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REVISED STATUTES

OF THE

STATE OF MAINE

1954

1961 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 2

Discard Previous Pocket Part Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1961

Chapter 48.

Operation of Motor Vehicles for Profit

Sections 34-39. Jurisdiction over Motor Vehicles Carrying Passengers for Hire.

Motor Vehicles Carrying Passengers or Freight for Hire or Leased for Hire.

Sec. 3. Rules and regulations governing use of motor vehicles.—The commission is authorized to make from time to time rules and regulations governing the operation of the motor vehicles described in sections 1 and 2, which shall include provisions concerning the route of operation, schedule to be operated and maintained, rates of fare to be charged for the carriage of passengers, the safeguarding of passengers and other persons using the streets and highways, and such other reasonable regulations as may be deemed necessary for the safety or convenience of the public. The power and authority conferred upon the commission in chapter 44, section 63, is made applicable to the provisions of sections 1 to 18.

Any person, firm or corporation required to procure a certificate under section 5 shall be subject to all the provisions of chapter 44, sections 64 to 68, and to such orders, rules and regulations as shall be adopted and promulgated by the commission under the authority of said chapter. (R. S. c. 44, § 2. 1949, c. 349, § 86. 1957, c. 81. 1959, c. 107, § 1.)

Effect of amendments. — The 1957 amendment added the last sentence of this section.

transportation of baggage, mail and express for hire and making the last sentence, added in 1957, into a second paragraph.

The 1959 amendment rewrote this section, deleting provisions as to authorizing

Sec. 5. Such motor vehicles not operated without certificate; transportation of baggage, mail and express for hire.—No person, firm or corporation shall operate a motor vehicle or vehicles as described in section 1 on any street or highway in any city or town of this state, without obtaining from the commission a certificate permitting such operation. Nor shall the commission issue an original certificate or amend a certificate unless it finds after public hearing that public convenience and necessity require such operation. The commission may, in its discretion and for good and sufficient reason issue a temporary certificate authorizing such operation and hold the prescribed hearing at a later date and then determine whether a certificate shall be finally issued; but no temporary certificate shall be issued for a period longer than 30 days. No temporary certificate shall be extended or renewed, and no temporary certificate shall be issued, unless the applicant has paid the fees and has established proof of financial responsibility for liability for personal injury or property damage as required by sections 10 to 12.

The commission also may authorize transportation of baggage, mail and express for hire in passenger motor vehicles in such cases as the said commission, after notice given to motor carriers operating under sections 19 to 32 and to the extent therein provided, and after hearing, at which persons protesting shall be heard on such matters as may be applicable under this or other laws, finds the transportation of baggage, mail and express for hire in passenger vehicles to be in the public interest. Such authority shall be made a part of the certificate of public convenience and necessity described above and may be made subject to such terms, conditions and restrictions as said commission may prescribe. (R. S. c. 44, § 4. 1947, c. 21. 1955, c. 41. 1959, c. 107, § 2.)

Effect of amendments. — The 1955 amendment added the provisions relative to temporary certificates.

The 1959 amendment revised the section generally and added the last paragraph.

Sec. 6. Operation without certificate.—Any person, firm or corporation operating a motor vehicle or motor vehicles as described in section 1 on any street or highway in this state, without having obtained from the commission a certificate permitting such operation, may be restrained and enjoined from such operation upon a complaint addressed to either the superior or the supreme judicial court and brought by any certificate holder under sections 1 to 18, or by any carrier of passengers for hire under any other law of this state. (R. S. c. 44, § 5. 1961, c. 317, § 120.)

Effect of amendment.—The 1961 amendment substituted “a complaint” for “bill of complaint in equity” and deleted “the

provisions of” formerly preceding “sections 1 to 18” in this section.

Sec. 10. Financial responsibility for liability for personal injury or property damage. — The secretary of state shall not register any motor vehicle or trailer subject to the supervision and control of the public utilities commission under sections 1 to 18, and the commission shall not issue a certificate permitting the operation of such motor vehicle or trailer, and no person or persons shall operate or cause to be operated upon any public highway any such motor vehicle or trailer unless, in the opinion of the commission, the owner or owners thereof are financially responsible through insurance, indemnity bond or otherwise to respond to any legal liability for personal injury, the death of any person or property damage which may result from or have been caused by the use or operation of such motor vehicle or trailer.

When, in the opinion of the commission, the carrier’s insurance, indemnity bond or other proof of financial responsibility is inadequate to meet its legal liabilities under this section, the commission shall forthwith require that the registration plates issued to said carrier by the secretary of state be returned thereto. (R. S. c. 44, § 8. 1959, c. 18.)

Effect of amendment.—The 1959 amendment, which became effective on February 24, 1959, rewrote the first paragraph and

added the second paragraph to this section.

Sec. 11. Extent of financial responsibility.—The extent to which such financial responsibility shall be required shall be determined by the commission and shall be subject to change from time to time. (R. S. c. 44, § 9. 1959, c. 18.)

Effect of amendment.—The 1959 amendment, which became effective on February 24, 1959, repealed and replaced this section.

Sec. 12. Filing of proof.—The commission may require such proof of insurance or indemnity bond or such form of insurance or indemnity bond or such appointment of agent for service of process or the deposit or segregation of such securities or such proof of other type of financial responsibility as it shall deem appropriate to the establishment and continuance of such financial responsibility. No insurance or indemnity bond given to satisfy the requirements of sections 10 to 12 shall lapse, expire or be cancelled until at least 30 days’ written notice shall have been given to the commission and the secretary of state of an intention to cancel by the insurer or bond guarantor. Carriers may take exceptions to the commission’s action under sections 10 to 12 as prescribed in applicable provisions of chapter 44. (R. S. c. 44, § 10. 1959, c. 18.)

