

Coordination of Motor
Transportation .

BEFORE THE
INTERSTATE COMMERCE COMMISSION

DOCKET: 23,400.

COORDINATION OF MOTOR
TRANSPORTATION.

MEMORANDUM SUBMITTED BY THE
NATIONAL AUTOMOBILE CHAMBER
OF COMMERCE.

LARUE BROWN,
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Counsel.

May 28, 1931.

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**I. REGULATION OF INTERSTATE
PASSENGER CARRIERS.**

We do not oppose regulation of passenger carriers by motor vehicle although we do not wholly share the optimism of those who propose it.

We do not, for example, believe that such regulation will have any appreciable effect upon the decline in rail passenger revenue of which so much was said in the present record. So far as competition is responsible for this decline, it has been made plain that the effective factor is the preference of the public for the private motor car.

On the other hand, we believe that so far as loss to the rail carrier is properly attributable to the motor bus, it can be more than offset by its intelligent adaptation to the service of the railroads. The experience of the railroads which have seriously attempted

such adaptation points to the fruitfulness of thoughtful study of the possibilities of the motor vehicle in substitution for, or in coordination with rail service.

The reasons for our attitude toward bus regulation in contrast to our opposition to similar regulation of motor truck operations may be briefly stated. By business necessity, commercial motor bus operation must be a common carrier operation on definite routes, with reliable schedules and approximately uniform rates. The field for individual service or bargaining is negligible. Since the motor bus answers a public demand capable of at least rough calculation, it is possible, with a certain degree of accuracy, to determine what capacity and frequency of service will efficiently meet the demand. And while experience with intra-state regulation indicates the difficulty of so doing, the relatively fixed and regular character of the service makes the devising of a rate structure fair to the public and to the operator at least theoretically practicable.

II. REGULATION OF INTERSTATE PROPERTY CARRIERS.

In the case of motor truck operations few of the conditions thus favoring regulation exist and those which do exist are applicable only in greatly diminished degree. On the other hand the difficulties, legal and practical, have complete and increased application.

We therefore oppose such regulation. We believe it to be unwise from the point of view of the shipping public, from that of the public in general, and from that of the railroads themselves.

A. Certain Irrelevant Considerations.

Before examining the matter from the foregoing individual and collective points of view, it is convenient to clear away the confusion caused by the persistent forcing upon the attention of the Commission of contentions irrelevant to the present inquiry.

I. "If motor buses are regulated, motor trucks should be regulated."

The suggestion is so frequently made that, if regulation is desirable in the field of passenger transportation, it must likewise be desirable in the field of motor freight transportation, that some further analysis is warranted. Such analysis will make it clear that the two types of carriage are so different, as a matter of economics, as to require entirely separate study. Indeed, the very considerations which make passenger carrier regulation constitutional and perhaps desirable lead to a precisely contrary result in the case of the motor truck.

Where substantially all motor bus operations are common carriage, only about seven per cent of the motor trucks in operation appear to be common carriers and of these only about one-half operate over regular routes. (Counsel for the L. & N. and for the N. C. & St. L. state this percentage as between one and three percent—brief p. 11). Unlike the passenger carriers, motor truck service has not developed in major degree for regular, scheduled public service but for the provision of flexible transportation moving at irregular times over constantly shifting routes, dictated by the individual and constantly varying needs of the particular shipper served. In a technical sense few motor trucks serve a "public demand." They are rather the direct agency of the shipper, privately owned as to about 82% of their number, and

in the great majority of other cases specifically hired by the shipper and operated in the way he specifically desires in a very great variety of service.

Thus both the possibility and the supposed need of limiting the number of operators who answer a fixed demand over a fixed route which are present in a bus situation are absent from the trucking field where there is a constantly varying demand for varied types of service and irregular journeys at irregular times. Only in the relatively small number of common carrier operations between fixed termini and over regular routes are fixed conditions present. Indeed it is their absence which has brought about the great expansion of the motor truck and its attractiveness to shippers. It follows also that the practicability, such as there is, of controlling the rates and supervising the operations of bus operators moving in relatively defined orbits is emphatically not present in a service whose outstanding characteristic is its flexibility and its variety of conditions shifting with the needs of the moment.

Regulation of property carriers must then be considered upon its own merits and its desirability must be determined without regard to opinions which may be held as to the regulation of passenger carriers.

2. "Motor Trucks are Subsidized by Public Highway Construction and Maintenance."

