

MAINE STATE LEGISLATURE

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REPORT OF THE COMMITTEE CREATED
BY THE 102ND LEGISLATURE SP 520
TO STUDY AND REPORT ANY RECOM-
MENDATIONS FOR LEGISLATION RELAT-
ING TO THE CREATION OF A NEW CLASS-
OF MOTOR VEHICLE CARRIER NON-SCHED-
ULED TRANSPORTATION SERVICE KNOWN
AS THE NON-SCHEDULED TRANSPORTATION
COMMITTEE.

Chairman - Senator Romeo Boisvert,
Lewiston
Rep. M. Abbott Pendergast,
Kennebunkport
Harvard W. Blaisdell
Ellsworth (Public Member)
Gerald A. Cole,
Portland (Common Carrier Member)
*Paul E. Merrill,
Portland (Contract Carrier Member)
William F. Fernald,
Director of Transportation, PUC

* See Minority Report filed by Mr. Merrill attached hereto.

November 28, 1966

Your committee met five times since its creation for the purposes outlined in the order of the Legislature. Also, the advice of Dr. John Frederick, Professor Emeritus of Transportation of the University of Maryland, was sought and obtained together with a memorandum on certain aspects of the problem submitted by the Public Utilities Commission.

The committee was created to study and make recommendations to the Legislature on the desirability of amending the Motor Carrier Act, so-called, as administered by the Public Utilities Commission, for the purpose of providing for a third class of motor carrier commonly known as irregular route common carriers. Legislation of this type was considered by the 102nd Legislature in regular session in legislative document No. 1498 and as amended, therefore the subject matter under consideration involves a technical revision of certain sections of Title 35 M.R.S.A.

It appears from the information that we have been able to obtain that a wide divergence of opinion exists within the motor carrier industry on the desirability of such an amendment to the existing statutes. We are informed by the Public Utilities Commission that it has taken the position that this type of legislation is worthy of careful study. The Commission points out that it has, in fact, suggested such legislation in several past biennial reports as well as in its comments on the special report made by Dr. John Frederick. The approach taken by the Commission to the problem appears to have been from the technical aspects of regulation, in particular, the classification of motor carrier service, and not from whether the existing motor carrier service is adequately serving the public need.

The Commission further points out that it has not received complaints from the public generally or from individual officials responsible for purchasing transportation, that existing service is inadequate. It appears that the motor carriers generally have not asked for unrestricted contract carrier authority throughout the State. Consequently the Public Utilities Commission cannot point to any substantial public demand for the new classification of motor carrier and only a few of the motor carriers have expressed dissatisfaction with their existing classification. The Commission, therefore, was unwilling to recommend any specific legislation for our consideration. It is noted that in Dr. Frederick's presentation to us no specific recommendation as to the desirability or necessity of this type of legislation was made. Neither have we been able to get a unanimous consensus from the Committee members on this point.

After due consideration of the matters and issues present, the committee, in its meeting of October 19, 1966, adopted the motion of Representative Pendergast as follows:

"In view of our studies, this Committee has no recommendations for legislation on Non-Scheduled Transportation at this time. However, we do recommend that the 103rd Legislature consider legislation that would permanently establish the Transportation Commission and authorize sufficient funds to permit that Commission to undertake the long-range transportation study, including the subject of intrastate irregular route common carriage, and planning necessary to the future economic and industrial development of the State including sufficient funds to provide that Commission with an adequate secretariat."

Therefore, it is the recommendation of your committee that no specific legislation be presented to the 103rd Legislature effecting the existing statutes classifying service rendered by motor carriers. However, it is recommended that this matter be referred to the Transportation Commission created by the

102nd Legislature for consideration in the overall long-range planning of the transportation needs for this state.

We further recommend that the 103rd Legislature take the necessary steps to permanently establish the Transportation Commission and provide it with the necessary funds to permit the continued long-range study of Maine's transportation needs so necessary to the future economic and industrial development of our State, which funds should be sufficient to provide an adequate secretariat.

Respectfully,

/s/ Senator Romeo Boisvert
Rep. M. Abbott Pendergast
Harvard W. Blaisdell
Gerald A. Cole
William F. Fernald

The Committee was directed to study the feasibility of amending the so-called Maine Motor Carrier Act and to submit legislative recommendations for creation of a third class of truck transportation commonly known as Irregular Route Common Carriage. The study was requested because freight services and freight costs are key factors for economic and industrial development and the Public Utilities Commission has repeatedly expressed its opinion that legislation should be enacted to provide some form of irregular route common carriage. Report "B" will include more historical and factual background than Report "A" in order to facilitate a better understanding of the problem.

