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CERTIFICATES OF CONVENIENCE FOR AIR TRANSPORT*

FRED D. FAGG, JR. and ABRAHAM FISHMAN†

INTRODUCTION

Carriage of persons and property by air is simply a newer and more rapid form of transportation. Like other forms of transportation, it will be subjected to certain governmental control and, like other forms of transportation, it, at times, seeks to postpone the exercise of that control. Particularly has it sought to avoid the responsibilities attached to common carriage and the restrictions which might be placed upon the establishment of air transport services.

Second only to the questions of trespass-nuisance and liability is that of the desirability of applying certificates of convenience and necessity to air carriers. Originally a more or less academic question, the subject has lately assumed considerable importance and, while discussion of the merits has not been lacking, it may be stated safely that few articles have attempted to treat the question dispassionately and without evident bias.

Believing sufficient data—based both upon experience and upon principle—could be gathered to advantage, one of the Air Law Institute studies was directed toward an examination of the subject. To obtain adequate information, a rather elaborate questionnaire¹ was prepared and submitted to each of the state regulatory bodies which might be charged with control over aeronautical activities. Replies were received from almost every state² and the

* This study was presented by Mr. Fagg, in the form of a paper, before the Round Table Conference on Public Law, at the Twenty-ninth Annual Meeting of the Association of American Law Schools, Chicago, Illinois, December 29, 1931, under the title "The Regulation of Air Carrier Competition."

† Mr. Fishman, of the Chicago Bar, is a Research Associate at the Air Law Institute. The full study made by Mr. Fishman is too voluminous to be presented within the bounds of a single article, and the present paper is merely a summary of the essential material contained in the complete report.

1. See Appendix A.

2. The writers desire to express their appreciation and thanks to the various members of the several state public utility and aeronautical commissions, and other persons, whose kindness and careful responses made this Institute study possible. Unfortunately, there is little material on

present article, in summarizing the material studied and information received, will be directed to a discussion of the following topics: I—May the States require Certificates of Convenience and Necessity for Air Carriers?; II—The Existing Certificate Requirements; and III—Should the States require such Certificates?

I. MAY THE STATES REQUIRE CERTIFICATES?

Any attempt to answer the question as to whether or not the states may properly require certificates of convenience and necessity for air carriers must concern itself with the following two problems: (1) Have the states any jurisdiction over the subject matter, or is it properly a field exclusively for federal regulation? and (2) If the states be not excluded from control, does the existing state legislation empower any state regulatory body to require certificates of convenience and necessity for air transport services?

These jurisdictional questions must be disposed of before the merits of certificate regulation can be considered and, in this study, it will be assumed that the air transport services in question fall within the legal classification of common carriers. Such an assumption, a few years ago, might have caused a storm of protest but, to the writers, the burden now rests upon anyone who would make an assertion to the contrary. At least, the assumption here made has the support of eminent authority.³

state experience with certificates of convenience available in the ordinary reports. The data collected in this study could only have been assembled through the courtesy and patience of the many state officials mentioned.

3. For a discussion of the aircraft common carrier question, the following articles will be found most helpful: *Edward A. Harriman*, "Carriage of Passengers by Air," 1 JOURNAL OF AIR LAW 33; *W. J. Davis*, "State Regulation of Aircraft Common Carriers," 1 AIR L. REV. 47; *Carl Zollmann*, "Aircraft as Common Carriers," 1 JOURNAL OF AIR LAW 190; *John K. Edmunds*, "Aircraft Passenger Ticket Contracts," 1 JOURNAL OF AIR LAW 321; *Howard Wikoff*, "Uniform Rules for Air Passenger Liability," 1 JOURNAL OF AIR LAW 512; *William M. Allen*, "Limitations of Liability to Passengers by Air Carriers," 2 JOURNAL OF AIR LAW 325; and a note by *Nathan Wolfe*, "When Are Carriers of Passengers by Air Common Carriers?" 2 AIR L. REV. 86.

In cases involving provisions in insurance policies relating to common carriers and in injury cases involving common carrier liability, airplanes have been held to be common carriers: *Andrew Hagymasi v. Colonial Western Airways, Inc.* (N. J. Sup. Ct., Essex County—1931), 1931 U. S. Av. R. 73, where the carrier accepted all applicants except those who were "obnoxious" by reason of intoxication or otherwise; *Law v. Transcontinental Air Transport* (U. S. Dist. Ct., E. D. Penn.—1931), 1931 U. S. Av. R. 205, 3 JOURNAL OF AIR LAW 131, where the company sold tickets generally to the public without discrimination and advertised by circulars the regular times of operating its planes. In *Brown v. Pacific Mutual Life Ins. Co.*, 8 F. (2d) 996 (C. C. A., 1925), and in *North American Accident Ins. Co. v. Pitts*, 213 Ala. 102, 104 So. 21 (1925), an airplane operator was held not to

Federal and State Regulation:

In principle, under our dual division of sovereignty, the federal government is given power to regulate interstate commerce and the states have retained the power to control intrastate commerce. Theoretically, neither shall invade the regulatory province of the other but the conflicts of authority which have developed have given rise to certain refinements of the foregoing rule. The most far-reaching refinement is that state authority over intrastate commerce must yield to federal authority over interstate commerce whenever a state regulation creates an undue burden upon interstate commerce.⁴ It is obvious, of course, that a too liberal inter-

be a common carrier where he did not advertise his business, made no scheduled flights but operated only when he saw fit to do so, and where each flight was made by special arrangement.

Smith v. O'Donnell (Cal., 2nd App. Dist., Div. 2—Nov. 20, 1931), 232 C. C. H. 2006 (Jan. 1, 1932): "The question arises whether appellant was a common carrier, and liable as such. Counsel for appellant apparently grounds his argument in two thoughts, first that there must be 'the carriage of the thing or person from one place to another on terra firma' in order to constitute a common carrier and second, that 'so new a craft, so new an industry' ought not to 'be so classified and charged with such a liability.' His first assertion assumes as a premise and as a reason for the conclusion, the conclusion itself and the second furnishes no legal basis for the desired result. If the craft be employed as a common carrier vehicle, it is not a reason for applying different rules of liability to say that it and the industry is new. The appellant maintained a regular place of business for the express purpose of carrying those who applied. Section 2168 of our Civil Code defines a common carrier as follows: 'Everyone who offers to the public to carry persons, property, or messages, excepting only telegraph messages, is a common carrier of whatever he thus offers to carry.' Under the wording of this definition it is plain that the appellant was a common carrier. *There can be no doubt under the general law of common carriers that those airplanes which are engaged in the passenger service on regular schedules on definite routes fall within the classification.* The industry itself should be desirous of assuring the public that those who accept their invitation to travel by air will be accorded that protection which may be afforded by the exercise of 'the utmost care and diligence for their safe carriage.'" (Italics ours.)

These cases, though concerned with the status of the air carrier only in connection with insurance policy provisions and in connection with the common carrier liability for injuries to passengers, clearly indicate that air carriers are common carriers subject to public utility regulation, for the classification is the same whether it be for the former purpose, or for the latter.

The existence of certificate regulation of air carriers in the states is further proof of their status as common carriers.

4. Conversely, federal legislation controlling intrastate flying is justified and valid only so far as may be necessary or reasonable for the regulation and protection of interstate commerce.

For a discussion of this joint problem of jurisdiction, see *Kenneth F. Burgess*, "The Twilight Zone Between the Police Power and the Commerce Clause," 15 Iowa L. Rev. 162; *Clarence M. Young*, "The Province of Federal and State Regulation of Aeronautics," 1 JOURNAL OF AIR LAW 423; *George B. Logan*, "The Interstate Commerce 'Burden Theory' Applied to

pretation of the refinement would abolish the rule for it is entirely possible to so construe the "burden theory" as to leave nothing to state regulation. But the practice has been otherwise, and we may safely assume that nothing but a real and substantial burden upon interstate commerce will curtail state action.

It will be assumed also that the states are concerned, relative to the certificate question, only with regulations pertaining to intrastate air transport operations. The problem for determination, then, is whether or not the federal government has exclusive control over intrastate air operations so as to preclude the states from any regulatory action. The answer, it is submitted, is that the federal government has no such exclusive control.

Let us consider the situation as regards two other types of carriers: (a) Railways—In 1920, the Interstate Commerce Commission was given the power to require certificates of convenience for interstate carriers, yet the states still retain their certificate authority over intrastate carriers. The federal government has not exclusively occupied that field! (b) Motor Bus—The Interstate Commerce Commission has not been given control over these carriers. The authority of the several states over intrastate motor bus carriage has not been seriously questioned.

But let us go further. In the railway field, the states even exercise certificate authority over *interstate* carriers—despite federal control in the hands of the Interstate Commerce Commission.⁵ In the field of motor bus carriage, where the Interstate Commerce Commission lacks control, the states have also exercised certificate

Air Transportation," 1 JOURNAL OF AIR LAW 433; *Edward A. Harriman*, "Federal and State Jurisdiction with Reference to Aircraft," 2 JOURNAL OF AIR LAW 299; *George B. Logan*, "The Present Status and Development of Aviation Law," 2 JOURNAL OF AIR LAW 510; and note by *Abraham Fishman*, 1 JOURNAL OF AIR LAW 359; and note by *Joseph W. Cupp*, "Regulation of Intrastate Flying by the Federal Government and of Intrastate Flying by State Governments," 3 JOURNAL OF AIR LAW 122; and *Van Vechten Veeder*, "The Legal Relation Between Aviation and Admiralty," 2 AIR L. REV. 29.

For a discussion of the problem, generally, see *G. H. Robinson*, "The Interacting Area of Regulatory Authority in Public Utilities," 76 U. PA. L. REV. 548.

5. The certificate requirement made in the Transportation Act of 1920 is not applicable to the construction of railroads operating solely in intrastate commerce, and such railroad company need not obtain a certificate of public convenience and necessity from the Interstate Commerce Commission before constructing its line: *Texas & N. O. R. Co. v. Northside Belt Ry. Co.*, 276 U. S. 475, 48 S. Ct. 361 (1928). The Transportation Act of 1920 does not authorize the Interstate Commerce Commission to give a certificate of public convenience and necessity to a purely intrastate railroad company to abandon its line, so far as intrastate commerce is concerned: *Texas v. Eastern Texas R. Co.*, 258 U. S. 204, 42 S. Ct. 281 (1922).

control over *interstate* carriers.⁶ But in both instances, of course, the control has been directed to the *intrastate* business of those carriers.

What, now, of air transport? The Interstate Commerce Commission has no authority over air carriage, even though such control has been proposed.⁷ The Aeronautics Branch of the Department of Commerce has not required such a certificate, and perhaps lacks the authority so to do. There is no existing federal control. Can it, then, be seriously questioned that the states have authority to require certificates of convenience and necessity for intrastate air carriers and for the intrastate business of interstate carriers—at least, so far as any federal conflict may be concerned?

This argument, it is true, rests in part upon analogy. Yet it is believed to be sound. There is, however, one constitutional objection to state certification which seems to have some validity. It bases its claim on the "burden theory" and is to the effect that,

6. Even though the states have supposedly granted to the federal government the power to regulate interstate commerce, the states still have the power, in order to protect their inhabitants and property, to impose a considerable degree of regulation upon interstate commerce. Although the state has no power, under *Buck v. Kuykendall*, 267 U. S. 307, 45 S. Ct. 324 (1925), to refuse to grant a certificate to engage in interstate commerce on the ground that there is no need for such interstate service, it does have the power, *Johnson Transfer & Freight Lines v. Perry*, 47 F. (2d) 900 (1931), [D. Ct., N. D. Ga.], to impose certain safety regulations upon interstate carriers, to tax them and otherwise regulate them, and to require certificates as a means of compelling compliance with these requirements. Thus, *Louis v. Boynton*, 53 F. (2d) 471 (1932), a state may compel a motor carrier engaging in interstate commerce to furnish insurance for injuries to persons or property; it may require registration of his vehicles and licensing of his drivers, *Hendrick v. Maryland*, 235 U. S. 610, 35 Sup. Ct. 140 (1915); it may require the interstate carrier to pay a tax for the use of the highways, *Clark v. Poor*, 274 U. S. 554, 47 S. Ct. 702 (1927); it may require three interstate railroad companies entering a city to construct a union passenger station, *Atchison, Topeka & Sante Fe Ry. Co. v. RRd. Com. of Calif.*, 283 U. S. 380, 51 S. Ct. 553 (1931).

Such is the extent that a state may regulate the *interstate* operation of interstate carriers. Its power over the *intrastate* operations of interstate carriers is much greater. It may require an interstate carrier to show that the public convenience and necessity demand his proposed intrastate operation, *Interstate Busses Corp. v. Holyoke Street Ry. Co.*, 273 U. S. 45, 71 L. ed. 530 (1926), *Re Sioux Falls Traction System*, ... S. D. ... 228 N. W. 179 (1929); it may require an interstate railroad company to obtain a certificate of convenience and necessity before discontinuing intrastate train service, *St. Louis-San Francisco Ry. Co. v. Alabama Publ. Serv. Com.*, 279 U. S. 560, 49 S. Ct. 383 (1929); and an interstate carrier in applying for an intrastate certificate for motor carriage has the same burden of proving public convenience and necessity as a purely intrastate carrier would have, *Canton-East Liverpool Coach Co. v. Publ. Util. Com. of Ohio*, 123 Ohio St. 127, 174 N. E. 244 (1930).

7. See suggestion of Erle P. Halliburton, 1 Air L. Rev. 120, and Thomas H. Kennedy, "The Certificate of Convenience and Necessity Applied to Air Transportation," 1 JOURNAL OF AIR LAW 76, 90.

since the intrastate business is at present such a vital part of any interstate carriage, an attempt by a state to control it through certificate requirements will be held invalid. The soundness of this objection can be determined only by a weighing of the particular facts of an actual case. As a matter of principle, it would seem to be of doubtful validity.

Federal Certificate of Authority:

Despite the fact that the Interstate Commerce Commission has no jurisdiction over air carriers and that the Aeronautics Branch of the Department of Commerce may lack authority to require certificates of convenience and necessity for air transport, still the latter body does exercise considerable control over the establishment of air carrier services of an interstate nature. This supervision is obtained through the medium of a certificate of authority.

The Air Commerce Act of 1926 provides⁸ that the "Secretary of Commerce shall by regulation * * * provide for the issuance and expiration, and for the suspension and revocation of registration, aircraft and airmen certificates, *and such other certificates* as the Secretary of Commerce deems necessary in administering the functions vested in him under this Act."⁹ Under this empowering provision, it is now necessary for any person, firm, copartnership or corporation which desires to conduct a scheduled operation of passenger air transport services in interstate air commerce to obtain from the Secretary of Commerce a Certificate of Authority to operate such service.

This federal certificate of authority is not a certificate of convenience and necessity. And it is not considered such by the Aeronautics Branch of the Department of Commerce.¹⁰ It would appear

8. Sec. 3(f).

9. Italics ours.

10. "The federal government has no provision for the granting of a certificate of Necessity and Convenience to carriers by air." Letter of Nov. 4, 1931, from *E. McD. Kintz*, formerly Chief, Enforcement Section, Aeronautics Branch.

"This Certificate is based upon an operator complying with what we consider minimum safe standards for operation, but in no wise constitutes a Certificate of necessity and convenience. Under our present policy, the Department would issue such a Certificate to as many operators over the same route as met these minimum requirements, and has in no way attempted to control the matter of competition or set any rates for such a service.

