

Public Service Commission

DECISIONS OF

The Public Service Commission

OF THE

COMMONWEALTH OF PENNSYLVANIA

VOLUME 13



HARRISBURG, PENNSYLVANIA
1937

If instead of using 4-inch pipe on the two lateral extensions, a 2-inch pipe were used, the cost would be approximately \$200 less, but the operating charges would be slightly increased, and the net result of the installation of the smaller pipe would not be an appreciable advantage.

The estimated gross revenue based on seven consumers at the minimum of \$8.80 per year and on one fire hydrant is \$91.60, which is less than 3% on the estimated cost. If the four vacant houses were occupied and applied for service, the revenue would be \$126.80. From these sums deductions must be made for the cost of supplying water, reading meters, billing, etc., and depreciation before a return on the investment can be obtained.

There is no question regarding the fact that complainants and others in this territory are in need of the service sought; however, the necessary capital outlay by the water company will be so excessive in comparison with the revenues which are to be expected, that it is clearly beyond the bounds of a reasonable obligation or duty of the water company to provide the extension of facilities and furnish the service sought, even though it is within the charter territory.

Under all the facts disclosed in the testimony which have been made a part of the record, the Commission finds that the complaint cannot be sustained; THEREFORE,

NOW, to wit, July 3, 1934, IT IS ORDERED: That the complaint be and is hereby dismissed.

DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

v.

WILKES-BARRE RAILWAY CORPORATION et al.

COMPLAINT DOCKET No. 10165

Crossings—Above grade—Dangerous condition—Reconstruction—Allocation of cost.

Complaint alleging that a bridge carrying a state highway and railway track over the grade of a railroad was inadequate to accommodate the traveling public in safety sustained and an order directing reconstruction issued. Owing to the weakened physical condition of the bridge it was barricaded so as to permit only one way traffic.

Allocation of cost of reconstructing bridge deferred until after further hearing where the public was being inconvenienced by restricted use and reconstruction at the earliest possible date was necessary.

Gomer W. Morgan for Complainant.

R. Lawrence Coughlin for County of Luzerne.

S. W. Rhoads for The Wilkes-Barre Railway Corporation.

M. F. McDonald for Township of Hanover.

Joseph F. Ingham for Department of Highways.

Thomas M. Lewis for Borough of Plymouth.

Edwin B. Morgan for City of Wilkes-Barre.

REPORT AND ORDER BY THE COMMISSION, *July 3, 1934*:

Near East Main Street in the Borough of Plymouth, Luzerne County, a single track of the Wilkes-Barre Railway Corporation and West End Road, or Bridge Street, are carried over the grade of the two main tracks of the Bloomsburg Division of The Delaware, Lackawanna and Western Railroad Company by a bridge locally known as the Carey Avenue bridge. This complaint alleges that the bridge is inadequate to accommodate the traveling public in safety and should be repaired or reinforced immediately.

A hearing was held at which testimony was introduced to show that the bridge was originally constructed about 1895 by the Plymouth Bridge Company, a subsidiary of the Plymouth Street Railway, one of the lessors of the Wilkes-Barre Railway Corporation, under a lease dated January 1, 1910. The bridge, which is about 128 feet in length and consists of three spans, was operated as a toll bridge until January 25, 1922, and was purchased by the County of Luzerne on April 16, 1923. Since September 5, 1925, the structure has been in use by the public as a free county bridge and has been maintained by the county. By deed dated April 16, 1923, right to operate trolley cars over a portion of the bridge was reserved to the Plymouth Street Railway.

Bridge Street forms a portion of State Highway Route No. 4 in the borough, and is an important and heavily traveled thoroughfare. The record shows that the structure is now in such a weakened physical condition that it is inadequate to accommodate safely the traffic passing over it, and is dangerous to the operation of railroad traffic under it. As a result of conferences held by representatives of The Public Service Commission and the parties of record, the bridge has been barricaded

so as to reduce the roadway section of the structure to one lane of vehicular traffic and to limit and restrict the loads passing over it.

A plan submitted at the hearing of June 22, 1934, and marked "Respondent's Exhibit No. 2" provides for the reconstruction of the bridge and approaches thereto in a manner satisfactory to all parties of record; the cost of the improvement being estimated at \$40,158.80, including an item of \$100.00 for land damages.

