Practice and Procedure Before the Wisconsin Public Service Commission in Contract Motor Carrier Matters

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WHAT advice should a lawyer give a client who walks into his office and puts this query? "I own a truck and want to haul some coal locally for the ABC Coal Company. I am anxious to go right to work but I am informed that I must have a hearing of some kind before I can haul for hire. Will you get this matter straightened out and advise me what to do?" The lawyer in his own mind will wonder why his client cannot go right to work; but his best answer at the moment will be to tell his client frankly that he will look into the matter and advise him on the next day.

He will have to dig into the statutes to find out what the legislature has prescribed. Then he must think about procedure. A writer in an earlier article in this Review has stated the problem as follows:1 "Motor vehicle regulation is of a twofold aspect to the average practitioner. It is not only the matter of the lawyer-like approach to a legal problem, the Statutes, the appellate decisions, and the manner and methods of the courts, but there is another and more important aspect—that of the ever-developing field of administrative law—of the particular commission's personnel and peculiar precedents which usually must be studied at close range for understanding * * * Then there is the matter of rules of procedure and of hearings or the lack of them with the resulting expenditure of time in properly presenting one's client's interest in such an uncharted sea."

By checking the 1937 statutes the lawyer will discover Chapter 194, known as the Motor Vehicle Transportation Act, which gives various definitions and sets out the duties and powers of the Public Service Commission in regard to motor carriers. Chapters 195 and 195 prescribe the rules for procedure and practice.

After reading and studying Chapter 194, counsel concludes that his client is a contract carrier,2 and that before the client can operate as a

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1 The writer has taken up in this article the case of the contract motor carrier because there are more contract carriers than common carriers and they appear more often at hearings before the commission.
2 Ihrig, State Regulation of Motor Carriers (1935) 19 MARQ. L. REV. 149, 161.
contract carrier on a public highway, he must first obtain a license from the Public Service Commission, and after he has obtained a license, he must also obtain a permit for each of the vehicles that is operated under his contract carrier's license.\(^3\) Section 194.34 indicates that it is necessary to obtain a license, or in other words, the authority from the commission to perform the particular contract carrier operations desired. This license does not require renewal and should be distinguished from the commonly known motor vehicle license and driver's license, which are issued under Chapter 85 of the Wisconsin Statutes.

The permit is obtained as a matter of course after the license has been issued by executing an application for a contract carrier's permit. An application form can be obtained from the Public Service Commission. A permit is the authority given by the commission and required to be obtained for the lawful operation of any vehicle which is subject to the provisions of Chapter 194 of the Wisconsin Statutes. All motor vehicle permits must be renewed annually. There is no hearing necessary on the application for a permit. The fee required for a contract carrier's permit is ten dollars per calendar year, but if the

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\(^{3}\) Wis. Stat. (1937) § 194.34. "(1) No person shall operate a motor vehicle upon the public highways as a contract motor carrier without first having obtained from the commission a license and a permit for the operation of such vehicle. The commission, upon the filing of an application for such license, shall have power as the public interest may require, upon a finding of convenience and necessity, to grant or deny the license prayed for or to grant it for the partial exercise only of the privilege sought, and may attach to the exercise of the privilege granted by such license such terms and conditions as in its judgment the public interests may require. Before granting a license to a contract motor carrier, the commission shall take into consideration existing transportation facilities in the territory for which a license is sought, including common motor carriers and steam and electric railways. If the commission shall grant in whole or in part any application for a license or amendment without hearing, it shall publish the authority so granted in such manner as it may deem proper, and in such detail as is necessary to show the extent thereof. Any person having an interest may, within thirty days of any such grant, petition the commission for a public hearing thereon and such petition shall be granted by the commission as a matter of course, and the commission may in its discretion suspend such license or amendment until further order of the commission.

