OFFICIAL OPINION NO. 55

December 5, 1955

Mr. Warren Buchanan, Chairman
Public Service Commission of Indiana
401 State House
Indianapolis, Indiana

Dear Mr. Buchanan:

In respect to motor vehicle carriers engaged in interstate commerce, you have asked the following question:

"An official opinion is respectfully requested as to whether or not the Public Service Commission of Indiana has the power under sections 6, 7, 9, 11, and 12 (Burns 47-1216, 47-1217, 47-1219, 47-1221, and 47-1222) of the Motor Vehicle Act of the State of Indiana, 1935, as amended, to require that a public hearing be held for the purpose of determining whether certificates of authority or permits shall be issued to common or contract carriers by motor vehicle engaged in interstate commerce who have received prior operating authority from the Interstate Commerce Commission under Part II of the Interstate Commerce Act (49 U. S. C. sec. 301 et seq.)."

Foreseeing a possible conflict with the Constitution and laws of the United States in respect to interstate commerce, our Legislature provided, in the same act, as follows:

"The provisions of this act shall apply alike to persons engaged in the transportation of persons or property over the highways of the state of Indiana whether such transportation be interstate or intrastate, except in so far as this act may contravene the Constitution or the laws of the United States."

Acts of 1935, Ch. 287, Sec. 25, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1235.

There is no power remaining in the State of Indiana to determine what carriers can or cannot operate in Indiana in interstate commerce.
However, it has been clearly recognized that a state can regulate in respect to an interstate carrier, to require a certificate or permit, and impose conditions for operation on the highways of the state so long as no "undue burden" is imposed on interstate commerce.

Lloyd A. Fry Roofing Co. v. Wood et al. (1952), 344 U. S. 157, 73 S. Ct. 204, 207, 97 L. Ed. 168;

Maurer et al. v. Hamilton, Secretary of Revenue of Pennsylvania et al. (1940), 309 U. S. 598, 60 S. Ct. 726, 84 L. Ed. 969;

McDonald v. Thompson et al. (1938), 305 U. S. 263, 59 S. Ct. 176, 83 L. Ed. 164.

In the case of Maurer et al. v. Hamilton, Secretary of Revenue of Pennsylvania et al., supra, the Supreme Court of the United States was considering the question of reservation of power to the states from that power given to the Interstate Commerce Commission, and stated on page 735 as follows:

"Sizes and weights which affect safety, not excluding consideration of local conditions, as well as those which affect wear and tear of the highways were to be the subject of investigation, and it is the subject of investigation which defines the reservation from the Commission's authority to regulate. Hence the phrase 'sizes and weight' in § 225, when safety is concerned, is not to be narrowly limited to the overall length, width and height of the loaded cars and to their gross weight. For as we have seen distribution of weight and dimensions of load or particular parts of it in connection with local conditions of curves, grades and overhead obstruction of the highways, have an important relation to safety. In the light of the investigation Congress might conclude that the regulation of gross weights and dimensions concededly left to the states, could not be
conveniently or wisely separated from regulation of weight distribution and particular dimensions."

The General Assembly of Indiana has detailed a number of matters to be considered by the Public Service Commission of Indiana in determining whether a certificate or permit should be granted upon application by a carrier. Those which would apply to a common carrier applicant holding an I. C. C. permit for interstate operations are found in the Acts of 1935, Ch. 287, Sec. 7, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1217, as follows:

* * *

"4. The volume of existing traffic over the route proposed by the applicant.

"5. The effect and burden upon the highways and the bridges thereon, and the use thereof by the public.

"6. Whether the operations will threaten the safety of the public or be detrimental to the public welfare."

Those which would apply to a contract carrier applicant holding an I. C. C. permit, for interstate operations are found in the Acts of 1935, Ch. 287, Sec. 12, as found in Burns' Indiana Statutes (1952 Repl.), Section 47-1222, as follows:

"* * * whether the character and conditions of the vehicles proposed to be operated by the applicant are such that they may be operated upon the public highways without injury or damage to said highways, and if a particular highway or highways designated in the application is or are of such type of construction or in such state of repair or subject to such use as to permit the use sought to be made by the applicant without unreasonable interference with the use of such highways by the general public * * *."

