

OPINION 42

OFFICIAL OPINION NO. 42

December 28, 1971

Mr. W. W. Hill, Chairman
Public Service Commission of Indiana
901 State Office Building
Indianapolis, Indiana 46204

Dear Mr. Hill:

This is in response to a request for my Official Opinion from your Commission concerning a seeming conflict between state and federal law establishing annual registration fees for *interstate* motor carrier operating authority.

ANALYSIS

The Indiana statutes concerned are Acts of 1935, Ch. 287, Sec. 34, as amended and found in Burns' (1971 Supp.), Section 47-1244(c), IC 1971 8-2-7-46 and Acts of 1935, Ch. 287, Sec. 35, as amended and found in Burns' (1971 Supp.), Section 47-1245, IC 1971 8-2-7-47.

Burns' 47-1244, *supra*, provides for a fee for registration of interstate authority of \$25.00 with each application, plus an additional \$5.00 for each certificate over five on applications for more than five authorities. The federal regulation, which is found in 49 CFR Sec. 1023.13, limits the fee to \$10.00 for an application filed by a motor carrier which has previously filed a currently effective application for the registration of ICC operating authority with the Commission.

The Indiana law in Burns' 47-1245, *supra*, provides for a charge of \$12.00 for an identification stamp for a truck or bus and \$24.00 for a registration stamp for a tractor. The federal regulation is 49 CFR Sec. 1023 which limits identification stamp fees to \$5.00.

These federal regulations are based upon 49 U.S.C. §§305(f) and 302(b)(2).

In resolving the apparent conflict between the foregoing state statutes and the federal regulations, we are first led to the question of whether the federal regulations are valid.

A brief chronology of 49 CFR Sec. 1023.13 and 1023.133 shows that the regulations were promulgated on December 28, 1966, and were recodified on December 20, 1967. The Section 1023.13 and 1023.133 amendments limiting charges which the states can impose were promulgated in the Federal Register on February 4, 1970. See 35 Fed. Reg. 2524, 2525.

The statute authorizing the foregoing regulation, 49 U.S.C., Sec. 302(B)(2), *supra*, specifically provides that the regulations cannot be effective until five years after their date of promulgation. Therefore, the foregoing amendments which limit the charges which this State may impose on motor carrier registrations cannot be effective until five years after February 4, 1970.

However, when the foregoing amendments were promulgated it was ordered that:

“* * * since these amendments do not materially affect the substance of the standards, they shall be effective concurrently with the original standards promulgated by the Commission which is five years from the fourteenth day of December 1966.”

Logically, it would seem that since the limitation upon fees which the State may charge is not a matter which “materially” affects the original standards as found in 32 Fed. Reg. 20017, 20018, *supra*, then this State’s statutory fees cannot be deemed to be a burden upon interstate commerce. The legal doctrine of *De Minimis Non Curate Lex* (the law is not concerned with trifling matters) is also applicable to matters concerning interstate commerce. *Ranhoff vs. Henry Granling Co.* (1941), 42 F. Supp. 754.

Under this set of circumstances, the continuing implementation of Burns’ 47-1244(c) and Burns 47-1245 does not impose a judicially cognizable burden upon interstate commerce, since the fee limiting amendments “do not affect materially the substance of the standards” as declared by administrative fiat, *supra*. Non-compliance with such standards cannot be said to be a burden on interstate commerce.

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CONCLUSION

It is my official opinion that the Public Service Commission of Indiana can charge fees according to Burns' (1965 Repl.), Section 47-1244(c) and Burns' (1971 Supp.), Section 47-1245, at least until February, 1975 (because that is the effective date of the succeeding federal regulation). These statutes provide that an application for the registration of *interstate* authority shall be accompanied by a fee of \$25.00. Applications for the registration of more than five certificates shall be accompanied by an additional filing fee of \$5.00 for each certificate. Indiana law further provides for a charge of \$12.00 for an identification stamp for a truck or bus, and \$24.00 for a registration stamp for a tractor.