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## THE PUBLIC SERVICE COMMISSION AND MOTOR CARRIERS

Wyoming has regulated motor carriers by law since 1927 when the first motor carrier law was passed.<sup>1</sup> The present motor carrier act has been in effect since 1957, as amended. The motor carrier act (hereinafter called the Act) defines four types of motor carriers to which the Act applies. They are common, contract, private, and interstate. The Public Service Commission (hereinafter called the Commission) is required to administer the Act so as to attain the stated objectives of promotion of safety on the highways, the collection of a fair and adequate compensatory fee for the commercial use of publicly constructed highways, and the maintenance of a proper transportation structure.<sup>2</sup> To determine whether an individual is affected by the Act, he should ask himself if he is operating a motor vehicle<sup>3</sup> on state highways<sup>4</sup> for the purpose of financial gain. If the answer is yes, then, in all probability, he is a motor carrier<sup>5</sup> and as such he is subject to the rules and regulations of the Public Service Commission.

The Act exempts motor carriers who operate wholly within a municipality or who go outside the municipality to adjacent airports; farmers who own vehicles with an unladen weight of less than 10,000 pounds and use such vehicle to haul their own produce or commodities; transportation of school children; transportation of sick, injured, or deceased persons by ambulance or hearse; transportation by motor vehicle owned by the United States; and transportation of the United States mails.<sup>6</sup>

**COMMON CARRIERS:** There are two types of common carriers; the regular route and the irregular route. The regular route common carrier transports, by motor vehicle, persons or property over state highways along specified routes with fixed termini as the public may require.<sup>7</sup> The irregular route common carrier differs in two respects from the regular route; first, he is limited to the carrying of six specific commodities; second, he operates over irregular routes without fixed termini.<sup>8</sup> Either type of common carrier's service must be available to any and all members of the public who desire such service insofar as his facilities enable him to perform the service.<sup>9</sup>

Common carriers, by statute, are considered public utilities.<sup>10</sup> As such

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1. Ch. 98, Session Laws of Wyoming, (1927).
  2. Wyo. Stat. § 37-132 (1957).
  3. Wyo. Stat. § 37-131 (k) (1957).
  4. Wyo. Stat. § 37-131 (h) (1957).
  5. Wyo. Stat. § 37-131 (m) (1957).
  6. Wyo. Stat. § 37-134 (1957).
  7. Wyo. Stat. § 37-131 (m) (1957).
  8. Wyo. Stat. § 37-131 (n) (2) (1957). The commodities which can be transported under this certificate are: (1) livestock; (2) petroleum and petroleum products; (3) oil field equipment and supplies, except water; (4) persons in special charter operations; (5) bulk cement; (6) household goods.
  9. *Mt. Tom Motor Lines, Inc. v. McKesson & Robbins, Inc.*, 325 Mass. 45, 89 N.E.2d 3 (1949).
  10. Wyo. Stat. § 37-133, 137 (1957).

their rates and fares are set by the Public Service Commission.<sup>11</sup> The Commission is required to insure that the carrier furnishes adequate and sanitary transportation facilities; that insurance policies are filled by companies authorized to do business in Wyoming and are in force to cover cargo, public liability, and property damage.<sup>12</sup> Commission regulations require common carriers to file an annual report on forms mailed to the carrier; in addition, a common carrier must file a time schedule of his operations.<sup>13</sup>

The prerequisite for a common carrier to operate in Wyoming is the acquisition of a certificate of convenience and necessity from the Commission. The certificate is obtained by proper application to the Commission pursuant to Wyo. Stat. § 37-147 (1957). There is no form available from the Commission for compiling the required information for a regular route certificate, but there is a form available for an irregular route application.<sup>14</sup> The information required is listed in rule nine (9) of the Public Service Rules and Regulations and Wyo. Stat. § 37-148 (1957). This information is used by the Commission in considering an applicant's qualification for rendering the proposed service and his financial ability to provide such service.<sup>15</sup> The Commission may attach to the exercise of the privilege sought under the certificate, terms and conditions deemed proper to protect the public interest or what the public convenience and necessity require for a proper transportation system. However, any applicant legally operating on January 1, 1935, or on the beginning of any calendar year thereafter as a common carrier and rendering satisfactory service is presumed to be serving the public convenience and necessity, and said applicant is entitled to a certificate or renewal as a matter of right.<sup>16</sup> A certificate of convenience and necessity is granted only after a hearing before the Commission at which time it determines if the prospective hauler is willing to transport property from one place to another for all persons that desire to employ him and whether the transporting will involve a public interest.<sup>17</sup> The final decision as to issuance is in the sound discretion of the Commission which can be reversed by a district court only on a showing of abuse of discretion. In *Robinson v. Gallagher Transfer and Storage* there was an application to extend Robinson's service over

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11. Wyo. Stat. § 37-137 (1957); Rule 31, Public Service Commission Rules and Regulations Governing Motor Carriers.