It was apparently part of the instructions given to railroad "witnesses" to repeat this assertion in one form or another but very seldom was any serious effort made to show anything more than that large sums are spent for highway construction and maintenance and that the railroads with their tremendous holdings of valuable property, for which they receive the protection of the communities, pay very considerable taxes. Where more was attempted, as for ex-

ample in the case of the Louisville & Nashville Railroad, it appeared on cross-examination that after resolving every possible doubt in favor of the railroad's contention, the proportion contributed by it to the construction and maintenance of the highways principally used by organized motor transportation was so trifling as to be negligible.

It was after this demonstration that one railroad "witness" brought the matter to a peak of absurdity by seeking to include in the alleged subsidy the entire assumed value of the land represented by the city streets of America. It is of course plain that without the city streets the railroads of this country would be valueless. It is not so plain but will, upon slight reflection, appear to be equally true that without the rural highways there would be a ruinous reduction in the earning power of the steam carriers.

Examination of the record will show the degree to which these assertions about "subsidized highway competition" fade under analysis. It will show also the extent to which it was demonstrated that, when all the various tax impositions upon the highway carrier are taken into account, the commercial motor vehicle, which in 1930 contributed \$269,870,000 to the public treasury, pays very heavily indeed for what it receives.

It is however unnecessary to go into these matters at length.

If it were true that the public in providing modern highways is subsidizing the motor truck, it would only be following the example of the direct and indirect subsidies from federal, state and local governments which were so generously contributed to forward the development of the railroads. According to Dr. Duncan, the federal government alone gave to the railroads 128,000,000 acres of the public land. The total

of the subsidies given by state and local governments was not calculated and is perhaps incalculable. Dr. Duncan and others were sure that these railroad subsidies were, despite their huge proportions, very wise expenditures by the public. If the public needed the railroads, it is equally true that the highways have been constructed because the public needed the flexible, individual transportation which the improved highways have made possible. Especially in view of the fact that the overwhelming proportion of the use made of them is by privately owned vehicles, less than 700,000 of the 26,523,779 vehicles operating on the highways being carriers for hire of any sort, it is plain that, wholly apart from the matter of carriage for hire, the public could have made no better investment. It would seem that one need go no further than to consider the enormous increase in property values resulting from quick, safe and convenient communication to be convinced as to this.

In the second place, the Interstate Commerce Commission has nothing whatever to do with matters of state taxation or expenditure. It presumably will not depart from its proper field of activity to attempt to act as guide and mentor of the several states in their individual problems of finance. It has a proper concern with the propriety of recommending federal regulation of interstate commerce by motor truck but an argument that because in the railroads' view the trucks are not taxed enough, they should be regulated too much—an "eye for a tooth," so to speak—need not detain us.

It should be said, however, that one of the contentions repeatedly pressed during the hearings was completely exploded by highly competent expert witnesses. That is the assertion that a heavy additional burden of cost has been placed upon the taxpayer by

the construction of roads more strongly built than those which would be needed to carry ordinary non-commercial traffic. If warranted, this assertion would still disregard the fact that a very large proportion of the heavier vehicles are owned by the taxpayers for use in their private enterprises and that such use very substantially reduces the cost of distribution finally borne by the consuming public.

But it was shown by Thomas H. MacDonald, Chief of the Federal Bureau of Public Roads, that the increase in strength, over a practical engineering minimum, necessary to carry the heavier trucks, if properly designed and equipped, involves a very small increase in cost. That increase is, according to Col. Brainerd Taylor, representing the War Department, absolutely essential to the national defence.

It is, however, repeated that all this discussion of taxation related to matters with which the Commission has no concern and as to which it is powerless.

3. "Since the railroads are regulated, the trucks should be regulated."

It is apparent that the railroad representatives regard this contention as very appealing. Its repetition is accompanied by complaints of "unfairness" and phrases like "denial of equal opportunity" whose tendency, if not whose purpose, is to becloud the issue and divert the course of logical thinking.

The reasons why railroad regulation came into being are familiar. A comparatively small group of powerful corporations enjoyed a monopoly of transportation and the shipping public was, relatively speaking, helpless in the face of widespread abuse or misuse of power. Counsel for the Association of Railway Executives opened his statement with the admission that it was this situation which led to railroad

regulation. Regulation was not imposed at the demand of superseded transportation agencies nor in an effort to save or revive them. If and when monopolistic conditions obtain in highway transportation, if and when abuses arise against which the public, and particularly the shipping public, requires the protection of governmental interference, such interference in the form of regulation will no doubt, within the limits of the constitution, not long be delayed.