"(4) No contract motor carrier shall transport property by motor vehicle for compensation except in accordance with the authority set forth in his license, or except under contract for isolated or emergency instances of transportation. Applications for additional authority shall be treated as applications for amendments to the contract motor carrier license and shall be acted upon in the same manner as is provided for applications for licenses."
vehicle for hire has not been used and no contract carrier permit has
been issued on it prior to making this application for a permit, the per-
mit fee to be paid on the vehicle is reduced in proportion to the num-
ber of quarters of the permit year which have fully elapsed at the
time the vehicle is placed in operation.\(^4\)

The first step in obtaining the license or authority to perform certain
operations is to file an application for a contract carrier's license.\(^5\) The
commission requires that the application shall be signed by the appli-
cant or his authorized agent, and it may be signed by his attorney, who
acts as the applicant's authorized agent; the application must be duly
verified, and should be made on forms furnished by the commission.
The Public Service Commission in its offices at Madison and Milwau-
kee have regular forms prepared that will be furnished upon request
to any person.

The application is directed to the Public Service Commission of
Wisconsin, at Madison, Wisconsin, the applicant stating that he is
applying for a license and permits thereunder authorizing him to
operate motor vehicles on the public highways in the state of Wiscon-
sin as a contract motor carrier, alleging that the public convenience and
necessity, having due regard for existing lawfully authorized trans-
portation facilities available, require the same, and that the applicant
is prepared to make proof thereof. The applicant will then state his
correct legal name and address, and state whether he is an individual, a
coopartnership (if so, the names and addresses of each partner), if a
corporation, the date of incorporation and state issuing the charter, and
also the names and addresses of each of the directors and officers of
the corporation and if it is a foreign corporation, whether it is licensed
to do business in Wisconsin.

The applicant will proceed to make an accurate and complete de-
scription of the operations and transportation services proposed to be
rendered in sufficient detail to enable full notice of proposals to be
given to the public and to other carriers; he will further give the name
of the shipper for whom he proposes to haul. For instance, in the case
at hand, counsel would state that his client, the applicant, proposes to
haul coal for the Coal Company in the city of Milwaukee; this would
mean that when the license was granted the licensee would have author-
ity to haul coal in the city of Milwaukee only, and with the further
privilege of making isolated and emergency hauls beyond this terri-

\(^4\) The fees required for permits which go into effect in the various quarters
are as follows:
January-February-March—$10.00; April-May-June—$7.50; July-August-
September—$5.00; October-November-December—$2.50.
\(^5\) See Wis. Stat. (1937) § 194.35.
Prior to June 29, 1937, a contract carrier who obtained authority in a certain municipality also was given authority to operate in contiguous localities. However, since that time a contract carrier can only transport property in accordance with the exact authority set forth in his license.

After all this information is set out in the application, the applicant or his authorized agent will sign the application and have it verified. He will then inclose a filing fee of fifteen dollars in the form of a certified check, or money order, made payable to the Public Service Commission of Wisconsin, and will also inclose his application for a permit, or permits to operate specific motor vehicles under this license which he is applying for. The application and all communications and documents should be sent to the commission at Madison. All applications, communications, and documents so addressed are deemed to be officially received when delivered to the office of the director.

After the commission receives this application it has the right to grant the license in whole or in part without a hearing. The right granting this authority without a hearing was given to the commission by the 1937 statutes. It is the writer's opinion that the commission will grant authority without a hearing when it is quite sure that there will be no opposition, and if the authority requested is definitely in the public interest and there is apparent need for such service. It seems that this procedure of eliminating certain unnecessary hearings has

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6 The Public Service Commission in a memorandum dated March 14, 1935, and directed to all contract motor carriers and shippers using their service made the distinction between an isolated instance of transportation and an emergency instance of transportation and further defined and illustrated these terms. 

"An isolated instance of transportation is one which is not performed in the ordinary course of the business of the shipper, the receiver, or the carrier. For example, the movement of household goods for a person who is changing his residence, when it is not performed by a carrier who makes a regular business of household-goods moving, is clearly an isolated instance of transportation. An emergency instance of transportation is one which must move in order to meet the actual requirements of the shipper or the receiver, or which is necessary in the public interest, and which cannot be performed by a carrier having authority, service, and facilities therefor adequate to meet the necessities of the occasion.

