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CONSTITUTIONAL LAW - INTERSTATE COMMERCE - STATE REGULATION OF MOTOR CARRIERS - HIGHWAY CONSERVATION

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CONSTITUTIONAL LAW — INTERSTATE COMMERCE — STATE REGULATION OF MOTOR CARRIERS — HIGHWAY CONSERVATION — In conformity with the Texas statute regulating contract carriers, the plaintiffs applied for permits to operate as contract carriers in interstate commerce. The Texas Railroad Commission denied the application on the grounds that the proposed use of the highways would unreasonably interfere with their use by the general public and would constitute an undue burden on said highways. *Held*, by a three-judge court, that the Commission was acting within its authority in refusing the application on these grounds, that such refusal was valid as to interstate motor carriers, and that evidence supported the Commission's findings, consequently the bill to enjoin the Commission from interfering with the plaintiffs' operations should be dismissed. *Wald Storage & Transfer Co. v. Smith*, (D. C. S. D. Tex. 1933) 4 F. Supp. 61.

The decision in the case at bar is in accord with the Supreme Court's recent decision in *Bradley v. Public Utilities Commission*¹ where it held that a State could deny permission to an interstate motor carrier to operate over particular highways in order to conserve such highways and prevent further traffic congestion thereon.² The instant case is of particular interest because the Texas statute

¹ 289 U. S. 92, 53 Sup. Ct. 577 (1933).

² For discussion of the problem involved and for comment on the Bradley case, see Kauper, "State Regulation of Interstate Motor Carriers," 31 MICH. L. REV. 920 at 934-938 (1933).

specifically authorized the Commission to deny a permit to a contract carrier where existing common-carrier service was already adequate,³ but gave no specific authorization to deny a permit on grounds of highway conservation alone. The statute was obviously designed to place a curb on contract-carrier competition in the transportation field.⁴ But in the early case of *Buck v. Kuykendall*⁵ the Supreme Court held that a State could not deny permission to an interstate motor carrier to use its highways for the purpose of regulating competition.⁶ Consequently, when the Texas Commission denied a permit to an interstate contract carrier because existing common-carrier service was adequate, the Supreme Court by a *per curiam* decision⁷ affirmed the holding of the three-judge court below in holding the Commission's action invalid as an interference with interstate commerce.⁸ But in the instant case the Commission refused permits to interstate contract carriers on grounds pertaining to highway conservation alone, and thereby it brought its action within the *Bradley* case. The three-judge court said that although the statute did not specifically authorize the Commission to refuse a permit to a contract carrier on grounds of highway conservation alone, such authority was to be assumed since highway conservation was the general policy underlying the statute.⁹ The court's readiness to give the statute a liberal interpretation in support of the Commission's action even where interstate motor carriers were concerned is indicative of the present tendency in favor of allowing States to exercise a wide power in determining what use shall be made of their highways.¹⁰

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³ Tex. Stat. (Vernon 1928 Supp.), art. 911b, secs. 6, 9.

⁴ But in *Stephenson v. Binford*, 287 U. S. 251, 53 Sup. Ct. 181 (1932), where the Supreme Court held that the Texas statute did not violate the due process clause, it said that the regulation of competition was appropriate to the end of highway conservation. See comment on the case in 31 MICH. L. REV. 395 (1933).

⁵ 267 U. S. 307, 45 Sup. Ct. 324 (1925).

⁶ See Kauper, "State Regulation of Interstate Motor Carriers," 31 MICH. L. REV. 920 at 928-934 (1933).

⁷ *Allen v. Galveston Truck Line Corp.*, 289 U. S. 708, 53 Sup. Ct. 694 (1933).

⁸ *Galveston Truck Line Corp. v. Allen*, (D. C. S. D. Tex. 1933) 2 F. Supp. 488. See Kauper, "State Regulation of Interstate Motor Carriers," 31 MICH. L. REV. 920 at 933, n. 43 (1933).

⁹ See note 4, *supra*.

¹⁰ See *Stephenson v. Binford*, 287 U. S. 251, 53 Sup. Ct. 181 (1932), and *Bradley v. Public Utilities Commission*, 289 U. S. 92, 53 Sup. Ct. 577 (1933).