If however anything is plain as the result of the mass of assertions and contradictions which make up this record, it is that no such abuses are felt or exist with respect to motor truck transportation. Motor truck transportation is subject to the most effective possible regulation, that of sharp competition. Under these conditions it has developed with increasing service and satisfaction to the shipping public. It is primarily an adjunct and tool of individual business rather than a transportation system as that phrase is used with respect to railroad corporations. As already has been shown it is only in small measure a common carrier operation. For these reasons, the shipping public which demanded railroad regulation for its essential protection opposes truck regulation. For these reasons, also, railroad regulation affords neither precedent nor justification for truck regulation.

It may be proper here to remark that the motor truck industry has no opinion to express with regard to certain modifications of railroad regulations urged during the course of these hearings by representatives of rail carriers. While the avowed purpose of seeking these modifications is to facilitate competition by the railroads with motor transportation, the matter is one which the motor industry leaves to the experi-

ence and judgment of the Interstate Commerce Commission. It may properly be observed that the burden of the justification advanced by the railroads for these requested modifications was the restrictive effect of regulation upon the carriers' ability to deal with individual situations. In view of the essential differences between the services rendered, such hampering while annoying to the railroads would be fatal to the motor vehicle whose very function is to render individual service.

B. Truck Regulation Is Not in the Interest of the Shipping Public.

In view of the degree to which truck regulatory bills have, almost always under railroad auspices, been passed by State legislatures, it is almost a spectacular circumstance that so far as any interest other than the railroads has made itself heard in these proceedings, it has been to oppose truck regulation. It is equally significant that railroad witnesses when asked as to the effectiveness of state truck regulation in the regions with which they were familiar were almost uniformly bitter in proclaiming its ineffectiveness. Nevertheless, the general counsel for the Association of Railway Executives, who, in the light of the history of the matter must be taken to be the chief spokesman—and certainly a very accomplished spokesman—for the proponents of regulation, has demanded very far-reaching governmental interference with what in overwhelming measure is a strictly private business. Our reasons for believing his proposals economically unsound, constitutionally invalid, and wholly ineffective for their obvious purpose of increasing the revenues of his clients will be later stated. For the present, it is enough to emphasize the fact that the proposals for truck regulation come almost wholly

from those who believe that they have something to gain by cutting down the efficiency or the economy of motor truck operation.

It is interesting to note that while counsel did not attempt to translate the desires of his clients into a draft of specific legislation but was content to remain within the relatively safe limits of generalities, he recognized that any such proposal would be futile which was confined within the hitherto recognized limits of governmental interference with private business, namely to that very small percentage of trucks which are engaged in common carriage, that is to say, public employment. To be sure, counsel did not propose "at this time" to try to make a public utility out of every merchant or corporation which uses a motor truck as a tool of its business, but that was the limit of his moderation. It is significant that one so highly qualified was unwilling to hazard any estimate of the extent of the administrative organizations or of the millions of dollars required to begin the national truck regulation with any hope of effectiveness. Some light is thrown into the dark places so hastily passed by, if one remembers that the motor trucks of this country are owned by about 2,300,000 separate owners; that the average "fleet" is less than 4 trucks and that 100 trucks represent a large organization. It is curious that gentlemen who were eloquent about the so-called "hidden cost" of truck operation, meaning the supposed uncompensated cost of highway maintenance, were able so completely to ignore the tremendous cost of any serious attempt at national truck regulation.

As we have said, it is almost a spectacular circumstance that the demand for truck regulation, ostensibly made in the public interest, received during these hearings substantially no support from the public. So

far as the shipping public is concerned, it is sufficient to recall the statements made on behalf of the National Industrial Traffic League, the Merchants Association of New York, the Boston Chamber of Commerce and other organizations representing those who use the motor trucks.

The reason for this opposition is as simple as it is convincing. Shipments of merchandise, especially in less than car load lots, now move by truck with a speed, simplicity of handling and flexibility of service which the rail carrier in many cases can not match. Often the rates from shipping platform to receiving door are less than in the case of rail service. Since 1920, there has been an increasing tendency on the part of merchants and small industries toward the maintenance of small inventories and "hand to mouth" buying. Many manufacturing enterprises have come to depend upon quick delivery from the manufacturing town to the great distributing centers. Such a service in many cases only the motor truck can give. Striking examples of service in special situations rendered by it which could not be duplicated by rail service abound in the record particularly in the testimony given in Washington, New York and Boston.

