Contract Carriers, loc. cit., in the case of interstate operations.

carriers only those who were for hire or who made a special charge to their customers for delivery service, and therefore included some retail and wholesale merchants but not all of them. Later the group of private carriers subject to regulation was widened to include all businesses operating motor vehicles in the furtherance of a commercial or industrial enterprise. Frequent exceptions to such definitions and to certain duties imposed by regulation are found in favor of those carrying only agricultural produce or other specified commodities such as rough lumber and sea fish.

Finally, some regulatory legislation provides for the inclusion under the term motor carrier of a person transporting his own private property by motor vehicle even when such transportation is not done in connection with a commercial or industrial enterprise.[7] Under this broad definition of the term motor carrier, all operation of motor vehicles except the operation of ordinary private passenger cars is specially regulated. For it is important to observe that persons defined by law as motor carriers automatically become regulated.

There are other terms which must be definitely understood, principally the three classes of carriers--"A", "B",

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7 The Motor Carrier Act of 1935 (49 Stat. 543-567), although not including such private carriers in the definition of motor carriers, specifies that the I.C.C. may prescribe hours for employees and safety rules for such carriers. It further provides that if such rules are made for this class of carriers, then these carriers automatically come within the definition of the term motor carrier as given in the act.

and "C" in Oklahoma--but these definitions likewise vary and must be studied in connection with each law.

Something likewise must be said in definition and explanation of what is meant by regulation.

> Public regulation may be of three distinct general forms. One is regulation through taxation. Another is regulation through the police power in the interest of public safety and convenience. The third is regulation of rates, charges, practices, service, and other matters such as this (Interstate Commerce) commission exercises in the case of the railroads.[8]

In explaining the history of regulation, one must necessarily mention regulations of motor vehicles operated by persons other than motor carriers, although this is outside the strict scope of the present study.

The terms permit and certificate are used frequently in the literature of regulation. The term certificate refers to the certificate of public convenience and necessity which must be issued by a regulatory body before common carrier service can be offered. The term permit refers to the authority to operate any other type of service; this authority is granted by the same regulatory bodies as are certificates, but the rules for issuing permits are not so exacting.

A word should perhaps be mentioned concerning documentation. The chapters on legal bases and history are intended to be completely documented so that the reader is aware of the specific sources of all facts stated and would

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8 Coordination of Motor Transportation, 182 I.C.C. 263 (383), 1932.

be able to get easily any additional details of any law or ruling referred to. The chapters on economics and recommendations are not as closely documented because these chapters contain principally observations, analysis, and opinions drawn from facts mentioned in other chapters or in the appendix.

Chapter II

ECONOMIC BASES OF REGULATION

In Chapter IV we will see reviewed legal principles which form the bases for the regulation of motor carriers. In practice closely intertwined with those legal principles, but really forming a foundation in everyday experience for the development and perpetuation of those legal concepts are certain economic characteristics of the motor carrier industry which make regulation desirable and--in a society with our standards and customs of business ethics--inevitable.

Individually, these characteristics of the motor carrier industry which make regulation desirable may be observed in other businesses and industries. But no other industry has the same particular combination of economic characteristics as has motor carrier transportation.

It should be remembered that this chapter is not an exposition of the economics of motor carrier transportation; it is only partially that. It is an analysis of those characteristics of the fundamental economy of motor carriers which make regulation in the public interest desirable.

An enlightening, brief summary of the general characteristics of the industry is furnished by the Interstate Commerce Commission:[1]

> The principal inherent advantages of motor-carrier operation over rail operation are: Unusual flexibility, ability to run through city streets

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1 Interstate Commerce Commission Activities, 1887-1937, p. 211.

> and to make delivery of goods and passengers at more convenient points in centers of congestion; relatively low first cost of initiating operations; ability to use public highways in contrast with the expensive private rights-of-way needed by rails; capacity for speed superior, for short hauls, to that of the rail carriers; and ability, because of its smaller units of transportation, to furnish more frequent service. On the other hand, the principal inherent disadvantages are: The relatively small size of the units involved; the lack of economy in long hauls; and the attractiveness of the occupation to irresponsible, poorly equipped, and insufficiently financed operators.

Use of Public Roads. A motor carrier is necessarily subject to control by government because he must use equipment which government has built directly and which government has intended and uses principally for other purposes.[2] In spite of the opinion to the contrary expressed by some carriers, there seems to be no great amount of evidence that there is any established custom that use of the highways for gain is a right as distinguished from a privilege.

Affect Other Businesses Intimately. Common carriers by motor vehicle, like all common carriers, touch intimately the businesses of many persons, and are thus the subject of direct and vital interest of persons in general just as are banks and postal facilities. Public transportation is a service, like the furnishing of water or electricity, which requires social participation by customers to a marked extent for its successful operation, and like other public utilities becomes a direct object of the interest of society.

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2 Stephenson v. Binford, 287 U.S. 251 (1932); Packard v. Banton, 264 U.S. 140 (1924); Motor Bus and Motor Truck Operation, 140 I.C.C. 685-760 (741), 1928.

This characteristic is operative today to some extent in almost all businesses; the one-price policy in retail stores is made almost compulsory for managers by public opinion. Other characteristics combine with the fact that common carriers touch most other businesses intimately to produce a situation of peculiar importance for common carriers as well as other public utilities.

Concepts of Business Ethics. Important in a practical view of any economic problem are the technical and natural possibilities or the abilities of man. But also important are the attitudes, beliefs, customs, and predelictions of people--whether these are correct or incorrect from the viewpoint of ultimate efficiency or some other standard. As a part of our firmly planted concept of practical business ethics, modern Americans believe that common carriers and other businesses vitally affected with the public interest must serve all patrons impartially and discriminate against nobody.[3] But several economic characteristics of the industry make it frequently against the immediate selfish interest of managers and owners of motor carriers to perform their services impartially and without discrimination. The situation which brings about this conflict between the immediate interests of managers and the social interest will be noted presently. It is this conflict, in the light of our ethical standards, which makes social regulation necessary.

3 Note the recurrence of statutory provisions to this effect in Chapters V and VI.

An Industry of Decreasing Costs. Motor carrier transportation is, until a unit business expands enough to encounter serious terminal congestion, an industry of decreasing costs, the unit costs of carrying passengers or freight normally falling rapidly as the business increases.[4] This characteristic logically results in a willingness on the part of managers and owners to reduce charges and make special concessions regarding service to shippers who can give them increased volume. The railroad industry, whose history demonstrates many of the principles also applicable to motor transportation, has for years been regulated partially because this characteristic is present to an even more marked degree.

At times railroads have suffered heavily from the competition of unregulated motor carriers who deliberately reduced their charges to overload the public highways with business which the railroads were adequately prepared to handle. As long as the motor carrier industry was not regulated, a manager was intelligent in thus cutting rates if and when he could in that way increase the total net revenues of his business. Ultimately the result of such a situation is continued competitive reduction of rates finally below a compensatory level, the impairment of service and safety because of poorly repaired equipment as all transportation

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4 The implications of this principle form the economic foundation for the decision in C. & D. Oil Co. Contract Carrier Application, 1 M.C.C. 329 (332), and in most motor carrier cases before the I.C.C. which involve rates.

businesses lose money, and chaotic conditions (lack of financial responsibility of carriers, unpaid claims, changing and uncertain rates, poor service, possibility that competitors will get secret low rates) in transportation which make for social loss.[5]

Most Costs are Joint Costs. The motor carrier industry, like the railroad industry, is one in which most costs are joint costs. This makes the determination of actual costs of furnishing service difficult or impossible to determine on a unit basis.[6] In practice, experience has shown that individual rates bear little direct relation to the actual costs of rendering the service or even to the average unit cost of rendering the service. Rate making is an exceedingly complicated subject, and it is usually difficult for anyone not familiar with transportation to understand the principles involved. This is true because, although many familiar principles of pricing are involved in rate making, the controling factors in setting a rate may often be points of consideration which make the procedure seem to an unfamiliar observer to be arbitrary or definitely unjust. The principal considerations of pricing transportation deserve some attention.[6]

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5 Motor Bus and Motor Truck Operation, 140 I.C.C. 685.

6 A comprehensive discussion of the principles underlying construction of freight rates, with special reference to rates for motor carriers, will be found in H. E. Stocker, Motor Traffic Management, pp. 153-244. These complicated principles of pricing of transportation service form perhaps the fundamentally most important and yet the least understood and appreciated economic basis for the need of social regulation not only in the interest of shippers but to protect carriers themselves against each other's competition.

Transportation Prices. Constructing a rate schedule is not a science and is a technical subject in itself too lengthy to allow of its discussion here. But the fact is important that competition of many types, value of the commodity carried, state of the industry served, and a great many other factors which at first blush appear as poor pricing principles are often justly the controling factors in setting an individual rate. In all of the quagmire of rate-fixing considerations there is at least one plot of solid economic ground--the total revenues of each carrier must pay the total expenses of that carrier including a reasonable return on the investment. Otherwise social loss will result eventually from the unwillingness of investors to provide the equipment and furnish the transportation society needs.

When some sort of monopoly control is exerted over transportation, the management of the monopoly will be able to set the rates in accord with the principle of what the traffic will bear. Experience has shown that enough of the high-priced commodities can be made to pay more than the cost of shipping them to more than make up for some low-priced commodities which businessmen can afford to ship only when the rates cover not quite all of the average unit cost of carrying them. Thus the monopoly will be able to cover total expenses, plus return on the investment, with the total revenue.

This situation may seem at first to be unjustifiable taxation of some commodities and subsidy of others, but it really benefits all shippers and the transportation agency when it is applied reasonably. If the low-priced commodity would not be shipped at all (over the transportation agency in question) when the rate covered the full average unit cost, then the high-priced commodities would have eventually to pay for the entire upkeep of the transportation agency. That is, shippers of the high-priced goods would have to pay the entire cost of the transportation agency if each good were charged the average unit cost of its transportation. The shippers of the high-priced goods would be paying all of the fixed costs of the agency and all of the variable costs.

But if a low rate on low-priced commodities will bring in the business of shippers of such goods and this low rate covers all of the variable costs added by the new traffic and in addition yields something else, then the shipper of the high-priced goods has been helped even if the rate on the low-priced goods is not equal to the total cost of transporting them. The shipper of the high-priced goods has had some help in paying for the fixed costs of the transportation agency. If the low-priced goods had not been secured as traffic with the low rate, the shipper of the high-priced goods would have been obliged to pay for all of these fixed costs. This analysis applies equally well to all transportation, to one truck, or to one company.

Abuse Under Monopoly. Economical as is this scheme of setting rates according to what the traffic will bear, experience in the field of railroading has shown that it and similar principles of rate making are abused under a system of monopoly of transportation, and social regulation then becomes necessary if for no other reason to prevent the total revenues of the carrier from mounting to unreasonable heights.[7]

But in the field of motor carrier transportation any discussion of natural monopoly is largely hypothetical. One of the important characteristics of the industry is its attractively low first cost and the resulting tendency for small, financially irresponsible operators who are not trained in rate making and are on the borderline of insolvency to enter the field. Such operators are faced with the immediate necessity of obtaining traffic and cash revenues, even though depreciation and other non-cash expenses make the traffic ultimately unprofitable.[8]

Cut-Throat Competition "Natural." Considering this characteristic and others mentioned previously, the field of motor carrier transportation without regulation is one of natural cut-throat competition. Furthermore, the competition is not between complete systems of transportation, as was much of railroad cut-throat competition, but between

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7 H. B. Vanderblue and K. F. Burgess, Railroads; Rates, Service, Management, pp. 3-13.

8 Interstate Commerce Commission Activities, 1887-1937, p. 211.

carriers who specialize in distinct types of hauling. There are common carriers of freight, busses which also carry express, trucks of private businesses which are thrown into the public hauling business during slack seasons, single trucks driven by their improvident owners who must get a load in order to meet the next installment on the truck, companies sincerely trying to put their business on a stable basis who find themselves underbidden by those who carry no liability insurance, and every other type of regular and fly-by-night carrier of freight or passengers.[9]

In this kind of chaotic, mad-scramble competition, no one management can by itself adjust the rate schedules so that each class of traffic pays what it can bear toward the total cost of transportation. Common carriers who attempt to do this find themselves underbidden on the high-class freight by contract carriers who concentrate on this more profitable business and are thus able to charge for it rates that will just cover average unit cost of transportation.

Such a condition of chaotic competition is obviously not to the best interests of the majority of individuals engaged in motor carrier transportation, in shipping freight, riding as passengers, or operating railroads or other competing methods of transportation. It makes for individual losses for most transportation companies, unfair competition between

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9 In addition to Motor Bus and Motor Truck Operation, loc. cit. (702), see Gallock Application for Extension of Operations, 1 M.C.C. 161 (165) and Contracts of Contract Carriers, ibid., 628-638, for discussions of the natural course of unregulated motor carrier competitions and the advisable remedies which have been suggested.

shippers which usually results in higher rates for the small shipper, and most important of all it inevitably brings about poorly repaired transportation equipment, unsafe vehicles on the highways, unreliable service, and similar social as well as individual losses.[10]

It should be noticed that these undesirable results of free entry into and free competition in the motor carrier industry are only partly the result of lack, on the part of managers, of regard for the public welfare. To be sure using unsafe equipment, failure to fulfill contracts, and failure to carry liability insurance are much the same type of abuse of public patronage as is the use of narcotic drugs in patent medicines; and regulation is founded upon the same principle in both cases. But many of the ills brought to the motor carrier industry by free competition come from each individual manager ethically following his own immediate (not long-time perhaps) interest.

It is to a contract carrier's interest to cut rates on a high-priced commodity below those of common carriers if he can thus get enough steady volume of shipments to make the carriage of the freight profitable, and it is in the immediate interest of the shipper to accept the lowest rates offered by any responsible carrier. But these low rates may be barely compensatory to the most efficient and luckiest contract carrier in the field. His competition may drive out of business not only the inefficient (who are normally

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10 Contracts of Contract Carriers, loc. cit.

driven out of business in any line of endeavor under free competition and are so driven out in the interest of society) but also the efficient common carrier who holds himself out to carry whatever is offered by the public. For the common carrier then finds himself being offered all of the low-class freight which seldom pays its own way and which is about all that is left to him by the unregulated contract carriers.

Under unregulated competition, the common carrier finds himself in much the same position as a doctor who treats many of his patients free because of their poverty and who finds himself in competition with another physician who for some reason has no patients but the wealthy and well paying, many of whom he has lured away from his more charitable colleague.

Under unregulated competition, large contract carriers and private carriers who consolidate shipments and use their equipment to its full economic advantage and thus reduce their unit overhead costs will survive, as will other carriers in favored or efficient circumstances. But the small contract carrier who is unable to bargain for large volume to compensate for the low prevailing rates, the small shipper who sees his larger competitor able to trade for transportation favors of various kinds, many common carriers, and the general public which ships only occasionally will find themselves deprived of service, revenues, or otherwise harmed obviously and immediately.[11]

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11 See Contracts of Contract Carriers, loc. cit.

We have seen that for several reasons monopoly does not follow to a great extent as the logical outcome of unrestrained competition in the motor carrier field, as it once did in the field of railway transportation. But the social losses are perhaps as disastrous from the lack of regulation in one field as in another of the two.

Regulation is Social Management. Since many of the practices which lead to social loss in the motor carrier industry if unregulated are not unethical or wasteful in most lines of business, motor carrier regulation is not merely police regulation. It does, of course, include police regulation. But it is much more fundamentally an economic as distinguished from a political need than is police regulation. Regulation of rates, charges, tariffs, routes, and other business practices of motor carriers is definitely a part of the management of those businesses. These phases of business management must be administered socially not because individual managers are incapable. Social management is needed because economical management of public transportation has by experience and analysis been shown to be possible only when the managing authority of many phases of transportation controls all transportation facilities and is guided by the social interest.[12] This is the economic, the

12 "It should be remembered that the problem with which we are here concerned is essentially an economic one; legislation and regulation are involved but only indirectly. The primary purpose sought is the more effectual coordination of rail, water, and motor transportation." Coordination of Motor Transportation, 182 I.C.C. 263-430 (275), 1932.

ultimately real, basis of regulation of motor carriers as well as other public transportation agencies, public utilities, and banks.

SUMMARY

Government furnishes the roads on which motor carriers operate, and therefore government regulates their use of the roads.

Americans have a firm belief that businesses serving the public should offer the same services and rates to all, without discrimination of any kind. Certain economic characteristics of the motor carrier industry make it to the intelligent self-interest of managers of motor transportation to discriminate to some extent between customers or would-be customers. Regulation is needed to enforce our concepts of fair competition.

Because the industry is one of joint costs, decreasing costs, and small units, competition is destructive of adequate and continuous public service and of fair returns on investments in property devoted to such public service. Regulation is needed in the interest of preserving such service.

Chapter III

PROBLEMS AND OBJECTIVES OF REGULATION

This chapter is a discussion of the principal problems which regulation of motor carriers, whether those designing the regulation are conscious of the problems or not, must answer. It seems reasonable that merely calling attention to the existence of the problems would encourage and facilitate more logical solutions. Later, in discussing conclusions and steps toward solutions which the writer believes have been or are likely to prove reasonable, part of these questions will be answered.

In setting forth problems of regulation it will be necessary to enumerate settled objectives of regulation in order to put the problems in their proper settings. It may well be that to one who disagrees with the established objectives, the objectives themselves constitute fundamental problems. This observation has not been ignored. Justifications and bases for the objectives are to be found discussed in other parts of this work.[1]

TAXATION

Taxation of motor carriers is a part of several other vital problems. Historically first, perhaps, is the problem: Should transportation be subsidized? Railroads, ships, airplanes, motor carriers and private motor vehicles, and other forms of transportation have from time to time been sub-

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1 Chapters II, V, and VI.

sidized in one way or another in this country, but there seems still to exist no well formulated and widely accepted theory regarding the justification of subsidy of transportation. Historically, the observation presents itself that Americans have usually been willing to subsidize their vitally needed transportation agencies for either economic or political reasons when transportation could not be made readily available through unaided private enterprise. There are justifying reasons for a general policy of subsidy of transportation, but many of these reasons involve judgments of political as well as economic character, and there seems to be little public agreement upon their merits. Americans generally distrust subsidy of another man's enterprise.

Payment for Highways. A phase of this general question of importance to all motor vehicle operators, whether motor carriers or not, is: Shall users of the highways pay for them? Federal expenditures on highways have been recouped through taxation of motor transportation,[2] and the trend seems definitely to be toward financing state and local highways with special taxes on motor vehicles or carriers.[3] Roads, highways, and streets were originally built, however, largely by land owners' tax payments,[4] and the extent to

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2 Table III, appendix.

3 "Looking forward, it is reasonable to assume that for the country as a whole...contributions from highway users will be sufficient to cover the full cost of state and county highways and an increasing portion of town roads." Quoted in The Oklahoma Motor Carrier, January-February, 1939, p. 4, from Harold G. Moulton, The American Transportation Problem, 1933, p. 557. See Table VIII, appendix, for analysis of sources of funds spent on roads in Oklahoma in 1935.

4 Coordination of Motor Transportation, loc. cit., appendix G by C. S. Morgan, pp. 413-428.

which that original investment constitutes a continuing subsidy in favor of highway users would be an interesting and somewhat useful problem, but one difficult of solution.

There is clearly apparent on this question a public opinion that users of the highways should from the present forward pay for expenditures on highways. But city streets directly benefit in most cases the property owners who largely pay for them. If this opinion is accepted as the will of the people, a basis is formed for more definite planning of taxation, but there still remains the important question: How is the value of use of the highways by motor carriers to be measured so that equitable means of taxing them for their use of the highways may be devised?

Other Tax Problems. We have presumed because of general opinion and because of reasonableness of this opinion that motor carriers should repay the governments, state, federal, and local, for their use of the highways. But railroads (except for governmental and private subsidy which was certainly substantial in many cases) built their own roadbeds and now pay ad valorem taxes on those roadbeds. Should motor carriers pay a "property tax" based on the use-value of the highways to them to compensate for the ad valorem taxes they would pay if they themselves owned their roadbeds?

Regarding other problems of taxation of motor carriers, such as mandatory employees' compensation insurance, income taxes, and many other levies, nothing will be mentioned here, not because they are not important nor because they do not

vitally concern motor carriers, but because they are not peculiarly problems of motor carrier regulation. They are problems of taxation broader than any one industry or occupation.

REGULATION FOR PUBLIC SAFETY AND CONVENIENCE

Problems of this phase of regulation are perhaps even more fundamental than any other of regulation, but call for less consideration here because they are largely settled by firm conviction in public opinion and confirmed by general ideals of social responsibility. In the discussion of legal backgrounds,[5] we shall see demonstrated the long-time conviction of the political body that social regulations of virtually all existing types are justified if such regulation is undertaken legitimately in the interest of public safety and reasonable public convenience.

With this conclusion there is little if any serious disagreement among well informed, reasonable persons. Our government, as the representative and agent of society, may prescribe and enforce regulations concerning size, weight, dimensions, and mechanical repair of equipment of vehicles; qualifications and hours of work for drivers; speed limits and rules for driving, including the exclusion of freight and large passenger vehicles from designated highways; and mandatory public liability insurance for the protection of innocent third parties injured or suffering property damage as the result of operation of motor vehicles. Such regu-

5 Chapter IV.

lations are justified if and because they are needed means to protect the public.

Pressing problems do exist, of course, in this phase of regulation. These problems are principally technical and administrative: What are reasonable regulations of maximum weight, size, and dimensions of vehicles;[6] what are reasonable requirements regarding mechanical equipment; what maximum hours of drivers sets the reasonable limit beyond which drivers cannot continue to work with safety to the public; how much insurance should be required for various types and sizes of vehicles;[7] and which of these rules and regulations which are decided to be reasonable should be administered by state and which should be administered by federal authorities?

There appears to be a growing conviction that many rules of this character, especially those regarding size and dimensions and mechanical equipment of vehicles, should be uniform for the entire nation, either through uniform state legislation or through national rules promulgated by the Interstate Commerce Commission under authority of the Motor Carrier Act of 1935.

REGULATION OF RATES, CLASSIFICATIONS, AND SERVICE

It is in the regulation of rates, classifications, and service that regulation becomes in economic fact social

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6 See The Oklahoma Motor Carrier, January-February, 1939, p. 5, for an informative, brief discussion of this point.

7 The rates for motor carrier insurance are also vital problems of regulation. For some indications of the claims on this point made by carriers in Oklahoma, see ibid., May, 1938, p. 6; June, 1938, p. 8; July-August, 1938, p. 6; September-October, 1938, p. 8.

management; prices and policies are set for individual businesses by governmental agencies. Certain objectives in this phase of regulation must be considered before the problems involved in achieving these objectives can be clearly understood.

Continuous and Adequate Service. Because transportation is depended upon by other businesses for vital service, regulation and management must maintain this service continuously and adequately for the needs of the public. Two principal aims are necessary corollaries of this objective. In the first place, with carriers operated by private enterprise, regulation must be so designed and administered that each carrier necessary to public convenience and necessity will receive adequate revenues to pay expenses and a reasonable return on investment. Unless a return on investment reasonable in comparison with other investment opportunities is earned, new equipment needed for transportation will not be provided by private enterprise.

