# WHAT CONSTITUTES INTERSTATE MOTOR COMMERCE?

Because of potential and actual conflict between Federal and State power over motor commerce, it has become increasingly imperative to distinguish interstate motor commerce from the intrastate counterpart. Enactment of the Federal Regulatory Act of 1935[1] has increased measurably the necessity for differentiating the two types of activity.

This article is concerned with the distinction between interstate and intrastate motor commerce as revealed in commission and court rulings since 1933.[2] No attempt is here made to deal with the form or degree of regulation applicable to the different types.

Whether the motor commerce is intrastate or interstate "must be determined by the essential character of the commerce and not by the mere billing or forms of contract," we hear from the Pennsylvania commission in 1936, which also points out that the continuity of interstate transit is to be determined by various factors, the most important being the intention of the owner of the goods shipped, his control to change destination of them, the instrument by which the transit is to be made, "actual continuity of the transportation and the occasion or purpose of the interruption" of the transportation.[3] This statement reveals the indefiniteness and vagueness inevitably encountered in any attempt to formulate a standard of measuring a concept so volatile as interstate commerce. In view

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1. Motivation for its passage, an analysis and appraisal of the Federal Act of 1935 I attempted in 22 CORNELL LAW QUARTERLY 249-75 (February 1936).

2. Earlier developments in the field here surveyed appear in Chapter 15 of my book *Motor Carrier Regulation in the United States*, (1929); *Bus Transportation*, November, 1931; and 67 UNITED STATES LAW REVIEW 293-301; 353-60. (June and July 1933.)

3. Terminal Transportation Co. v. Railway Express Agency, 16 P.U.R. (N.S.) 518.

of the difficulty in discovering the distinction between interstate and intrastate motor activity we can proceed by the follow-divisions.

## I. Allegedly Interstate Activity Held Intrastate

A. *Subterfuges.* 1. Tickets. Use of tickets to or from out of state points does not change to interstate character transportation between two points in Pennsylvania over a route which lies wholly within the state.[4] Of the same character is transportation of passengers between two Pennsylvania towns over a route by a small town across the border, despite the use of tickets marked from a state point to an out of state point.[5]

Certificate restrictions prohibiting carriage between two intrastate points is violated by a motor carrier in selling tickets to an out of state point with the explanation to the purchaser that the ticket entitles him to ride back free to the intrastate point nearest the border.[6]

2. Joint or Combined Service. The view that joint or combined service of two operators between a point in Pennsylvania and an out of state town constitutes interstate operation and therefore beyond state regulation was denied by the Commission. On finding that one of the operators was carrying passengers between two points in Pennsylvania, the Commission ruled the service intrastate despite the final destination of the passengers.[7]

A superior court in Pennsylvania has held purely intrastate the transportation between two points without leaving

4. Pennsylvania Railroad Co. v. Nevin Bus Lines, Complaint Docket No. 7878, Oct. 15, 1934; Public Utilities Reports Annual 1934, 190.

5. *Ibid.*

6. Pennsylvania Greyhound Transit Co. v. Frank Martz Coach Co. (Pa.), Complaint Docket No. 10337, Sept. 24, 1935, P. U. R. Annual 1935, 202.

7. White Bus Line Co. v. Frank Martz Coach Co., Complaint Docket No. 9106, 9107, May 7, 1933.

the state, despite the sale of interstate tickets to passengers by employees who know that purchasers are not valid interstate passengers.[8] The carrier here concerned should have profited by the experience of Detroit-Cincinnati Coach Line with the Ohio commission in 1927 in exactly parallel conduct which led to cancellation of certificate to do interstate business, and in which no appeal was taken.[9]

3. Local Activity Prior to Beginning of Interstate Commerce. Transporting logs by motor truck over intrastate highways from forest to mill for manufacture into lumber or for booming, scaling, branding and subsequent sale when marketing conditions turn favorable is merely intrastate commerce, very recently declared the Interstate Commerce Commission.[10]

Less convincing is the intrastate character attributed by the Pennsylvania commission to the transportation of groups of persons from one point to other points in the same state at which latter points they remain a few days before continuing by busses of another carrier to out of state destination "All under provisions of contracts with managers of the groups by which they are to be taken to points in an adjoining state".[11] Should not this arrangement be considered equivalent to an interstate through ticket with stop over privileges?