There are presently two classes of regulated motor carriers in Maine, to wit: common carriers and contract carriers. The common carrier hauls general freight for the public at large in the geographical area of his authority and is limited to regular routes. Contract carriers, for the most part, haul specific commodities to designated points and usually for customers with whom they have a contract. The common carrier holds a certificate of public necessity and convenience which provides him with certain protection from competition. A second common carrier will not ordinarily be authorized to furnish the same service over the same regular route unless public demands are greater than can be serviced by the first common carrier. The contract carrier, on the other hand, holds a permit which affords him with no protection for investment in equipment and business development generally. These two classes were embodied in the original 1933 Act but truckers who were transporting goods when the law became effective were authorized to continue the operation in which they were then

engaged. In the case of the contract carrier, this was known as a "Grandfather Permit" which did not designate the specific destination, commodities or customers to be served. This permit authorized the contract carrier to operate within the general area and/or for the general purposes within which or for which he had been regularly engaged in transporting freight or merchandise for hire over highways for fifteen months prior to the effective date of the Act. Such permits are also known as "Unclarified Permits" of which about sixty are still in existence. The Public Utilities Commission during the past two years has made a concerted effort to replace the "Grandfather" or "Unclarified" permit with one which is exact in definition and termed a "Clarified Permit". Clarification is the reason for a majority of the contract carriers being authorized only to haul specified goods or commodities to designated points or customers.

The grandfather permit holder appears before the Public Utilities Commission for a clarification hearing and must prove, under Rules of Evidence admissible in a Court, the exact transportation service which was provided during the 1932-1933 fifteen-month test period. Business records were not maintained during those depression days of thirty-five years ago to the extent as has been required since the enactment of Social Security, Employment Security, Withholding Tax, etc. Sometimes old records can be produced at a hearing but are ruled inadmissible as being hearsay evidence. The contract carrier is invariably opposed by a battery of attorneys representing the four major intrastate common carrier railroads and truckers. He has the burden, subject to cross-examination by each of these attorneys, to prove by the preponderance of the evidence, the exact transportation

service rendered and the precise goods hauled during the test period. The Public Utilities Commission has long recognized this unreasonable burden and that issuance of clarified permits necessitates some form of irregular route common carriage. The problem became so critical for furniture movers in 1963 that the Legislature authorized transportation of household goods by common carrier over irregular route.

The question now is not whether non-scheduled common carriage should be authorized, but what is the best method for providing transportation of additional goods and commodities. One approach would be for the Public Utilities Commission, by rule and regulation, to specify the goods or commodities which might be transported. This concept was considered in L. D. 912 during the 102nd Legislature but the Commission did not wish to accept the responsibility. The Commission did, however, propose an amendment whereby authorization for transporting specific goods be defined by statute. It further suggested that the Legislature not only define the type of commodities but also authorize common carriage over irregular routes for transporters utilizing specialized motor equipment. The proponents of L. D. 912 and a majority of the legislative Committee on Public Utilities endorsed this proposal. The committee majority voted favorably in a Committee New Draft, L. D. 1498. The two major trucking common carriers, railroads and labor unions collaborated in urging defeat of that report and an additional committee hearing was conducted at which time the Public Utilities Commissioners hedged upon their position. The Commissioners withdrew support of their own bill on the grounds that the common carriers had not participated in legislative drafting. The Commissioners did, however, reassert

that "They were still of the opinion that the basic concept of irregular route common carriage in some form is needed". They then recommended formation of a special committee for drafting legislation which would include representatives from both classes of carriers. Notwithstanding the Commissioners' recommendation, the same lobby of common carriers and unions vigorously opposed the legislative order creating a committee for this specialized purpose but eventually it was passed.

