State Regulation of Motor Carriers

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No consideration will be given herein to those practical aspects of the exercise of legislative power and administrative discretion relating to motor vehicles arising out of the varying reactions to them among competitors for the same passenger and cargo traffic. Nor will the aspect of legislative enactment of regulation as restricting competition and tending to monopolistic grants for the carriage of cargo and persons be discussed. With this limitation also will be omitted consideration of the protecting of property values of pre-existing carriers encompassed by a restriction of competition. Neither will any discussion be here directed to the fact that the power to tax may be challenged as often actually approximating the power to destroy. These are all considerations, which in the impersonality of legislative enactment, are discharged as unworthy of the attention of the courts in determining the power of the legislature in its benign wisdom to legislate respecting the matters of state regulation of motor vehicles hauling for hire. These matters, like the echoes from Tara’s harps, will be left to the memory of Legislative Halls.¹

¹ But see South & N. A. R. Co. v. Railroad Commission, 171 Fed. 225 (C. C. N. D. Ala. 1909), where the court held that in a bill to enjoin the enforcement of railroad rates established by a state, allegations of the motive of the officers or legislators of the state in prescribing and enacting the statute complained of are impertinent: but that allegations that power conferred by such statute on a railroad commission to alter the rates fixed thereby in its discretion with respect to individual carriers is being so used as to discriminate against complainants and to favor other carriers as a reward for dismissing
The aspects herein considered are those which generally arise in a critical approach to such regulations— in a consideration of the first principles in this growing field of legislation affecting thousands in every state. Regulation as to any particular situation or motor vehicle must be considered from the standpoint of whether the regulation emanates from a local, state, or national legislative body. In each instance the authority and limitation thereon vary in handling the self-same problem both as to the regulation standpoint and that of taxation. In the absence of legislation preventing the use of public highways by motor carriers such carriers are lawful vehicles and have an equal right with carriers drawn by horses and other lawful conveyances to operate on public highways upon compliance with local police regulations.

State regulation of motor vehicles for hire is based on the exercise of the inherent police power vested in the respective state legislative bodies to regulate motor vehicle transportation on the highways. In different jurisdictions the legislatures have declared various reasons for the exercise of the police power in this regard, among those being that the primary purpose of such legislation is: (1) to secure the adequacy of service by such carriers; (2) to secure the reasonableness of rates; (3) to protect the business of others in such business by controlling competitive conditions; (4) to regulate the public highways either for their protection or conservation; (5) to serve the public interest and convenience on the public highways; (6) to safeguard the pavement, the pedestrians and the other travelers on it.

Due process clauses limiting state legislative bodies are not violated by reasonable classifications among motor vehicles as to types. But the right to use the public highways of the state by the usual and ordinary means of transportation is common to all members of the public— without distinction. However, in classification of motor vehicles and their operators the operation of them for hire on the public highways is a special use of such highways which tends to impede ordinary traffic and require additional construction, maintenance, and repairs of the highways at public expense thus furnishing additional reasons for such classification and for their regulation and control.

suits brought to test the validity of the law, are pertinent to show that the statute, in operation, denies to complainants the equal protection of the laws, citing Covington & Lexington T. R. Co. v. Sanford, 164 U.S. 578, 17 Sup. Ct. 198, 41 L.ed. 560 (1896), and also Yick Wo v. Hopkins, 118 U.S. 356, 63 Sup. Ct. 1064, 30 L.ed. 220 (1886), relating to "actual operation" of administrative bodies.


Before legislation enacted is declared unconstitutional as an exercise of the police power mentioned above it must appear that the specific exercise of such power is flagrantly unjust, unreasonable, or oppressive. A study of the cases must always relate to the particular statutes under consideration. It is important to observe the distinction in the statutes and the decisions under them with respect to the type of motor carrier regulated in the particular instance. At common law the regulations for a common carrier were based on such carrier’s “hauling for hire to an unlimited public.” Included in such class were those who had a definite route of service more or less scheduled, as well as those who went anywhere at any time.

