Statutory Definitions of Public Utilities and Carriers (continued)

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STATUTORY DEFINITIONS OF PUBLIC UTILITIES
AND CARRIERS*

(Concluded.)

MOTOR CARRIERS

In this field we shall find later statutes and more unanimity among the statutes. With the tremendous expansion of paved roads in the early twenties, commercial trucks and busses increased at such a rapid rate that the congestion of the highways became an acute problem in the states. A number of states tried to solve the problem by regulating all commercial motor carriers as common carriers and subjecting them to the jurisdiction of the public service commissions, hoping to limit the number by requiring them to obtain certificates of convenience and necessity as a condition precedent to operation, and yet protect the public against exorbitant charges by fixing the rates. But they soon received a rude awakening in the Duke,127 Frost,128 and Cahoon129 cases. These cases held that a private carrier could not be converted into a public carrier by legislative fiat, and that a carrier was not public unless it held itself out to serve the public indiscriminately in whatever field of transportation it afforded. It therefore followed that the states could not solve the problem by fixing of charges and limiting the number of certificates of convenience and necessity.130 Mr. Hard-

*The first part of this article was published in (1937) 12 Notre Dame Lawy. 246.

130 Messrs. Rosenbaum and Lilienthal, writing in 1926, said: "It is submitted that within the bounds of the practical capacity of the commissions to act, private carriers, equally with public ones, should be required to obtain certificates of convenience and necessity. Regulation by means of such certificates is reasonably devised to protect the public from the abusive use of the roads, from the
man’s conceptualists constituted the majority of the Court at that time, and their concept was a mighty conservative one at that. There sprang up everywhere motor carrier clubs, associations, etc., of all sorts and descriptions in order to get all the business possible without “holding themselves out to serve all who came.” How was this problem to be solved? Messrs. Brown and Scott, writing in 1931,\(^{131}\) analyzed the power of the states to deal with this problem as it was believed to exist at that time thusly:

“Perhaps the best approach to an analysis of the power of the state to regulate the private carrier, in that capacity, is again found in the Frost case. Without resorting to the somewhat vague term ‘police power,’ it is clear that there are two distinct types of power which the state may attempt to assert. These are, first the power arising from the public control of the highways to enact measures in the interest of preserving their condition and the safety of the traveling public; and second, the power to regulate the business of the carrier by reason of the nature of that business.

“Much can be and has been accomplished in the solution of the problems created by automotive transportation through the exercise of the state’s control of its highways. Speed, height, and weight limitations, licensing and registration provisions, requirement of indemnity


Messrs. Brown and Scott, writing in 1931, make this reply: “Without stopping to quarrel with some of the practical assumptions implicit in this language, its use suggests insufficient analysis of the economic and constitutional situation dealt with. Regulation designed to protect the public from the evils of unregulated competition is not regulation of the use of the highways at all. It is simply regulation of the business of carriage which cannot be imposed either directly or indirectly upon a business not affected with a public interest. A legislature might feel that unregulated competition in the grocery business was an evil. But it could not be dealt with by requiring grocers to apply for certificates of convenience and necessity before their privately owned trucks could use the highways, thus coping with the assumed evil by granting certificates to only that number of grocers which a commission might conclude was enough to satisfy the demands of the community.” Brown and Scott, *Regulation of the Contract Motor Carrier Under the Constitution*, 44 HARV. L. Rev. 530, 560. Previously, at page 542, they cited numerous court and commission cases in support of the proposition that certificates of convenience and necessity were not police measures to protect the highways from congestion, but were granted or withheld depending upon the adequacy or inadequacy of the existing service, “however that adequacy or inadequacy may be measured.”

bonds or insurance protection to the public, special tax exactions for the use of the highways, insistence upon proper qualifications of those who drive motor vehicles, all these may be imposed upon all who own or operate motor vehicles, in the interest of public safety and the like. The imposition is, however, upon the general public as such. The type of business or other purpose for which the vehicle is employed has nothing to do with the regulation enforced. The validity of such measures is unassailable.

"Regulation imposed upon a particular business or occupation for economic reasons stands obviously upon a very different footing. There may well be constitutional sanction for such regulation, and that applied to public utilities is an obvious example. The source of this power has, through a long series of decisions, come to be expressed by the elastic formula that the business in question is 'affected with a public interest.'"

The authors proceed to show that private carriers are not affected with a public interest, and are therefore subject only to the first power described. And as they point out the United States Supreme Court in the Frost case conceded that a state might prohibit private motor carriers from using the highways altogether, but could not grant the privilege upon a condition which required the relinquishment of constitutional rights, that is, could not require private carriers to submit to the usual regulations imposed upon public carriers as a condition to the state's consent to use the highways.

With the law in this condition, Texas tried a new plan. The Texas statute regulated common carriers as such by requiring them to obtain certificates of convenience and necessity, and gave the Railroad Commission authority to fix their charges. Then it provided that contract carriers should obtain a permit from the Railroad Commission which should be granted only after a hearing, and not if the Commission was of the opinion "that the proposed operation of any such contract carrier will impair the efficient public service of any authorized common carrier or common carriers then adequately serving the same territory," and gave the Com-

182 Texas Acts 1931, c. 277, House Bill No. 335.
mission authority to fix the *minimum* rates of such carriers "which shall not be less than the rates prescribed for common carriers for substantially the same service." The Act was drawn so as to prescribe separate and distinct regulation for each type of carrier. Section 22b of the Act contained a broad declaration of policy. It read:

"The business of operating as a motor carrier of property for hire along the highways of the state is declared to be a business affected with the public interest. The rapid increase of motor carrier traffic, and the fact under existing law many motor trucks are not effectively regulated, have increased the dangers and hazards on public highways and make it imperative that more stringent regulation should be employed to the end that the highways may be rendered safer for the use of the general public; that the wear of such highways may be reduced; that discrimination of 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 various transportation agencies of the state may be adjusted and correlated so that the public highways may serve the best interest of the general public."

The United States Supreme Court, in the case of *Stephenson v. Binford*,\(^1\) sustained the constitutionality of the plan. That was the cue for the other states, and we shall see the influence of this case on the various statutes. We shall also note that a "declaration of policy" has become quite the vogue.

**Public Carriers**

Motor carriers are usually divided by the statutes into three groups: (1) common carriers of passengers and property, (2) private carriers of passengers, and property for others, and (3) persons carrying property for sale, rent, lease, bailment or to further commercial purposes. The first group is divided into two groups: (a) all common carriers, and (b) only those common carriers which operate "between fixed termini or over regular routes." The chief distinction between group (1) and group (2) is that the carriers of the

first group hold themselves out to carry for the public indiscriminately, while the second group (contract or private carriers) have retained their right of discrimination. Perhaps, that is the distinction.