The Special committee was organized in the fall of 1965 and a sincere effort was made by the contract carrier representative to draft a suitable amendment for the Committee. The legislative order requested that this Committee submit a report, if possible, to the 102nd Legislature in special session. The Committee did not, however, feel it was possible to prepare a report for the 1966 special session. The common carriers offered no affirmative legislative proposal but finally admitted that they were satisfied with existing conditions and were unalterably opposed to any form of irregular route common carriage. Thus on January 12, 1966, the Committee requested the Public Utilities Commission to clarify some of the questions raised during Committee deliberations. The Commission provided a detailed explanation on all points and concluded that there was no necessity for it to recommend any statutory changes "which would differ materially from those already considered". In other words, the Commission indicates that the common carrier representative has not raised any additional problem with which, as a regulatory agency, it could not cope.

Report "A" fails to clearly focus the issue and was apparently written in an attempt to justify a Committee vote on October 19th that further study is needed. Thus it laboriously avoids both the facts and the issue. It creates an inference that, because Dr. John Frederick, Professor Emeritus of Transportation at the University of Maryland,

made no specific recommendation, then possibly irregular route common carriage is not too important. The fact is that on December 2, 1965, Dr. Frederick asserted to the Committee that the existence of irregular route carriers does not need to be justified but to the contrary they are necessary. Dr. Frederick even suggested to the Committee that the Legislature spell out the type of commodities which could be hauled and special types of equipment which could be used in irregular route common carriage. He was never requested to submit any specific statutory amendment. Report "A" glosses over the Public Utilities Commission's position by stating that it has never approached the issue from the view of public need. The Commission in its 1958 Biennial Report stated that "Public interest requires.....serious consideration" to clarifying so-called grandfather permits and simultaneously recommended that it be given "statutory authority" to issue common carrier certificates for transporting goods over irregular routes. The Commission reiterates this position in its Review and Comment on Dr. Frederick's Survey. On October 19, 1964, the Commission stated, "It is as necessary in the public interest to protect and foster transportation service performed in this State by specialized carriers.....as it is to protect common carriers of general commodities over regular routes." The Commission further stated that "Specialized carriers should be recognized as were the household goods carriers". "Public need" and "public interest" are synonymous as used by any regulatory agency.

In conclusion, Report "B" is not intended to create an impression that common carriers over regular routes should be without protection from unfair competition. They are entitled to it, but, at the same time, contract carriers who make a substantial investment in providing

needed transportation for specialized commodities and commodities utilizing specialized equipment should receive similar treatment. The common carriers should willingly accept some degree of responsibility for the public good and cease their opposition to fair and reasonable competition in serving specialized transportation needs of industry and business. Unfortunately the Committee did not take advantage of the offer by the Interstate Commerce Commission, Division of Operating Rights, Washington, D. C., to present the views of its experts. However, the "inherent advantages" of irregular route common carriage which are recognized in the federal transportation policy should be incorporated into this State's policy. Maine's lack of such a policy will compel more industries to purchase their own transportation equipment to the detriment of public transporters as well as industries and businesses which dislike shipper-owned equipment responsibilities.

The need for some form of common carriage which would better aid economic development in Maine at a lower cost has been debated for a generation. There is no reason for further vacillation and thus recommended legislation is hereto appended. This proposal seeks to improve upon L. D. 1498 and is consistent with the latest views expressed by all impartial experts in the transportation field, including the Maine Public Utilities Commission.

Proposed Legislative Document

AN ACT Relating to Transportation of Commodities for Hire by a Common Carrier.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 35 § 1552, amended. The first sentence of section 1552 of Title 35 of the Revised Statutes is amended to read as follows:

'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 to hire as a common carrier over regular routes between points within this State, or in the business of transporting household goods; disabled, collision, damaged, or repossessed motor vehicles; heavy machinery, dairy products and refrigerated products by truckload; liquid petroleum products in bulk in tank equipment by truckload; asphalts and tars in bulk in tank equipment by truckload; liquid, semi-solid or dry chemical products in bulk in tank or dump trailer equipment by truckload, as such ~~commodity~~ commodities shall from time to time be defined by the commission, and such other specific or generically grouped commodities in bulk and those requiring the use of specialized motor vehicle equipment as shall from time to time be defined by the commission and as the commission shall determine require transportation for hire as a common carrier by motor vehicle over irregular 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.'

Sec. 2. R. S., T. 35, § 1552, amended. Section 1552 of Title 35 of the Revised Statutes is amended by adding at the end of the first sentence

a new sentence to read as follows:

'The word "truckload" as used in this chapter means the use of a truck, trailer, or semi-trailer in the transportation of specified or defined commodities under consignment from one shipper to one or more consignees or from multiple shippers to one consignee.'