Modern regulation in some states attempts to include all these classes under the designation “common carrier.” Then those carriers who offer little direct competition or who are politically troublesome are designated “contract carriers” and subjected to little regulation and with numerous classes of tax exemptions provided for them with major emphasis on penalties for them only if they encroach on the traffic of the more closely regulated “common carriers.” In other states a well defined delineation has arisen both as to the elements of regulation as well as taxation. A “common carrier” has by those states been defined as one traveling between fixed termini over a regular or irregular route. A “contract carrier” has been defined by these states as all carriers hauling for hire not included in the definition of a “common carrier.” In most of these states a private carrier is one who does not haul for hire and usually owns the subject of carriage.

An examination of the complete set of definitions in the law relating to motor carriers of persons or property is necessary to understand the limits of the language employed in the respective cases and it will be found that most distinctions in construction of regulation and tax laws relating to motor carriers are based on dissimilar facts rather than on dissimilar names for the carriers.

Public Interest as the Basis for Regulation

Because Motor Carriers are usually regulated by Railroad or Public Service Commissions does not mean *ipso facto* that such regulated motor carriers are assumed to be “public utilities” in the full legal sense of the name. Rather the “public interest” in their business and in the highways on which they travel is the basis for legislative regulations of such carriers.

Motor carriers of all classes may be included in a general law to regulate the different classifications thereof on the proper basis but the regulation must be related to the facts of the particular classification
in measuring the regulations applied to the individual groups of motor carriers.\textsuperscript{4}

Regarding the factor of "public interest" it is measured by the established rules.\textsuperscript{5} In Wisconsin we find public utilities defined by stat-


\textsuperscript{5}In 1927 the Supreme Court, in Tyson & Brother v. Banton, infra, said:

"This phrase (affected with a public interest), first used by Lord Hale 200 years ago, * * * , it is true, furnishes at best an indefinite standard, and attempts to define it have resulted, generally, in producing little more than paraphrases, which themselves require elucidation. Certain properties and kinds of business it obviously includes, like common carriers, telegraph and telephone companies, ferries, wharfage, etc. Beyond these, its application not only has not been uniform but many of the decisions disclose the members of the same court in radical disagreement. Its full meaning, like that of many other organizations, cannot be exactly defined;—it can only be approximated. * * *" The characterizations in some decisions of business as 'quasi-public' * * * and the like, while well enough for the purpose for which they were employed, namely, as a basis for upholding police regulations in respect of the conduct of particular businesses, cannot be accepted as equivalents for the description 'affected with a public interest,' as that phrase is used in the decisions of this court as the basis for legislative regulation of prices. The latter power is not only a more definite and serious invasion of the rights of property and the freedom of contract, but its exercise cannot always be justified by circumstances which have been held to justify legislative regulation of the manner in which a business shall be carried on. * * *

In the Wolff case [Wolff Packing Co. v. Court of Industrial Relations, 262 U.S. 522, 67 L.ed. 1103, 43 Sup. Ct. (1923)] this court held invalid the wage fixing provision of the compulsory arbitration statute of Kansas as applied to a meat packing establishment. * * * In the course of the opinion (p. 535) it was said that businesses characterized as clothed with a public interest might be divided into three classes:

"(1) Those which are carried on under the authority of a public grant of privileges which either expressly or impliedly imposes the affirmative duty of rendering a public service demanded by any member of the public. Such are the railroads, other common carriers and public utilities.

"(2) Certain occupations, regarded as exceptional, the public interest attaching to which, recognized from earliest times, have survived the period of arbitrary laws by Parliament or colonial legislatures for regulating all trades and callings. Such are those of the keepers of inns, cabs and gristmills. State v. Edwards, 86 Me. 102, 29 Atl. 947, 41 Am. St. Rep. 528, 25 L.R.A. 504 (1893); Terminal Taxicab Co. v. Kutz, 241 U.S. 252, 254, 36 Sup. Ct. 583, 60 L.ed. 984, 986; Ann. Cas. 1916 D. 765, P. U. R. 1916 D. 972 (1916).