In the motor carrier field the attainment of this objective, as has been explained, ultimately means that common carriers must be protected against the competition of contract carriers and other private carriers who are under no obligation to maintain service for the public. Private carriers will, if not regulated, in many instances take the cream of the traffic and leave for the common carriers traffic which is by itself unprofitable. In such a situation the crippled common carrier business will not bring sufficient

revenues to justify adequate and continuous service; the public which cannot afford to contract with private carriers for the shipment of its goods will suffer.

Known and Stable Rates, Classifications, and Charges. The reasons for this objective are partly concerned with social economy which results when plans can be made and executed efficiently and with transportation costs known before shipments are made. The reasons are partly concerned with the attainment of goals regarding business morality. The American public has the firmly established politico-economic-ethical concept that business competition should not be on the bases of bargaining power gained by size, unequal treatment of customers, or other forms of place, commodity, or personal discrimination, in the field of public utilities at least. In order to achieve this desired stability and uniformity in the field of motor carrier regulation, two conditions are necessary.

The regulatory body must have authority and power to review and adjust rates, classifications, and charges; it must be able to change such to reasonable figures if evidence shows the charge or classification to be unreasonable in the public interest. For this reason regulation of transportation must be broad enough that regulated businesses will not suffer serious losses of revenues from the competition of businesses which are not regulated.

This needed breadth of regulation is involved in another objective of regulation--coordination of all trans-

portation facilities so that needed transportation will be effected at the least possible social cost. This objective is founded upon the solid rock of economy of labor and resources.

The principal theoretical problems involved in the regulation of rates, charges, classifications, and business practices have been solved to the general satisfaction of special students of transportation. The most confusing problems from the standpoint of theoretical analysis probably are concerned with rate fixing. Here the opportunistic policy of "whatever works best is right" seems to be in accord with sound principles of economy, which were discussed in this connection as one of the economic bases of regulation.[8]

In administration, serious problems remain in this phase of regulation. These concern principally details and the division of authority and administration between state, joint, and federal officers. The desire for uniformity and efficiency in many cases indicates the need of concentration of administration under the authority of the Interstate Commerce Commission. But the consideration of peculiar local conditions and the need of administrators familiar with those local conditions suggests the desirability of retaining authority on many matters with state, regional, or local bureaus and officers.

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8 Chapter II.

Chapter IV

LEGAL BASES OF REGULATION

The legality of governmental regulation of motor carriers is based upon three principles: upon the broad and inalienable right of a sovereign government to take steps necessary to protect the health, safety, morals, and welfare of its citizens--the police power--, upon the common law right of government to regulate common carriers as businesses charged with the public interest, and upon the principle that a state may regulate the use of its own property, the highways.

Federal Powers. The federal government derives its constitutional right to regulate motor carriers--except in time of national emergency when its powers presumably would be almost dictatorial--from the United States Constitution, article 1, section 8, which directs in part:

> The Congress shall have power--
> . . . . . .
> To regulate commerce with foreign nations, and among the several states, and with the Indian tribes.

Pursuant to this authorization, Congress has established the Interstate Commerce Commission with jurisdiction over interstate carriers, and the United States courts rule upon the legality of any state action which affects interstate commerce.

Businesses Affected with the Public Interest. That government, both state and federal, has the authority and power to regulate any business, industry, or occupation

affected with the public interest is a principle developed and applied to other common carriers long before it was applied to the regulation of motor carriers; its development need only be mentioned here.[1] This principle forms a clear basis for the regulation of common carriers[2] and can be extended to other motor carriers on occasion,[3] although many rules commonly applied to common carriers cannot legally be used in regulation of private carriers.[4]

The Police Power. Wider in its scope and permitting of broad regulations concerning all motor carriers and even all motor vehicles is the police power, largely reserved to the states by the tenth amendment to the United States Constitution.[5] In Bradley v. Public Utility Commission of Ohio, 289 U.S. 92 (1932), the court explained the breadth of the police power of the states:

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1 See Munn v. Illinois, 94 U.S. 113 (1876).

2 Okl. St. Anno., title 13, sec. 4: "Everyone who offers to the public to carry persons, property or messages is a common carrier of whatever he thus offers to carry."

3 Sproles v. Binford, 286 U.S. 374 (1931). The court said that "we cannot ignore the fact that the State has a distinct public interest in the transportation of persons (whether by common carrier or otherwise)."

4 That the state has no power to apply to all motor carriers the type of regulation traditionally legal only for common carriers is shown by the decision in Smith v. Cahoon, 283 U.S. 553 (1931), in which it is said: "It is true that the statute of Florida does not in express terms demand that a private carrier constitute itself a common carrier, but the statute purports to subject all the carriers which are within the terms of its definition to the same obligations (of obtaining certificates of convenience and necessity). Such a scheme of regulation of the business of a private carrier, such as the appellant, is manifestly beyond the power of the State."

5 "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."

> Regulation to ensure safety is an exercise of the police power. It is primarily a state function, whether the locus be private property or the public highways. Congress has not dealt with the subject (of routing interstate motor carriers over particular highways). Hence, even where the motor cars are used exclusively in interstate commerce, a State may freely exact registration of the vehicle and an operator's license,...may require the appointment of an agent upon whom process can be served in an action arising out of operation of the vehicle within the State,...and may require carriers to file contracts providing adequate insurance for the payment of judgments recovered for certain injuries resulting from their operations. The State may exclude from the public highways vehicles engaged exclusively in interstate commerce, if of a size deemed dangerous to the public safety.***Safety may require that no additional vehicle be admitted to the highway.

With the legitimate exercise of this power the federal authority does not interfere.[6]

But this wide power must be used for the legitimate purposes of the police power--protection of the health, safety, morals, or welfare of the citizens--for its exercise to be valid. In interpreting the purpose of acts of states, the Supreme Court has followed when possible the pronouncements of the supreme courts of the states.[7] Thus only when the regulation of interstate commerce is incidental to the main purpose of fostering safety, health, morals, or welfare can the police power of the state be extended over interstate commerce.[8]

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6 All motor carriers, including those operating under authority of the Interstate Commerce Commission, must observe all valid regulations and restrictions respecting the use of highways issued by the states, counties, and municipalities in the exercise of their police powers. House Contract Carrier Application, 1 M.C.C. 725 (735).

7 Frost v. Railroad Commission of California, 271 U.S. 583 (1926).

8 In Bradley v. Public Utility Commission of Ohio, supra,

State Ownership of Highways. The other legal basis upon which state regulation is sometimes placed is ownership of the highways and the consequent right to prescribe rules limiting their use, whether those proposing to use the highways happen to be engaged in inter- or intrastate commerce. That state ownership of the highways is unquestioned and exists in spite of federal grants for road building under the Federal Aid Road Act of 1916[9] and subsequent acts of Congress is clearly stated by the Supreme Court in South Carolina Highway Department v. Barwell Bros., 303 U.S. 177 (1937):

> South Carolina has built its highways and owns and maintains them. It has received from the federal government, in aid of its highways improvements, money grants which have been expended upon the highways....[10]

In Stephenson v. Binford, 287 U.S. 251 (1932), the court found this principle of highway ownership to be an adequate justification for regulation of private contracts entered into by motor carriers:

> Here the circumstance which justifies what otherwise might be an unconstitutional interference with the freedom of private contract is that the

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the court said:

"In those cases (Buck v. Kuykendall, 267 U.S. 307 (1925) and Bush & Sons Co. v. Maloy, 267 U.S. 317 (1925), safety was merely an incident of the denial. Its purpose was to prevent competition deemed undesirable. The test employed was the adequacy of existing transportation facilities; and since the transportation in question is interstate, denial of the certificate invaded the province of Congress. In the case at bar, the...effect of the denial upon interstate commerce was merely an incident."

9 39 Stat. 355.

10 Federal aid legislation in this connection is significant, however, because it has made clear the purpose of Congress that state highways shall be open to interstate commerce. Bush & Sons Co. v. Maloy, supra.

> contract calls for a service, the performance of which contemplates the use of facilities (highways) belonging to the State; and it would be a strange doctrine which, while recognizing the power of the state to regulate the use itself, would deny its power to regulate the contract so far as it contemplates the use.***The Texas statute...rests definitely upon the policy of highway conservation, and the provision now under review is governed by the same principle as that which recognizes the authority of a state to prescribe the conditions upon which it will permit public work to be done on its behalf.

Earlier the court had said in Sproles v. Binford, 286 U.S. 374 (1931), in reviewing the laws of the same state:

> Contracts which relate to the use of the highways must be deemed to have been made in contemplation of the regulatory authority of the State.[11]

Division of Powers. In practical legislation and administration of regulations, the division of powers between the federal government (with jurisdiction over interstate commerce) and the state governments (with jurisdiction over intrastate commerce) assumes considerable importance. Sufficiently precise distinction between the two jurisdictions can be made in theory by a close reading of decisions of the Supreme Court, but it seems likely that "reasonable" considerations must remain of sufficient importance to make future

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11 Thus the state has the clear and undisputed right to levy a tax on vehicles engaged in interstate commerce; but since the state may not tax the privilege of engaging in interstate commerce, in light of the division of powers discussed post, such a tax on interstate vehicles must be affirmatively sustained to be levied only as compensation for use of the highways in the state or to defray the expense of regulating motor traffic. Interstate Transit v. Lindsey, 283 U.S. 183 (1931). That the federal government carefully recognizes primary ownership of the highways is shown in section 207 (b) of the Motor Carrier Act of 1935: "No certificate issued under this part shall confer any proprietary or property rights in the use of the public highways."

decisions in specific cases not perfectly predictable even by one familiar with the broad principles.

To recapitulate, we have seen that the federal government has the enumerated power to regulate interstate commerce, and the states have all of the powers of sovereignty not enumerated in the United States Constitution. But in the use of the police power or in the regulation of the use of its highways, a state may with validity exercise authority over interstate commerce if such exercise of authority is merely incidental to the use of police power or regulation of use of the highways.[12]

The justification of this infringement of state authority on interstate commerce is to be found in the following political safeguard:

> The fact that they (the regulations) affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse.[13]

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12 South Carolina Highway Department v. Barwell Bros., loc. cit. "This Court has often sustained the excercise of that power (to regulate for safety and conservation of highways) although it has burdened or impeded interstate commerce." In Morris v. Duby, 274 U.S. 135 (1926), the court said a state may "rightly prescribe uniform regulations adapted to promote safety upon its highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens."

13 South Carolina Highway Department v. Barwell Bros., loc. cit. A note ibid., p. 184, explains that in situations where such a political safeguard does not exist, state interference is unconstitutional: "State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, have been thought to constitute an impingement upon the constitutional prohibition even though Congress has not acted."

In the same case the court explains that Congress may by default leave some authority over interstate commerce to the states. The court recognizes that

> ...there are matters of local concern, the regulation of which unavoidably involves some regulation of interstate commerce but which, because of their local character and their number and diversity, may never be fully dealt with by Congress. Notwithstanding the commerce clause, such regulation in the absence of Congressional action has for the most part been left to the states by the decisions of this Court, subject to the other applicable constitutional restraints.

In the absence of Congressional action, a state requirement which obliges both intrastate and interstate carriers to carry insurance against possible damages suffered as a result of the carriers' operations within the state by persons other than passengers is valid even as against interstate carriers. But this is exercise of the police power principally and not regulation of interstate commerce per se; a state cannot in practice require a certificate of convenience and necessity as a prerequisite for the operation within its borders of an interstate carrier.[14] But the court also pointed out in these cases that a state cannot require insurance protection of cargo or passengers by an exclusively interstate carrier.

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14 Sprout v. South Bend, 277 U.S. 163 (1928); Clark v. Poor, 274 U.S. 554 (1927). In the Clark case it was held that although the state law required from interstate as well as intrastate carriers certificates of convenience and necessity from the state commission (Ohio Public Utilities Commission), when the commission publicly recognized that it had no right to require such a certificate from interstate carriers and had announced that such would be issued to interstate carriers upon payment of the required tax, even an interstate carrier must pay the tax and receive the certificate before it had the lawful privilege of using the highways.

Except in cases in which there is conflict with federal regulatory powers, the presumption of legality is generally in favor of state authority. In Interstate Busses Corp. v. H. S. Ry. Co., 273 U.S. 45 (1927), the court held that a carrier doing business both interstate and intrastate has the burden of showing that the enforcement of a state statute requiring a license to do intrastate business operated to prejudice its interstate business.

Borderline Cases. Some light is thrown upon the shadowy line beyone which a state may not go in its encroaching regulations upon interstate commerce by a consideration of two cases in the United States Supreme Court in 1936, both coming on appeals from the Supreme Court of New Mexico. In Morf v. Bingaman, 298 U.S. 407, the court reviewed the legality of a flat fee of $7.50 charged by the state for the privilege of using the highways in transporting each automobile in a "caravan." The state supreme court had ruled that the tax was levied as a charge for the extra wear and tear on the highways and the extra police protection which evidence indicated was entailed by that method of transporting automobiles.

Accepting the purpose of the act as construed by the state supreme court, the United States Supreme Court sustained the legality of the tax, and in doing so explained its decision:

> We cannot say that these circumstances (transporting cars in caravans) do not afford an adequate basis for special licensing and taxing provisions, whose only effect, even when applied to interstate traffic,

> is to enable the state to police it, and to impose upon it a reasonable charge, to defray the burden of the state expense, and for the privilege of using the highways of the state.
>
> As the tax is not on the use of the highways but on the privilege of using them, without limitation as to mileage, the levy of a flat fee not shown to be unreasonable in amount, rather than a fee based on mileage, is not a forbidden burden on interstate commerce.
>
> . . . . . .
>
> Nor is it important that a part of the fees collected is not devoted directly to highways maintenance, the cost of which the state pays in part from the proceeds of a general property tax.

In Bingaman v. Golden Eagle Western Lines, Inc., 297 U.S. 626, the court ruled against the legality of a gasoline tax applied to gasoline which busses purchased outside of the state and brought into the state for use in regular interstate commerce. The ruling specified that the state was within its rights in applying the gasoline tax to gasoline sales or withdrawals from storage for use to compensate it for the use of its highways, but the court held that states can not "impose an excise tax for the use of an instrumentality of interstate commerce."[15]

Classification of Carriers. If regulation of common carriers is to be carried even so far as the requirement of a certificate of public convenience and necessity as a prerequisite for operation, the state must classify carriers.

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15 Italics supplied. Two leading cases on taxation of gasoline used in interstate commerce are Nelson v. Kentucky, 279 U.S. 245 (1928), and Central Transfer Company v. Commercial Oil Company, 45 Fed. (2d) 400. In Bowman v. Continental Oil Company, 256 U.S. 642 (1921), the court upheld the application of a gasoline tax as a valid excise tax upon sale or use in interstate commerce. For a comprehensive discussion of the constitutionality of the gasoline tax, see Finla G. Crawford, The Gasoline Tax in the United States, 1934, pp. 41-44.

It can not apply such a regulation to any except common carriers. Within the constitutional limitations, the state has a wide latitude in making classifications of motor carriers.[16] The principal limitation in this respect is the fourteenth amendment to the United States Constitution.[17]

We have seen that a state can not arbitrarily apply to all motor carriers rules applicable only to common carriers, when there is no attempt at classification.[18] But the states are also bound to make their classifications reasonable. They can regulate both contract and common carriers, but what are actually common and contract carriers must be so classified; a motor carrier which in fact is a private or contract carrier cannot by legislative fiat be declared to be a common carrier.[19] Any form of classification which does not discriminate between persons engaged in substantially the same type of activity and which is in accord with the economic realities of the case is open to the states in the exercise of their discretion.

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16 Smith v. Cahoon, 283 U.S. 553 (1931). "The principle that the State has a broad discretion in classification in the exercise of its power of regulation is constantly recognized by the decisions of this Court."

17 The fourteenth amendment declares, in part: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

18 Smith v. Cahoon, supra.

19 Frost v. Railroad Commission of California, 271 U.S. 583 (1926); Smith v. Cahoon, loc. cit.; Michigan Public Utilities Commission v. Duke, 266 U.S. 570 (1925): "Moreover, it is beyond the power of the State by legislative fiat to convert property used exclusively in the business of a private carrier into a public utility, or to make the owner

CONSTITUTIONAL PROVISIONS OF OKLAHOMA

When the Constitution of Oklahoma became effective November 16, 1907 by virtue of President Theodore Roosevelt's proclamation of statehood, it contained provisions for extensive regulation of motor carriers, although the language of the constitution itself indicates that its framers thought only of railroads when they used the term "transportation company."[20] Specific legislation was necessary before these constitutional provisions became actually effective as regulation. Sections 15 to 35 inclusive of article 9 of the constitution created the Corporation Commission, provided for the appointment of its three members, and carefully defined its powers and duties:[21]

> The Commission shall have the power and authority and be charged with the duty of supervising, regulating and controlling all transportation and transmission companies doing business in this State, in all matters relating to the performance of their public duties and their charges therefor, and of correcting abuses and preventing unjust discrimination and extortion by such companies; and to that end the Commission shall, from time to time, prescribe and enforce against such companies, in the manner hereinafter authorized, such rates, charges, classifications

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a public carrier, for that would be taking private property for public use without just compensation, which no State can do consistently with the due process of law clause of the Forteenth Amendment."

20 Oklahoma Constitution, art. 9, sec. 20, speaks of the "train schedule of any transportation company...." A motor carrier operating busses under the jurisdiction of the Corporation Commission is now a transportation company. Temple v. Dugger, 164 Okl. 84, 21 P. (2d) 482. Also, of course, a railroad is a transportation company as defined in art. 9, sec. 34 of the constitution. Luck v. State, 47 Okl. 648, 150 P. 151.

21 The quoted paragraph is sec. 18. All of the constitutional provisions quoted hereafter in reference to the Corporation Commission are taken from sections 15 to 35 inclusive of article 9.

> of traffic, and rules and regulations shall require them to establish and maintain all such public service, facilities, and conveniences as may be reasonable and just, which said rates, charges, classifications, rules, regulations, and requirements, the Commission may, from time to time, alter or amend.

The Commission was also given the power to inspect the books and records of all transportation and transmission companies and to require special reports and statements under oath from such companies; it was instructed to keep itself fully informed concerning the physical equipment and manner of operation of railroads in the state, and was instructed to make and enforce such requirements necessary to prevent unjust or unreasonable discrimination against any person, place, or classification of traffic. There were also provisions for ample public notice by the Commission before any rate or regulation could be proclaimed as in force, and the Commission was required to hold a public hearing at which objection and evidence could be introduced by any interested party before the regulation became effective. If the proposed rule or regulation was directed against a company or companies by name, the companies concerned were given the right of process to enforce the attendance of witnesses.

Appeal to Supreme Court. Appeal from an order of the Corporation Commission is available directly to the Supreme Court of Oklahoma by virtue of section 20. On a case appealed from the Corporation Commission, the supreme court will hear no new evidence from the complaining party directly but will review the evidence as certified in the report of the Commission. If the court believes additional evidence

would be pertinent, it may remand the case back to the Commission and require the Commission to take and certify the new evidence.[22]

When the Oklahoma Supreme Court reverses an order of the Corporation Commission, the court must at the same time proclaim the order the Commission should have made when the order reversed was originally made. No such substitute order shall be retroactive, and even after the court proclaims such a substitute order the Commission retains the authority to change and amend all orders to fit changes in the situation.[23]

An extensive list of specific regulatory powers and duties of the Corporation Commission was given in the constitution. The Corporation Commission was given the power to compel testimony of officers of companies under its jurisdiction,[24] and was directed to ascertain the amounts spent in construction of Oklahoma railroads and to make this and other information about finances, such as salaries and amounts of securities outstanding, public information.[25] There was a general prohibition of a charge for a short haul greater than or equal to the charge for a long haul including the short haul and in the same freight classification. But the Commission was directed to give its authority for certain exceptions such as special excursions and the meeting of competition of points outside the state.[26]

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22 Sec. 22.
23 Sec. 23.
24 Sec. 28.
25 Sec. 29.
26 Sec. 32.

The Commission was also charged with the duty of investigating through rates for transportation charged in the state and reporting any violations of Interstate Commerce Commission rules to the federal authorities and praying for enforcement of the rules.[27]

Pursuant to section 35, the legislature of Oklahoma has the constitutional right to change any of the provisions contained in sections 18 to 35 inclusive of article 9, which are the sections regarding the Corporation Commission.

Construction of Commission's Powers. A brief consideration of court decisions affecting the powers and the limitations upon the powers of the Corporation Commission is necessary to make its position clear. The Commission is endowed with legislative, executive, and judicial powers.[28] The Commission exercises legislative powers in prescribing rules, judicial powers in conducting hearings and in recording evidence regarding the proposed or effective rules, and executive powers in administering the regulation.

But broad as are the powers of the Commission, they have strict limitations. Regulation must not be extended so far as to constitute management of a company, and a rule of a company under the Commission's jurisdiction must not be set aside unless it is contrary to law or clearly results in injustice or discrimination; the mere fact that a rule for management of a public utility is not the best possible rule

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27 Sec. 32.

28 Ft. Smith & W. Ry. Co. v. State, 25 Okl. 866, 108 P. 407; Atchison, T. & S. R. Ry. Co. v. State, 82 Okl. 288, 200 P. 232; St. Louis-San Francisco Ry. Co. v. State, 81 Okl. 298.

is not alone sufficient to warrant its abrogation by the Commission.[29] The Commission must confine its decisions to matters affected with the public interest and must leave private differences, even between parties before it in a hearing and under its jurisdiction, for determination by a court of competent jurisdiction.[30]

Decisions of the state supreme court have held that the Supreme Court of Oklahoma has exclusive jurisdiction among state courts to review, reverse, correct, or annul any action of the Corporation Commission within the scope of its authority.[31] The only exception to this rule is that of legitimate equity suits to be noticed later.

Federal Judicial Jurisdiction. But the federal Supreme Court has ruled in this connection that where the review of a state commission's rate order is judicial, parties have a constitutional right under the due process of law clause of the fourteenth amendment to introduce evidence in support of their claims.[32] But the constitution of this state forbids the submission of new evidence by a company appealing to the state supreme court for review, and therefore the review is legislative or administrative, not judicial. In the absence

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29 Fred Harvey v. Corporation Commission of Oklahoma, 102 Okl. 266, 229 P. 428, 36 A.L.R. 1445. Regulation must not become management of any one company, but in economic fact regulation constitutes part of management of the industry, as is explained supra, p. 21.

30 Western Union Telegraph Co. v. Carter, 93 Okl. 269, 220 P. 635.

31 Russell Petroleum Co. v. Walker, 162 Okl. 216, 19 P. (2d) 582; Southern Oil Corp. v. Yale Natural Gas Co., 89 Okl. 121, 214 P. 131, affirmed 45 S. Ct. 97, 266 U.S. 583 (1924), 69 L. Ed. 455; Oklahoma Natural Gas Co. v. Russell, 261 U.S. 290 (1923).

32 Carey v. Corporation Commission of Oklahoma, cited post.

of a definitive decision by the Oklahoma Supreme Court that an order of the Corporation Commission is subject to judicial as distinguished from this legislative review in the state courts, the federal district court and superior federal courts have jurisdiction to entertain injunction suits regarding the rules and regulations of the Commission.[33]

This construction differs somewhat from that placed by the federal courts upon the powers of the federal regulatory body, the Interstate Commerce Commission. The Supreme Court has repeatedly expressed itself as being very reluctant to question findings and evidence as certified by the Interstate Commerce Commission, and contents itself with examining the legality of the Commission's proceedings.[34]

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33 Oklahoma Gas & Electric Co. v. Wilson & Co., Inc. of Oklahoma (U.S.C.C.A. Okl.) 54 F.(2d) 596; Carey v. Corporation Commission of Oklahoma (U.S.D.C. Okl.) 9 F. Supp. 709, affirmed Corporation Commission of Oklahoma v. Carey, 56 S. Ct. 300, 296 U.S. 452 (1935), 80 L. Ed. 324.

