

1932

## Regulation of Aircraft as Common Carriers

Irwin S. Rosenbaum

---

### Recommended Citation

Irwin S. Rosenbaum, *Regulation of Aircraft as Common Carriers*, 3 J. AIR L. & COM. 194 (1932)  
<https://scholar.smu.edu/jalc/vol3/iss2/4>

This Article is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

# REGULATION OF AIRCRAFT AS COMMON CARRIERS\*

IRWIN S. ROSENBAUM†

Aviation is one of the most recent and lusty of our infant industries. A great deal of care and attention has been given to see it grow healthy and strong, and the results of the efforts are startling. During the fiscal year ending June 30, 1931, a total of 37,132 miles more were being flown daily by air transport companies in the United States and on foreign extensions than during the prior fiscal year, the total mileage flown on schedule every 24 hours in the United States, Canada, West Indies and Latin America at the end of the 1931 period being 140,314. During the calendar year 1931, 417,505 passengers were carried on scheduled routes, and nearly 37,000,000 miles were flown. In miscellaneous flying during this year, which includes student instructions, sight-seeing, exhibition, crop dusting, photography and the like, more than 108,000,000 miles were flown and 3,000,000 people carried, of whom 1,850,000, were carried for hire. The Federal Government is doing notable work in developing a federal airway system which when completed will include 25,000 miles of airways fully equipped for day and night service. Up to June, 1931, 17,500 miles of this system was lighted and equipped with radio direction and communication facilities and weather reporting services. In addition 1,123 miles of airways were being provided for day operations. Three lighted transcontinental routes are operating for passengers, mail, and express services from New York to California.<sup>1</sup>

Despite this growth of the industry little attention has been paid to date to the problems of protecting investment in it, coordinating its service with existing transportation, and regulating

---

\*This article was written and accepted as the committee report of the sub-committee on regulation of aircraft common carriers of the Aviation Committee of the Ohio Bar Association. The author is chairman of the sub-committee of which Mr. Thomas Herbert, Columbus, Ohio, and Francis Schnacke, Dayton, Ohio, are members.

†Of the Ohio Bar.

1. This data was obtained from the annual report for the fiscal year ending June 30, 1931, of the Aeronautics Branch of the Department of Commerce.

The committee wishes to acknowledge thanks to the various commissions with which it has had correspondence, and in particular to Fred D. Fagg, Jr., of the AIR LAW INSTITUTE and Howard C. Knotts, Aviation Supervisor of Illinois, both of whom have given great assistance.

the charges and corporate activities. These are problems which parallel our established system of public utilities regulation. The problem which your sub-committee wishes to discuss is to what extent aerial operation should be brought within our existing category of common carriers and public utilities, and to what extent state regulation should apply to it. The two phases of regulation which we shall consider and which are most vital are those of, first, the commencement and continuity of carrying on service, and second, the charges exacted for the service.

The objection generally made to this line of inquiry is that the aviation industry is young and should be allowed to grow without regulatory interference.<sup>2</sup> Your committee, however, feels that the problems will be forced to the front eventually and probably not in the distant future, and that it is best to meet them at this early stage before the situation gets out of hand, as it did largely in the case of motor carriers. The policy followed by the Federal Radio Commission of nurturing and watching the development of the television industry is preferable to procrastination and subsequent cure of a situation which might have been provided for by foresight.

#### *Aircraft as Common Carriers*

There is no doubt that the traditional methods of public utility regulation can be applied to aircraft common carriers within the due process of the law clause of the constitution. Aircraft common carriers fit readily into the established category of common

---

2. The view opposing the issuance of certificates is expressed in an article by *Davis*, "State Regulation of Aircraft," 1 *Air Law Review* 47, 55, 60:

"Any such regulatory legislation is moreover very premature. There are only a few regularly established passenger air services in operation in California at this time. Air transport companies should be permitted to charge what the traffic will bear, and there should be no restrictions for many years to come. There may be some distinctive competition and duplication of the services such as already exists between Los Angeles and San Francisco, Chicago and St. Paul, and on the Chicago-St. Paul-Minneapolis route. It is entirely too early in the development of any transport to create monopolies in favor of the line which happens to commence operations first, and thus preclude companies which might provide the public with better service.