"A school or hospital may run short of coal during an exceptionally cold period. Coal must be supplied if the building is to remain open. The dispatch of a truck loaded with coal is clearly one which is justified to take care of such an emergency where the service cannot be obtained from an authorized carrier. The transportation involved is insignificant in comparison with the degree of the need for the commodity transported. Of course, it goes without saying that the receiver of coal in such an instance cannot voluntarily create an emergency so as to utilize the services of an unauthorized contract motor carrier by designedly permitting his supply of coal to become exhausted for that purpose. Such evasion in time would be indicated if there were repeated or frequent occurrences of so-called 'emergencies' in such cases."

7 The writer suggests that if counsel has any difficulties with the application that he write the Public Service Commission at the Madison or Milwaukee offices.
resulted in a saving of time and money both to the applicant and the state.

It might be well for counsel at the time he sends in the application to the commission to request that authority be granted without a hearing. If this authority is granted without a hearing it must be published in such a manner as the commission may deem proper. Notices of all hearings with description of operations proposed and all authority granted without hearings are published each Wednesday in the official state paper.

Any person having an interest may within thirty days after the granting of authority without a hearing request the commission for a public hearing thereon. If an attorney represents a client who wishes to oppose the authority so granted he must file a petition and state the fact that the petitioner has an interest in the authority granted without hearing, and pray that a public hearing be held thereon. After the petition is received, the commission will grant the petition as a matter of course, set the matter for hearing, and notify the attorney of the date. If the application is not granted without a hearing, the hearing will then be set for a day certain, depending in which county the applicant resides. It usually takes from two to five weeks from the date the application is filed before a hearing is held, and a like period from the date of hearing until the decision and order are rendered. In all, the

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8 The Public Service Commission as a quasi-judicial body must be very careful to afford full hearing to everyone. See Morgan v. United States, 58 Sup. Ct. 773, 82 L.Ed. 757 (1938). The United States Supreme Court held in this case that in administrative proceeding of a quasi-judicial character a fair and open hearing is essential to the validity of the resulting administrative regulation. See McCarthy v. Public Service Commission, (Utah, 1938) 77 P. (2d) 331. There the commission granted the defendant, a transfer company, a permit to operate as a contract carrier without giving other carriers notice of the application or without holding a hearing thereon. The plaintiffs, common carriers of property and passengers, sought a rehearing and reconsideration of the authority granted. The court ruled that a hearing must be had so that the plaintiff could appear and offer testimony in opposition. The court said that it cannot be expected that persons adversely affected by the application should be bound by mere self-serving statements or declarations contained in the application.

9 Public hearings are held at Madison every Monday on applications of persons residing in LaCrosse, Monroe, Juneau, Adams, Waushara, Marquette, Green Lake, Fond du Lac, Vernon, Sauk, Columbia, Dodge, Crawford, Richland, Grant, Iwa, Dane, Jefferson, Lafayette, Green, Rock, and Walworth Counties; at Milwaukee on the first and third Tuesdays of each month on the application of all persons residing in Sheboygan, Washington, Ozaukee, Waukesha, Milwaukee, Racine, and Kenosha Counties; at Green Bay on the first and third Wednesdays on applications of persons residing in Forest, Florence, Marinette, Oconto, Shawano, Door, Waupaca, Outagamie, Brown, Kewaunee, Winnebago, Calumet, and Manitowoc Counties; at Wausau on the first and third Thursdays on applications of persons residing in Ashland, Iron, Vilas, Price, Oneida, Lincoln, Langlade, Taylor, Clark, Marathon, Wood, and Portage Counties; and at Eau Claire on the first and third Fridays of each month on the application of all persons residing in Douglas, Bayfield, Burnett, Washburn, Sawyer, Polk, Barron, Rusk, St. Croix, Dunn, Chippewa, Pierce, Pepin, Eau Claire, Buffalo, Trempealeau, and Jackson Counties.

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time necessary to complete the whole matter is generally from thirty

to sixty days.

At the time the application is executed and filed counsel should
advise his client that he must enter into a written contract with the
shipper, a copy of which should be filed at or before the time of the
hearing.\textsuperscript{10} The form of the contract may be very simple, and shall
specify the services proposed to be performed, the commodities to be
hauled, the places to and from which said commodities are to be trans-
ported, and rates to be charged therefor. Such a contract is a con-
dition precedent to the granting of any authority. If time permits
counsel should draft a contract and have it properly executed by his
client and the shipper, and send a copy to the commission together with
the application. Said contract must be filed at or before the time of
the hearing. If counsel is unable for good cause to have it at the time
of the hearing, he should request the presiding commissioner or ex-
aminer to grant him more time in which to file it, and usually he will
be granted permission to file such contract with the commission within
five days after the date of the hearing.