The statutes usually run rant on defining all terms used. This is illustrated by the Alabama Statute\(^\text{184}\) which reads:

"'Motor transportation' shall be construed to mean the business of carrying and transporting passengers or property in motor propelled vehicles of any kind whatsoever for hire as common carriers over any public street, alley, road or highway in this State, except transportation solely and wholly within the limits of any municipality, and/or within the police jurisdiction thereof; the term 'motor propelled vehicle' or 'motor vehicle' when used in this Act shall be held to mean any automobile, automobile truck, automobile or motor bus, or any other self propelled vehicle or vehicles used in connection therewith not operated or driven upon fixed rails or tracks; the term 'highway' as used in this Act shall be construed to mean any public road, street or alley dedicated to public use, and/or maintained by the expenditure of public funds, whether within or outside any incorporated city, town or village; the term 'motor transportation company' shall be construed to mean any corporation, person, partnership or association, or the lessees, trustees, or receivers thereof, owning, controlling, operating and/or managing (1) any motor propelled vehicle not operated on or over rails, used in the business of transportation of passengers or property for hire as a common carrier over any highway in this State, or (2) any terminal or station facilities for passengers, freight or express transported by such company. (1) 'Person' or 'persons' shall be held to include firm, corporation, partnership or association, or any lessee, trustee or receiver thereof, provided, however, that this Act shall not apply to motor vehicles engaged exclusively in transporting solely within the limits of any city, town or village, in this State or within the police jurisdiction thereof. 'Fixed termini,' or 'regular route,' as used herein or in any certificate issued hereunder shall mean the termini between which or route over which such motor transportation company shall usually or ordinarily operate, though departures from such termini or route may be periodical or irregular. 'Common carriers' in the meaning of this Act shall be held to include only motor transportation companies operating between fixed termini or over regular route and who hold out to carry for hire, so long as it has room, for all persons applying, or goods of every one bringing goods to him for hire."

It will be noticed that the Alabama Statute falls in the (1) (b) classification in that it regulates only those com-

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mon carriers operating "between fixed termini or over regular routes." This feature is present in one form or another in the definitions in the statutes of the following list of states: Colorado,\(^{135}\) Idaho,\(^{136}\) Illinois,\(^{137}\) Iowa,\(^{138}\) Louisi-


Section 1. (d) provides: "The term 'motor vehicle carrier,' when used in this Act, means and includes every corporation, person . . . owning . . . or managing any motor vehicle used in serving the public in the business of the transportation of persons or property for compensation as a common carrier over any public highway between fixed points or over established routes, or otherwise, whether such business or transportation is engaged in or transacted by contract, or otherwise."

Section (g) defines "fixed points" similarly to the definition of "fixed termini" in the Alabama Statute.

Although a literal interpretation of the phrase "or otherwise" would destroy the effect of the limitation "between fixed points or over established routes," the Commission has provided, in Rule 2 (g), that the application for a certificate of public convenience and necessity must contain a tariff of rates and fares "to be charged for the transportation of persons or property between points on the proposed route . . . ."

Section 23 provides: "Nothing in this Act shall be construed as prohibiting the intermittent transportation of farm product to market or supplies to the farm by any person chiefly engaged in farming, or to the transportation of children to and from school."

Private Motor Carriers are regulated by Chapter 120 of the Laws of 1931 (as amended by the Laws of 1935, No. 294).

Section 1 (h) declares such carriers to be all carriers of persons and property for others not included in Section 1 (d), supra, and divides them into two classes: Class A those operating "over substantially regular or established routes or between substantially fixed termini; or to a fixed terminus or termini;" and Class B are those who do not so operate.

\(^{136}\) Idaho Code (1932) Tit. 59 (as amended, § 59-801). The Statute is broad enough to include both common and contract carriers ("used in the business of transporting persons and or property for compensation") between fixed termini or over a regular route. But a previous similar statute was interpreted to apply only to common carriers. See: Smallwood v. Jeter, 42 Idaho 169, 244 Pac. 149 (1926); Sanger v. Lukens, 26 Fed. (2d) 855 (C. C. A. 9th, 1928). This Section exempts intra-city and suburban carriers, certain carriers of agricultural and horticultural products, and vehicles used for "the sole purpose of carrying United States mail or property belonging to the United States." Section (g) defines "between fixed termini or over a regular route" similarly to the definition in the Alabama Statute, and states that its determination shall be a question of fact.

\(^{137}\) Ill. Rev. Stat. (1935) c. 111a, § 72. Although the Statute and Rule 1 of General Order No. 133 (as amended) of the Illinois Commerce Commission would seem broad enough to include all common carriers, yet the Commission has interpreted the Act as not including taxicabs, since the Act "seems to contemplate that a public utility in the nature of a common carrier of passengers for hire must operate upon a schedule not only of rates and charges for the service, but also between fixed and definite points." Newcomb v. Yellow Cab Co., No. 4122, 3 Ill. P. U. C. R. 69, 70 (1916); and the Commission also held, in
ana,\textsuperscript{139} Maine,\textsuperscript{140} Maryland,\textsuperscript{141} Massachusetts,\textsuperscript{142} Minnesota,\textsuperscript{143} Mississippi,\textsuperscript{144} Montana,\textsuperscript{145} Nebraska,\textsuperscript{146} Nevada,\textsuperscript{147}

\textbf{Illinois Central R. R. Co. v. Crescent Transit Co.}, No. 17154, 7 Ill. C. C. R. 1072 (1928), that truckmen operating neither on regular schedules of rates or charges, nor over fixed routes or between fixed termini need not obtain certificates from the Commission for operation.

Section 44, c. 95a, requires taxicabs to be bonded, the supervision of which is placed in the Commission.

\textsuperscript{138} \textit{Iowa Code} (1927) § 5105-a1. This Statute includes carriers "of freight and passengers for compensation between fixed termini, or over a regular route, even though there may be occasional, periodic or irregular departures from such termini or route; except those owned by school corporations or used exclusively in conveying school children to and from schools." Such carriers are required to secure certificates of convenience and necessity. Iowa Acts 1929, c. 129 (as amended), defines the term "motor trucks" as embracing "any automobile, automobile truck, or other self propelled vehicle, including any trailer . . . not operated upon fixed rails or tracks, used for transportation of freight for compensation, not operating between fixed termini, nor over a regular route." Such carriers are required to secure \textit{permits} before operation.

\textsuperscript{139} Louisiana Laws 1926, No. 292, § 1. This Statute subjects common carriers of persons or property operating "between fixed termini or over a regular or irregular route" to regulation. The latter phrase is defined similarly to the definition in the Alabama Statute. The Act exempts hotel busses, school busses, funeral cars, and taxicabs.