Owing to the weakened physical condition of the structure, the inconvenience to the public resulting from the restriction of traffic and the necessity of reconstructing the bridge at the earliest practical date, the parties have agreed of record that an order be issued immediately directing the County of Luzerne to proceed with the construction work in accordance with the plans presented at the hearing and that the allocation of costs be deferred until after further hearing.

Upon careful consideration of all the evidence, the Commission finds and determines that the existing structure is inadequate to accommodate the traveling public safely and that its replacement is necessary for the accommodation and safety of the public; THEREFORE,

NOW, to wit, July 3, 1934, IT IS ORDERED: That the complaint be and is hereby sustained.

IT IS FURTHER ORDERED: That the bridge carrying the single track of the Wilkes-Barre Railway Corporation and Bridge Street (State Highway No. 4) over the grade of the tracks of the Bloomsburg Division of The Delaware, Lackawanna and Western Railroad Company at a point in the Borough of Plymouth, Luzerne County, near East Main Street and the approaches to the structure be reconstructed and altered in accordance with the general plan submitted at the hearing of June 22, 1934, and marked "Respondent's Exhibit No. 2," which said plan is hereby approved, attached hereto and made part hereof.

IT IS FURTHER ORDERED: That the County of Luzerne, within 30 days from the date of service hereof, submit to this Commission for approval and to the parties of record for examination detailed plans of the bridge and approaches herein ordered to be reconstructed or altered by said County of Luzerne.

IT IS FURTHER ORDERED: That the County of Luzerne furnish all materials and do all work necessary to complete the improvement in accordance with the approved plan, said work and materials being estimated to cost \$40,158.80; said work upon the structures and track to be performed in cooperation with The Delaware, Lackawanna and Western Railroad Company, so that the operation of its trains will not be endangered or unnecessarily impeded.

IT IS FURTHER ORDERED: That during the construction of the portion of the improvement which extends across the track and right of way of the railroad company, The Delaware, Lackawanna and Western Railroad Company operate its trains in the vicinity of the improvement at reduced speed and under control, cooperate with the County of Luzerne in the reconstruction of the bridge, and, if necessary, maintain watchmen at the site at its own expense.

IT IS FURTHER ORDERED: That all work herein ordered to be done be completed on or before December 31, 1934.

IT IS FURTHER ORDERED: That any relocation, changes in or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvement herein ordered, be made by said public service company at its own expense.

LEHIGH VALLEY TRANSPORTATION COMPANY

v.

FISHER

COMPLAINT DOCKET No. 9949

Motor vehicles—Buses—Common carriers—Subterfuge—Knowledge of.

Complaint alleging illegal transportation of passengers by bus operator dismissed where although the arrangement to give the carriage an interstate appearance was clearly a subterfuge to evade regulation it appeared that respondent knew nothing of the arrangement.

Edmund G. Hauff and William J. Wilcox for Complainant.

Claude T. Reno for Respondent.

REPORT AND ORDER BY THE COMMISSION, *July 3, 1934:*

The present complaint alleges that respondent transported a group of persons from Phillipsburg, New Jersey, to Scranton and West Pittston, Pennsylvania, the persons walking across the bridge from Easton, and the transportation from Phillipsburg being a subterfuge in an attempt to give an interstate character to the movement. The evidence shows that the arrangements for the transportation were

Original in Public Service Commission

DECISIONS OF
The Public Service Commission
OF THE
COMMONWEALTH OF PENNSYLVANIA

VOLUME 14



HARRISBURG, PENNSYLVANIA
1937

\$900 principal amount of said bonds shall have been purchased at par, and the purchase price shall have been represented by a cash payment or a non-interest-bearing open account payable to the vendor. The Commission cannot find or determine that the purchase of \$900 bonds at a premium of 4 points, or the purchase of any of the bonds upon an interest-bearing open account, is either necessary or proper for the service, accommodation or convenience of the public; THEREFORE,

NOW, to wit, February 25, 1936, IT IS ORDERED: That the purchase by Northern Pennsylvania Power Company of \$14,000 principal amount of its own First and Refunding Mortgage Gold Bonds, Series A, 5%, from The Associated Corporation on May 29, 1934, at the price of \$13,417.50, be and is hereby approved.

IT IS FURTHER ORDERED: That the purchase by Northern Pennsylvania Power Company of \$14,000 principal amount of its own First and Refunding Mortgage Gold Bonds, Series A, 5%, from The Metropolitan Edison Corporation on June 1, 1935, at the price of \$14,524 represented by cash payment or non-interest-bearing open account payable to the vendor, be and is hereby approved.

