

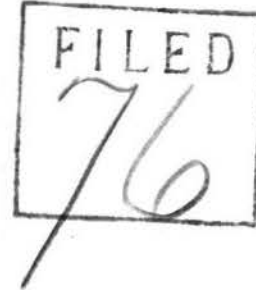
MOTOR CARRIERS

PUBLIC SERVICE  
COM.

Public Service Commission without authority to require foreign interstate carriers to comply with license section relating to foreign corporations doing business within state.

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January 20, 1940.



Mr. Daniel C. Rogers  
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Public Service Commission  
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Dear Sir:

This will acknowledge receipt of your recent request for an opinion, which reads as follows:

"Rule No. 4-(g), promulgated by the Public Service Commission and appearing in General Order No. 33-A, effective September 17, 1938, provides that if any motor carrier or contract hauler, making application to the Public Service Commission for authority to use the public highways of the State of Missouri, is a foreign corporation,

'..... it shall present with the application evidence of its authority to transact business in the State of Missouri; .....

"A certain foreign corporation, which has filed its application for authority to operate upon the public highways of Missouri, has taken the position that, inasmuch as its proposed use of the public highways of Missouri will be strictly limited to interstate commerce, the Commission has no authority to require it to comply with Sections 4596, 4597, 4598 and 4599 of the Missouri Statutes. Applicant suggests that, inasmuch as the freight which it would haul to Missouri destinations originates in another State and the

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freight which it would pick up at Missouri points of origin would be destined to points in other States, it is engaged exclusively in interstate commerce, and hence is not subject to the above provisions of the statute.

"The Commission, believing that the requirement of Rule No. 4-(g), above quoted is a beneficial one in its program of administering the Missouri Bus and Truck Laws, Laws of Missouri, 1931, pages 304-316, inclusive, as amended, contends it has authority to promulgate the rule mentioned.

"For example, Section 5267-(b) of the aforesaid Bus and Truck Law provides:

'(b) The Public Service Commission shall have power and authority by general order or otherwise to prescribe rules and regulations governing all motor carriers as herein defined.'

"Other provisions of the law indicate a legislative intent to give the Commission rather broad discretionary powers in promulgating rules necessary to carry out effectively the purposes of the Act."

Whenever authorized by the legislature the right of certain officers, boards and commissions to promulgate rules and regulations has always been recognized as the general proposition of law. State ex rel. Field et al. v. Smith et al. 49 S. W. (2d) 74, Sawyer v. United States 10 Federal (2d) 416, Ex Parte Cavanaugh v. Gerk, 313 Mo. 375. While this observation may be said to be axiomatic it does not necessarily follow, where the right is given that such right may be used

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to change the law itself. This has been pointed out in the case of *Sawyer v. United States*, supra, at page 420, as follows:

"Authority to make rules and regulations necessary for carrying out the purposes of a legislative act can confer no authority to change the provisions of the act itself, and thereby deprive one of a right given by the act. The Congress cannot delegate legislative power. That it cannot do so is universally recognized as a vital principle of our system of government under the Constitution. *Field v. Clark*, 143 U. S. 649, 692, 694, 12 S. Ct. 495, 36 L. Ed. 294. But the authority to make administrative rules is not a delegation of legislative power, and to deny the right of Congress to authorize a department of the government to establish administrative rules which shall have the force of law, as Mr. Justice Harlan said in *Union Bridge Co. v. United States*, 204 U. S. 364, 387, 27 S. Ct. 367, 374, (51 L. Ed. 523), "would be 'to stop the wheels of government.'" See, also, *United States v. Grimaud*, 220 U. S. 506, 519, 520, 31 S. Ct. 480, 55 L. Ed. 563. It is also undoubted that no "regulation" made by a department of the government under authority so conferred by an act of Congress can alter or amend the law, and that all that can be done is to regulate the mode of carrying into effect that which Congress has enacted."

The object and purpose we believe underlying the giving of such power to prescribe rules and regulations is aptly stated in the case *State ex rel.*

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Field v. Smith, supra, at page 76, wherein the Supreme Court of Missouri observed:

"The Legislature may not delegate the power to enact a law, or to declare what the law shall be, or to exercise an unrestricted discretion in applying a law; but it may enact a law complete in itself, designed to accomplish a general public purpose, and may expressly authorize designated officials within definite valid limitations to provide rules and regulations for the complete operation and enforcement of the law within its expressed general purpose."

From these considerations it is to be seen that certain details regarding the enforcement of any laws may be left to administrative officers. As was stated in the case *Ex Parte Cavanaugh*, supra, at page 380.