Effect of amendment.—The 1959 amendment, which became effective on February 24, 1959, repealed and replaced this section.

Sec. 14. Limitation of action.—Civil actions for injuries to the person or for death and for injuries to or destruction of property, caused by the ownership, operation, maintenance or use on the ways of the state of motor vehicles or trailers, subject to the supervision and control of the commission, shall be com-

menced only 2 years next after the cause of action occurs. (R. S. c. 44, § 12. 1947, c. 156. 1961, c. 317, § 121.)

Effect of amendment.—The 1961 amendment substituted "Civil actions" for "Actions of tort" at the beginning of this sec-

tion and deleted "public utilities" formerly preceding "commission" near the end thereof.

Operating Motor Trucks for Hire.

Sec. 19. Policy.

The incorporating by reference of sections 19 to 32, as required by section 23, into the contract carrier permit, for purposes of policy considerations, shows a legislative intent that contract carrier permits should not be granted in cases where the requested operations would be adverse to the public interest and the maintenance

of a sound and effective motor and rail transportation system. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Quoted in *Application of Richer*, 156 Me. 178, 163 A. (2d) 350.

Cited in *Public Utilities Comm. v. Cole's Express*, 153 Me. 487, 138 A. (2d) 466.

Sec. 20. Certificate from commission required before operation.

Cross reference.—As to application of this section to substitutions of motor vehicle transportation for rail transportation after January 1, 1935, see note to § 25.

Convenience and necessity of public is criterion.

In accord with original. See *In re Chapman*, 151 Me. 68, 116 A. (2d) 130; *Application of Ballard*, 152 Me. 158, 125 A. (2d) 861; *application of Bangor & Aroostook R. Co.*, 157 Me. 213, 170 A. (2d) 699.

Applicability of § 25.—Section 25 was obviously enacted for the purpose of regulating highway transportation when motor vehicle transportation was required to be substituted for that of rail. There was no need of such an enactment where a common carrier sought to inaugurate a transportation service by motor vehicle, as this section, previously enacted, provides the procedure in that case. *Application of Railway Express Agency, Inc.*, 157 Me. 223, 170 A. (2d) 380.

Burden of proof under this section and § 25.—There seems to be no reason to determine that the words "public convenience and necessity" are to have any different meaning or shades of meaning as applied to § 25 than they do in light of this section. Under either section the burden is on the petitioner to prove public convenience and necessity and lacking such proof, petitioner cannot prevail. *Application of Bangor & Aroostook R. Co.*, 157 Me. 213, 170 A. (2d) 699.

Sufficiency of evidence.—Where the evidence, taken most favorably to the commission, shows no more than the inability of two summer resort proprietors to obtain more expeditious delivery service on occasional small shipments, such evidence lacks the substance required to form the basis of a finding of public con-

venience and necessity. *In re Chapman*, 151 Me. 68, 116 A. (2d) 130.

Finality of finding.—If a factual finding, basic of an order of the commission, is supported by any substantial evidence, that is, by such evidence as, taken alone, would justify the inference of the fact, the finding is final. *Application of Bangor & Aroostook R. Co.*, 157 Me. 213, 170 A. (2d) 699.

Meaning of "public".—The "public" referred to in section 20 is the general public as distinguished from any individual or groups of individuals. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Commission not to ignore interest of public.—The commission may by no means ignore the interests of the public in motor carrier transportation in its determination as to whether or not the application of a contract carrier will be granted. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

The need for the particular service which may justify the contract carrier application may be only that of an individual or firm or a group of individuals or firms who comprise the potential contractors for the proposed service, as contrasted with the "necessity and convenience" of the general public. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

The requirements imposed upon common carriers and contract carriers are not identical. The common carrier must obtain from the commission "a certificate declaring that public necessity and convenience require and permit such operation." *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Contract carrier to obtain permit.—The contract carrier must obtain, not the "certificate" applicable to common carriers, but

a "permit" authorizing the operation and limiting its scope. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Holding in State v. Ballard. — *State v. Ballard*, 152 Me. 158, 161, 125 A. (2d) 861, upon its facts, merely holds that contract carrier permits are not to be issued when

there is no evidence of need of the service and the operations of common carriers serving the same territory are entirely adequate and efficient. See *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434, as authority for above and for similar holding.

Sec. 22. Schedules of rates filed.—Every holder of a certificate of public convenience and necessity shall file with the commission a schedule or schedules showing its rates or charges for service rendered or furnished or to be rendered or furnished within the state, including rates or charges established jointly with other such holders to the extent authorized by the commission over routes not served by a single common carrier. Such rates shall be just and reasonable. Such schedule or schedules shall be subject to the approval of the commission. No holder of a certificate or of a permit, nor any officer, agent or employee of such holder shall charge, demand, exact, receive or collect, directly or indirectly, for any service rendered an amount greater or less than the rate specified in its schedule or schedules, filed with the commission, or in the case of holders of permits, less than the minimum rate prescribed by the commission, nor shall any holder of a certificate or of a permit, nor any officer, agent or employee of such holder refund or remit, directly or indirectly, in any manner or by any device, any portion of the rate so specified or prescribed. The commission may, on its own motion or on complaint by an interested party, after notice and hearing, allow or disallow, alter or prescribe such rates. It shall be unlawful for any person, firm or corporation, or any officer, agent or employee thereof knowingly to offer, grant or give, or to solicit, accept or receive any rebate, discount, concession or discrimination in violation of any provision of sections 19 to 33, inclusive, or by means of any false or fictitious bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, deposition, lease or bill of sale, or by any other means or device, whatsoever, knowingly or willfully assist, suffer or permit any person, firm or corporation to obtain transportation of property subject to sections 19 to 33, inclusive, free or for less than the applicable rate or charge, or by any such means, or otherwise, fraudulently seek to evade or defeat regulation as in this chapter provided; except that free or reduced rate transportation of property may be given by a holder of a certificate or permit for the same purposes and to the same extent as is authorized by section 40 of chapter 44. (R. S. c. 44, § 20. 1955, c. 337.)