4. Deviation from "Normal" Route. A truck hauling freight between two points in the state does not enter into interstate commerce by leaving the normal route between the termini and traveling a short distance in another state for the purpose of acquiring the interstate character.[12] The commission ruling

8. Nevin Bus Lines v. Public Service Commission, 120 Pennsylvania Superior Court, 266, 182 Atl. 80; P. U. R. 1936 Annual, 184.

9. P. U. R. 1928 C, 571-575.

10. Burr Common Carrier Application, Interstate Commerce Commission Reports, 6 Motor Carrier Cases 691; hereafter cited as M.C.C.

11. Pennsylvania Greyhound Transit Co. v. Waer Bus Co., Complaint Docket No. 10752, 10783; P. U. R. 1936 Annual, 184.

12. Blackmore v. Public Service Commission, 120 Pa. Superior Court 437,

here reviewed by the court emphasized that the deviation from normal route was not compulsory, but made at the election of the carrier.[13] Similarly, travelling through an adjoining state in going from one point in a state to another in the same state is merely subterfuge to simulate interstate commerce, ruled the Pennsylvania commission in 1936.[14] Merely a trick to give semblance of interstate character to an intrastate operation is the label attached by the same commission to the operation of trucks over a route through another state, there being shown no reason to establish the necessity for operating over the longer route passing into another state.[15] These rulings are in accord with the Supreme Court position in *J. P. Grubb Co. v. Public Utlities Commission of Ohio,* decided in 1930.[16]

5. Location of a Carrier's Customers. Motor carriers operating between definite points in a state on direct intrastate highway routes are engaged in intrastate commerce, despite their assertion that of necessity they operated over an interstate route, the evidence showing that all their customers except one had their business places within the state.[17]

B. *Routing.* Motor transportation of persons between points in the same state and return over a route partly within another state was ruled intrastate by the Pennsylvania commission because (1) it was a continuous movement of one group, no stops being made in the other state for letting off or

183 Atl. 115 (1936).

13. Public Service Commission v. Blackmore (Pa.), Complaint Docket No. 10191, January 22, 1935; P. U. R. Annual 1935, 202.

14. Pennsylvania Greyhound Transit Co. v. Waer Bus Co., Complaint Docket Nos. 10752, 10783.

15. Public Service Commission v. Sparkman (Pa.), Complaint Docket No. 11163, Feb. 9, 1937.

16. George T. P. Grubb Co. v. Pub. Util. Comm. 281; U. S. 470, 50 Sup. Ct. 374, 74 L. Ed. 972 (1930).

17. Lehigh Valley Transit Co. v. Flounders (Pa.), 17 P. U. R. (N.S.) 280, 1936.

taking on passengers and (2) the shortest and most direct highway route at least as good as that in the other state lay entirely within Pennsylvania.[18] Here the operation for a few miles on a road in another state appears less weighty as a classification factor than origin and destination of transportation being in same state plus the facts that one way of the trip and practically all of the travel were in original state and that none of the business was offered in the second state.

C. *Claimed Relation of Intrastate to Interstate Commerce.* Untenable is the view of Nevin Bus Lines that to transport intrastate shipments in an interstate operation which was not self-sustaining was warranted as a means of fostering the interstate commerce. Acceptance of this view would preclude commission full control over clearly demonstrable intrastate transportation.[19]

D. *Break in "Interstate" Movement.* A truck operator who brings raw silk from another state to mills in Pennsylvania where they are processed into yarn or thread and put on bobbins, thereafter engages in intrastate commerce rather than interstate when he hauls the processed product to another mill in Pennsylvania where it is woven into cloth whence it is then shipped out of the state.[20] The intermill transportation in the state was held not interstate because (1) it was done under separate bills of lading; (2) substantial change had been made in the character of the commodity between its entering and leaving the state. This intermill transportation was sustained as intrastate commerce by the superior court.[21] A parallel case

18. *Supra,* note 6.

19. Pennsylvania Railroad Co. v. Nevin Bus Lines (Pa.), Complaint Docket No. 7878, Oct. 15, 1934.

20. Public Service Commission v. Blackmore, Complaint Docket No. 10191, P. U. R. Annual 1935, 202.

21. *Supra,* note 12.

of intermill transportation received parallel decision by the same commission in 1937.[22]

E. *Interstate Movement Has Ended.* In many alleged interstate motor commerce cases the activity has been declared intrastate on the ground that the interstate movement has ended prior to the activity staged locally.