"We do feel that adequate equipment is essential, inasmuch as reserve equipment has a definite bearing on the time allowed for maintenance. We also feel that any holder of a Certificate of Authority should be in a position to maintain a reasonably dependable schedule, and not be so hampered

that the foregoing section of the Air Commerce Act empowers the Secretary to prescribe certificates for the purpose, and such only as may reasonably be adapted to the purpose, of carrying out the provisions of the Act. The Act, it is clear, anticipates regulation for the purpose of safety, but there seems to be nothing in the Act showing an intention to regulate or authorize the regulation of the economic aspects of air transport. The policy must be, then, to place no other restrictions upon the forces of free competition.

While the federal certificate of authority is not a certificate of convenience and necessity, it does give the federal department a measure of the same control that the latter type of certificate permits. The certificate of authority does place limitations upon the establishment of air carrier services—assuming that they are of the scheduled air transport sort under discussion. Bottomed upon the desirability of protecting the safety of the traveling public and that of the general public on the ground, the certificate of authority makes possible the establishment of a standard of excellence below which air transport services may not fall. On the other hand—whether it be defect or not—the certificate of authority allows no other restrictions upon the number of carriers by air who wish to establish scheduled interstate transport services in a given territory, possibly over the same airways and between the same termini. If such restrictions are desirable, legislation probably must be enacted permitting the requirement of certificates of convenience and necessity—either by the Department of Commerce, the Interstate Commerce Commission, or some other body.

A moment ago it was stated that, while the federal certificate of authority is not a certificate of convenience and necessity, it does

by lack of equipment, personnel and facilities as to have to interrupt their service for anything but weather.

"The relationship of this Department to interstate aircraft carriers, if and when such carriers are made subject to the regulations of the Interstate Commerce Commission, will probably be indicated in the law which promulgates such regulations.

"We have never made any inquiry into the financial responsibility of applicants for Certificate of Authority to operate other than those indicated by the equipment and facilities which they have. As outlined previously, they must have sufficient equipment to adhere to schedule, and a failure to provide any of the safeguards to operation outlined in the Interpretations of 7-E would be cause for refusal of a Letter of Authority.

"To sum it up, our Certificate of Authority to operate is designed to assure adequate equipment, facilities and personnel to operate safely, without any connection with the financial arrangements of the company. *We of course recognize the fact that our requirements are apt to cost money, and in that way influence finances*, and for that reason have kept them down to the minimum which we consider consistent with safety." (Italics ours.) Letter of Nov. 16, 1931, from *George E. Gardner*, Supervisor, Airline Inspection, Aeronautics Branch.

gives the federal department a measure of the same control that the latter type of certificate permits. At first blush, it might appear that regulation for safety purposes is a rather harmless control—without economic significance. It does, however, permit of rather powerful—yet desirable—economic control. To that extent, the certificate of authority may not need the supplementary legislation just mentioned. While the certificate of convenience can distinctly control the competitive factor by placing limitations upon the number of carriers operating in a given territory—even though monopolies are not granted, the certificate of authority can accomplish much of the same result by demanding that, however severe the competition may be, the quality of service must not be impaired. Since the evils of cut-throat competition are eventually manifested in a poorer quality of service, with its inherent danger to the public, these economic evils may be partially controlled through a regulatory device that purports only to be concerned with questions of safety.

That the federal department is, at present, interested in questions of safety may be seen readily from the information requested in the application for a certificate.¹¹ Furthermore, in actual practice, a *Letter of Authority* is granted,¹² in the nature of a temporary certificate.

State Jurisdiction Over Air Transport:

Having noted the extent to which there has been a federal entry into the field of carrier regulation, and having asserted that

11. See Appendix B.

12. For example, the following *Letter of Authority*, dated Jan. 23, 1931, was granted Century Airlines, Inc.:

"The Department of Commerce now has on file your authenticated application for a Certificate of Authority to operate an interstate passenger air transport service on certain fixed schedules. The application, with its supporting data, shows the following routes, service and aircraft:

"Route: Cleveland, Ohio to Detroit, Michigan via Toledo, Ohio;
Toledo, Ohio, to Chicago, Illinois;
St. Louis, Missouri, to Chicago, Illinois via Springfield, Illinois.

"Service: Daylight—darkness.

"Aircraft: Stinson Tri-Motor Cabin land monoplanes.

"Subject to any state or other local requirements which are applicable in the premises, you are authorized to conduct the service as stated herein, and as described in further detail in your application, until such time as the authority granted hereby is withdrawn or a Certificate of Authority issued in your behalf.

"Any material change in the nature of the operation as set forth in the application, such as change from daylight to darkness schedule, or in the type of aircraft employed, the route flown, etc., will require prior written approval of the Secretary of Commerce; otherwise, the authority contained herein is automatically suspended."—CLARENCE M. YOUNG, Assistant Secretary of Commerce.

the states are not barred from certificate control of intrastate air transport and the intrastate business of interstate air carriers—within the limits mentioned—, it becomes necessary that we consider the power which the various state regulatory bodies actually possess over scheduled air transport services.

The regulatory bodies are, for our purposes, of two types: (a) public utility commissions—by whatever name designated, and (b) aeronautics commissions—or officers. In either case, their powers are conferred by statute and are rather strictly construed. Before a state commission may require a certificate of convenience for an air carrier it must (1) have jurisdiction—either general or special—over such an air carrier, and (2) be authorized to issue certificates of convenience—either generally or for that kind of carrier. If either authority be lacking, the state commission may not regulate air transport through certificates of convenience and necessity. Thus, the State of X may have jurisdiction of air carriers, yet lack authority to require certificates. Such appears to be the situation in California and several other states—as will be indicated later.¹³

Most states have aviation statutes requiring registration and licensing and some create aeronautical boards with power to prescribe rules and regulations—which power is frequently phrased in rather broad language. However, it is very doubtful whether, under such statutes, certificate regulation may be imposed. The broad powers of regulation conferred must, in accordance with well established principles of statutory construction, be restricted to and limited by the purposes and objects of the statutes as appear in the more specific provisions, and these, generally, indicate no intention to authorize certificate regulation of air transport.

Again, most states have motor carrier statutes but these may not be extended to cover air carriers since the obvious intention of these acts is to regulate automobile carriers using the land highways and most of the legislation specifically provides only for operation over such highways.¹⁴

As to the general public utility statutes, comparatively few questions have arisen relative to the kind of utilities over which the

13. See Appendix C.

14. "When a rule of conduct is laid down in words that evoke in the common mind only the picture of vehicles moving on land, the statute should not be extended to aircraft simply because it may seem to us that a similar policy applies, or upon the speculation that if the legislature had thought of it, very likely broader words would have been used." *McBoyle v. U. S.*, 283 U. S. 25, 51 S. Ct. 340 (1931). Of course, a penal statute was involved. Public utility laws are construed more liberally.

commission has power.¹⁵ This is due to the fact that these bodies have no authority except that which is conferred by statute and the statutes have set up rather clear boundaries for commission regulation. A public utility commission, being unknown to the common law, derives its authority wholly from constitutional or statutory provisions, and possesses only such powers as are thereby conferred.¹⁶ Where a statute does not provide jurisdiction over a particular business, the commission may not assume jurisdiction over it merely because the business is in public service. It is limited to such utilities as are named or described in the acts creating and empowering it.¹⁷ Therefore, if a commission is given jurisdiction over common carriers, it may not regulate all those transportation agencies which, under common law rules, would be common carriers. It may regulate only those lines of business designated common carriers in the statute creating the commission or stating its authority.¹⁸

A difficult question arises where the commission is given jurisdiction over all common carriers, but the term is not defined. In several states, the term was held to include motor carriers even though they were not in existence, or not in great use, when the statute was enacted. Thus, the California constitution gives the Railroad Commission certain powers over "railroads and other transportation companies." In *Western Association of Short Line Railroads v. Railroad Com. of California*,¹⁹ it was held that a motor carrier is a "transportation company" within this provision and the commission was required to take jurisdiction over motor carriers—although that type of carrier was not in existence at the time the constitution was adopted. It is probable that commission jurisdiction, under such a provision, would extend to air carriers.

Many statutes extend the jurisdiction of the commission to railroad companies, Pullman companies, and express companies. One state commission has issued one certificate of convenience and necessity to an air carrier, relying, in part, upon an opinion that

15. H. C. Spurr, "Guiding Principles of Public Service Regulation," (1924) Vol. I, p. 17.

16. *Chicago Railway Co. v. Commerce Commission* (Illinois), 336 Ill. 51, 167 N. E. 840 (1929); *Nashville, Chattanooga & St. Louis Ry. v. RRd. & Pub. Util. Com.* (Tennessee), 159 Tenn. 43, 15 S. W. (2d) 751 (1929); and *West v. Sun Cab Co.* (Maryland), 154 Atl. 100, P. U. R. 1931 C. 1 (1931).

17. For general discussion, with authorities, see 51 C. J. 36, 37.

18. Spurr, *supra*, p. 18.

19. 173 Cal. 802, 162, Pac. 391 (1917).

the term "express companies" would include air carriers.²⁰ Such an opinion possibly violates the meaning of the term, for it would appear to apply to a company such as the American Railway Express Company. The common understanding of the term and the definition given by those statutes in which it is defined seem to exclude air carriers. Thus, the Arizona statute²¹ defines it as follows: "express corporation includes every person engaged in the business of transporting property for compensation on the line of any common carrier"

20. Maryland, upon the advice of *Mr. Raymond S. Williams*, as follows: "It is true that nowhere in the Public Service Commission Law are carriers by air specifically mentioned. This, however, does not determine the question, for if the general terms of the law are sufficiently inclusive, jurisdiction will attach. In *U. S. v. Hubbard*, 266 U. S. 473 (1925), it was held that although interurban electric railways were not specifically referred to in the original Act to Regulate Commerce, nor in any amendments thereto prior to that of June 18, 1910, nevertheless they were subject to the jurisdiction of the Interstate Commerce Commission. 'The basis for the jurisdiction of the Commission over them (said Mr. Justice Brandeis at page 479) is the generality of the language of the original act, which declared in paragraph one that its provisions "shall apply to any common carrier engaged in the transportation of passengers or property by railroad"'

"The Public Service Commission Act of this State evinces a general purpose to subject all public utilities operating in this State to the supervision and control of the Commission. More specifically, Art. 23, Sec. 346, includes 'express companies' in its definition of 'common carriers'—and the corporation in question will carry 'express' as well as passengers. The jurisdiction of the Commission, therefore, might well be rested on this paragraph of the law alone.

"Furthermore, Sec. 350 of Art. 23 provides that the jurisdiction of the Commission shall extend '8. To all persons, corporations or partnerships engaged in the "transportation of property or freight," as above defined, within this State.' And, under Sec. 346 the 'transportation of property or freight' is defined as follows: 'The term "transportation of property or freight," when used in this sub-title, *includes* any service in connection with the receiving, delivering, elevation, transfer in transit, ventilation, refrigeration, icing, storage and handling of the property or freight transported.'

"Apart from the specific definitions of the law itself contained in Sec. 346 above quoted, the Chesapeake Aircraft Company will be a common carrier, and under Sec. 350 it is provided that the jurisdiction of the Commission shall extend '4. To any common carrier operating or doing business within the State.'

"Still further, Sec. 360 of Art. 23 declares: '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 carrier performing such service;' and Sec. 362 of Art. 23 provides that 'the Commission shall have general supervision of all common carriers transporting passengers, freight or property from one point to another within the State of Maryland.' For these reasons I have reached the conclusion above stated.

"I may add that analogous questions as to the jurisdiction of the Commission were similarly answered by Senator Bruce when General Counsel to the Commission. See 1 P. S. C. Md. 37; 3 P. S. C. 426; 4 P. S. C. 566, and 5 P. S. C. 613."

21. Struckmeyer's Rev. Code of Arizona, 1928, Sec. 673.

In most states, the statute defining the jurisdiction of the commission extends to more utilities than does the provision—if one exists—requiring certificates. In many such cases, the commission is given power to “regulate” the broader class of carriers. But does “regulate” authorize the commission to require certificates? It has been held that it does not,²² and this would seem to be the construction that such statutes would and should generally receive.

State Authority to Require Certificates:

We have seen that the first consideration to note is whether or not the state regulatory commission has jurisdiction over the subject matter—air transport. If that jurisdiction be lacking, our inquiry may end at once. Such a state cannot control the business of air carriage. On the other hand, if jurisdiction over air transport be granted, the search is not ended. It remains to consider whether or not the commission is empowered to require certificates of convenience and necessity for that particular type of carrier. Unless both powers exist, regulation by certificate is unauthorized.

As has already been indicated, the aviation statutes which create aeronautical boards with rather broad powers pertaining to rules and regulations may give considerable jurisdiction over air carriers but it is believed doubtful that they will permit certificate regulation.

Manifestly, the number of states having both powers mentioned will be less than those which may have the single jurisdictional power. That this is true will appear when we consider the actual amount of regulation undertaken by the various states, which subject is dealt with in the next section.

For a state possessing, or assuming to possess, both powers, we may consult the Illinois legislation as found in the Commerce Commission Law of 1913, which was amended in 1921.²³ The act contains no specific mention of aircraft or the transportation of persons and property via the air, yet the following provisions taken from Sections 8 to 10 would seem clearly to give jurisdiction over air transport services:

“8. *The Commission shall have general supervision of all public utilities, . . . shall inquire into the management of the business thereof and shall*

22. *Arkansas RRd. Com. v. Independent Bus Lines*, 285 S. W. 388, P. U. R. 1927 A 371 (1926); *Re Burlington Transp. Co.* (Nebraska State Ry. Com.), P. U. R. 1929 C 632 (1929).

23. See *Howard C. Knotts*, “Certificates of Convenience and Necessity for Air Carriers,” 3 JOURNAL OF AIR LAW 58, 61.

keep itself informed as to the manner and method in which the business is conducted. It shall examine such public utilities and keep informed as to their general condition, their franchises, capitalization, rates and other charges, and the manner in which their plants, equipment and other property owned, leased, controlled or operated are managed, conducted and operated, not only with respect to the adequacy, security and accommodation afforded by their service but also with respect to their compliance with the provisions of the Act and any other law, with the orders of the Commission and with the charter and franchise requirements."

"10. The term 'public utility,' when used in this Act, means and includes every corporation, company, association . . . that now or hereafter:

"(a) May 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 . . .

"(b) May own or control any franchise, license, permit or right to engage in any such business.

"The term 'common carrier,' when used in this Act, includes . . . every corporation, company, association . . . owning, operating or managing any such agency for public use, in the transportation of persons or property within the State."²⁴

The second power—that permitting the requirement of a certificate of convenience and necessity—is found in the Illinois law in Section 55 which provides as follows:

"55. No public utility shall begin the construction of any new plant, equipment, property or facility which is not in substitution of any existing plant, equipment, property or facility or in extension thereof or in addition thereto, unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."

An examination of the existing statutory powers shows that at least thirty of the states have no jurisdiction over the business of air transport and that less than a dozen states are possessed both of jurisdiction and the power to require certificates. This factual situation, together with certain procedural matters, will be considered in the following section. Of course, when it is stated that not over eighteen of the states have jurisdiction over air carriers, reference is not made to aeronautical regulation generally—to that pertaining to licensing, traffic rules, etc.—but, rather, to jurisdiction that underlies the certificate power, and which power is usually found—not in an aeronautics commission—but in a public utility commission.