Effect of amendment.—The 1955 amendment rewrote the last sentence.

Sec. 23. "Contract carrier" defined; regulations.

I.

Holding in State v. Ballard. — *State v. Ballard*, 152 Me. 158, 161, 125 A. (2d) 861, upon its facts, merely holds that contract carrier permits are not to be issued when there is no evidence of need of the service and the operations of common carriers serving the same territory are entirely adequate and efficient. See *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434, as authority for above and for similar holding.

The incorporating by reference of sections 19 to 32, as required by section 23, into the contract carrier permit, for purposes of policy considerations, shows a legislative intent that contract carrier permits should not be granted in cases where the requested operations would be adverse to the public interest and the maintenance of a sound and effective motor and rail transportation system. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

III. No application for a permit shall be granted by the commission until after a hearing, nor shall any permit be granted if the commission shall be of the opinion that the proposed operation of any such contract carrier will be contrary to the declaration of policy of sections 19 to 33, or otherwise will not be

consistent with the public interest, or will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory by rail or over the same general highway route or routes or that an increase in the number of contract carriers operating in the area to be served by the applicant will interfere with the use of the highways by the public. The commission shall give notice of such hearing, in such manner and to such persons, firms and corporations as it deems necessary, at least 7 days prior to the time fixed for such hearing, except as otherwise provided by law. Permits granted by the commission shall authorize only such operations covered by the application as the commission finds to be justified by the evidence, and no permit shall be granted unless it appears that the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of sections 19 to 33, inclusive, and to the rules and regulations of the commission issued thereunder. The commission shall specify in the permit the business and operations of the contract carrier covered thereby, and the scope thereof, and shall attach to it, at the time of issuance and from time to time thereafter, such reasonable terms, conditions and limitations as it may find consistent with said sections; such terms and conditions may permit such contract carrier to substitute or add contracts which are within the scope of his permit, and such contract carrier shall have the right to add to his equipment and facilities within the scope of the permit as the development of his authorized business may require. Contract carriers now operating by virtue of so-called grandfather rights granted by the commission pursuant to this subsection as originally enacted, and whose present permits, in the opinion of the commission, need clarification, may be directed, upon reasonable notice given as hereinabove provided, to appear before the commission for further public hearing, at which hearing evidence of regular operation as a contract carrier from March 1, 1932 to June 30, 1933 may be submitted, and the carrier may supplement same by evidence of regular operation subsequent to said period, and the commission shall issue an amended permit in accordance with the facts found on the original and new evidence presented. Said amended permit shall specify the territory within which and the general purposes for which the contract carrier may operate, but said amended permit shall not limit or restrict any rights lawfully existing, as shown by the record on the carrier's application filed in 1933, by virtue of this subsection as originally enacted, and shall not restrict the right of such carrier to substitute or add contracts which are within the scope of his permit or to add to his equipment and facilities within the scope of the permit as the development of the business and the demands of the public have or may require. (1949, c. 266. 1951, c. 266, § 73. 1957, c. 53, § 1; c. 222; c. 429, § 50)

Effect of 1957 amendment.—In 1957 the legislature amended subsec. III by inserting the words "or otherwise will not be consistent with the public interest." This did not add any new requirement to be met by contract carrier applicants but was inserted by the legislature to emphasize and point up this very important feature of an already effective policy. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

The need for the particular service which may justify the contract carrier application may be only that of an individual or firm or a group of individuals or firms who comprise the potential contractors for the proposed service, as contrasted with the "necessity and convenience" of the general

public. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

However, interest of public cannot be ignored.—Nevertheless, as the law is written, the commission may by no means ignore the interests of the public in motor carrier transportation in its determination as to whether or not the application of a contract carrier will be granted. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Meaning of "public."—The "public" referred to in section 20 is the general public as distinguished from any individual or groups of individuals. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

The requirements imposed upon common

carriers and contract carriers are not identical. The common carrier must obtain from the commission "a certificate declaring that public necessity and convenience require and permit such operation." *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Contract carrier must obtain permit.—The contract carrier must obtain, not the "certificate" applicable to common carriers, but a "permit" authorizing the operation and limiting its scope. *Merrill v. Maine Public Utilities Comm.*, 154 Me. 38, 141 A. (2d) 434.

Meaning of "regular operation" in application of "grandfather rights" clause.—See

Public Utilities Comm. v. Gallop, 143 Me. 290, 62 A. (2d) 166, and *Cole's Express v. O'Dornell's Express*, 156 Me. 211, 163 A. (2d) 360.

Applicant to know wherein he fails to meet standards. — It is of importance when a permit is denied that the applicant know wherein he has failed to meet the statutory standards. *Application of Richer*, 156 Me. 178, 163 A. (2d) 350.

Possible loss of some traffic cannot well be the basis for a finding of impairment of efficient public service. *Application of Richer*, 156 Me. 178, 163 A. (2d) 350.

Finality of finding. — See note to § 20.

IV. The commission is vested with power and authority and shall have the duty to prescribe rules and regulations covering the operations of contract carriers in competition with common carriers over the highways of this state. Any person, firm or corporation required to obtain a permit under the provisions of this section shall be subject to all the provisions of sections 63 to 68, inclusive, of chapter 44. The commission may prescribe reasonable minimum rates and charges to be collected by contract carriers. It shall be the duty of every contract carrier to establish and observe reasonable minimum rates and charges for any service rendered or to be rendered in the transportation of property or in connection therewith, which rates and charges shall not be less than the rates charged by common carriers for substantially the same or similar service, and to establish reasonable rules, regulations and practices to be applied in connection with said reasonable rates and charges; it shall be the duty of every contract carrier to file with the commission, publish, and keep open for public inspection, in the form and manner prescribed by the commission, schedules containing the minimum rates or charges of such carrier actually maintained and charged for the transportation of property in intrastate commerce and any rule, regulation or practice affecting such rates or charges. Whenever, after hearing, upon complaint of interested parties or in an investigation on its own motion, the commission finds that any minimum rate or charge of any contract carrier for the transportation of property, or any rule, regulation or practice of any such carrier affecting such minimum rate or charge, is unjust or unreasonable, or is contrary to the provisions of sections 19 to 32, inclusive, it shall prescribe the minimum rate or charge, or such rule, regulation or practice, as it shall find to be just and reasonable and to be necessary or desirable to carry out the provisions and intent of said sections. No contract carrier shall charge less than the minimum rates or charges filed with or prescribed by the commission, but nothing in sections 19 to 32, inclusive, shall prohibit any contract carrier from charging more than such minimum rates. Nothing in this subsection shall apply to the transportation of property by contract carriers for any common carrier over the highway when the rate charged the public for transportation of such property is already published and filed with the commission. (1955, c. 286)

(1955, c. 286, § 1; c. 53, § 1; c. 222; c. 429, § 50.)

Effect of amendments. — The 1955 amendment rewrote the former first sentence of subsection IV to appear as the present first and third sentences, and inserted the present second sentence of subsection IV.

The first 1957 amendment changed former references to "sections 19 to 32"

to read "sections 19 to 33" in the first and third sentences of subsection III. The second 1957 amendment, which did not mention the first and did not incorporate the change made by it, inserted the word "the" preceding the word "opinion", inserted the clause "or otherwise will not be consistent with the public interest"

and inserted the words "by rail or" following the word "territory" in the first sentence of subsection III. The third 1957 amendment, which referred to and gave effect to the prior 1957 amendments, struck out the word "inclusive," formerly appearing after the figure "33" and before the word "or" in subsection III.

As the rest of the section was not

changed by the amendments, only subsections III and IV are set out.

Effective date.—P. L. 1957, c. 429, § 50, amending this section became effective on its approval, October 31, 1957.

Applied in *Cole's Express v. O'Donnell's Express*, 156 Me. 211, 163 A. (2d) 360.

Sec. 25. Operations by or in connection with rail or water common carriers.

II. Permits and plates, fees for; employment of assistance; operation of vehicles, regulated.—Each application for a certificate or permit shall be accompanied by a fee of \$25, and each application for amendment of a certificate or permit, for the transfer of a certificate or permit or for the reopening or rehearing of an application shall be accompanied by a fee of \$10, which is not for revenue purposes, but shall be used by the commission for the purpose of defraying the expenses of administering the provisions of sections 19 to 33, inclusive, and any portion of such fees not used or required for this purpose shall be added to the general highway fund of the state. Distinguishing plates, which shall remain the property of the state, shall be prescribed and furnished by the commission for, and shall be displayed under rules to be prescribed by the commission at all times on, each motor vehicle, trailer and semi-trailer operated or caused to be operated, under the provisions of sections 19 to 32, inclusive; the commission may refuse to furnish plates for any motor vehicle not registered in the name of the holder of a certificate or a permit. The charge for each set of plates shall be \$5, and \$1 shall be charged for each transfer of plates.

The commission is authorized and empowered to employ such assistance, subject to the provisions of the personnel law, and to procure such office supplies and equipment as said commission may determine to be necessary in the administration and enforcement of the provisions of sections 19 to 33, inclusive. The salary and traveling expenses of employees and all office expense connected with the administration and enforcement of said sections shall be paid out of the revenues received under the provisions of this section and section 32, which shall be set up as a separate fund in the office of the treasurer of state, to be disbursed under the direct supervision and control of the commission.

(1957, c. 53, §§ 2, 3)

IV. Renewals. Provided application therefor is filed with the commission prior to the expiration date of a certificate or permit issued by the commission, renewals thereof shall be issued upon application made in accordance with the commission's requirements and upon the payment of the fees prescribed for original applications. The commission shall have no power to refuse to renew any existing permit or certificate or to cancel or suspend any such permit or certificate whenever issued except for willful or continued violations of the provisions of sections 19 to 33, inclusive, or the regulations of the commission, and after a hearing, at least 10 days' notice of which shall be given to the holder of the permit or certificate and to such other parties as the commission shall deem proper. No order of the commission suspending, cancelling or refusing to renew any existing permit or certificate shall be effective until 10 days after such order has been issued and a copy thereof mailed to the holder of such permit or certificate and to such other parties as were represented at the hearing. Within said period of 10 days any party deeming himself aggrieved by the order of the commission may appeal therefrom to the superior court in the county wherein the holder of such permit

or certificate resides, and cause notice of such appeal to be served on the commission. Such court, after hearing, shall affirm or reverse the order of the commission. If such appeal be seasonably taken, the order of the commission shall be stayed and the applicant permitted to continue operation, upon payment of the required fees, until final determination of such appeal. If appeal be taken under this section, no appeal shall be taken under chapter 44, section 67. [1957, c. 57, § 1. 1959, c. 317, § 21. 1961, c. 317, § 122.]. (R. S. c. 44, § 23. 1947, c. 126. 1957, c. 53, §§ 2, 3; c. 57, § 1. 1959, c. 317, § 21. 1961, c. 317, § 122.)

Effect of amendments.—The first 1957 amendment changed former references to “sections 19 to 32” to read “sections 19 to 33” in the first sentence of the first paragraph and in the first sentence of the second paragraph of subsection II. The second 1957 amendment changed a former reference to “sections 19 to 32” to read “sections 19 to 33” in subsection IV, made the effective date of orders of the commission applicable also to orders suspending or cancelling permits, and made other minor changes in such subsection.

The 1959 amendment struck out the words “term of the”, formerly appearing after the word “the” and before the word “superior” and struck out the words “next to be held” after the word “court” and before the word “in” in the fourth sentence of subsection IV.

Prior to the 1961 amendment, the last sentence of subsection IV of this section read “If appeal be taken under the provisions of this section, no exceptions shall be taken under the provisions of section 67 of chapter 44.”

As only the first two paragraphs of subsection II and subsection IV were changed by the amendments, the rest of the section is not set out.

Effective date and applicability of Public Laws 1959, c. 317. — Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all further proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

Purpose of section.—This section was obviously enacted for the purpose of regulating highway transportation when motor vehicle transportation was required to be substituted for that of rail. There was no need of such an enactment where a common carrier sought to inaugurate a transportation service by motor vehicle, as a previously enacted section, § 20, provides

the procedure in that case. Application of Railway Express Agency, Inc., 157 Me. 223, 170 A. (2d) 380.

The legislature did not intend that those seeking substitution after January 1, 1935, do so under § 20, and if the commission finds from evidence of a substantial nature that public convenience and necessity require and permit substitution of motor vehicle transportation for rail transportation, then such a certificate shall issue. Application of Railway Express Agency, Inc., 157 Me. 223, 170 A. (2d) 380.

This section applies to a railroad which is performing a carrier service and desires permission to substitute highway transportation for rail service. Application of Bangor & Aroostook R. Co., 157 Me. 213, 170 A. (2d) 699.

“Grandfather clause.” — The legislature saw fit to protect that carrier who was, at the time of the enactment of the legislature, providing substituted highway transportation for rail transportation, when it inserted a so-called “grandfather clause” in this section. Application of Railway Express Agency, Inc., 157 Me. 223, 170 A. (2d) 380.

Proof required.—The proof which this section requires of convenience and necessity is the convenience and necessity of the public as distinguished from that of the individual or group of individuals. Application of Bangor & Aroostook R. Co., 157 Me. 213, 170 A. (2d) 699.

Burden of proof under this section and § 20. — There seems to be no reason to determine that the words “public convenience and necessity” are to have any different meaning or shades of meaning as applied to this section than they do in light of § 20. Under either section the burden is on the petitioner to prove public convenience and necessity and lacking such proof, petitioner cannot prevail. Application of Bangor & Aroostook R. Co., 157 Me. 213, 170 A. (2d) 699.

Finality of finding.—See note to § 20.

The Railway Express Agency, Inc., is a common carrier. Application of Railway Express Agency, Inc., 157 Me. 223, 170 A. (2d) 380.

Sec. 27. Rules and regulations.—The commission shall have authority to make such rules and regulations as it deems necessary or advisable to insure proper administration and enforcement of the provisions of sections 19 to 33, inclusive, and to promote the safety of the operation of common carriers, contract carriers and interstate carriers over the highways. The commission shall have the power and authority to suspend, cancel or refuse to renew any certificate or permit, issued under the provisions of sections 19 to 33, inclusive, for any willful or continued violations of said sections or of any rules or regulations promulgated by the commission pursuant to the authority thereof. The commission shall have authority to issue an order to any holder of a certificate or permit, requiring such holder to cease and desist from any violation of the provisions of sections 19 to 33, inclusive, or of any rules or regulations of the commission promulgated pursuant to the authority thereof. The commission shall have authority in event it shall suspend or cancel a certificate or permit, or in event the holder of a certificate or of a permit shall fail to obey a cease and desist order issued by the commission, to require the return to the commission of any plates issued by it to such holder. It shall be the duty of the state police, sheriffs and their deputies and all other peace officers to investigate any alleged violations of the provisions of sections 19 to 33, inclusive, and of any rules and regulations promulgated by the commission pursuant to the authority thereof, to prosecute violators of said sections and of such rules and regulations and otherwise to aid in the enforcement of the provisions thereof. (R. S. c. 44, § 25. 1957, c. 57, § 2.)

Effect of amendment. — The 1957 amendment gave the commission authority to cancel or refuse to renew any certificate or permit, and changed former references to “sections 19 to 32” to read “sections 19 to 33.”

Investigative power of commission. —

The commission is fully empowered to investigate, even upon its own motion, the unauthorized and unlawful operations or practices of carriers, and after a full hearing, to order that such carriers cease and desist. *Cole's Express v. O'Donnell's Express*, 156 Me. 211, 163 A. (2d) 360.

Sec. 29. Exemptions in re operation of motor vehicles.—

I. Exemptions.

A. While being used within the limits of a single city or town in which the vehicle is registered by the secretary of state or in which the owner maintains a regular and established place of business, or within 15 miles, by highway in this state, of the point in such single city or town where the property is received or delivered, but no person, firm or corporation may operate, or cause to be operated, any motor vehicle for the transportation of property for hire beyond such limits without a certificate of public convenience and necessity or a permit to operate as a contract carrier; nor may any such person, firm or corporation participate in the transportation of property originating or terminating beyond said limits without holding such a certificate or permit unless such property is delivered to or received from a carrier over the highways operating under a certificate or permit issued by the commission or a railway, railway express, or water common carrier, but nothing in this section shall prevent a carrier from delivering and picking up with his exempt motor vehicle in a city or town where he has a terminal, freight and merchandise transported or to be transported over territory covered by his certificate or permit; nothing in this paragraph shall permit the transportation of freight or merchandise for hire, by motor vehicle, under any circumstances unless exempted by provisions of this chapter other than this paragraph, by any person, firm or corporation beyond the 15 mile limit as heretofore prescribed unless such person, firm or corporation holds a certificate or permit from the commission authorizing such transportation; (1957, c. 60)

B. While engaged, directly or through a contractor, exclusively in con-

struction or maintenance work for any branch of the government of the United States, or for any department of the state, or for any county, city, town or village; (1961, c. 11.)

E. While engaged exclusively in the hauling of wood, pulpwood, logs or sawed lumber from the woodlot or forest area where cut or sawed to points within 100 miles thereof, by highway, or while hauling, within said distance, horses, crew, equipment and supplies to or from such woodlot or forest area; (1949, c. 212, § 1. 1955, c. 331)

J. While engaged exclusively in the transportation of Christmas trees, wreaths and greens. (1957, c. 83)

(1955, c. 331. 1957, cc. 60, 83. 1961, c. 11.)

Effect of amendments. — The 1955 amendment substituted "100" for "60" in paragraph E of subsection I.

The first 1957 amendment eliminated "steam or electric" from paragraph A of subsection I and added the provision at the end of such paragraph relating to transportation of freight or merchandise for hire unless otherwise exempted by

other provisions of this chapter. The second 1957 amendment added paragraph J under subsection I.

The 1961 amendment added "or maintenance" in paragraph B of subsection I.

As only paragraphs A, B, E and J of subsection I were changed or added by the amendments, the rest of the section is not set out.

Sec. 31. Exceptions.—No provisions in sections 20, 23 and 24 shall authorize the use by any motor vehicle of any highway or street in any municipality in violation of any charter provision or ordinance thereof, nor shall the provisions of sections 19 to 33, inclusive, be construed as taking from or in any manner curtailing the right of any city, town or village to regulate and control the routing, parking, speed or safety of operation of motor vehicles operated under the provisions of said sections, or as curtailing the general police power of any such city, town or village over its highways or streets, nor shall the provisions of sections 19 to 33, inclusive, be construed as abrogating any provisions of law whereby any such municipality has the right to require certain conditions to be complied with before such motor vehicle shall be operated on the highways or streets of such city, town or village. (R. S. c. 44, § 29. 1957, c. 53, § 4.)

Effect of amendment. — The 1957 "sections 19 to 32" to read "sections 19 to amendment changed former references to 33" in two places in this section.

Sec. 32. Penalties and evidence.—

I. Any person, firm or corporation, or any officer, agent or employee of any corporation who violates, orders, authorizes or knowingly permits a violation of any of the provisions of sections 19 to 31, inclusive, or of section 33, or of any rule, regulation or order made or issued by the commission pursuant to the authority of sections 19 to 33, inclusive, shall be punished by a fine of not less than \$10 nor more than \$500, or by imprisonment for not more than 11 months, or by both.

(1957, c. 53, § 5)

II. The certificate of the clerk of the commission, under the seal of said commission, shall be received in any court of law in this state as prima facie evidence of the making or issuing by said commission of any order, rule or regulation authorized by the provisions of sections 19 to 33, inclusive, to be made or issued by said commission. The certificate of the secretary of state or his deputy, under seal of the state, shall be received in any court of law in this state or in any hearing or other proceeding before the commission as prima facie evidence of the issuance, suspension, revocation or restoration of any operator's license or the issuance, suspension, annulment or restoration of any certificate of registration of any motor vehicle under the provisions of sections 19 to 33, inclusive. (1957, c. 53, § 6)

III. Any person employed as driver of any motor vehicle by any holder of

a certificate or permit and any person who rides on any motor vehicle as employee of any such holder of a certificate or permit, and any person employed as driver of any motor vehicle or who rides on any motor vehicle as employee of any person, firm or corporation engaged in the business of letting or leasing for hire, profit or compensation motor vehicles to be used by any other person, firm or corporation for the purpose of hauling or transporting goods, wares, merchandise or other property upon the public highways of this state for hire, shall be liable to the penalties provided in this section, in case said motor vehicle is operated in violation of the provisions of sections 19 to 33, inclusive, or of any rule, regulation or order issued by the commission pursuant thereto. (1957, c. 122)