It is important to note that every contract carrier is required to file
insurance policies with the commission\textsuperscript{12} having the following cover-
age: for vehicles having a gross weight of 10,000 lbs. or less, public
liability insurance from $5,000 to $10,000, and property damage insur-
ance of $5,000; for vehicles having a gross weight over 10,000 lbs.,
public liability insurance from $10,000 to $20,000, and property damage
insurance of $5,000.\textsuperscript{12}

If the hearing on counsel’s application is scheduled to be heard
in Milwaukee, the proceedings will be held in the Milwaukee
county courthouse. These hearings will start promptly at nine
o’clock in the forenoon, and it may be well for counsel to note that
the calendar is called promptly and that he should be there a few
minutes before, unless his hearing is definitely scheduled at some
other hour. If the calendar is especially heavy some of the hear-
ings may be scheduled for one-thirty in the afternoon. If the date
for hearings is on a legal holiday, the hearing will be held on the next
hearing date. The proceedings are informal, the purpose being to
get at the heart of the matter at once. The hearings are conducted
by a commissioner or a duly authorized agent designated as an ex-
aminer.\textsuperscript{13} The commissioner or examiner in charge has full

\textsuperscript{10} See General Order M. C. 992 on filing of written contracts. This will be
furnished to counsel by the commission upon request.
\textsuperscript{11} See Wis. Stat. (1937) § 194.41.
\textsuperscript{12} See Rules of Procedure and Practice as prescribed January 26, 1938, Gen-
eral Order No. 2, pursuant to Section 195.03 and which became effective in
governing the conduct of proceedings before the commission on and after
February 1, 1938.
authority to conduct the hearing in all particulars. Also present at
the hearing will be a court reporter, and usually an inspector who
after the application is heard will check the file to see if it is com-
plete, and whether or not there are any tax delinquencies.

The parties to the proceedings before the commission are com-
plainants, defendants, interveners, respondents, applicants, peti-
tioners, and objectors, according to the nature of the proceedings
and the relationship of the parties thereto. In the case at hand, the
parties represented would be the applicant, and any party who supports
his application as an intervener, and any party who opposes the appli-
cation as an objector.

The presiding commissioner or examiner will call the calendar,
and will then take up the first scheduled matter, and make a con-
cise statement of the scope and purpose of that hearing and ask
for appearances. A party may appear only in person or by counsel
or by his authorized agents.4 The attorney appearing for the appli-
cant will first give his name and address to the reporter and state
that he is appearing in behalf of the applicant. Then any other
party may make his appearance and give his name and address and
state whether he appears in support of or in opposition to the
application. The reporter will take all the appearances and include
the same in the transcript of hearing. After all the appearances
are entered, any person wishing to make an opening statement
may do so.

The attorney will then proceed with the presentation of his
case. In the case at hand the order of presenting evidence will be,
first, by the applicant; secondly, by the interveners; then by the
objectors, and finally, by the commission's staff.5 The commis-
sion's experts may have made a special study of the facts pertain-
ing to the particular hearing, and have the right to appear and
testify. The applicant will first be sworn and then the counsel must
proceed to prove his case. Counsel should keep in mind Section
194.346 and remember that there must be a showing of convenience

13 See Section 196.24(3) and General Order No. 1, "In the Matter of the Appoint-
ment of Agents of the Commission Pursuant to Section 196.24."
14 Practice before the commission is not limited to members of the bar. The
Interstate Commerce Commission requires that before one can be admitted
to practice before it, that person must make application and have the qualifi-
cations prescribed by its rules and take an oath. Practice before the Inter-
state Commerce Commission is also not limited to members of the bar. The
writer feels that in time the Wisconsin Public Service Commission may also
require certain qualifications and admission to practice before it.
15 See Rule 13, RULES OF PRACTICE AND PROCEDURE, General Order No. 2.
16 See note 3 supra.
and necessity, and that the commission must take into consideration existing transportation facilities in the territory for which the license is sought.