34 Western Paper Makers' Chemical Co. v. United States, 271 U.S. 268 (1926): "The determination by the Interstate Commerce Commission of the question whether a rate is reasonable or discriminatory is conclusive if supported by substantial evidence, in the absence of any irregulatiry in the proceeding or error in applying rules of law." In Mississippi Valley Barge Line Co. v. United States, 292 U.S. 282 (1934), the court said: "The settled rule is that the findings of the Commission may not be assailed upon appeal in the absence of the evidence upon whence they were made." Spiller v. A. T. & S. F. Ry. Co., 253 U.S. 117 (125); Chicago, I. & L. Ry. Co. v. United States, 270 U.S. 287 (295) (1926); Louisiana & Pine Bluff Ry. Co., v. United States, 270 U.S. 148. "The appellant did not free itself of this restriction by submitting additional evidence in the form of affidavits by its own officers. For all that we can know, the evidence received by the Commission overbore these affidavits or stripped them of significance. The findings in the report being accepted thus as true, there is left only the inquiry whether they give support to the conclusion. Quite manifestly they do."

State Equity Jurisdiction. Section 24 of article 9, Constitution of Oklahoma, specifically provides that the

> right of any person to institute and prosecute in the ordinary courts of justice, any action, suit, or motion against any transportation or transmission company, for any claim or cause of action against such company, shall not be extinguished or impaired...

because of any penalty imposed by the Corporation Commission; but in no such case may the reasonableness of a ruling of the Commission prescribed within its authority be questioned as long as the ruling is in force. Furthermore, according to this section, no case "based on or involving any order of the Commission" can be heard or disposed of against the objection of either party while the order is suspended in its operation by the state supreme court.

Under this section, the Commission does not have exclusive jurisdiction to compel public service companies to render services which it is their plain duty to perform, and district courts have jurisdiction at least concurrent with the Commission in this respect.[35]

In Pioneer Telephone & Telegraph Co. v. State, 40 Okl. 417 (1914), 138 P. 1033, the Oklahoma Supreme Court pointed, furthermore, that there are three remedies open to a party complaining of an order of the Corporation Commission: appeal to the Commission for a re-hearing and change of the order, appeal to the state supreme court for a review of the order, and the right guaranteed by the Bill of Rights of the

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35 Southwestern Natural Gas Co. v. Cherokee Public Service Co., 172 Okl. 325, 44 P. (2d) 945.

Oklahoma Constitution of a direct suit in a court of equity power. As a matter of practical procedure, the court advised that the three remedies be tried in the order named, but emphasized that in spite of section 24 of article 9, the guarantee of relief in the courts of equity could be denied no citizen, not even in a suit against the Corporation Commission.

Chapter V

HISTORY OF OKLAHOMA'S REGULATION

Oklahoma's first and second legislatures found no problem of motor vehicle regulation. The third legislature, meeting in 1911, created and established the highway department and installed the first of the state's many highway commissions to constitute the department.[1] The commission's duties were made principally those of getting information from and offering advice to county authorities, who were engaged in the actual task of road building for the new state. This act[2] quite incidentally provided for the licensing of automobiles in the state for the payment to the state highway department of a fee of one dollar for each vehicle.

First Graduated License Fee, 1915. Four years later the first comprehensive motor vehicle regulation act became effective.[3] A new highway commission was created, and its personnel was given increased powers to supervise and coordinate the work of the 77 boards of county commissioners in an effort to develop a truly state highway system. Article 4, concerning motor vehicle registration, levied annual license fees on each vehicle at rates of 50, 40, and 30 cents per horse power for the first three years' registrations respectively and 20 cents per horse power for all years thereafter. These fees were to be paid in lieu of all other taxes, and local governments, although permitted to make safety

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1 Authorized by the constitution, the highway department is regarded as continuing since statehood. Highway commissions have come and gone with legislative statutes.

2 Session Laws of Oklahoma, 1910-11, chap. 105.

3 Ibid., chap. 173, art. 4.

regulations, were forbidden to tax or license motor vehicles. Reciprocity was provided for in the exemption of foreign-licensed vehicles from registration requirements. This act also contained the now familiar rules of the road and the state's first regulation based on highway conservation; it provided that after January 1, 1917, no wagon of one-ton capacity or more could be sold in Oklahoma with iron or steel tires less than three inches wide. Ten percent of the revenue collected from the license fees was to go to the general revenue fund, and the remainder was to go to the road funds of the counties collecting it, except that cities in each county should receive 25 percent of the county's share for street and alley improvement.

Meeting in extraordinary session the following year, the legislature exempted electrical cars from registration, restoring to them the incidence of ad valorem taxes[4], and mitigated the highway conservation feature of the 1915 law by forbidding wagons only if they were of two-ton capacity or more and had unsuitable tires.[5]

State Aid to Highways, 1917. In its regular session the following year, the sixth legislature made more extensive provisions for state aid to highways, appropriating a million dollars for each of the two following fiscal years.[6] It also provided for the more adequate enforcement of the registration law by requiring the licensing of each manufacturer

4 Session Laws of 1916, chap. 17.
5 Ibid., chap. 41.
6 Session Laws of 1917, chap. 238.

or automobile dealer in the state for an annual fee of $15, required reports from dealers on every car sold,[7] and made the defacing of serial or other identifying numbers on an automobile a criminal offense.[8]

Specific authorization of city busses, subject to reasonable regulation and/or occupation tax and bond requirements, was granted in March, 1919, to any "person, firm or corporation," and it was provided that:

> Any such person...furnishing such jutney servic (sic)...shall be subject to taxes or license fee for such vehicles...as are required by the laws of the State[9] of Oklahoma, and to such reasonable occupation tax by the ordinances of such city and no other.[10]

Classification of Vehicles, 1919. In the same session of the seventh legislature, and in line with the trend of more complicated regulation, an act[11] was passed which revised the scale of registration license fees on the basis of manufacturer's list price for automobiles and of carrying capacity for trucks. This was the first classification of motor vehicles on the basis of use for licensing purposes in this state. For passenger automobiles, the yearly fees were: $10 on a list price of $500 or less and 75 cents additional on each $100 or major fraction thereof more than $500 in the list price.

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7 Session Laws of 1917, chap. 195.
8 Ibid., chap. 196.
9 A fee of $50 per annum for each car operated had already been ruled reasonable in Ex Parte Boyle (Tex. Crim.) 179 S.W. 1193. A license fee of $5 per annum for each passenger seat capacity and $4 per annum for a driver's permit was ruled not unreasonable in Allen v. Bellingham, 95 Wash. 12, 163 Pac. 18.
10 Session Laws of 1919, chap. 129.
11 Ibid., chap. 290.

For trucks the schedule of fees was:

Carrying Capacity in Pounds*	Yearly License Fee per Vehicle
Not more than 1,500	$15
1,501 to 2,000	20
2,001 to 3,000	25
3,001 to 4,000	40
4,001 to 6,000	60
6,001 to 8,000	100
8,001 to 10,000	300

*Figures for the lower limits of the class intervals except the first one are different by one pound from figures in the statute, but the meaning expressed is that of the statute.

The fee for all vehicles except trucks of five tons or more carrying capacity which had been licensed two or more successive years in this state was reduced by 20 percent of the previous year's fee each year for three years but in no event was made less than $10 per year. Each dealer was sold four transferable license plates for his new cars or demonstrators for a fee of $25 and could get extra individual plates for $12.50 each. All registration license fees except those of manufacturers and dealers were made in lieu of all taxes, general or local, to which motor vehicles might be subject otherwise as personal property. The allocation of license fee revenues was virtually copied from the 1917 law.

As late as March, 1921, when an act legalized the operation of automobile races by corporations,[12] bus and truck lines were as yet not mentioned in the laws of Oklahoma. But the young state was busy encouraging counties through the state department of highways and through a direct appropriation

12 Session Laws of 1921, chap. 26.

of $80,000[13] to match federal aid in having constructed the roadbeds over which the motor carriers of the future would operate.

REGULATION OF COMMON MOTOR CARRIERS, 1923-1929

The Motor Carrier Act of 1923[14] brought motor carrier regulation as an accomplished fact; it was not merely a forerunner of real regulation yet to come. On March 28, 1923, extensive regulation of intrastate common carriers by motor vehicle in Oklahoma emerged as full-grown as a warrior sprung from a dragon's tooth. The administrative machinery was at hand in the Corporation Commission, which had already practiced the techniques of requiring certificates and making rules in its regulation of railway transportation. The act specifically provided that:

> All control, power and authority over railroads and railroad companies now vested in the Corporation Commission is hereby specifically extended to include such motor carriers.

Applied to Intrastate Common Carriers Only. The act, which is the basis of all legislation of like kind in Oklahoma since 1923, applied only to intrastate common carriers.[15] But the regulatory powers and duties specifically assigned to the Commission were broad and important. The Commission was authorized to supervise, regulate, fix either maximum

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13 Ibid., chap. 245.

14 Session Laws of 1923, chap. 113.

15 Section 1 of the act reads: "The term 'motor Carrier' when used in this act means any person, firm, business, trust, or corporation, lessee, trustee or receiver, operating any motor vehicle with or without trailer or trailers attached, upon any public highway for the transportation of passengers or property for compensation between fixed termini or over a regular route even though there may be periodic or irregular departures from said termini or route."

rates, minimum rates, or both maximum and minimum rates, fares and charges; to establish and supervise accounts, schedules, service and safety; to prescribe a uniform system and classification of accounts which would become mandatory for carriers under its jurisdiction; to require the filing of monthly, annual, and other reports if necessary; and to "supervise and regulate motor carriers in all other matters affecting the relationship between such common carriers and the traveling and shipping public."[16]

Carriers to which the act applied were required to obtain from the Corporation Commission certificates of convenience and necessity as a prerequisite for operation. The Commission was given wide discretion in refusing, granting, or granting in part, after a public hearing, any request for a certificate, and was authorized "at any time after a hearing and for good cause (to) suspend, alter, amend or revoke any such certificate."[17] Carriers "must operate and furnish service in strict conformity with the current existing terms and provisions of their respective certificates of convenience and necessity."[18] Applications for certificates were required to contain full information on the personnel, finances, and physical equipment of the petitioner.

Motor vehicles with a gross weight, including load, of more than 15,000 pounds were banned from the highways unless special permission were granted by the Commission.

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16 Sec. 2.
17 Sec. 3.
18 Sec. 4.

The First Mileage Tax. On carriers subject to the act, it levied a special tax of one-fifth of one cent per mile traveled per vehicle. The mileage was to be computed on the basis of the trips scheduled and a 30-day month even if some of the scheduled trips were not made, but any extra trips or extra vehicles on scheduled trips were to be reported and taxed. The tax money was paid monthly to the state highway commission and allocated to the counties in proportion to the mileage traveled in each county and was "to be used by each respective county receiving the same for construction, maintenance, repair and upkeep of the highways or streets over which said carrier operates."[19]

Other provisions of the original act of 1923 related to the required liability insurance bond for injury to persons or loss or damage to property, bond for faithful performance of the certificate granted by the state, safety rules, and the authority of the Commission to prescribe additional rules and regulations.

Other legislation of the same session regulated the weight, speed, kind of tires, and width of all vehicles except passenger vehicles using pneumatic tires, assessed criminal penalties and civil responsibilities for violation, provided procedure for suits growing out of violations of these rules,[20] and provided for the keeping of an "autofacture of title" showing ownership of each automobile, to be kept by the state highway department.[21]

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19 Sec. 6.
20 Session Laws of 1923, chap. 194.
21 Ibid., chap. 221.

The First Gasoline Tax, 1923. Oklahoma's first gasoline tax, of one cent per gallon, was levied by an act of March 23, 1923, the entire revenue to be distributed to counties for use in constructing and maintaining state highways.[22]

The First Corporation Commission Order. Promptly complying with the Motor Carrier Act of 1923, the Corporation Commission issued on April 17, 1923 its proposed order relative to motor carriers, announced and held a public hearing on June 11, 1923, "the representation of the motor transport industry in Oklahoma being general,"[23] and following the hearing issued its definitive order no. 2219 on June 19, 1923, amplifying the statutory rules and regulations. Rule 8 of the new order reworded the statutory definition of motor carrier to include "livery or service" cars operating partially within city limits.[24] Carriers petitioning for a changed or new certificate were required to give special notice to clerks of cities on their proposed routes and to notify direct "or clearly indirect" competitors. The Commission announced it would issue a certificate only to one legal person, not to a group.

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22 Ibid., chap. 239.

23 Corporation Commission of Oklahoma, order no. 2219.

24 "Rule 8. The term 'Motor Carrier' means any person, firm, business trust, corporation lessee, trustee or receiver, operating any motor vehicle with or without trailer or trailers attached, upon any public highway of this State for the transportation of passengers or property for compensation between fixed termini or over a regular route even though there may be periodic or irregular departures from said termini or route; and such term includes any motor vehicle operated for compensation between point or points in one city or community and a point or points outside such city

Order 2219 also made definite the conditions on which the Commission would demand forfeiture of a certificate, after a hearing. These causes were: discontinuance of service for five consecutive days without notice to the Commission, violation of any law or regulation of the Commission or of any local traffic ordinance, lapse of service for 30 days (even with notice to the Commission) unless an extension of this period were obtained from the Commission, or lapse of the required insurance. Other rules contained in the order related to forms for monthly reports, newspaper notices of petition for a certificate, and signs showing routes of busses; to regulations of drivers' hours of service[25] and qualifications and required licenses of drivers, to safety provisions, and other similar details.

Before granting a certificate, the Commission demanded that the applicant show himself ready, willing, and able financially and in his personnel and equipment to perform the service, to show that he would do a sufficient business to enable him to pay operating expenses and yield a reasonable return upon the investment, and that sufficient need existed for his services. He must show that he could thus operate profitably without materially reducing earnings of

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or community or in a different city or community giving irregular and limited service not over established route or routes, such vehicles being commonly referred to as 'livery or service' cars."

25 The provision was a maximum of 14 hours of continuous duty for any one time and at least 10 hours of rest before returning to duty again after having been on duty for the maximum time allowed.

any carriers already giving satisfactory and complete service over the route in question.[26]

Rise of the Gasoline Tax. On March 7, 1924, not quite a year after the first gasoline tax was levied for highway purposes, the tax was increased to two and one-half cents per gallon. The original one cent continued to go to counties for road building, and the additional cent and one-half was allocated to the state highway construction and maintenance fund, at least 75 percent of which was specifically ordered to be spent for new highway construction.[27] Since gasoline wholesale distributors were agents of the state in collecting, reporting, and sending to the state the accrued tax revenue each month, the distributors were allowed to use 97 percent of their reported gallonage as the basis of the tax. The tax they charged their own customers on the other three percent of the actual gallonage was their compensation for the performance of their duties as agents.

In their quest for funds for highways, legislators the following March (1925) again increased the gasoline tax, this time to three cents per gallon, one cent to the counties and two cents from each gallon to the state highway fund.[28]

Two other laws of 1924 provided penalties for delinquent license fees and gave cities more specific authority to regulate and require surety bonds of "auto-busses for the carrying of passengers for hire."[29]

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26 In re Application of W. E. Adams, Seventeenth Annual Report of the Corporation Commission of the State of Oklahoma, 1924, p. 488. In re Application of Bradley and Staats, Ibid., p. 600.

27 Session Laws of 1923-24, chap. 101.

28 Session Laws of 1925, chap. 198.

29 Session Laws of 1923-24, chaps. 76 and 105.

License Law of 1925. Registration license fees were again rescheduled by statute in March, 1925, effective July 1, 1925. The basic rates on automobiles was raised to $12.50 per annum for each car with a list price of $500 or less plus $1.50 for each additional $100 in the list price of more expensive cars.[30]

The schedule of fees for trucks was set as follows:

Carrying Capacity in Pounds*	Yearly License Fee per Vehicle
Not more than 1,500	$15
1,501 to 2,000	25
2,001 to 3,000	40
3,001 to 4,000	60
4,001 to 6,000	80
6,001 to 8,000	200
More than 8,000	300

*Figures at the lower end of each class interval are one pound different in each case from those in the statute, but the meaning expressed by the table is the same as that of the statute.

The fee on each vehicle was to be reduced by 20 percent of the fee for the previous year for each of the first three years it was registered, but in no event could the fee for a vehicle be below $8. The apportionment of the receipts was changed to: 40 percent to the state highway construction and maintenance fund, 60 percent to counties but provided that county treasurers should pay to cities and incorporated towns 15 percent of the revenue from vehicles domiciled within the respective city corporate limits.

Temporary Permits Stopped. The Corporation Commission continued to regulate carriers under the statute of 1923 and

30 Session Laws of 1925, chap. 167.

its own order no. 2219. The Commission's reports for 1924 and 1925 respectively show 206 certificates granted and 72 denied and 209 granted, 96 denied, and two cancelled.[31] In an order issued December 9, 1924,[32] the Commission announced it would issue no more temporary permits to operate while it considered the granting of regular certificates.

Following a duly announced public hearing and investigation conducted July 8, 1926, the Commission issued an order[33] setting up more stringent regulations for liability insurance and providing for more adequate protection for the public, and prescribing forms for the various specific types of insurance.

The eleventh legislature contented itself with liberalizing the state's highway speed limit to 45 miles per hour,[34] earmarking all gasoline and automobile license receipts by certain counties for the retirement of road bonds, rearranging some details of the 1925 registration law,[35] and making the almost routine change in highway commissions.[36]

The new registration law continued to honor foreign motor vehicle registrations for 60 days in Oklahoma but made the exception that foreign vehicles used for business or commercial purposes must have Oklahoma licenses to operate.

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31 This information is not summarized in the reports, but the individual cases are listed.

32 Corporation Commission, journal entry no. 1245 (Eighteenth Annual Report of the Corporation Commission of Oklahoma, 1925, p. 781.).

33 Corporation Commission, order no. 3633.

34 Session Laws of 1927, chap. 76.

35 Ibid., chap. 116.

36 Ibid., chap. 71.

Commission Includes Interstate Carriers. On June 23, 1928, following a duly called general hearing on May 14 when recommendations were received from representatives of inter- and intrastate motor carriers and steam and electric railways, the Commission issued a general order[37] amplifying and amending order 2219. The new order repeated many rules laid down in order no. 2219, but Rule 10 was an important amendment:

> Rule 10. No motor carrier shall furnish intrastate service within this State without having obtained from the Corporation Commission a certificate declaring that public convenience and necessity require such operation, and without complying with this order and all rules and regulations of this Commission now or hereafter promulgated, so far as applicable to it, and no motor carrier shall furnish interstate service within this State without first having obtained from the Corporation Commission a permit authorizing it to do so, and without complying with this order and all rules and regulations of the Commission now or hereafter promulgated, so far as applicable to it." (Italics inserted.)

The Commission itself had thus widened its jurisdiction by explicit rule on the eve of its second major grant of authority in the motor carrier field, which the legislature gave in 1929.

REGULATION OF CLASSIFIED CARRIERS, 1929-PRESENT

The twelfth legislature again increased the gasoline tax, this time to four cents per gallon, three cents of each gallon's tax to go to the state highway fund and the other one cent to be distributed to counties.[38] The 1929 session also resulted in a statute[39] stringently limiting the speed

37 Corporation Commission, order no. 4317.
38 Session Laws of 1929, chap. 278.
39 Ibid., chap. 252.

of freight carrying vehicles and vehicles with solid tires. But the monumental work of the twelfth legislature in motor carrier regulation was its new statutory basis for regulation contained in the Motor Carrier Act of 1929,[40] which is another milestone in Oklahoma's regulation.

This statute defined motor carriers to include all operating "for compensation," and divided carriers into three classes, as follows:

> Class "A" motor carriers, shall include all motor carriers operating as common carriers of persons, or property between fixed termini or over a regular route, even though there be periodic or irregular departures from said termini or route, and
>
> Class "B" motor carriers, shall include all other motor carriers not operating as Class "A" and "C" motor carriers, whether as private carriers or common carriers, of persons or property.
>
> Class "C" motor carriers shall include all carriers which are operated by owners for the transportation of their own property, goods or merchandise who charge or collect from the consignee, purchaser, or recipient of such property, goods or merchandise for transportation or delivering same, provided, however, the provisions of this Act shall not apply to transportation of livestock and farm products in the raw state and trucks hauling road materials.[41]

The Commission was authorized to apply the act to interstate and foreign commerce as fully as such application

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40 Ibid., chap. 253.

41 In the following cases the Supreme Court of the United States has upheld the exception of transportation of products of farm, forest, and sea from certain provisions, such as the payment of a tax, of the motor vehicle or other regulatory laws of the states: Aero Mayflower Transit Co. v. Georgia Public Service Comm., 295 U.S. 285 (1934); Continental Baking Co., v. Woodring, 295 U.S. 371 (1934); Hicklin v. Coney, 290 U.S. 169 (1933). In the Aero Mayflower case the court said:

"These cases and others like them...are illustrations of the familiar doctrine that a legislature has wide discretion in the classification of trades and occupations for

would be consistent with the United States Constitution and the acts of Congress.

Expenses of regulation in the future years were to be paid out of a fund (the motor carrier act enforcement fund) replenished by collections of a $100 fee from each "A" or "B" carrier and $10 each from "C" carriers which were given authority to operate. Any amounts so collected not used in paying expenses of the Commission were "to be expended insofar as the same may be practicable, upon the roads and highways which motor carriers, in this Act taxed, shall have operated." Prerequisites for operation were, for an "A" carrier a certificate of convenience and necessity, for a "B" or "C" carrier a permit to operate. Adequate hearings were provided for, but the Commission was given the right to revoke or revise, after a hearing, any permit or certificate. No intrastate carrier could discontinue service provided for in its certificate without permission from the Commission given in a hearing and at least 30 days' public notice.

No other bond but liability insurance, bond to guarantee payment of taxes, and compensation insurance on employees could be required of "A" and "B" carriers, except that required by the Commission, and the Commission was given the right to exempt "C" carriers from the requirement of public liability and property damage bond.

In addition to the regular motor vehicle taxes and the application fees, carriers were subjected to several schedules of special taxes.

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the purpose of taxation and in the allowance of exemptions and deductions within reasonable limits."

The special tax schedule for "A" passenger carriers was:

Carrying Capacity for Passengers*	Mills per Mile per Vehicle**
7 or less	3
8 to 11	5
12 to 17	7
18 to 23	9
24 to 29	11
30 to 36	12½
More than 36	15

*Oklahoma statutes have uniformly regarded 16 inches of space as a "seat" or carrying capacity of one passenger where separate seats are not provided.

** An additional tax of two-fifths of one cent per mile was levied on any vehicle of this class also engaged in carrying property.

For "B" carriers of passengers the fee schedule was:

Carrying Capacity for Passengers	Yearly Fee per Vehicle	Cents per Mile per Vehicle
0 to 7	$25	½
8 to 16	50	½
17 to 25	75	3/4
More than 25	100	1

For "A" carriers of property the tax schedule was:

Carrying Capacity[42] in Pounds*	Yearly Fee per Vehicle
2,000 or less	$17.50
2,001 to 3,000	40
3,001 to 4,000	75
4,001 to 5,000	100
5,001 to 6,000	150
6,001 to 7,000	175
7,001 to 8,000	300
8,001 to 9,000	350
9,001 to 10,000	400
10,001 to 15,000	500

*Figures for the lower limits of the class intervals in this column are different by one pound from figures in the statute, but the meaning of the statute is expressed.