\textsuperscript{140} \textit{Me. Rev. Stat.} (1930) c. 66, § 1. This Statute subjects all motor carriers of passengers for hire operating "over regular routes between points in this State" to regulation. "Regular routes" are defined as defined by the Alabama Statute. Chapter 259 of the Laws of 1933 (as amended by Laws of 1935, c. 146) deals with the regulation of motor carriers of property. Section 1 is a declaration of policy. Section 2 requires common carriers of freight "over regular routes between points in this State" to secure certificates of convenience and necessity before operation, and regular routes are again defined as defined in the Act relating to carriers of passengers. Section 5 defines "contract carrier" so as to include all motor carriers of freight "other than common carriers over regular routes." This section excludes casual carriers. Section 10 exempts from operation of the Act intra-city and suburban carriers, contractors engaged in construction work for any branch of the United States Government, or for the State or any political subdivision thereof, and transportation of newspapers. Certain carriage is exempted from rate regulation.

\textsuperscript{141} As the statutes of Maryland are quite confusing, perhaps the Rules of the Public Service Commission governing Motor Carriers would give us a better idea of what carriers are subject to regulation:

"Rule 3. \textit{Definitions}. . . (e). The word 'Motor Vehicle' shall include all vehicles or machines propelled by any power other than muscular used upon the public roads, not on rails, for public transportation of persons or property, for compensation."

"Rule 4. \textit{Necessity for permit}. Except as otherwise provided in Rule 39 hereof (which provides for substitute vehicle in case of breakdown, etc.) no motor vehicle shall be operated over roads of this State until a permit has been obtained from the Commission authorizing such operation. . . . " These permits seem to be granted as a matter of right if the applicant can meet the specifications required by the Rules.
"Rule 7. Established Route. No motor vehicle, for which a permit has been issued, shall be operated in the public transportation of persons and property for hire over any route other than that prescribed therein. . . ."

"Rule 7-A. Distinction between interstate and intrastate service. (1) Permits issued by this Commission for interstate operation only shall not include the right to receive passengers or freight at a point in Maryland destined to any other point in Maryland. (2) Motor vehicle operators transporting interstate passengers or freight shall not transfer said passengers or freight, at any point in Maryland, to another interstate operator for delivery to another point in Maryland, when there is an authorized intrastate service between the said points in Maryland, nor shall any such interstate operator receive, or transport between any points in Maryland, passengers or freight so transferred."

"Rule 8. Fixed Schedules. No motor vehicle shall be operated on any schedule other than that authorized in its permit, . . . without the consent of the Commission."

Chapter 585 of the Acts of 1931 gave the Commission substantially the same jurisdiction over taxicabs operating in Baltimore and vicinity.

142 Mass. Gen. Laws (1932) c. 159A. Section 1 of this Statute provides that carriers competing with railways, or between fixed termini or over regular routes in cities must secure a license from the city. For inter-city operation the carrier must secure a license from each city, but if license is granted by all except one then the Department of Public Utilities may grant the license. Section 7 declares that all licensees under this Statute must secure a certificate of convenience and necessity before operation, and that the certificates must specify the routes to be used.

Chapter 159B of the General Laws, Enacted in 1934 (Mass. Acts 1934, c. 264, § 1), includes common carriers of freight "over regular routes between points within this commonwealth." The words "regular routes" are given the customary definition. Such carriers are required to secure certificates of convenience and necessity as a prerequisite to operation. Section 3 of this Chapter defines "contract carrier" as including "every person engaged in transporting property for hire by motor vehicle, other than a common carrier as defined in Section 1." This Section also contains a declaration of policy. Section 4 requires contract carriers to secure a permit before operation. Section 10 exempts from the provisions of this chapter "(1) motor vehicles while engaged exclusively in work for any branch of the government of the United States or for any department of the commonwealth, or for any county, city, town or district; (2) motor vehicles while engaged exclusively in the delivery of the United States mail."

143 Minn. Stat. (Mason, 1927) § 5015-2. This Statute includes public carriers of persons and property "between fixed termini or over a regular route," which phrase is defined similarly to the definition in the Alabama Statute. It exempts school, and hotel busses, taxicabs, intra-city carriers, and certain carriers of agricultural products. Chapter 170 of the Session Laws of 1933, Section 1 (f), includes all common carriers of property not operating between fixed termini or over a regular route. Section (g) provides: "The term 'contract carrier' means any person engaged in the business of transporting property for hire over the public highways of this State, other than as a common carrier." This Section exempts from regulation intra-city and suburban carriers and certain carriers of agricultural products. Section 2 gives the Commission authority to fix minimum rates. Section 24 is the declaration of the legislative policy.

144 Miss. Code Ann. (1930) § 7117 (h). This Statute includes common carriers of persons and property between fixed termini or over regular routes and
New Hampshire, New York, Oklahoma, Rhode Island, Vermont, Washington (passengers and ex-

contains the same exemptions as set forth in the Minnesota statute. This Section also contains the usual definition of the phrase "between fixed termini or over regular route."

145 Mont. Laws 1931, c. 184. Sections 1 and 2 of this Statute divide motor carriers into three classes: Class A includes common carriers of persons and property between fixed termini or over regular route; Class B includes all other common carriers of persons and property; and Class C includes private or contract carriers of persons and property. The Act exempts school busses, occasional hauling, logging and mining business, and concerns operating in construction and maintenance of the highways.

146 Nev. Comp. Stat. (1929) c. 60. Section 101 of this Statute subjects to regulation carriers of passengers and baggage “between fixed terminals in this State.” The language is broad enough to include both common and private carriers. But the Commission does not have the power to fix rates for any motor carrier; nor has it the power to deny any applicant a certificate even though the public convenience and necessity would be served by its denial. Re S. Y. A. Bus Line, P. U. R. 1928E, 98 (1928). The Act exempts from regulation, if the Act can be called a regulatory act at all, intra-city carriers, taxicabs, hotel and school busses.

147 Nev. Laws 1933, c. 165, as amended by Laws 1935, A. B. No. 246. Section 1 is a declaration of policy. Section 2, paragraph (b), provides: “The term ‘common motor carrier or property,’ when used in this Act, shall mean any person engaged in the transportation by motor vehicle of property for hire as a common carrier conducting fixed route or on-call route operations.” Paragraph (c) provides that a “contract motor carrier of property” shall include all carriers for hire “not a common motor carrier of property.” Paragraphs (e) and (f) define common and contract carriers of passengers in a manner analogous to the definitions of carriers of property. In paragraph (g) “motor convey carrier” is defined as a motor carrier of automobiles, etc., which are to be sold, or stored for sale. Section 3 exempts from the operation of the Act intra-city and suburban carriers, farmers carrying their produce to market, school busses, sight-seeing tours, transportation of road machinery, and transportation of minerals and mining supplies “in the producer’s own vehicle.”

148 N. H. Laws 1933, c. 169. Section 1 of this Statute is a declaration of policy. Section 2 provides that common carriers of property must designate their routes in application for certificates of convenience and necessity. Section 3 includes all carriers of property other than common carriers. Section 4 exempts casual haulers, intra-city and suburban carriers, United States and State vehicles (including counties, etc.), and mail carriers from the provisions of this Statute. But see Rule (4a), of the Commission’s Rules, which defines “common motor carriers” as including any carrier “who indiscriminately carries or holds himself by advertising or otherwise to carry the property of those choosing to employ him.” Chapter 258 of the Public Laws of 1926 subjects common carriers of passengers operating on regular routes to regulation.