Sec. 3. R. S., T. 35 § 1552, sub-§§ 1-3, repealed and replaced.

Subsections 1 to 3 of section 1552 of Title 35 of the Revised Statutes are repealed and the following enacted in place thereof:

'1. Certificate for transportation of household goods and bulk commodities; service having been rendered. A certificate authorizing the transportation of household goods, as such commodity shall from time to time be defined by the commission, for hire as a common carrier over irregular routes, shall be granted as a matter of right when it appears to the satisfaction of the commission, after hearing, that an adequate and responsible service in transportation of used furniture or used household goods is being lawfully rendered by the applicant within the general area covered by the application, and that the applicant has been rendering such service without substantial interruption since the first day of January, 1963, and in cases where such authorized service has been so rendered the operation may lawfully be continued pending the issuance of such certificate, provided application therefor is made within 15 days from September 21, 1963.

A certificate authorizing the transportation of disabled, collision damaged, or repossessed motor vehicles; heavy machinery, dairy products and refrigerated products by truckload; liquid petroleum products in bulk in tank equipment by truckload; asphalts and tars in bulk in tank equipment by truckload; liquid, semi-solid or dry chemical products in

bulk in tank or dump trailer equipment by truckload, and such other specific or generically grouped commodities in bulk and those requiring the use of specialized motor vehicle equipment as such commodity or commodities shall from time to time be defined by the commission for hire as a common carrier over irregular routes, shall be granted as a matter of right when it appears to the satisfaction of the commission, after hearing, that an adequate and responsible service in the transportation of such commodity or commodities is being lawfully rendered by the applicant within the general area covered by the application and that the applicant has been rendering such service without substantial interruption since the first day of January 1965, and in cases where such authorized service has been so rendered the operation may lawfully be continued pending the issuance of such certificate provided application therefore is made within 30 days after the effective date of this act.

2. Common Carrier. Holders of contract carrier permits who since January 1, 1963, have not engaged in the transportation of used furniture or used household goods for hire and holders of contract carrier permits who since January 1, 1965, have not engaged in the transportation of disabled, collision damaged or repossessed motor vehicles; heavy machinery, dairy products and refrigerated products by truckload; liquid petroleum products in bulk in tank equipment by truckload; asphalts and tars in bulk in tank equipment by truckload; liquid, semi-solid or dry chemical products in bulk in tank or dump trailer equipment by truckload, as such commodity or commodities shall from time to time be defined by the commission, and such other specific or generically grouped commodities in bulk and those requiring the use of specialized motor vehicle equipment as shall from time to time be defined by the commission for hire but who propose to engage in such transportation as a common carrier over irregular routes shall, upon application be granted a certificate authorizing

the transportation of such commodity or commodities for hire as a common carrier over irregular routes when it appears to the satisfaction of the commission, after hearing, that such transportation was within the scope of the permit held by the applicant.

3. Limitation. A certificate issued under subsections 1 and 2 shall not grant more authority than existed by virtue of the contract carrier permit held by the applicant except as may result from adoption of the terms household goods; disabled, collision damaged, or repossessed motor vehicles; heavy machinery, dairy products and refrigerated products by truckload; liquid petroleum products in bulk in tank equipment by truckload; asphalts and tars in bulk in tank equipment by truckload; liquid, semi-solid or dry chemical products in bulk in tank or dump trailer equipment by truckload, as such commodity or commodities shall from time to time be defined by the commission or as may result from the definition of a specific commodity or certain related commodities grouped under a generic term.

Sec. 4. R. S. T., 35 § 1555 amended. The first sentence of section 1555 of Title 35 of the Revised Statutes is amended to read as follows:

'The term "contract carrier" as used in chapters 91 to 97 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 or common carriers of household goods, disabled, collision damaged, or repossessed motor vehicles; heavy machinery, dairy products and refrigerated products by truckload; liquid petroleum products in bulk in tank equipment by truckload; asphalts and tars in bulk in tank equipment by truckload; liquid, semi-solid or dry chemical products in bulk in tank or dump trailer equipment by truckload, as such commodity or commodities

shall from time to time be defined by the commission, or such other specific or generically grouped commodities in bulk and those requiring the use of specialized motor vehicle equipment as shall from time to time be defined by the commission, over irregular 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.†

/s/ Paul E. Merrill