24. Italics ours.

II. THE EXISTING CERTIFICATE REQUIREMENTS

A full summary of the existing requirements is presented elsewhere²⁵ and attention may now be directed to the basic features of certificate regulation in the eleven states which have exercised control over air carriers.

Statistical Summary:

Jurisdictional authority, commission policy, and commission action can be determined, in summary fashion, from the chart on the following page.

25. See Appendix C and Appendix D.

Data Pertaining to Eleven States Requiring Certificates

States Requiring Certificates	Regulatory Body	Authority to Regulate	Policy in Granting Certificates	Why Granted	Why Refused	Duration of Certificate	Revocations	Certificates	
								Granted	Refused
Arizona	Corporation Commission	Commission order under Constitution in re "common carriers"	(Granted to) Limited Number	General public convenience and necessity	Carrier financially incapable or not qualified as aircraft operator	One year	Three: Failure to comply with regulations	Six	Eight
Colorado	Public Utilities Commission	Construction of "public utility" in general statute	Limited Number	Public need for service and financial resp. of carrier	Unnecessary duplication and financial irresp.	Indefinitely	One: Failure to operate	Seven	One (and 2 dismissed)
Illinois	Commerce Commission	Construction of "transportation of persons" in general utility statute	Limited Number	Need for service and financial ability	02	Indefinitely	0	Three	0
Maryland	Public Service Commission	"Express companies" in general utility statute	No established policy	General public convenience and necessity	0	—3	0	Two4	0
Nevada	Public Service Commission	"Airship companies" made utilities by statute	—	—	—	—	—	Six	—
New Mexico	Corporation Commission	Air carriers made "common carriers" by statute	(Granted) Liberally	General public convenience and necessity	Unnecessary duplication, non-compliance with U. S. Standards	One year	0	Five	0
North Dakota	Board of Railroad Commissioners	"Common carriers" in general statute	—	—	—	—	—	One	—
Pennsylvania	Public Service Commission	Special statute requiring certificates of air carriers	Practically all applicants	Financial security and public necessity	—	One year	0	43	One
Tennessee	Railroad and Public Utilities Commission	"Common carriers" in general statute	No policy	General public convenience and necessity	0	—	0	One	0
West Virginia	Board of Aeronautics	Commission order under Aviation Statute	Effective January 1, 1932						
Wyoming	Public Service Commission	Commission order under statute, in re "common carrier"	—	Safety, financial ability, and general public convenience and necessity	—	Indefinitely	0	Two	0

1 = Elements considered in granting.
2 = Zero indicates none.

3 = Dash indicates no information existing or obtained.
4 = One certificate was for security issue.

It will be noted that, in ten states, certificate control is lodged in the hands of the state public utility commission. In West Virginia, alone, the authority is claimed by the State Board of Aeronautics. The Public Service Commission of West Virginia has stated that the "question of certificates of convenience and necessity is under the jurisdiction of the Board of Aeronautics."²⁶ If there be any advantage, and it is believed that there is, in having all types of carrier services—motor bus, rail, etc.—under one state regulatory body (except as to questions of licensing, etc.), the policy of the ten states would seem clearly superior to that of West Virginia.

In seven states,²⁷ authority to regulate by certificate is derived from an interpretation of the public utility statutes. In three states,²⁸ the statutes expressly refer to air carriers. In West Virginia, as mentioned, the authority is claimed from Sec. 2 of the aviation statute which provides: "Such board shall have general supervision and control over . . . *all other phases of aerial activities.*"²⁹ The Maryland situation has previously been mentioned.³⁰

The majority of states have not committed themselves as to any definite policy in granting certificates, particularly as to limiting the number of carriers in the same territory. The statements made must not be criticized too severely. The industry is still young; certificate regulation has less of history behind it. Questions of policy are in the making. However, it would appear that the element of *public safety* has been foremost in the minds of the various commissions. Most of them grant certificates when, and only when, the petitioning air transport service is financially responsible—which would include an ability to provide adequate insurance. Of course, every commission is bound to consider the well recognized factors of "convenience" and "necessity."

Refusals to grant certificates seem to be based but slightly upon the question of duplication, although the competitive factor has been recognized.³¹ The slight volume of intrastate operations would serve as good reason for lack of emphasis upon this economic

26. Letter of Oct. 15, 1931.

27. Arizona, Colorado, Illinois, Maryland, North Dakota, Tennessee, Wyoming.

28. Nevada, New Mexico, and Pennsylvania.

29. H. B. No. 266, March, 1931. See Appendix C.

30. See note 20, and Appendix C.

31. See *Howard C. Knotts*, *supra*, 58, and cases cited for a clear discussion of this problem.

factor. As the number of competing air carriers increases, this element will assume far greater significance.

Of all the certificates applied for, only twelve of the requests have been denied, and eight of these were refused by the Arizona Commission—due, largely, to failure to satisfy the *safety* requirement. Refusing one, Colorado granted seven, and Pennsylvania granted forty-three and refused one. Only these three states have refused applications.

Some of these certificates granted have been for single flying events rather than for regular transport services. Thus, of the five certificates granted by the State Corporation Commission of New Mexico, three "covered the operation of aircraft for some special event, such as a fair or convention and not regular operation."³²

Procedural Principles:

Inasmuch as the certificate control is quite generally in the hands of the state public utility commission, the procedural principles for air carriers will be largely settled by the requirements for other kinds of carriers. However, separate provisions or regulations have been set up for air transport services³³ and it is neces-

32. Letter of Jan. 8, 1932.

33. The Arizona Corporation Commission in its General Orders 113-L (Nov. 10, 1928) and 116-L (June 18, 1929), requiring air carriers to obtain certificates, has made specific regulations in regard to the form and contents of the application for a certificate and the determination thereof. Applications must specify, among other things, the proposed route, the kind of transportation and a description of the vehicles, the proposed time schedule and schedule of rates, and evidence of registration with and licensing by the Secretary of Commerce and the Corporation Commission. The applicant must give notice of the hearing of the application by publication, and upon the hearing, the Commission may issue the certificate prayed for, refuse it, or issue it upon terms, modifications, or conditions. The carriers are required to conform to the federal air commerce regulations, and to provide insurance for person and property damage.

The Illinois Commerce Commission is preparing rules prescribing the form and contents of, and procedure upon, applications for air carrier certificates. Meanwhile, it is using a converted motor carrier form, indicating in addition to the usual facts, the names and routes of those aircraft, railroad, and motor carriers that at the time of the application are rendering service between points on the proposed route, the applicant being required to serve these existing carriers with copies and notice of the application.

The air commerce regulations promulgated by the Nevada Public Service Commission (Feb. 5, 1929) prescribe flying rules and other typical air traffic rules and provide that applications for certificates must contain evidence of the federal licensing of the aircraft and pilots, and provide that a violation of the air commerce rules "operates as an automatic revocation of the certificate of public convenience."

The State Corporation Commission of New Mexico has adopted (March 17, 1930) a set of rules and regulations governing the contents of and pro-

sary, of course, to consult the requirements of the particular state in question.

To support an application for a certificate, it is necessary to introduce certain documentary evidence into the commission record, in addition to the testimony of witnesses present. The following list of exhibits is typical of those prepared and presented by the three Illinois air carriers to whom certificates have been granted:³⁴

General:

1. Proof of notice of hearing duly published and served.

Air Transport Company History:

2. Certificate of incorporation,
3. Certificate to do business in state (Illinois),
4. Annual Report to Stockholders—Corporation balance sheet,
5. Airport leases—hangar space, etc.,
6. Insurance carried—amount and types.

Services Rendered:

7. Map showing route covered,
8. Federal certificate of authority,
9. Time-table in effect—showing plane schedules,

cedure upon applications for air carrier certificates which is practically identical with those contained in General Order 113-L of the Arizona Commission, except that in New Mexico it is discretionary with the Commission whether or not to call a hearing upon the application. The Commission has drafted a form of application similar to the usual motor carrier form, and specifying, as does the Illinois form, the names of those transportation agencies then serving the territory proposed to be served by the applicant.

The Pennsylvania Public Service Commission has prepared a comprehensive form of application (Circular No. 2, Rules of Practice, Penn. Public Serv. Com., Dec. 1, 1930), specifying in considerable detail, among many other things, the financial organization of the applicant, the arrangements for and ownership of landing fields to be used, a detailed description of the vehicles to be used, a statement of the applicant's assets and liabilities, the names of transportation companies then serving the territory, proof of licenses and certificates of qualifications and safety issued by the State Aeronautics Commission for the landing fields, aircraft, facilities, and air-men to be used, and a statement of the reasons why the proposed service is convenient and necessary for the public. The rules of practice in regard to such applications are the same as in other applications to the commission.

The applications and procedure in regard to air carrier certificates are governed in Wyoming by rules adopted by the Public Service Commission for utilities in general.

In West Virginia the Board of Aeronautics is now engaged in the preparation of rules and regulations governing applications for certificates.

34. In this case, however, the carriers were actually engaged in rendering air transport services when the applications were filed. The table of exhibits assumes such fact. Manifestly, some of the exhibits will not be useful for a *proposed* air carrier.

The writers are indebted to Mr. Howard C. Knotts, Aviation Supervisor, Illinois Commerce Commission, for access to the commission files and for suggestions pertaining to the exhibits.

10. Schedule of fares,
11. Ticket form,
12. Air Mail contracts,
13. Night and day service.

Need for Service:

14. Services rendered by competing carriers,
15. Schedule showing time saved by air travel, mail handling, etc.,
16. Revenue miles flown,
17. Maintenance of schedule—departures, arrivals (on time, early, late) and cancellations,
18. Passengers refused for lack of space,
19. Passengers actually carried—northbound—eastbound, etc.,
20. Letters from local Chambers of Commerce, business establishments, etc., stating need for the air carrier service.

Some of the representative application forms are presented in an appendix,³⁵ as is a representative order granting a certificate.³⁶

III. SHOULD THE STATES REQUIRE SUCH CERTIFICATES?

Thus far, jurisdictional questions have been considered and an examination has been made of the existing state certificate requirements. The desirability of such control over air transport services remains to be dealt with—particularly since so much of the periodical material has been directed toward opposing or advocating certificate regulation.

The Arguments Against:

A summary of the arguments opposed to certificate regulation would include the following:

- (1) State control through certificates will *never* be desirable—because
 - (a) Monopolies are never desirable;
 - (b) Air transport does not lend itself to monopoly;
 - (c) The federal government has complete control of the field;
 - (d) The air transport companies can, by their own conduct, make such control unnecessary.
- (2) State control through certificates is *not now* desirable—because
 - (a) There is not sufficient air transport operation to justify it;

35. See Appendix E.

36. See Appendix F.

- (b) Such regulation will stifle an infant industry;
- (c) Certificate control will necessitate undesirable and drastic rate regulation.

Validity of the Arguments:

1—(a) The idea that monopolies are never desirable finds its roots in the economic theory of laissez-faire. In maintaining Adam Smith's notion of the "invisible hand", it represents an extreme view favoring the full play of free competition. Although the mode of transportation belongs to the twentieth century, the economic theory smacks greatly of the eighteenth century. The modern tendency seems, clearly, to favor a regulated monopoly in the field of public service.³⁷ Furthermore, the view assumes that an absolute monopoly is actually granted. If correct, it would have merits for the public might be prevented from receiving the benefits of a newer company that could operate at lower costs. In fact, so little is known of operating costs in aviation that we must expect considerable rate fluctuations. In actual practice, monopolies—of the sort feared—are seldom granted. In a number of the states, there is a statutory provision to the effect that "no certificate of public convenience and necessity shall be construed as granting a monopoly or an exclusive privilege, immunity or franchise."³⁸

1—(b) It has been stated that "there is no proper analogy between aircraft common carriers and railroads or motor stages. There is a marked similarity in governing conditions, however, as between aircraft carriers and steamship lines. Steamship lines are not required to obtain certificates."³⁹ If one be thinking of ocean

37. On this subject, see *Thomas P. Hardman*, "The Changing Law of Competition in Public Service," 33 W. Va. Law Quart. 219; *Lilienthal and Rosenbaum*, "Motor Carrier Regulation," 36 Yale Law Journ. 163; and *John J. George*, "Motor Carrier Regulation in the United States," 1929.

H. C. Spurr, supra, "Competition was the earliest form of regulation but this proved to be bad, in the long run, for the consumers of utility service, as it too often meant duplication of facilities in a field not large or rich enough to support more than one company. The usual outcome of this was consolidation, followed by recoupment, by means of high rates, of losses due to the competition. Whatever may be the value of competition as a regulator of charges in other lines of business, it proved to be a failure in the public utility industry. It was a long time before this was understood, and, even now, it is not generally appreciated by the public," p. 1.

38. Illinois Commerce Commission Law, Sec. 55. Cahill's Illinois Revised Statutes—1931, Ch. 111a, Sec. 71.

39. *W. J. Davis*, "State Regulation of Aircraft Common Carriers," 1 Air L. Rev. 47, 55. See, also *William P. MacCracken, Jr.*, "Special Problems in Aeronautic Legislation," Proceedings of the National Conference on Uniform Aeronautic Regulatory Laws, p. 34, 2 Air L. Rev. 479, 483, wherein it is stated, "Inherently air transportation, unlike rail transporta-

steamships, the answer follows that we are not concerned with trans-Atlantic air transport services—but with services within the states. If we confine our interest to these latter services, it might be pointed out that several of the state statutes, which require certificates, specifically extend to steamboat carriers.⁴⁰

There are some merits to these arguments by analogy—even if they break down at times. Air carriers do not require great investments in plant—road-bed, depots, rolling-stock, etc.—as do the railroads. They do not use the ground highways—as do the motor carriers (which, incidentally, require only a small capital investment in plant). They are something like steamboats—only they travel the airways instead of the water courses—and steamboats are subject to regulation!

The difficulty with these arguments by analogy is that they seek to make air carriers assume the role of a *prima donna*.⁴¹ For some time, acting upon the advice of counsel, the carriers sought, in their ticket contracts, the protection of private carrier status. And to what avail! There is no escape from the fact that a scheduled air carrier of persons and property is merely another transportation medium—competing with those other forms which ante-date it. And arguments that air transport is neither fish nor fowl will not long deter public utility commissions from exercising some control over its activities.⁴²

1—(c) The view that the federal government has preempted the field is based upon the proposition that, for the present at least, any state regulation of the intrastate business of interstate air carriers will constitute an undue burden upon interstate commerce and so be unconstitutional. The validity of the notion has already been dealt with in Part I, but it might be pointed out that the objections to state control are directed primarily to matters such as *rate* regulation rather than to regulations pertaining to *safety*.

1—(d) "If the air transport industry will profit by the experience of its older brother, the railroads, to the extent that it

tion, does not lend itself to a monopoly; therefore the basic reason for such regulatory legislation by the national government, or the states, is lacking."

40. California has such a statute. So has Alabama, Arkansas, Illinois, Maryland, North Carolina, and North Dakota. And, in Florida, Kentucky, Louisiana, Maine, Massachusetts, Missouri, New York, Oklahoma, Pennsylvania, Rhode Island, Virginia, Washington, and West Virginia, though certificates are not required, steamboat carriers are regulated with other utilities.