42 Refers to manufacturer's rated carrying capacity only, Campbell v. Cornish, 163 Okl. 213, 22 P. (2d) 63.

Mileage for "A" carriers of passengers was to be computed on the basis of the scheduled trips per day and 30 days in the month even if some of the scheduled trips were not made. Mileage for "B" carriers was to be kept by a daily speedometer record of actual miles traversed. No vehicle of more than 15,000 pounds carrying capacity was allowed on the highways, and all vehicles carrying property were required to have pneumatic tires.

For "B" and "C" carriers of property the special tax was one-half cent per mile per vehicle.

Another step forward was taken July 12, 1929 in a statute[43] providing for reciprocity with other states in amounts of motor vehicle taxes and fees with the exception that in no case should a foreign vehicle pay less than one-half what the same vehicle would pay if it were domiciled in Oklahoma.

New Order by the Commission. Pursuant to the new legislation, the Corporation Commission conducted a general hearing September 9, 1929 when the proposed regulations were discussed with "a large number of the representatives of motor carriers, operating within the State of Oklahoma, both intrastate and interstate..."[44] and the representatives suggested rules. There was "little disagreement manifested" concerning suitable rules except over the matter of granting authority to "B" carriers to operate over the same routes as "A" carriers; on this point, according to the Commission's

43 Session Laws of 1929, chap. 254.
44 Corporation Commission, order no. 4831.

report, the two classes split as their own interests dictated, and the Commission accepted in total neither view expressed.

On most points the new order, issued October 14, 1929, was merely a logical, extended application of familiar principles done in accordance with the new statute. The order prescribed forms for notice and insurance, detailed information to be contained in reports and prescribed a mandatory classification of accounts for motor carriers, laid down rules for safety, signs, loading, and passes, repeated the substance of the conditions of forfeiture of permits and certificates, and ordered all carriers and their employees to assist inspectors of the Commission.

For motor carriers of freight, Rule 12 was significant; it required applicants for certificates or permits for this class of carrier to "state fully in writing the following facts:"

> (a) Whether the proposed operation is that of Class "A", Class "B", or Class "C";
> (b) Whether the proposed operation is that of a private or common carrier;
> (c) Whether the proposed operation is exclusively interstate or otherwise.

Rule 16 stated that for interstate, private, and Class "C" carriers the Commission would issue authority to operate upon compliance with the laws and rules with reference to taxes, fees, bonds, insurance, and safety and would not require showing of convenience and necessity of the proposed operation.

Rule 31 concerned the conflicts between Class "A" and Class "B" intrastate carriers, both passenger and property.

Class "A" passengers were defined as passengers traveling by ordinary vehicles over ordinary routes; Class "B" passengers were those requiring private conveyances, chartering a vehicle for special trips, or choosing the destination of the vehicle. A lower rate for "B" passengers than for "A" passengers was forbidden.

As amended by a later order issued January 31, 1930,[45] the paragraph of Rule 16 applying to freight carriers stated that a Class "B" permit authorizes freight movement between points served by a Class "A" carrier only of household goods and office furniture in use, entire stocks of established businesses, building materials and supplies to locations, carload shipments including distribution to one or more consignees, oil field equipment and other commodities requiring unusual equipment, handling, or service. If the goods are held more than five days in a warehouse controlled by the Class "B" carrier, the rate cannot be lower than that of the Class "A" carrier serving the same route.

Competition Regulated. Uniform rates for newspapers to be charged by all carriers operating under certificates of convenience and necessity were prescribed by the Commission in May, 1931,[46] and in January, 1933, it issued another order providing additional liability insurance forms for certain special cases.[47]

Regulation of competition between motor carriers and motor and rail carriers was the subject of a general order

45 Corporation Commission, order no. 4912.
46 Ibid., order no. 5479.
47 Ibid., journal entry no. 1496.

given December 18, 1933.[48] Rail lines "operating intrastate within Oklahoma" and all Class "A" intrastate freight motor carriers were authorized to adopt a suggested tarrif given in the order for L.C.L. (less than carload or less than truckload) shipments on five days' notice to the public and to the Commission. Item 13 of the entry prohibited the publication of joint line rates as between rail carriers and carriers by motor vehicle, and Item 14 ruled that two or more carriers may not meet the rates of one carrier where the route of the two or more carriers is more than 50 percent longer than the route of the single carrier.

Gasoline Tax "Diversion." The thirteenth legislature, meeting in 1931, applied the Jim Crow law to motor carriers[49] and enacted safety regulations,[50] but its chief contribution was a set of regulations by which the newly created[51] Oklahoma Tax Commission could obtain information from all carriers of gasoline regarding time, amount, and route of all gasoline movements and collect the regular gasoline tax of four cents on each gallon.[52] In addition to the regular tax on gasoline, the legislature levied an additional tax of one cent per gallon, effective from March 25, 1931 to December 31, 1931, to repay the state treasury for two grants of $500,000 each for seeds and "food, clothing, fuel and shelter for the

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48 Ibid., journal entry no. 2,374.
49 Session Laws of 1931, chap. 41.
50 Ibid., chap. 50, art. 9, 10, and 11.
51 Ibid., chap. 66, art. 1.
52 Ibid., chap. 66, art. 9. The Oklahoma Tax Commission drafted this law. Report of the Oklahoma Tax Commission, Jan. 19, 1931 to Nov. 1, 1934, p. 45.

destitute..." and to provide $400,000 more for relief.[53] Any additional revenue so collected was allocated to the state highway fund. This extra one-cent-per-gallon levy produced the million dollars for relief and an additional $934,819.84 for the highway fund.[54]

While the legislature was thus increasing the retail price of gasoline and diverting the gasoline tax revenue to non-highway uses, it was planning to investigate into the spending by the highway commission of funds on the highways[55] and requesting the attorney general to investigate into the reason for the reported spread of 10 cents per gallon between refinery and retail price of gasoline.[56] He was requested to report any new legislation which would help him in an action to lower the spread.

Since 1933 Oklahoma motor carriers have been subjected to a maze of detailed legislation of various types. Four statutes passed by the fourteenth legislature, for instance, contained detailed provisions prescribing the duties of common carriers in carrying milk cans,[57] seed,[58] cigarettes,[59] and gasoline.[60] Heavy penalties were provided for violations of the prescribed procedures. These regulations are of great interest to common carrier managements, but detailed consideration of their provisions and advisability is outside the scope of this study; their central purpose is law enforcement in other fields besides primary motor carrier regulation.

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53 Ibid., chap. 66, art. 10.
54 Report of the State Highway Commission, 1931-32, p. 133.
55 Session Laws of 1931, sen. con. res. no. 8.
56 Ibid., sen. con. res. no. 2.
57 Session Laws of 1933, chap. 87.
58 Ibid., chap. 95.
59 Ibid., chap. 99.
60 Ibid., chap. 111.

License Fee Law of 1933. Motor vehicle registration fees and taxes, with the exception of the fee for filing application for a permit or certificate, were placed under the collection authority of the Oklahoma Tax Commission in 1933.[61] For the basic motor vehicle registration license fees, the new statute returned to the same rates for ordinary automobiles as had prevailed in 1919, $10 for a vehicle with a list price of $500 or less plus $1.50 for each $100 additional in the list price of the vehicle. Motor busses were removed from the class of general passenger vehicles and assessed with the following license fees:

Seating Capacity of Vehicle	Yearly Fee per Seat
Not more than 11	$5
12 to 23	5.50
More than 23	7

The following fees were designated for motor trucks, truck-tractors,[62] trailers, or semi-trailers:

Unladen Weight in Pounds*	Yearly Fee per Vehicle
1,500 or less	$7.50
1,501 to 2,500	12.50
2,501 to 3,500	20
3,501 to 5,000	35
5,001 to 7,000	70
7,001 to 9,000	100
9,001 to 11,000	200
More than 11,000	300

*Lower limits of the class intervals in this column are different from figures in the statute by one pound, but the meaning is preserved herein.

Each truck, truck-tractor, trailer, or semi-trailer was regarded as a separate taxable unit. In computing the

61 Ibid., chap. 113.

62 A truck-tractor is a motor vehicle built to pull a trailer which (with its load) rests partially on the pulling vehicle.

unladen weight for tax purposes, 500 pounds was added to such weight for each foot of lineal length of the vehicle more than 18 feet.

Tractors, ditch-diggers, and other special mobile equipment were taxed according to horse power. On all motor vehicle license fees, the reduction was to 80 percent of the previous year's fee for seven successive years but in any event not less than $2.50 for an automobile or motorcycle or $5 for a bus or truck. The reduction on trailers and semi-trailers was to 80 percent of the previous year's fee for five successive years but not below $5. All registration license fees other than for dealers' cars were in lieu of all ad valorem taxes, general or local. Free 60-day registration for foreign vehicles used temporarily in Oklahoma was provided for.

Apportionment of license fee revenue was left virtually unchanged, and there were detailed provisions limiting weights of loads, total weights of vehicles, specifying maximum heights and widths, and making other speed and safety regulations more comprehensive than had been in force previously.

Motor Carrier Act Amendment. Legislation of 1933 also included a statute drafted by the Oklahoma Tax Commission[63] amending the Motor Carrier Act--levying new schedules on vehicles used by motor carriers and providing additional rules of regulation.[64]

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63 Report of the Oklahoma Tax Commission, Jan. 19, 1931 to Nov. 1, 1934, p. 58.

64 Session Laws of 1933, chap. 156.

As defined in the 1933 amendment, the term "motor Vehicle" was made to include trailers and semi-trailers, and the new definition of "motor carrier" included for the first time, in addition to those operating "for compensation," all those operating "for commercial purposes," and included only those carriers "doing an intercity business and not operating exclusively within the limits of an incorporated city or town...."

Class "A" and Class "B" carriers were defined in the language of 1929, but the new definition of Class "C" included private commercial vehicles:

> Class "C" motor carriers shall include all other persons, firms, or corporations, their trustees or receivers, engaged in the transportation of property in furtherance of any private commercial enterprise and not operated as a private carrier for hire or as a common carrier for hire, provided, however, the provisions of this Act shall not apply to transportation of livestock and farm products in the raw state, logs and rough lumber and which raw state shall include cotton, whether in the seed or ginned, cotton seed, hay, whether loose or baled, corn, wheat, oats, and all other articles produced on the farm, from farm to market, nor to trucks hauling road materials.

There was a flat fee of $25 for any application to the Corporation Commission for a permit, certificate, or change in such. Taxes and reports of taxes were made due on the fifteenth of each month to the Oklahoma Tax Commission on operations of the previous month, and stringent penalties for tax delinquency or evasion were decreed. The bases for computing the mileage subject to the tax were not changed, but new schedules of tax rates were written into the law.

For "A" and "B" carriers of passengers, the following special taxes were provided:

Passenger Seating Capacity	Mills per Vehicle Mile
Not more than 7	3
8 to 11	5
12 to 17	7
18 to 23	9
24 to 29	11
30 to 36	12½
More than 36	15

For "A", "B", and "C" carriers of property, taxes were:

Unladen Weight in Pounds*	Mills per Vehicle Mile
Not more than 3,500**	4
3,501 to 7,000	5
7,001 to 11,000	6
11,001 to 15,000	7
More than 15,000	10

*Some figures in this column have been adjusted by one pound for statistical purposes.
**For Class "C" this interval reads: "More than 1,500 but not more than 3,500."

The addition of 500 pounds to the unladen weight figure for each lineal foot more than 18 feet of length of the vehicle was retained from the 1929 law. The tax might be paid on any truck and semi-trailer combination as one unit at the option of the carrier.

Amendment of Old Certificates. Holders of certificates or permits under the laws of 1923 and 1929 were directed to file acceptances with the Corporation Commission of the 1933 act within 30 days; if such compliance were not filed, "the certificate or permit of such holder shall be subject to cancellation."

The fifteenth legislature, in 1935, made three principal contributions to the statutes in regulation of motor carriers; it passed acts defining more specifically minor items in the

Motor Carrier Act,[65] setting up the now abandoned ports of entry,[66] and levied for the first time in Oklahoma an excise tax on motor vehicles, to be used for non-highway purposes.[67] Other acts were passed pertaining to the duty of carriers in transporting livestock,[68] narcotic drugs,[69] nitroglycerine,[70] and making safety glass compulsory equipment for passenger-for-hire vehicles and school busses,[71] and providing for more lenient registration for short periods of foreign vehicles but making registration compulsory for commercial vehicles entering the state.[72]

The motor vehicle excise tax was levied on every motor vehicle except foreign ones, vehicles with temporary licenses for not more than 90 days, or owned by governmental or charitable organizations. It was collectable only the first time a vehicle was registered in this state, at the rate of one percent of its value, and expired July 1, 1937. Revenue from the tax, except two percent to the Oklahoma Tax Commission for collection expenses, went into the general revenue fund to be spent only by special appropriation of the legislature. The motor vehicle excise tax is really a special form of collecting the general sales tax, which is thus levied on motor vehicles to protect Oklahoma automobile dealers from competition of dealers in neighboring states which levy no sales tax.[73]

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65 Session Laws of 1935, chap. 20, art. 12.
66 Ibid., chap. 20, art. 1.
67 Ibid., chap. 66, art. 12.
68 Ibid., chap. 39, art. 5.
69 Ibid., chap. 24, sec. 12.
70 Ibid., chap. 33, art. 10.
71 Ibid., chap. 41.
72 Ibid., chap. 50, art. 5.
73 Report of the Okla. Tax Com., 1931-34, p. 34.

New Excise Taxes. Another "diversion" of the motor vehicle excise tax came as the result of a direct vote of the people in the primary election on July 7, 1936, when an initiative petition was passed which provided for increase in both the sales tax and the motor vehicle excise tax from one percent to two percent, and the receipts were to go for assistance to needy persons more than 65 or less than 15 years of age, or blind or crippled.[74]

This two-percent levy was re-enacted into law by the sixteenth legislature in May, 1937, and the levy was clothed with the necessary safeguards to keep it from being fouled on the legal snags of interstate commerce.[75] Section 11 of the act specifically stated that it did not apply to vehicles with special temporary licenses in this state, those duly registered in another state, or a government-owned vehicle. An objective method was given for computation of the value to which the tax is applied--65 percent of the list price for the second year's registration and 65 percent of the previous year's value for each successive year until a minimum value of $35 for any one vehicle is reached--but the tax was levied and collectible only the first time a vehicle was registered in this state. There was an additional excise tax of two percent of the value on the transfer of title of a motor vehicle, but only on the first transfer of any one vehicle during one calendar year. Three percent of the revenue was made available to the tax commission, and the

74 State Election Board, Directory of the State of Oklahoma, 1937, p. 140.

75 Session Laws of 1937, chap. 50, art. 8.

act was effective from June 1, 1937 to July 1, 1939. This excise tax was in lieu of all other taxes except license fees, mileage tax for freight or passenger carriers, or any fees charged under the jurisdiction of the Corporation Commission.

In line with the trend observable in legislation to increase the power of tax enforcement officers and reduce tax evasion, the legislature in the new amendment to the motor vehicle registration law prohibited the entrance into the state without Oklahoma license of foreign trucks, busses, and trailers "used for commercial or industrial purposes." But the law provided for an optional 30-day license at one-eighth the annual fee if the foreign carrier preferred. Private automobiles, tourist trailers, and light sample cars used by salesmen coming into Oklahoma from other states continued to enjoy the free registration period of 60 days allowed all non-commercial vehicles under the registration law of 1933.[76] The act made non-residents who did not obtain the required licenses subject to the same fines and delinquent registration fees as residents would be.

Ports of Entry Act. The Ports of Entry Act was designed to increase the enforcement efficiency of the tax commission in the collection of the gasoline tax, motor vehicle registration license fees, and special motor carrier taxes, cigarette taxes, and miscellaneous levies. By its terms the commission was ordered to establish primary and

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76 Session Laws of 1933, chap. 113.

secondary registration stations (popularly known as ports of entry) through which all motor carriers entering or leaving Oklahoma were ordered to pass. When entering the state, the operator of a vehicle operated as a motor carrier was required to: present evidence of having complied with all of the laws and regulations of the Corporation Commission and the Oklahoma Tax Commission, give address and other required information concerning the owner of the vehicle, describe the cargo and explain its ownership, proposed route, and destination, the number of taxable miles to be covered on the proposed trip, and information on insurance on vehicle and cargo. After this and similar information had been reported and gasoline tax on any incoming load of gasoline had been paid and whatever registration license fees required had been paid, the operator was given a clearance certificate.

When the vehicle left the state the operator presented his clearance certificate to the official at the port of entry, reported the taxable miles traveled since he last reported his mileage tax, gave other similar information if it were required, paid whatever taxes were due, and returned his clearance certificate to be cancelled. The act provided that 10 percent of the revenue from the motor vehicle license fees and special motor carrier taxes be placed in the Oklahoma Tax Commission fund and that the remaining 90 percent be distributed as formerly provided by law for the entire amount.

Department of Public Safety, 1937. Creation of enforcement agencies continued in the sixteenth legislature, which established the Department of Public Safety in April, 1937. It has three divisions--one in charge of motor vehicle registration, one in charge of highway patrol, and one in charge of traffic control and regulation.[77] Besides being given the work of the title division of the highway commission, the new department was charged with the duty of enforcing all laws and rules regulating motor carriers, reporting violations to the Corporation Commission, detecting violations of weight and width specifications and otherwise preventing damage to the highways, and serving as a police patrol generally on the highways.

The legislature in 1937 also amended the laws regarding the gasoline tax,[78] the motor vehicle registration license fees,[79] motor vehicle mileage taxes,[80] and enacted for the first time an act providing for the licensing of all motor vehicle drivers in the state.[81]

Distribution of Gasoline Tax Revenues. Gasoline taxes, by the 1937 act, were pledged: three percent to the tax commission to pay for collection; of the remaining 97 percent, 40 percent or as much thereof as necessary to pay interest bearing warrants issued by the state prior to July 1, 1933, until those items were paid; another 40 percent was put into

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77 Session Laws of 1937, chap. 50, art. 4.
78 Ibid., chap. 66, art. 16.
79 Ibid., chap. 50, art. 7.
80 Ibid., chap. 66, art. 9.
81 Ibid., chap. 50, art. 5.

a newly created State Highway Commission Note Fund of 1937 to pay outstanding highway revenue anticipation notes. Twenty percent of the 97 percent, together with any remainder from the two percentages pledged to pay indebtedness, was allotted to the state highway fund.

After the diversion of 29.4 percent of gasoline tax revenue during 1936-37 to pay on the state treasury notes of 1933, this "diversion of the gasoline tax ended with the close of the 1936-37 fiscal year."[82]

The state's four-cent-per-gallon gasoline tax was again re-allotted on May 31, 1939, when the seventeenth legislature's House Bill 415 became effective.[83] Revenue from the measure was divided according to the following percentages: three percent to the Oklahoma Tax Commission; 70 percent to the state highway construction and maintenance fund; five percent to cities in the ratio which their census figures bear to the total urban population of the state; 22 percent to the counties, until January 1, 1940 to be divided "in the percentage which the population and area of each county bears to the population and area of the entire state," and after that date 60 percent in the above manner and 40 percent in proportion to the county road mileages. The new

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82 Third Biennial Report of the Oklahoma Tax Commission, p. 42.

83 H.B. 415 was approved April 18, 1939. The seventeenth legislature's H.B. 485, approved with emergency clause April 12, 1939, levied a tax of four cents per gallon on diesel fuel oils, liquified gases, and other special motor fuels used to propel vehicles over the highways. This tax is really merely an extension of the gasoline tax; it merely extends the definition of motor fuel to include fuel for all highway vehicles.

statute provides for exemptions for gasoline used in aircraft, as a solvent, and for agricultural purposes. The exemption for farm uses has since 1931 been a problem in administering the tax.[84]

Registration Fee Law of 1937. The 1937 registration statute made the basic rates for private automobiles, motorcycles, and house trailers $12.50 yearly per vehicle for a list price of $600 or less plus $1.50 for each $100 or major fraction thereof in excess of $600 in list price, and one dollar each for private trailers of not more than 1,200 pounds carrying capacity.

For busses the license fee schedule was:

Passenger Seating Capacity	Yearly Fee per Seat
11 or less	$7.50
12 to 23	9
More than 23	10

On trucks, truck-tractors, trailers, or semi-trailers, the rates were:

Unladen Weight in Pounds*	Yearly Fee per Hundredweight**
Not more than 3,000	$ .50
3,001 to 4,000	.60
4,001 to 5,000	.80
5,001 to 6,000	1.25
6,001 to 7,000	1.35
7,001 to 8,000	1.50
8,001 to 9,000	2.25
9,001 to 10,000	3.00
10,001 to 11,000	3.50
11,001 to 12,000	4,00
More than 12,000	$600 per vehicle

*Figures are adjusted for statistical accuracy, but the meaning is not distorted.

**Or major fraction thereof.

Each vehicle in this classification registered as a unit.

84 Third Biennial Report of the Oklahoma Tax Commission, pp. 25-27.

On each motor vehicle other than farm tractors and other than any motor-driven vehicle mentioned specifically in this statute, rates of one dollar per horse power as rated by the manufacturer for the first year and on a descending scale to 20 cents per horse power for the fifth year and thereafter were levied.

After the first year's registration "in this or any other State," the fee was reduced to 80 percent of the preceding year's fee for seven successive years, with minima of $2.50 for autos, $8 for busses, trucks and truck-tractors. But such reduction on fees for trailers and semi-trailers other than those registered for one dollar each would continue for only four years, and the minimum was set at $8.

Dealers, upon payment of a required $25 fee for each county in which they had places of business, were issued transferable plates for two cars, and would get extra plates if needed for $12.50 each. To provide for proper cancellation of license plates, registration certificates, and certificates of title, and in order to obtain useful reports, legislators required used car dealers to obtain licenses from the tax commission for $5 each per year, and required them to "keep such records and...use such forms as may be prescribed by the Commission."

Besides the receipts from the certificate of title fees, which were to go to the public safety fund, revenue from the measure was to go: ten percent to the Oklahoma Tax Commission; the other 90 percent to go 30 percent to the

state highway fund, 55 percent to the counties (one-half for retirement of road bonds and one-half for the county highway funds), and 15 percent to cities on a complicated basis of distribution according to population.

In provisions similar to those of the 1935 law, the statute required registration licenses of all non-residents bringing vehicles into Oklahoma but provided an elaborate list of temporary licenses for those not wishing a full year's license in Oklahoma. Other provisions of the law were principally designed to aid in enforcement and in decreeing penalties.

A separate statute provided for the registration of farm tractors; 97 percent of the revenue from this measure was devoted to county erosion funds.[85]

Mileage Tax of 1937. The 1937 motor vehicle mileage tax, levied "in order to reimburse the state for the maintenance and upkeep of the public highways of this State and for the administration and enforcement of the provisions of this Act...," was levied on all motor vehicles, but with a list of 13 exemptions which virtually made it a tax on motor carriers as defined in the 1935 statute.

