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Harold D. Torgan

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CONTROL OVER MOTOR CARRIERS BY THE PUBLIC UTILITIES COMMISSION

By HAROLD D. TORGAN of the *Denver Bar*



Harold D. Torgan was born in Canada of American parents; attended the University of Manitoba and Manitoba Law School in Winnipeg. Admitted to Colorado Bar in 1938; member of the Denver and Colorado Bar Associations.

Since the Constitutional Amendment was adopted in Colorado last fall which now gives the Public Utilities Commission control over commercially operated motor vehicles in home rule towns and cities, many inquiries have arisen as to the procedure for obtaining authority to operate.

Prior to January 1, 1955, when a motor vehicle was operated solely within a home rule town or city, no authority from the P.U.C. was necessary. Since that date, *all* such truck operators, whether hauling their own merchandise, or goods belonging to others, must obtain, in addition to their city license, a certificate of authority from the P.U.C. How do "permits" and "certificates" differ? What type of authority should be applied for? What is the procedure? How is authority obtained to operate in intrastate commerce?

As far as motor vehicles for hire are concerned, the authority of the Public Utilities Commission now extends to their operation not only throughout the state, but also when operated entirely within a home rule city or town. Such vehicles are considered public utilities.

Permits

A "permit" is a form of limited operating authority issued to a *private or contract carrier* under which the carrier *cannot* hold himself out as being ready, willing and able to serve the general public. There are three types of permit:

- (1) "Class A Private Carriers shall embrace all private carriers by motor vehicle operating over substantially regular or established routes or between substantially fixed termini; or to a fixed terminus or termini.
- (2) "Class B Private Carriers shall embrace all private

carriers by motor vehicle who do not operate over substantially regular or established routes or between substantially fixed termini."¹

- (3) A commercial carrier, ("M" permit holder), means any person or corporation operating a motor vehicle transporting property sold or to be sold by him, or in furtherance of its own private commercial enterprise; or property of which such person or corporation is the owner or lessee, whether the property is transported between fixed points or over established routes, or otherwise.²

Comparing the three permits, an "A" permit holder can transport commodities for hire for a limited number of specifically named customers with whom he holds a contract, *over regular routes between fixed termini*; a "B" permit holder can transport commodities for hire for a limited number of specifically named customers with whom he holds a contract, *over irregular routes where there are no fixed termini*; an "M" permit holder, or commercial carrier, (formerly known as a "C" permit holder) can transport his own goods *anywhere* in intrastate commerce, *whether or not over fixed routes*.

Procedures for Obtaining A and B Permits

The application to the Public Utilities Commission for such a permit³ must set forth, among other things, a statement of the area or routes to be served, the names of all motor vehicle *common* carriers with whom applicant will likely compete, and a statement of the names and addresses of all persons whom applicant proposes to serve.

The application is set for formal hearing before the P.U.C. and notice is mailed out by the P.U.C. about ten days before the hearing to all those common carriers who might be affected by the granting of the application. These notices are sent not only to those common carriers named in the application, but also other common carriers with whom the Commission feels the applicant is likely to be in competition.

Although the notice of the hearing is not usually sent to other competing *private* carriers, the latter, if they learn of the hearing, may appear at the hearing and are generally allowed to protest the application, but only as a member of the public.

The carrier, even if his application is not protested, will not be granted original authority, or allowed to extend his existing authority, "if the Commission shall be of the opinion, after hearing, that the proposed operation will impair the efficient public service of any authorized motor vehicle common carrier or carriers then adequately serving the same territory over the same general highway route or routes."

The applicant, at the hearing, first testifies as to his finances, equipment, and experience, if any, as a carrier, and also as to the customers' needs for such service. He usually has shipper witnesses, representing those named in his application, if any, to tes-

¹ 1953 C.R.S. Vol. 5, Chap. 115-11-1.

² 1955 Session Laws (Senate Bill No. 301).

³ "Rules and Regulations Governing Private Carriers for Hire by Motor Vehicle"

tify as to their *need* for the particular type of service to be granted by the applicant. The protestants—other competing carriers—may then testify individually that no additional carrier service is needed, giving reasons. The application is granted only if it will not impair the efficient public service of any authorized common carrier.

An "A" or "B" permit cannot be transferred until formal application is made to the Commission and a hearing held. It must be shown at the hearing that the transferee is qualified, financially and otherwise, to conduct the operation.

An "A" or "B" permit holder is not allowed to advertise for new customers. He is restricted to the customers named in his application, and such others as may be added subsequently with the consent of the Commission.

Procedure for Obtaining M Permit for a Commercial Carrier

No hearing whatsoever is necessary to obtain an "M" permit to operate in intrastate commerce. It is merely necessary to file an application with the P.U.C.⁴, which sets forth, among other things, whether the applicant intends to operate over a regular route, or whether a limited area, and if so, a description thereof. A liability insurance policy must also be filed with the Commission.

This permit cannot be transferred without the consent of the Commission.

Certificates

"Certificates," as distinguished from permits, are only granted by the P.U.C. to *common carriers*. What distinguishes a common carrier is his ability to serve the public generally and indiscriminately within the geographical area prescribed by the Commission. He can advertise for new customers, whom he can serve within this area. He is obligated to serve every customer who requests his services within the limit of his ability. He may be considered a common carrier even though he is transporting only one commodity, such as livestock.

Procedure for Obtaining Certificate

A "certificate of public convenience and necessity," which is the full technical name, is far more difficult to obtain than a

⁴ See "Rules and Regulations Governing Commercial Carriers by Motor Vehicle."

