

**LEGISLATURE: General Assembly, interstate commerce,  
motor trucks.**

January 23, 1937.

Senator O. Bruce Lane,  
General Assembly of the State of Indiana,  
State House,  
Indianapolis, Indiana.

My Dear Senator:

I have your recent request for an opinion "as to the constitutionality of a law which would prohibit the traveling of interstate trucks on the highways of Indiana on Sunday between the hours of 6:00 A.M. and midnight."

If the law you have in mind is intended to apply to interstate motor trucks only, it would be an unfair discrimination against interstate commerce and in my opinion would be clearly unconstitutional.

If the contemplated statute is intended to apply equally to both interstate and intrastate motor carriers, the question of its validity would turn upon the fact whether or not the law was a reasonable police regulation and its constitutionality would be a very close question.

The highways of the State were laid out and are maintained at public expense and are designed primarily for ordinary travel. Their use by those who conduct a business thereon for hire is only permissive and subject to proper regulation. The State has an undoubted right therefore to protect its highways from injury and also to secure the safety and convenience of those who are primarily entitled to use them, and, to that end, may regulate and prohibit the use of highways by contract and common carrier trucks both interstate and intrastate to the extent that the regulation is within the police power of the State.

The Supreme Court of the United States said on this point in 1933 after the use of commercially operated vehicles had become quite common:

"In dealing with the problem of safety of the highways, as in other problems of motor transportation, the state may adopt measures which favor vehicles used solely in the business of their owners, as distinguished from those which are operated for hire by

carriers who use the highways as their place of business."

Bradley v. Public Utility Comm., 289 U. S. 292.

Since the enactment of the Federal Motor Carrier Law which became operative October 1, 1935, a number of serious problems have arisen in connection with the State's control over interstate carriers. It may be stated generally that a state now has no power to determine the need or convenience for interstate motor carriage. That question rests with the Interstate Commerce Commission. However, recent court decisions have recognized the right of the states to continue certain lines of regulation, such as the size and weight of trucks, because that has to do with the construction and type of roads which are local problems. *L. L. Freight v. R. R. Commission*, 17 Fed. Supp. 13 (Decision December 4, 1936) and *Barnwell Brothers v. So. Carolina Highway Commission*. (Not yet reported.)

The Federal Act also leaves to the several states the power of taxation of motor carriers. However, since the field of interstate motor regulation has been occupied by the Federal Government, a state is without power to enact any regulation that would operate as a regulation of interstate commerce or which would put a serious burden upon it.

I do not believe that a law which would prevent interstate motor carriers from using the highways of the State on Sunday between 6:00 A.M. and midnight is so certainly a police regulation that its validity could be sustained.

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**FINANCIAL INSTITUTIONS, DEPARTMENT OF: Venue, change of; liquidation of banks. Right of change of venue in matters touching.**

January 25, 1937.

Mr. Wm. R. Dexheimer,  
Supervisor, Division of Liquidations,  
Department of Financial Institutions,  
Indianapolis, Indiana.

Dear Sir:

I have your letter of inquiry containing the following question: