

MAINE STATE LEGISLATURE

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THE MICHIE COMPANY, Inc.
CHARLOTTESVILLE, VIRGINIA

Chapter 48.

Operation of Motor Vehicles for Profit.

Sections 1-18. Motor Vehicles Carrying Passengers or Freight for Hire or Leased for Hire.

Sections 19-32. Operating Motor Trucks for Hire.

Section 33. Letting Motor Vehicles for Hire.

History of chapter.—See *Maine Motor Coaches v. Public Utilities Comm.*, 125 Me. 63, 130 A. 866.

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

Sec. 1. Motor vehicles carrying passengers for hire over regular routes under jurisdiction of public utilities commission.—The public utilities commission, hereinafter in this chapter called the “commission,” shall have jurisdiction over every person, firm or corporation operating any motor vehicle upon any public street or highway for the carrying of passengers for hire in such a manner as to afford a means of transportation similar to that afforded by a railway company, by indiscriminately receiving and discharging passengers along the route on which the vehicle is operated or may be running or for transporting passengers for hire as a business between fixed and regular termini. Whether or not any motor vehicle is being operated within the meaning of sections 1 to 18, inclusive, shall be a question of fact, and the finding of the commission thereon shall be final and shall not be subject to review, except that questions of law may be raised in the manner provided in sections 67 and 68 of chapter 44. Application for an original certificate 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 certificate, 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. (R. S. c. 44, § 1.)

See § 18, re penalty; c. 22, § 48, re school bus.

Sec. 2. Interstate busses; permit to operate.—In order that there may be proper supervision and control of the use of the highways of this state, every person, firm or corporation regularly engaged in transporting passengers for hire by motor vehicle upon the public highways between points within and points without the state is required to obtain a permit for such operation from the commission. Whether or not any person is so regularly engaged shall be a question of fact to be determined by the commission. Application for such permits shall be made in the manner and form to be prescribed by the commission in its regulations, and such permits shall issue as a matter of right upon compliance with such regulations and payment of fees, unless the commission shall find that the condition of the highways to be used is such that the operation proposed would be unsafe or the safety of other users thereof would be endangered thereby. (1947, c. 362, § 2.)

See § 18, re penalty.

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 the preceding sections, 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 high-

ways, and in such cases as the said commission, after notice given to motor carriers operating under the provisions of sections 19 to 32, inclusive, 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 it to be in the public interest, it may authorize the transportation of baggage, mail and express for hire, in the passenger motor vehicles operated by said carrier, subject to such terms, conditions and restrictions as said commission may prescribe 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 section 63 of chapter 44 is made applicable to the provisions of sections 1 to 18, inclusive. (R. S. c. 44, § 2. 1949, c. 349, § 86.)

See § 18, re penalty.

Sec. 4. Existing statutes relative to use and operation of motor vehicles not affected.—Nothing contained in sections 1 to 18, inclusive, shall exempt any person, firm or corporation owning or operating a motor vehicle or vehicles as described in said sections from complying with existing statutes relating to the ownership, registration and operation of motor vehicles in this state as defined in chapter 22. (R. S. c. 44, § 3.)

See § 18, re penalty.

Sec. 5. Such motor vehicles not operated without certificate. — 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. (R. S. c. 44, § 4. 1947, c. 21.)

Cross reference.—See § 18, re penalty.

Prohibition of operation is legitimate exercise of police power.—In view of the well recognized control over highways by the state and the possible menace to public safety and the destruction of the highways by the operation over them of heavy high-powered motor busses, the authority of the legislature to prohibit such operation cannot be questioned. *Maine Motor Coaches v. Public Utilities Comm.*, 125 Me.

63, 130 A. 866; *State v. King*, 135 Me. 5, 188 A. 775.

Issuance of certificate is not mere ministerial act. — The certificate permitting operation cannot be viewed as intended solely for the purposes of registration and its issuance a mere ministerial act. *Maine Motor Coaches v. Public Utilities Comm.*, 125 Me. 63, 130 A. 866.

Section constitutional. — See *State v. Rowe*, 132 Me. 167, 168 A. 927.

Sec. 6. 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 bill of complaint in equity addressed to either the superior or the supreme judicial court and brought by any certificate holder under the provisions of sections 1 to 18, inclusive, or by any carrier of passengers for hire under any other law of this state. (R. S. c. 44, § 5.)

See § 18, re penalty; c. 22, § 16, re fees for motor vehicles used for livery or hire.

Sec. 7. Transfer of certificate.—Any such certificate may be assigned and transferred, with the approval and consent of the commission but not otherwise, by the holder or the personal representatives of said holder to whom the rights and privileges under said certificate shall pass at the death of said holder. The commission is authorized to prescribe the conditions precedent to such transfer and make any necessary rules and regulations pertaining thereto. (1949, c. 102. 1951, c. 11.)

See § 18, re penalty.

Sec. 8. Certificates revoked.—The commission shall have the right to revoke a certificate of any person, firm or corporation who shall fail to comply with the rules and regulations as provided in section 3. (R. S. c. 44, § 6.)

See § 18, re penalty.

Sec. 9. Record of mileage, trips, passengers carried, receipts, etc., kept and report filed.—Every person, firm or corporation operating any motor vehicle or trailer under the provisions of sections 1 to 18, inclusive, shall keep an accurate record of the mileage, of the number of trips made, number of passengers carried, of the receipts from operation, operating and other expenses, etc. and shall file with the commission, at such times and in such form as it may prescribe, reports duly verified covering the period fixed by the commission. The commission shall prescribe the character of the information to be embodied in such reports and furnish a blank form therefor. (R. S. c. 44, § 7.)

See § 18, re penalty.

Sec. 10. Insurance or bond against 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, 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, until the owner or owners thereof shall have procured insurance or a bond having a surety company authorized to transact business in this state or 2 individuals as sureties thereon, which bond shall be approved by the commission, which insurance or bond shall indemnify the insured against any legal liability for personal injury, the death of any person or property damage, which injury, death or damage may result from or have been caused by the use or operation of the motor vehicle or trailer described in the contract of insurance or such bond. (R. S. c. 44, § 8.)

See § 18, re penalty.

Sec. 11. Amount of insurance or bond.—The amount of insurance or of the bond described in section 10, which each motor vehicle or trailer owner shall carry as insurance or indemnity against claims for personal injury, death or property damage, shall be determined by the commission. (R. S. c. 44, § 9.)

See § 18, re penalty.

Sec. 12. Certificate filed; insurance or bond not canceled without notice.—The original policy of insurance or the indemnity bond, or a certified copy thereof, or the certificate relative thereto, as the public utilities commission may require, shall be filed with the commission before any motor vehicle is registered by the secretary of state as required by law, proper notice thereof being given by said commission to the secretary of state. No such insurance or bond shall lapse, expire or be canceled while the registration is in force until at least 10 days' written notice shall have been given the commission and the secretary of state of an intention to cancel and until said commission shall have accepted other insurance or indemnity bond and shall have notified the person or company seeking to cancel such insurance or bond that such other insurance or bond has been accepted or that the public service registration of the motor vehicle or trailer described in such insurance policy or bond has been canceled and the number plates of such motor vehicle or trailer described in such insurance or bond have been returned to the secretary of state. (R. S. c. 44, § 10.)

See § 18, re penalty.

Sec. 13. Notice of injury or damage given company. — Any person sustaining bodily injuries, or injury to or destruction of his property, and the personal representatives of any person sustaining death by reason of an accident arising out of the ownership, operation, maintenance or use upon the ways

of the state of any motor vehicle or trailer subject to the supervision and control of the commission, shall within 1 year thereafter give to the company or individuals executing any motor vehicle liability bond as surety for the owner or the person responsible for the operation of such motor vehicle or trailer involved in such accident, or to the liability insurance company issuing the motor vehicle liability policy covering such owner or other person, a notice in writing of the time, place and cause of the said injury, death or damage. (R. S. c. 44, § 11.)

See § 18, re penalty.

Sec. 14. Limitation of action.—Actions of tort 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 public utilities commission, shall be commenced only within 2 years next after the cause of action occurs. (R. S. c. 44, § 12. 1947, c. 156.)

Cross references.—See § 18, re penalty; c. 112, § 90, re limitations of personal actions.

Section only applicable to tort actions.—The language of this section is plain. One of two possible remedies, *assumpsit* or tort, was chosen for the one-year limitation. It omitted actions *ex contractu*, to which another statute already applied. *Doughty v. Maine Central Transp. Co.*, 141 Me. 124, 39 A. (2d) 758.

The legislature, when it said in this section "actions of tort," intended not to include actions of *assumpsit*, although the

claimed breach of the implied promise were founded originally on the commission of a tort. *Doughty v. Maine Central Transp. Co.*, 141 Me. 124, 39 A. (2d) 758.

Section not applicable to accidents caused by operation of trucks.—It was not the intention of the legislature to make the provisions of this section applicable to actions arising out of accidents caused by the operation of a truck, subject to the control of the public utilities commission. *Steele v. Smalley*, 141 Me. 355, 44 A. (2d) 213; see note to §§ 19-32.

Sec. 15. Action in name of state brought against surety company in case judgment is not satisfied; limitation. — If a judgment rendered against the principal of a motor vehicle liability bond or against the person responsible for the operation of the principal's motor vehicle or trailer is not satisfied within 30 days after its rendition, the judgment creditor may for his use and benefit and at his sole expense bring an action in the name of the state against the surety company or individuals executing the bond, but no action shall be brought later than 4 months from the date of the original execution. (R. S. c. 44, § 13.)

See § 18, re penalty.

Sec. 16. Insurance and surety companies prohibited from offering inducements not specified in policy or bond; rebates prohibited.—No insurance or surety company, officer, agent or attorney thereof, or individuals, and no insurance broker shall pay or allow, or offer to pay or allow any valuable consideration or inducement not specified in the policy or contract, in connection with placing or negotiating any motor liability bond or any motor liability policy, both as defined in section 10. No such insurance or surety company, officer, agent, broker or individuals shall at any time pay or allow or offer to pay or allow any rebate of any premium paid or payable on any such policy of insurance or bond. (R. S. c. 44, § 14.)

See § 18, re penalty.

Sec. 17. Acceptance of rebates prohibited; no person excused from testifying on ground of self-incriminating evidence; immunity from prosecution.—No person shall receive or accept from any insurance or surety company, or officer or agent thereof or any other person, any such rebate or premium paid or payable on any such motor vehicle liability bond or any such

motor vehicle liability policy, at a rate less than that specified in the policy or contract. No person shall be excused from testifying, or from producing any books, papers, contracts, agreements or documents at the trial of any other person charged with violating any provision of this and the preceding section on the ground that such testimony or evidence may tend to incriminate himself. No person shall be prosecuted for any act concerning which he shall be compelled so to testify or produce evidence, documentary or otherwise, except for perjury committed in so testifying. (R. S. c. 44, § 15.)

See § 18, re penalty; c. 135, § 1, re perjury.

Sec. 18. Violation of provisions of §§ 1-18.—Any person who shall violate any provision of sections 1 to 18, 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 such fine and imprisonment. (R. S. c. 44, § 16.)

Operating Motor Trucks for Hire.

There is no reference in §§ 19-32 to § 14 of this chapter, and no specific limitation of time within which actions based on negligence in the operation of trucks must be brought. *Steele v. Smalley*, 141 Me. 355, 44 A. (2d) 213.

Sec. 19. Policy.—The business of operating motor trucks for hire on the highways of this state affects the interests of the public. The rapid increase in the number of trucks so operated, and the fact that they are not effectively regulated, have increased the dangers and hazards on public highways, and make more effective regulation necessary to the end that highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that discrimination in rates charged may be eliminated; that congestion of traffic on the highways may be minimized; that the use of the highways for the transportation of property for hire may be restricted to the extent required by the necessity of the general public; and that the various transportation agencies of the state may be adjusted and correlated so that public highways may serve the best interest of the general public. (R. S. c. 44, § 17.)

Prohibition of use of public ways is legitimate exercise of police power.—In view of the well recognized control over highways by the legislature and of the public moneys spent in building permanent thoroughfares throughout the state and the possible menace to public safety and the rapid destruction of the roadbed by the operation of heavy, high-powered motor busses over them, the authority of the legislature to prohibit the use of the public ways for such purposes cannot be doubted. *State v. King*, 135 Me. 5, 188 A. 775.

With the increase in number and size of the vehicles used upon the highway,

both the danger and the wear and tear grow. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject. *State v. King*, 135 Me. 5, 188 A. 775.

Stated in *In re McLay*, 133 Me. 175, 175 A. 348.

Cited in *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

Sec. 20. Certificate from commission required before operation.—No person, corporation, partnership, railroad, street railway or other transportation company shall operate, or cause to be operated, any motor vehicle or vehicles not running on rails or tracks upon any public way in the business of transporting freight or merchandise for hire as a common carrier over regular routes between points within this state without having obtained from the commission a certificate declaring that public necessity and convenience require and permit such operation. The commission shall have authority and jurisdiction to determine applications for such certificates. The words "regular routes" as used in sections 19 to 32, inclusive, mean those routes over which any person, firm or

corporation is usually or ordinarily operating, or causing to be operated, any motor vehicle or vehicles, even though there may be departures from said routes, whether such departure be periodic or irregular; whether or not the operation is over regular routes within the meaning of said sections shall be a question of fact to be determined by the commission, the supreme judicial court, the superior court or a municipal court. Every application for a certificate shall be made in such form and contain such matters as the commission may prescribe. 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 thereof. Notice of such hearing, in such manner as the commission may deem necessary, and of the right to file a protest in accordance with the commission's requirements, shall be given by the commission at least 7 days before the hearing of such application, to the applicant, to such common carriers, including steam and electric railway and water carriers, as the commission shall deem necessary, to the chairman of the state highway commission, and to any other person, firm or corporation who may, in the opinion of the commission, be interested in or affected by the issuance of such certificate. Any person, firm or corporation having an interest in the subject matter shall have the right, in accordance with the rules and regulations prescribed therefor by the commission, to file a protest to the granting in whole or in part of the certificate applied for and to make representations and to introduce evidence in support of such protest. After such hearing, the commission shall have the power to issue to the applicant a certificate in a form to be prescribed by the commission, declaring that public convenience and necessity require the operation for which application is made, or refuse to issue the same, or to issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment public convenience and necessity may require; provided, however, if no protest to the granting of the certificate be filed with the commission prior to or at the time fixed for the hearing and if the commission is satisfied that the privilege sought by the applicant is convenient and necessary in the public interest, the certificate may be granted without a public hearing. In determining whether or not such a certificate shall be granted, the commission shall take into consideration the existing transportation facilities and the effect upon them, the public need for the service the applicant proposes to render, the ability of the applicant efficiently to perform the service for which authority is requested, conditions of and effect upon the highways involved and the safety of the public using such highways. No such certificate shall be issued unless and until the applicant has established to the satisfaction of the commission that there exists a public necessity for such additional service and that public convenience will be promoted thereby. If 2 or more applicants who have been engaged in the transportation of property as common carriers before June 30, 1933 apply for a similar certificate authorizing them to perform substantially the same service in the same territory under similar conditions, and if the commission shall be of opinion, in accordance with the provisions of this section, that certificates should be granted to some but not all of such applicants, preference shall be given to the applicant or applicants who have been longest engaged in such service, provided such service has been rendered in accordance with the requirements of the law. (R. S. c. 44, § 18.)

Cross reference.—See §§ 29, 30, re exemptions; § 31, re exceptions.

Purpose of section. — This section was doubtless enacted in the interest of existing operators, on the theory that a sound public policy dictates that, for devoting their property to use which concerns the body politic, these should be encouraged, and the entry, in competition, of service

carriers unnecessary to public convenience, discouraged. Moreover, the section was enacted to preserve the ways, to obviate menace to present traffic, and further the safety of travelers generally. In re Stanley, 133 Me. 91, 174 A. 93.