"Those fostering aircraft development do not feel that the time has come to select which 'fittest' of the oncoming lot of new aviation companies should be the one or ones to survive. They are for nurturing all air transport companies at this particular dramatic time in the history of air transport development; anything—machines, methods, or fundamental discoveries—may come out of the incubator. The segregation will come later, after the industry of air transportation is solidly rooted."

For an opposing view favoring the issuance of certificates of convenience and necessity see *T. H. Kennedy*, "The Certificate of Convenience and Necessity Applied to Air Transportation," 1 *JOURNAL OF AIR LAW* 76 (1930).

carriers either by analogy or by application of any of the numerous legal tests.<sup>3</sup>

### *Rate Regulation*

Rates of aircraft common carriage are being set at the present time by economic factors which are effective and powerful. Consideration such as saving of time, novelty, and style tend to raise the level at which rates are adjusted. On the other hand, competition with existing transportation, fear, inconvenience of schedules and unreliability of service are factors which tend to draw the rate downward. The terms of government air mail contracts also affect the situation. Competition between aircraft carriers themselves has probably little effect. It is undoubtedly true that under existing conditions rates are finding an economic level by the trial-and-error method and there is no need for active regulation by the state. When, however, the service becomes better established, and if certificates of convenience be issued which give either a complete or limited monopoly on a route, there should be some measure of at least potential rate regulation. To this end, your committee recommends that if certificates of convenience and necessity be issued to aircraft common carriers the commission should be given jurisdiction to regulate rates. It is clear that this power should not be exercised at the present time to any greater extent than possibly requiring the filing of schedules and tariffs. If rate regulation does become active in the future it will undoubtedly be done by methods other than that of fair return on fair value as currently applied in public utility rate making, probably on a basis of analyzing the economic factors of operation and marketing of the service.

### *Certificates of Convenience and Necessity*

The certificate of convenience and necessity has come into increasing prominence largely through the attention paid to issuance

---

3. See *Carl Zollmann*, "Aircraft as Common Carriers," 1 JOURNAL OF AIR LAW 190 (1930). For cases involving recovery for negligence wherein aircraft operation was declared common carriage, see *Hagymasi v. Colonial Western Airways, Inc.*, 1931 U. S. Av. R. 73 (1931 N. J.); *Law v. Transcontinental Air Transport, Inc.*, 1931 U. S. Av. R., 206 (1931 U. S. District Ct., E. D. Pa.).

In several cases arising over insurance policies aircraft operators were declared not common carriers under circumstances of the case, see *Brown v. Pacific Mutual Life Insurance Co.*, 8 F. (2d) 996; 1928 U. S. Av. R. 186 (1926); *Insurance Co. v. Pitts*, 213 Ala. 122; 1928 U. S. Av. R. 778 (1925).

In *Smith v. New England Aircraft Co., Inc.*, 170 N. E. 385 (1930, Mass.), the prescribing of a minimum altitude of flight was held constitutional under the police power. To the same effect; *Svetland v. Curtiss Airports Corp.*, et al., 41 F. (2d) 929; 1930 U. S. Av. R. 21 (1930).

of certificates to motor carriers.<sup>4</sup> The certificate is a half-breed between a franchise and a license. It is a franchise in so far as it authorizes operation either for a definite period or until revoked for cause, and it has features of exclusiveness and property rights surrounding it. It is in the nature of a license on the other hand in so far as it may be revoked by the state in the case of altered circumstances. The certificate is generally issuable on a showing that there is a public need for the service which is not met by existing services; it generally is issued for an indefinite period and is revokable only for violation of legal or operating requirement. It is generally transferable with the consent of the regulatory commission.