For purposes of the mileage tax, vehicles were classified in four groups: passenger carrying vehicles owned by residents, property carrying vehicles owned by residents; and passenger carrying vehicles owned by non-residents and having a taxable situs in another state and complying with the laws of their resident states, and non-resident

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85 Session Laws of 1937, chap. 50, art. 9.

property carriers. The fees for mileage of out-of-state vehicles' mileage were paid on special permits issued by the Corporation giving permission for trips of not more than 72 hours' duration over particular, pre-designated routes; it was unlawful for an operator following such a permit to deviate from the prescribed route.

Revenue from the mileage taxes, besides two percent for an adjustment fund for claims of incorrect payment and eight percent for the tax commission, went equally to the state highway fund and to the counties for retirement of road bonds and highway maintenance.

For resident passenger vehicles, the rates were:

Passenger Seating Capacity	Mills per Mile
Not more than 7	3
8 to 11	5
12 to 17	7
18 to 23	9
24 to 29	11
30 to 36	12½
More than 36	15

For resident property carrying vehicles, the rates were:

Unladen Weight in Pounds*	Mills per Mile
Not more than 3,000	3
3,001 to 4,000	4
4,001 to 6,000	5
6,001 to 9,000	6
9,001 to 11,000	7
11,001 to 13,000	8
13,001 to 15,000	9
More than 15,000	10

*Figures adjusted for statistical consistency.

For out-of-state vehicles designed to carry passengers, when on a trip in Oklahoma under a special permit, rates were:

Passenger Seating Capacity	Cents per Mile
Not more than 7	1
8 to 11	1½
12 to 15	2
16 to 19	2½
20 to 23	3
24 to 27	3½
28 to 31	4
32 to 35	4½
More than 35	5

For out-of-state non-passenger vehicles on such special trips, the mileage tax rates were:

Unladen Weight in Pounds*	Cents per Mile
Not more than 3,000	.7
3,001 to 4,000	1
4,001 to 5,000	1½
5,001 to 7,000	1½
7,001 to 9,000	2
9,001 to 10,000	2½
10,001 to 11,000	3
11,001 to 12,000	3½
12,001 to 13,000	4
13,001 to 14,000	4½
More than 14,000	5

*Figures adjusted to conform to logical class intervals.

Ports of Entry Act Repealed. The seventeenth legislature extended the two-percent excise tax on automobiles until July 1, 1941 in an act approved April 18, 1939,[86] and repealed the Ports of Entry Act.[87] Provisions for levying and collecting the excise tax were similar to those of the statute of 1937.

The revenue from the tax is apportioned 95 percent to the State Board of Public Welfare for general functions of state government and five percent to the tax commission fund

86 Seventeenth Legislature, H.B. 544.

87 Ibid., H.B. 11, approved April 25, 1939, emergency clause attached.

to be paid "pursuant to direct appropriation from said fund by the State Legislature." The act states that the tax is levied in lieu of all others for the calendar year in which it is due except: registration and license fees, mileage tax, sales tax on accessories not included in the manufacturer's list price, one dollar each for certificates of title, and any fee charged under the jurisdiction of the Corporation Commission.

House Bill 192, 1939. Approved the same day was the much discussed House Bill 192, which establishes new rates for registration license fees, provides for reciprocity with other states for the first time since the statute of 1929, and lays down safety and maximum-load-and-size regulations for the use of the highways. In this act, which was approved and actively supported by bus and truck owners,[88] the apportionment of the registration license fee revenues is left substantially unchanged, except that counties are instructed to spend at least one-half their revenues from this source in contributing to federal aid projects if such is practicable. The basic rates for new vehicles are lowered generally, but the provisions for reduction of fees on old vehicles used by motor carriers is made less lenient.

Section 13 of the act grants the Oklahoma Tax Commission authority and power to enter into "such reciprocal compacts and agreements as said Commission may deem proper or expedient

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88 The Associated Motor Carriers of Oklahoma, Inc., Legislative Bulletin no. 39-9, Oklahoma City, Oklahoma, April 8, 1939, and other legislative bulletins of the association.

and in the interest of the residents of the State of Oklahoma, with the proper authorities of other states, concerning all other automotive equipment engaged in international and interstate commerce upon and over the public highways." Such compacts and agreements shall grant "privileges substantially like and equal" to residents of states concerned but shall not "supercede or suspend any laws, rules, or regulations of the State of Oklahoma applying to vehicles operated intrastate in the State of Oklahoma." No such agreement shall supercede or suspend the power and authority of the Corporation Commission to make and enforce rules and regulations operating over motor carriers for hire or to grant or deny certificates or permits to motor carriers for hire. Such agreements can change the application of Oklahoma laws only "insofar as they apply to the payment of vehicle fees charged residents of the states with which such compacts and agreements are made."

House Bill 192 will not become effective until January 1, 1940, and the Oklahoma Tax Commission has as yet entered into no negotiations "with a view to negotiating reciprocal compacts and agreements."[89]

Safety and highway regulations provide, among other things: maximum weight or a truck or trailer, 24,000 pounds, of a truck and trailer combination, 47,000 pounds; maximum length of any vehicle or combination thereof, 45 feet; maximum weight per inch width of tire on any wheel, 600 pounds;

89 Letter to the writer from motor vehicle division of the Oklahoma Tax Commission, dated June 21, 1939.

maximum width for vehicles, nine feet; maximum height, 12 feet six inches. Exceptions for any or all of these rules are provided in unusual cases where the objects to be moved cannot be reasonably dismantled and the proper authorities issue special permits, and for road machinery and such vehicles as threshers and caterpillar ditch-diggers.

Rates for annual registration license fees as set by the present act are:

For private automobiles and house trailers, $10 on a list price of $500 or less plus $1.50 on each $100 or major fraction thereof of the list price above $500. The reductions for this class of vehicles are virtually unchanged; fees are 80 percent of the previous year's registration fee for seven successive years but not less than $2.50 per vehicle in any event. Registrations in other states count in allowing the reductions.

For motorcycles the fee is $5 each.

For busses, the fee schedule is as follows:

Passenger Carrying Capacity	Fee per Seat for Intercity Vehicles	Fee per Seat for Intracity Vehicles
Not more than 15	$13.50	$4
16 to 25	21	5
More than 25	24	6

For school busses of not more than 15-passenger capacity, $20; for a larger school bus, $25. An amendment to the act on May 10, 1939, provided for license fees of one dollar each for vehicles owned by religious or charitable organizations.[90]

90 S.B. 298. There is a provision that vehicles so registered must be used for religious or charitable purposes by the owning organization.

For trucks, truck-tractors, trailers, or semi-trailers, the fee schedule now is:

Laden Weight in Pounds*	Fee per Vehicle
5,500 or less	$15
5,501 to 7,000	20
7,001 to 8,000	25
8,001 to 10,000	35
10,001 to 12,000	50
12,001 to 15,000	65
15,001 to 18,000	90
18,001 to 20,000	115
20,001 to 22,000	140
22,001 to 24,000	165
24,001 to 26,000	190
26,001 to 28,000	215
28,001 to 30,000	240
30,001 to 32,000	265
32,001 to 34,000	290
34,001 to 36,000	315
36,001 to 38,000	340
38,001 to 40,000	365
40,001 to 42,000	390
42,001 to 47,000**	425

*Figures in this column adjusted for statistical consistency, but the meaning of the statute is expressed.

**The Oklahoma State Highway Commission may issue special licenses for movement of vehicles heavier than this limit for a flat fee of $5 plus one dollar for each 1,000 pounds the vehicle exceeds the limit.

Each vehicle in the class above is registered as a separate unit. The laden weight of a truck-tractor is stated to be its actual unladen weight when fully equipped for use, and the laden weight of a semi-trailer is its own weight plus the entire weight of the load carried thereon. Registration of a vehicle for 8,000 pounds or less entitles its owner to operate it at a laden weight actually 1,000 pounds above its registered weight, and registration at more than 8,000 pounds entitles the owner to operate the vehicle with an actual weight of one ton more than the licensed weight.

For trucks and truck-tractors which have been registered three years in this or any other state and which do not have a laden weight of more than 20,000 pounds, the annual fee is reduced 45 percent on the fourth year and 20 percent 20 percent of the previous year's fee for each of the following four years but not less than $8 per vehicle in any event. No reductions in fees for age are offered for trucks of more than 20,000 pounds laden weight or for trailers.

For vehicles used in agriculture or in transporting forest products to first market or shipping point, the fees are:

Manufacturer's Rated Carrying Capacity in Tons	First Year's Fee per Vehicle	Minimum Fee per Vehicle*
Less than 1	$15	$6.50
1 to but not including 1½	20	7
1½ to but not including 2	35	8
2	50	8

*This class has the same reductions for age of vehicle as have private automobiles and house trailers.

For other vehicles not mentioned in one of the other classifications, except farm tractors, which are dealt with in the Farm Tractor License Act, the annual fee is 60 cents per horse power. The fees in the act do not apply to trailers or semi-trailers not used in a commercial or industrial enterprise or trailers used for the transportation of lumber products to market or to any farm trailer of a carrying capacity of two and one-half tons or less. Such trailers are not required to pay registration license fees.

State Motor Carrier Vehicle Identification. The enforcement of regulatory provisions was made more practicable for

highway patrolmen by the Motor Carrier Vehicle Identification Plate and Registration Act of the recent legislature.[91] This act requires all motor carriers to obtain registration certificates and identification plates, for 50 cents per vehicle, from the Corporation Commission. The identification plates are in distinctive colors, and different plates are prescribed for Class "A" passenger carriers, "B" passenger carriers, "A" freight carriers, "B" freight carriers (for use of vehicles being operated by contract carriers), and for private freight carriers, who are for all other purposes classed as "B" carriers. After July 27, 1939, all vehicles of carriers must display plates showing for what purposes their use is authorized, and it is the duty of all state and local peace officers to arrest, without the requirement of a warrant, any operator of a vehicle being used for a purpose other than that indicated by its identification plate. All such plates contain the initials "O. C. C." (for Oklahoma Corporation Commission) and identifying letters such as "A. P." (for Class "A" passenger carrier).

The controversially discussed ports of entry, highly regarded as tools for efficient tax administration by disliked because of their impediment to interstate commerce,[92]

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91 Seventeenth Legislature, H.B. 650, approved April 27, 1939.

92 Third Biennial Report of the Oklahoma Tax Commission, July 1, 1936 to June 30, 1938, pp. 23, 24. "Chiefly as a result of the work of the ports of entry," the collections from the mileage taxes increased from $613,414.22 in 1934-35 to $1,393,562.06 in 1937-38. The ports also aided materially in increasing collections of the gasoline tax, cigarette tax, and other levies.

were discontinued July 1, 1939,[93] and the tax commission again faces the task of enforcing tax laws with what the commission personnel has regarded as inadequate administrative machinery.

SUMMARY

In the maze of detailed legislation and regulation, one may see a definite trend toward more complete regulation and more efficient and thorough tax administration in Oklahoma's dealing with the motor carrier problem.

Period of Common Carrier Regulation, 1923-1929. The 1923 law placed intrastate common carriers by motor vehicle under the regulatory power of the Corporation Commission and levied the first motor carrier tax, a mileage tax of one-fifth cent per vehicle mile. The legislature had already, in 1919, made registration license fees payable according to carrying capacity for trucks, and in 1923 the first gasoline tax was levied.

In 1928 the Corporation Commission issued an order making interstate common carrier service through Oklahoma amenable to the Commission in matters of payment of taxes, safety rules, and insurance against injury to non-passengers. Meanwhile the legislature had in 1927 passed a law requiring the registration of all foreign vehicles passing into or through Oklahoma when they were used for commercial or business purposes.

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93 Letter to the writer from J. D. Carmichael, chairman of the Oklahoma Tax Commission, dated June 21, 1939.

Regulation of Classified Carriers, 1929-1939. The second most important law concerning motor carriers is the amendment of 1929 to the Motor Carrier Act. This law classified carriers as "A", "B", and "C", and provided for the issuance of certificates to the first two and permits to the latter. In 1929 regulated motor carriers included all operating for hire or charging their customers an extra fee for the delivery of products. The 1929 legislation also put both mileage and yearly tax per vehicle for motor carriers on a graduated schedule. The schedules were graduated according to class and capacity of vehicle. The gasoline tax reached its present level of four cents per gallon in 1929, and reciprocity was provided for in the motor vehicle registration law of the year.

Private commercial vehicles were brought into the regulated and taxed field of motor carriers in 1933, and motor carrier taxes were simplified into two schedules of mileage taxes, one for "A" and "B" carriers of passengers and another for all classes of property carriers. The 1933 motor vehicle registration law for the first time used unladen weight of trucks and seating capacity of busses as the basis of registration (motor vehicle) license fees, and provided for free registration for 60 days for itinerent foreign vehicles. It was also in 1933 that the Oklahoma Tax Commission took over the collection of motor vehicle and motor carrier taxes.

The outstanding legislation of 1935 was the enactment of the first excise tax by Oklahoma on motor vehicles, the establishment of the ports of entry, and the more precisely defined exemption from motor carrier taxes of operations for agricultural purposes. No reciprocity or free registration was allowed for foreign commercial vehicles under the 1935 statute.

In 1936 the motor vehicle excise tax was raised to two percent, the Corporation Commission and Oklahoma Tax Commission gained a new aid in enforcement and supervision with the establishment of the Department of Public Safety's highway patrol, and the registration law increased the rates for license fees on private automobiles, busses, and especially on the heavier trucks.

Since 1915 Oklahoma's motor vehicle registration laws had provided for lower and lower license fees as a vehicle became older. But in 1939 the legislature lowered the license fee rates on all automobiles but especially on busses and heavier trucks but drastically molified reduction of license fees on light trucks and truck-tractors and provided no reduction on any commercial trailer or on any other motor carrier vehicle with a gross laden weight of more than 20,000 pounds. All license fees on trucks and trailers were placed on a graduated basis according to gross weight, not unladen weight as had been the case since 1933.

The other legislation of 1939 of importance to motor carriers was a provision for specific reciprocal compacts

with other states on the matter of motor vehicle license fees and provision for identification plates for motor carrier vehicles to be issued by the Corporation Commission.

Chapter VI

FEDERAL REGULATION OF MOTOR CARRIERS

In view of the limitations upon the constitutional authority of the states to regulate interstate motor carriers, it is evident that even the broad powers of regulation given to state authorities by the Constitution of Oklahoma and by the legislature were insufficient to cope with the motor carrier industry's problems as it grew increasingly larger and, somewhat as did the railroad industry decades earlier, crossed state lines as it once had crossed from one county to another.

The Interstate Commerce Commission was established in 1887 to regulate interstate carriers by railroad and was given genuine power by later acts of Congress. It had ruled in 1924 that trucking service performed by railroad companies as a part of their terminal service was under its jurisdiction but that line-haul truck operations carried on by railroad companies were without the Interstate Commerce Act and its amendments, and therefore largely unregulated when such line-hauls were interstate. Then in 1925 and 1926 the Supreme Court defined, in cases we have already reviewed,[1] the fundamental limitations on the states' powers to regulate interstate carriers. The problem became increasingly one of national proportions in the minds of members of the Interstate Commerce Commission and others who could forsee the approaching shadows of some of the problems which had

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1 Chapter IV.

plagued the railroad industry and its customers for decades. National regulation, largely a matter for hypothetical speculation in the field while the motor vehicle was undergoing mechanical development, had become a practical problem to be dealt with.

Proposals for Federal Regulation, 1926-1935. Each session of Congress from 1925 to 1935 had before it proposals for federal motor carrier regulation.[2] Acting under its authority to investigate conditions of competitors of the railroads and to make recommendations of legislation to Congress, the Interstate Commerce Commission, on its own motion, began an investigation into the motor carrier industry generally on June 15, 1926. After almost two years of investigation, gathering of testimony and other data, and research, the Commission made its report.[3] Although statistics were incomplete and difficult to obtain, the report, written by Commissioner Esch, briefly reviewed the growth of the motor vehicle industry, gave statistical indications of the extent of its development, and pointed out the significance of the Supreme Court rulings on March 2, 1926.[4] These rulings had held that states could regulate interstate motor transportation only for safety or conservation of highways.

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2 Interstate Commerce Commission Activities, 1887 to 1937, p. 213.

3 Motor Bus and Motor Truck Operation, 140 I.C.C. 685-760.

4 Buck v. Kuykendall, 267 U.S. 307 (1925); Bush & Sons Co. v. Maloy, 267 U.S. 317 (1925). See also Interstate Commerce Commission Activities, 1887 to 1937, p. 213, for a discussion of these decisions in 1926 of the cases (which had arisen in 1925). See Chapter IV for further cases.

The Commission had discovered that "almost immediately thereafter interstate motor-vehicle operations sprang up all over the country...,"[5] carriers frequently deliberately run-nine their routes a few miles across one state line in order to escape, by technicalities, the regulation of a state commission.

The report recognized the need of the motor vehicle in the nation's transportation system:

> ...There was needed, however, some agency which would permit the fullest development of the country's economic situation by permitting transportation and communication to reach remote communities through territory not able to support costly railroad facilities. This need has been supplied by motor-vehicle transportation, flexible and composed of small units, so that many remote communities are now served (1928) by such agencies and enjoy the benefits of practically direct rail service.[6]

The Commission was later to recognize certain advantages of motor vehicles even in direct competition with railways.

But in view of the lack of regulation of interstate operations, the Commission found many conditions of rate wars, uncertain rates, deliberate failure to fulfill contracts, "wildcat" (undependable) operations by irresponsible carriers who gave poor service and damaged the reputations and businesses of legitimate motor carriers, and frequent examples of interstate carriage of what was really intrastate business, carried on thus to escape legitimate state regulation.

The report recounted generally the history of motor carrier growth and regulation by the states and pointed out

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5 Motor Bus and Motor Truck Operation, loc. cit., p. 697.
6 Ibid., p. 696.

the logical classifications of truck operations. Regarding rates, the report noted that bus fares were generally approximate to or higher than railroad fares for short hauls, where the convenience of busses was a competitive attraction, and usually lower than railroad fares for longer hauls. The Commission implied commendation of the Oklahoma Corporation Commission's policy of refusing permission for bus rates lower than rail rates. Few complaints were discovered regarding service or rates by truck, and truck rates were so difficult to obtain accurately and so confused by variations in service that little comparison could be found.

The Commission strongly inclined to the view that motor carriers were definitely advantageous for certain types of traffic, but discounted claims regarding their competitive danger to the railroads. Although the evidence was not conclusive on this point, certain facts were cited to substantiate this opinion. From 1920 to May 1, 1925, competition from motor vehicles accounted for only 4.3 percent of the 2,439 miles of rail tract abandoned.[7]

But the advantage of the motor truck in some short hauls was definitely admitted. The report called attention to the experiment of the Texas Midland Railway, which cut rates sufficiently to get the business from its truck competitors but found the business at the lower rates unprofitable and discontinued the attempt to underbid trucks on short hauls. Attention was also called to several cases in which motor service continued through weather which interrupted competing

7 Ibid., p. 727.

rail service for several days. On the point of competition between motor vehicles and railroads in general, the Commission concluded in its 1928 report:[8]

> "The steam railroads have undoubtedly lost much business to the new highway transportation agency (much more to private automobiles than to motor carriers), but it is also probably true that in the aggregate this has been more than offset by the gain from new traffic created by the development of the automobile industry.

The Commission noted that in 43 states and the District of Columbia intrastate motor carriers of passengers were regulated and in 33 states and the District of Columbia intrastate motor carriers of property were subject to some type of state control. The report recommended that interstate bus operations be placed under the control of the Commission and that the state authorities, most of whom had already some experience in the business of regulation, have delegated to them original jurisdiction to administer federal laws regarding certificates of convenience and necessity and insurance. Appeals to the Interstate Commerce Commission would be available under the suggested plan. The recommendations urged that permission be given to railroads to engage in motor service and to publish joint rates with motor carriers if they so desired. Regarding interstate truck regulation, the report commented that this phase to supervise properly and that regulation was not here needed as much as was regulation of passenger carriers. The suggestion was for further study of the problem while more experience was gained in the regulation of busses.

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8 Ibid., p. 723.

The study of the problem continued, and in 1930 the Interstate Commerce Commission began another investigation of motor carrier transportation. Its report was published as "Coordination of Motor Transportation" after its approval April 6, 1932.[9]

In its second report the Commission quoted more accurate and definite statistics, found the competitive threat of both trucks and busses to be formidible, and recommended regulation for the entire interstate motor carrier field in more definite proposals. That the problem was still unsolved even in theory was made clear, and Congress was requested to make funds available for an impartial and authoritative investigation of the entire field of transportation, with a view of ultimately devising better theories and methods of economic coordination.

Regulation Need Grows. Trucks carried in 1929 about six percent as many ton-miles of freight as did the railroads, and originated an estimated 14.2 percent as much intercity traffic as did the railroads.[10] The report still inclined to the view that many persons probably overestimated the advantages of the truck, "judged from the broad public standpoint,"[11] but concluded its estimates of truck efficiency in rather careful language:[11]

> For less-than-carload and for much carload traffic, other than bulk movements on a siding-to-siding basis, truck service is so much superior to rail service and truck costs are so far below those of railroads or any combination of rail and motor facilities that as

9 182 I.C.C. 263-430.
10 Ibid., p. 374.
11 Ibid., p. 376.

> to such traffic for distances up to about 150 miles, but averaging not more than 75 miles, trucks have a distinct advantage; in an intermediate zone up to approximately 300 miles, truck service can equal or excel rail service on the foregoing classes of traffic, but the line-haul costs of trucks within this zone are greater, so that there are here large possibilities for effecting coordination; in the zone beyond, the inherent advantages of the rail carriers with respect to costs and speed make truck competition generally of less concern.

In 1930 busses carried about 26 percent as many passenger-miles as did the railroads, and about 25 percent of the intercity bus travel was interstate. Of the estimated $274,000,000 of passenger revenue lost to the motor vehicle in general by railroads between 1925 and 1929, busses were responsible for 20 to 30 percent.[12]

By 1932 the Commission, in its recommendation, was emphasizing that "unrestrained competition is an impossible solution of the present transportation problem and is incompatible with the aim of coordination under regulation."[13] The hypothesis was that there existed a need for fair and economic regulation of all transportation, and the conclusion was clear.[13]

> Federal legislation relating to the regulation of motor vehicles operating upon the public highways and engaged in inter-state commerce is desirable in the public interest.

Classification of Carriers Recommended. The recommendation urged the division of motor carriers into common and contract carriers, with appropriate provisions for regulation of each class, and continued somewhat its former distinction between need for regulation of busses and of

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12 Ibid., p. 377.
13 Ibid., p. 380.

trucks by remarking that regarding the need of regulation of busses the "opinion appears to be unanimous."[14] By implication there was not unanimous recognition of the need for regulation of trucks.

In 1933 Congress provided in the Emergency Railroad Transportation Act for the appointment by the president of a federal coordinator of transportation, who recommended federal regulation of motor carriers in his report to President Roosevelt on March 10, 1934.[15] Partly as the direct result of his report and partly as the manifestation of growing conviction on the problem, another bill was introduced into Congress providing for federal motor carrier regulation. It was subjected to study by the coordinator and his staff, the entire membership of the Interstate Commerce Commission, state regulatory agencies, and counsel for shippers, railroads, and the motor carrier industry.[16]

THE MOTOR CARRIER ACT OF 1935

After being amended, this bill was passed by Congress and was approved by the president on August 9, 1935, as the Motor Carrier Act of 1935.[17] In federal as well as state regulation, initial legislation was far from embryonic; to a very large extent this law provided the Interstate Commerce

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14 Ibid., p. 380.