It will be noted that the sizes and weights of the vehicles to be used by the applicant are material to each of the above considerations, and therefore it would be lawful for the Public Service Commission to condition a certificate or permit of an interstate carrier either as to size and weight of vehicles used, or as to particular highways to be used or not used because of the size and weight of the vehicles to be used.
Since this is a proper matter for the submission of evidence, the Commission may require a public hearing to be held for such determination, but it might be well to point out that the applicant who has already received an Interstate Commerce Commission permit could not be reasonably required to bear the burden of proof; that notice to the Highway Department and the Indiana State Police would be proper; and that if a showing is made adverse to the applicant, without a prior pleading of the facts shown, a reasonable period of continuance should be granted for rebuttal.

It should also be noted that any action on the part of the Commission to deny the use of particular highways to applicants in interstate commerce would be invalid unless the same action was taken and the same determination made in respect to applicants in intrastate commerce.

"* * * Few subjects of state regulation are so peculiarly of local concern as is the use of state highways. There are few, local regulation of which is so inseparable from a substantial effect on interstate commerce. Unlike the railroads, local highways are built, owned and maintained by the state or its municipal subdivisions. The state has a primary and immediate concern in their safe and economical administration. The present regulations, or any others of like purpose, if they are to accomplish their end, must be applied alike to interstate and intrastate traffic both moving in large volume over the highways. The fact that they affect alike shippers in interstate and intrastate commerce in large number within as well as without the state is a safeguard against their abuse."


Perhaps the best statement in respect to the extent of the authority of the individual states in respect to their own highways is the following:

"* * * The subject of protection of the highways in so far as they may be used for interstate commerce
does not require uniformity of action, and, as a matter of fact, there is no uniformity of action by the various states at this time. The Interstate Commerce Commission has jurisdiction over the commercial considerations appertaining to the interstate truck business, but the preservation and safety of the roads themselves has been left with the state commissions. * * *

"The Motor Carrier Act of 1935, 49 U. S. C. A. § 301 et seq., passed by Congress, does not provide for any tribunal to determine the method by which the public highways of any state shall be maintained or preserved, nor how the safety of the traveling public may be protected against any dangers that might be caused by an undue amount of traffic, nor does the act authorize the Interstate Commerce Commission to make the rules or regulations with reference to this. Moreover, said act does not provide that every person who shall receive a certificate of public convenience and necessity shall be entitled to the use of the various highways of the state, but the said act prohibits anyone engaging in interstate commerce until he receives such certificates from the Interstate Commerce Commission. The Interstate Commerce Commission under the act has the power and exclusive authority to pass upon such applications and to refuse them. If it should refuse one, then such applicant would not be permitted to engage in interstate commerce. This is made clear by the act. That provision, however, is not in direct conflict with the provisions of the motor truck laws of the state of Texas which require the Railroad Commission of the state of Texas to determine whether or not the preservation of its highways and the safety of the traveling public will be endangered if there is an excessive amount of traffic on the highways. The determination of that question has been left to the states."

Thompson et al. v. McDonald (1938), CCA 5th, 95 F. 2d 937, 943.

It is therefore my opinion that the Commission cannot require public hearings for the purpose of determining "whether certificates of authority or permits shall be issued," but public
hearings may be required and held in respect to "terms, restrictions and limitations" as provided in the Acts of 1935, Ch. 287, Secs. 7 and 12, as found in Burns' Indiana Statutes (1952 Repl.), Sections 47-1217 and 47-1222.

OFFICIAL OPINION NO. 56

December 8, 1955

B. Groesbeck, Jr., M. D., Director
Department of Health
1330 West Michigan Street
Indianapolis 7, Indiana

Dear Doctor Groesbeck:

Your letter requesting an Official Opinion on the following question has been received:

"Does the phraseology and construction of Chapter 194, Acts 1953, the same being an Act concerning the rehabilitation of alcoholics, create an autonomous commission or agency responsible only to the Governor and Division of the Budget of the State of Indiana in the conduct of its business and the administration of said Act; or is such commission, by the wording of said Act read in conjunction with Chapter 197, Acts 1953, administratively an integral part of the Division of Mental Health of the Department of Health?"

Your inquiry involves the interpretation of two separate Acts passed by the 88th Session of the General Assembly, to-wit: Acts of 1953, Ch. 194, as found in Burns' Indiana Statutes (1950 Repl., 1955 Supp.), Section 22-4401 et seq., and Acts of 1953, Ch. 197, as found in Burns' Indiana Statutes (1951 Repl., 1955 Supp.), Section 60-2021 et seq. Both Acts were approved March 13, 1953. Chapter 194 became effective August 18, 1953 on promulgation of the 1953 Acts, while Ch. 197, containing an emergency clause, became effective July 1, 1953.

The title of Ch. 194, supra, provides:

"AN ACT concerning alcoholics; defining the words: alcoholics and alcoholism; providing for scientific treat-