Up to date ten states have required the issuance of certificates of convenience and necessity of airplane common carriers. In all of them except West Virginia and Colorado the existing public utilities commission has assumed jurisdiction under its general powers over common carriers and public utilities. These commissions have interpreted their jurisdictional provisions as including aircraft common carriers. In West Virginia, jurisdiction has been delegated to the Board of Aeronautics; and in Colorado the Public Utilities Commission acts pursuant to a specific statutory authorization. Some of the commissions have provided special forms of applications for certificates and several decisions have been handed down applying the established principle to the issuance of certificates, such as refusal of certificates where existing aircraft facilities are adequate.<sup>5</sup> The state of the law in these various jurisdictions is as follows:

---

4. See *Irwin S. Rosenbaum and David E. Lilienthal*, "Motor Carrier Regulation: Federal, State & Municipal," 26 *Columbia Law Review* 954 (1926).

*Irwin S. Rosenbaum and David E. Lilienthal*, "Motor Carrier Regulation by Certificates of Convenience and Necessity," 36 *Yale Law Journal* 163 (1926).

5. One of the earliest cases on this subject is that of *Application of Battlefield Airways, Inc.* (Pa. Corp. Com.) 1929 U. S. Av. R., 54; 17 Pa. C. R. 410 (1928). In this case application was made for approval of a company to operate commercial flying service for passengers, freight, baggage, mail and express, to purchase and operate a landing field, and to operate as a common carrier on call or demand from and to a field located in Cumberland Township, Adams County, Pennsylvania.

Protest against the issuance was made by the Gettysburg Flying Service, Inc., operating commercial service from an airport in the same township, two and one-half miles distant. The commission refused to grant the application on the ground that existing service was adequate and that institution of the new service would create destructive competition. The opinion of the commission reads as follows:

"The question presented for determination is, shall the non-competitive principle control under the facts in this case?"

"We are convinced from consideration of all the facts and arguments

(1) *Arizona*: Article 15, section 2 of the Arizona Constitution provides:

"All corporations other than municipalities engaged in carrying persons or property for hire . . . and all corporations other than municipal, operating as common carriers, shall be deemed public service corporations."

Section 673 of chapter 15 of the Revised Statutes of Arizona, 1928, defined transportation of persons and transportation of property as follows:

"Transportation of persons includes every service in connection with the carriage and delivery of such person and his baggage; transportation of property includes every service in connection with transportation and handling of property."

Section 688 gives the commission general regulatory power over public service corporations and reads as follows:

"The commission is vested with power and jurisdiction to supervise and regulate every public service corporation in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and juris-

---

that the applicant has failed to meet the legislative requirement to establish that the proposed service is necessary or proper for the service, accommodation, convenience and safety of the public and so find and determine.

"The Commission recognizes that the policy of the nation and state is to foster and encourage aviation. The facts in this case, however, are in the opinion of the Commissioner convincing that in a community such as Gettysburg the creation of unnecessary and destructive competition could not and would not be a contributing factor in the development of commercial flying service in Pennsylvania, but would be a decided hindrance to its development. Common carrier transportation by aircraft must be developed for some time at least by and through private enterprise which should not be required to struggle for an existence in the competitive field under conditions as existing in this case.

"If, however, in any similar proceeding it appears that the application of the competition principle is not in the interest of and would not foster and encourage aviation the principle will not control. The Commission desires in every way possible under its regulatory powers and duties to encourage the growth and development of commercial air service."

*In Application of Pikes Peak Air Commerce, Inc., and U. S. Airways, Inc.*, 1930 U. S. Av. R. 253; P.U.R. 1930 E. 308 (1930 Colo. P.U.C.), two applicants applied for a certificate to operate over the same route between Denver and Durango, Colorado. It appears that there was not enough business for both. On consideration of the respective schedules, equipment, altitude of passes on respective routes, connections and possible air mail contract the commission granted the certificate to one of the applicants and refused it to the other.

*In re Riordan, et al.*, C.P.C. No. 417, et al. P.U.R. 1928 D, 854 (Nev. P.S.C.), with the consent of the parties the commission prescribed that priority of two hours be given the operator on calls in his home port during which time no other operator could accept the call.