Manifestly any variety of regulation worthy of the name must have a restrictive effect upon the possibilities of the truck for service to industry. In fact counsel for the Association of Railway Executives when asked as to certain specific examples of emergency service of the greatest value to manufacturers frankly admitted that the service rendered might and probably would be impossible under regulation. Regulation both in theory and in practice involves insistence upon a greater or less degree of uniformity while the very essence of the service of the motor truck is its individuality.

“Regulation” of highway transportation, as was pointed out by Mr. Justice Brandeis in *Buck v. Kuykendall*, 267 U. S. 307, 315, means the exclusion of A and the admission of B to the business of carriage. It means that the shipper can no longer choose for his sudden necessity the truckman in whom he has from experience confidence of receiving prompt and efficient personal service but must take the truckman chosen for him by a public authority. If that truckman cannot meet the shipper’s emergency, it cannot be met, unless the shipper is financially powerful enough to be able to operate his own truck. It means that no longer can the shipper fix with the truckman a fair price for the service desired with its peculiar conditions but must be bound by rates fixed by an overburdened commission. In short it means a serious limitation if not an end to the vitally important function of the contract carrier.

Now, it is plain that behind the phrases popular with railroad counsel as to “fairness” and “equality of opportunity” lies something very practical. It is the belief, or at least the hope, that in truck regulation there may be found a partial reversal of the trend of less carload traffic of which so much was made at the hearings.

Desire to Restrict Truck Use Obvious

No fair words from the Association of Railway Executives or their representatives to the effect that they do not wish to impair or destroy truck transportation but only to help it to a sound economic basis can conceal the fact of a desire to regain revenue at the expense of a service which shippers by their use of it have shown that they prefer. For no other possible reason did witness after witness elaborate upon the decline of railroad revenues. For no other possible

reason did general counsel for the Association of Railway Executives go into such detail in emphasizing the capital expenditures of the rail carriers and the excess capacity which—it may be said in common with every other great industry—they now possess. However concealed by skillful language it is plain that the purpose of the railroads is in fact that candidly stated by a less guarded witness—namely to force the traffic back to the rails “where it belongs.”

With the probabilities that regulation will accomplish this purpose we will later deal. For the present what is important is that the hope exists.

If this hope is well grounded, it can be achieved only by rendering truck service less attractive either as to rates or performance so that shippers will be compelled by self interest to give it up, to a greater or less extent, and to return to the rail service which they have ceased so largely to patronize.

If the railroads have reason to hope for this result from regulation the shippers have equal reason to fear it. This is especially true if the increase in railroad rates now proposed becomes effective. Then, bringing to a parity rail and truck rates means an increase of truck rates relatively much higher than that purposed for railroad rates. In other words, if truck regulation is to be effective, it will result in damage to the interest of the shipping public. If it is not, it will simply be a useless annoyance and expense.

C. Truck Regulation Is Not in the General Public Interest.

In last analysis, truck regulation is demanded as a help to railroad revenues. That it will produce any substantial result of this kind is very questionable as will shortly be made to appear. It may here be

said however that the decline in railroad revenues of which so much is made, has in many notable instances occurred in territory in which state regulation has for some time been upon the statute books. The statement made on behalf of the Nashville, Chattanooga and St. Louis Railroad is one of a number of places in the record in which this failure of intra-state truck regulation to protect the railroad's business is emphasized and the reasons for such failure are suggested.

The motor industry has no occasion to challenge the assertion that the railroads are an essential agency of transportation and that the great investment in them should not be unduly imperilled. In fact the motor industry is, directly and indirectly, perhaps the railroads' most important customer. In 1930, 3,330,383 car loads of freight traffic were traceable to the public use of motor vehicles, while direct shipments of such vehicles and parts, including tires, amounted to 618,483 car loads, producing revenue of \$120,244,443.