Pooled car shipments have figured prominently in this phase of regulation. Rates charged by city motor carriers for distributing interstate pooled-car freight though made under agreement with the out of state shipper are subject to state control on the ground that interstate shipment ends at car destination by sorting and distributing the goods to separate consignees.[23] Likewise, goods collected by a forwarding company and shipped in pool cars from one state to consignee in another state cease to be interstate and become intrastate when they enter truck transportation from the pool-car destination point to other destinations in the same state. Breaking and dividing the carload ends interstate commerce and makes subsequent delivery intrastate. The commission rejected as controlling the intention of original shipper that the goods be delivered to separate consignees in the second state.[24]

Interstate commerce has ended at the geographic point where a broker holds for his buyers goods he has ordered from out of state principal, the specified lots being shipped in bulk and the broker having notified his buyers severally that the goods have arrived and will be held for them. Movement of the goods from that point to the buyers by motor carriers con-

22. Eastern Pennsylvania Certificated Carriers Committee v. Metzger, Complaint Docket No 11257, P U. R. Annual 1937, 195.

23. *Re* Rates, Rules, Classifications and Regulations for City Carriers, 39 California R. C. Reports 711 (1936).

24. Black Hills Transportation Co. v. Buckingham Transportation Co. of Colorado (S.D.), Order F1825, Dec. 20, 1937.

trolled by the buyers constitutes intrastate commerce.[25]

The South Dakota commission has ruled that transportation of interstate pooled-car shipments may constitute intrastate commerce, despite the fact that original parties were dealing with an article in interstate commerce.[26]

Transporting automobiles "from freight cars to consignees' warehouses, showrooms, or places of business, or to other points in the state" is intrastate commerce for the reason that interstate movement ended with delivery of the freight car at the team track.[27]

Interstate movement of petroleum products sent from one state to another by private pipe line has ended when products are delivered to storage tanks of shipper at destination point, the products being intended for sale to dealers but no specific amount being intended for any particular consignee when shipment began. Consequently any movement by a motor carrier to another point in the state would constitute a new movement and not a continuation of the original movement, and the Interstate Commerce Commission has no jurisdiction thereover.[28] Where none of the commodities handled between points within same state had been received at terminals of railroad or motor carrier the traffic was declared by the above agency to be beyond Federal jurisdiction.[29]

Hauling from San Francisco docks to points in California imported fertilizer was adjudged intrastate commerce because it had come to rest before being sold or distributed.[30]

The Federal Commission has, in two instances of apparent

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25. Horlacher Delivery Service v. Maskaly (Pa.), Complaint Docket, No. 11455, March 14, 1938.

26. *Re* Wilson Transportation Co., Order F. 1701, P. U. R. Annual, 191.

27. Terminal Transportation Co. v. Railway Express Agency (Pa.), 16 P. U. R. (N.S.) 518 (1936).

28. Bausch Contract Carrier Application, 2 M.C.C. 4.

29. 2 M.C.C. 307, 551, and 773.

30. Lester Common Carrier Application, 6 M.C.C. 51.

intrastate activity and the record did not permit definitive classification as intrastate, concluded that the circumstances might change sufficiently as to impress the interstate label, and granted the interstate certificate.[31] Thus possibility in future development served as basis for present interstate classification.

## II. Activities Held Interstate Commerce

A. *General Rule for Determining Interstate.* Echoing *The Daniel Ball,*[32] the California supreme court in 1933 stated the general rule that the origin and destination of the shipment determine the character of the motor carrier operation, not the geographic limits of the state in which the operation takes place; that once the interstate character attaches to the shipment, it remains throughout the movement of the goods.[33] And the Massachusetts supreme judicial court stated the same year that U. S. Supreme Court decisions are to serve as guide in determining whether particular motor carrier operations are interstate in character.[34]

Implementing the first declaration above, the Interstate Commerce Commission more recently observed that no distinction is to be drawn between a link in interstate commerce which operates wholly within a state and one which crosses a state line.[35]

B. *Subterfuges and Choice of Route.* Rebilling at a state boundary appears as a subterfuge to simulate intrastate commerce and thereby to avoid Federal jurisdiction is found in a case decided by the Federal Commerce Commission in 1938.

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31. I.O.N. Freight Line Contract Carrier Application, 2 M.C.C. 520.

32. 10 Wallace 557, 19 L. Ed. 999 (1871).