"It may empower certain officers, boards and commissions to carry out in detail the legislative purposes and promulgate rules by which to put in force legislative regulations. It may provide a regulation in general terms and may define certain areas within which certain regulations may be imposed, and it may empower a board or a council to ascertain the facts as to whether an individual or property affected come within the general regulation or within the designated area."

To illustrate we direct your attention to subdivision (d) of Section 5268, R. S. Mo. 1929, as amended, Laws of Missouri, at page 309, pertinent to your inquiry, wherein the legislature has expressly provided,

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"The commission shall adopt rules prescribing the manner and form in which motor carriers shall apply for certificates and permits required by this act. Among other rules adopted, there shall be rules as follows:  
(1) Application shall be in writing.  
(2) Shall contain full information concerning the ownership, financial condition, equipment to be used and the physical property of the applicant. (3) The complete route over which the applicant desires to operate or the territory which applicant desires to serve. (4) The proposed rates, schedule, or schedules, or time cards of the applicant."

It will be noticed that this portion of the statute makes it mandatory on the Commission to promulgate rules and regulations governing the particular subject matter.

With these observations we come to your precise question: has the commission exceeded the power granted to make rules and regulations for the enforcement of Section 5268, supra,? We think so.

Attention is directed to Section 5268, supra, subdivision (b), reading as follows:

"It is hereby declared unlawful for any motor carrier except as provided in Section 5265 of this act to use any of the public highways of this state for the transportation of persons or property, or both, in interstate commerce without first having obtained from the commission a permit so to do. The commission upon the filing of a petition for an interstate permit shall within a reasonable time fix a time and place for a hearing thereon.

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The commission shall cause a copy of such petition and notice of hearing thereon to be served upon the secretary of the state highway commission and upon the proper officer of each municipality maintaining the highway over which proposed interstate permit is desired, and each party so notified is hereby declared to be an interested party to said proceeding and may offer testimony as to the use and regulation of that part of said highway coming under its maintenance and police regulation. In determining whether or not a permit should be issued, the commission shall give consideration to the kind and character of vehicles permitted over said highway and shall require the filing of a liability insurance policy or bond in some insurance company, association, or other insurer authorized to transact insurance business in this state, in such sum and upon such conditions as the commission may deem necessary to adequately protect the interest of the public in its use of the highway, which liability insurance shall bind the obligors thereunder to make compensation for injuries to persons or loss of or damage to property resulting from the negligent operation of such interstate motor carriers."

This section of the statute we believe is plain and without ambiguity, therefore no room for construction exists. It is clearly within the power of the legislature to enact. *Atlantic Pacific Stages Incorporated v. Stahl* 36 Federal (2) 260 (1929). Since the legislature has enacted this section of the statute, is it not reasonable to assume, that the legislature deemed that the requirements therein imposed were sufficient for the regulation of carriers engaged exclusively in interstate commerce? We

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think so. This is because had the legislature the power to require a foreign carrier to comply with Sections 4596, 4597, 4598, 4599, R. S. Mo. 1929, relating to the licensing of foreign corporations that such would have been done. Since it was not done, it is believed that the legislature was fully aware of what requirements could be imposed upon interstate carriers so as to not burden interstate commerce. This observation is fortified by the decision of the Supreme Court of Missouri, in the case of International Text Book Company v. Gillespie 229 Mo. 397. In that case it was expressly held that to require a foreign corporation engaged exclusively in interstate commerce to comply with the sections of the statute, which the commission now seeks to require of foreign interstate carriers, would amount to a burden upon interstate commerce and therefore violate the Constitution of the United States.

We note particularly from your request for an opinion that other provisions of the act seem to indicate a legislative intention to give the commission broad discretionary power respecting the promulgation of rules necessary to effectively carry out the provisions of the act. This is true. On the other hand it is not believed that the power asserted by the rules and regulations presently promulgated can be said to have been promulgated for the purpose of enforcing the provisions of the act. Clearly to us the rule promulgated is but an additional requirement, and not made for the purpose of enforcing the provisions of the act. We believe an analysis of subdivision (b) 5268, clearly supports this view.

#### CONCLUSION

In view of the above, it is the opinion of this department that the rule promulgated by the Public Service Commission requiring foreign corporations engaged exclusively in interstate commerce to comply with Sections 4596, 4597, 4598, 4599, R. S. Mo. 1929, is invalid, because in excess of the power granted by the legislature to make rules and regulations.

Respectfully submitted,

APPROVED:

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RCS/mc