On the other hand, it is a circumstance of great importance that the decline in railroad movement which can be traced to the motor vehicle is very largely in respect of less than car load freight. Less than car load freight is a principal factor in raising terminal costs to proportions of the gross rate which as to such freight are as high as 80 per cent, or even higher in certain highly congested and expensive terminals. (Compare testimony of R. N. Collyer.) It is a type of freight formerly, at least, proclaimed to be unremunerative by railroad managers who believed that it was in the field of long distance bulk transportation that their great opportunity for service and profit lay. It is common knowledge that it was in the development of facilities for the cheaper and more

expeditious handling of this long distance traffic that the great capital expenditures emphasized by counsel for the Association of Railway Executives and other railroad representatives were principally made. It is not impossible that there was over-expansion in the railroad world as elsewhere in American business. It is significant that according to Mr. Thom the railroads subsequent to April, 1923, with the motor truck developing before their eyes, equipped themselves "to handle the entire land traffic of the country."

In view of these circumstances, it is open to fair question whether the truck by taking part of the less than carload business has not been a definite advantage to the railroads and it is certainly true that it offers to such carriers as may use it, a method of handling such traffic which is capable of producing great operating economies.

In any event, it is not in the public interest in an effort to bolster up railroad revenue to enter upon a national policy which if constitutionally framed will be ineffective and which if effective must be so at the expense of other interests at least as important as those of the rail carriers for whom protection regulation is demanded.

We do not here refer to our own industry, but it may be said in passing that the motor industry and its customers are the country's largest purchaser of steel, rubber, plate glass, nickel and lead, that the capital investment in the direct production of motor vehicles, including tires, parts and accessories, was \$1,880,808,233 in 1930 and that 5,056,124 people in this country were employed in that year in occupations which owe their existence to the motor vehicle. It may be added that 2,150,000 men were employed as professional truck drivers.

While this great interest and that of the investors

in railroad securities are not to be overlooked, it is the shipping public which comes into direct competition with transportation and which it is the function of transportation to serve, and upon which all other interests are ultimately dependent. In any balancing of individual interests, it is entitled to primacy.

There are, however, more general public interests involved.

1. Governmental Interference With Private Business Should Not Be Extended.

Except in very limited political circles there is general agreement in this country that government should not interfere with the conduct of private business except in situations where the business itself is essentially of a public character—is, to use the legal phrase, clothed with a public interest. In every instance in our history where either a state or the central government has undertaken to interfere with the free control of an industry by its owners, the industry has been of that character and the compelling force has been a public demand for regulation initiated by the persons served by the industry in question seeking relief against some unfair economic advantage possessed as the result of monopoly or other circumstance by the producer over the consumer. Such has been the history of the extension of governmental control from the grain elevators in *Munn v. Illinois*, 94 U. S. 113 (1876) to the stockyard commission men in *Tagg Bros. & Moorehead v. United States*, 280 U. S. 420 (1930). That it was such conditions and not the complaints of the stage coachmen and the steamboat interests which led to railroad regulation has already been pointed out. It was said, in 1927, by Mr. Justice Stone, in his dissenting opinion in *Tyson v. Banton*, 273 U. S. 418, 451:

“An examination of the decisions of this court in which price regulation has been upheld will disclose that the element common to all is the existence of a situation or a combination of circumstances materially restricting the regulating force of competition, so that buyers and sellers are placed at such a disadvantage in the bargaining struggle that serious economic consequences result to a very large number of members of the community.”

There is here a principle of American constitutional and economic policy which should be departed from only under conditions of demonstrated and compelling public need.

2. The Regulation Proposed Is Unconstitutional.

Moreover it is important to the public that legislative experiments should be limited to those offering a reasonable probability of practical success. Any others are mischievous.

It seems to be pretty generally agreed that existing state regulation of motor carriers of property has been ineffective and that apart from the practical difficulties which exist in enforcement of such regulation even against undoubted common carriers, a controlling reason for this ineffectiveness has been the presence in the field of the overwhelming majority of privately owned trucks and contract carriers, and the facility with which under the compulsion of attempted regulation the common carrier will change his method of conducting his business. Mr. MacDonald's illustration of attempting to squeeze between the fingers a handful of mercury was peculiarly apt and descriptive.

Recognition of this fact is to be found in the present insistence that the private carrier must be included in regulation if it is to be effective.

It is clear that the shipper who owns his own truck and uses it in his own business can not be made the subject of regulation. It is almost equally clear that the contract carrier who does not hold himself out to serve the public in general but who operates exclusively on special contract with an individual shipper or group of shippers can not be brought within the limits of congressional power. The legal and constitutional issues involved in this question have been exhaustively analyzed in *Brown and Scott, Regulation of the Contract Motor Carrier under the Constitution*, (1931) 44 Harvard Law Review, 530, an exhibit in this record, and that analysis need not be here repeated.