149 Section 2 of the Public Service Law of New York (Subd. 28, added by Laws 1931, c. 531, amended by Laws 1932, c. 111) defines “omnibus line” as a public carrier of passengers along the same route or between stated termini, or on a fixed or stated schedule. It exempts taxicabs, hotel and school busses, and local transportation between railroad stations. This Statute defines “omnibus corporation” as any person or concern operating an “omnibus line.”
press),\textsuperscript{158} Wisconsin,\textsuperscript{154} and Wyoming.\textsuperscript{155} What does this phrase mean? The statutes usually define it quite similarly.
to the definition in the Alabama Statute. Wisconsin defines it like Alabama except for this sentence which is added to the Wisconsin definition:

"Fixed termini shall mean incorporated or unincorporated municipalities in this State or the boundary lines of this State." 159

The best discussion of this phrase which I have been able to find is found in the case of *State v. Blecha & Owen Transfer.* 157 This was an action in equity brought by the State of Iowa upon the relation of its Board of Railroad Commissioners against the defendant for an injunction to restrain them from using the highway between Cedar Rapids and Iowa City for transportation purposes; it being alleged that the defendant was operating motor vehicles between fixed termini and over regular routes without a certificate of convenience and necessity. The defendant denied this allegation and alleged that they had been doing a general trucking business under a permit from the Board of Railroad Commissioners. The trial court found that the defendant did not operate on any fixed schedules, nor made no regular runs, but hauled for farmers and merchants whenever called. On this evidence the trial court dismissed the petition, and its action was sustained by the Supreme Court of Iowa. The Court said:

"The appellant argues that a motor carrier may operate between fixed termini, and not have a freight station or depot. This is not questioned by the appellees. The appellant's contention in this respect is apparently correct. See *Chelan Transfer Co. v. Foote,* 130 Wash. 511, 228 Pac. 297, where it is held that a terminus of a route of one operating a motor vehicle under the required certificate of public convenience is not so circumscribed that the holder of the certificate may not collect or distribute the freight at the residences of his patrons or their places of business, or at other serviceable points. But this does not solve the problem. . . . True, there may be 'occasional, periodic or irregular departures from such termini or route.' In other words, the

the Act intra-city carriers, farmers and ranches transporting their own products to markets, school busses, motor vehicles owned and operated by the United States or by the State or by any political subdivision thereof, and United States mail.

159 Wis. Stat. (1931) c. 194.01 (7).
157 213 Iowa 1269, 239 N. W. 125 (1931).
party, or parties, having a certificate of convenience and necessity may, for good reasons, make immaterial variations from the route. But because one may have a certificate of convenience and necessity for the operation of motor vehicles, this does not signify that others may not legitimately use the highways; the same route and between the same termini.

"It will be observed from the foregoing testimony that the defendants had no predetermined plan relative to trips made to and from Cedar Rapids. If there is no call, no trip is made; if a call is made, the highway extending between them and the place of the call determines the route, and also the termini thereof. In other words, one terminus is where they are, and the other where they must go in obedience to the call. As to the defendants, there is nothing regular, predetermined, or fixed about their routes or the termini thereof. Their route one day may be between Iowa City and Davenport, or any other town or city, and between Iowa City and Cedar Rapids the next, or some subsequent date, or vice versa. . . . The termini of their hauls are no more fixed than their routes are regular. It seems quite clear to us that the defendants are not operating their trucks between fixed termini or over regular route.

"This is a case of first impression in this state, but the decisive question has been passed upon by the Supreme Court of Minnesota in State v. Boyd Transfer & Storage Co., 168 Minn. 190, 209 N. W. 872, 874. The court, in passing upon the question, said:

"'Even if it [the defendant] is a common carrier, defendant is not subject to the act, unless it is transporting goods "between fixed termini or over a regular route." The quoted phrase is declared by subdivision (g) of section 2 to "mean the termini or route between or over which any auto transportation company usually or ordinarily operates any motor vehicle, even though there may be departures from said termini or route."

"'We take the statute to mean that, in order to come within its purview, a business must be confined, through custom or predetermined plan, to a selected route or routes travelled habitually if not at stated intervals. There is nothing of that kind in this case—nothing regular or predetermined about either routes or termini. Recurring but constantly varying occasion and no pre-existing plan or custom determines the route of each haul, and it may not be followed again for months, and in some cases not at all. If travel has no regular route, how can it have "fixed termini" except as any single journey must have termini? In our opinion the one, in the present sense, implies the other. It is the case where the disjunctive "or" of the statute is not of controlling significance. The termini of defendant's hauls are no more fixed than its routes are regular. They are no more fixed or regular than those of the ordinary drayman. They are as much subject to the caprice of
occasion, and so cannot be either "fixed" or regular. "Fixed" as a modifier of "termini" denotes predetermination, establishment, and a degree of constancy and invariability which excludes subservience alone to mere occasion. Webster's New International Dictionary; 3 Words and Phrases, First Series, p. 2830.

"In its complete subjugation to the requirements of recurring occasion is found a complete differentiation of defendant's hauling from that of an ordinary railroad. The latter's routes and termini are, by predetermination, made both regular and fixed. The routes are fixed by the line itself and the termini confined to its established stations.

"The statute furnishes much internal evidence in support of our interpretation. The statutory definition is self-qualified by its reference to possible "departures from said termini or route." That implies a fixing of both route and termini by some sort of predetermination. [Writer's italics.] Otherwise there could be nothing fixed or regular from which to make departures. The time schedules contemplated by the act have the same implication. It is still more apparent from the provision of section 4, authorizing departures by any carrier subject to the law "from the route over which it is authorized to operate." The determination of "public convenience and necessity" by the commission, which is prerequisite to any carrier's operating under the law, seems to refer to the convenience and necessity of operation over ascertained and designated highways. The petition for the certificate of convenience and necessity must show "the public highway or highways over which, and the fixed termini between which, or the route or routes over which, it intends to operate"; also, and more significant, the "proposed time schedule." The definition itself, as well as its context, shows an intent to exclude rather than include such a general transfer business as that of defendant which hauls as occasion requires, and not over routes or between termini made regular or fixed by predetermining plan or custom.' [Writer's italics.]

"It will be noted that the statutes of Minnesota are analogous to the statutes contained in chapters 252-A1 and 252-A2, Code 1927. The reasoning of the pronouncement of that court is conclusive on the decisive question involved in the instant case."

In the case of State v. Ooten the Supreme Court of Iowa had before it a case quite similar to the case of State v. Blecha & Owen Transfer. In the Ooten case the defendant's trucking activities along a certain route had become quite regular on Tuesdays and Fridays. On that subject the Court said:

"A truck operator, who operates between fixed termini and on a regular route, is readily identified. But when one operates upon any and all routes, and between any and all termini, it becomes a question of degree whether sooner or later his business may not concentrate upon a regular route and two fixed termini. As between two termini there can hardly be other than a 'regular route,' if the distance be short."