15 Report of the Federal Coordinator of Transportation, 1934. House Document no. 89, 74th Cong., 1st sess., Jan. 30, 1935.

16 Regulation of Interstate Motor Carriers, Hearings Before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives; To Amend the Interstate Commerce Act, Hearings Before the Committee on Interstate Commerce, United States Senate, 74th Cong., 1st sess.

17 49 Stat. 543-567.

Commission with a complete plan for regulation of interstate motor carrier traffic.[18]

Technically, the new law became part II of the Interstate Commerce Act, and the original act with its numerous amendments became part I. The 1935 law constituted the greatest expansion of the powers of the Interstate Commerce Commission since the Transportation Act of 1920.[19]

The Commission has explained that:[20]

> Motor transportation required regulation for two principal reasons; first, it had reached so large a development that it was a disturbing element so long as it remained unregulated while other methods of transportation were regulated; second, it had fostered transportation abuses and practices which demanded correction by public regulation.

The law included a declaration of policy which has become a cornerstone on which individual cases arising before the Commission are decided:

> Sec. 202. (a) It is hereby declared to be the policy of Congress to regulate transportation by motor carriers in such a manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers in the public interest; promote adequate, economical, and efficient service by motor carriers, and reasonable charges therefor, without unjust discriminations, undue preferences or advantages, and unfair or destructive competitive practices; improve the relations between, and coordinate transportation by the regulation of, motor carriers and other carriers; develop and preserve a highway transportation system properly adapted to the needs of the commerce of the United States and of the national defense; and cooperate with the several States and the duly authorized officials thereof and with any organization of motor carriers in the administration and enforcement of this part.

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18 Fifty-First Annual Report of the Interstate Commerce Commission, 1937, p. 68.

19 Interstate Commerce Commission Activities, 1887 to 1937, pp. 51-52.

20 Ibid., p. 211.

In order to accomplish this purpose, the act defined "common carrier by motor vehicle,"[21] "contract carrier by motor vehicle,"[21] and "private carrier of property by motor vehicle."[21] The first two types of carriers were placed under the full regulatory authority of the Commission, and the Commission was authorized, if need were found, to prescribe standards of equipment, hours of employees, and requirements to promote safety of operation of interstate motor vehicles of other classes. Private carriers of property were made subject only to such safety regulations.

Authority of I.C.C. Required. As a prerequisite to interstate operations, every common carrier was directed to obtain a certificate of convenience and necessity, every

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21 These definitions are contained in paragraphs 14, 15, and 17 of sec. 203 (b):

(14) The term "common carrier by motor vehicle" means any person who or which undertakes, whether directly or by a lease or any other arrangement, to transport passengers or property, or any class or classes of property, for the general public in interstate or foreign commerce by motor vehicle for compensation, whether over regular or irregular routes, including such motor vehicle operations of carriers by rail or water, and of express or forwarding companies, except to the extent that these operations are subject to the provisions of part I.

(15) The term "contract carrier by motor vehicle" means any person, not included under paragraph (14) of this section, who or which, under special and individual contracts or agreements, and whether directly or by a lease or any other arrangement, transports passengers or property in interstate or foreign commerce by motor vehicle for compensation.

(17) The term "private carrier of property by motor vehicle" means any person not included in the terms "common carrier by motor vehicle" or "contract carrier by motor vehicle", who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in furtherance of any commercial enterprise.

A list of exceptions to these definitions included school busses, taxicabs, hotel busses, busses in national parks,

contract carrier required to obtain a permit, and every broker dealing in motor transportation ordered to obtain a license from the Interstate Commerce Commission.

The Commission was authorized to establish for common carriers requirements as to adequate and continuous service, baggage and express, uniform accounts, records, reports, qualifications and maximum hours of employees, and safety regulations. For contract carriers the Commission had the same authority of regulation except that they were not required to furnish continuous service or service adequate for the general shipping public.

No merger, consolidation, or acquisition of control by contract, purchase of stock, or otherwise of two or more motor carriers can be effected lawfully without approval and authorization by the Commission. In order to approve the application of a railroad to use motor vehicles, the Commission must find that such will improve the railroad's services in the public interest and "will not unduly restrain competition." This provision regarding mergers does not apply to consolidations involving 20 vehicles or less, and carriers subject to this provision are exempt from the anti-trust laws.

The Commission's approval is also required for all security issues, any guarantee of any other's securities, or

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farm trucks, trucks used for transporting livestock by the owner, vehicles used exclusively for distributing newspapers, vehicles traveling exclusively between contiguous municipalities unless they are genuinely engaged otherwise in interstate commerce, and casual transportation generally.

issues of notes except certain short-time notes by a motor carrier.

I.C.C. May Prescribe Rates. Motor carriers are authorized to establish joint rates and through routes with each other and with railroads, and were by the act forbidden to practice person, place, or commodity discrimination of any kind or to give rebates.[22] The act contains no specific prohibition of a greater charge for a short haul than for a long haul including the short haul. The Commission can prescribe maximum and minimum or either maximum or minimum rates, fares, and charges, and can establish classifications, rules, regulations, and practices, but is specifically forbidden to establish intrastate rates for the purpose of removing discrimination against interstate commerce or for any other reason.[23]

The Commission may determine reasonable and just divisions of joint rates and may enforce an adjustment as of the time of complaint. In any proceding to determine a just rate, there shall not be allowed as elements of value either good will, earning power, or the certificate under which a carrier operates. The factors to be considered in prescribing rates by common carriers by motor vehicle shall be, among others: the inherent advantages of motor transportation, the

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22 In Arrangements and Agreements between Arrow Carrier Corporation and Duplan Silk Corporation, 4 M.C.C. 657, and in Middle Atlantic States Motor Carrier Rates, 4 M.C.C. 231, the Commission declared illegal certain round-about arrangements which it found to result in the granting of rebates, and ordered the practices stopped.

23 The Supreme Court had ruled that the Interstate Commerce Commission had this power with respect to railroad rates if necessary to prevent discrimination against interstate commerce. Alabama v. United States, 279 U.S. 229 (1929).

effect of rates upon the movement of traffic by such carriers, the need in the public interest of adequate and efficient transportation by such carriers "at the lowest cost consistent with the furnishing of such service;" and the need of revenues to enable carriers "under honest, economical, and efficient management, to provide such service."

Competition Regulated. The Commission may prescribe minimum rates so that such rates will not give a contract carrier a competitive advantage over any common carrier by motor vehicle subject to this act when it is found that such would not be in the public interest.

With respect to receipts and bills of lading, motor common carriers were placed under the same rules as railroads. They had even previously been subject to the Bills of Lading Act.[24]

The Commission may require yearly, monthly, and special reports as it sees fit, and under oath if it requires, and may prescribe the forms of accounts, records, and memoranda and the length of time these must be kept. If it deems wise, it may require a copy of every contract entered into affecting the traffic subject to this act to be filed with it. The Commission's employees shall at all times have access to the property of carriers under its jurisdiction for the purpose of inspecting all records.

Rules for use of carriers in extending credit to shippers may be prescribed by the Commission, but pending such rules carriers were not to deliver goods, except to govern-

24 Motor Bus and Motor Truck Operation, loc. cit., p. 732.

mental agencies, before payment of all charges. Identification of all vehicles under the jurisdiction of the act may be provided for by the Interstate Commerce Commission.

Investigation by the Interstate Commerce Commission into the need for nation-wide regulation of sizes and weights of vehicles and maximum hours of service for employees of all motor carriers and private carriers of property by motor vehicle was authorized by the act.

The Grandfather Clause. The so-called grandfather clause specified that contract carriers in bona fide operation as such on July 1, 1935 and continuously since would be granted permits and common carriers in bona fide operation as such on June 1, 1935 and continuously since would be granted certificates. These grants of authority to operate were only authorizations to continue the service given on July 1 and June 1 respectively, and in order to obtain them carriers must show only that their operations were not against the public interest. Furthermore, application must be made within the 120-day period following the effective date of the act for the grandfather clause to be operative for a carrier.

Any application made after the 120-day period would be treated as an application by a new carrier, and common carriers would be required to show that public convenience and necessity required their service and contract carriers would be required to demonstrate that their operations would be consistent with public interest. The grandfather clause also applied to the licensing of brokers dealing in motor transportation.

Joint Boards. The idea of national authority delegated to state officials for administration, stressed in the report of the investigation of 1928, was incorporated into the act. Under this plan, joint boards composed of one member from each state involved consider applications for certificates, permits, or licenses; the suspension or change of any of these grants of authority; and consolidations, mergers, acquisitions of control of operating contracts; complaints of violations of rules and regulations. An examiner from the Interstate Commerce Commission is in attendance at all meetings of joint boards as a matter of administrative procedure. Such joint boards, the members of which are in practice usually members of the state regulatory commissions, are appointed by the Interstate Commerce Commission on recommendation of the state regulatory bodies or governors.

Joint boards hear the evidence and make recommended orders to the Commission, which either approves the order if there are no objections, stays the order to consider objections, or stays the order on its own motion if it desires to consider the case in a hearing. The law directs that all matters affecting not more than three states shall be referred to a joint board. Other matters may, at the Commission's option, be so referred; but adequate legal safeguards provide for consideration by any matter whatsoever by the Commission in case some obstacle prevents proper functioning of a joint board.

Interstate Carriers Within One State. The law further specified that a carrier engaged solely within a state, even

though engaged in carrying interstate commerce, shall not be required to get authority to operate from the Interstate Commerce Commission if he has authority from his state commission, but: "Such transportation shall, however, be otherwise subject to the jurisdiction of the Commission under this part."

Recent Amendments to the Act. The Motor Carrier Act of 1935 is substantially the law governing regulation of interstate commerce today (June, 1939). It was amended by two statutes in June, 1938, the Civil Aeronautics Authority Act[25] making the Motor Carrier Act inapplicable "to the transportation of persons or property by motor vehicle when incidental to transportation by aircraft," and an act specifically in amendment to the Motor Carrier Act.[26] Most of the provisions in amendment modified small points of jurisdiction or reworded definitions slightly or provided for different procedure in achieving regulation in some matters. Most of the changes of detail are of considerable administrative importance in spite of the simplicity of the change.

The more important of the 1938 amending clauses are: a new section (210a) authorizing temporary permits without formal investigation for operation of not more than 180 days to serve a territory having no service (the Commission to consider in the meantime the grant of permanent authority) or to consolidate lines, if it appears that the absence of such permission to operate would result in injury to the property

25 52 Stat. 1029.
26 52 Stat. 1236-1241.

in its future usefulness to the public; a general provision to make the rule exempting original schedules and regulations for administration of individual companies from revocation by the Commission apply only to original schedules and regulations filed on or prior to July 31, 1938; a change allowing notes of not more than two years' maturity or total amount of $100,000 to be issued by any carrier without consulting the Commission; and a grant of authority to the Commission to suspend any certificate, permit, or license on 15 days' notice for failure to comply with any order, rule, or regulation, and changing the required notice necessary for cancellation from not less than 90 days to not less than 30 days.

Pending Amendments and Other Bills. Currently pending in Congress (June, 1939) are a number of bills affecting motor carriers, some providing for nation-wide drivers' licenses,[27] one providing for adoption of uniform traffic regulations by all states receiving federal aid,[28] and others in more direct amendment of the Motor Carrier Act.[29] The legislative committee of the Interstate Commerce Commission submits numerous reports, by special request, to congressmen, and the chairman of the committee appears before frequent hearings of both houses.[30]

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27 76th Cong. sess. 1, S. 25.
28 Ibid., H.R. 15.
29 Ibid., S. 167. Other bills pending are H.R. 2299, H.R. 2395, and S. 254.
30. Fifty-Second Annual Report of the Interstate Commerce Commission, 1938, p. 121.

REGULATION UNDER THE ACT OF 1935

On August 10, 1935, the day following the approval of the act, the Interstate Commerce Commission created Division 7 to handle administration of the act, but on September 24, the Commission effected a general reorganization, reduced and consolidated the divisions, and made Division 5 in charge of the Motor Carrier Act, appointing a director for the new Bureau of Motor Carriers on October 1, 1935.[31] This was set in the act itself as the date on which the law was to become effective, but a proviso gave the Interstate Commerce Commission authority to postpone the effective date of any or all parts of the act to any date not later than April 1, 1936.

An initial delay postponed the effective date of the entire act until October 15, 1935 because of difficulties in obtaining and distributing printed forms for applications.[32] Requirements relating to filing of schedules or contracts by

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31 Interstate Commerce Commission Activities, 1887-1937, p. 217. When the bureau was set up the following sections were authorized: 1. certificates and insurance, 2. complaints, 3. traffic, 4. finance, 5. legal and enforcement, 6. safety, 7. accounts, 8. research, 9. statistics. As of November 1, 1938, all sections were in working order except that for statistics, but the staff detailed on research was a small one because of insufficiency of appropriations, of which the Commission has mildly complained in its annual reports. Appropriations for the administration of the Motor Carrier Act have been: (1) August 10, 1935 to June 30, 1936--$525,000 obtained by re-allocating the general appropriation for the Interstate Commerce Commission, upon authority from the Bureau of the Budget, after the third deficiency appropriation bill carrying a $1,250,000 appropriation to carry out the Motor Carrier Act failed of passage. (Forty-Ninth Annual Report of the Interstate Commerce Commission, 1935, p. 73.) (2) Fiscal year ending June 30, 1937--$1,035,000 (49 Stat. 1112). (3) Fiscal year ending June 30, 1938--$2,750,000 (50 Stat. 337, 52 Stat. 86). (4) Fiscal year ending June 30, 1939--$3,500,000 (52 Stat. 419).

32 Forty-Ninth Annual Report of the Interstate Commerce Commission, 1935, p. 73.

contract carriers and tariffs by common carriers were postponed until March 31, 1936 to give carriers more time to learn how to prepare tariffs and schedules.[33] Meanwhile the 120-day period for filing applications under the grandfather clause expired on February 12, 1936, but not before 80,428 applications had been filed claiming authority to operate as a matter of right. The Bureau of Motor Carriers was faced with its first gigantic task--the duty of carefully checking each of these applications on file to determine in each case the actual state of bona fide operations on June 1, 1935 or July 1, 1935.

On May 7, 1937, rules and regulations were issued providing for an identification plate on the rear of each vehicle operated under the act, at a cost of 25 cents each to carriers and not to be renewed periodically.[34] By October 1, 1937, 137,373 plates had been issued, and to October 31, 1938, 197,669 plates had been issued.

Oklahoma's Joint Board Member. Pursuant to the act, the Interstate Corporation Commission began immediately to refer applications involving three states or less to joint boards. Corporation Commissioner A. S. J. Shaw has been appointed the joint board member for Oklahoma, and to date Oklahoma

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33 Fiftieth Annual Report of the Interstate Commerce Commission, 1936, pp. 69-88. "One of the main difficulties has to do with the type of person who constitutes the average motor carrier. In the main, he is a small operator; he is not educated as to regulation and does not readily recognize his responsibilities under the law. He requires not only the ordinary regulatory attention but also education, instruction, cooperation, explanation, adjustment, and detailed individual treatment."

34 Fifty-First Annual Report of the Interstate Commerce Commission, 1937, p. 68.

has been designated a member of the following joint boards: 15, 16, 39, 86, 88, 90, 170, 180, 210, 211, 214, 217, 251, 254, 287, 288, 307, 334.[35] Commissioners Reford Bond and Ray O. Weems are alternate members of joint boards, and certain employees of the Oklahoma Corporation Commission have also been named alternate members.

Whenever a proposed operation involving three states or less comes before the Interstate Commerce Commission, the original hearing regarding the application is delegated to a joint board made up of the joint board member from each of the states involved. The joint board members' actual expenses from the time they leave their homes until they return from the joint board meeting are paid by the Interstate Commerce Commission, and an examiner from the Bureau of Motor Carriers of the Interstate Commerce Commission in practice meets with each joint board and advises it on procedure and legal questions.

After the hearing, the joint board makes its recommended order to the Interstate Commerce Commission, and the Commission itself or an appelant or interested party may challenge the recommended order and obtain a hearing before the Interstate Commerce Commission. Otherwise the order is approved and becomes effective. In cases involving more than three states, the original hearing is ordinarily held before an examiner of the Bureau of Motor Carriers instead of a joint board, but otherwise the procedure is much the same.

35 Letter from Homer S. Hurst, director of the motor carrier division of the Corporation Commission of Oklahoma, to the writer, dated June 20, 1939.

Lenient, But Not Lax, Enforcement. In the actual administration of the act, the Interstate Commerce Commission has shown a spirit of helpful cooperation and a lack of any desire to enforce rules rigidly when such enforcement would not better conditions; it has at times been lenient.[36]

Safety Regulations. Besides its thousands of individual cases heard and disposed of, the Commission was faced with the task of modifying and amplifying the rules and regulations

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36 The ruling has been given that violations of the law by operating without a permit after the Motor Carrier Act became effective and driving too long hours and as the result suffering several collisions must all be considered in determining an applicant's fitness, but these are not absolute bars to the grant of a certificate or permit. Diehl Contract Carrier Application, 1 M.C.C. 151 (152); House Contract Carrier Application, Ibid., 725 (731); Vedder Oil Co., Inc., Contract Carrier Application, Ibid., 757 (759).

When it developed at hearing in Tri-State Transit Co. of Louisiana, Inc., Common Carrier Application, 1 M.C.C. 215 (216), that the applicant had not commenced actual operation of a portion of its route prior to June 1, 1935, although application was filed under the grandfather clause, application was not turned down but was considered as automatically amended accordingly and was so acted upon.

That technically illegal operation escaped in excusable cases is shown by the following from the report of Butcher Contract Carrier Applications, 1 M.C.C. 485 (486, 487):

"Question: May a carrier who was entitled to a certificate under the grandfather clause, but who filed his application subsequent to February 12, 1936, operate lawfully during the pendency of the application? Was his operation after February 12, 1936, and up to the filing of his application lawful?

"Answer: A carrier who was entitled to a grandfather right by virtue of bona fide operation, and who filed application for a certificate after February 12, 1936, may operate lawfully from the date of filing until the application is passed upon. His operations from February 13 to the date of filing application were illegal."

Applicant's own testimony, when it is not disputed and when he is one with experience in the field and his estimates appear to have been conservative and carefully made, is accepted as the necessary evidence that a carrier will have enough business to justify its operation and make such profitable. Watson Common Carrier Application, 1 M.C.C. 277 (279).

In Slagle Contract Carrier Application, 2 M.C.C. 85, the Commission ruled that failure to conform to state laws

contained in the act. Interpretation of the act came largely in reports of individual cases, but a few general regulations were necessary. One of the first important sets of general rules came on December 23, 1936, in Motor Carrier Safety Regulations,[37] in which the Commission prescribed definite rules concerning qualifications of drivers, information about drivers to be reported to the Bureau of Motor Carriers, regulations for driving motor vehicles, definition of reasonable speed, and parts and accessories necessary for safe operation.

Contract v. Common Carriers. In April, 1937, the Commission considered the troublesome question of competition between common and contract carriers. We have seen that the Oklahoma Corporation Commission decided this question for intrastate carriers by prohibiting rates for contract carriers lower than those of any competing common carrier; for the Interstate Commerce Commission this was a plausable possible solution, but it was not the best one because of the great number of carriers under its jurisdiction, and the Commission has not followed this plan.[38] Consequently the Commission adopted a different solution, and in its ruling, Contracts of Contract Carriers,[39] decreed regarding the subject

> ...that for the future the said contracts or agreements shall be in writing, shall provide for transportation for a particular shipper or shippers, shall be bilateral and impose specific obligations upon both carrier and shipper or shippers, shall cover a series of shipments during a stated period of time in

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and regulations is not in and of itself proof that a carrier was not in "bona fide operation," which the act makes a prerequisite to so-called grandfather rights.

37 1 M.C.C. 1-36.

38 Lower rates for contract carriers than for common carriers was not unfair or destructive competition in Vedder Oil Co., Inc., Contract Carrier Application, Ibid., 757 (760).

39 Ibid., 628-638.

> contrast to contracts (of common carriers) of carriage governing individual shipments, and copies of which shall be preserved by the carriers parties thereto so long as said contracts or agreements are in force and for at least one year thereafter.

The report recognizes that this ruling is in direct conflict with conceptions of common law, explains why this is no longer a valid objection to the ruling's legality, and sets forth in considerable detail that such regulations will stabilize the industry, tend to prevent unjust discrimination by large against smaller carriers and shippers of any class, and will not harm contract carriers because they are all placed on the same footing. In June, 1937, true copies of all such contracts were required to be filed with the Commission.[40]

Motor Carrier Insurance. Insurance for motor carriers has been a troublesome matter for the Commission. It considered at length the desirability of a definite set of rules of its own which would cover insurance,[41] but in its initial ruling on the subject prescribed only minimum amounts of insurance for various classifications of carriers and contented itself with the rule that the insuring companies must have licenses to write insurance in every state in which the insured carrier did business.[42] To allow many insurers time to comply with the requirement, the effective date of the regulation was postponed until February 15, 1937.

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40 In the Matter of Filing of Contracts by Contract Carriers by Motor Vehicle, 2 M.C.C. 55.

41 Fifty-First Annual Report of the Interstate Commerce Commission, 1937, pp. 66-68.

42 Motor-Carrier Insurance for Protection of the Public, 1 M.C.C. 45. Minimum amounts as given in this schedule were in many cases the same as those approved for carriers by the Oklahoma Corporation Commission in 1924.

Of considerable importance to regulation generally was a ruling delivered in the report concerning insurance in which section 206 (a) of the Motor Carrier Act was interpreted to create a statutory adoption by the Commission of certificates issued by state commissions to carriers of interstate commerce who operate wholly within one state. This interpretation of the statute makes such carriers subject to the requirements regarding insurance and all other matters promulgated by the Commission except in the matter of granting the original certificate or permit to operate.[43]

Later, the Commission discovered cases in which insurance companies who were in fact insolvent still were technically licensed to do business in some states, and issued another order regarding Motor Carrier Insurance for the Protection of the Public.[44] In this new order the Commission reserved the right to revoke or refuse for cause its approval of any insurance policy or surety bond.

Credit Extensions by Carriers. In July, 1937, the Commission authorized extension of credit for seven days to first shippers by a carrier and 30-day credit extensions to reliable shippers who had paid one bill to a carrier satisfactorily.[45] It found that contract carriers' extensions have "not been

43 The Commission has gone so far as to regard the law as only prohibiting it from requiring carriers of interstate commerce wholly within one state and under authority from a state commission to obtain a certificate or permit from the Commission. In Alabama Coaches Co., Inc., Common Carrier Application, 1 M.C.C. 273 and Meisinger Stages Common Carrier Application, Ibid., 471, the Commission granted certificates to such carriers even though they already had authority to operate from their own state commissions.

44 6 M.C.C. 407.

45 Payment of Rates and Charges of Motor Carriers, 2 M.C.C. 365.

shown to contravene the policy declared...." The credit policy has been brought within the zone of regulated practices of carriers in order to guard against discrimination.

Maximum Hours of Work. At the close of 1937 and again on July 1, 1938, the Commission issued orders prescribing maximum hours for employees of motor carriers.[46] Technically the new orders became Part V of the original Motor Carrier Safety Regulations, since the principal reason for regulating hours of drivers is to prevent incompetent driving due to physical fatigue. As amended, the maxima are: 60 hours in any week, but drivers of vehicles operating every day of the week can be on duty up to 70 hours in any period of 192 consecutive hours; 10 hours' driving in any period of 24 hours unless the driver is off duty for eight consecutive hours during or immediately after the 10 hours and within the 24 hours.