41. See *Smith v. O'Donnell*, *supra*, note 3.

42. For an analysis of the economic factors involved, see *Thomas H. Kennedy*, "The Certificate of Convenience and Necessity Applied to Air Transportation," 1 *JOURNAL OF AIR LAW* 76, 81.

avoids discriminatory practices and unfair competition, there is no apparent reason why the industry cannot avoid the burden of such regulation."⁴³ This is helpful advice, but it must be pointed out that the motor bus industry and other utilities—developing after the railroads—had the benefit of their example yet were unable to avoid regulation. Even if unfair competition can be prevented without recourse to regulation, some control is necessary to insure the interests of the traveling and general public.

2—(a) The argument that there is not sufficient air transport operation to justify regulation is valid if we base our decision upon the present volume of intrastate air services which duplicate each other.⁴⁴ The evils of competition have yet to manifest themselves in abundance. But our infant industry is growing rapidly. The domestic scheduled air lines carried a total of 457,340 passengers during 1931, and, during the last six months of that year, flew a total of 27,195,062 miles. There are interstate flying operations by scheduled lines in 43 states and intrastate operations in 35. Even if the economic question of duplication be not pressing, is it not time that the public be assured of *some* check upon the quality of air carrier service offered them? Is it not worth while to establish some standard of excellence to govern questions of financial responsibility, equipment, personnel and insurance?⁴⁵

2—(b) The 1929 report of the American Bar Association Committee on Aeronautical Law contains the following statement: "State franchise for intrastate operation would, in the opinion of your committee, *throttle the development of aviation* as a means of transportation and would not serve the best interest of the public."⁴⁶ And one of the committee members stated elsewhere: "It is true that such a measure would tend to protect present operators from unfair and unjustified competition, but it was the consensus of

43. *William P. MacCracken, Jr.*, *supra*, 484.

44. See Appendix C. and D. for a summary of the air transport services in the various states.

45. See *George B. Logan*, "The Interstate Commerce 'Burden Theory' Applied to Air Transportation," 1 *JOURNAL OF AIR LAW* 433, 441: "The state should require a proper permit by a corporation engaged in carrying passengers within the state. . . . The requirement should include not only a qualification as to competency of the official personnel of the company, but solvency in one way or another, either by its actual invested capital or by some form of insurance or otherwise to protect the traveling public within the state."

46. *Report of the Standing Committee on Aeronautical Law, 1929*, 54 *Reports of American Bar Association*, 287-298. The committee was composed of the following members: Chester W. Cuthell, Chairman, W. Jefferson Davis, Randolph Barton, Jr., John A. Elden, and B. M. Holden. Italics ours.

opinion that *the time is not yet ripe for such a drastic position.*"⁴⁷

Those opposing this view of certificate requirement seem to be as positive that free competition—resulting in cut-throat competition—will stifle the industry. As long ago as 1928, the Pennsylvania Corporation Commission, in denying an application for a certificate said: "The Commission recognizes that the policy of the nation and state is to foster and encourage aviation. The facts in this case, however, are . . . convincing that . . . 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."⁴⁸

"In order to surround the aviation industry with the necessary protective measures *in its formative stage*, . . . it is essential that sound government regulation of air transport lines be brought about, not government ownership in any sense, but the same character of regulation as exercised over the railroads through the Interstate Commerce Commission . . ."⁴⁹

There are merits in both positions. The industry is too young and, as has been indicated, our knowledge of air carrier operating costs is too meagre to warrant the granting of monopolies. On the other hand, invested capital will require some protection from unwarranted competition—unwarranted in the sense that it is mere duplication and does not offer increased or better services to the public. The judgment of the public utility commissions may be trusted in balancing the interests concerned; their members clearly recognize the need for proceeding cautiously in this new field.

2—(c) One of the chief objections to certificate regulation is that it involves rate regulation.⁵⁰ This assertion is somewhat

47. *W. J. Davis*, *supra*, p. 57. Italics ours.

48. *Application of Battlefield Airways, Inc.*, 17 Pa. C. R. 410, P. U. R. 1928B. 287. However, the commission added, "If, however, in any similar proceeding it appears that the application of the non-competitive principle is not in the interest of and would not foster and encourage aviation, the principle will not control."

49. *Erle P. Halliburton*, 1 Air L. Rev. 120. Italics ours. See also, *Thomas H. Kennedy*, *supra*: "It is admittedly the policy of the United States to encourage aviation and if history can be trusted to repeat itself, it will soon become evident that by permitting ruinous competition between air transport companies aviation is not being encouraged but is rather being devitalized and stunted in growth."

50. *Chester W. Cuthell*, "Development of Aviation Laws in the United States," 1 Air L. Rev. 86, 89-90.

misleading for it must be remembered that the Interstate Commerce Commission had jurisdiction over rates long before the Transportation Act of 1920 gave it certificate authority. Rate regulation may exist apart from certificate control. Certain of the states which have jurisdiction over air carriers, but are not empowered to require certificates, already have authority to regulate rates.

In Illinois, for example, it is clearly recognized by the members of the Commerce Commission that any attempt at rate regulation of air carriers is premature. The Commission has taken jurisdiction of these carriers and has made certain requirements for purposes of safety. It is in position to study the rate problem and if the time comes when rate regulation is necessary, the Commission will be able to act wisely in the matter. In the meantime, the public is assured of reasonable protection.

This viewpoint, of course, assumes that the state commission is intelligent. The action taken by the commissions of the eleven states requiring certificates would seem to justify the assumption.

The Arguments For:

(1) State control through certificates is immediately desirable—because

- (a) The safety of the traveling and general public can be protected only by requirements of:
 - responsible management, and
 - capital sufficient to provide:
 - safe and proper equipment,
 - qualified and experienced personnel, and
 - adequate insurance against injury;
- (b) Reasonable protection may thereby be given to invested capital against unnecessary duplication and destructive competition;
- (c) The interests of all transportation services can best be safeguarded by giving jurisdiction over air carriers to the public utility commission.

These Arguments Considered:

1—(a) This argument urges state certificate control on the same ground that supports the requirement of a federal certificate of authority—that of safety. It has nothing to do with monopoly, and is not concerned with rate regulation. In protecting the public against the unqualified operator, certificate control likewise pro-

motes the interests of the qualified operator. The former will, of course, object.

1—(b) Regulation of the economic factors has been the subject of consideration in several preceding paragraphs. The views expressed need not be repeated here. We are not forced to choose between free competition and exclusive grant. Rather, the choice lies between free competition and some limitations placed upon duplication.

1—(c) The unified control argument is to the effect that the equities of all forms of transportation services can best be adjusted if our single commission (the public utility commission) have jurisdiction over them all.⁵¹ If this view be correct, as indicated in Part II, certificate control of air carriers should not be placed in the hands of an aeronautics commission.

Conclusions:

- (1) The states may regulate intrastate air carriers and the intrastate business of interstate air carriers—subject to the limitations of the burden theory.
- (2) There exists sufficient air carriage to make the taking of jurisdiction—where authorized—desirable.
- (3) If the commission have no statutory jurisdiction—with power to require certificates—the proper empowering legislation should be enacted.
- (4) The state certificate requirements—like those of the federal certificate of authority—should be devoted primarily to considerations of safety.
- (5) Certificates should not grant monopolies—but reasonable limitations upon duplication of services should be imposed.
- (6) Air transport rate regulation should be avoided until the industry has reached a more mature stage.

51. See *Stevenson v. Binford* (U. S. D. Ct. S. D. Texas), P. U. R. 1932A. 1 (1931). See, also, *Henry C. Spurr*, "The Right to Be Regulated," IX Public Utilities Fortnightly 195, and 284.

Appendix A

AIR LAW INSTITUTE QUESTIONNAIRE ON CERTIFICATES OF CONVENIENCE AND NECESSITY

REQUIREMENT OF CERTIFICATE:

1. Is a certificate of convenience and necessity, or similar certificate, required in your state for aircraft carriers?.....
2. Is this requirement made by virtue of some *statute* or by a *regulation* of a commission?.....
3. When was such requirement first made?.....
4. What is the citation to such statute or regulation?.....
5. If required by regulation, what statutory authority exists for making such regulation?.....

PUBLIC POLICY INVOLVED:

6. What considerations prompted the legislature or the commission to make such requirement for a certificate? (Possibility of monopoly, economic or legal considerations).....
7. If no requirement exists, what reasons have prompted a policy of non-regulation?
8. If no requirement exists, have there been any attempts to provide for the granting of such certificates?.....
9. If there have been such attempts, why have they failed?.....

PROCEDURE IN GRANTING OR REFUSING CERTIFICATES:

10. To what classes of carrier does the requirement extend?.....
11. Are the certificates granted rather liberally to all air carriers who apply, or to a limited number in a given territory?.....
12. What elements are considered by the commission in regard to the granting or refusing to grant a certificate?.....
13. By what state commission, or administrative head, is such certificate granted?
14. For what reasons have certificates been refused?.....
15. Have any certificates ever been revoked?..... How many?..... For what reasons?.....
16. For what period of time are certificates granted?.....
17. Are any conditions attached to the granting of certificates? If so, what conditions?.....
18. Are there any requirements as to the form of application for a certificate?
19. Are there any requirements as to the procedure in applying for certificates and as to the hearings upon such applications?.....
20. Is the hearing conducted before the commission, or an examiner?...
21. May we obtain copies of such requirements as to form and procedure?

STATISTICAL INFORMATION :

22. How many applications have been made for such certificates?.....
23. How many certificates have been granted?.....
24. How many certificates have been refused?.....

GENERAL QUESTIONS :

25. Is it possible for the Air Law Institute to obtain copies of any orders granting or refusing certificates, as made by your state body?.....
26. Is it possible for the Air Law Institute to obtain copies of the record of the hearings of applications for certificates?..... The hearings?.....
27. If so, what would you estimate the cost to be of same, or, if there are many of them, of the principal cases?.....
28. Are there any other facts that you think might be helpful, or any suggestions which you would care to make in regard to an investigation of this subject?.....

Appendix B

PROCEDURE FOR MAKING APPLICATION FOR CERTIFICATE OF AUTHORITY TO OPERATE INTERSTATE PASSENGER AIR TRANSPORT SERVICE*

Applications for such a Certificate shall set forth the information required herein. In making application, the questions requested herein must appear before the answer thereto and must be paragraphed and numbered as indicated. Responses to all questions and requirements outlined shall be full and complete in every particular. Responses of a general nature will not be accepted.

The original application shall be signed by a duly authorized executive officer of the applicant having knowledge of the matters and things set forth therein and shall be signed under oath. In addition to the original, four copies of the application shall be submitted.

The following wording should precede the information requested in the application: (Typewrite on letter-size 8½" x 11" white paper using one side of the sheet only.)

"TO THE SECRETARY OF COMMERCE:

Application is hereby made for a Certificate of Authority
to Operate Interstate Passenger Air Transport Service."

1. Date of Application.
2. Exact trade name of applicant.
3. General office address of applicant.
4. This application is for authority to operate scheduled passenger air transport service from to, via (list all intermediate stops).
5. (a) Is applicant an individual, partnership, or corporation?
(b) If an individual, is the individual a bona fide citizen of the United States?
(c) If partnership, names and citizenship of each partner.
(d) If a corporation, names of president, directors, and managing officers and citizenship of each. State percentage of the voting interest controlled by citizens of the United States.
6. Name, title, and postoffice address of official to whom correspondence in regard to the application is to be addressed.
7. Is this for a new line, or an extension of an existing line?
8. When is the service to be inaugurated?
9. Submit herewith a map indicating thereon the route to be traveled. Indicate the terminals, intermediate scheduled stops, and intermediate landing fields available for emergency use. Indicate on this map by red pencil, those portions, if any, of the route which will be flown at night. (For this purpose, use shortest day of year as basis for computation.)
10. List in sequence, all terminals, intermediate scheduled stops, intermediate and marked auxiliary landing fields and supply in each case the following information. Scale diagrams of each field containing the following information will be satisfactory:
 - (a) Name (if any) of airport.
 - (b) Location. (Name of nearest city adjoining.)
 - (c) Class of airport. (Municipal, commercial, private, intermediate, or marked auxiliary.)

* The Regulations governing scheduled operation of interstate passenger air transport services as amended October 1, 1931 (Aeronautics Bulletin 7-E), together with the interpretation thereof appear in 3 Air Commerce Bulletin 131 (Sept. 15, 1931, No. 6). See also 1931 U. S. Av. R. 260-7.

- (d) Altitude above sea level.
- (e) Dimensions of landing space available.
- (f) Obstructions. (List obstructions surrounding airport, giving height and location.)
- (g) Markings and identification. (Describe airport markings, such as circle, etc.)
- (h) Airport lighting. (Including beacon, auxiliary beacon, boundary lights, approaching lights, obstruction lights, etc.)
- (i) Distance from last field.
- 11. Submit statement of existing or proposed schedules including departures and arrivals at all scheduled stops.
- 12. Outline air navigation facilities available over entire route, including route markings or lighting, emergency field marking or landing, radio range beacons, and such other aids to air navigation as may exist. (Except weather service.)
- 13. Outline weather service on which line will be operated including source, location of reporting stations along route, frequency and method of collection and dissemination, and attach copy of form in which this information is made available to the pilot.
- 14. Describe radio system,
 - (a) Reception of Department of Commerce broadcasts and beacons.
 - (b) Location of Department of Commerce stations used in your operation.
 - (c) Description of privately operated two-way radio facilities.
- 15. List the aircraft to be utilized, including make, type, ownership, license numbers, and passenger capacity.
- 16. List equipment and instruments of each individual aircraft which will be carried on (a) day schedules; and (b) night schedules.
- 17. List the various grades and number of pilots regularly employed and outline their time of duty, including hours flown per day, the days they are on duty per week, and total time per month. (Differentiate between first pilots and co-pilots.)
- 18. Submit detailed organization chart outlining the various positions, the number of each and the functional duties of each.
- 19. Describe the hangar facilities available, including size, location, capacity in airplanes and type of construction.
- 20. Describe the repair facilities available, including size of shops, personnel employed, equipment utilized and locations.
- 21. Outline the maintenance program for both ships and engines, including period between overhaul.
- 22. Submit any additional information which you may believe will be of value in determining the adequacy and completeness of the proposed service.
- 23. The affidavit required on the original application shall be worded as follows:

AFFIDAVIT

State }
 County } ss :

..... being first duly sworn,
 upon his oath deposes and says that the foregoing statements are true to
 the best of his knowledge and belief.

That he is the of the above-named
 corporation, and has authority to make his application on its behalf.

.....
 (Signature)

Subscribed and sworn to before me this.....day of.....19....

.....
 Notary Public.

Appendix C

SUMMARY OF STATE JURISDICTION AND AIR TRANSPORT OPERATIONS

ALABAMA

*Jurisdiction Over Air Carriers:*¹

Alabama Public Service Commission given jurisdiction over "transportation companies," but this term is clearly defined so that it could not extend to air carriers. *Code of Alabama—1923, Vol. 4, Secs. 9625, 9631, 9709, 9741, 9742, and 10016.*

*Authority to Require Certificates:*²

The Commission has no authority to require certificates—*Sec. 9713.*

*Air Transport Services:*³

Interstate—1

American Airways, Inc.

Intrastate—0

ARIZONA—Certificates Required.