"(3) Businesses which though not public at their inception may be fairly said to have risen to be such and have become subject in consequence to some government regulation. They have come to hold such a peculiar relation to the public that this is superimposed upon them. In the language of the cases, the owner by devoting his business to the public use, in effect grants the public an interest in that use and subjects himself to public regulation to the extent of that interest although the property continues to belong to its private owner and to be entitled to protection accordingly" (citing the Munn case and others.) Tyson & Bro. v. Banton, 273 U.S. 418, 430, 47 Sup. Ct. 426, 71 L.ed. 718, 722, 723 (1927). Also see: Munn v. Illinois, 94 U.S. 113, 24 L.ed. 77 (1876) (elevator charge; Ribnik v. McBride, 277 U.S. 350, 48 Sup. Ct. 545, 72 L.ed. 913 (1928) (employment agency rates); Frost v. Corp. Com., 278 U.S. 515, 49 Sup. Ct. 235, 73 L.ed. 483 (1928) (cotton gin case); New State Ice Co. v. Liebman, 285 U.S. 262, 52 Sup. Ct. 541, 76 L.ed. 747 (1932) (ice case); Cotting v. K. C. Stock Yards Co., 183 U.S. 79, 85, 22 Sup. Ct. 30,
ute in Section 196.01. Construing that section the Wisconsin Supreme Court stated:

"The question whether a corporation such as is the canal company is or is not a public utility in this state is one to be ultimately determined by the judiciary by applying the statutory definition of a public utility to the facts concerning and the physical situation of any such company."

Considerations of promoting the public interest by preventing waste from duplication of services may be considered in determining the validity of regulatory legislation. Matters of policy of this type are left to the legislature by the courts. The use of the distinguishing name of "permits, licenses and certificates of convenience and necessity" for classes of motor carriers indicates a legislative recognition of variance in the extent of the public interest in the various types of the motor carrier business. The cases divide on the different basic factors in the actual business of the various motor carriers on the well known principle that one cannot be compelled to conduct a business different than he desires except as an incident to a voluntary act on his part.

The United States Supreme Court has held that a state statute converting property used exclusively in the business of a private carrier at common law into a public utility or making the owner a public carrier takes private property for public use without just compensation in violation of the due process clauses of the 14th Amendment. Using as the basis for classification the weight of motor vehicles is proper under the police power. But to exempt motor carriers from regula-


8 See note 7 supra. Also see: Notes in P. U. B. 1927 E. 90; P. U. R. 1928 B. 261; and P. U. R. 1932 A. 257.


tion on the basis of the type of property carried is unconstitutional. To classify motor carriers for the purpose of regulation on the basis of operation within a limited area or because the carriage is for the owner rather than for hire is constitutional.

Regarding the limits of regulation of enterprises "affected with a public interest" the Supreme Court in *Cotting v. Kansas City Stock Yards Co.* put the question as follows:

"But to what extent may this regulation go? Is there no limit beyond which the state may not interfere with the charges for service either of those who are engaged in performing some public service, or of those who, while not engaged in such service, have yet devoted their property to a use in which the public has an interest? And is the extent of governmental regulation the same in both of these classes of cases? After analyzing the leading decisions the Supreme Court concluded:

"In the light of these quotations, this may be affirmed to be the present scope of the decisions of this court in respect to the power of the legislature in regulating rates: As to those individuals and corporations who have devoted their property to a use in which the public has an interest, although not engaged in a work of a confessedly public character, there has been no further ruling than that the state may prescribe and enforce reasonable charges. What shall be the test of reasonableness in those charges is absolutely undisclosed."

**Distinction Between Carriage for Hire at Common Law and Under Present Statutes**

At common law there were private and common carriers: Corpus Juris defines a private carrier:

"A private carrier is one who, without being engaged in the business of carrying as a public employment, undertakes to deliver goods in a particular case for hire or reward. He may carry or not, as he deems best. He is but a private individual and is invested, like all other private persons, with a right to make his own contracts." Corpus Juris also defines a common carrier:

"A common carrier has been defined as 'one who undertakes for hire or reward, to transport the goods of such as chose to employ him from place to place.' This definition applies to carriers by land and by

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15 10 C. J. § 4. (See cases cited in notes on carriers.)
water, without regard to distance or motive power. It is a question of law for the court to determine what constitutes a common carrier; but it is a question of fact whether one charged as a common carrier is within that definition and is carrying on its business in that capacity."\(^{16}\)