12. Wyo. Stat. § 37-137 (1957). Insurance requirements are found in part two of the rules and regulations of the Public Service Commission. Rule two prescribes the minimum amounts for motor carriers both for injury to persons and for cargo liability.

13. Rule 4, Public Service Commission Rules and Regulations Governing Motor Carriers (revised 1963).

14. Wyo. Stat. § 37-147 (1957) lists the information required. In addition *Robinson v. Gallagher Transfer and Storage Co.*, 58 Wyo. 69, 125 P.2d 157 (1942) has various parts of an application in the opinion.

15. Wyo. Stat. § 37-145 (1957).

16. Wyo. Stat. § 37-146 (1957).

17. *Weaver v. Public Service Commission of Wyo.*, 40 Wyo. 462, 278 P. 542 (1929); Rule 9(c), Public Service Commission Rules and Regulations Governing Motor Vehicles (revised 1963).

a route already given to Gallagher. The Commission allowed the extension of service. In reversing the district court, which found the Public Service Commission had abused its power, the Wyoming Supreme Court indicated that any showing of abuse of discretion must be exceedingly strong, especially in light of the fact that only the applicant for the extension testified. The court said:<sup>18</sup>

It is our view that it was the purpose of the legislature to place matters of this character in the sound discretion of the commission, with its power broadened so as to obtain and apply pertinent facts and conditions not so easily determined by the courts. Should the commission abuse its discretion in handling matters of this kind, then the courts may well be invoked to correct such abuse. Each case must in large measure stand upon its own facts and circumstances.

The Commission may, in its discretion, allow a competitive carrier to operate where the present carrier fails to provide the proper service called for in its certificate or which the public is entitled to receive.<sup>19</sup> The issuance of the certificate is dependent, not on the need of the carrier for business, but upon a showing of a general public need for transportation where no reasonably adequate service existed.<sup>20</sup> Hence, the Commission need not allow a presently operating carrier an opportunity to furnish the required service.<sup>21</sup> At the hearing the burden of proof is on the one seeking the certificate, and he carries this burden by presenting witnesses who are prospective shippers of the applicant.

**CONTRACT CARRIERS:** The Act defines a contract carrier as any carrier, other than a common motor carrier, who engages in the transportation of persons or property by a motor vehicle on and over the highways of the state for compensation.<sup>22</sup> A permit, applied for on a Public Service Commission form, is necessary before a contract carrier can operate.<sup>23</sup> The issuance of the permit is governed by a very wordy statute which initially states that the permit shall be immediately issued upon proper compliance with the Act, but this is conditioned upon there being no showing that the permit will result in impairment or competition with any common carrier serving the same route. If there is such a showing, a hearing before the Commission is required before the permit is granted, and the Commission may attach terms and conditions to protect the common carrier. The statute concludes, qualifying all prior statements, by providing that if the contract carrier permit is to transport property over

18. *Robinson v. Gallagher Transfer and Storage Co.*, 58 Wyo. 69, 125 P.2d 157 (1942).

19. *Russell v. Calhoun et al.*, 51 Wyo. 448, 68 P.2d 591 (1937). This case was the second of three involved in this controversy to amend a certificate of convenience and necessity. The first was *Russell v. Calhoun*, 51 Wyo. 439, 68 P.2d 588. The third was *Russell v. Calhoun*, 51 Wyo. 463, 68 P.2d 597 (1957).

20. *Ibid.*

21. Cases cited note 19 *supra*.

22. Wyo. Stat. § 37-131 (o) (1957).

23. Wyo. Stat. § 37-150-151; Rule 11, Public Service Commission Rules and Regulations (revised 1963).

irregular routes, the Commission cannot find that the permit sought competes with a common carrier.<sup>24</sup> The result has been that any contract carrier who applies for a permit cannot be denied the permit if he applies for an irregular route. There is no distinction between resident and non-resident applicants. This is in contrast to Colorado which requires a formal hearing for contract carrier permits and allows common carriers who might be affected to appear.<sup>25</sup>

Thus the Public Service Commission would seem to be in the position of being able effectively to regulate competition as to common carriers, yet the Commission cannot deny a contract carrier applicant a permit where it competes with either a regular or irregular route common carrier as long as the permit is to operate over an irregular route.