*Jurisdiction Over Air Carriers: Assumed.*⁴

Arizona Corporation Commission has by the Arizona Constitution been given very broad powers of regulation over "public service corporations" which are so defined as to reasonably include air carriers, and the statute also gives the commission very broad powers over such corporations. *Arizona Constitution, Art. XV, Sec. 2 & 3.*

*Authority to Require Certificates: Assumed—6 granted—8 refused.*⁵

The statute requiring certificates does not seem applicable to air carriers—being apparently designed for automobile carriers. But the Commission, relying upon the broad powers given in the Constitution, has by *General Orders 113-L and 116-L* required certificates.

Air Transport Services:

Interstate—3

American Airways, Inc.

Transcontinental & Western Air, Inc.

Century Pacific Lines, Ltd.

1. The jurisdiction referred to here means that jurisdiction possessed by the state public utility commission—by whatever name it may be designated. The various state statutes granting some regulatory body power to license aircraft, airmen, etc., have not been relied on—except where the jurisdiction seems to specifically cover air transport operations. The various state motor bus statutes have not been relied upon as giving jurisdiction over air carriers—since it seems clear that they cannot be construed to grant this jurisdiction.

2. When it is stated that the commission has no authority to require certificates, it is meant that there is no statutory authority which is deemed capable of construction allowing certification of air carriers.

3. The data pertaining to air transport services has been obtained, almost exclusively, from *The Official Aviation Guide*, as of Dec. 1, 1931, a monthly publication which carries a record of operations (schedules and fares) of all the major transport services. Manifestly, this list is not entirely complete as to the number of intrastate operations. Nor does the information here presented give an adequate idea of the volume of intrastate operations—the number of daily flights, etc. However, it is intended only to offer a fairly comprehensive picture of the status of interstate and intrastate operations now being conducted.

The number of interstate or intrastate services in a particular state is indicated by the numeral opposite the subtitle.

4. By "assumed" is meant that the commission has taken jurisdiction under a belief that it is authorized so to do. The use of the term does not mean that the writers have made any assumption as to jurisdiction.

5. As of Oct. 19, 1931.

Intrastate—2

American Airways: Douglas—Tucson—Phoenix.
Century Pacific: Phoenix—Yuma.

ARKANSAS

Jurisdiction Over Air Carriers:

Arkansas Railroad Commission jurisdiction extends to "common carriers." This might include air carriers but it is quite possible that it would be construed as not applicable to carriers other than railroads—which kind of carrier the statute apparently has chiefly in mind. See, also, *1927 Supplement to Crawford and Moses Digest of the Statutes of Arkansas, Sec. 8417q.*

Authority to Require Certificates:

See *Digest—1921, Sec. 1651, and 1653.* Whether the certificate provision in regard to "public service corporations" could be applied to air carriers seems questionable.

*Air Transport Services:**Interstate—3*

Trump Airways, Inc.
American Airways, Inc.
Robertson Air Lines.

Intrastate—2

Trump Airways: Ft. Smith—Little Rock.
American Airways: Little Rock—Texarkana.

CALIFORNIA

Jurisdiction Over Air Carriers:

Railroad Commission of California given broad powers by California Constitution—which no doubt would include air carriers. *California Constitution of 1879, Art. XII, Sec. 17:* "All railroad, canal, and other transportation companies are declared to be common carriers, and subject to legislative control." See, also, *Constit., Art. XII, Sec. 23, Amend. of 1911, and Act 6386—Public Utilities, Sec. 2(L), and Sec. 2(dd).*

Authority to Require Certificates:

There seems to be no authority to control air carriers by certificate, unless the power to supervise be held to justify certificates, which is doubtful. The provisions, however, have been held to justify certificates for motor carriers. *Statutes 1927, Ch. 129, Sec. 50(a), and 50(d).*

*Air Transport Services:**Interstate—7*

Pacific Air Transport, Inc. (United Air Lines).
Boeing Air Transport, Inc. (United Air Lines).
Gilpin Air Lines.
American Airways, Inc.
Transcontinental & Western Air, Inc.
Western Air Express.
Century Pacific Lines, Ltd.

Intrastate—6

Pacific Air Transport: San Francisco—Fresno—Bakersfield—Los Angeles—San Diego.
Boeing Air Transport: Sacramento—Oakland.
Gilpin Air Lines: Los Angeles—Long Beach—San Diego.
Transcontinental & Western Air: Los Angeles—Alameda.
Western Air Express: Los Angeles—San Diego.
Century Pacific:
(1) Sacramento—Oakland.

- (2) Oakland—San Jose—Salina—Santa Maria—Los Angeles
—Long Beach—San Diego—El Centro.
- (3) San Jose—Fresno—Bakersfield—Los Angeles.

COLORADO—Certificates Required.

Jurisdiction Over Air Carriers: **Assumed.**

The Public Utilities Commission of Colorado has assumed jurisdiction under the public utility legislation pertaining to "every common carrier." *Compiled Laws of Colorado—1921, Sec. 2912(e), Sec. 2913, 2914.*

Authority to Require Certificates: **Assumed—7 granted—3 refused or dismissed.⁶**

The power to require certificates is assumed from the "public utility" provisions of the statute. *Compiled Laws of Colorado—1926, Sec. 2946.*

Air Transport Services:

Interstate—3

United States Airways.

Western Air Express.

Wyoming-Montana Air Lines.

Intrastate—1

Western Air Express:

(1) Denver—Colorado Springs—Pueblo.

(2) Pueblo—Trinidad.

CONNECTICUT

Jurisdiction Over Air Carriers:

Connecticut Public Utilities Commission authority over "public service" companies is too narrowly defined to permit jurisdiction over air carriers. *General Statutes of Connecticut, Revision of 1930, Vol. II, Sec. 3577 and Sec. 3839.*

Authority to Require Certificates:

Extends to motor bus operation, but could not include air carriers. *Sec. 3851.*

Air Transport Services:

Interstate—1

American Airways, Inc.

Intrastate—0

DELAWARE

Jurisdiction Over Air Carriers:

No regulation at all.

Authority to Require Certificates:

No regulation.

Air Transport Services:

Interstate—2

Eastern Air Transport, Inc.

Ludington Line.

Intrastate—0

FLORIDA

Jurisdiction Over Air Carriers:

The State Road Department of Florida asserts that there is no jurisdiction over aircraft. This statement seems accurate in view of *Comp. Gen. Laws of Florida—1927, Sec. 6702.*

Authority to Require Certificates:

The same authority asserts that no statute of Florida requires certificates applicable to aircraft.

6. As of Jan. 25, 1932.

*Air Transport Services:**Interstate—2*

Eastern Air Transport, Inc.
Pan-American Airways System.

Intrastate—1

Eastern Air Transport:

- (1) Jacksonville—Daytona Beach—Palm Beach—Miami.
- (2) Daytona Beach—Orlando—Tampa—St. Petersburg.

GEORGIA

Jurisdiction over Air Carriers:

Georgia Public Service Commission is given jurisdiction over "all common carriers." The Commission has stated that it "has no jurisdiction over aircraft carriers," but it would seem possible that the term "all common carriers" might be construed to include air carriers. *Parks Ann. Code of Georgia—1914, Sec. 2663, 2711, 2712.*

Authority to Require Certificates:

There is no certificate provision applicable.

*Air Transport Services:**Interstate—2*

Eastern Air Transport, Inc.
American Airways, Inc.

Intrastate—1

Eastern Air Transport:

- (1) Atlanta—Macon.
- (2) Atlanta—Augusta—Savannah.

IDAHO

Jurisdiction over Air Carriers:

The Public Utilities Commission has no jurisdiction over air carriers, and this view is seconded by an assertion of the Idaho Department of Public Works. The term "common carrier" is defined too narrowly to include aircraft carriers. *Comp. Statutes of Idaho—1919, Sec. 2380.* Also "public utility," *Sec. 2396.*

Authority to Require Certificates:

The general certificate requirement is too narrow to include air carriers. *Sec. 2474.*

*Air Transport Services:**Interstate—2*

Varney Air Lines (United Air Lines).
National Parks Airways, Inc.

Intrastate—0

ILLINOIS—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

Illinois Commerce Commission has assumed jurisdiction under a broad definition of "public utility," the definition reasonably bearing such construction. *Cahill's Illinois Revised Statutes—1931, Ch. 111a, Sec. 2, and 25.*

Authority to Require Certificates: Assumed—3 granted—none refused.⁷

Sec. 71 gives authority to require certificates, stating: "No public utility shall begin the construction of any new plant, equipment, property or facility . . . unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction."

*Air Transport Services:**Interstate—9*

Northwest Airways, Inc.

7. As of Nov. 11, 1931.

Transamerican Airlines Corp.
Continental Airways, Inc.
Boeing Air Transport, Inc. (United Air Lines).
National Air Transport Co. (United Air Lines).
American Airways, Inc.
Braniff Airways, Inc.
Transcontinental & Western Air, Inc.
Century Airlines, Inc.

Intrastate—4

Northwest Airways, Inc.: Chicago—Elgin—Rockford.
National Air Transport: Chicago—Moline.
American Airways: Chicago—Springfield.
Century Airlines: Chicago—Bloomington—Springfield.

INDIANA

Jurisdiction over Air Carriers:

The Public Service Commission of Indiana states that there is no statute sufficient to authorize the control of air carriers. This view seems entirely correct. *Burn's Ann. Ind. Statutes—1926, Sec. 12672 (10052a)*, does not define the term "public utility" broadly enough for the assumption of jurisdiction.

Authority to Require Certificates:

Sec. 12770 (1005213), pertaining to new franchises, is limited to the narrow definition of public utilities above mentioned.

Air Transport Services:

Interstate—6

Transamerican Airlines Corp.
Continental Airways, Inc.
National Air Transport Co. (United Air Lines).
American Airways, Inc.
Transcontinental & Western Air, Inc.
Century Air Lines, Inc.

Intrastate—2

Transamerican Airlines: South Bend—Fort Wayne.
Transcontinental & Western Air: Indianapolis—Terre Haute.

IOWA

Jurisdiction over Air Carriers:

The Board of Railway Commissioners have asserted no jurisdiction, but it should be noted that the railroads—which are subject to control—are authorized to operate aircraft, which fact may bring air carriers within the commission jurisdiction. *Code of Iowa—1927, Ch. 368, Sec. 7874, and Acts—1929, Ch. 133, Sec. 1.*

Authority to Require Certificates:

The Board states that certificates are not required. *Letter of Oct. 15, 1931.*

Air Transport Services:

Interstate—4

Northwest Airways, Inc.
Boeing Air Transport, Inc. (United Air Lines).
National Air Transport Co. (United Air Lines).
Western Air Service Corp.

Intrastate—1

Boeing Air Transport: Iowa City—Des Moines.

KANSAS

Jurisdiction over Air Carriers:

The Public Service Commission of Kansas has and exercises no jurisdiction over air carriers—the definitions of "common carrier" and "public utilities" being too restricted. *Revised Statutes of Kansas—1923, Ch. 66, Art. 1, Sec. 156, 101, 104, 105.*

Authority to Require Certificates:

Certificate authority extends merely to carriers and utilities defined. *Ch. 66, Art. 1, Sec. 131.*

*Air Transport Services:**Interstate—8*

National Air Transport Co: (United Air Lines).
 United States Airways.
 Tuxhorn Air Lines.
 American Airways, Inc.
 Braniff Airways, Inc.
 Transcontinental & Western Air, Inc.
 The Western Air Service Corp.
 Skyway, Inc.

Intrastate—5

United States Airways: Topeka—Salina—Goodland.
 Tuxhorn Air Lines: Fort Scott—Pittsburg.
 Braniff Airways: Chanute—Coffeyville.
 The Western Air Service: Salina—Wichita.
 Skyway, Inc.: Wichita—Topeka.

KENTUCKY

Jurisdiction over Air Carriers:

The Railroad Commission of Kentucky has and exercises no jurisdiction over air carriers. The term "common carrier" is given a restricted meaning. *Baldwin's Kentucky Statute Service—1931, Sec. 201g1.*

Authority to Require Certificates:

Certificate authority does not exist.

*Air Transport Services:**Interstate—1*

American Airways, Inc.

Intrastate—0

LOUISIANA

Jurisdiction over Air Carriers:

The Public Service Commission of Louisiana has and exercises no jurisdiction over air carriers. The statutory language is not sufficiently broad to give jurisdiction over air carriers. *Constitution and Statutes of Louisiana—1930, Vol. 3, Art. 284, Sec. 1. Act 24 of 1904, Sec. 1—*giving certain powers to the Railroad Commission.

Authority to Require Certificates:

Certificate authority does not exist.

*Air Transport Services:**Interstate—2*

American Airways, Inc.
 Robertson Air Lines.

Intrastate—1

American Airways: Monroe—Shreveport.

MAINE

Jurisdiction over Air Carriers:

The Public Utilities Commission of Maine has and exercises no jurisdiction over air carriers. The terms "common carrier" and "public utility" are used in a sense restricted to the carriers and utilities enumerated. *Rev. Statutes of Maine—1930, Ch. 62, Sec. 15.*

Authority to Require Certificates:

Certificate authority does not exist.

*Air Transport Services:**Interstate—0**Intrastate—0*

MARYLAND—Certificates Required.

Jurisdiction over Air Carriers: **Assumed.**

The Public Service Commission of Maryland has assumed jurisdiction, relying upon a legal opinion supporting such jurisdiction on the grounds chiefly that an air carrier is an "express company" and a "common carrier." The first ground seems quite doubtful and the Maryland statute defines common carriers in such a way that an air carrier—even if a common carrier—is hardly within the statute. The jurisdiction here assumed is questionable. *The Ann. Code of Maryland—1924 (Bagby), Vol. 1, Art. 23, Sec. 346, 347, 350, and 360.*

Authority to Require Certificates: **Assumed—2 granted—none refused.⁸**

General certificate authority is authorized in *Sec. 379*. Under this authority two certificates have been granted, although one pertained to a security issue. It might be noted, however, that there are no air carriers furnishing service in Maryland at this time. *Letters of Oct. 16, 1931 and Jan. 7, 1932.*

Air Transport Services:

Interstate—4

Eastern Air Transport, Inc.
Continental Airways, Inc.
Ludington Line.
Pennsylvania Air Lines, Inc.

Intrastate—0

MASSACHUSETTS

Jurisdiction over Air Carriers:

The Commissioners of the Department of Public Utilities of Massachusetts have and exercise no jurisdiction over air carriers. The term "common carrier" is limited by definition to certain kinds of carriers mentioned. *Gen. Laws of Massachusetts—1921, Ch. 159, Sec. 12.*

Authority to Require Certificates:

Limited certificate authority exists by virtue of *Ch. 160, Sec. 17, and Ch. 162, Sec. 7.*

Air Transport Services:

Interstate—1

American Airways, Inc.

Intrastate—0

MICHIGAN

Jurisdiction over Air Carriers:

The Michigan Public Utilities Commission has and exercises no jurisdiction over air carriers. The term "common carrier" being used in a relatively limited sense. *Compiled Laws of the State of Michigan—1929, Sec. 11019, 11026.* Also "public utility," *Public Acts, Michigan—1929, No. 69, Sec. 1.*

Authority to Require Certificates: **Assumed for Security Issue.**

"Michigan does not issue any certificate of convenience to airline operators and, so far as we know, does not contemplate doing so at this time."—*Letter of Oct. 26, 1931, from Department of Aeronautics.* The Public Utilities Commission seems to have no jurisdiction to require certificates, except, perhaps, of railroad companies operating aircraft. However, it has assumed to regulate the issuance of securities by air carrier companies. *Compiled Laws of the State of Michigan—1929, Sec. 11505; and Public Acts, Michigan—1929, No. 69, Sec. 2.* See, *Re Kohler Aviation Corp., P. U. R. 1930 B 242; Comp. Laws of Michigan—1929, Sec. 11077.*

8. As of Oct. 16, 1931.

*Air Transport Services:**Interstate—4*

Transamerican Airlines Corp.
 Kohler Aviation Corp.
 Canadian Airway's Ltd.
 Century Air Lines, Inc.