IT IS FURTHER ORDERED: That the purchase of \$900 of the bonds at a premium of 4% of par, and the incurring of an open account indebtedness, bearing interest, for the purchase of all of the bonds, be and is hereby disapproved.

IT IS FURTHER ORDERED: That a certificate of public convenience issue in evidence of such approval.

IT IS FURTHER ORDERED: That Northern Pennsylvania Power Company forthwith take such steps as may be necessary to adjust its indebtedness to The Metropolitan Edison Corporation to meet the terms of the above order, and that it report compliance herewith not later than March 13, 1936.

DELAWARE, LACKAWANNA AND WESTERN
RAILROAD COMPANY

v.

THE WILKES-BARRE RAILWAY CORPORATION, et al.

COMPLAINT DOCKET No. 10165

Crossings—Construction of a bridge—Allocation of costs—Department of Highways—Bridge improvement in borough—Liability for costs—Article V,

Section 12 of the Act of 1913, P. L. 1374—Power to assess Commonwealth—Curtailement of powers—Contracts requiring Commission approval—Allocation of costs.

Where the Department of Highways refused to pay its part of the cost of the reconstruction of a bridge directed by the Commission in a prior order, on the ground that certain Acts of Assembly prevented assessment on the Department of Highways where the bridge in question was located in a borough. This contention was rejected. Article V, Section 12 of the Act of 1913, P. L. 1374, as interpreted by the Appellate Courts provides that the Commission has power to levy on public bodies including the Commonwealth when they are concerned in improvements within its jurisdiction. Subsequent legislative enactments show no curtailment of those powers of the Commission.

Held that where the law is silent as to the liability of the Department for payment of its proportionate share of the costs of a bridge construction over a railroad in a borough, there is no curtailment of the general power of the Commission to make a reasonable assessment against it as an interested party.

A public service company cannot consummate an agreement with a municipality for the maintenance of a crossing improvement without first having obtained Commission approval.

Costs of the crossing improvements were allocated and maintenance and safety devices provided.

Gomer W. Morgan for the Complainant.

R. Lawrence Coughlin for the County of Luzerne.

Joseph F. Ingham for the Department of Highways.

S. W. Rhoads for Wilkes-Barre Rwy. Corp.

Thomas M. Lewis for the Borough of Plymouth.

Edwin B. Morgan for the City of Wilkes-Barre.

SUPPLEMENTAL REPORT AND ORDER BY THE COMMISSION, *February 25, 1936:*

This Commission on July 3, 1934, ordered reconstruction of the bridge carrying West End Road, or Bridge Street, and the single track of The Wilkes-Barre Railway Corporation over the grade of the two main tracks of the Bloomsburg Division of The Delaware, Lackawanna and Western Railroad Company in the Borough of Plymouth, Luzerne County, upon the finding that the bridge was inadequate to carry the traveling public safely.

Owing to the weakened physical condition of the structure, the inconvenience to the public resulting from the restriction of traf-

fic, and the necessity of reconstructing the bridge at the earliest practicable date, the parties having agreed, the Commission, by its order of July 3, 1934, ordered the County of Luzerne to furnish all materials and do all work necessary to complete the improvement in accordance with approved plans and deferred the allocation of costs incident thereto until after further consideration.

A further hearing was held on the allocation of costs on November 2, 1934, and briefs were subsequently filed by the parties of record. In the brief of the Department of Highways, it is contended that under certain Acts of the Assembly, no assessment can be made on the Department of Highways in this case, owing to the fact that the bridge which carries a state highway over the railroad is located in a borough. This contention must be rejected.

Article V. Section 12, of the Act of 1913, P. L. 1374, provides, in part, as follows:

“The compensation for damages which the owners of adjacent property taken, injured, or destroyed may sustain in the construction, relocation, alteration, or abolition of any such crossing specified in this section (for which compensation the said owners are hereby invested with warrant of authority, upon appeal from the determination of the commission, to sue the Commonwealth), shall, after due notice and hearing, be ascertained and determined by the commission; and such compensation, as well as the expense of the said construction, relocation, alteration, or abolition of any such crossing, shall be borne and paid, as hereinafter provided, by the public service company or companies or municipal corporations concerned, *or by the Commonwealth*, either severally or in such proper proportions as the commission may, after due notice and hearing, in due course, determine, unless the said proportions are mutually agreed upon and paid by those interested as aforesaid.” (italics ours)