Counsel will first examine the applicant by asking the following preliminary questions: his name, address, whether his insurance is filed and his experience in the trucking business. The contract may then be identified, and introduced, and if not already filed, request made that it be filed. Counsel should then attempt to bring out by the applicant's testimony that there is a need for the services proposed. This testimony, of course, is self-serving, and therefore, counsel should be well prepared to bring out from testimony of witnesses other than the applicant the need for the service, and to show that the applicant has special knowledge or special equipment which is necessary for the type of hauling in question, if that is the fact. Furthermore, if proof can be made that existing transportation facilities in the territory for which the license is sought are inadequate, that should be done. The shipper, in this case the Coal Company, by its officers or representatives, must give supporting testimony.

After direct examination those in opposition may cross-examine, and after the applicant has put in his case any parties in opposition, or their witnesses, may testify and be cross-examined. The parties in opposition are vitally interested in seeing that the application is denied, because the applicant is probably requesting authority to perform the same or similar services which parties in opposition are licensed to perform.

The presiding examiner or commissioner may in his discretion change the order of presenting the evidence. The commission will follow the rules of evidence as interpreted and applied by the Wisconsin courts, but these rules may be relaxed in the discretion of the presiding commissioner or examiner when he thinks that such deviation will aid in ascertaining the facts. He may also, with or without objections, exclude inadmissible evidence or order cumulative evidence discontinued. When objection is made to the admissibility of evidence, he may receive such evidence subject to a later ruling by the commission. The commission may take judicial notice of its own records, and those of the state and federal government.

See Wisconsin Telephone Co. v. Railroad Commission, 162 Wis. 383, 156 N.W. 614 (1916). The court said the word "necessity" is relative rather than absolute and in its relation to regulation of public utilities it will be construed to mean not absolute but a reasonable necessity. Public convenience and necessity was defined under the statute in question to be a strong and urgent need for the service. The court said that the meaning must be ascertained by reference to the content and to the objects and purposes of the statutes in which it is found.
Such records may be offered in evidence by reference, but shall not be received over objection unless opportunity for examination has been offered the parties. The presiding official usually has a good knowledge of the rules of evidence, but as a practical matter may often allow testimony to stand over proper objection in order to better ascertain certain facts. The Commission requires that when evidence consists of technical data or figures so numerous as to make oral presentation difficult to follow, that it shall be presented in exhibit form, supplemented and explained by oral testimony. Rule 20 of *Rules of Practice and Procedure* sets out in detail how such exhibits should be prepared for presentation.

The presiding commissioner or examiner has all the inquisitorial powers granted to the commission and the powers of a court commissioner relative to depositions. He is authorized to call upon the sheriff or any peace officer to maintain order at any hearing. He may adjourn the hearing in case the conduct of any persons interferes with the orderly holding of such hearing. Rule 20 sets out the further powers of the presiding official and the procedure in regard to witnesses, subpoenas, fees and depositions.

After the parties have introduced all their evidence and their witnesses have been heard, the presiding official shall declare the testimony closed. The parties may stipulate on the record to permit the introduction after the close of testimony of data, reports of investigations, test results, studies, and personal inspection, as part of the record of the case. No further evidence shall be received after the testimony is closed, except in the presence of all parties, and then only if the presiding official shall deem such further evidence necessary.

After the testimony is closed the attorneys or parties shall state whether they wish to file briefs. Counsel must use his own judgment as to whether he should file a brief. If it appears that the proof is sufficient and there has been very little or no opposition, there may be no need for a brief. However, if counsel feels that he may clear up certain conflicts in the testimony, or if there is a question as to the interpretation of a statute or an order of the commission, or it appears that vital objections have been improperly overruled, he may file a brief to his advantage. If briefs are to be submitted, they must be filed within fifteen days after the mailing of the transcript, and any party may file a reply brief within five days thereafter, unless otherwise directed by the presiding official. Briefs must be served upon all adverse parties on or before the date of filing, and due notice of such service given to the commission.

\[28^\text{Wis. Stat. (1937) § 196.24.}\]
A hearing is closed when the briefs have been submitted and oral arguments completed. When the hearing is closed it cannot be reopened except upon order of the commission entered either upon application of one or more parties or upon the commission's own motion. If no briefs are submitted nor oral argument made the hearing is considered closed when the testimony is closed. Parties may note exceptions on the record to any ruling or other actions of the presiding official and present the same to the commission for review by motion, by a petition for further hearing, or by brief or oral argument.