Contract carriers are regulated in a different manner from the common carrier.<sup>26</sup> Theoretically, a contract carrier serves particular shippers or a limited number of shippers under a contract with each shipper to be served. One fallacy here is that there is no statutory requirement as to a contract, hence negotiations may be minimal. The contract carrier is under no duty to haul for all persons, and there is nothing to restrain him from showing favor or preference between shippers who deal with him as he makes no claim to be holding himself out to serve all of the public. The contract carrier must refrain from offering his services to the public, i.e., that he is available to any and all of the public who wish to hire him as in the case of a common carrier, in order to maintain his status as an independent contract carrier.

The fact that carriers are fully aware of the implications of Wyo. Stat. § 37-153 (1957) is shown by the fact that in the two year period from September 1, 1960, to August 31, 1962, only eighteen common carriers were certified compared to 549 contract carriers.<sup>27</sup> By definition a contract carrier engages in transportation of both persons and property for compensation.<sup>28</sup> Hence, he carries or transports the same items as common carriers. The contract carrier must agree to charge not *less* than the rate or fare required to be charged by common carriers rendering the same class and kind of service over the same route (s) or area proposed to be served by the applicant and include a description of the equipment to be used.<sup>29</sup> Note that there is no upper limit on the rate a contract carrier can charge.

**OTHER CARRIERS:** There are three other types of permits which

24. Wyo. Stat. § 37-153 (1957).

25. Sept. 1960-Aug. 1962, Twenty-Fourth Biennial Report of the Public Service Commission of Wyoming.

26. Wyo. Stat. § 37-138 (1957); Rule 11, Public Service Commission Rules and Regulations (revised 1963).

27. Public Service Commission Report, supra note 25.

28. Wyo. Stat. § 37-131 (o) (1957).

29. Wyo. Stat. § 37-138 (1957); Rule 11, Public Service Commission Rules and Regulations (revised 1963).

are required by carriers of which only two, private and interstate, are commonly used. A private motor carrier transports employees or property in the furtherance of a private enterprise by the owner or for the purpose (s) of lease, rent, or bailment.<sup>30</sup> The private carrier permit application is made pursuant to the Public Service Commission application forms which are furnished upon request. The principal requirement is that the applicant give a complete statement of the nature of his business so the Commission may determine if the proposed operations will constitute private carrying.<sup>31</sup> Issuance is immediate unless the applicant's information is insufficient to show that he is a bona fide private carrier or unless safety regulations will be violated.<sup>32</sup> There is no insurance requirement for private carriers. The Commission's power has been limited by a Supreme Court ruling that it is unconstitutional to require private carriers to abide by the Commission rules pertaining to common carriers.<sup>33</sup>

Interstate carriers consist of other than a common or contract carrier who transports persons or property for compensation, by motor vehicle, from one state to another.<sup>34</sup> Interstate carrier permits are applied for on forms available from the Public Service Commission. Principally the application requires a statement of whether the applicant intends to carry property or passengers or both, a description of the equipment to be operated, and proof that authority has been granted to the applicant by the Inter-State Commerce Commission.<sup>35</sup> The permit will be issued immediately upon application if the applicant has complied with all the requirements and the safety regulations.<sup>36</sup> The Federal Motor Carrier Act provides for close coordination with the state in regulating interstate transportation by stating:<sup>37</sup>

The act applies to the transportation of passengers and property by motor carriers engaged in interstate commerce, and expressly disclaims any effect upon the power of a state to tax or to authorize carriers to do an intrastate business.

FEES (see accompanying chart): Enforcement authority for regulation and rules as to collection of the fees lies in the Board of Equalization.<sup>38</sup> These compensatory fees are payable in advance from towing motor vehicles.<sup>39</sup> The fees from all other motor carriers are due and payable on the fifteenth day of the month after the month in which they were traveled. If not paid they become a lien on all motor vehicles for which such fees are delinquent. If the fees are thirty days overdue or the vehicle

30. Wyo. Stat. § 37-131 (p) (1957).

31. Rule 12 (a), Public Service Commission Rules and Regulations (revised 1963).

32. Rule 12 (c), Public Service Commission Rules and Regulations (revised 1963).

33. Authorities cited note 17 supra.

34. Wyo. Stat. § 37-131 (q) (1957).

35. Rule 13 (a), Public Service Commission Rules and Regulations (revised 1963).

36. Rule 13 (c), Rule 28, Public Service Commission Rules and Regulations (revised 1963).

37. 49 U.S.C.A. § 302 (b) (c) (1963).