The Court held that this defendant's business had not yet reached that degree where it would fall in the classification under consideration. The degree, however, was reached in the case of State v. Mercer. The defendant was operating under a permit granted by the Board of Railroad Commissioners to do a public trucking business not between fixed termini nor over a regular route. The evidence showed that the defendant had for some time made daily trips between Burlington and Keokuk over U. S. Highway No. 61; that at least on five occasions he had carried freight; that he had a fixed charge for his haul; and that he solicited business at both ends of this route. The Court held that that was enough, saying:

"It seems to us that the evidence in this case shows that the appellee Mercer Transfer & Storage Company had a predetermined plan relative to trips between Burlington and Keokuk. Trips were made practically daily. The route followed was Highway No. 61. The Mercer Transfer & Storage Co. solicited business at Keokuk for transportation to Burlington. It had a fixed charge for freight between Burlington and Keokuk. It had contracts with various wholesale houses and manufacturing concerns for handling their shipments between Burlington and Keokuk. The route of the appellees was a regular route. The termini were fixed at Burlington and Keokuk. . . . The mere fact that the Mercer Transfer & Storage Company was a permit holder under Chapter 252-C1 does not give it a permanent status. Its business has developed and it clearly comes within the meaning of the statute created by chapters 252-A1 and 252-A-2."

The following statutes include all public motor carriers, and do not limit the class to those operating "between fixed termini or over regular routes": Federal, Arizona,
California\textsuperscript{162}, Connecticut\textsuperscript{163}, Delaware\textsuperscript{164}, Florida\textsuperscript{165}, Georgia\textsuperscript{166}, Indiana\textsuperscript{167}, Kansas\textsuperscript{168}, Kentucky\textsuperscript{169}, Michigan\textsuperscript{160}, regular or irregular routes.\textsuperscript{15} Section 203 (a) (15) defines "contract carrier by motor vehicle" as all other carriers of persons and property not included in paragraph (14). Section 203 (b) exempts school busses, taxicabs, hotel busses, depot transportation, certain carriers under the control of other departments of the government, certain agricultural carriers, distribution of newspapers, intra-city and suburban carriers, and casual haulers.

\textsuperscript{161} Ariz. Laws 1933, c. 100, p. 472. Section 1 defines contract carriers of persons and property to include all carriers for hire other than common. Section 2 exempts school busses from the provisions of the Act.


\textsuperscript{163} Conn. Pub. Acts 1935, c. 126. Section 1 provides for the regulation of both common and contract motor carriers of property. Section 2 exempts motor vehicles "while engaged exclusively in work for and under contract with any branch of the government of the United States or any department of the State, or for any county, city, borough or town; nor shall this Act apply to carriers by motor vehicles operating exclusively within the limits of any city or town of this State, or between any city or town and adjoining territory, as shall be determined by the Commission." Section 1405c of the General Statutes (Cum. Supp.) provides: "The definition of 'motor bus' contained in Section 3527 is amended to read as follows: 'Motor bus' shall include any public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation similar to that afforded by street railway companies, by indiscriminately receiving or discharging passengers, or operated on a regular route or any portion thereof, or operated, between fixed termini and public service motor vehicle operated over highways within this State or between points within this State and points outside of this State." Section 1425c brings taxicabs under the jurisdiction of the Commission, and they are required to obtain certificates of convenience and necessity as a prerequisite to operation. Section 1427c defines "motor vehicle in livery service" as any carrier of passengers for hire except motor bus, taxicab, and school busses. Such carriers are required to obtain permits.

\textsuperscript{164} Del. Laws 1935, c. 39. Section 2 defines both common and contract motor carriers of persons and property. Section 3 exempts intra-city and suburban carriers, school busses, mail carriers, farmers and casual haulers of farm products, United States- and State-owned and operated vehicles, and wreckers. Section 4 is a declaration of policy.

\textsuperscript{165} Fla. Laws 1935. This Statute (Fla. Laws 1935, p. 793) exempts all intra-city carriers. Chapter 14764 of the Acts of 1931 classifies motor carriers for the purpose of regulation; and that classification is described by the Supreme Court, in Riley v. Lawson, 106 Fla. 521, 143 So. 619 (1932), thus: "Chapter 14764, Acts of 1931 \ldots permits generally the use of the State highways for the purpose of motor carriage of persons and property for hire. But in permitting the general use the Statute undertakes to classify the users into three separate and distinct classes. Each of these three separate and distinct classes is placed under the jurisdiction of the State Railroad Commission for the purpose of appropriate regulation pursuant to statutory provisions and subject to the limitations of our system of constitutional law. The three classes thus identified and defined in the statute are: (1) Auto transportation companies operating motor vehicles for the
transportation of persons and property as common carriers for compensation; (2) Auto transportation companies operating motor vehicles for the transportation of persons and property as private contract carriers for compensation over the highways where such carriage consists of continuous or recurring carriage under the same contract; (3) Auto transportation companies operating ordinary 'for hire' motor vehicles on the public highways in this State in the transportation of persons or property for compensation.” The Court also says that each class must obtain a certificate of convenience and necessity as a prerequisite to operation, but justifies it constitutionally by saying that the considerations for granting or withholding the certificates are different for each class.

166 Ga. Acts 1931, p. 179 (Supp. 1932, § 1770 (60ppp)) (e)). All common carriers by motor vehicles of persons and/or property. Section 1770 (60pppp) exempts from the provisions of the Act school busses, intra-city and suburban carriers, and motor carriers operating in connection with interstate commerce.

167 Ind. Acts 1935, H. B. No. 418. Section 2 (g) of this Statute includes all common carriers of persons and property; paragraph (h) of this Section includes contract carriers of persons and property. Section 3 exempts intra-city and suburban carriers, United States mail, school busses, government vehicles, and certain carriers of farm products. Section 4 states the purpose of the Act.

168 KAN. REV. STAT. (Supp. 1933) c. 66, Art. 1, as amended. Section 66-1108 defines public motor carriers of persons and property, and contract carriers of persons and property as including all carriers not defined as public carriers. Section 66-1109 exempts from the Act intra-city and suburban carriers, funeral cars, ambulances, certain carriers of farm products, certain carriers from the point of origin to a common carrier, and school busses.

169 Ky. STAT. (Carroll, Supp. 1933). Section 2739j-42 includes common motor carriers of persons and property; contract carriers are defined to include all carriers other than common carriers. This Section exempts casual haulers, and those hauling for themselves.

170 Mich. Pub. Acts 1933, No. 254, Art. I. Section 1 (f) defines common motor carriers of property; paragraph (g) defines common motor carriers of passengers; paragraph (i) defines contract motor carriers of property; paragraph (j) defines contract motor carriers of passengers, the contract carriers being defined to include all carriers for hire other than common carriers. Section 2 states the general purpose of the Act. Section 3 exempts from regulation certain local carriers operating within a radius of 40 miles of their terminal provided that they do not furnish service between two or more cities or towns.