33. Meyers v. Railroad Commission (1933), 1 P. U. R. (N.S.) 215; 218 Calif. 316; 23 P. (2nd) 26.

34. Conlin Bus Lines v. Old Colony Coach Lines, 1 P. U. R. (N.S.) 186; 282 Mass. 498, 185 Atl. 350.

35. Gulf Coast Motor Freight Lines, Inc., Common Carrier Application, 3 M. C. C. 497.

Cream transported from a South Dakota point to Minnesota point but rebilled at state boundary was held to be in interstate commerce from the beginning because "Delivery at Worthington (Minn.) was originally intended".[36]

As regards motor transportation over a route partly in another state but mainly in Massachusetts the supreme judicial court held the motives of the operators in choosing the route did not affect the bona fide interstate character of the transportation, there being no evidence that such route was chosen to evade state regulation.[3]

A motor carrier who picks up freight in Dallas and transports it directly to his warehouse in Texarkana, which warehouse for sake of economy in rents was chosen on the Arkansas side of Texarkana, unloads the freight thereinto prior to delivering it to consignees on Texas and Arkansas sides of town is engaged in interstate commerce. No subterfuge appeared in selecting the Arkansas location for a warehouse, and all deliveries made in the Texarkana area were delivered from the warehouse. Crossing the state line with the goods whose points of origin and destination are in Texas was a bona fide routing, according to the Federal district court.[38] In so holding, Judge Atwell accords with *Hauley v. Kansas City Southern Railway,*[39] but his use of the terms "foreign" and "domestic" to denominate interstate and intrastate commerce is not only confusing, but in conflict with the distinction betweeen interstate and foreign commerce established by the Supreme Court in *Woodruff v. Parham,* 1869.[40]

Validly interstate is motor transportation of passengers between two points in Pennsylvania over a route "leaving a

36. Pronk Brothers Extension of Operations, 6 M. C. C. 346.
37. *Supra,* note 34.
38. Roundtree v. Terrell, 22 Fed. Supp. 297 (1938).
39. 187 U. S. 617 (1903).
40. 8 Wallace 123.

main cross state highway to pass through a junction point in another state" which latter point is a "natural junction point for the lines as operated, and there was a different territory to be accommodated and traffic obtained for the utility".[41] Likewise interstate in character is the transportation of a group of persons from a point just across the border in another state to a point in Pennsylvania in which the persons reside despite the fact that for economic advantage and other reasons the persons crossed over the state line to enter the bus which travelled back near their residence at which they could have boarded the same bus for an intrastate ride to the same destination.[42]

Motor carrier operation between two points in Missouri over a highway lying primarily in another state is interstate commerce.[43]

Bona fide interstate is the transportation of passengers between two points in same state but over a normal route which passes into another state.[44]

C. *When Interstate Commerce Begins.* Interstate character does not attach to shipments originating at one point in Maine whence they are transported to a transfer station for furtherance by a second carrier to points beyond Maine until they are accepted by the second carrier, the first carrier not having accepted the goods for shipment to out of state point.[45] Here the second carrier was not authorized to transport from the particular point of origin, but contracted with the shipper for the final journey of the goods out of the state.

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41. Nevin Bus Lines v. Public Service Commission (1935), 120 Pa. Superior Ct. 266, 182 Atl. 80.

42. Waer Bus Co. v. Public Service Commission, 11 P. U. R. (N.S.) 325; 117 Pa. Superior Ct. 517, 178 Atl. 157.

43. *Re* Hill, P. U. R. 1933 C, 516.

44. *Supra*, note 41.

45. *Re* Gay, 1 P. U. R. (N.S.) 89 (1935).

D. *Intrastate Operation Part of Interstate Commerce.* A motor carrier transporting from points around Los Angeles to the docks, and from the docks to the above points goods beginning or completing their interstate journey is engaged in interstate commerce.[46] Taking passengers on a sightseeing trip entirely within Massachusetts which trip is merely a part of an interstate tour constitutes interstate commerce.[47]

Distributing pooled interstate shipments within a state, the bills of lading for which were accompanied by individual invoices and instructions for delivery of the shipments beyond car destination point and the goods remaining in carrier's warehouse until his trucks could take them to persons designated in the separate invoices constitutes a part of through transportation.[48]

Hauling lumber from mills to transshipment points in same state by a carrier whose contract obligations ended with laying down the lumber for loading into cars and boats for interstate or foreign points is interstate because the destination of the lumber was known when the lumber was loaded at the mill, and therefore no break occurs in the movement from mill to final destination.[49]

Where commodities have been sold before leaving the shipper's plant and the packing cases stenciled to consignee at ultimate interstate or foreign destination, transporting them from the shipper's plant to shipping point in the same state constitutes a definite part of continuous interstate movement although this interstate portion was not conducted under through bills of lading or joint interstate rates.[50] In establishing the inter-

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46. *Supra,* note 33.