Intrastate—2

Transamerican Airlines Corp.:

- (1) Detroit—Pontiac—Flint—Saginaw—Bay City.
 - (2) Muskegon—Grand Rapids—Kalamazoo—Battle Creek—Jackson—Ann Arbor—Detroit.
 - (3) Kalamazoo—Lansing—Flint.
 - (4) Grand Rapids—Lansing—Pontiac.
- Kohler Aviation Corp.: Muskegon—Grand Rapids—Lansing—Detroit.

MINNESOTA

Jurisdiction over Air Carriers:

The Minnesota Railroad and Warehouse Commission has and exercises no jurisdiction over air carriers, as stated: "This Commission has no jurisdiction over aircraft carriers."—*Letter of October 20, 1931*. Term "common carrier" is restricted. *Statutes of Minn.—1923, Sec. 4722*.

Authority to Require Certificates:

No certificate authority. But, relative to the acquisition or use of air rights, see *Laws of Minnesota—1931, Ch. 300, Sec. 1*.

*Air Transport Services:**Interstate—1*

Northwest Airways, Inc.

Intrastate—1

Northwest Airways, Inc.:

- (1) Rochester—Minneapolis—St. Paul.
- (2) St. Paul—Minneapolis—Duluth.

MISSISSIPPI

Jurisdiction over Air Carriers:

The Railroad Commission has and exercises no jurisdiction over air carriers. "In this state there is no regulation of aeroplanes or aeronautics."—*Letter of Jan. 7, 1932*. The only jurisdictional authority which is distinctly limited is to be found in *Mississippi Code of 1930, Sec. 7046 and 7044*.

Authority to Require Certificates:

No certificate authority.

*Air Transport Services:**Interstate—2*

American Airways, Inc.
 Robertson Air Lines.

Intrastate—1

Robertson Air Lines: Greenwood—Jackson.

MISSOURI

Jurisdiction over Air Carriers:

The Public Service Commission probably has no jurisdiction over air carriers although its authority extends to "all common carriers operating or doing business within this state," the reason being that the term "common carrier" is defined less broadly in a prior section. However, the definition may not be held conclusive since it states: "The term 'common carrier' . . . includes all . . .," but does not actually limit the number of carriers to those

mentioned. The reasonable construction would seem to exclude air carriers. *Revised Statutes of Missouri—1929, Sec. 5136, and 5122.*

Authority to Require Certificates:

Sec. 5174 gives only general certificate authority. But "there has been no action taken by this state on this subject."—*Letter of Oct. 17, 1931.*

Air Transport Services:

Interstate—10

National Air Transport Co. (United Air Lines).
United States Airways.
Tuxhorn Air Lines.
American Airways, Inc.
Braniff Airways, Inc.
Transcontinental & Western Air, Inc.
Rapid Air Transit.
Robertson Air Lines.
Century Air Lines, Inc.
Skyway, Inc.

Intrastate—4

Tuxhorn Air Lines: Joplin—Carthage—Springfield.
Braniff Airways, Inc.: Kansas City—St. Louis.
Transcontinental & Western Air:
 (1) St. Louis—Kansas City.
 (2) St. Louis—Springfield.
Rapid Air Transit: St. Joseph—Kansas City—St. Louis.

MONTANA

Jurisdiction over Air Carriers:

The authority of the Board of Railroad Commissioners and Public Service Commission is somewhat doubtful. The term "common carrier" is defined as "every one who offers to the public to carry persons, property, or messages" *Rev. Codes of Montana—1921, Sec. 7846.* *Sec. 3797* gives the Board "general supervision of all railroads, express companies . . . and any common carrier engaged in the transportation of passengers or property in the state" (Italics ours.) But *Sec. 3792* limits this as follows: "The provisions of the act shall apply to all persons . . . that shall do business as common carriers upon any of the lines of railroad in this state." (Italics ours.) See also, *Sec. 3881*; under a liberal interpretation, jurisdiction might be assumed.

Authority to Require Certificates:

No certificate authority, and no action taken.—*Letter of Oct. 16, 1931.*

Air Transport Services:

Interstate—2

National Parks Airways, Inc.
Wyoming-Montana Air Lines.

Intrastate—1

National Parks Airways: Butte—Helena—Great Falls.

NEBRASKA

Jurisdiction over Air Carriers:

The State Railway Commission possibly has jurisdiction over aircraft carriers by virtue of the broad statutory use of the term "common carriers." But such jurisdiction seems only to apply to carriers of freight—not passengers. "The Commission shall have . . . general control over . . . all other common carriers engaged in the transportation of freight." (Italics ours.) *Compiled Statutes of Nebraska—1929, Ch. 75, Sec. 201, 401, and 402.*

Authority to Require Certificates: Assumed for Security Issue.

There seems to be no certificate requirement applicable, although the commission has, in one instance at least, exercised control over the issuance of securities by an air carrier company. *Re Union Airlines, P. U. R. 1931 C 489*. This was for a newly formed air transport company for the acquisition of new planes, working capital, and other reasonably required equipment, where it appeared that there was a reasonable prospect of success for the venture through the procurement of air mail contracts, etc.

Air Transport Services:**Interstate—5**

Northwest Airways, Inc.
Boeing Air Transport, Inc. (United Air Lines).
American Airways, Inc.
Rapid Air Transit.
The Western Air Service Corp.

Intrastate—2

Boeing Air Transport: Omaha—Lincoln—North Platte.
The Western Air Service Corp.: Omaha—Lincoln.

NEVADA—Certificates Required.**Jurisdiction over Air Carriers: Assumed.**

The Public Service Commission is given jurisdiction by a statute which expressly defines "public utility" to include "*airship common carriers*" and "*airship companies*." (Italics ours.) *Nevada Public Service Comp. Law—1919, Amended Stats., 1928, 57*. The amendment is of *Sec. 7*. If the term "airship" be used in its technical sense, the jurisdiction would extend only to lighter-than-air craft. This difficulty is probably overcome by virtue of *Sec. 7(a)*, which states that: "The provisions of this act and the term 'public utility' shall apply to . . . any common carrier engaged in the transportation of passengers or property . . . by air." (Italics ours.) The provisions, no doubt, give jurisdiction also over *airplanes*—or over all *aircraft*.

Authority to Require Certificates: Assumed—6 granted.⁹

The certificate requirement extends to all utilities. *Statutes of Nevada—1925, Ch. 161, Sec. 36½*. Accordingly certificates are required of air carriers.

Air Transport Services:**Interstate—2**

Boeing Air Transport, Inc. (United Air Lines).
Western Air Express.

Intrastate—1

Boeing Air Transport: Elko—Reno.

NEW HAMPSHIRE**Jurisdiction over Air Carriers:**

The Public Service Commission has and exercises no jurisdiction over air carriers. The term "public utility" is defined too narrowly to include air carriers. *Public Laws of N. H.—1926, Vol. 2, Ch. 236, Sec. 4 and 3*.

Authority to Require Certificates:

A general certificate authority exists for railroads and public utilities as defined. *Ch. 240, Sec. 19 and 21*. The Commission states that "to date no certificates of convenience and necessity have been issued."—*Letter of Oct. 19, 1931*.

Air Transport Services:**Interstate—0****Intrastate—0**

9. As of Dec. 1, 1931.

NEW JERSEY

Jurisdiction over Air Carriers:

The Board of Public Utility Commissioners has and exercises no jurisdiction over air carriers. The term "public utility" is defined too narrowly to include air carriers. *Laws of New Jersey—1926, Ch. 146, Sec. 15.*

Authority to Require Certificates:

No certificate authority. "No such requirements pertaining to Air lines have been promulgated."—*Letter of Oct. 15, 1931.*

Air Transport Services:

Interstate—6

Eastern Air Transport, Inc.
National Air Transport, Co. (United Air Lines).
Ludington Line.
Transcontinental & Western Air, Inc.
Metropolitan Air Ferry Service.
Martz Air Lines.

Intrastate—2

Eastern Air Transport, Inc.: Newark—Atlantic City.
Ludington Line: Camden—Trenton—Newark.

NEW MEXICO—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

The State Corporation Commission exercises jurisdiction under a statute declaring air carriers to be common carriers within their jurisdiction and requiring licenses which has been construed by the Commission, reasonably as it seems, to authorize certificates. *New Mexico Stats. Ann. 1915, Vol. 1, Const. Art. XI, Sec. 7; Laws of New Mexico—1929, Ch. 71, Sec. 6, 7, and 8.*

Authority to Require Certificates: Assumed—5 granted—none refused.¹⁰

As stated above, the certificate requirement results from an interpretation of the power to license.

One certificate has been granted for an interstate carrier, one for an "anywhere carrier" and three certificates covered the operation of aircraft for some special event—such as a fair, or convention, and not regular operation. *Letters of Oct. 16, 1931, and Jan. 8, 1932.*

Air Transport Services:

Interstate—2

Transcontinental & Western Air, Inc.
Western Air Express.

Intrastate—1

Western Air Express: Santa Fe—Albuquerque.

NEW YORK

Jurisdiction over Air Carriers:

The Public Service Commission has and exercises no jurisdiction over air carriers. The term "common carrier" is defined too narrowly to include air carriers. *Cahill's Consolidated Laws of New York—1930, Ch. 49, Sec. 2, P. 9.*

Authority to Require Certificates:

General certificate authority over railroads and common carriers, as defined. *Sec. 53.* "No such certificate (for air carriers) is required, neither by statute nor by regulation."—*Letter of Oct. 22, 1931.*

Air Transport Services:

Interstate—3

American Airways, Inc.

10. As of Oct. 16, 1931.

Metropolitan Air Ferry Service.
Martz Air Lines.

Intrastate—3

American Airways: Albany—Syracuse—Rochester—Buffalo.
Metropolitan Air Ferry Service: Brooklyn—Queens.
Martz Air Lines: Elmira—Dansville—Buffalo.

NORTH CAROLINA

Jurisdiction over Air Carriers:

The Corporation Commission would seem to have jurisdiction over air carriers by virtue of the provision that its authority shall extend to "all other companies or corporations engaged in the carrying of freight or passengers, and all copartnerships or individuals engaged in the business of common carriers." *Consolidated Stats. of North Carolina—1919, Ch. 21, Art. 2, Sec. 1035, 1038; Art. 3, Sec. 1054, and Art. 4, Sec. 1066.*

Authority to Require Certificates:

The certificate authority seems doubtful and depends upon whether or not "public utility, plant or system" includes air carriers. *Pub. Laws of North Carolina—1931, Ch. 455, Sec. 1037(e).* "This State does not require a certificate of convenience and necessity."—*Letter of Nov. 4, 1931.*

Air Transport Services:

Interstate—2

Eastern Air Transport, Inc.
Knollwood Airport, Inc.

Intrastate—2

Eastern Air Transport, Inc.: Greensboro—Charlotte.
Knollwood Airport, Inc.: Pinehurst—Raleigh.

NORTH DAKOTA—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

The Board of Railroad Commissioners would seem to have jurisdiction under the term "common carriers." *Suppl. to Compiled Laws of North Dakota—1913-1925, Sec. 4609c(2).*

Authority to Require Certificates: Assumed—1 granted.¹¹

General certificate authority over public utilities—which, supposedly, includes air carriers. *Laws of North Dakota—1929, Ch. 198, Sec. 1.*

Air Transport Services:

Interstate—2

Northwest Airways, Inc.
Canadian Airways, Ltd.

Intrastate—1

Northwest Airways, Inc.:
(1) Fargo—Grand Forks—Pembina.
(2) Fargo—Valley City—Jamestown—Bismarck.

OHIO

Jurisdiction over Air Carriers:

There is no statute in Ohio capable of being applied so as to give jurisdiction to the Public Utilities Commission over air carriers. See, *Throckmorton's 1930 Ann. Code of Ohio (Baldwin's Revision), Sec. 614-2 and Sec. 502.*

Authority to Require Certificates:

No certificate authority.

Air Transport Services:

Interstate—7

Transamerican Airlines Corp.

11. As of Dec. 3, 1931.

Continental Airways, Inc.
National Air Transport Co. (United Air Lines).
Pennsylvania Air Lines, Inc.
American Airways, Inc.
Transcontinental & Western Air, Inc.
Century Air Lines, Inc.

Intrastate—6

Transamerican Airlines: Cleveland—Toledo.
National Air Transport: Cleveland—Toledo.
Pennsylvania Air Lines: Cleveland—Akron.
American Airways: Cleveland—Akron—Columbus—Dayton—
Cincinnati.
Transcontinental & Western: Columbus—Springfield—Dayton.
Century Air Lines: Cleveland—Toledo.

OKLAHOMA

Jurisdiction over Air Carriers:

The Corporation Commission has and exercises no authority over air carriers. The term "transportation company" is too narrowly defined to include air carriers. *Compiled Stats. of Oklahoma—1921 (Bunn), Const. Art. IX, Sec. 18, and 34.*

Authority to Require Certificates:

No certificate authority.

Air Transport Services:

Interstate—7

National Air Transport Co. (United Air Lines).
Trump Airways, Inc.
Braniff Airways, Inc.
Bowen Air Lines, Inc.
Transcontinental & Western Air, Inc.
Reed Airline.
The Western Air Service Corp.

Intrastate—6

National Air Transport: Tulsa—Oklahoma City.
Trump Airways: Tulsa—Muskogee.
Braniff Airways: Tulsa—Oklahoma City.
Transcontinental & Western: Tulsa—Oklahoma City.
Reed Airline: Lawton—Oklahoma City—Ponca City.
Western Air Service Corp.: Blackwell—Ponca City—Tulsa.

OREGON

Jurisdiction over Air Carriers:

The Public Utilities Commission has and exercises no jurisdiction over air carriers. The term "public utility" is too narrowly defined to include air carriers. *Oregon Code—1930, Vol. 3, Sec. 61-201.* "Aircraft carriers are not under the jurisdiction of this Commission."—*Letter of Oct. 19, 1931.*

Authority to Require Certificates:

Certificate authority repealed. *Oregon Laws—1931, Ch. 59, Sec. 1.*

Air Transport Services:

Interstate—2

Pacific Air Transport, Inc. (United Air Lines).
Varney Air Lines (United Air Lines).

Intrastate—1

Pacific Air Transport: Portland—Medford.

PENNSYLVANIA—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

The Public Service Commission has and exercises full jurisdiction by express statute as well as by prior existing law. "The

term 'common carrier' . . . includes any and all common carriers . . . engaged . . . in the conveyance of passengers or property . . . between points in this Commonwealth . . . over, above, or under land or water or both." *Dig. of Penn. Stat. Law—1920 (West Publ. Co.), Sec. 18057*; also *1924 Suppl. to Dig. of Penn. Stat. Law—1920, Sec. 18125*.