While the development of state regulation of motor carriers has been of recent date compared with railroad regulation it has been materially influenced by the decisions applicable to them as well as by the decisions concerning regulation of river ferries and wharfage companies.\(^{17}\) The Supreme Court has held in connection with private carriers and common carriers that a statute purporting to regulate motor carriers which fails to distinguish between a private carrier and a common carrier is unconstitutional as applied to a private carrier engaged in hauling merchandise under an exclusive contract with a single shipper.\(^{18}\) In making provisions applicable only to common carriers also applicable to private carriers by means of regulatory devices, a constitutional power is usurped to obtain an unconstitutional result.\(^{19}\) However, classification may be made between common carriers at common law and private carriers at common law operating for hire and private carriers at common law who carry only their own goods, "since there is a natural and inherent basis for the classification and distinction."\(^{20}\)

**DIFFERENCE IN REGULATION BASED ON INTRASTATE AND INTERSTATE NATURE OF MOTOR CARRIAGE**

The division of legislative powers between Congress and the state legislatures is twofold. The source of authority in Congress is not the police power as in the case of state legislatures, but is rather the commerce clause of the Constitution. The due process limitations are applicable to both federal and state legislation arising from the Fifth and Fourteenth Amendments respectively. This fact of state limitation by the Federal Constitution of course gives a basis for federal review of state legislation and administrative regulation and orders.

If the respective adjoining states of the Union had similar provisions for the regulation and taxation of motor vehicles, state regulation

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\(^{16}\) 10 C. J. § 9. (See cases cited in notes on carriers.)


would be more effective and productive of the declared legislative intent indicated for the various motor carrier acts in spite of the failure of Congress to legislate for motor vehicles under its interstate commerce powers and in spite of the limits this unexercised power places on state regulatory effort. In the absence of similar regulatory and tax laws by adjoining states all state highways between such adjoining states with unequal laws offer daily scenes of cargo bootlegging, of severe political pressure on enforcement officers, and injustice on those motor carriers who accept the burden of full regulation and taxation but who get the benefits of unequal enforcement. From this unequal "reciprocity law" provision on the part of adjoining states, a "gordian knot" for administrative officers as well as prejudiced motor carriers is presented.

Within the state there may be at various times both local and state legislative provisions as to the same or different classes of motor vehicles and in all such legislation the cardinal questions of whether such legislation is under the police or regulatory power or under the taxing power must be first considered. This matter once being determined, the sources and limitation of the legislative authority exercised can be definitely studied and the proper authorities considered.

As a rule local legislation is superseded by state legislation either of general application or of the sort that is based on a proper classification. With the development of home rule constitutional provisions in the various states especial consideration must be given to the form of such limitations on the state legislatures and as grants of authority to local legislative bodies dealing with local matters.

As the problems of motor carriers became more pressing, legislation on the subject passed in the main out of the field of local control. The problem in turn became one of the local communities striving to obtain some of the state-collected fees and taxes imposed along with state legislation, to reimburse themselves for the maintenance of their roads. The major aspect left to the local bodies was a right to consent or object to the routes used by motor carriers having regular routes either as to busses or trucks through such communities. This may be quite an effective means of control of the use of the city streets and determination as to who shall obtain that city's passenger and cargo traffic when so intentionally used by the local authorities.

21 Note on conflict between statutes and local regulations as to autos for hire: 21 A.L.R. 1203; 64 A.L.R. 993.
23 Home rule constitutional amendment, Wis. Const. Art. II, § 3; State ex rel. Sleeman v. Baxter, 195 Wis. 437, 219 N.W. 858 (1928); Milwaukee v. Diller, 194 Wis. 376, 216 N.W. 834 (1927).
Regulation Versus Taxation

As mentioned previously legislation either state or local pertaining to motor carriers arises both out of the police or regulatory power and out of the taxing power. In Wisconsin, for example, the taxing provisions with matters of rates thereof, returns, exemptions therefrom, and penalties are found in Section 76.54 of the Wisconsin Statutes as to ton-mileage taxes and the optional flat taxes payable in lieu thereof, in Chapter 78 as to motor fuel taxes, Sections 85.01 to 85.05 as to registration fees, while the regulatory or police power provisions are found in Sections 85.86 to 85.92 and in Chapter 194 as well as in many other special provisions.