It is requested that that exhibit be read as a part of this memorandum.

It follows, therefore, if these views which are confidently held are correct, that no regulation which can be expected to be constitutional, will be effective.

3. If Constitutional, the Proposed Regulation Is Impracticable.

Any practical analysis of the situation arising under such a regulatory law leads inescapably to the conclusion that the result would be an utter lack of enforceability. The Commission would be the last to underestimate the tremendous practical problem involved in regulation of interstate railroad operations by a single administrative body. But the existing difficulties of such supervision would be incalculably multiplied in any effort to control the operation of every truck carrying goods for hire in interstate commerce in the United States. At present approximately 600,000 vehicles, a figure which is constantly increasing, are operating in common and contract car-

On pages 18 and 19 of this memorandum, the contention is made, with a reference to the authors' article in 44 *Harvard Law Review*, 530, that regulation of the business of the private or "contract" carrier is unconstitutional. Since this memorandum was printed, the Supreme Court of the United States, in *Smith v. Cahoon*, decided May 25, 1931, has fully sustained the position here taken.

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riage in this country, and a substantial proportion of these conduct *some* operations in interstate commerce. The problem of isolating these, and distinguishing carriers for hire from shipper-owned trucks, and interstate from the vastly greater number of intrastate trucks, would present in itself almost insurmountable obstacles before the problem of regulation proper even began. This problem would constantly present itself anew because of the ease of change of form of these almost innumerable small operations.

The problem of segregating the vehicles to which to apply regulation would be succeeded by the problem of granting or withholding certificates "of convenience and necessity" as a prerequisite to their operation. The outline of proposed regulation submitted by the Association of Railway Executives contains no reference to a "grandfather clause" and presumably it is intended by them that the regulatory body would have to consider applications for certificates by every interstate truck carrier now in operation. It is certain that it would have to do so with respect to every operator or operation commencing subsequent to the passage of the act. Although this requirement is specifically proposed to be applied to the contract carrier, not the shadow of a practicable criterion for certificating such carriers has yet been suggested. A discussion of the complete inappropriateness to them of the customary test of adequacy of existing service, applied to common carriers in existing state regulatory laws, may be found in *Brown and Scott, supra*, at 541-546, and no practicable substitute has yet been suggested. Any criterion would involve thorough investigation by the commission into a myriad different types of truck operations, from the irregular route common carrier who will haul anything that is offered him to any point, within or with-

out the state, to the contract hauler who carries a single commodity for a single employer between two points selected by the fortuitous circumstances of some particular business transaction. In each case some way must be found to decide whether there is "public necessity and convenience" in the particular operation in question.

Most important of all to those who ask for regulation is the provision that carriers shall not only be certificated, but shall also have their rates regulated. Regulation, in the words of counsel for the Association of Railway Executives, is to prevent the motor carriers from continuing to charge rates which are "too low." If "too low" means simply lower than the rail rates for the same line haul, it might not be impossible for a commission to go through rate tariffs blue pencilling all items lower than corresponding items on the tariffs of competing railroads. If, however, the basis for rate regulation is to be the only justifiable one—a scheme of charges which will be fair and non-discriminatory toward the public, and which will at the same time enable the carrier to earn a fair return on his investment—it is submitted that the task confronting any commission charged with the duty of establishing and enforcing such a scheme would be an impossible one. The number of vehicles and the number of separate and dissimilar operations of any individual truck, the immense number of variable cost accounting factors arising out of varying routes and frequencies of operations, varying road and weather conditions, varying types and sizes of vehicles with varying upkeep expenditures and varying rates of depreciation, create a situation where an army of accountants would be needed to establish what must become a separate tariff of rates for each operator and *operation*. An army of police officers

would be needed to enforce such a system once it had been evolved. Since the rates of individual contracts between shipper and carrier are to be supervised, the Commission would have to decide such problems as what would be a fair charge for a subsidiary trucking corporation to charge its parent for services offered to the parent for any and all of its transportation needs but to no one else. Examples so multiply themselves on the briefest consideration that they need no elaboration.

It follows that regulation cannot be effective unless it includes the contract carrier, and if it does include him will not be constitutional, and cannot be established upon any rational basis, or adequately enforced once established.