Common carrier defined. — A common carrier is one who holds himself out as engaged in the public service of carrying

goods for hire, to the limit of capacity, and to "take anybody's freight." *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

Convenience and necessity of public is criterion. — The convenience and necessity, proof of which this section requires, is the convenience and necessity of the

public, as distinguished from that of any individual, or group of individuals. In *re Stanley*, 133 Me. 91, 174 A. 93.

Stated in *Public Utilities Comm. v. Utterstrom Bros.*, 136 Me. 263, 8 A. (2d) 207; *Public Utilities Comm. v. Congdon*, 137 Me. 216, 18 A. (2d) 312.

Sec. 21. Regulations and law applicable to certain common carriers.

—Any person, firm or corporation required to procure a certificate of public convenience and necessity under the provisions of the preceding section shall be subject to all the provisions of chapter 44 so far as applicable, and to such orders, rules and regulations as shall be adopted and promulgated by the commission under the authority of said chapter, and such person, firm or corporation and the service rendered or furnished shall be included under the general supervision and regulation of the commission and shall be subject to its jurisdiction and control in the same manner and to the same extent as service performed by other persons, firms or corporations engaged in the transportation of freight or merchandise as common carriers for hire, as provided in said chapter, except that sections 18 and 43 to 47, inclusive, of said chapter shall not so apply. (R. S. c. 44, § 19.)

See §§ 29, 30, re exemptions; § 31, re exceptions.

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 solicit, accept or receive any rebate, discount or discrimination in respect of any service rendered by the holder of any certificate or permit whereby any such service shall in any manner or by any device, whatsoever, be rendered free or at a rate less than named in the schedules in force as provided therein or as prescribed by the commission as a minimum rate; 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.)

Cross references.—See §§ 29, 30, re exemptions; § 31, re exceptions.

Stated in *Public Utilities Comm. v. Utterstrom Bros.*, 136 Me. 263, 8 A. (2d) 207.

Sec. 23. "Contract carrier" defined; regulations.—The term "contract carrier" as used in this chapter is intended to include all persons, firms or corporations operating or causing the operation of motor vehicles transporting freight or merchandise for hire upon the public highways, other than common

carriers over regular routes; except that the term shall not be construed to include any person, firm or corporation not regularly engaged in the transportation business but who on occasional trips transports the property of others for hire. Whether or not any person, firm or corporation is engaging regularly in the transportation business within the meaning of this paragraph shall be a question of fact to be determined by the commission, the supreme judicial court, the superior court or a municipal court, but the making of 2 trips for hire during any 6-month period shall be deemed as regularly engaging in the transportation business.

It is declared that the business of contract carriers, which term is intended to include all persons, firms or corporations operating or causing the operation of motor vehicles transporting freight or merchandise for hire upon the public highways, other than common carriers over regular routes, is affected with the public interest and that the safety and welfare of the public upon such highways, the preservation and maintenance of such highways and the proper regulation of common carriers using such highways require the regulation of contract carriers to the extent hereinafter provided:

I. No contract carrier shall operate, or cause to be operated, any motor vehicle or vehicles for the transportation of property for hire on any public highway within this state without having obtained a permit from the commission;

Applied in *State v. King*, 135 Me. 5, 188 A. 775. **Stoddard v. Public Utilities Comm.**, 137 Me. 320, 19 A. (2d) 427.

Stated in *Public Utilities Comm. v. Congdon*, 137 Me. 216, 18 A. (2d) 312; **Cited** in *Kirk v. Yarmouth Lime Co.*, 137 Me. 73, 15 A. (2d) 184.

II. Applications for permits shall be made in manner and form prescribed by the commission in regulations which it shall make;

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 opinion that the proposed operation of any such contract carrier will be contrary to the declaration of policy of sections 19 to 32, inclusive, or will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory 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 32, 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 pro-

vided, 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)

Remedy by way of exceptions is available.—The remedy by way of exceptions provided by c. 44, § 67, is available in proceedings under this section for clarification of a permit issued under the grandfather clause so-called. Public Utilities Comm. v. Gallop, 143 Me. 290, 62 A. (2d) 166.

No judicial review unless discretion abused.—It is apparent from this subsection that the legislature has given the public utilities commission the function of utilizing its discretion in matters coming before it such as operating motor trucks for hire on the highways of the state. That function, by the language of the statute, is a discretionary grant of power and is imposed upon the commission and not upon the court. It is a clear legislative delegation of discretion and unless that discretion is abused by the commission this court has no power to intervene and it is not reviewable on exceptions. O'Donnell, Petitioner, 147 Me. 259, 86 A. (2d) 389.

Provision for supplemental evidence does not extend test period nor enlarge original rights.—The provision that a carrier may supplement evidence of regular operation from March 1, 1932 to June 30, 1933 "by evidence of regular operation subsequent to said period" was not designed to open the door so widely as in effect to extend the test period itself. Neither was it the purpose to enlarge the rights originally held by adding thereto new, different and

unrelated transportation services which were subsequently performed. Public Utilities Comm. v. Gallop, 143 Me. 290, 62 A. (2d) 166.

In order to throw light upon the true meaning of the original permit, the subsequent operation must be a regular operation and it should be an operation based upon, connected with, and explanatory of the services performed during the test period. Public Utilities Comm. v. Gallop, 143 Me. 290, 62 A. (2d) 166.

The clarification proceeding assumes the existence of rights. It is instituted to make clear what those existing rights are by granting a new definitive permit, which shall neither extend nor abridge that which in reality already exists. In determining the issue and making a definite permit, the commission under the statute is to consider the evidence taken in the original hearing and evidence to be submitted in the "further" hearing. Public Utilities Comm. v. Gallop, 143 Me. 290, 62 A. (2d) 166.

Applied in In re McLay, 133 Me. 175, 175 A. 348.

Quoted in part in Stoddard v. Public Utilities Comm., 137 Me. 320, 19 A. (2d) 427.

Cited in Public Utilities Comm. v. Johnson Motor Transport, 147 Me. 138, 84 A. (2d) 142.

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, and 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.

Loading, transporting and delivering goods not ipso facto competition with common carrier.—It cannot be said to be the intent of the legislature that any contract carrier who exercises the right to load, transport and deliver goods ipso facto

becomes a competitor of common carriers and performs substantially the same service. *Public Utilities Comm. v. Utterstrom Bros.*, 136 Me. 263, 8 A. (2d) 207.

Applied in *Stoddard v. Public Utilities Comm.*, 137 Me. 320, 19 A. (2d) 427.

V. When the operation proposed by any applicant for a contract carrier permit authorizing the applicant to engage exclusively in the transportation of forest products or milk and cream, including empty milk and cream containers, is not contrary, in the opinion of the commission, to the declaration of policy as set forth in section 19 and will not seriously infringe on common carrier service, the commission may issue a temporary permit authorizing such transportation and hold the prescribed hearing at a later date and then determine whether a permit shall be finally issued; but no temporary permit shall be issued unless the applicant has paid the fees and procured insurance as required by subsection II of section 25 and section 28. [1947, c. 125]. (R. S. c. 44, § 21. 1947, c. 125. 1949, cc. 266, 317. 1951, c. 266, § 73.)

Cross references. — See §§ 29, 30, re exemptions; § 31, re exceptions.

Operation as contract carrier is fact determined by commission.—What constitutes a common carrier, and what constitutes a contract carrier, are questions of law, but whether the carrier is acting as a common carrier or as a contract carrier is a question of fact. The fact is to be determined by the commission. *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

Contract carrier is engaged in private transaction.—The contract with a private carrier may be in writing, it may be oral,

or it may be implied from all the circumstances. It may be for one carriage of freight or a series. Each act of transportation, however, is a separate and individual act. It is not for public convenience and necessity but is a private transaction. The contract carrier does not hold himself out to accept all freight of all who offer. He makes an individual contract and is only liable for negligence under the contract he has made. *Public Utilities Comm. v. Johnson Motor Transport*, 147 Me. 138, 84 A. (2d) 142.

Section cited in *State v. Jones*, 133 Me. 387, 178 A. 719.

Sec. 24. Interstate carriers; permit to operate.—In order that there may be proper supervision and control of the use of the highways of this state, every person, firm or corporation transporting freight or merchandise for hire by motor vehicle upon the public highways of this state between points within and points without the state or between points without the state but passing

through this state is required to obtain a permit for such operation from the commission. Application for such permits shall be made in the manner and form to be prescribed by the commission in its regulations, and such permits shall issue as a matter of right upon compliance with such regulations and payment of fees, unless the commission shall find that the condition of the highways to be used is such that the operation proposed would be unsafe, or the safety of other users thereof would be endangered thereby. (R. S. c. 44, § 22. 1949, c. 263. 1951, c. 113.)

Cross references. — See §§ 29, 30, re exemptions; § 31, re exceptions.

Regulation is valid exercise of police power.—With the increase in number and size of the vehicles used upon the highway, both the danger and the wear and tear grow. To exclude unnecessary vehicles — particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject. *State v. King*, 135 Me. 5, 188 A. 775.

For the purpose of making sure that the highways to be used are safe for any proposed operation in interstate commerce and that the safety of other users of the highways will not be endangered thereby, the state, under its police power, has the right to require permits for the use of its highways in interstate commerce. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

Even though the issue of the permit is mandatory provided the condition of the highways to be used is such that it would be safe for the operation proposed, and the safety of other users of the highways would not be endangered thereby, the public utilities commission under this section has not only the duty but the power and authority to determine these questions as questions of fact. If the commission, upon evidence, determines these facts, or either of them, against the applicant for the permit to engage in interstate commerce, it may deny the permit. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

And is not restricted by federal motor carrier act.—It is within the power of the State of Maine for the purposes stated in this section to require that those who use the highways of this state for interstate motor transportation obtain a permit therefor, provided such permits are to be granted as a matter of right “unless the commis-

sion shall find that the condition of the highways to be used is such that the operation proposed would be unsafe, or the safety of other users thereof would be endangered thereby.” There is nothing in the Motor Carrier Transport Act of 1935, 49 U. S. C. A. Secs. 301 et seq. which prevents the state of Maine from requiring such permits, for the purposes and under the conditions set forth in this section from interstate carriers using its highways for carriage of goods for hire. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

Transportation of goods not covered by restricted permit is prohibited. — Where the permit issued under this section is restricted as to the class of goods to be carried the situation with respect to the transportation of goods not in the class authorized is the same as though the carrier had no permit whatever from the public utilities commission as required by this section. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

The driving of a truck in itself is not an interstate operation within the meaning of this section, and the driver is not required to have a permit for himself as an interstate carrier. *State v. Torrey*, 148 Me. 107, 90 A. (2d) 456.

Wrongful denial of permit is not equivalent of permit.—Even though a denial of the permit under this section be wrongful, the wrongful denial of a permit is not the equivalent of a permit. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

No permit required for owner-lessor of trucks, not himself engaged in transport business. — The owner-lessor of a truck, not in the business of transporting freight and merchandise for hire in interstate commerce, but in the business of furnishing a truck with driver to a carrier for use in the interstate operations of the carrier, requires no permit. *State v. Torrey*, 148 Me. 107, 90 A. (2d) 456.

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

I. Filing of applications; issuance of certificates. Applications may be filed with the commission by railroads, electric railways, railway express or water common carriers asking its approval of operation by motor vehicles over

the highways by or in connection with the service of such carriers, where highway transportation has been substituted by or for such carrier prior to January 1, 1935, for transportation service previously performed by such carrier or is to be substituted for transportation now performed by or for any such carrier. Hearings shall be ordered by the commission on every such application and notice thereof shall be given in such manner and to such persons, firms and corporations as the commission deems necessary at least 7 days prior to the date fixed therefor. If, after such hearing, the commission shall find that the operation is a service which regularly has been performed by or for such carrier prior to and since January 1, 1935, it shall grant a certificate of public convenience and necessity as a matter of right, and in cases where such service regularly has been performed by or for any such carrier prior to January 1, 1935, the service lawfully may be continued pending the issuance of such a certificate, provided application for such a certificate is filed with the commission within 15 days after July 6, 1935; but if such service has not been regularly performed prior to and since January 1, 1935 such a certificate shall be issued only if the commission shall find that the public convenience and necessity require and permit such operation. Any applicant common carrier shall be permitted, in cases where any such order of approval is issued, to perform said highway transportation service itself or to contract therefor with such persons, firms or corporations as it may select, if the commission shall find that such arrangement will be consistent with the public interest. Rates to be charged the public for the transportation of property in such service between points in the state shall be filed with the commission and shall be subject to its jurisdiction and regulation in the same manner as is provided in chapter 44 or this chapter, as the same may apply, but such jurisdiction and regulation shall not apply to the compensation to be charged by one carrier to another for performing service authorized in this section.

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 32, 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 32, 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.

It shall be unlawful for any person to act as driver or helper on any motor

vehicle, for the operation of which a certificate or a permit is required by the provisions of sections 19 to 32, inclusive, unless such motor vehicle displays distinguishing plates as required by this section and by rules issued by the commission. (1947, c. 126)

III. Transfers. Any certificate or permit issued under the provisions of sections 19 to 32, inclusive, except as otherwise provided in section 20, may be assigned and transferred, with the approval and consent of the commission but not otherwise, by the holder or by the personal representatives of said holder to whom the rights and privileges under said certificate or permit shall pass at the death of said holder. The commission is authorized to prescribe the conditions precedent to such transfer and make any necessary rules and regulations pertaining thereto. Provided, however, that no assignment or transfer of any such certificate granted as a matter of right under the provisions of this section shall be made which would result in an exclusive right to any railroad company or its subsidiaries to operate motor vehicles for the transportation of freight or merchandise for hire over such route. No certificate or permit granted under the provisions of sections 19 to 32, inclusive, shall be effective after the date, following the year of its issue, on which the right to display the registration plates issued by the secretary of state on the holder's motor vehicle or vehicles shall have terminated.

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, provided, however, that 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 32, 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. Provided further, that no order of the commission 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 term of the superior court next to be held 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 the provisions of this section, no exceptions shall be taken under the provisions of section 67 of chapter 44. (R. S. c. 44, § 23. 1947, c. 126.)

See §§ 29, 30, re exemptions; § 31, re exceptions.

Sec. 26. Length of duty of driver.—It shall be unlawful for any driver to operate or for the holder of any certificate or permit to require or permit any driver to operate any motor vehicle for the transportation of freight for hire on the highways of this state, when the driver has been continuously on duty in any capacity for more than 12 hours, and after a driver has been continuously on duty in any capacity for 12 hours, it shall be unlawful for him to operate or for the holder of a certificate or permit to permit him to operate any such motor vehicle on the highways of this state until he shall have had at least 8 consecutive hours off duty.

It shall be unlawful for any driver to operate or for the holder of a certificate or permit to require or permit any driver to operate any motor vehicle for the transportation of freight for hire on the highways of this state when the driver has been on duty in any capacity more than 16 hours in the aggregate in any 24-hour period, and when a driver has been on duty in any capacity 16 hours in any 24-hour period, it shall be unlawful for him to operate or for the holder of a certificate or permit to require or permit him to operate a motor vehicle on the highways of this state until he shall have had at least 10 consecutive hours off duty. Periods of release from duty herein required shall be given at such places and under such circumstances that rest and relaxation from the strain of the duties of the employment may be obtained. No period off duty shall be deemed to break the continuity of service unless it be for at least 3 consecutive hours at a place where there is opportunity for a rest. In case of an unforeseen emergency the driver may complete his run or tour of duty if such run or tour of duty, but for the delay caused by such emergency, would reasonably have been completed without a violation of the provisions of this section. (R. S. c. 44, § 24.)

See §§ 29, 30, re exemptions; § 31, re exceptions.

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 32, 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 any certificate or permit, issued under the provisions of sections 19 to 32, inclusive, for any willful and continued violations of said sections or of any rules or regulations promulgated by the commission pursuant to the authority thereof; the commission also 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 32, inclusive, or of any rules or regulations of the commission promulgated pursuant to the authority thereof; also the commission shall have authority in event it shall suspend 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 32, 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.)