Observance of the fact that taxation may be on the basis of a license tax or on an occupational basis and that regulation may be accompanied by licensing for which fees are imposed both as to license and as to the vehicles used thereunder is essential to properly understand the particular situation of regulation or taxation of motor carriers under consideration. The principle is concisely stated as follows:

"The imposition of such a tax (for vehicles) may be referable to the taxing power, the police power or both; to the police power alone if the object is merely to regulate, and the amount received merely pays the expense of enforcing the regulations, and to the taxing power alone if its main object is revenue. Whether the fee in a given case is to be regarded as imposed for regulation or revenue will depend upon the recitals of the ordinances (or statute) and to proper construction."

Regulations that in effect determine operating practices must not be unreasonable and must proximate the aims to be accomplished by them. Among those provisions which have come to be well recognized as reasonable are those requiring the use of bills of lading by motor carriers; that the motor vehicles used by the carrier should be owned by it; that motor vehicles be equipped with fire extinguishers and first aid kits; that vehicles of not more than certain maximum limits be used; that require a showing of financial responsibility before the granting of consent to operate as a motor carrier; that as a prerequisite to operation of a motor vehicle sufficient public liability insurance

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26 McQuillan, Law of Municipal Corporations (2nd Ed.) §§ 1110, 1091.
27 Re Auto Transp. Companies P. U. R. 1930 C. 54 (Wis.).
29 Re Motor Passenger Vehicles P. U. R. 1927 B. 589 (Mich.).
30 Ex parte Cardinal, 170 Cal. 519, 150 Pac. 348, L.R.A. 1915 F. 850 (1915).
31 Capitol Taxicab Co. v. Cermak, 60 F. (2d) 608 (N.D. Ill. 1932).
and cargo and passenger insurance be obtained;[32] that the vehicle operate over only special roads[33]—and such limitation may be complete and amount to exclusion from the public highways;[34] that vehicle operators should not loaf or smoke while having passengers;[35] that such motor carriers file annual and other reports as well as a classification of their rates, fares, and charges.[36]

All regulations provided for the various motor carriers must be reasonably designed to accomplish the due aim of proper regulative ends and such regulation may not be arbitrary or capricious,[37] nor may such regulations tend to create a monopoly or require the carrier to change his status in violation of the due process clause of the 14th Amendment.[38]

Rules have been promulgated and continued, regulating the filing of motor carrier rates and the classification and sale of tickets; as well as rules as to equipment of motor vehicles used as common carriers including lights, tires, brakes, skid chains, speedometers, and warning devices; such rules have also been extended to common carriers to include maintenance, safety, overcrowding, carrying of loads on running boards; and with respect to trailers.[39]

Such rules have been extended to classes of transportation, rebates, service, payment of commissions, change of control or ownership, non-carriage of explosives and inflammable articles, overcrowding, and limitation of carriage of baggage by common carriers of persons.[40]

Rate Fixing

It is impossible to discuss the matter of regulation without mentioning rate fixing. This is a subject which requires more consideration than is possible in the space of a few pages. The principles can be

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36 Re Transportation Co., P. U. R. 1918 B. 297.
40 P. U. R. 1919 A. 52 (Ariz.).
merely touched. It has been said by the U. S. Supreme Court that:

"* * * the right of the owner to fix a price at which his property shall be sold or used is an inherent attribute of the property itself, State Freight Tax Case, 15 Wall 232, 278, 21 L.ed. 146, 162 (1872), and, as such, within the protection of the due process of law clauses of the Fifth and Fourteenth Amendments. * * * The power to regulate property, services or business can be invoked only under special circumstances; and it does not follow that because the power may exist to regulate in some particulars it exists to regulate in others or in all.

"The authority to regulate the conduct of a business or to require a license comes from a branch of the police power and which may be quite distinct from the power to fix prices. The latter, ordinarily, does not exist in respect of merely private property or business, Chesapeake & P. Teleph. Co. v. Manning, 186 U.S. 238, 246, 22 Sup. Ct. 881, 46 L.ed. 1144, 1147 (1902), but exists only where the business or the property involved has become affected with a public interest."

The "due process clause" is not violated in the fixing of reasonable rates for motor carriers.

As to the limits of rate making the Supreme Court has said:

"It is unnecessary to decide, and we do not wish to be understood as laying down as an absolute rule, that in every case a failure to produce some profit to those who have invested their money in the building of a road is conclusive that the tariff is unjust and unreasonable. And yet justice demands that everyone should receive some compensation for the use of his money or property, if it be possible without prejudice to the rights of others."