This particular section of the Act has not been amended and its interpretation has been several times before the appellate courts. In *Paradise Township v. Public Service Commission*, 75 Pa. Superior Ct. 208, the court affirmed an assessment levied by the Commission against a township for the reconstruction of a bridge on a state highway over the right of way of a railroad. It was held in this case that the township through which the highway ran was a “concerned and interested party” and could be assessed part of the cost of such reconstruction by the Commission. See also *Salem Township v. Public Service Commission*, 76

Pa. Superior Ct. 374; Lancaster County *v.* Public Service Commission, 77 Pa. Superior Ct. 495; Schuylkill County *v.* Public Service Commission, 77 Pa. Superior Ct. 504. Thus the Commission was vested with authority to levy an assessment upon public bodies, including the Commonwealth, who are interested and concerned in improvements within the scope of its jurisdiction. See Norristown Chamber of Commerce *v.* The Pennsylvania Railroad et al., 10 Pa. P. S. C. 638, where the Department of Highways was ordered to pay \$200,000 as its share of the cost of a crossing improvement within a borough. It is, therefore, necessary to examine subsequent legislative enactments to determine whether there has been any curtailment of the broad powers vested in the Commission.

As a premise to this discussion, it should be noted that a bridge is not part of a road or highway within the meaning of the general term as used in the Sproul Act of May 11, 1911, P. L. 468, Sec. 34, and the amendments thereto. Only township bridges are included in that act, and other bridges are excluded: Commonwealth *v.* Bird, 253 Pa. 364 (1916); Commonwealth *v.* Grove, 261 Pa. 504 (1918); Commonwealth *v.* Lehigh Coal & Navigation Co., 285 Pa. 551 (1926).

The original jurisdiction of the Commonwealth and the Department of Highways over State roads was created by the Sproul Act of 1911. The portion of that act relevant to the instant situation reads as follows:

“Section 10. Anything herein contained, or any apportionment of the State into highway districts, shall not be construed as including or in any manner interfering with the roads, streets, and highways in any of the cities, boroughs, or incorporated towns of the Commonwealth: Provided, That where any road, street or highway within the limits of any borough or in any incorporated town shall form a part or section of any State highway, as herein described, and the same, or any part thereof, is not already improved or reconstructed according to the standards of the State Highway Department, or in a manner equal to said standards, by the borough or incorporated town, the State Highway Commissioner, by and with the consent of the borough or town councils, may improve or reconstruct such unimproved section or sections of such road, street, or highway at the expense of the Commonwealth: Provided further, That where the councils of any borough or incorporated town shall, for any valid reason, object to the taking over and appropriation of any road, street or highway, or of any part or parts thereof, as a state highway, they shall file such ob-

jection, in writing, with the State Highway Department, within sixty days after the State Highway Commissioner shall have notified in writing the proper authorities of said borough or incorporated town of his intention to take over any such road, street or highway, or any part thereof, under the provisions of this act: And provided further, That any such road, street, or highway, or any part or parts thereof, forming a state highway within the limits of any borough or incorporated town, shall only be taken over, at the discretion of the State Highway Commissioner, for reconstruction and maintenance by the State Highway Department, when the failure to so take over such road, street, or highway would leave an unimproved gap in a continuous improved state highway. * * * ”

The original act thus vested a discretion in the State Highway Commissioner and also limited his acts to instances where a borough or incorporated town consented to the improvement.

This section was first amended by the Act of June 7, 1917, P. L. 602. The Act of 1917 merely omits the last three lines above quoted,—“when the failure to so take over such road, street, or highway would leave an unimproved gap in a continuous improved state highway.” Section 10 was subsequently amended by the Act of May 18, 1923, P. L. 252. This amendment abolished the necessity of consent from the borough or town councils and left the matter entirely to the discretion of the State Highway Commissioner. This act was next amended by the Act of May 12, 1925, P. L. 593, only to substitute the Secretary of Highways to replace the Commissioner of Highways.

