

359 US 520, 3 L ed 2d 1003, 79 S Ct 962. We conclude that no impermissible burden on commerce has been shown."

An examination of 1974 PA 361, *supra*, indicates that an out-of-state collection agency is required to have a local office where its books and records are kept and to have a Michigan resident as its manager. All of these requirements are the same as those for licensure of the in-state collection agency. No additional requirements or fees are required of the out-of-state collection agency.

Non-discriminatory licensure of out-of-state collection agencies is not contrary to the commerce clause of the United States Constitution. 1974 PA 361, *supra*, does not discriminate against the out-of-state collection agency seeking to contact persons in Michigan. As stated in *Fairfax, supra*, the mere payment of a licensure fee is not an unreasonable burden on interstate commerce. There is nothing in the act which would indicate that the out-of-state firm is being discriminated against or could be discriminated against.

However, the requirements of a local office in Michigan where the books and records are kept under the supervision of a Michigan resident is an undue burden on interstate commerce. These provisions are an attempt to do what the Michigan Court of Appeals labeled a domestication of an out-of-state corporation. Such domestication is not permissible under the Interstate Commerce Clause of the United States Constitution as indicated by the rationale of *Fairfax, supra*.

Therefore, the Department of Licensing and Regulation, Collection Practices Division, under the provisions of 1974 PA 361, *supra*, must license qualified out-of-state collection agencies contacting persons in Michigan through the use of the United States mail and/or interstate telephone lines. However, the Department may not require an out-of-state collection agency to have a local office in Michigan.

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MOTOR CARRIERS: Subject to private security guard act.

PRIVATE SECURITY GUARD ACT: Private armed security vehicles subject to motor carrier act and private security guard act.

A business firm that provides both transportation and armed security services is subject to the jurisdiction of the Public Service Commission for its transportation function and to the Department of State Police for its armed security service.

Opinion No. 5064

July 27, 1976.

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You have requested my opinion with respect to a question of interpreting provisions of the Private Security Guard Act of 1968, 1968 PA 330, as amended by 1969 PA 168¹ when read in conjunction with the provisions of the Motor Carrier Act, 1933 PA 254.² Specifically you ask whether a business firm which transports currency, coins, choses in action and other property under armed guard and which is already subject to Public Service Commission regulation under provisions of the Motor Carrier Act, *supra*, is also subject to regulation by the Department of State Police under the Private Security Guard Act of 1968.

The purpose of the Motor Carrier Act, 1933 PA 254, is set forth in Article 1, § 2 of the act; MCLA 475.2; MSA 22.532:

"It is hereby declared to be the purpose and policy of the legislature in enacting this law to confer upon the commission the power and authority and to make it its duty to supervise and regulate the transportation of persons and property by motor vehicle for hire upon and over the public highways of this state in all matters whether specifically mentioned herein or not, so as to: (1) Relieve all future undue burdens and congestion on the highways arising by reason of the use of the highways by motor vehicles operated by motor carriers; (1a) protect and conserve the highways and protect the safety and welfare of the traveling and shipping public in their use thereof; (2) carefully preserve, foster and regulate transportation and permit the coordination of motor vehicle transportation facilities; (3) restrict the use of the highways by motor vehicles operated by motor carriers to those required by the convenience of the general public; (4) prevent unjust discrimination and insure adequate motor transportation service; (5) prevent evasion of this act through any device or arrangement."

Under Section 1 of the act, MCLA 475.1(k); MSA 22.531(k), motor carrier means both common motor carriers and contract motor carriers.

"'Common motor carrier of property' means any person who holds himself out to the public as being engaged in the business of a common carrier as at the common law, either directly or through any device or arrangement, including those who operate over fixed routes or between fixed termini, in the transportation by motor vehicle from place to place upon or over the highways of this state, the property, or any property, or any class thereof of others who may choose to employ him." MCLA 475.1(f); MSA 22.531(f)

"'Contract motor carrier of property' means any person engaged in

¹ MCLA 338.1051 *et seq.*; MSA 18.185(1) *et seq.*

² MCLA 475.1—479.49; MSA 22.531—22.587(109).

the transportation by motor vehicle of property for hire upon the public highways of this state other than as a common carrier of property, either directly or through any device or arrangement." MCLA 475.1(i); MSA 22.531(i)