171 Mo. Laws 1931. Section 5264 (b) of this Statute defines public motor carriers of persons and property, except regular route carriers in cities and their suburbs; paragraph (c) defines “contract hauler" to include carriers of persons and property other than common carriers and excepts intra-city and suburban carriers. Section 5265 exempts from the operation of the Act school busses, taxicabs, United States mail, certain carriers of dairy and farm products and distributors of newspapers.

172 N. J. Pub. Laws 1926, c. 144. Section 1 of this Statute defines “auto bus" as including all public carriers of passengers by motor vehicle with the exceptions of taxicabs, hotel busses, and school busses.

173 N. C. CODE (1931). Section 2613 (j) of this Statute seems to subject both common and contract carriers of passengers and property operating between cities and town to regulation. Section 2613 (k) exempts from the opera-
tion of the Act school busses, vehicles used in religious services, United States 
mail, certain carriers of agricultural products and distributors of newspapers.

174 N. D. Laws 1933, c. 164, as amended. Section 1 (b) states the purpose 
of the Act. Section 2 defines common motor carriers of persons and property. 
Section 3 exempts from operation of the Act intra-city and public suburban 
carriers, and certain agricultural public carriers. Section 14 defines contract 
carriers of persons and property as including all carriers not included in the defini-
tion of common motor carriers. Section 15 excepts from the definition of con-
tract carriers intra-city and suburban carriers, school busses, United States mail, 
and certain agricultural carriers.

175 Ohio Code Ann. (Page, 1926) § 614-84. Although this Section also de-
finishes "fixed termini," "regular route," and "irregular route" and provides that 
the Commission shall have authority to determine the fact whether a carrier is 
operating between fixed termini, etc., yet the Section reads: "The term 'motor 
transportation company,' when used in this chapter, means every corporation . . . 
used in the business of transportation of persons or property, or both, as a com-
mon carrier, for hire, under private contract or for the public in general, over 
any highway in this State. . . ." This Section exempts public carriers operating 
within a municipality or its suburbs, taxicabs, hotel busses, school busses, certain 
agricultural carriers, and road workers.

176 Ore. Laws 1933, c. 429, as amended by Laws 1935, c. 415. Section 2 de-
finishes common motor carriers of persons and property; and it defines contract car-
riers as including all other carriers of persons and property. Section 3 exempts 
from the operation of the Act intra-city and suburban carriers, school busses, 
United States mail, certain wreckers, hearses, ambulances, armored cars, and col-
lectors of milk for creameries. Lumber haulers are included in the definition of 
"special carriers." Section 4 is a declaration of policy.

177 Not having the Pennsylvania Statutes available, the reader's attention is 
called to the "Rules and Regulations Governing Motor Vehicle Transportation 
Companies," Revised General Order No. 18, Rules 1 and 2. The definition set 
forth in Rule 1 is broad enough to catch all public motor carriers of persons 
and property. Rule 2 makes the following classification:

"The following classification of motor vehicle transportation companies is 
adopted:

(a) Carriers of persons.
(1) Between fixed termini over regular route.
(2) Call or demand (taxicab).
(3) Groups or parties."

General Order No. 29 rescinds General Order No. 18, insofar as it applies to property carriers, and is as follows: Rule 2 quotes the following definition from the statute:

"The term 'Common Carrier,' as used in this Act, includes any and all com-
mon carriers, whether corporations or persons, engaged for profit in the con-
veyance of passengers or property, or both, between points within this Common-
wealth, by, through, over, above, or under land or water, or both."

Rule 3. Classification. "The following classification of truckers is adopted:
Carriers of property:
(a) Between fixed termini or over a designated route.
(b) Between any points in a designated area.
(c) From a designated area to undesignated points over undesignated routes.
(d) Under special certificates."
olina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington (property), and West Virginia. Under these statutes there is only one important fact to be determined, viz., Does the concern in question hold itself out

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178 S. C. Code (1932). Section 8507 includes all motor vehicles "used in the business of transporting persons or property for compensation. . . ." Section 8508 exempts from the operation of the Act school busses, carriers used in religious services, picnics, United States mail, certain carriers of agricultural products and lumber. Acts 1935, No. 240, also exempts intra-city and suburban carriers.

179 S. D. Laws 1933, c. 139, as amended by Laws 1935, c. 152, c. 153. Section 1 is a declaration of policy. Section 3 (j) provides: "The term 'motor carriers,' when used in this Act, means any person owning, controlling . . . any motor vehicle . . . for the transportation of persons and or property over the public highways of this State . . ." except ordinary automobiles, school busses, government vehicles, hotel busses, taxicabs, hearses, drays, police cars, ambulances, and certain carriers of minerals, farm products, and lumber.

180 Tenn. Code (Michie, Supp. 1935). Section 5501 (1) (b) includes all common motor carriers of persons and property; paragraph (c) provides that contract haulers includes all carriers other than defined to be common motor carriers. Intra-city and suburban contract haulers are excepted. Section 5501 (2) exempts from the operation of the Act school busses, vehicles used in religious services, funeral cars, ambulances, taxicabs, transfers between depots, milk distributors, certain carriers of agricultural products, and casual carriers.

181 Tex. Acts 1927, c. 270, as amended. This Statute dealing with passengers, is broad enough to include both public and contract carriers of passengers for compensation, "whether operating over fixed routes or fixed schedules, or otherwise." The Act exempts intra-city and suburban carriers. Laws of 1929, as amended by Acts 1931, page 482, define the term "common carrier," and define "contract carrier" as including all carriers not included in the definition of common carriers. This Act also exempts intra-city and suburban carriers.

182 Utah Laws 1935, House Bill No. 77. Section 1 defines "common motor carrier of property" and "common motor carrier of passengers"; contract carriers of persons and property are defined as including all carriers not defined as common carriers. Section 2 excepts intra-city carriers. Section 13 exempts from the operation of the Act intra-city and suburban carriers, school busses, United States mail, certain carriers of farm products, newspaper distributors, taxicabs, wreckers, ambulances, hearses, armored cars, and casual carriers.

183 Va. Acts 1932, c. 359. This Statute includes all common carriers of persons and property. The Act exempts intra-city carriers and taxicabs.

184 Wash. Laws 1935, c. 184. Section 1 includes all common carriers of property by motor vehicles "over regular or irregular routes and schedules. . . ." Contract carriers are defined as all other carriers not defined as common carriers. Certain lumber haulers are classified as "special carriers." Section 3 exempts from the Act intra-city carriers, United States mail, distributors of newspapers and periodicals, government vehicles, wreckers, farmers carrying their own products to market, casual carriers, and United States Relief.