*In Re Ferrant*, Dec. No. 22720, Appl. No. 16512. P.U.R. 1928 D, 854 (1930 Cal. R. C.), a certificate was granted a motor transportation company to operate buses to an airport for the specific purpose of encouraging aviation.

diction; and every public service corporation shall comply with every order, decision, rule or regulation made by the commission in any matter relating to or affecting its business as a public service corporation, and shall do everything necessary to secure compliance with and observance of every such order, decision, rule or regulation."

There is no specific statutory provision governing the issuance of certificates of necessity and convenience to aviation companies. Section 706 of the Revised Statutes requires such a certificate for the construction or extension of street railroads, gas, electric, telephone, and water companies. The commission, however, acting under its general regulatory powers by General Order No. 113-L, issued Nov. 10, 1928, has required the obtaining of such a certificate by aircrafts. By General Order No. 116-L, issued June 18, 1929, it required as a condition of the issuance of such a certificate the filing of a certified copy of the license issued by the Federal Government covering the plane. It also requires the federal operators to file operating licenses.

(2) *Colorado*: The Colorado Public Utilities Commission has taken jurisdiction over the issuance of certificates under the general terms of the Public Utilities Act (Laws of 1913, c. 127, as amended by laws of 1921, 2911 ff.). Airplane carriers do not seem to fall within the definition of "common carrier" contained in section 2, but they can be brought within the definition of public utilities found in section 3 in which "every corporation, or person now or hereafter declared by law to be affected with a public interest," is "declared to be a public utility and to be subject to the jurisdiction, control and regulation of the commission and to the provisions of this act . . ."

Again in section 14 of the Act the commission is given power and authority "to generally supervise and regulate every public utility in this state and to do all things, whether herein specifically designated or in addition thereto which are necessary or convenient in the exercise of such power . . ."

Section 35 of the Act provides for the issuance of certificates of convenience and necessity for the construction or extension of a "new facility, plant, or system," the exercise of any "right or privilege, under any franchise, permit, ordinance, vote or any other authority" and also the issuance of articles of incorporation or charters. This is the section which has apparently been applied to airplane companies.

No rules and regulations have been issued by the commission

and the same form of application for certificates is used as for motor carriers.

Section 68 of the Act states that the jurisdiction of the commission does not apply to interstate commerce except in so far as it would be constitutional so to do. The commission has in fact issued certificates to interstate operators as a matter of right without considering the question of convenience and necessity.<sup>6</sup>

(3) *Illinois*: By section 10 of the Illinois Commerce Commission Act public utilities are defined to include companies which "own, control, operate, or manage within the state, directly or indirectly for public use, any plant, equipment, or property used or to be used for or in connection with the transportation of persons or property . . ."

Section 55 of the Act requires public utilities to obtain certificates of convenience and necessity from the commission "prior to the construction of any plant, equipment, property or facilities or the transaction of any public service business within the state."

Section 10 of the Aeronautics Code passed July 9, 1931, provides that the supervision, rules and regulation of the newly organized Illinois Aeronautics Commission "shall not be in conflict with authority of the Illinois Commerce Commission to supervise or regulate public utilities." This clause means that the power of Commission to issue certificates is not interfered with by the new act. Under these provisions the Commerce Commission has been exercising jurisdiction.

(4) *Maryland*: In Maryland the commission has exercised jurisdiction over airplane carriers under the Public Service Commission Law of the state, being chapter 180 of Acts of 1910, as amended on August 8, 1928.

Raymond S. Williams, special counsel for the Public Service Commission, in answer to an inquiry of a prospective operator declared that the commission's jurisdiction extends to aircraft common carriers. He referred to section 346 of the Act which includes "express companies". In his opinion the commission might rely on this paragraph of the law alone. He further pointed to section 350 which provided that the jurisdiction of the commission shall extend "to all persons, corporations or partnerships engaged in the 'transportation of property or freight' as above defined within this State."

---

6. See P.U.R. 1928 E, 518.

\ Under section 546 the transportation of property or freight is defined to include "any service in connection with the receiving, delivering, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property or freight transported."