V. In addition to any other penalty imposed for a violation of subsections III and IV of this section, the court hearing the case may suspend the operator's license of any such driver or other employee for a term not exceeding 30 days, and in such case shall at once take up said license, which license shall be surrendered forthwith by the holder thereof, and forward the same to the secretary of state, together with a report of said case and any recommendations as to further suspension, revocation or restoration of such license deemed necessary by the court. Refusal to surrender said license on demand to the court or to any officer delegated by the court or by the secretary of state to receive the same shall be a violation of the provisions of sections 19 to 33, inclusive. Blanks for said report and recommendations shall be furnished to the courts by the secretary of state. The secretary of state may, after hearing, suspend said license for a further time, revoke the same or may restore the same at the expiration of the time for which the same was suspended by the court. The trial court shall forthwith report to the commission all prosecutions under the provisions of sections 19 to 33, inclusive, or under the rules, regulations and orders of the commission, on blanks to be furnished by the commission. The secretary of state shall notify any person whose license has been suspended as provided herein, and also the commission, of the time and place of hearing and the commission shall be heard if it so desires; notice in the manner and form prescribed in section 9 of chapter 22 shall be sufficient. The secretary of state shall immediately notify the commission of his decision in any such case. Any person aggrieved by any decision of the secretary of state in suspending or revoking any operator's license may appeal to any justice of the superior court in the same manner provided by section 7 of chapter 22, but pending such appeal, the decision of the secretary of state shall remain in full force. (1957, c. 53, § 7)

VI. In case any person convicted of any violation of the provisions of sections 19 to 33, inclusive, or of any rule, regulation or order of the commission made or issued pursuant thereto, shall appeal, the operator's license of such person may be suspended by the secretary of state while said appeal is pending, if requested by the commission. (1957, c. 53, § 8)

VII. In case of any willful and continued violation by any holder of a certificate or a permit, or by any person, firm or corporation required by the provisions of sections 19 to 33, inclusive, to have such a certificate or permit, of any provision of said sections or of any rule, regulation or order of the commission made or issued pursuant thereto, in addition to any penalty imposed by the commission or by any court of law, the secretary of state, at the request of the commission, may suspend the certificate of registration of any motor vehicle or vehicles owned or operated by said violator, and after notice to said violator as provided in section 9 of chapter 22 and to the commission, and after hearing thereon, may suspend such registration for a definite time or may annul or restore the same. Any person aggrieved by the decision of the secretary of state in suspending or annulling any such certificate of registration may appeal to any justice of the superior court in the manner

provided by section 7 of chapter 22, but pending said appeal the decision of the secretary of state shall remain in full force. (1945, c. 378, § 51. 1957, c. 53, § 9)

VIII. All fines and forfeitures collected under the provisions of sections 19 to 33, inclusive, when the arrest is made by a member of the state police or any inspector or officer employed by the commission, together with all costs taxed by the court for any such officer, shall be paid to the commission to be used in defraying the expense of administering and enforcing the provisions of said sections. When the arrest is made by any other officer, all fines and forfeitures shall be paid into the treasury of the county where the offense is prosecuted. In any case, all fees taxed for any judge or recorder of any municipal court or for any trial justice shall be disposed of as the law establishing the trial court directs, and all costs taxed for any officer, other than a member of the state police or any inspector or officer employed by the commission, shall be disposed of as the law provides in other criminal cases. [1957, c. 53, § 10]. (R. S. c. 44, § 30. 1945, c. 378, § 51. 1949, c. 390. 1957, c. 53, §§ 5-10; c. 122.)

Effect of amendments.—The first 1957 amendment inserted the phrase “or of section 33”, changed a former reference to “sections 19 to 32” to read “sections 19 to 33”, and deleted the words “such fine and imprisonment” in the first paragraph of subsection I, deleted the words “public utilities” which formerly preceded the word “commission” in the first clause of subsection II and changed two former references to “sections 19 to 32” to read “sections 19 to 33” in such subsection, and changed former references to “sections 19

to 32” to read “sections 19 to 33” in subsections V, VI, VII and VIII. The second 1957 amendment inserted the provisions relative to employees of persons, etc., engaged in the business of letting or leasing for hire vehicles used by others for transporting property for hire in subsection III and changed a former reference to “sections 19 to 32” to read “sections 19 to 33” in such subsection.

As the second paragraph of subsection I and subsection IV were not changed by the amendments, they are not set out.

Jurisdiction over Motor Vehicles Carrying Passengers for Hire.

Sec. 34. Policy.—It is declared to be the policy of this state to regulate transportation by “special or charter carrier of passengers by motor vehicle”, as defined in section 35, to the end that the highways may be rendered safer for the use of the general public and in such manner as to recognize and preserve the inherent advantages of, and foster sound economic conditions in, such transportation and among such carriers and carriers to whom a certificate has been issued under section 5 in the public interest; promote safe, adequate, economical and efficient service by such carriers of passengers by motor vehicle, and reasonable charges therefor without unfair or destructive competitive practices. (1961, c. 236.)

Sec. 35. Special or charter carriers of passengers by motor vehicle, defined.—The term “special or charter carrier of passengers by motor vehicle” means every person who or which engages in the transportation by motor vehicle of passengers for hire other than transportation referred to in section 1 for which a certificate is required under section 5. Said term shall not include:

I. School bus. The operation of a school bus as defined in chapter 22, section 48, when such school bus is engaged in transportation authorized by chapter 41, sections 14 and 101;

II. Capacity. Motor vehicles having a capacity of not more than 6 passengers operated in what is commonly known as taxicab service, unless such service becomes, or is held out to be regular service between fixed termini, localities, areas or territories;

III. Hotel vehicles. Motor vehicles owned or operated by or on behalf of hotels and used exclusively for the transportation of patrons between hotels and local railroad or other common carrier stations;

IV. Agricultural transportation. Motor vehicles owned or operated by or in behalf of growers, processors and manufacturers of fruit, vegetable or fish products and used in the transportation of workers between their homes and places of employment. (1961, c. 236.)