In Cotting v. Kansas City Stock Yards Co., the Supreme Court stated:

"While by the decision heretofore referred to he cannot claim immunity from all state regulation he may rightfully say that such regulation shall not operate to deprive him of the ordinary privileges of others engaged in mercantile business.

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“Pursuing this thought we add that the state’s regulation of his charges is not to be measured by the aggregate of his profits, determined by the volume of business, but to the question whether any particular charge to an individual dealing with him is, considering the service rendered, an unreasonable exaction. In other words, if he has a thousand transactions a day and his charges in each are but a reasonable compensation for the benefit received by the party dealing with him, such charges do not become unreasonable because by reason of the multitude the aggregate of his profits is large. The question is not how much he makes out of his volume of business, but whether in each particular transaction the charge is an unreasonable exaction for the services rendered. He has a right to do business. He has a right to charge for each separate service that which is reasonable compensation therefor, and the legislature may not deny him such reasonable compensation, and may not interfere simply because out of the multitude of his transactions the amount of his profits is large. Such was the rule of the common law even in respect to those engaged in a quasi-public service independent of legislative action. In any action to recover for an excessive charge, prior to all legislative action, whoever knew of an inquiry as to the amount of the total profits of the party making the charge? Was not the inquiry always limited to the particular charge, and whether that charge was an unreasonable exaction for the services rendered?

“The authority of the legislature to interfere by a regulation of rates is not an authority to destroy these principles, but simply to enforce them.”

In considering the matter of fixing rates for motor carriers under state laws several important matters must be kept in mind. The guiding decisions must relate to statutes and businesses of the same kind. In rate making case the public interest is protected in some situations by merely fixing a reasonable charge for the separate services to be rendered whereas in situations of outright public utilities the rate fixed also has relation to the ultimate net profits of the company. To apply the wrong rule might cause the respective rates to be either higher or lower for motor carriers so as to influence the competitive effectiveness of such carriers. This situation is protected by the freedom of private contract clause and the due process clause of the federal constitution. It is probable that with the extensive advent of rate making for motor carriers a new line of federal decisions under the federal constitution will arise, since the federal courts offer the more direct remedy in these situations.

The state statute authorizing rate making for motor carriers must be carefully considered as to whether it applies alike to common and to contract motor carriers. When the state statute covers both the maximum and minimum rates for the same type of transportation service another special problem arises in the accounting basis therefor.

Attempts will be made to have rates fixed for motor carriers of different and competitive types of service which will have in them elements of benefiting one type of carrier service over another. To the extent that such elements may enter legislative efforts in providing for a unified transportation system or in safeguarding established carrier service it appears that the same can only relate to matters of regulation and not to rate matters so that the rate making will have to relate to a reasonable accounting basis alone therefor.

**Practice Considerations**

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 personnel and peculiar precedents which usually must be studied at close range for understanding. These difficulties render local attorneys near the commissions administering the motor vehicle law in a better position to understand the best method of procedure in the particular case, or what to expect from a given set of facts in advising clients respecting a given motor vehicle law problem. 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.

It appears reasonable to suggest the retention of local counsel in handling commission matters, unless one has a regular repetition of such business—in the interests of economy for one's client. The choice of local counsel might well be influenced by a personal choice, rather than by correspondence, to better determine the possibility of conflicting claims of construction before such commissions. This might tend to arise where the number of local counsel who practiced before such commission was restricted.

Also definite aspects of administrative law and administrative bodies must be kept in mind. One finds experts stating: "The action of the administration, whose forms and methods have just been described, is so important that it is impossible in any country possessing constitutional government to allow every administrative officer a perfectly free hand in the discharge of his duties."
"Nearly all the expressions of the will of the state which are to be carried out in their details and executed by the administration cause a conflict at times between the conception by the administration of what the public welfare demands and the conception by the individual of the sphere of private rights guaranteed to them by the law.

"If the officers of the administration had, in all such cases, uncontrolled discretion, it is to be feared that individual rights would be violated.

"Of course, it is the purpose of all administrative legislation to lessen as far as possible the realm of administrative discretion and to fix limits within which the administration must move. But it is impossible to do this with such precision as effectively to protect private rights." 46

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