Entirely aside from these statutory definitions he pointed out that aircraft common carriage is a form of common carriage covered by section 350 which provides that the jurisdiction of the commission shall extend "to any common carrier operating or doing business within the state". He pointed out further to section 350 of the act which provides "this sub-title shall apply to the transportation of passengers, freight or property from one point to another within the state of Maryland and to any common carriers performing such service."

Section 362 provides "that the commission shall have general supervisions of all common carriers transporting passengers, freight, or property from one point to another within the state of Maryland."

Section 381 of the Act gives the commission extensive jurisdiction in issuing certificates of convenience and necessity to common carriers.

The commission has issued no special forms for applications for certificates but has applied rules 8, 9, 10, and 11 of its Rules of Practice which are applicable to all companies under its jurisdiction.

(5) *Michigan*: In Michigan the only jurisdiction the Commission has over the issuance of certificates of convenience and necessity is in the cases of the construction and operation of gas and electric plants (Public Acts 1929 No. 69) and the operation of motor carriers (Public Acts 1923 No. 209). The commission also has jurisdiction over the approval of security issues (Public Acts 1909 No. 144 as amended). The latter provision applies among other to railroad and interurban railroads and other common carriers. Under this last clause the commission has required aircraft common carriers to obtain approval of security issues by them. In *In re Air Taxi Service, Inc.*,<sup>7</sup> the commission exercised jurisdiction under these powers authorizing the filing of articles of association and the issuance of stock by an airplane carrier. Similarly in *In re Kohler Aviation Corp.*,<sup>8</sup> it assumes jurisdiction over the issuance of securities by such a company.

(6) *Nevada*: Section 7 of the Nevada Public Service Com-

---

7. D. 2278. P.U.R. 1927 D, 279 (1927 Mich. P.U.C.).

8. D 249. P.U.R. 1930 B, 242 (1930 Mich P.U.C.).

mission Law defines public utilities as including "airship common carriers" and imposes all duties and penalties of the Act insofar as practicable to "airship companies."

Section 361½ covers the issuance of certificates. It reads as follows:

"Every public utility owning, controlling, operating or maintaining or having in contemplation of owning, controlling, or operating any public utility shall, before beginning such operation or continuing of operation, or construction of any line, plant or system or any extension of a line, plant or system within this state, obtain from the public service commission a certificate that the present or future public convenience or necessity requires or will require such continued operation or commencement of operations or construction; provided, that except as to automobile common carriers nothing herein shall be construed as requiring a public utility to secure such certificate for any extension within any town or city within which it shall theretofore have lawfully commenced operations or for an extension into territory either within or without the city or town contiguous to its railroad, line, plant or system and not then served by a public utility of like character. Upon the granting of any certificate of public convenience, the commission may make such order and prescribe such terms and conditions for the location of lines, plants or systems to be constructed, extended or affected as may be just and reasonable.

"Every applicant for a certificate of public convenience shall furnish such evidence of its corporate character and of its franchise or permits as may be required by the commission. The commission shall have the power, after hearing to issue it or refuse such certificate of public convenience or to issue it for the construction of a portion only of the contemplated line, plant, or systems or extensions thereof, and may attach thereto such terms and conditions as, in its judgment, the public convenience and necessity may require."

The Air Commerce Regulations issued by the Public Service Commission of Nevada, effective February 5, 1929, by rule 9 requires that applicants for certificate of public convenience and necessity must show compliance with rules 7 and 8 which require a federal license for both aircraft and pilot.

Rule 11 of the regulations provides as follows:

"A violation of any of the rules herein contained operates as an automatic revocation of the certificate of public convenience issued to the person, firm or corporation guilty of the violation."

The commission has not exercised its jurisdiction over rates.<sup>9</sup>

(7) *North Dakota*: Aircraft common carriers were brought by interpretation either within the definition of "common carriers" or public utilities, the latter being defined as businesses enumerated

---

9. 1929-1930 Report of Public Service Commission of Nevada, 55.

“or any other public utility business whether above enumerated or not.”<sup>10</sup> Companies as defined above are required to obtain certificates by Chapter 235 of 1927 Session Laws as amended by Chapter 198, 1929 Session Laws. Certificates must be obtained for construction, operation, or extension.