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permit. The procedure, however, is substantially the same. An application is filed with the Commission,⁵ which should set forth the area or points to be served and the proposed time schedule, if any. It should give the names of all other carriers, including railroads, with whom applicant is likely to compete, and a statement of all facts and circumstances showing public convenience and necessity. Notices of a hearing are sent to all carriers who may be affected by the application, and the matter is set for formal hearing.

Presently established carriers of the same commodities and operating in the area sought by the applicant are naturally anxious to protect their own certificates, or operating rights, and frequently oppose the application. The applicant must prove to the Commission "that the present or future public convenience and necessity require, or will require, such operation."⁶ This means, in effect, that there must be a definite need for a transportation service for which no reasonably adequate public service exists.⁷ The public convenience and necessity is the criterion, rather than the applicant's personal desire, and there must be a showing that existing transportation facilities are inadequate or unsatisfactory. If existing carrier service is adequate or can be made adequate, new certificates will not be granted.⁸ The Commission has taken the position that duplication leads to waste, and competition is not necessary to secure reasonable rates, since rates for many types of both common carriers and private carriers may be prescribed by the Commission.⁹ The burden of proof is on the applicant to establish the inadequacy of existing service.¹¹

Transfer of Certificates

The procedure for the transfer of a common carrier certificate of public convenience and necessity is substantially the same as that for a private carrier permit. Notices are mailed to interested competing carriers, and the matter set for hearing, at which time the Commission inquires as to the terms and conditions of transfer, financial condition and experience of the transferee, and evidence of possible abandonment of operating rights.

Differences Between Permit and Certificate

Some of the essential differences between a common carrier certificate and a private carrier permit have been enumerated by our Colorado Supreme Court in the case of *McKay vs. Public Utilities Commission*¹² as follows:

"The legislative intent is clear, that the authorization of private carriers shall not be detrimental, within the limits of the law, to common-carrier operation. No permit as a private carrier can be granted by the commission if

⁵ See "Rules and Regulations Governing Common Carriers by Motor Vehicle."

⁶ 1953 C.R.S. Vol. 5, Chap. 115-9-4.

⁷ 60 C.J.S. Sec. 90, p. 289 et seq.

⁸ *Pand on Public Utilities*, Vol 3, 3rd Ed. Sec. 714, P. 1436.

⁹ Application of Roybal, Dec. 31591.

¹⁰ Application of Lemmon, Dec. 27284.

¹¹ Application of Hellesen & Thompson, Dec. 26354.

¹² Application of Foster, Dec. 26113.

¹³ 104 Colo. 402 (at 413)

in its opinion, based upon proper evidence, such private-carrier operation impairs the efficient public service of an authorized common carrier serving the same territory or over the same highway or routes. All this indicates an intent to coordinate motor transportation in such a way as to preserve common-carrier operation and to not impair the integrity of state regulation of common-carrier service. That this is in the public interest cannot be questioned, especially when we have in mind the difference in legal obligations as applied to common carriers and private carriers. The obligations of a common carrier to the public are different. A common carrier has the duty of giving adequate and sustained public service at reasonable rates, without discrimination. Any failure in that respect makes it civilly liable. Liability as to loss and damage owing to negligence is of a higher degree than that of a private carrier. A private carrier is liable only for mere negligence. A common carrier is held to the highest degree of care. The purpose of the legislative intent to protect the integrity of regulatory power over common carriers is therefore apparent. The exercise of regulatory power is primarily in the public interest. A greater degree of service is required from the common carrier; hence, the legislative direction that no permit to a private carrier should be granted if it impairs the efficient public service of an authorized common carrier."

*Carriers Operating Entirely Within a Home Rule
Town or City*

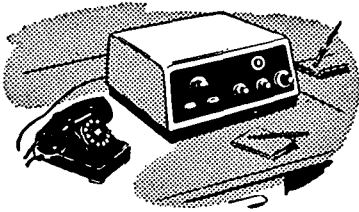
A carrier by motor vehicle, as previously stated, must now have authority (a permit or certificate) from the P.U.C., even though operating entirely within a home rule town or city. This is so *even though* the authority which had been issued to him by the P.U.C. before January 1, 1955, included authority to operate within the home rule city, such as "to operate as a common carrier by motor vehicle within the City and County of Denver, and within the Counties of Adams and Arapahoe." The reason an application for authority to operate in Denver would now be necessary is that the P.U.C. had no authority to grant the right to operate in Denver prior to January 1, 1955, and its actions in doing so are void. Since it now must authorize the right to operate within a Colorado home rule city, a new petition must be filed for such authority.

The application for such authority should set forth the type of commodity to be transported; whether the applicant has already been engaged in hauling it and for how long; whether a certificate or permit is being sought; whether applicant has held a license from the city as a hauler; and a description of his equipment. If the applicant has been engaged in the same type of hauling as sought in the application, in the home rule city before January 1, 1955, the P.U.C. would probably grant him the authority without

the necessity for shipper witnesses under so-called "grandfather rights." If, after January 1, 1955, the applicant has transported some new commodity, or presently desires to do so, he must show "public convenience and necessity," and should arrange for the testimony of shipper witnesses.

Conclusion

An attorney, in applying to the Public Utilities Commission, should first decide very definitely what type of authority to seek. If a permit would be satisfactory, do not apply for a certificate, since a certificate might not be granted due to opposition from opposing carriers, whereas a permit to haul for specified customers might be granted.



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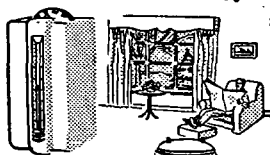
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