Sec. 36. License from commission required before operation.—No person shall operate a motor vehicle for the transportation of passengers in special or charter service as defined in section 35 on any street or highway in any city or town of this state unless there is in force with respect to such person a license issued by the commission authorizing such operations. Application for such licenses shall be made in writing to the commission and shall be in such form and contain such information as the commission may require. Upon the filing of any such application and the payment of the fee hereinafter prescribed, the commission shall within a reasonable time fix the time and place for a hearing thereon. Notice of such hearing, in such manner as the commission may deem necessary, shall be given by the commission at least 7 days prior to the hearing to such common carriers and other persons or governmental agencies as the commission shall deem necessary. A license shall be issued after such public hearing to any qualified applicant therefor, authorizing the whole or any part of the operations covered by the application, if it is found that the applicant is fit, willing and able to perform the service proposed and to conform to the applicable provisions of law and the requirements, rules and regulations of the commission, and that the proposed service, to the extent to be authorized by the license, is or will be consistent with the public interest and the policy described in section 34; otherwise such application shall be denied. In determining whether issuance of a license will be consistent with the public interest and the policy described in section 34, the commission shall consider the nature of the service proposed and the demand therefor and the ability of existing authorized carriers to perform the service and the effect which the granting of the license would have upon the services of the protesting carriers. Any license issued hereunder shall specify the service to be rendered and the territory within which the licensee is authorized to operate; and there shall, at the time of issuance and from time to time thereafter, be attached to the exercise of the privilege granted by the license such reasonable terms, conditions and limitations as the public interest may, from time to time, require. Any license issued hereunder may be suspended or revoked for cause. Applications for an original license shall be accompanied by a fee of \$25; yearly renewals and amendments requiring a public hearing, by a fee of \$15; and transfer of a license, by a fee of \$15. The funds so received by said commission shall be used to defray the expenses of said commission in connection therewith. (1961, c. 236.)

Sec. 37. Certificate holders exempted.—A license hereunder shall not be required to be obtained by a common carrier transporting passengers under a certificate issued pursuant to section 5 and such common carriers may transport between any points in the state of Maine special or charter parties under such rules and regulations as the commission shall have prescribed. (1961, c. 236.)

Sec. 38. Establishment of rules and regulations. — The commission may, from time to time, establish reasonable rules and regulations covering the operation of motor vehicles under a license granted pursuant to section 36. The commission may require holders of licenses issued under section 36 to file with the commission and publish and keep open for public inspection schedules containing all rates, fares and charges of such carriers for the transportation of persons, and any rule, regulation or provision effecting such charges and value of service thereunder, or, in the alternative, the commission may establish minimum mileage rates, and in determining such rates the commission shall consider as a part of the rate base the elements of waiting time, deadhead mileage and the type of equipment employed. (1961, c. 236.)

Sec. 39. Other applicable sections.—Sections 3, 4, 6, 9, 10, 11, 13, 14, 15, 16, 17 and 18 shall apply to operations conducted under a license issued under section 36 and wherever the term “certificate” is used therein it shall be deemed to include a license issued under section 35 and the holder thereof. (1961 c. 236.)

Chapter 49.

Corporations for Navigation by Steam.

Corporations for Navigation by Stream.

Sec. 3. Boats liable for loss or damage of property transported, and may be attached.—For loss or damage of property transported on a river, stream or bay, by boat for hire, the boat is liable, whether owned or not by the person undertaking such transportation, and may be attached on a writ of attachment in an action against him, sued out within 60 days after such loss or damage, and sold like other personal property on an execution issued on the judgment recovered in such action. Any surplus shall be paid to the owner of the boat. Such attachment is effectual against any conveyance or lien after such loss or injury and prior to the attachment. (R. S. c. 45, § 3. 1959, c. 317, § 22.)

Effect of amendment.—The 1959 amendment rewrote this section.

Effective date and applicability of Public Laws 1959, c. 317.—Section 420, chapter 317, Public Laws 1959, provides as follows: “This act shall become effective December 1, 1959. It shall apply to all actions brought after December 1, 1959 and also to all fur-

ther proceedings in actions at law or suits in equity then pending, except to the extent that in the opinion of the court the application of this act in a particular action pending on December 1, 1959 would not be feasible or would work injustice, in which event the laws in effect prior to December 1, 1959 would prevail.”

Safety on Inland Steamers.

Sec. 5. Definitions.

II. “Motorboat” means any vessel propelled by motive power other than steam or outboard motor. (1955, c. 281)

IV. “Vessel” means any boat or vessel operated by machinery propelled by steam or other motive power except by outboard motor. [1955, c. 281] (R. S. c. 45, § 5. 1955, c. 281.)

Effect of amendment.—The 1955 amendment added the words “or outboard motor” at the end of subsection II and the words “except by outboard motor” at the

end of subsection IV. As the rest of the section was not changed by the amendment, only subsections II and IV are set out.

Sec. 10. Boats, properly equipped, and life rafts carried by vessels over 30 feet in length; life preservers.—Every vessel more than 30 feet in length, measured from end to end along deck, excluding sheer, subject to registration, shall have at least 1 substantial boat, with life lines attached, properly supplied with oars, kept tight and in good condition at all times and ready for immediate use. In addition thereto, such other boats or life rafts shall be carried as the commission, on account of the route or the number of passengers, may deem requisite. It shall be the duty of the master of such vessel to exercise and discipline his crew in the launching, use and management of the boats and life rafts until they become skillful boatmen. The commission may make such rules and regulations as it deems necessary, designating what boats or life rafts, if any, shall be carried by vessels less than 30 feet in length. (1955, c. 31.)

Effect of amendment.—The 1955 amendment inserted the words “or life rafts” in the second and fourth sentences, and the words “and life rafts” in the third sen-

tence. As only the first paragraph was changed by the amendment, the rest of the section is not set out.