

thus could not refuse to issue a permit to an interstate carrier. Following ten years of controversy and Congressional study, in which the ICC recommended federal regulation of both busses and trucks, Congress enacted in 1935 the *Motor Carrier Act* which became Part II of the Interstate Commerce Act. Phillips, *op. cit. supra* at 463-64.

This Act regulates differently common, contract, and private carriers.³ The ICC is given power to create and apply to all interstate carriers all safety regulations that it sees fit. Private carriers are not subject to any economic regulation. Certain carriers, even though operating in interstate commerce, are exempted from federal regulation by Sec. 203(b), 49 U.S.C.A. § 303(b). Among the excluded categories are local carriers, such as school busses, hotel busses, and taxi cabs, and motor vehicles used by railroads, airlines, water carriers and others for purposes of transferring and delivering freight or passengers in their normal operations. Also exempted by the same section are common motor carriers, even if engaged in interstate commerce, that operate on regular routes within contiguous municipalities or their adjacent zones, so long as they are engaged also in intrastate transportation over the entire route and in that capacity subject to state regulation.

Section 205 of the Act, 49 U.S.C.A. § 305, reflects a Congressional attempt to decentralize administration and give the states a share in the regulatory authority over interstate matters by creating joint boards composed of both federal and state commission representatives whenever an ICC matter involves not more than three states, otherwise the boards to be used at the discretion of the ICC.⁴

Another illustration of the "double aspect" of governmental regulation is in the area of highway safety. Although the Act authorizes the ICC "to investigate and report on the need for Federal regulation of the sides and weight of motor vehicles and combinations of motor vehicles and of the qualifications and maximum hours of service of employees of all motor carriers", § 225, 49 U.S.C.A. § 325, and to regulate common, contract, and private carriers in order to insure reasonable safety of operation and equipment, § 204(a), 49 U.S.C.A. § 304(a), the preservation and safety of the roads themselves have been left with the state commissions, *Thompson v. McDonald*, 95 F.2d 937 (5th Cir. 1938), *aff'd*, 305 U.S. 263 (1938), even where the state regulations apply alike to vehicles moving in interstate commerce and intrastate commerce, *South Carolina State Highway Dep't v. Barnwell Bros.*, 303 U.S. 177 (1938). State commissions may determine whether the safety of the travelling public and the preservation of the state highway property can accommodate any additional burden of commerce upon such highways, even if such determination results in a burden on interstate commerce. *South Carolina State Highway Dep't v. Barnwell Bros.*, *supra*.

A further example of federal and state division of authority concerns the prescription of time limitations in which judicial actions can be instituted. Section 304(a) provides a federal statute of limitations for all actions at law by a common carrier engaged in interstate commerce, but it provides no limitation time on actions of contract carriers so that, as to the latter, the applicable state statutes of limitations apply. *Minton v. General Shale Prod.*

Even more significantly, Congress in 1962 amended the Federal Motor Carrier Act, making it clear that there would be no requirement to secure a federal certificate of public convenience and necessity for "operations in interstate or foreign commerce by a common carrier by motor vehicle operating solely within a single State" which is not controlled by another interstate carrier with operations outside the State, where such carrier has obtained a State certificate authorizing intrastate operations. 76 Stat. 911 (1962), amending 49 U.S.C.A. § 306(a) by adding paragraph (6). While it should be pointed out that the amendment specifically provides that "such operations in interstate . . . commerce shall . . . be subject to all other requirements of this Act," such clear recognition of the importance of single state operations is a major step forward in the continuing development of the concept of the "double aspect" of federal and state regulation.

³ Although the term "interstate commerce" in the statute may include transportation between places in the same state through another state, the federal statute does not authorize a motor carrier to do any intrastate business on state highways or interfere with the exclusive exercise by each state of its power of regulation of intrastate commerce by motor carriers. *Atlantic Freight Line, Inc. v. Pennsylvania Pub. Util. Comm'n*, 60 A. 2d 589 (Pa. Super. Ct. 1948).

⁴ For a fuller discussion of the scope of the Federal Motor Carrier Act see generally, Phillips, *The Economics of Regulation* 463-65 and Jones, *Cases and Materials on Regulated Industries* 484-99.