47. Commonwealth v. New England Transportation Co., 185 N.E. 23; 282 Mass. 429 (1933).

48. Barry Contract Carrier Application, 6 M. C. C. 59.

49. Empire Fuel and Transfer Co., Contract Carrier Application, 6 M. C. C. 75.

50. Panella Common Carrier Application, 6 M. C. C. 96.

state character of this initial intrastate movement stenciling the shipping package is equivalent to through bills of lading.

Admitting that carrying canned fruits from plants where bought to a shipping point in the same state at which point the goods are labeled and stenciled "might be" intrastate commerce, the Federal Commission held interstate the transportation of those goods which were transferred from the plants where bought to shipping point, were labeled and stenciled with name of consignee and ultimate destination before moved from original plant, and were delivered directly to railroad car for shipment.[51]

Hauling from one point in California to another assembled automobiles destined to points in Washington and Oregon is interstate because it is part of the continuous interstate movement.[52]

The ultimate destination of goods consigned to out of state points being known before they leave the factory, transporting them to a shipping point constitutes them a part of interstate movement.[53]

Delivering from Butler to other Pennsylvania points meat products shipped from South Dakota and consigned to a motor carrier for delivery to ultimate consignee as directed by the shipper constitutes part of through transportation.[54]

An applicant participating in through transportation to and from any points in the United States is engaged in interstate commerce though his route is confined to Montana.[55] Similarly ruled the same commission as regards transportation of goods in Ohio, but which transportation formed part of through traffic.[56]

51. *Ibid.*
52. Hamilton and MacCallum Contract Carrier Application, 6 M. C. C. 273.
53. Burr Common Carrier Application, 6 M. C. C. 691.
54. Black and White Express Contract Carrier Application, 6 M. C. C. 633.
55. Great Falls Coach Lines Co. Common Carrier Application, 3 M. C. C. 441.
56. Ross Common Carrier Application, 1 M. C. C. 607.

Present actual connection with carriers who operate across the state line is not necessary to warrant Federal issuance of authorization, for proposed arrangements with connecting bus and rail lines for handling passengers in interstate commerce would serve as adequate basis for Federal authorization.[57] Thus the element of futurity enters into the concept of interstate commerce.

Goods shipped from one state to another under a through bill of lading are in interstate from their inception, and transfer to or from a truck at a terminal station in the state does not break the interstate movement [58]

## III. Resume

In the period here surveyed more instances of alleged interstate operation have been denied than have been held genuine. Of those denied, Pennsylvania is the particular scene of conflict between different types of transportation agency, between divergent views of motor carriers and the public service commission, and between the philosophies of the commission and the superior court.

Interstate character has been denied on grounds of subterfuges, routing, claimed but not proved relation of intrastate activity to interstate commerce, break in interstate movement, and the ending of interstate transportation, the latter figuring as numerically the most important basis of denial.

Conversely, interstate character has attached to motor carrier activity because the transportation extended across state lines, or because the purely intrastate portion constituted a bona fide step in the complete movement extending into at least

57. Alabama Coaches Co., Inc., Common Carrier Application, 1 M. C. C. 273

58. *Re* Fulton Fast Freight Co., 11 P. U. R. (N.S.) 91 (1935), P. U. R Annual 1936, 183.

two states; because of intention of shipper as revealed labeling and marking the goods before transportation begins, in bills of lading, and even in evidence that carriers know that real destination is out of state when accepting shipments scheduled for rebilling at the state boundary.

Pronouncements appear as to the effects of labeling and marking the goods at a particular stage of commercial procedure; when interstate commerce begins and what does and what does not break it; the intricacies of pooled-car shipments as reflected in their invoice instructions; and even futurity as an element in the interstate commerce concept.

While for long Federal courts have engaged in determining what motor commerce is interstate only in the period here studied has the Interstate Commerce Commission directed by the Act of 1935 appeared as a participant in the differentiation process. Necessarily most of the differentiating in the last three years has devolved upon the commission. Implemented with much practice and precedent accumulated in motor commerce matters since 1935 and in related fields earlier, this agency appears well equipped to separate the interstate from the intrastate so that proper source of regulation may be recognized, and appropriate forms and degree of control be applied. In the performance of these functions state agencies must continue to share extensively.

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