*Authority to Require Certificates: Assumed—43 granted—1 refused.*¹²

The Commission has full certificate jurisdiction. "It shall be unlawful to operate . . . civil aircraft, as a common carrier, within this Commonwealth . . . without first having . . . obtained . . . a certificate of public convenience . . ." *Laws of Penn.—1929, Art. XII, Sec. 1203; Act 316, Sec. 1208, and 1209*.

Air Transport Services:

Interstate—6

Eastern Air Transport, Inc.
Continental Airways, Inc.
National Air Transport Co. (United Air Lines).
Pennsylvania Air Lines, Inc.
Transcontinental & Western Air, Inc.
Martz Air Lines.

Intrastate—2

Transcontinental & Western: Philadelphia—Harrisburg—Pittsburgh.
Martz Air Lines: Stroudsburg—Wilkes-Barre (1 stop).

RHODE ISLAND

Jurisdiction over Air Carriers:

The Public Utilities Commission has and exercises no jurisdiction over air carriers. The terms "public utility" and "common carrier" are defined too narrowly to include air carriers. *Gen. Laws of Rhode Island—1923, Sec. 3665*.

Authority to Require Certificates:

No certificate authority. "Certificates of convenience and authority are not required for aircraft carriers in this state."—*Letter of Oct. 16, 1931*.

Air Transport Services:

Interstate—0

Intrastate—0

SOUTH CAROLINA

Jurisdiction over Air Carriers:

The Railroad Commission has and exercises no jurisdiction over air carriers. The term "public utility" is defined too narrowly to include air carriers. *Code of Laws of So. Carolina—1922, Vol. 3, No. 4811, Sec. 5; No. 525, Civil Code, Sec. 922; No. 4857, Sec. 17*.

Authority to Require Certificates:

No certificate authority.

Air Transport Services:

Interstate—1

Eastern Air Transport, Inc.

Intrastate—1

Eastern Air Transport:
(1) Florence—Charleston.
(2) Spartanburg—Greenville.

SOUTH DAKOTA

Jurisdiction over Air Carriers:

The Board of Railroad Commissioners has and exercises no jurisdiction over air carriers. The term "common carriers" is de-

12. As of Oct. 22, 1931.

fined too narrowly to include air carriers. *South Dakota Compiled Laws—1929, No. 9503.*

Authority to Require Certificates:

No certificate authority, and none is exercised. *Letter of Oct. 15, 1931.*

Air Transport Services:

Interstate—0

Intrastate—0

TENNESSEE—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

"While there is no specific statute conferring express jurisdiction upon this Commission (Railroad and Public Utilities Commission) over applications and operations of the sort herein referred to, still the Commission is advised by the Attorney General of Tennessee that it does have jurisdiction over this sort as common carriers under the provisions of Chapter 49, Public Acts of 1919, and the Commission therefore assumes and proceeds to exercise this jurisdiction under said Act." *Commission Docket No. 1612, p. 2, in the matter of Application of Seaboard Airways, Inc.* The term "public utility" is defined to include all other common carriers. *Code of Tenn.—1932, Sec. 5448, and 5447.*

Authority to Require Certificates: Assumed—1 granted—none refused.¹³

Certificate authority derived from *Sec. 5502.*

Air Transport Services:

Interstate—2

American Airways, Inc.

Robertson Air Lines.

Intrastate—1

American Airways, Inc.:

(1) Nashville—Chattanooga.

(2) Nashville—Memphis.

TEXAS

Jurisdiction over Air Carriers:

The Railroad Commission has and exercises no authority over air carriers. *Letter of Oct. 19, 1931.* Jurisdiction extends, primarily, to railroads. *Rev. Civil Stats. of Texas—1925, Art. 6445, Sec. 1.*

Authority to Require Certificates:

No certificate authority.

Air Transport Services:

Interstate—8

National Air Transport Co. (United Air Lines).

American Airways, Inc.

Bowen Air Lines, Inc.

Transcontinental & Western Air, Inc.

Reed Airline.

Western Air Express.

Corporation Aeronautica De Transportes, S. A.

Pan American Airways System.

Intrastate—3

National Air Transport: Ft. Worth—Dallas.

American Airways, Inc.

(1) Dallas—Ft. Worth—Abilene—Big Spring—El Paso.

(2) Ft. Worth—Waco—Austin—San Antonio—Brownsville.

(3) Amarillo—Wichita Falls—Ft. Worth—Waco—Houston—Galveston.

13. As of Jan. 9, 1932.

Bowen Air Lines, Inc.:

- (1) Houston—San Antonio.
- (2) San Antonio—Austin—Dallas—Ft. Worth.

UTAH

Jurisdiction over Air Carriers:

The Public Service Commission asserts a jurisdiction over air carriers by virtue of the general statutes. *Letter of Oct. 21, 1931*. "The term 'common carrier' . . . includes . . . every . . . person . . . whatsoever engaged in the transportation of persons or property for public service, over regular routes between points within this State." *Comp. Laws of Utah—1917, Ch. 2, Sec. 4782, Ps. 14, and 28*. See also, *Constitution, Art. XII, Sec. 12*.

Authority to Require Certificates:

The certificate authority seems limited to certain enumerated carriers. *Laws of Utah—1925, Sec. 4818*. See also, *Comp. Laws of Utah—1917, Sec. 4787*.

Air Transport Services:

Interstate—4

Boeing Air Transport, Inc. (United Air Lines).
 Varney Air Lines (United Air Lines).
 National Parks Airways, Inc.
 Western Air Express.

Intrastate—1

National Parks Airways, Inc.: Salt Lake City—Ogden.

VERMONT

Jurisdiction over Air Carriers:

The Public Service Commission has and exercises no jurisdiction over air carriers. The statute enumerates those utilities over which the Commission shall have jurisdiction and this list does not include air carriers, or any term permitting jurisdiction over air carriers. *Acts of Vermont—1925, Act 86; Gen. Laws of Vermont—1917, Sec. 5045*.

Authority to Require Certificates:

General certificate authority. "The Vermont laws do not provide for the issuance of a certificate of convenience and necessity as applied to aircraft carriers."—*Letter of Nov. 4, 1931*. See also, *Laws of Vermont—1931, Act 101*.

Air Transport Services:

Interstate—0

Intrastate—0

VIRGINIA

Jurisdiction over Air Carriers:

The State Corporation Commission has and exercises no jurisdiction over air carriers. The term "transportation company" is defined too narrowly to include air carriers. *Ann. Code of Virginia—1919, Vol. I, Const. Art. XII, Sec. 153 and 156(b); Code of Virginia—1919, Vol. I, Sec. 4064*. For a definition of "public utility" see also *Acts of 1922, Ch. 511, Sec. 2*.

Authority to Require Certificates:

"At present Virginia has no regulation providing for the issuing of certificates of Convenience and Necessity for Aircraft Carriers operating in this State. In all probability such regulation will be passed at the next session of the legislature, as we now have several lines passing over and through this State."—*Letter of Oct. 30, 1931*.

Air Transport Services:

Interstate—5

Eastern Air Transport, Inc.
Continental Airways, Inc.
Ludington Line.
Dixie Flying Service.
Pennsylvania Air Lines, Inc.

Intrastate—2

Eastern Air Transport, Inc.: Richmond—Norfolk.
Dixie Flying Service: Hot Springs—Charlottesville.

WASHINGTON

Jurisdiction over Air Carriers:

The Department of Public Works has and exercises no jurisdiction over air carriers. *Letter of Oct. 17, 1931.* The term "common carrier" is too narrowly defined to include air carriers. *Session Laws of Wash.—1929, Ch. 223, Sec. 1.*

Authority to Require Certificates:

Certificate provision was vetoed by popular vote. *Suppl. to Compiled Stats.—1927, Sec. 10412.*

Air Transport Services:

Interstate—4

Pacific Air Transport, Inc. (United Air Lines).
Varney Air Lines (United Air Lines).
Alaska-Washington Airways.
Gorst Air Transport, Inc.

Intrastate—3

Pacific Air Transport: Seattle—Tacoma.
Varney Air Lines:
(1) Tacoma—Seattle.
(2) Pasco—Spokane.
Gorst Air Transport: Seattle—Bremerton.

WEST VIRGINIA—**Certificates Required.**

Jurisdiction over Air Carriers: Assumed.

The Public Service Commission asserts jurisdiction "over the common carriage of passengers or goods by air, as outlined in Chapter 24, Article 2, Section 1, Code 1931, but the question of certificates of convenience and necessity is under the jurisdiction of the West Virginia Board of Aeronautics, which was created by Chapter 4, Acts of the Legislature, Regular Session, 1931."—*Letter of Oct. 15, 1931.* See also, *Code of West Virginia—1931, pp. 667 and 669*—wherein the statute expressly covers carriage by air.

Authority to Require Certificates: Assumed—none granted.¹⁴

Certificate authority of the Board of Aeronautics is based upon Sec. 2 of H. B. No. 226, March, 1931, providing: "Such board shall have general supervision and control over . . . all other phases of aerial activities." (Italics ours.) The certificate requirement became effective Jan. 1, 1932. *Letter of Oct. 26, 1931.*

Air Transport Services:

Interstate—3

Continental Airways, Inc.
Dixie Flying Service.
Pennsylvania Air Lines, Inc.

Intrastate—0

WISCONSIN

Jurisdiction over Air Carriers:

"The Wisconsin Public Service Commission does not have any

14. As of Oct. 26, 1931.

jurisdiction over aircraft carriers."—*Letter of Oct. 15, 1931*. The term "public utility" is defined too narrowly to include air carriers. *Wisconsin Stats.—1929, Vol. I, Ch. 196, Sec. .01, Ch. 195, Sec. .02*.

Authority to Require Certificates:

Specific certificate requirement only. *Ch. 196, Sec. .50*.

Air Transport Services:

Interstate—2

Northwest Airways, Inc.

Kohler Aviation Corp.

Intrastate—1

Northwest Airways, Inc.:

(1) Madison—Janesville.

(2) Milwaukee—LaCrosse.

(3) Milwaukee—Fond du Lac—Oshkosh—Appleton—Green Bay.

WYOMING—Certificates Required.

Jurisdiction over Air Carriers: Assumed.

"The regulatory power bestowed on this Commission (Public Service Commission) is from the general statute granting authority to regulate all common carriers."—*Letters of Oct. 21, 1931, and Jan. 8, 1932. Wyoming Comp. Stats.—1920, Art. X, Sec. 7; Session Laws—1925, Ch. 150, Sec. 1; Wyoming Comp. Stats.—1920, Sec. 5463, 5478, and 5492*.

Authority to Require Certificates: Assumed—2 granted—none refused.¹⁵

Specific certificate authority given only to certain enumerated utilities—not including air carriers or any term capable of being construed to include air carriers. *Wyoming Comp. Stats.—1920, Sec. 5497*. That the commission has power to require certificates for air carriers seems doubtful.

Air Transport Services:

Interstate—3

Boeing Air Transport, Inc. (United Air Lines).

Western Air Express.

Wyoming-Montana Air Lines.

Intrastate—2

Boeing Air Transport: Cheyenne—Rock Springs.

Wyoming-Montana Air Lines: Cheyenne—Casper—Sheridan.

15. As of Oct. 21, 1931.

Appendix D

CERTIFICATE AND AIR TRANSPORT DATA PERTAINING TO ALL STATES

State	Jurisdiction		Certificates		Air Transport Business			
	To Regulate	To Require Certificate	Granted	Refused	No. of Interstate Operators	No. of Intrastate Operators	No. of Intrastate Operations	
1. Alabama					1	0	0	
2. Arizona	X	D	6	8	3	2	3	
3. Arkansas	D	D			3	2	2	
4. California	X	D			7	6	14	
5. Colorado	X	X	7	3	3	1	3	
6. Connecticut					1	0	0	
7. Delaware					2	0	0	
8. Florida					2	1	6	
9. Georgia	D				2	1	3	
10. Idaho					2	0	0	
11. Illinois	X	X	3	0	9	4	6	
12. Indiana					6	2	2	
13. Iowa					4	1	1	
14. Kansas					8	5	6	
15. Kentucky					1	0	0	
16. Louisiana					2	1	1	
17. Maine					0	0	0	
18. Maryland	D	D	2	0	4	0	0	
19. Massachusetts ...					1	0	0	
20. Michigan					4	2	15	
21. Minnesota					1	1	3	
22. Mississippi					2	1	1	
23. Missouri	D	D			10	4	4	
24. Montana	D				2	1	2	
25. Nebraska	D	D			5	2	2	
26. Nevada	X	X	6	—	2	1	1	
27. New Hampshire..					0	0	0	
28. New Jersey					6	2	3	
29. New Mexico	X	X	5	0	2	1	1	
30. New York					3	3	6	
31. North Carolina...	D	D			2	2	2	
32. North Dakota....	X	X	1	—	2	1	5	
33. Ohio					7	6	7	
34. Oklahoma					7	6	6	
35. Oregon					2	1	1	
36. Pennsylvania	X	X	43	1	6	2	3	
37. Rhode Island					0	0	0	
38. South Carolina...					1	1	2	
39. South Dakota ...					0	0	0	
40. Tennessee	D	D	1	0	2	1	2	
41. Texas					8	3	13	
42. Utah	X	D			4	1	1	
43. Vermont					0	0	0	
44. Virginia					5	2	2	
45. Washington					4	3	3	
46. West Virginia ...	D	D	Effective Jan. 1, 1932			3	0	0
47. Wisconsin					2	1	6	
48. Wyoming	X	D	2	0	3	2	3	

Note: X = State has jurisdiction
D = Jurisdiction doubtful
Blank space = No jurisdiction or no certificates

Dash = Information lacking
Operators = Individual carrier companies
Operations = Number of flying stops made in state

Appendix E

REPRESENTATIVE CERTIFICATE APPLICATION FORMS

(1)

The Arizona Corporation Commission

In the matter of the application of.....
for a certificate of convenience and necessity authorizing the operation of
aircraft as common carriers via airplanes between
..... and

STATE OF ARIZONA, } ss. Docket No.....
COUNTY OF

Your petitioner states that it is.....
(Here state whether an Association, Copartnership or Individual)

1. That its name and address is.....
....., that the names and addresses of its officers, if any, are.....

2. That it desires to operate aircraft through the airplanes.....
....., between.....and....., passing
through and serving.....

3. Your applicant desires to engage in the transportation of.....
.....
(State whether Passengers, Express, or Freight)

4.	Model	Type	Mfg. No.	Engine No.	Capacity

5. It proposes to operate on the time schedule attached hereto and made a part hereof.

6. Its schedule or tariff of passenger fares or freight rates to be charged between the several points or localities to be served is shown in the schedule annexed and made a part hereof.

7. That the public convenience and necessity require the operation of said aircraft.

Time Table

Leave	Time	Arrive	Time

Local Tariff

Distance Table
(Miles)

BETWEEN

AND					

**Schedule of Passenger Fares
BETWEEN**

AND										
	One Way	Round Trip	One Way	Round Trip	One Way	Round Trip	One Way	Round Trip	One Way	Round Trip
.....										
.....										

Dated at....., Arizona,
this.....day of....., 19....

.....
(Sign)

By.....
(Officers or Person in Charge of Operations)

Subscribed and sworn to before me.....
a Notary Public in and for the County of....., State of
Arizona, this.....day of....., 19....

.....
Notary Public.

My commission expires.....