38. Wyo. Stat. § 37-170 (1957).

39. Wyo. Stat. § 37-171 (1957).

on which the fees are due is about to be moved out of the state, the Board of Equalization can seize and sell said vehicle after four weeks notice published in the proper newspaper. The Board of Equalization is also empowered to bring suit on behalf of the state against any person owing compensatory fees.<sup>40</sup>

All motor carriers must maintain records, which are subject to audit by the Board of Equalization, from which certified monthly reports of total ton miles traveled on state highways are made to the Board on forms furnished by the Board. In this regard each operator of a commercial vehicle must deposit a bond with the Board. This bond is not required if the fees are paid in advance or if the operator is operating over regular routes between fixed termini and operators who have been a resident of this state for more than one year and have not had their permits cancelled for non-payment of compensatory fees.<sup>41</sup>

**SUMMARY:** If a person is hauling solely his own property he should consider whether he wants to get a private permit and be subject to the Commission's rules and regulations or whether to make use of a contract or common carrier. If the person involved is hauling other people's goods, he must consider whether he wants to be a contract carrier, a common carrier, or discontinue hauling other people's goods and become a private carrier (if he will still have to haul his own property). The answer should be arrived at by a consideration of the factors herein discussed.

The principal problem or weakness in the Act lies in the inability of the Act to provide for a means whereby the Commission has discretion to protect Wyoming residents holding contract permits from excessive competition by nonresidents requesting similar authority. It would appear desirable to give the Commission discretionary power similar to that over common carriers so that the granting of the permits could be on the basis of actual competition with other contract carriers and on the basis of fitness to perform the proposed service.<sup>42</sup> This would give protection to the Wyoming contract carriers similar to that enjoyed by contract carriers in our neighboring states.<sup>43</sup>

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40. *Ibid.*

41. Wyo. Stat. § 37-172 (1957).

42. Rule 12(a), Public Service Commission Rules and Regulations (revised 1963).

43. Public Service Commission Report, *supra* note 25.

**FEE SCHEDULE (37-169)**  
**FEEES FOR USE OF HIGHWAYS BY CERTAIN**  
**GASOLINE POWERED VEHICLES**

Unladen Weight	Amount	How Paid
1. 4,000 lbs. or less	\$ 6.00 per year	\$.50 per month, payable in advance for number of months remaining in year when issued.
2. 4,000 to 6,000 lbs.	\$12.00 per year	\$1.00 per month, payable in same manner as No. 1.
3. 6,000 to 8,000 lbs.	\$24.00 per year	\$2.00 per month, payable in same manner as above.
4. 8,000 to 10,000 lbs.	\$36.00 per year	\$3.00 per month. Payable in same manner as above.
5. 10,000 to 12,000 lbs.	\$48.00 per year	\$4.00 per month. Payable in same manner as above.
6. 12,000 lbs. & up	For freight & express service, fee is 1½ mills per ton mile* on the unladen weight. For passenger service, fee is \$.017 per mile traveled on Wyoming state highways.	

**FEEES FOR CERTAIN VEHICLES NOT USING GASOLINE FOR FUEL**

*Unladen Weight	Amount	How Paid
1. 4,000 lbs. or less	\$12.00 per year	\$1.00 per month. Payable in advance for number of months remaining in year when issued.
2. 4,000 to 6,000 lbs.	\$30.00 per year	\$2.50 per month. Payable in same manner as above.
3. 6,000 to 8,000 lbs.	\$48.00 per year	\$4.00 per month. Payable in same manner as above.
4. 8,000 to 10,000 lbs.	\$66.00 per year	\$5.50 per month. Payable in same manner as above.
5. 10,000 to 12,000 lbs.	\$90.00 per year	\$7.50 per month. Payable in same manner as above.
6. 12,000 lbs. & up	For freight and express service there is an additional fee on special fuels of \$.07 per gallon on diesel fuel and \$.05 on butane or propane or mixture thereof. For passenger service the fee is \$.025 per mile traveled on Wyoming state highways by said vehicle.	

\*UNLADEN WEIGHT -37-131 (u): as therein defined.

\*TON MILE: unladen weight times number of miles traveled on state highways divided by 2,000.