(8) *Pennsylvania*: Under the Public Service Commission Law of Pennsylvania the term “public service company” is defined to include “common carriers”. “Common carriers” in turn are defined to include “any and all common carriers whether corporations of persons, engaged for profit in the conveyance of passengers or property, or both, between points within this Commonwealth, by, through, over, above, or under land or water, or both.”<sup>11</sup>

Section 18 of article 5 of this Act provides for applications for certificates of convenience and necessity by public service companies in case of incorporation, organizations, or creation of the company, renewal of its charter, the beginning of the exercise of rights, powers, franchises and privileges, and in case of sales, leases and mergers. Approval is made contingent on finding that the application is “necessary or proper for the service, equipment, convenience or safety of the public.”

Under this provision there is little doubt airplane common carriers fall within the certifying power of the commission without additional legislation, and in fact the commission has issued a large number of certificates.

(9) *West Virginia*: In West Virginia the Board of Aeronautics was created by House Bill No. 226, passed March 11, 1931, which gave this Board general supervision and control over airports, schools of aviation and all other phases of aerial activities. Under this law the Commission issued rules and regulations which by section 31 provide for the issuance of certificates of convenience and necessity for aircraft common carriers. This rules reads as follows:

“No person, firm, co-partnership, association, or corporation shall hereafter establish, maintain, or operate an air transportation line for the carrying of passengers or material to or from any point within the State of West Virginia without first having secured a Certificate of Convenience and Necessity from the West Virginia Board of Aeronautics.”

The Public Service Commission also has jurisdiction over airplane carriers,<sup>12</sup> but it does not control the issuance of certificates.

---

10. Section 4609c2 (Chapter 13a Civil Code of North Dakota).

11. Art. 1, Sec. 1.

12. Chapter 24, Article 2, Section 1, Code 1931.

The Board has as yet no occasion to require certificates of convenience and necessity and has not yet prepared application blanks or adopted any rules governing their issuance.

(10) *Wyoming*: Section 5453 of the Wyoming Compiled Statutes formerly defined public utilities so as to include only railroad express companies and the like. In 1925, however, by Chapter 150 of the 1925 Session Laws this section was amended to include carriers in general and so as to warrant the inclusion of aircraft carriers within its scope. The section now defines public utilities to include "any plant, property or facility for the transportation or conveyance to or for the public of passengers or property for hire, except taxicabs operating solely in cities or towns."

It is difficult to see how the commission's jurisdiction over aircraft carriers can be extended to the certifying of aircraft carriers in as much as section 5497 of the Wyoming Compiled Statutes which covers the certification of public utility operations is still worded in line with the earlier definition of public utilities and states that it includes in its scope only street railroad, gas, electric, telephone and water public utilities. The commission, however, has apparently exercised jurisdiction under this section.

Both the number of certificates outstanding in the United States and the number of operations carried on under certificates is comparatively small. The total number of outstanding certificates is about 59 and those under which operations are being conducted is approximately 19.<sup>13</sup>

---

13. *Certificates now outstanding for intrastate operations:*

*Arizona* has issued 6 certificates and refused applications for 8. 3 of the 6 granted have been revoked and 1 evidently has not been used or has been discontinued, leaving only 2 certificates in force.

*Colorado* has issued certificates but the number outstanding is not available. There is but one regular intrastate operation at the present time.

*Illinois* has issued 3 certificates, one to the Central Air Line, Inc., operating intrastate between Chicago and E. St. Louis, another to American Airways, Inc., for operation between Chicago, Peoria, Springfield and to the Illinois-State Line at a point north of St. Louis, and the third to the National Air Transport, Inc., operating between Chicago and Moline. These certificates were all issued in 1931. Illinois is about to entertain an application for a fourth. There are 4 intrastate operations in the state.

*Maryland* has issued 2 certificates, 1 of which is merely a grant of authority for security issue rather than a certificate for operation. Neither has been utilized and there are no intrastate operations at the present time.