Cross references. — See §§ 29, 30, re exemptions; § 31, re exceptions. Johnson Motor Transport, 147 Me. 138, 84 A. (2d) 142.

Applied in Public Utilities Comm. v.

Sec. 28. Indemnity bonds.—The secretary of state shall not register any motor vehicle subject to the provisions of sections 20, 23 and 24 and the commission shall not issue a certificate or a permit covering the operation of any such motor vehicle or vehicles, and no person, firm or corporation shall operate or cause to be operated upon any public way any such motor vehicle or vehicles until the applicant for such certificate or permit shall have procured a good and sufficient insurance policy or indemnity bond, in such amount as the commission shall prescribe, having as surety thereon a surety company authorized to transact business in this state or 2 responsible individuals, which bond shall be approved by the commission; such insurance policy or bond shall adequately provide for cargo insurance and for protection of the public in the collection of dam-

ages for which the holder of a certificate or permit may be liable by reason of the operation of any such motor vehicle or vehicles, provided, however, that the bond or insurance policy required of applicants for permits need not provide for cargo insurance. (R. S. c. 44, § 26.)

See §§ 29, 30, re exemptions; § 31, re exceptions.

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

I. Exemptions. There shall be exempted from the provisions of sections 20 to 28, inclusive, the operation over the highways of motor vehicles:

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 steam or electric 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;

This paragraph has an obviously reasonable basis, as such operations are subject to local regulations. In protecting its highway system the state was at liberty to leave its local communities unembarrassed, and was not bound either to over-ride their regulations or to impose burdensome additions. *State v. King*, 135 Me. 5, 188 A. 775.

And is entirely free from technical words or phrases. It must be construed according to the common meaning of the language. One does not receive property from or deliver it to himself when it is already in his possession. The words "receive" and "deliver," in themselves, indicate a transfer of possession from one person, firm or corporation to another. *Public Utilities Comm. v. Congdon*, 137 Me. 216, 18 A. (2d) 312.

This paragraph creates three exempted zones, and one who trucks exclusively in any one of them need have no permit. *State v. Jones*, 133 Me. 387, 178 A. 719.

Mere transfer of property from one vehicle to another cannot bring carrier within exemption.—The legislature did not in-

tend to include within the exemption provisions of this paragraph a local motor carrier of property for hire and the vehicles which he operates, when and while, through a mere transfer of the property from one of his trucks to another, they are being used to extend his carriage of freight and merchandise beyond the specified termini or pick-up or delivery points which he is authorized to serve as a certified common carrier. In making such an extension of service, the operation of the pick-up and delivery trucks of the local carrier without a certificate or permit is a violation of this chapter. *Public Utilities Comm. v. Congdon*, 137 Me. 216, 18 A. (2d) 312.

But vehicles of common carrier used in local operations may be exempt. — The fact that a local carrier is also a common carrier operating under a certificate or permit issued by the commission does not exclude the vehicles which he owns and operates in purely local transportation for hire from the exemption provision of this paragraph. *Public Utilities Comm. v. Congdon*, 137 Me. 216, 18 A. (2d) 312.

B. While engaged, directly or through a contractor, exclusively in construction 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;

C. While engaged exclusively in the transportation of the United States mail;

D. While engaged exclusively in the transportation of fresh fruits and fresh vegetables from farms to canneries or quick freezing plants, place of storage or place of shipment, or the products of vining and cutting plants to canneries or quick freezing plants, during the harvesting season;

Paragraph quoted in part in State v. King, 135 Me. 5, 188 A. 775.

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 60 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)

F. While engaged exclusively in the transportation of livestock for exhibition purposes, excluding race horses, to and from agricultural fairs and exhibits;

G. While engaged exclusively in the hauling of milk and cream to receiving stations from points within a distance of 25 miles by highway from them; (1949, c. 212, § 2)

H. Of any bona fide agricultural cooperative association transporting property exclusively for the members of such association on a nonprofit basis, or of any independent contractor transporting property exclusively for such association; and

I. Of any independent contractor while engaged exclusively in the transportation of seed, feed, fertilizer and livestock for one or more owners or operators of farms directly from the place of purchase of said seed, feed, fertilizer and livestock by said owners or operators of said farms to said farms, or in the transportation of agricultural products for one or more owners or operators of farms directly from the farm on which said agricultural products were grown to place of storage or place of shipment within 60 miles by highway of said farm. (1947, c. 373, § 2. 1949, c. 212, § 3)

Nothing under the provisions of sections 19 to 32, inclusive, shall apply to persons, firms or corporations operating motor vehicles carrying property of which they are the actual and bona fide owners, if such ownership is in pursuance of a primary business, other than the transportation business, of such persons, firms or corporations.

Subsection quoted in part in State v. King, 135 Me. 5, 188 A. 775.

II. Rate exemptions. There shall be exempted from the foregoing provisions as to rate regulation the transportation by motor vehicle of property:

A. When moving in interstate commerce;

B. When moving to warehouses, railroads or boats for reshipment by rail or vessel; and

C. When consisting of logs, wood or lumber moving to mills for manufacture.

This particular kind of transportation presents real differences from common carrier and other kinds of transportation, as in equipment used, the seasonal or irregular and non-constant hauling, and the apparent inaptitude of this kind of transportation to rate regulation can be seen. State v. King, 135 Me. 5, 188 A. 775.