Carrier Classifications. On August 9, 1937, the Commission prescribed a system by which motor carriers of property shall be classified for the purposes of making rules applicable to particular classes.[47] The chart on page 120 is reproduced from that contained in the order and shows graphically all of the possible classifications of property carriers.

For purposes of uniform accounting reports, the Commission has divided motor carriers into three classes:[48]

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46 In the Matter of Maximum Hours of Service for Motor Carrier Employees, 3 M.C.C. 665; also 6 M.C.C. 537.

47 In the Matter of the Classification of Brokers and Motor Carriers of Property, 2 M.C.C. 700.

48 Fifty-Second Annual Report of the Interstate Commerce Commission, 1938, p. 86.

CLASSIFICATION OF MOTOR CARRIERS OF PROPERTY
AND OF DEALERS AS BROKERS IN
SUCH TRANSPORTATION

Source: In the Matter of the Classification of Brokers and Motor Carriers of Property, 2 M.C.C. 700.

Common
- A Regular route and scheduled service.

Contract
- B Regular route but non-scheduled service.

Broker
- C Irregular route and radial service.

Private
- D Irregular route and non-radial service.

Exempt
- E Local cartage service.

Sample identification of a carrier:
Contract, class C-2.

1. Carriers of general freight.
2. Carriers of household goods.
3. Carriers of heavy machinery
4. Liquid petroleum products carriers.
5. Carriers of refrigerated liquid products.
6. Carriers of refrigerated solid products.
7. Carriers engaged in dump trucking.
8. Carriers of agricultural commodities.
9. Carriers of motor vehicles
10. Carriers engaged in armored-truck service.
11. Carriers of building materials.
12. Carriers of films and like goods.
13. Carriers of forest products.
14. Carriers of mine ores except coal.
15. Carriers engaged in retail-store delivery service.
16. Carriers of explosive or other dangerous articles.
17. Carriers of specific commodities not sub-grouped here.

Class I carriers are those whose gross revenues from transportation services aggregate $100,000 or over annually.

Class II carriers are those whose gross revenues from transportation services aggregate at least $25,000 but less than $100,000.

Class III carriers are those whose gross revenues from transportation services aggregate less than $25,000 annually.

Uniform accounts are prescribed for Class I carriers of passengers and for Class I carriers of property. Class I carriers of passengers file monthly reports showing the amount of passenger revenue and the number of passengers during the current month and during the corresponding month of the preceding year. Class I carriers of property as well as Class I carriers of passengers file quarterly reports of revenue and expense data, certain operating statistics for the current quarter, and cumulative figures for the current year and for the corresponding quarter and cumulative period of the previous year. During 1938 the Commission received 558 special reports by Class I carriers showing income and statistical data in reply to orders issued in connection with proceedings involving a consideration of some kind regarding reasonableness of rates.[49]

Of vital importance, although not discussed here because of their high degree of technicality, are the Commission's orders fixing motor carrier rates for certain territories as well as for individual carriers.

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49 Fifty-Second Annual Report of the Interstate Commerce Commission, 1938, p. 87.

PRECEDENTS OF INTERPRETATION

General rules of interpretation of importance in administering the act are also laid down in decisions on individual cases. The usefulness of joint boards has been protected by the Commission's interpretation that applicants cannot sustain a charge that a member of a joint board is prejudiced merely because he is also an employee of a state commission which is protesting the granting of a certificate being considered by the joint board. The members of the joint board in making their recommendation act as representatives of the Interstate Commerce Commission and in the absence of a showing of a specific prejudicial action it is presumed that each member acts fairly and impartially in the performance of his duties under the act. Appeals to the Commission are, of course, available.[50]

In the confusing matter of distinctions between common and contract carriers, the Commission's ruling are again to be found in reports of individual cases. In Bassete & Lawson Contract Carrier Application, 1 M.C.C. 187 (189), we are told that the requirements for the issuance of a permit to operate as a contract carrier are not as exacting as those governing the issuance of a certificate. In the case of a certificate, it is necessary to find that present or future convenience and necessity requires the proposed service before the certificate can be granted. In the case of a permit, however,

50 Doyle Common Carrier Application, 1 M.C.C. 761 (762); Benjamin Franklin Line, Inc., Common Carrier Application, 1 M.C.C. 97 (98).

before authority to operate can be granted it is necessary only to find that it is consistent with the public interest and with the policy declared in the act. When the applicant proposes to operate as a common carrier, it is necessary to consider the extent to which the territory is already served, need for additional service, and facilities which the applicant can provide to supply common-carrier service. Less is demanded in the case of a contract carrier.

What constitutes these less stringent requirements for contract carrier applicants must be decided in the light of individual circumstances and no general rule can be applied.[51]

In McBroom Contract Carrier Application, 1 M.C.C. 425 (426), it was not necessary for the applicant, who sought authority to serve one particular shipper, for whom he hauls a single commodity under an individual contract, to show that operation by him as a contract carrier was required by public convenience and necessity, but only that it would be consistent with the public interest.

Commission May Not Limit Equipment. One point important in considering regulation in general, as well as any particular application, is brought out in Butcher Contract Carrier Application, 1 M.C.C. 485 (488). Regardless of the applicant's statement that he would not haul for other than the shipper with whom he already had contracted, the Commission may not, under section 209 (b) (6), impose any terms, conditions, or limitations restricting the right of a contract carrier to

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51 Gollock Application for Extension of Operations, 1 M.C.C. 161 (165).

substitute or add contracts, or to add equipment and facilities, within the scope of his permit, as the development of the business and the demands of the public may require.

Hurdles for New Applicants. The logical conclusion, of course, from this inability of the Commission to limit the equipment of carriers already in operation is that the Commission must guard against uneconomically too great carrying capacity for a route by limiting its approval of new applications. In C. & D. Oil Co. Contract Carrier Application, 1 M.C.C. 329 (332), this dictum was stated. To foster sound economic conditions in the motor-carrier industry, existing motor carriers should normally be accorded the right to transport all traffic which they can handle adequately, efficiently, and economically in the territories served by them, as against any person now seeking to enter the field of such transportation.

Furthermore, certain conditions are placed around the matter of proof by the new applicant that his services are needed. In Wellspeak Common Carrier Application, 1 M.C.C. 712 (715-716), it was found that when traffic transported by the applicants had been previously handled by other common or contract carriers and has been obtained because of lower rates, and rates of such competitors were not shown to be too high, issuance of contract-carrier permit would not be consistent with the public interest. The same case also brought to light another bar to new applicants. That the rates of carriers already in operation were too high would

not alone justify issuance of certificates to additional carriers in the same territory. Any unlawful rates of existing carriers can be corrected by the Commission, upon complaint in accordance with the act. It would be uneconomical social management to lower these rates by forcing competition as this practice would result in destruction of the property values of investments in motor carrier transportation.

FEDERAL TAXATION OF MOTOR TRANSPORTATION

Passing consideration must be given here to the taxation phase of federal regulation of motor carriers, although here the taxes apply to the vehicles they and private individuals use and the motor fuel used to propel these vehicles. Federal taxation of motor transportation is not special taxation of motor carriers, but of all motor vehicles in general without distinction to method of operation.

Since 1917 the internal revenue department of the federal government has collected excise taxes on automobiles, trucks, automobile parts, accessories, tires, and tubes, and on similar manufactured items from time to time, except during most of 1928 and until 1933. These taxes are relatively small in amount, as can be seen from Table III when it is recalled that the amounts shown there are totals for all such taxes and for the entire nation. No detailed consideration of the legislation authorizing these taxes will be given here; they are merely a part of the system of internal revenue, but they do of course especially concern motor carriers.

Of more recent origin as well as of more fiscal importance to the government and motor carriers is the federal gasoline tax of one cent per gallon. Although proposed by responsible legislators as early as 1914 and frequently later, the gasoline tax was first written into law when President Hoover approved the Revenue Act of 1932 on June 6, 1932. The one-cent levy became effective June 21, 1932, and except for an interval from June 16, 1933 to January 1, 1934 when the tax was one and one-half cents, has continued unchanged in rate since. The Seventy-Sixth Congress extended the tax, along with others, to June 30, 1939,[52] and further extensions presumably may be expected.

Federal grants in aid to states for highway construction have been balanced by receipts from motor vehicle and motor fuel taxation, as shown by Table III.

SUMMARY

Federal regulatory authority over motor carriers has a short history, chronologically speaking. First seriously proposed by the Interstate Commerce Commission for motor busses in 1928 and later for all contract as well as common carriers by motor vehicle in 1932, federal regulation of motor carriers was not a reality until the Motor Carrier Act of 1935. This act gave wide powers of regulation to the Interstate Commerce Commission, and provided for decentral-

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52 50 Stat. 358. With the exception of this extension and that described in 49 Stat. 431, a legislative history of the federal gasoline tax from its proposal in 1914 will be found in Finla G. Crawford, The Gasoline Tax in the United States, 1934, pp. 3, 7.

ization of authority in cases of carriers operating in three states or less.

Under the act, which has received amendments designed to make it a more practical statutory basis for regulation, the Interstate Commerce Commission has shown the same spirit of scientific investigation into the facts as it showed in its earlier reports. It furthermore has demonstrated the practical adjustment, under the law, of its administration and coordination of all transportation facilities. The social good is the objective of federal regulation.

The Commission has made extensive regulations for safety, including the promulgation of maximum working hours for drivers, has regulated competition between contract and common carriers by setting up rules for contract carrier contracts, made provisions for motor carrier insurance and credit extensions by carriers, made classifications of carriers of property and brokers and prescribed systems of accounts for Class I, and has laid the precedents for hearing applications for certificates of convenience and necessity for common carriers and for permits to operate for contract carriers.

Federal regulation is in its infancy in years, in its maturity in development.

Chapter VII

RECOMMENDATIONS

As suggested by the statement of problems of regulation in a previous chapter, the problems of regulation for safety and convenience and regulation of service, rates, charges, and classifications have been largely solved satisfactorily, in broad theory at least. We have pointed out justifications in economic reality and in firmly founded social policy for the general type of regulation practiced at present by state and federal government under the police power and by both the Corporation Commission of Oklahoma and the Interstate Commerce Commission.[1] For these reasons the recommendations here will deal principally with the problems of taxation and especially with the problem of paying for use of the highways.

Any plan of regulation of a business affected with the public interest must involve political as well as economic considerations. Perhaps broad concepts of political and economic in such a context would largely duplicate each other; at least political considerations are of great legitimate importance in any regulatory problem. Any economic plan or theory based on mathematical formulae is subject to modification in practice, and many a worthy ideal is not the best practice for today. One need be neither a cynic nor adopt the attitude that "whatever is, is right" to have profound regard for the present situation in considering to what extent it should be changed.

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1 Chapters II and IV.

What can be done and how inexpensively it can be done are just as important questions as what should be done. How a plan probably will be administered is as important to consider as how it could best be administered. The national leader who disarms his country because he believes in the Christian ideal of world peace may find his ideals ahead of the world. The economic adviser who insists on suddenly moulding industries as they actually should be with little thought of the metamorphosis from their present to their ideal state may find the transition more costly than the improvement is worth.

These recommendations, therefore, are to be taken as suggestions for consideration and for goals to work toward if they are found to be practical in the light of existing conditions. They are not given as a solution for the motor carrier regulation problem, but as aids in handling some problems of motor carrier regulation.

Presumption Against Subsidy. Individual transportation rates do not clearly reflect costs. During many times and at many places in this country's development, total charges for transportation have not adequately covered transportation costs. These observations merely indicate that in the field of transportation the prices set in the market do not always correspond to the cost socially necessary to render the service for which the price is charged. Someone besides the one who receives the service sometimes pays part of the bill.

This is not to say that such a situation is desirable; the fact is that it has at times existed and, as far as

individual rates are concerned, at least, continues to exist. This failure of the market to reflect social cost in the price is true in many phases of our economy today.[2] Neither the student in public school nor his parents pay for the cost of his schooling. The parents may contribute to the schools more or less than the cost of educating their own children; the bill is not presented for the service rendered. Likewise, benevolent physicians, and at least one nationally famous hospital, make no direct relation between the price charged and the service rendered. The same situation is true in more instances that is realized by the man who believes that "the market is always right."[3]

In view of this general situation, the finding that some particular class of transportation is subsidized is in itself neither a reason that the subsidy should be stopped or that it should be continued. But the extent of any subsidy in favor of a class of transportation or of transportation in general, including any subsidy connected with the highways, should be ascertained. Each case of subsidy should be decided in the light of all of the economic, political, and broad social principles applicable.

It would be reasonable to believe that the exemption from certain taxes of trucks hauling needed fresh fruits

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2 For an excellent discussion of this problem see John M. Clark, Social Control of Business, Chap. XXIII, "The Question of Relative Charges," pp. 350-367.

3 For a discussion of the defensibility and indefensibility of the market in general, see Barbara Wootton, Lament for Economics, pp. 136-166.

would be beneficial to the general welfare if this plan would lower the price within the range of people who had previously had insufficient fruit and who were thus enabled to include it in their diet. If highways were paid for entirely from motor vehicle imposts, such a plan would constitute a subsidy of these truck operations by private automobile owners. Since private automobiles in general are a semi-luxury, such a subsidy might well be justified socially if those engaged in trucking were properly regulated so that they would not receive any of the subsidy as more than ordinary profit. The presumption is against subsidy, however, and any subsidy, prospective or existing now, should be condemned it not found to be thoroughly justified. The subsidy described above is not a recommendation but merely an example.

These recommendations are made on the assumption that motor carrier transportation and private transportation by motor vehicle should in general from the present onward pay their own social costs. This means that although the cost of hauling wheat by truck may or may not be adequately reflected in the price of bread, the total cost to society of transportation by any agency or of transportation in general will be adequately reflected in the total prices charged for that service.

A SUGGESTED TAX PLAN[4]

A taxation plan for motor carriers founded upon this attitude will have as its principal objective the just

4 The program of the Associated Motor Carriers of Oklahoma, Inc., will be found in The Oklahoma Motor Carrier, November-December, 1938, pp. 4 ff.

distribution among motor carriers of the social cost of operating their vehicles. It should be recalled that for the general purposes of this study the term motor carriers includes all carriers of persons for hire or compensation and all carriers of property. Since they now obviously pay, and through them their customers pay, all such costs as gasoline and salaries of employees, the problem in practice is confined to distribution among motor carriers of their share of the cost of the highways.

The first step is the construction of a simple but accurate road-use factor which can be used to multiply by rates in a tax schedule to calculate the tax payment due for payment of the use of the highway by any vehicle.

Factors of Highway Wear. There are seven factors which determine the wear produced by a vehicle on the highway.[5] The most obvious one is mileage; the farther the vehicle travels the more the road is worn. The next one is weight; a heavy vehicle will wear a highway more than a light one. A child can walk across thin ice without cracking it, while a man would break the ice so that not even a child could follow him over it. Thus the wear and damage to a paved highway increase more than proportional to the increase in the weight of the vehicle. The rate of increase varies with different road surfaces and is not a uniform rate through all possible vehicle weights, but it is roughly in geometric ratio.

5 For an excellent discussion of the factors determining highway wear, see Coordination of Motor Transportation, loc. cit., appendix G by C. S. Morgan, pp. 413-428. See also the uniform maximum sizes and weights recommended by the American Association of State Highway Officials, cited post.

The way this weight rests upon the road is also important. A man on snowshoes can walk over the top of snowdrifts which would flounder a small dog. Likewise a heavy vehicle with its weight distributed on broad pneumatic tires on several wheels and several axles and with the axles far apart will move over pavement without damaging it while another vehicle of the same total weight with fewer axles, only two wheels to the axle, and thinner tires and the axles closer together will crack the same pavement or strain the same bridge. Each of the factors of axle load, distance between axles, wheel load, and concentration of weight per inch width of tire is individually important in this respect.

The remaining factor of wear on the highways is speed of the vehicle. Since force of impact increases directly as the square of the speed and the force of impact against the inevitable small irregularities in the pavement is an important cause of damage when a too heavy vehicle travels on it, even slight increases in speed at critical points are important in determining wear on the road.[6]

Simple Use Factor Needed in Practice. A complicated but accurate road-use factor could be constructed by properly combining all seven of the individual factors. But the practical use of such a factor in determining rates of taxes would be marred by its costliness and inconvenience. In practice, pavements must be constructed adequate to support vehicles of sizes decided upon as needed units of a trans-

6 Coordination of Motor Transportation, loc. cit, p. 426.

portation system.[7] In Oklahoma the heavy trucks necessary to move oil production equipment should be allowed for. Then speeds, axle loads, distance between axles, wheel loads, and concentrations of weight per inch width of tire which would break the pavement or damage it with more than ordinary wear must be prevented by law and prohibited by actual enforcement of the law.[8]

This plan is followed more or less closely in practice, but it could be placed on a more scientific basis. It is a technical engineering problem to determine the construction of the pavement adequate for the maximum load decided upon and then to find the maximum wheel-, axle-, and concentration-per-tire-width loads that should be allowed on the pavement.[9]

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7 Ibid.

8 The following recommendation regarding uniform maximum sizes and weights is made by the American Association of State Highway Officials: overall width eight feet, overall height 12 feet six inches, overall length of combinations of vehicles 45 feet, overall length of a single unit 35 feet, axle weight with high pressure pneumatics 16,000 pounds, wheel load of 8,000 pounds on high pressure pneumatic tires or 9,000 pounds on low pressure pneumatic tires; subject to the limitation imposed by the recommended axle loads, no vehicle shall be operated whose total gross weight, with load, exceeds that given by the formula: W=c(L plus 40). In this formula W is the total gross weight with load, in pounds; L is the distance between the first and last axles of a vehicle or combination of vehicles, in feet; c is a coefficient to be determined by individual states. A value of 700 is recommended for c as the lowest which should be imposed, but the association has pointed out that it does not necessarily object to higher values. "This gross weight recommendation is particularly applicable to bridges since axle loads and length limitations are determinative in their practical application." The Oklahoma Motor Carrier, I, June, 1938, p. 13. This source also gives the gross weight provisions of neighboring states to illustrate the lack of uniformity of state laws on this subject.

9 The conclusions here reached are virtually identical with those reached by C. S. Morgan in appendix C of Coordination of Motor Transportation, loc. cit. He believes that if

Truck operators claim sometimes that they pay for their use of the highways by the gasoline tax and that the fuel used is an ideal measure of road use. This claim is not supported by reasoning or the evidence. Part of the mechanical efficiency of larger trucks consists in carrying a ton of freight a mile with less fuel than a smaller truck would require.[10] Even if slightly more fuel per ton-mile were consumed by the larger trucks, fuel use would not accurately measure their road use because increasing the weight on an individual vehicle increases more than proportionally its wear on the road.[11]

According to estimates in the appendix,[12] trucks in 1935 traveled 16 percent of the total vehicles miles traveled by state-registered vehicles in Oklahoma but paid only 15 percent of the total of all gasoline payments.[13] In interpreting these figures one should remember that they are only estimates and that they indicate only that all trucks did not pay all costs of truck use of the roads in Oklahoma through the gasoline tax in 1935.

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if vehicles were made to bear their fair share of road costs, the cost of operation of vehicles of more than five tons of capacity would be "practically prohibitive." (p. 427)

10 "For the sizes of trucks and the weights of the payloads they may carry are bound up irrevocably to the economy of their operation.***Cut the payload in half and the rate must be doubled." Robert E. Black, president of White Motor Co., in a speech delivered November 15, 1937 and reported in The Oklahoma Motor Carrier, No. 84, December, 1937, pp. 6 ff.

11 Coordination of Motor Transportation, loc. cit., p. 425.

12 Tables VI and VII.

13 Trucks paid 31.68 percent of the registration license fees for the same period, but these are in part substitutes for property taxes and thus reflect the greater average unit value of trucks. Furthermore, it is difficult to estimate to what, if any, extent these two taxes balance against each other in this matter of whether trucks pay for their use of the roads.

Mileage Tax Pays for Extra Cost. For vehicles of the lighter weights, such as are all private passenger automobiles including those towing light trailers, gasoline consumption is a good measure of road use because it varies roughly with weight and mileage, and a slight difference in weight of a ton or two in lighter vehicles is of little significance in determining wear on a road capable of supporting much heavier weights. But the state must go to extra expense to construct roads adequate for heavy trucks and busses, and trucks and busses should pay the cost of this extra expense they entail.[14] They can most equitably pay this extra cost through a mileage tax graduated according to gross weight of the vehicle.

Road Use Taxes Should Be Variable Costs. Besides the principle that those using public property for purposes of private gain should pay for that use, there is another significant reason for making motor carriers' tax payments for highway funds proportional to their use of the highways. Motor transportation is naturally an industry of decreasing costs, and the implications of this situation have already been noticed.[15] But if the state is paid for use of the highways in direct proportion to that use, the payment of roadbed expense is changed to the category of a variable cost. This change will lessen materially the degree to which the industry is one of decreasing costs, from the manager's view.

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14 It is the contention here that whatever extra cost is caused by the heavier vehicles should be bourne by operators of heavy vehicles. For imposing quotations claiming to explode the contention that heavy vehicles cause extra cost, see The Oklahoma Motor Carrier, II, January-February, 1939, pp. 10, 11.

15 Chapter II.

One of the reasons for regulation of motor transportation is furnished by its characteristic of decreasing costs. If the operation of for hire passenger and freight vehicles is taxed proportionally to road use, then the interests of the managers of this transportation will more nearly coincide with the social interest and regulation will be achieved with less conflict. Mitigating the extent to which the industry is one of decreasing costs will also make less burdensome the tax payments of the operator who uses his vehicle only occasionally as compared with the operator who keeps his vehicles constantly on the highways.

That "artificially" lessening the extent to which an industry is one of decreasing costs will add stability to it has been illustrated by the piece-work royalty system of leasing shoe machinery.[16] This example also points to the dangers from too easy entry of competitors into the field, and strongly suggests that especially when road use is paid for by taxes directly proportional to it, stringent regulation of entry of new carriers into the field must continue to be exercised in the social interest to prevent the effects of competition which damage service.

Federal Help in Tax Administration. Any recommendation which claims to be practical cannot ignore the administrative problem of collecting the proposed tax. Both of the taxes here recommended as being capable of giving a combination

16 This conclusion was reached in the writer's "An Investment Analysis of the Johnson-Stephens-Shinkle Shoe Company," written in 1938 as a class exercise under the direction of Professor Fred E. Jewett.

which will adequately represent road use are already being used in the way here suggested, but serious administrative problems exist in their collection.

The chief problem involved in both taxes is determining easily, inexpensively, and universally who is subject to the tax. The ports of entry were the only method yet practiced which was deemed feasible by the Oklahoma Tax Commission for doing this.[17] The ports of entry are now abolished, for adequate reasons. What is really needed is a system of national reporting of the needed information by gasoline and blending material manufacturers and by all motor carriers, private, commercial, or for hire.

It is here proposed that with proper federal legislation all gasoline manufacturers and all motor carriers could be required to report output and movements of gasoline and mileage of all trips to the Interstate Commerce Commission. Other carriers of gasoline such as pipeline and railway companies would also report gasoline movements. Each state could be induced to enforce the reporting of manufacturers of gasoline and of carriers within its own borders. A penalty for failure to do so similar to the present penalty imposed on states diverting gasoline taxes to non-highway uses could be assessed. States so diverting taxes now suffer deductions from their federal road aid allocations.[18]

Since the information would be collected nationally principally for the convenience of state tax collecting

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17 Third Biennial Report of the Oklahoma Tax Commission, p. 23.