185 W. Va. Code (Supp., 1935). Section 1489 requires all common motor carriers of persons and property to secure certificates of convenience and necessity before operation without regard to whether they operate between fixed termini or over regular routes. Section 1490 (1) requires all other carriers to secure a permit prior to operation.
to carry passengers and freight for all indiscriminately? Of course this question is present in the other group discussed. Some of the statutes, like the Alabama Statute, attempt to define publicness, which is usually declaratory of the common law. This part of the statutes is of little or no value as the courts and commissions apply the common law concept anyway. Such evidence as prior course of business, advertisement, and prior declarations have been held sufficient evidence to warrant a finding of an intention on the part of the carrier to carry for all without discrimination. Of course carrying for the public does not mean accommodating all the public at all times, and the concept is further limited by the fact that the carrier is bound to carry only such goods as he professes or chooses to carry.

The Arizona, Colorado, and North Dakota statutes are more progressive than the rest in that they make certain acts prima facie evidence of publicness. The Arizona, and North Dakota statutes read:

"The transportation for more than one consignor, or to more than three consignees, by any motor carrier, shall be prima facie evidence that such motor carrier is acting as a common carrier."

The Colorado Act reads:

"The fact that any such person carries on his said operations:

a. In whole or in part between substantially fixed points or over established routes; or

b. Under contracts with more than one person or corporation; or

c. By making repeated or periodical trips, shall be prima facie evidence that such person is a motor vehicle carrier hereunder." (Which

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188 Affiliated Service Corporation v. Public Utilities Commission, 127 Ohio St. 47, 186 N. E. 703 (1933).
191 Ariz. Laws 1933, c. 100, p. 472, § 1; N. D. Laws 1933, c. 164, as amended, § 2.
is defined by the statute as including only those transporting "as a common carrier."\(^2\)

Other points of similarity among the statutes of both groups discussed are the exemptions. From the footnotes it will be noticed that there is great uniformity among the states in exempting intra-city and suburban carriers, United States Mail, government vehicles, carriers for philanthropic institutions, and certain carriers of farm products. These exemptions usually apply to both public and contract carriers. The Supreme Court, in *Continental Baking Co. v. Woodring*,\(^3\) has indicated that several of the above exemptions were not in conflict with the Fourteenth Amendment. That case involved the *Kansas Motor Vehicle Act* of 1931. Section 2 of the Act exempted (1) motor carriers operating wholly within any city or village of the state, (2) private motor carriers operating within a radius of twenty-five miles beyond the corporate limits of such city or village, (3) the transportation of livestock and farm products to market "by the owner thereof or supplies for his own use in his own motor vehicle," and (4) the transportation of children to and from school. The Act defined various carriers and among others "Private motor carriers of property" as meaning ones transporting "property sold or to be sold by him in furtherance of any private commercial enterprise." The plaintiffs, who were bakers, and distributed their own products by trucks, fell in this classification. The Act subjected them to a tax which was not imposed on the carriers exempted by Section 2. The plaintiffs sued in the Federal District Court to restrain enforcement of the Act, contending that enforcement would result in depriving them of property without due process of law and would deny them the equal protection of the law. The lower court dismissed the suit, and this judgment was affirmed by the Supreme Court. The opinion, written by Mr. Chief Justice Hughes, said, in part:

\(^2\) Colo. Laws 1927, c. 134, as amended by Session Laws of 1931, c. 121, § 1 (d).

\(^3\) 286 U. S. 352 (1932).
"Second. The challenged exemptions are set forth in § 2. [Motor Vehicle Act of Kansas. Kan. Laws 1931, c. 236.] The first, which excludes from the application of the Act motor carriers who operate wholly within a city or village of the State, 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 override their regulations or to impose burdensome additions.

"The second exemption extends only to certain private motor carriers. Under the construction aboved stated, the exemption provides immunity from the provisions of the Act for carriers of that class who have an established place of business or base of operations within a city or village and operate within a radius of twenty-five miles beyond the municipal limits. The first question is whether the State, in legislation of this sort, may provide for such carriers an exempt zone contiguous to its municipalities. We find no difficulty in concluding that it may. As the District Court pointed out, there is 'a penumbra of town' that is outside municipal limits and delivery trucks, of those having establishments within the municipalities, in their daily routine repeatedly cross these limits 'in going back and forth into these outlying additions.' The Court found that trucks of that class 'use the state improved highways but slightly, for the streets of these outlying additions are not generally a part of the state system.' The District Court also directed attention to the fact that 'the practical difficulty of keeping track of the mileage of such delivery trucks as they cross back and forth is well-nigh insuperable' and that 'the revenue to be gained from such use would be insignificant and the cost of collection large.' We think that the legislature could properly take these distinctions into account and that there was a reasonable basis for differentiation with respect to that class of operations. In this view, the question is simply whether the fixing of the radius at twenty-five miles is so entirely arbitrary as to be unconstitutional. It is obvious that the legislature in setting up such a zone would have to draw the line somewhere, and unquestionably it had a broad discretion as to where the line should be drawn. In exercising that discretion, the legislature was not bound to resort to close distinctions or to attempt to define the particular differentiations as to traffic conditions in territory bordering on its various municipalities. . . . The practical convenience of such a classification is not to be disregarded in the interest of a purely theoretical or scientific uniformity. [Citing cases.] . . . No controlling considerations have been presented to overcome the presumption attaching to the legislative action in this case in fixing the radius of the zone for the purpose of establishing an exemption otherwise valid.

"The third exemption applies to 'the transportation of livestock and farm products to market by the owner thereof or supplies for his own use in his own motor vehicle.' In Smith v. Cahoon, 283 U. S. 562, 75
L. ed. 1271, 51 S. Ct. 582 . . . the State statute, which applied to all carriers for compensation over regular routes, including common carriers, exempted from its provisions 'any transportation company engaged exclusively in the transporting of agricultural, horticultural, dairy or other farm products and fresh and salt fish and oysters and shrimp from the point of production to the assembling or shipping point en route to primary market, or to motor vehicles used exclusively in transporting or delivering dairy products.' The stated distinction was thus established between carriers, and between private carriers, notwithstanding the fact that they were 'alike engaged in transporting property for compensation over public highways between fixed termini or over a regular route.' The Court was unable to find any justification for this discrimination between carriers in the same business, that is, between 'those who carry for hire farm products, or milk or butter, or fish or oysters, and those who carry for hire bread or sugar, or tea or coffee, or groceries in general, or other useful commodities."