At times the applicant will have requested extensive authority and he will find at the time of the hearing that he has much opposition. It might be wise for counsel to ask his client whether he wishes to cut down some of his authority thus eliminating some or all of the opposition. If it is agreeable counsel may at once amend the application limiting, restricting, or eliminating some of the authority sought by his client. However, it is important to note that at the time of hearing no amendment may be made which includes additional operations not specified in such application, except in the case of minor additions where it clearly appears that no other carrier has an interest in the matter.

After the testimony is closed counsel should make a demand for a transcript of testimony. One such transcript will be provided to each party who makes demand for it, free of charge. The hearing closed, counsel will in a short time receive a transcript of the testimony, and some time later the decision and order of the commission. The decision will either grant the application in full or in part, or deny it entirely. If the application is granted in full or in part the commission will require that before the licensee may begin to operate that he file with the commission a schedule of rates subject to the approval of the commission, which rates shall conform to the outstanding general rate orders of the commission appertaining to such transportation.

If the application is denied or granted only in part, and counsel feels that the evidence warrants granting of the authority requested, he may proceed to obtain a rehearing, an application for said rehearing to be made within twenty days after the decision and order have been made and filed. This application for rehearing will operate to stay the effect of the decision and order until ten days after the application for rehearing has been denied or the commission has announced its final determination on rehearing.

19 Wis. Stat. (1937) § 196.36.
If any application is not granted within twenty days from the date of its filing it is deemed to have been denied, and only one rehearing shall be granted. The application for rehearing must set forth specifically the particular and specific respects in which it is deemed that the commission's order is improper, unfair, unreasonable, or unlawful. It is not enough to state mere conclusions of law or general allegations, without specific reference to the record in the proceeding. If the applicant wishes a rehearing on the ground that the commission has failed to consider certain of the evidence presented in the proceeding, the application shall so state, and shall include an abstract of all such evidence relied upon.

Application for rehearing shall be served by mailing copies postage paid to all parties to the proceeding. A certificate that copies of the application have been so mailed shall be filed together with the application for rehearing. Where parties are too numerous, or other circumstances warrant, the commission may exempt applicants from the requirement of this rule. If a rehearing is granted, counsel should be well prepared to make proof of his allegations.

It is important to note that, as a condition precedent to judicial review, a party must first make an application for rehearing. If the rehearing is denied or if the application is dismissed upon rehearing and the applicant seeks to proceed further, he may commence an action in the Circuit Court of Dane County against the commission as defendant to vacate and set aside the order or determination of the Public Service Commission, on the ground that it is unlawful or unreasonable.

The commission, according to statute may at any time but according to Rule 25 of the Rules of Practice and Procedure after the expiration of twenty days from the making of an order or other determination, on its own motion or upon motion of an interested party, rescind, alter, or amend any order or determination, or may reopen the proceeding for the purpose of receiving further evidence or to reconsider the evidence already presented. Such review should be sought by petition which petition should state the grounds upon which it is based and what relief is sought. The petition shall be served in the same manner as applications for rehearing. It should be remembered that all determinations and orders of the commission are deemed prima facie lawful and reasonable until finally found otherwise in an action brought pursuant to provisions of Section 196.41, which deals with judicial review.

Counsel, having studied the statutes and rules as outlined above, should be able to advise his client properly on the following day. If counsel is once familiar with the above procedure he will also know how to proceed with an application for an amendment to a contract carrier's license which will be the same as the procedure followed in the original application, forms for which can be obtained from the commission upon request. He will also know how to proceed with the assignment of a contract carrier's license from one party to another. Such assignment can be made only after a finding by the commission that it is not against the public interest.25