18 48 Stat. 995.

authorities, the states could well be required to pay the cost of collecting and furnishing the information by a system of deductions from federal highway aid funds. Since this national method of collecting the information would be a much less expensive way for each state to find out who should pay taxes to it than any system one state could use, the states could afford to pay for the service. This plan would make the collection of gasoline taxes and motor carrier mileage taxes by each state more efficient and less costly.

Universal Interstate Carrier Identification. As a further aid in enforcing the mileage tax, all vehicles used by carriers of property in interstate commerce over a certain minimum gross weight could be required to obtain identification tags from the Interstate Commerce Commission when they reported mileage for their trips. State enforcement of this regulation could be effected by proper provisions in motor vehicle registration laws making any carrier using vehicles not so identified subject to full resident license fees on grounds that he is prima facie not an interstate carrier. Actual enforcement in Oklahoma could be effected by the highway patrol, and similar agencies exist in other states.

Such a plan of close cooperation between federal and state governments seems the best solution for the state authorities' problem of collecting taxes from taxable persons who are at present almost impossible to identify inexpensively.

Tax Exemptions. One other matter is of prime importance in administering taxation--tax exemptions. Although the

Oklahoma Tax Commission flatly states that exemptions from taxes are in general the greatest source of trouble to tax collectors,[19] the exemption of some gasoline from taxation is especially prone to allow abuses. This is true because gasoline can easily be illicitly re-sold or used for a purpose which is not supposed to be exempt. Mileage tax exemptions are not so inviting of abuses, on the other hand, because mileage used by an exempt farmer can not be transfered to anyone else and because a vehicle without identification plate can readily be located on the highways by the highway patrol.

The requirement of identification plates for all carrier vehicles, exempt or not exempt from tax, and the practice of taking away identification plates from any person not paying his duly assessed taxes or making the necessary reports would make the enforcement of a mileage tax, even with exemptions, rather certain. This being true, the legislature can continue to exempt certain carriers for justifiable reasons of broad social policy without disrupting the entire mileage tax system.

Exemptions of gasoline from taxation, however, seem inevitably to lead to either wholesale abuse or unjustifiably large expenditures in enforcement to prevent abuse. In view of this situation, it is unreasonable to continue exemptions of gasoline for certain uses from taxation or to burden the tax administration officials with expensive refunds. These exemptions have been founded upon the sound principle that

19 Third Biennial Report of the Oklahoma Tax Commission, p. 20.

the gasoline tax is a tax for highways according to the benefits received and that those who receive no benefits should pay no tax. The legislature could find less socially costly methods than is the exemption or refund system for compensating aviation, agriculture, and users of gasoline as a solvent for the payment of the tax. Also, the sales tax and other taxes today violate this benefit principle of taxation so flagrantly that one more minor violation could hardly be the source of strenuous legitimate objections when such a violation is in the broad public interest.[20] On this point, political considerations are potent when considering actually changing the law, however.

Principles for Setting the Rates. Nothing has been said so far by way of definite suggestion as to what the gasoline tax rate and the schedule of mileage tax rates should be. It is not here presumed that these questions ought to be or can be decided in theory out of relation to a specific situation. The principles guiding the proper setting of these tax rates are mainly: Users of the highways should pay for the highways in proportion to their use (as far as the state is concerned in its collection and allocation of funds, at least); exceptions may be allowed to this rule, but the burden of prooving that any proposed exception is in the public interest is squarely on those proposing such an exception. The total amount to be collected from these two taxes will be set roughly by the total need for highway

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20 For a discussion of the gasoline tax exemption problem, see Third Biennial Report of the Oklahoma Tax Commission, pp. 25-27.

expenditures; the allocation among vehicle owners then should be made on the basis of benefits to be received from these expenditures.

Sources and Allocation of Highway Funds. In allocating funds for expenditures on highways, roads, and streets, the benefit principle is subject to considerable modification. In the case of city streets and strictly local rural roads, the principle, when interpreted logically, means that property owners can reasonably be assessed for road costs because they are the users (receivers of the benefits) of these roads to an even larger extent than others who use (in the sense of physically travel on) the roads and streets. To what extent this qualification is true in any specific instance will probably be decided upon considerations of political expediency.

In allocating highway funds between roads, it appears to be necessary to subsidize infrequently used roads in thinly populated districts with revenues collected from users of the more frequently traveled streets and highways. In 1935, for instance, about 30 percent of the estimated travel was on municipal streets, but only 10 percent of the total of streets and roads funds expended in Oklahoma was spent on these streets.[21] The economic principle back of this rule of allocation is that of full use of fixed investment to reduce overhead costs. More frequent use of a highway makes the per-mile-per-vehicle cost of the highway less and less, socially, until its capacity for traffic is reached.

21 Tables VI and VIII.

Motor Vehicle Registration Fees. The motor vehicle registration fee cannot be graduated according to road use in any practical manner, and its use to any large extent in charging directly for highway use is not recommended. Another important reason bars its use as a principal source for state highway revenue. The preceding discussion has been founded on the principle that a solution of motor carrier problems for Oklahoma in a satisfactory manner must of necessity also be the proper solution for any state or for the nation in general, since motor transportation has no natural state boundaries.

If an interstate carrier must pay the full license fees in each state in which it conducts operations of any single vehicle, this carrier is paying much more in license fees for his per-mile use of the highways than is a carrier who may operate more vehicle-miles totally within one state. The use of such a per-vehicle tax to compensate states for the use of the highways, although quite legal, is necessarily discriminatory against interstate carriers unless some elaborate system of reciprocity is used. Reciprocity is a partial solution of the problem, but each state should be paid for use of its highways in proportion to that use.

These remarks apply to a genuine license fee imposed as an extra tax in addition to regular taxes. In Oklahoma, the license fee is partially a property tax in lieu of a county ad valorem tax and other local taxes, and it must be judged accordingly.[22]

22 Seventeenth Legislature, H.B. 192, art. 10, sec. 10.

This is not condemnation of the license fee itself. The license fee can well be used to collect for the cost of policing the highways, for distribution to counties in lieu of the ad valorem property tax, or for other purposes. Although of economic importance as are all taxes, the absolute amount of the license fees charged is not as of great moment, perhaps, in a consideration of motor carrier regulation as is the basis on which the tax rates are graduated.

The license fee for some time was levied on the value of the vehicle on the theory that the fee was in lieu of an ad valorem property tax. Then the unladen weight of trucks was used as the basis, this being a convenient basis and more nearly in proportion to wear on the roads. Since license fees have been spent for highway purposes, it was logically believed that total laden weight would be a more just basis for levying the fee because total laden weight is the weight figure of significance in road wear.

Besides value, seating capacity has been used as a basis for levying license fees on busses. It can be seen that all of these bases are approximately the same when it is remembered that even when weight has been used as a basis for levying the tax, reductions have been allowed for age, making the basis always approximately proportion to value.

Such a plan of allowing reductions in license fees for age of the vehicle encourages the use of old vehicles on the highways, especially for any state which allows greater proportional reductions for old vehicles than does its neighbors.

Reduction in fees for age of vehicle was no doubt founded upon the sound principle that since license fees were largely in lieu of property taxes they should be proportioned to value. But the public interest in encouraging the operation of mechanically safe vehicles on the highways should be the ruling principle. The present Oklahoma law allowing no reductions for age of heavier vehicles and on other trucks only for the fourth year of registration and thereafter until the minimum is reached is a step in the interest of public safety and sound motor transportation service. The state owes an obligation to its citizens to encourage safety and efficiency in highway transportation.

Other Motor Carrier Taxes. Other motor carrier taxes require little discussion here. Fees for applications for certificates or permits are justified by the expense undergone by the state in investigating and deciding these cases, and other fees and assessments are levied for similarly specific purposes.

A final word regarding taxes must be mentioned. The recommendations of this chapter concern special motor carrier taxes. Motor carriers are of course subject to other taxes which vitally affect them. But income taxes, excise taxes on vehicles when a part of a general system of internal revenue levies, and other taxes intended to produce revenue for general governmental uses are not properly within the scope of this work, although their effects upon motor carriers are involved in the motor carrier problem. In the absence of a decision to subsidize motor carrier transportation, the

motor carrier industry should be subject to substantially the same taxes for general revenue purposes as other businesses, in addition to the special taxes here discussed. These special taxes are payments to government for services and property furnished to the industry by government.

The fact that some individual operator may look upon some of these services as interference with what should be his private business and upon others as belonging to him by natural right only exposes his own lack of understanding of his social obligations.

Efficiency v. Democracy. In dealing with such a lack of recognition of the social point of view, administrators must be careful to use education and persuasion in overcoming objections to as great an extent as is practicable.[23] A balanced point of view is important. For not only is the social interest vital; regulation even in the social interest must always be the result of enlightened social decision, not dictatorial management by some authority acting for itself.

Regulatory authorities are agents of the people. When they go beyond their authority given to them by the people, they violate the fundamental conceptions of rights on which democratic principles of government are founded. Waiting for authorization from the people or their direct representatives has caused and may again result in social losses. But only by this procedure can the political, social, and economic principles of basic individual freedom from domination be preserved. Most Americans seem willing to pay this price.

23 For discussion see Fiftieth Annual Report of the Interstate Commerce Commission, 1936, pp. 69-88.

More Data Needed. The recommendations made here are not complete. There are no data contained in this study upon which a scientific appraisal of the present tax rate structure can be quantitatively and definitely undertaken. Briefly, the tables shown in the appendix, especially those containing information gathered by the Oklahoma Highway Commission, indicate that in 1935 the recommendations contained here were not violated as broadly as might at first be supposed, as far as state collections and disbursements were concerned.

In reading the data one should recall that the license fees are to a great extent really ad valorem property taxes collected by a novel means, that inherent economic characteristics indicate an inevitable subsidy of local rural roads by users of city streets and main highways, that property taxation is a proper source of funds for local roads and city streets, and that the data are after all partially only estimates and not grounds for firm convictions that the present system is wrong.

What is needed is more traffic surveys, development by competent engineers of a practicable road-use factor, careful calculations of proportionate use by various classes of vehicles, classes of owners, and by types of vehicles within each class, of the streets and roads, and the use of these data in allocating total highway costs among those who benefit from highways.

Is Federal Aid A Subsidy? Federal aid is the source of almost one-half of the funds for construction of main highways[24]

24 Table VIII.

in Oklahoma. Although the federal government has obtained as much revenue from taxation of the motor vehicle industry as it has spent on federal road aid grants,[25] this observation may be misleading. Much of the taxation of the motor vehicle industry was levied in the form of manufacturers' excise taxes. These taxes were levied on many industries, and were intended for general revenue and to repay the war debt. They are not really special taxes levied for special benefits as are the mileage taxes and gasoline taxes of the state of Oklahoma.

The claim is made that if the motor industry has paid for its federal highways it has not contributed its part toward the general revenue and the war debt.[26] It has not, obviously, done both. This claim is more than partisan charge hurling. It is founded upon observation of the facts.

But the federal government has vital military, social, and political motives for spending part of its general revenue on roads which will be open to all citizens, and the discovery that subsidy exists is far from a conclusion that the subsidy should be abolished or even curtailed.

The Correct Attitude Important. The most important recommendation that could be made regarding the settlement of problems which arise concerning motor carriers is one concerning attitude. If the scientific spirit of intense determination to obtain the facts without bias is combined with an attitude of not only regard for individual rights but more particularly for the broad social interest for the future as well as for the present, intelligent legislators,

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26 See C. S. Duncan, Who Pays For the Highways?

administrators, and an enlightened public will enforce little regulation that is harmful.

APPENDIX

Since this study is not a history of the motor carrier industry itself but a history of rules for its regulation, no attempt has been made to gather more than the merest outline of statistics to show the growth in the number of motor vehicles in Oklahoma.

More important for purposes of deciding upon the advisability of the present tax structure would be accurate and inclusive data on road use, highway expenditures, and careful statistical analysis of the incidence of taxes used for building and maintaining the highways. Such information is not now available. The tables presented here are more in the nature of brief samples or examples of the general type of information needed than complete data. More careful and complete statistical analysis of the tax problems of all motor vehicles as well as of motor carriers would be necessary before any really scientific solution of the specific questions of motor taxation could be undertaken.

Anyone interested in taxation of motor transportation and obtaining highway revenues should study the complete data given in the latest report of the Oklahoma State Highway Commission, to which reference is made in the tables and which contains results of a general statistical study of the problem. The tables in this appendix which are taken from that data are not representative of the completeness of the data contained in the original study.

Table I

MOTOR VEHICLE REGISTRATION IN OKLAHOMA, 1913-1937

Source: Statistical Abstract of the United States, various years.

Year	All Motor Vehicles	Trucks	Trailers
1913	3,000*		
1914	13,500		
1915	25,032		
1916	52,718		
1917	100,199		
1918	121,500		
1919	144,500		
1920	212,880		
1921	221,300		
1922	249,659		
1923	307,000	18,576	
1924	369,903	27,047	
1925	424,345	31,298	
1926	499,938	40,983	
1927	503,126	65,350	
1928	529,843	64,295	
1929	570,719	60,390	
1930	550,331	59,384	
1931	482,725	54,585	
1932	428,302	48,705	
1933	451,712	65,957	4,184
1934	477,292	73,928	5,420
1935	502,101	82,855	6,452
1936	531,914	90,638	7,041
1937	547,263	98,675	26,567

*Registration incomplete.

Table II

TOTAL EXPENDITURES OF THE OKLAHOMA HIGHWAY COMMISSION
And Apportionment of Federal Aid Appropriations
to Oklahoma State Highways, 1917-1939

Source: Biennial Report of the Oklahoma State Highway Commission, 1937 and 1938, pp. 147, 252.

Year	Federal Aid	Total Expenditures
Total	$73,289,759.80	$227,170,782.40
1939	4,640,080.	(not available)
1938	4,750,919.	12,326,095.79*
1937	2,837,406.	21,004,497.06
1936	12,532,903.	18,214,010.54
1935	4,685,180.	11,567,580.78
1934	9,216,798.	14,772,411.59
1933	2,552,054.80	14,184,537.44
1932	5,811,292.	12,160,613.43
1931	4,855,547.	14,531,488.49
1930	1,748,857.	19,961,723.24
1929	1,749,066.	15,763,160.38
1928	1,751,891.	13,022,214.76
1927	1,752,245.	12,593,840.71
1926	1,770,659.	10,204,638.21
1925	1,758,189.71	12,894,287.01
1924	1,524,701.96	-5,748,349.18
1923	1,168,226.29	7,071,569.68
1922	1,752,339.44	-2,780,094.20
1921	2,302,478.33	6,451,413.96
1920	2,190,805.44	-1,725,390.13
1919	1,499,544.83	1,735,991.87
1918	230,278.	476,673.95
1917	115,139.	(not available)

*10 months.

Table III

Comparison of Federal Aid Highway Expenditures and Federal Tax Income from Motor Vehicles from 1917 to 1937

Sources: 78 Congressional Record, p. 8636, from a table submitted by Representative Whittington on May 11, 1934, and extended from information in Statistical Abstract of the United States, years 1934-38.

(Figures in Thousands)

Year	Total Federal Highway Expenditures	Motor Vehicle Tax Income of Federal Government
Total	$2,524,775	$2,518,972
1937	350,612	353,197
1936	243,896	298,962
1935	317,557	266,317
1934	267,882	298,731
1933	165,868	175,968
1932	188,718	------*
1931	155,888	------
1930	77,892	2,320
1929	84,007	5,546
1928	82,514	51,628**
1927	82,978	66,458
1926	89,362	138,155
1925	94,473	124,687
1924	80,448	158,015
1923	71,605	144,290
1922	89,947	104,434
1921	57,463	115,546
1920	20,341	143,923
1919	2,915	48,834
1918	575	23,981
1917	34	------

*Collections for the fiscal years 1929-32 were of delinquent taxes under the expired acts. Data for 1931 and 1932 are not given in detail in the sources, and the table is in this respect incomplete.

**Tax repealed May 29, 1928.

Note--This table includes all federal aid grants for highways and all motor vehicle income from excise taxes on vehicles, accessories, lubricating oils, gasoline, and similar items. According to these figures, which are incomplete to a small extent as explained above, there was an excess over the total period of expenditures over income of $5,803,000. In other words, 99.77 percent of federal highway expenditures have been returned through taxes by the motor industry as a whole. For comments on these facts, see Chapter VII.

Table IV

OKLAHOMA TAX COLLECTIONS FROM SOME PRINCIPAL SOURCES FROM 1917 TO 1938

Source: Third Biennial Report of the Oklahoma Tax Commission, p. 304.

(Figures in Thousands)

Fiscal Year	Total	Gasoline Tax	Motor Vehicle License	Motor Carrier (Mileage) Tax	Motor Vehicle Excise Tax
Total	$239,078	$143,558	$87,372	$4,867	$3,281
1938	23,210	15,323	5,161	1,394	1,332
1937	21,153	14,335	4,519	1,073	1,226
1936	19,123	13,395	4,195	892	641
1935	15,249	11,075	3,479	613	82
1934	14,079	10,523	3,033	523	
1933	13,177	9,687	3,295	195	
1932	15,982	11,040	4,765	177	
1931	17,483	11,588	5,895		
1930	18,837	12,071	6,766		
1929	15,224	8,555	6,669		
1928	13,587	7,621	5,966		
1927	12,494	6,660	5,834		
1926	11,129	5,777	5,352		
1925	8,882	4,266	4,616		
1924	5,449	1,642	3,807		
1923	3,758		3,758		
1922	2,629		2,629		
1921	1,992		1,992		
1920	2,654		2,654		
1919	948		948		
1918	947		947		
1917	1,092		1,092		

(Mileage tax collections for 1923 to 1931 not available.)

Note--The gasoline tax has been the leading producer of income for the state since 1930, inclusive. The motor vehicle license ranks fifth among taxes in the state in point of revenue produced.

Table V

STATE MOTOR VEHICLE IMPOSTS PAID BY VEHICLE OWNERS
In 1935 by Population Groups

Source: Biennial Report of the Oklahoma State Highway Commission, 1937 and 1938, p. 127

(Figures in Thousands)

Paid by Vehicle Owners Resident in:	Total	License Fees	Motor Fuel Taxes	Other Motor Vehicle Taxes
Grand totals	$17,015	$3,453	$11,984	$1,578
State totals	15,298	3,299	10,520	1,480
All rural areas	5,548	1,236	3,809	503
All urban areas	9,751	2,063	6,711	977
Out-of-state	1,716	154	1,464	99

Table VI

SUMMARY OF ESTIMATED VEHICLE MILES TRAVELED IN OKLAHOMA
By All Vehicles Registered in Oklahoma in 1935

Source: Percentages computed from figures in 1,000 vehicle miles in tables in Biennial Report of the Oklahoma State Highway Commission, 1937 and 1938.

(Figures in Percentages)

Place of Ownership	Grand Total	TRAVEL ON ALL RURAL ROADS				Travel on City Streets
		Total	Primary	Secondary	Local	
Travel by all Vehicles						
State total	100	70.62	52.01	13.93	4.67	29.32
All rural areas	37.35	47.79	38.31	72.78	80.54	12.19
All urban areas	62.65	52.14	61.69	27.72	19.26	87.81
Travel by Passenger Vehicles						
State total	80.09	82.11	83.32	78.30	80.00	75.11
All rural areas	29.91	38.34	31,28	56.13	64.13	9.70
All urban areas	50.14	43.77	52.04	22.27	15.76	65.41
Travel by Trucks						
State total	16,87	16.71	15.52	20.29	19.13	17.25
All rural areas	7.01	8.89	6.69	14.78	11.60	22.47
All urban areas	9.86	7.79	8.83	5.48	8.03	14.77

Note--Figures in the line "State total" under the classification "Travel by All Vehicles" are percentages of the grand total of all vehicle miles traveled in the state in 1935, which is represented by 100 percent. Figures in all other instances are percentages of the figure at the top of the vertical column in which they are located. For instance, travel on local rural roads amounted to 4.67 percent of all vehicle miles traveled in the state, and 15.76 percent of the travel on rural local roads was by passenger vehicles owned by residents of urban areas in the state.

Table VII

STATE REGISTRATION AND MOTOR FUEL TAXES PAID BY OWNERS OF VARIOUS TYPES OF VEHICLES
In 1935 by Population Groups

Source: Selected percentages computed from data given in Biennial Report of the Oklahoma State Highway Commission, 1937 and 1938.

(Figures in Percentages)

Paid by Residents of:	Total	Passenger Cars	Trucks	Busses	Taxicabs	Motor-Cycles	Trailers	Tractors
Grand Total	100	76.46*	18.99*	1.54*	1.92*			
Registration Fees								
Total	22.36**	61.88	31.68	.88	.57	.11	2.75	2.12
		(Figures immediately above are percentages of the total to the left, represented by the figure 22.36.)						
State total	93.51	(Figures to the left are percentages of the total for registration fees, represented by the figure 22.36)						
Out of state	4.46							
All rural areas	37.47	(Figures to the left are percentages of the state total)						
All urban areas	62.50							
Motor Fuel Taxes								
Total	77.64**	80.66	15.33	1.71	2.30			
		(Figures immediately above are percentages of the total of all motor fuel taxes, represented by the figure 77.64.)						
State total	87.79	(Figures to the left are percentages of the total for motor fuel taxes, represented by the figure 77.64.)						
Out of state	12.21							
All rural areas	36.20	(Figures to the left are percentages of the state total.)						
All urban areas	63.80							

*Percentages of the total of both registration fees and motor fuel taxes.
**Percentages of the total for both registration fees and motor fuel taxes, represented by the figure 100.

Table VIII

SOURCES OF FUNDS EXPENDED IN OKLAHOMA FOR ALL ROADS AND STREETS DURING FISCAL YEAR 1935

Source: Selected percentages computed for this table from data contained in Biennial Report of the Oklahoma State Highway Commission, 1937 and 1938.

(Figures in Percentages)

Paid by Residents of:	Grand Total	TOTAL CURRENT IMPOSTS						Federal Aid
			MOTOR VEHICLE IMPOSTS			Property Taxes	Other Revenues	
		Total	Motor Fuel	Licenses	Other			
Grand Total	100	66.66	33.80	11.11	2.82	15.77		28.31
All Highways and Urban Streets								
Out of state	2.70	(Percentage of grand total.)						
State total	97.30							
All rural areas	36.36	(Percentage of state total.)						
All urban areas	60.47							
All State Highways								
Total	53.12	57.14	40.34	10.39	5.24	0.00	1.57	42.86
Out of state	3.54	(Percentage of total for all state highways.)						
State total	96.48							
All rural areas	35.51	(Percentage of state total.)						
All urban areas	60.49							
All County Highways								
Total	36.41	74.07	31.79	15.69	.37	23.20	2.66	15.19
Out of state	2.28	(Percentage of total for all county highways.)						
State total	97.72							
All rural areas	47.62	(Percentage of state total.)						
All urban areas	50.06							
All Urban Streets								
Total	10.46	98.72	0.00	14.21		70.38	14.20	0.00
All rural areas	2.08	(Percentage of total for all urban streets.)						
All urban areas	97.92							

Note--Percentages in horizontal columns are to be applied to values represented by figures in their extreme left. Percentage figures given as "total" for all, state highways, county highways, and streets apply to the grand total.

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