*Michigan* has no jurisdiction to issue certificates governing aircraft common carriers so far as a right to operation is concerned. Its jurisdiction is limited to the approval of security issues and incorporation. In this field it has exercised its powers in comparatively few instances.

*Nevada* has granted the following six certificates: The Boeing Airplane Transport, Inc., and Parker Brothers Air Service. The following

*The Ohio Situation*

In Ohio, there are at the present time approximately nine intrastate operations which would be affected.

It is undoubtedly true that at the present date destructive competition between aircraft carriers is not a vital factor, nor is the competition of aircraft with existing carriers of other types of material concern. But there is reason to believe that in a comparatively short time both of these conditions will change. It may be expected especially in the fields of passenger and express service that aircraft common carriers will both compete with and coordinate with existing transportation facilities. In order to wisely guide this development and to prevent unnecessary duplication and destructive competition, commission control through certificates of convenience and necessity should be resorted to. From the other aspect namely that of the security of investment in aircraft companies certificates will also prove useful. The investor in an aircraft carrier will be reasonably assured that if the route he is operating becomes profitable his business will not be destroyed by new operators creating a situation of cut-throat competition. In a third way certificates will be of use as a means of enforcing safety and operating regulations. In issuing the certificate, conditions may be imposed and the certificate may be revoked for violations of the law and rules.

In Ohio the existing Public Utilities Act would not warrant the extension of jurisdiction by the Public Utilities Commission over aircraft common carriers without an amendment of the act. Section 501 of the General Code defining railroads, and sections 614-2, 614-2a of the General Code defining public utilities cannot be interpreted to include this form of transportation. This committee recommends that the Public Utilities Act be amended so as

---

holders operate express service by arrangement with the Railway Express and in connection therewith perform pick-ups and delivery services at Reno, Elko and Las Vegas: Donald Bartlett operating between Las Vegas and Reno; Buzz Morrison of Reno, Francis Riordan of Ely, and Gordon Griswold of Elko operating on call between points in Nevada.

*North Dakota* has issued one certificate to The Northwest Airways, Inc., of St. Paul, Minn.

*Pennsylvania* has issued 43 certificates and refused one application but at the present time only 2 intrastate operations.

*West Virginia* will issue certificates after January 1, 1932, but there are no intrastate operations at the present time.

*Wyoming* has granted 2 certificates and there are 2 intrastate operations at the present time. There are at least 3 other applications contemplated in the near future. No applications have been denied.

The total number of intrastate certificates outstanding is therefore something over 59. The number of intrastate operations carried on is approximately 19.

to bring aircraft common carriage within the jurisdiction of the commission, and that special sections be enacted to cover the issuance of certificates of convenience and necessity to aircraft common carriers, the regulation of rates of such companies, as well as other types of regulation which may be deemed advisable. The existing Director of Aeronautics who now has jurisdiction over the licensing of pilots and aircraft should not be given this type of regulatory power. The Public Utilities Commission is better equipped by experience to deal with the problem, and inasmuch as it regulates other common carriers would be better able to deal with the delicate adjustment and coordination of this transportation medium with other existing types. The existing powers of the Director of Aeronautics should, however, not be curtailed. His control of licensing and of safety regulation will not interfere with the activities of the Public Utilities Commission in applying the general public utility regulations, and there is good reason why the latter body should not be burdened with the duties of licensing and inspection.

### *Conclusion*

The committee recommends that aircraft common carriers be brought within the jurisdiction of the commission by adding sections to the code to specifically cover this phase of regulation. The mere amendment of sections 501 and 614-2, 614-2a of the General Code so as to extend the definition of common carrier and public utilities to include them would lead to considerable confusion in interpreting the extent and character of the commission's control. In drawing these provisions careful attention should be given to the types of carriers to be included, the method of rate control, and, in addition, the advisability of extending the regulatory control over the character of a service and the issuance of securities.

[EDITOR'S NOTE: Supplementing this article, the author included two documentary certificate application forms from Illinois and Pennsylvania. These documents appear in connection with another study, at page 275 of this issue.]