"The distinction in the instant case is of a different sort. The statute does not attempt to impose an arbitrary discrimination between carriers who transport property for hire, or compensation, with respect to the class of products they carry. The exemption runs only to one who is carrying his own livestock and farm products to market or supplies for his own use in his own motor vehicle. In sustaining the exemption, the District Court referred to the factual basis for the distinction. 'The Legislature knew,' said the Court, 'that as a matter of fact farm products are transported to town by the farmer, or by a nonexempt "contract carrier" employed by him. The Legislature knew that as a matter of fact the use of the highways for the transportation of farm products by the owner is casual and infrequent and incidental; farmers use the highways to transport their products to market ordinarily but a few times a year. The Legislature rightly concluded that the use of the highways for carrying home his groceries in his own automobile is adequately compensated by the general tax imposed on all motor vehicles.' (55 F. (2d) at p. 352.) And the Court properly excluded from consideration mere hypothetical and fanciful illustrations of possible discriminations which had no basis in the actual experience to which the statute was addressed. The Court found a practical difference between the case of the appellants 'who operate fleets of trucks in the conduct of their business and who use the highways daily in the delivery of their products to their customers,' and that of 'a farmer who hauls his wheat or livestock to town once or twice a year.' The Legislature in making its classification was entitled to consider frequency and character of use and to adapt its regulations to the classes of operations, which, by reason of their habitual and constant use of the highways, brought about the conditions making regulation imperative and created the necessity for the imposition of a tax for maintenance and reconstruction. As the Court said in Alward
v. Johnson, 282 U. S. 509, 513, 514, 75 L. ed. 496, 499, 75 A. L. R. 9, 51 S. Ct. 273: ‘The distinction between property employed in conducting a business which requires constant and unusual use of the highways, and property not so employed, is plain enough. . . .’

“The fourth exemption is ‘of transportation of children to and from school.’ The distinct public interest in this sort of transportation affords sufficient reason for the classification. The State was not bound to seek revenue for its highways from that source, and, without violating appellants' constitutional rights, could avail itself of other means of assuring safety in that class of cases.”

Therefore if this classification is valid as to private carriers for the purpose of taxation, that is some indication, at least, that it is valid when applied to other carriers for other purposes.

**Private or Contract Carriers**

The statutes regulate private carriers for various reasons, which are set forth in the several statutes. The purpose and extent of such regulation are not within the scope of this paper. Such carriers, usually designated "contract carriers" by the statutes, are usually required to obtain permits, the requisites of which depend upon the purpose of regulation. They are usually defined by the states as all carriers of passengers and property for compensation other than common carriers as defined by the statute. In the group limiting common carriers to those operating "between fixed termini or over regular routes" this definition would include common carriers not operating under those circumstances as well as true private carriers for hire. In the other group the definition, of course, includes only true private carriers for hire. The statutes with few exceptions leave the distinction between common and private carriers to inference or to the common law. The distinction is that the common carrier holds himself out to serve all within his chosen field, whereas the private carrier professes to carry for only those he cares to do business with. Alabama and Minnesota

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195 Minn. Laws 1933, c. 170, § 1.
deal with private carriers in separate statutes. These statutes define common carriers so as to include all common carriers, and contract carriers as all other carriers for hire. They further provide that both public and contract carriers as defined must secure permits before operation. The statutes carefully state, however, that they do not repeal or modify the previous public carrier acts. No other state of the "between fixed termini or over regular routes" group have followed this method, and no advantage is seen in it.

The contract motor carrier statutes make certain exemptions, with surprising uniformity. As previously pointed out, they usually exempt casual haulers, United States Mail, government vehicles, school busses, certain agricultural carriers, and, occasionally, certain industrial carriers. The latter exemptions are well-illustrated by the South Carolina Act; and the Supreme Court has held that they were not a denial of the equal protection of the law in the case of Hicklin v. Coney. This suit was begun in the Supreme Court of South Carolina by the Railroad Commission to compel the appellants to cease operation as a private carrier until they had complied with the law and received a certificate, the principal prerequisite of which left, after the South Carolina Supreme Court, and Commission had ceased whittling on the Statute, was the filing of an indemnity bond, for the protection of the public receiving injury by reason of any act of negligence of such carriers—did not include cargo insurance. The Act also exacted certain fees which the exempt carriers were not required to pay. The petition alleged that the appellants were private carriers of property for hire not proposing to operate over a regular route, and fell within Class F. The appellants by their demurrer and answer raised several constitutional objections, the only one of which we need to notice at this time was that the statute resulted in the denial of the equal protection of the law. The statute exempted "farmers or dairymen, hauling dairy or farm

196 290 U. S. 169 (1933).
products; or lumber haulers engaged in transporting lumber or logs from the forests to the shipping points." As to these exemptions the Court said:

"Upon the present record, it appears that the exemption is applied with two limitations, first, that, as construed by the State Court, it can refer only 'to one whose principal business is that of a farmer or dairyman and not to one merely incidentally engaged in farming or dairying;' and, second, under the construction of the Commission in enforcing the statute—a construction not disapproved by the State Court—that it applies only to farmers and dairymen who occasionally, and not as a regular business, transport farm or dairy products for compensation. We cannot say that a classification based on such a use of the highways is an arbitrary one and thus encounters constitutional objection.

"The exemption in favor of those hauling lumber and logs 'from the forest to the shipping points' relates to a limited class of transportation simply to places of shipment and does not appear to be unreasonable."

**Commercial Carriers**

Recently several states have enacted statutes defining commercial carriers, usually termed "private carriers." Such carriers are usually required to obtain permits from the public service commissions, and are usually treated to some extent like contract carriers. Some states have so classed them in order to get compensation for their extra use of the highways. The new *Federal Motor Carrier Act* of 1935, which also calls them "private carriers," reads:

"The term 'private carrier of property by motor vehicle' means any person not included in the terms 'common carrier by motor vehicle' or 'contract carrier by motor vehicle,' who or which transports in interstate or foreign commerce by motor vehicle property of which such person is the owner, lessee, or bailee, when such transportation is for the purpose of sale, lease, rent, or bailment, or in the furtherance of any commercial enterprise." 197

The following states have similar definitions except that they relate to intrastate commerce instead of interstate and foreign commerce: Arizona,198 Colorado,199 Connecticut,200

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197 U. C. C. A. Tit. 49, § 303 (17).
198 Note 191, supra.
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Kansas,\textsuperscript{201} Nevada,\textsuperscript{202} Oklahoma,\textsuperscript{203} Oregon,\textsuperscript{204} Rhode Island (exempted from the Act),\textsuperscript{205} Washington,\textsuperscript{206} and Wyoming.\textsuperscript{207}

\textit{Continental Baking Co. v. Woodring}\textsuperscript{208} holds that it is no violation of the Fourteenth Amendment to levy a ton-mile-age tax on commercial carriers and exempt from such tax casual carriers. The classification is justified upon the more frequent use of the highways by commercial carriers.

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\textsuperscript{199} Colo. Laws 1935, c. 167, § 1. (Termed "commercial carrier by motor vehicle.")

\textsuperscript{200} Conn. Acts 1935, c. 126, § 1 (f).

\textsuperscript{201} Note 168, \textit{supra}.

\textsuperscript{202} Nev. Laws 1933, c. 165, § 1 (d).

\textsuperscript{203} Okla. Stat. (1931) § 3700, Class C.

\textsuperscript{204} Note 176, \textit{supra}.


\textsuperscript{206} Wash. Laws 1935, c. 184, § 2 (h).

\textsuperscript{207} Wyo. Laws 1935, c. 65, § 2 (p).

\textsuperscript{208} Op. cit. \textit{supra} note 193.