Article 2 of the Motor Carrier Act, MCLA 476.1 *et seq*; MSA 22.534 *et seq*, regarding the duties of the Public Service Commission, states:

"The commission is hereby vested with power and authority and it is hereby made its duty upon the filing of an application for a certificate of public convenience and necessity to ascertain and determine under such reasonable rules and regulations as it may promulgate, after considering all existing motor vehicle transportation facilities and the demand for or need of additional service, whether there exists a public necessity for such service and whether public convenience will be promoted by granting said application and permitting the operating of motor vehicles on the highways pursuant to such application as a common motor carrier of persons or property." MCLA 476.2; MSA 22.535

In granting or denying the application of a common carrier, MCLA 476.4; MSA 22.537, the Public Service Commission must consider the character and condition of the vehicles to be operated, the condition of the highways to be operated over and the need for the service to be performed by the applicant for the charter.

With regard to contract motor carriers, the Public Service Commission's duties are much the same as those with respect to common motor carriers. The commission must decide whether or not applications for status as a contract motor carrier are to be granted to applicants. MCLA 477.2; MSA 22.549. Among the factors the Public Service Commission must consider are adequacy of the present service provided by both common and contract motor carriers, the possibility of damage to existing highways and the condition of the same, and the condition of the vehicles which the contract carrier proposes to use. MCLA 477.3; MSA 22.550.

The Michigan Supreme Court has twice construed the purpose and intent of the legislature in enacting the Motor Carrier Act. In *Michigan Express Inc. v Public Service Commission*, 333 Mich 101, 105; 52 NW2d 575, 616 (1952), the Court, speaking through Mr. Justice Dethmers, said:

" . . . legislative intent clearly applies that the guiding and controlling principle to be applied, . . . is that all motor carrier service and the manner, methods, conditions, extent, types and routes thereof, et cetera, shall be fixed and regulated by [Public Service Commission] on the basis of its determination of the requirements of public convenience and necessity in relation thereto. . . ."

In *McDaniel Trucking Co., Inc. v Oak Construction Co.*, 359 Mich 494, 501; 102 NW2d 575, 578 (1960), the Court said:

"It is apparent . . . that the legislature had in mind the protection of the public interest by requiring the publication of rates to be charged by each common motor carrier, to prohibit discriminatory charges, to forbid the observance of rates other than as fixed pursuant

to the statute, and to provide a penalty for the granting of rebates in any form and for discrimination forbidden by the act. . . .”

The provision of the Private Security Guard Act of 1968 which brings armored car services within the act's purview is § 2(b):

“Private police or special police or security guards or watchmen employed by investment, financial concerns or *other business firms*, not including banks or savings and loan associations, *whose duties require their employees as designated above to proceed from one point to another, including convoy activity for protection of choses in action or other designated reasons, and in so doing travel on public property, shall be included under this act.*” MCLA 338.1052(b); MSA 18.185(2)(b) [Emphasis added]

Section 4 of the act gives to the Department of State Police the power to license and regulate those private business firms which are defined in Section 2 of the act. Section 6 of the act establishes criteria upon which the state police are to judge the applications of firms which wish to be licensed as private security firms within the definition of Section 2 of the act. Section 17 and Section 18 of the act deal with the qualifications of the employees of private security agencies. The state police are to issue licenses to the private security firms only upon a showing that all employees meet the qualifications of Sections 17 and 18 of the Private Security Guard Act.

The legislature has recognized that the private armed security transport industry has two distinct aspects. The first is transportation; the second, armed security. The transportation aspect of the industry is within the expertise of the Public Service Commission, i.e., vehicle types, character and condition of the highways, the nature of and the necessity for the service to be provided, rates, tariffs and routes. MCLA 475.1-479.49; MSA 22.531-22.587(109).

The armed security aspects of the industry is within the expertise of the Department of State Police, i.e., licensing of the firms which will provide the security, weapons control and licensing and qualifications of employees. MCLA 338.1051-331.1081; MSA 18.185(1)-18.185(31).

In summary, it is my opinion that the business firms which provide both transportation and armed security services fall within the jurisdiction of both the Public Service Commission by reason of their transportation function and the Department of State Police by reason of their armed security function.

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