(2)

Illinois Commerce Commission

Application by Aircraft Carrier for Certificate of Convenience
and Necessity

In the Matter of the
APPLICATION

of.....
for a Certificate of Convenience and Necessity
to operate as an Aircraft Carrier for the trans-
portation of (persons)
(property)

Case.....
File

To the Illinois Commerce Commission, Springfield, Illinois:

The Petitioner herein respectfully shows:

1. That it is a duly incorporated Company, incorporated under the
laws of the State of Illinois on....., 19....
(Date)

2. That Petitioner's charter authorizes Petitioner to engage in the busi-
ness covered by this application, as is fully set forth in a copy of said
charter attached hereto and made a part hereof.

3. That the Post Office address of Petitioner is.....

4. That Petitioner desires to operate as an Aircraft Carrier for the
transportation of
(Persons or property, or both)
between
(Name every city and village)

5. That the following public utilities are now engaged in rendering
transportation service between two or more of the aforesaid municipalities
(or local service within one or more of them) and are hereby made parties
respondent to this proceeding:

6. That attached hereto and made a part hereof is a map, blueprint or
sketch showing the proposed route of Petitioner and the location of each
aircraft, railroad and motor carrier hereinabove named.

7. That Petitioner submits herewith three copies of a proposed tariff
naming rates and fares, and two copies of a proposed working time schedule.

8. That Petitioner has served copies and given notice of the filing of this application as required by the rules of the Commission, as is evidenced by proof of service filed herewith.

WHEREFORE, Petitioner prays that the Commission, after a hearing, will grant a Certificate of Convenience and Necessity to Petitioner to operate as an Aircraft Carrier as aforesaid.

.....
 By..... Petitioner
 (Official Title)

Attorney for Petitioner:

.....
 (Name)

 (Address)

(3)

The Public Service Commission of the Commonwealth of Pennsylvania

<p>In Re: Application of (<i>name of petitioner</i>) for certificate of public convenience evidencing the Commission's approval of the beginning of the exercise of the right and privilege of operating civil aircraft as a common carrier for the transportation of persons, freight, merchandise and other personal property upon call or demand in (<i>municipality in which service is to be furnished</i>).</p>	}	<p>Application Docket No.....193....</p>
---	---	---

To the Public Service Commission of the Commonwealth of Pennsylvania:

The petition of (*name of petitioner*) respectfully represents:

1. The name and address of your petitioner is (*name and address*).

Note: If the petitioner is a partnership, the names and addresses of partners must be given and copy of agreement of partnership filed as an exhibit, if partnership proposes to do business under an assumed or fictitious name, proof of compliance with the Fictitious Name Act of 1917 must be filed as exhibit.

If the applicant does not intend to actively engage in commercial flying but intends to employ an operator as agent for the applicant, copies of the agreement between the applicant and operator must be filed as exhibits.

2. The name and address of your petitioner's attorney is (*name and address of attorney*).

Note: This paragraph to be omitted when petitioner is not represented by an attorney.

3. That your petitioner is the owner or lessee of certain airports or landing fields which have been licensed as such by the State Aeronautics Commission, License No., and which he desires to operate and maintain in connection with the service applied for.

Note: A copy of the airport or landing field licenses issued by the State Aeronautics Commission must accompany this application. If airports or landing fields are leased by petitioner, give number of the airport or landing field license issued by the State Aeronautics Commission and attach (as exhibits) copies of all leases and agreements affecting such airports or landing fields.

4. That your petitioner is the owner or lessee of certain air navigation facilities now in operation or to be erected, maintained or operated upon airports or landing fields described in paragraph three, and certificate of

qualifications and safety No..... has been issued for such facilities by the State Aeronautics Commission.

Note: If the petitioner is owner of the air navigation facilities, attach a copy of the certificate of Qualifications and Safety issued by the State Aeronautics Commission for such facilities. If the petitioner is the lessee of air navigation facilities furnish the number of the certificate of Qualifications and Safety issued by the State Aeronautics Commission.

5. That your petitioner is the owner or lessee of the civil aircraft hereinafter fully described, which he (it) desires to operate:

First Aircraft.....State Commercial License No.....

Name of Manufacturer.....Over all span.....

Over all length.....Weight empty.....

Useful loadGross weight.....

Seating capacity exclusive of crew.....

Gasoline capacity.....Oil capacity.....

Second Aircraft.....State Commercial License No.....

Name of Manufacturer.....Over all span.....

Over all length.....Weight empty.....

Useful loadGross weight.....

Seating capacity exclusive of crew.....

Gasoline capacity.....Oil capacity.....

Note: If the petitioner intends to engage in commercial flying by agreement with operator, attach copy of such agreement together with description of civil aircraft, pilots and facilities to be used by operator under such agreement. All civil aircraft used or to be used by petitioner must have secured a commercial flying license from the State Aeronautics Commission and the number of such license should be inserted in this paragraph.

6. That this petitioner has secured from the State Aeronautics Commission a certificate of Qualifications and Safety for all airports, landing fields, aircraft, air navigation facilities and airmen used or to be used by the petitioner in commercial flying as a common carrier.

Note: Attach copies of certificates of Qualifications and Safety secured by petitioner from the State Aeronautics Commission.

7. That your petitioner is financially able to furnish adequate service to the public and submits the following statement showing his financial condition:

Assets:

Real Estate

Personal Property

Liabilities:

Mortgages

Judgments

Other liabilities

8. That the nature and character of the service to be rendered by your petitioner is the transportation of persons, freight, merchandise and other personal property as a common carrier by means of civil aircraft on call or demand in (municipality or locality in which service is to be furnished).

9. That no person, partnership or corporation is at present furnishing or has the right to furnish service similar to that desired to be furnished by your petitioner except the following:

(Give names of all individuals, partnerships or corporations now furnishing or having the corporate right to furnish service similar to that applied for.)

And that the following persons or companies transport persons, freight, merchandise and other personal property as common carriers within the territory covered by this petition:

(Give names of all persons or companies furnishing service in the territory.)

10. That the service proposed to be rendered by your petitioner is necessary and proper for the service, accommodation and convenience of the public for the following reasons:

(Give reasons why the proposed service is necessary.)

11. That your petitioner proposed to begin furnishing service immediately upon the receipt of the certificate of Public Convenience, evidencing his right so to do.

WHEREFORE, your petitioner prays your Honorable Commission to issue a certificate of public convenience under the provisions of Article 111, Section 2 (b) of the Public Service Company Law evidencing its approval of his right to operate the civil aircraft above described for the transportation of persons, freight, merchandise and other personal property upon call or demand, as a common carrier in *(territory in which service is to be furnished)*.

And he will ever pray, etc.

.....
(Signature of Petitioner)

Signed and dated this.....

day of, 193...

Commonwealth of Pennsylvania, } ss:
County of

Personally appeared before me, a Notary Public, in and for said county and state *(name of petitioner)*, who being duly sworn according to law doth depose and say that the facts as set forth in the foregoing petition are true and correct to the best of his knowledge and belief.

.....
(Signature of Petitioner)

Sworn and subscribed before me this day of 193...

.....
(Notary Public)

My Commission expires

.....193....

Appendix F

REPRESENTATIVE ORDER GRANTING CERTIFICATE

Illinois Commerce Commission

In the matter of the application of CENTURY AIR LINES, INC.,
for a Certificate of Convenience and Necessity to operate an
Air Transport line from the City of Chicago, County of Cook,
to the City of East St. Louis, County of St. Clair, Illinois. } 20815

ORDER

BY THE ILLINOIS COMMERCE COMMISSION:

On March 30, 1931, the applicant, a corporation, engaged in interstate commerce as a common carrier of passengers and property between the City of Chicago, Illinois, and the Cities of Detroit, Michigan, and Toledo and Cleveland, Ohio, filed its application asking for a Certificate of Convenience and Necessity to establish and operate an air transport line in the State of Illinois carrying passengers and property for compensation from the City of Chicago to the Cities of Peoria, Bloomington, Springfield and East St. Louis, Illinois, or the airports located in or adjacent to said Cities, and has applied for and desires a Certificate of Convenience and Necessity to establish and operate such air transport line and to transport and carry passengers and property as a common carrier between said points by airplanes. Applicant filed an amendment to said application on May 19th, 1931, so as to include traffic between Bloomington, Illinois, and said other Cities and points.

American Airways, Inc., a Corporation engaged in interstate and intra-state business similar to that of Century Air Lines, Inc., applicant herein, filed its application with this Commission on May 19, 1931, which was designated as Cause No. 20948. An agreement was entered into between the applicant herein, Century Air Lines, Inc., and said American Airways, Inc., applicant in Cause No. 20948, that in so far as counsel for the respective applicants had a right to stipulate, the said two applicants agreed that a Certificate of Convenience and Necessity should issue to each of said applicants in accordance with their respective applications.

The applicant herein, Century Air Lines, Inc., and American Airways, Inc. (Applicant in said Cause No. 20948), likewise entered into stipulation of record that all evidence on the issue of convenience and necessity offered in either case should be made a part of the record in each and/or both cases, and considered in each of said cases.

Proper notice was given to all interested parties, including the existing utilities operating in the general field proposed to be served by applicant, said Century Air Lines, Inc., and pursuant to said notice the above entitled cause was duly set and came on for hearing at the office of the Commission in Chicago, Illinois, on the 27th day of May, 1931, and was continued from time to time with proper adjournments to the 29th day of July, 1931, and on said latter date was designated Heard and Taken by a duly authorized agent of the Commission.

At the several hearings in this cause the Chicago and Eastern Illinois Railroad Company was represented by counsel but took no active part in the proceedings; the Illinois Central Railroad Company and the Chicago and Alton Railroad Company by its Receivers were represented and filed written protests to the granting of a Certificate of Convenience and Necessity as applied for in the Petition and the Amended Petition filed in this cause by said Century Air Lines, Inc., each of said objections having been formally withdrawn before said cause was designated Heard and Taken; Wabash Railway Company was represented and took an active part in the proceedings until the last hearing, when said Wabash Railway Company

failed to appear, although duly notified of the date of hearing.

The Commission having given due consideration to said application, to the evidence, record and proceedings herein, and being fully advised in the premises, is of the opinion and finds:

- (1) That due notice was given to all transportation utilities in the field covered by this application as required by the statutes of the State of Illinois and the rules of the Commission with respect to service of notice of its application;
- (2) That the Commission has jurisdiction of the subject matter hereof and of all the parties hereto;
- (3) That the applicant is a corporation existing under the laws of the State of Delaware, and licensed to transact business in Illinois as a foreign corporation on and after January 2, 1931;
- (4) That applicant's charter authorizes it to engage in the business covered by this application as is fully set forth in a copy of its charter introduced in evidence herein. That its charter, among other things, authorizes it:

"To carry on, by means of airplanes, seaplanes, hydroplanes, amphibian planes, dirigible balloons and other aircraft of every kind and description and/or by means of automobiles, buses, motor boats, trucks and other conveyances of any and all kinds, the general business of a common carrier and/or private carrier engaged in the transportation of passengers, mail, merchandise, and freight for hire by air, land or water, and to do any and all things necessary, advantageous or useful in connection with the conduct of said business.

"To acquire, purchase, lease, construct, own, maintain, operate and dispose of airplanes, seaplanes, hydroplanes, amphibian planes, dirigible balloons and other aircraft of every kind and description, also automobiles, buses, trucks, motor boats and other conveyances of any and all kinds, whether adapted for transportation by air, land or water; also to establish, purchase, own, acquire, operate and generally turn to account air lines and other transport service for the transportation of passengers, mail, merchandise and freight by air, land and water, and all other service of a similar character which may from time to time develop; also to own, purchase, construct, lease, operate and dispose of hangars, transportation depots, aircraft service stations and agencies, garages, automobile service stations and agencies and other objects and service of a similar nature which may be necessary, convenient or useful as an auxiliary to aircraft and automobile transportation; also to own and operate educational institutions for instruction in the construction, operation, maintenance and repair of aircraft and automobiles; also to service and repair aircraft and automobiles and buy, sell and generally deal in oils, gasoline, fuel, automobile and aircraft accessories and equipment, and goods, wares and merchandise of every name and description."

- (5) That the service proposed to be rendered by the applicant herein is a type and class of transportation service not now rendered by any of the authorized existing transportation agencies in the immediate field proposed to be served by the applicant herein, said Century Air Lines, Inc.;
- (6) That the authorized existing transportation utilities operating in the immediate field herein under consideration either failed entirely to offer or offered and later during the hearing of the cause withdrew the offer to furnish a service of the type and class as proposed to be rendered by the applicant herein, said Century Air Lines, Inc.;
- (7) That the public convenience and necessity require and will best be served by the establishment and operation of the air transport line of the applicant herein between the cities of Chicago, Peoria, Bloomington, Springfield, and East St. Louis, Illinois, and the airports located in or contiguous to said cities and the transportation by applicant of passengers and property between said cities and airports in connec-

tion with the operation by applicant of an air transport line carrying passengers and property as a public utility between points in Illinois, and in the inverse direction;

- (8) That the applicant has sufficient experience as well as financial ability and sufficient assets and resources to establish and operate the air transport line as petitioned for herein, and carries insurance for the purpose of covering any damages to persons and/or property which may arise by reason of its operation;
- (9) That the applicant for some time has been successfully operating an air transport line such as proposed herein between Chicago and East St. Louis via Springfield, Illinois;
- (10) That the several stipulations entered into between the applicant, Century Air Lines, Inc., and American Airways, Inc., agreeing that a Certificate of Convenience and Necessity shall issue to each of said applicants in accordance with their respective applications and that the evidence on the issue of convenience and necessity offered in either case, No. 20815 (the application herein) or in Case No. 20948 (application of American Airways, Inc.), should be made a part of the record in each and/or both cases and considered by the Commission in each of said cases, were reasonable stipulations and should be approved by the Commission;
- (11) That the application of the Century Air Lines, Inc., should be granted and a Certificate of Convenience and Necessity should be issued in accordance with the findings hereinabove set forth, subject, however, to the regulations and air traffic rules now existing or which may be promulgated, either by this Commission or any other duly authorized governmental agency.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the stipulations between the Century Air Lines, Inc., and American Airways, Inc., mentioned in finding No. (10) herein, be, and they are hereby, approved.

IT IS FURTHER ORDERED that Century Air Lines, Inc., be, and it is hereby, granted a Certificate of Convenience and Necessity to establish, operate and maintain an air transport line for the transportation of persons and/or property for hire in and through the air above and within the State of Illinois, by the most direct and reasonably practical air line route with stoppage on the ground as herein specified for the transportation of persons and/or property, and to transact a general business of rendering air transport service via the following described routes, to-wit:

(1) From Chicago, Illinois, to East St. Louis, Illinois, either direct or via Bloomington and Springfield and in the inverse direction, together with stoppage rights for the taking on or discharging of passengers at all of the aforesaid cities.

(2) From Chicago, Illinois, to East St. Louis, Illinois, either direct or via Peoria and Springfield and in the inverse direction, together with stoppage rights for the taking on and/or discharging of passengers at all of the aforesaid cities.

IT IS FURTHER ORDERED that the Certificate of Convenience and Necessity hereinabove ordered to be issued is granted subject to the regulations and air traffic rules now existing or which may be promulgated either by this Commission or any other duly authorized governmental agency.

IT IS FURTHER ORDERED that this Commission retains jurisdiction of the subject matter hereof and of the parties hereto for the purpose of issuing any such further order or orders as the Commission in its judgment may deem meet.

By order of the Commission at Springfield, Illinois, this 26th day of August, A. D. 1931.

(Signed) JULIUS JOHNSON,
Secretary.

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