This paragraph does not exempt motor vehicles transporting logs, wood or lumber to mills for manufacturing from the general operation of the statute but simply relieves such transporters from the provisions as to rate regulation. State v. King, 135 Me. 5, 188 A. 775.

III. Exemptions in re transportation of newspapers. The provisions of sections 19 to 32, inclusive, shall not apply to the transportation of news-

papers. (R. S. c. 44, § 27. 1947, c. 373, § 2. 1949, c. 212, §§ 1, 2, 3. 1951, c. 320.)

Exemption is neither arbitrary nor unreasonable.—In this day and age the speedy dissemination of news is a matter which vitally concerns the general welfare of society. Moreover, the transportation of newspapers is not such as to wear greatly on

the highways. It seems to fall, naturally, into a class by itself in the whole transportation of property scheme and the exemption is neither arbitrary nor unreasonable. *State v. King*, 135 Me. 5, 188 A. 775.

Sec. 30. Further exemptions. — Carrier trucks when carrying property to warehouses, railroads or boats for reshipment by rail or vessel, and when carrying logs, wood or lumber to mills for manufacture, shall not be subject to rate regulation for such service. (R. S. c. 44, § 28.)

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 32, 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 32, 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.)

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 any rule, regulation or order made or issued by the commission pursuant to the authority of sections 19 to 32, 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 such fine and imprisonment.

If any such person as above specified, after being ordered to appear in court to answer any violation of this chapter, fails to appear in court on the day specified, either in person or by counsel, the court shall notify the secretary of state, who shall, at the expiration of 7 days after mailing such person by registered mail, postage prepaid, a notice of his intention to do so, suspend or revoke his license to operate trucks, tractors or semi-trailers, if licensed in this state, or suspend or revoke his right to operate trucks, tractors or semi-trailers in this state, if a nonresident and not licensed to operate motor vehicles in this state, and also suspend or annul the registration of the motor vehicle operated by such person so ordered to appear, if said motor vehicle is registered in this state, and such suspension, annulment or revocation shall continue in effect until such person so appears in court as ordered. (1949, c. 390)

Quoted in *State v. Nagle*, 148 Me. 197,

91 A. (2d) 397.

II. The certificate of the clerk of the public utilities 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 32, 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 32, inclusive.

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 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 32, inclusive, or of any rule, regulation or order issued by the commission pursuant thereto.

IV. Any driver of any motor vehicle which is being unlawfully used by any person, firm or corporation in carrying on the business of a common carrier or of a contract carrier or of an interstate carrier without a certificate or permit shall be liable to the penalties provided in this section.

Wrongful refusal of permit cannot justify violation. — The driver cannot justify his acts for which a permit is required because of the wrongful refusal thereof to his employer, or because of the wrongful failure of the public utilities commission to issue a permit to his employer broad enough to cover the transportation in question. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397. See note to § 24.

Driver violates the law if carrier has no certificate. — Unless the truck is lawfully used by a carrier with the proper certificate or permit, the driver violates the law. In a sense the driver must pay for the sins of his employer or in any event of the carrier for whom the operation is conducted. This clause makes clear the distinction between the carrier and the truck

driver. *State v. Torrey*, 148 Me. 107, 90 A. (2d) 456.

But permit of lessee carrier protects driver.—Since the owner-lessor who furnishes a truck with driver to a carrier for use in interstate commerce is not required to have a permit as an interstate carrier (see note to § 24), the permit of the lessee carrier protects the driver from prosecution under this subsection. *State v. Torrey*, 148 Me. 107, 90 A. (2d) 456.

Where the driver employee of an interstate carrier himself has no permit from the public utilities commission, his guilt or innocence of the charge of violating § 24 must depend upon the rights, permits and privileges, if any, of his employer. *State v. Nagle*, 148 Me. 197, 91 A. (2d) 397.

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 32, 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 32, 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.

VI. In case any person convicted of any violation of the provisions of sections 19 to 32, 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.

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 32, 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)

VIII. All fines and forfeitures collected under the provisions of sections 19 to 32, 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. (R. S. c. 44, § 30. 1945, c. 378, § 51. 1949, c. 390.)

Letting Motor Vehicles for Hire.

Sec. 33. Regulation of business of letting for hire of motor vehicles.

—The business of letting or leasing for hire, profit or compensation of 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 affects the use of the public highways by the general public, and affects the interests of the general public in procuring transportation for hire. It is declared that such business requires regulation as hereinafter provided.

No person, firm or corporation shall engage in the business of letting or leasing for hire, profit or compensation a motor vehicle or 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 until such person, firm or corporation owning or controlling such motor vehicle or motor vehicles shall first have filed with the commission a good and sufficient insurance policy or indemnity bond having as surety thereon a surety company authorized to transact business in this state or 2 responsible individuals, which surety or sureties shall have been approved by the commission, and which insurance policy or bond shall adequately provide for the reasonable

protection of the parties of said person, firm or corporation and of the public in the collection of damages for which the operator of said motor vehicle or motor vehicles may be liable by reason of the operation thereof.

Any person, firm or corporation violating or any officer, agent or employee of such person, firm or corporation who orders, authorizes or knowingly permits the violation of the provisions of this section shall be punished by a fine of not less than \$10, nor more than \$500. (R. S. c. 44, § 31.)

See c. 22, § 158, re keeping of records of renters of motor vehicles.