This conclusion is not based upon speculation, but upon actual experience. The legislation here advocated is plainly to be modeled upon that now in force in numerous states with respect to carriers of property in intrastate commerce. The problem in a single state is of course upon a much smaller scale than would be the federal problem of regulating operations over the entire country, and might therefore be expected to have a better chance for practical success. That such has not been the case is confirmed by the vehement testimony to that effect of the very witnesses in this investigation who are advocating federal regulation. No one had good words for the success of any state regulatory scheme for property carriers, and various railroad witnesses explicitly stated that regulation was a complete failure in the states in which they operated. Specific reference was made to Illinois, Michigan, Tennessee and other states, and the fact is that the same could be said in every jurisdiction where such legislation has been essayed.

4. Since the result desired can be neither constitutionally nor practically attained, the consequence of enacting regulatory legislation would be an incalculable enforcement cost, paid by the public, without any beneficial result.

Economic laws are bound to cause the motor vehicle to find its place. Where it can render a service more cheaply and efficaciously than another mode of transportation, it will, and should properly, grow and prosper. Where it cannot do so, the law of demand and supply will not long permit it to remain in a field where it cannot profitably compete.

If regulation can constitutionally be applied only to common carrier operations, and, if so limited, it will be ineffective to accomplish the benefits hoped for from it, manifestly it should not be attempted. If regulation does not operate to help railroad revenues in the only way it can do so, by raising rates and crippling service or both, it will be tacitly abandoned. If it does so operate, the shippers will not long submit to being forced to pay higher rates or to give up a service which within its field they have come to regard as superior. The march of engineering and industrial progress can not be turned back by legislative interference.

While these results are being worked out by experience, a useless burden of expense and an unnecessary expansion of the government's organization will have been imposed upon the taxpayer and a period of annoyance and harassment imposed upon a developing industry.

D. Truck Regulation Is Disadvantageous to the Railroads.

It has already been pointed out that the loss of traffic by the railroads to motor truck competition has

been almost exclusively in respect to less than carload, short-haul package freight. While there are sporadic instances cited in the record of operations which do not answer this description, there is little to show any threat by the motor truck to the supremacy of the railroad in the longer hauls or in the transportation of bulk freight. This is a physical limitation upon truck operation inherent in its very nature. It also has been remarked that the field to which the motor truck is especially adapted is that in which the character and physical limitations of rail operation render the railroad service not only unsatisfactory to the shipper, but relatively unprofitable to the railroads. Moreover, the widespread resort by shippers to transportation in their own privately owned trucks has plainly reached a point where it is far from certain that the volume of short haul less than carload freight available in the future would represent a satisfactory operation if there were no motor carriers for hire whatever. It seems plain that the desirable recourse of the railroads, so far as this character of freight is concerned, lies in the progressive abandonment of local freight trains and the progressive adaptation of the motor vehicle to their own services.

It is impracticable to devise a single formula for this adaptation which can be applied universally. The form which it should take must be worked out by experiment with the particular and diversified conditions presented, as has been the development of motor carriage itself. It may very well be that in certain cases, the most satisfactory solution is by direct operation of motor trucks in substitution for freight trains. In others, some development of the container system may prove a desirable solution. In still other cases, operation through a motor subsidiary

may be most practicable. In others a system of contract or other less formal relationship with existing motor carriers may prove desirable.

In any event it is clear that the situation is a developing one and that the rail carriers have much to gain from its unhampered development.

It should not be forgotten that regulation, if effective, would operate as definitely to prevent the extension of railroad controlled truck operations, which would or might compete with existing motor truck operations as in the converse case. Indeed a large corporation like a railroad company is a shining mark to be hit when less conspicuous competitors escape. If there is to be "equality of opportunity" the railroad will be given no right to pre-empt the field of motor truck transportation and no special privileges in that field. Indeed the fact that the field is, according to the railroad's statement of the matter, already very fully occupied by motor carriers who are competitors of the railroad, suggests very strongly that in a situation of national regulation, it might well be the railroads and not their present competitors who would find themselves excluded.

For these reasons it is at least doubtful whether in advocating further truck regulation, the railroads are not creating for themselves serious difficulties in the future when the economics of the problem of the proper adjustment of the rail and highway carrier shall have, in the light of experience, become more clear.

**THE NATIONAL AUTOMOBILE
CHAMBER OF COMMERCE.**

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