The Legislature in the 1929 Session passed two acts amending Section 10. The first of these amendments was the Act of May 7, 1929, P. L. 1566, which added to the section the words “or bridges over streams,” so that the first proviso read: “Provided, that where any road, street, highway or bridge over a stream, within the limits of any borough. * * * * .” The second amendment was made by the Act of May 16, 1929, P. L. 1775, purporting to amend the Act of May 18, 1923, P. L. 252, making it mandatory upon the Department of Highways to improve and reconstruct “any road, street, or highway within the limits of any borough.” The latter act contains no mention of bridges. The first of these acts *empowered* the Secretary of Highways to improve or reconstruct borough highways, and the latter act made this a mandatory duty and placed the expense upon the Commonwealth. In short, these two acts taken together, *required* the department to construct and maintain highways in boroughs, au-

thorized the construction and maintenance of bridges over streams within boroughs, and remained silent upon the construction, reconstruction and maintenance of all other bridges.

The next amendment was the Act of June 26, 1931, P. L. 1388, amending 1929 P. L. 1566 and 1929 P. L. 1775. This Act removed all authorization of the Department of Highways to construct, reconstruct, or maintain any bridge on any state highway within the limits of any borough, and further provided that no assessment should be made against the Commonwealth by reason of the elimination of any grade crossing.

Section 10, as amended by the Act of June 1, 1933, P. L. 1402, reads, in part, as follows:

“The Department of Highways shall also construct, reconstruct, and maintain any bridge over a stream which the borough or incorporated town is obligated to maintain, and which bridge is located on or forms a part of a state highway established prior to the twenty-second day of June, one thousand nine hundred thirty-one, within the limits of any borough or incorporated town: Provided, That nothing herein contained shall authorize any assessment to be made against the Commonwealth by reason of, or to assist in the elimination of, any grade crossing on any highway within the limits of a borough or incorporated town, and no such assessment shall hereafter be made under any act of Assembly heretofore enacted: And provided further, That nothing in this act shall be construed as placing on the Commonwealth the payment of any costs of construction or reconstruction of any such bridges in boroughs or incorporated towns for the construction or reconstruction of which a contract has been let prior to the effective date of this act, and the Department of Highways shall not assume the obligation for the construction, reconstruction, or maintenance thereof until such contract has been performed.”

This paragraph deals with the liability of the Commonwealth for the construction, reconstruction and maintenance of bridges over streams within boroughs. A fundamental rule of statutory construction is that provisos such as these must be limited in their effect to the general provision which they follow. This principle of construction was stated by our Superior Court in an opinion filed January 31, 1936, in *City of Lancaster v. Public Service Commission* 120 Pa. Superior Ct. 597 wherein it was said “This paragraph of the section is, in effect, a proviso and, therefore, to be strictly construed: *Montgomery v. Martin et al.*,

294 Pa. 25, 143 A. 505." The general provision in this section is very definitely the maintenance of bridges over streams within boroughs, and the proviso must necessarily, therefore, affect only those situations in which the bridge over a stream would at the same time result in the elimination of a grade crossing. It therefore follows that this act is also silent upon the liability of the Commonwealth for the reconstruction of bridges such as the one in the instant case, which is within a borough, on a state highway, but not over a stream.

The Act of July 12, 1935, P. L. 945, also further amends Section 10. It is to be noted, however, that the applicable part of this section is in the same terms, so far as this case is concerned, with the Act of 1933. In the instant case the order for the construction of this bridge was issued by the Commission on July 3, 1934. The 1935 amending act was approved more than a year later, July 12, 1935, and it is doubtful that even if there was a change in this act that it could affect the Commission order. However, the question is moot for the reason that neither the original nor the amended section is deemed to have any effect in this case.

In summation, therefore, the legislative enactments are silent concerning the duty or liability of the Department of Highways to contribute to the cost of reconstruction of a bridge over a railroad, not over a stream, within a borough. This silence leads to the conclusion that there has been no limitation on or diminution of the general powers of the Commission to assess public bodies that are interested and concerned in the reconstruction of such a bridge as this. It is further to be noted that the titles to none of these acts make any reference to a limitation of the power vested in the Commission as heretofore set forth.

There can be no question that the Department of Highways is an interested party in the instant case. See *Paradise Township v. Public Service Commission*, supra, and *Norristown Chamber of Commerce v. The Pennsylvania Railroad Company et al.*, supra. The Commission, therefore, has the power to make a reasonable assessment against the department.

It is urged that the County of Luzerne, in an agreement entered into with the Plymouth Street Railway Company on April 16, 1925, agreed to maintain, repair and renew the bridge, as well as any bridges built in substitution or renewal thereof. The Public Service Company Law, by Article III, Section 11 (a), provides as follows: "No contract or agreement between any public service company and any municipal corporation shall be valid un-

less approved by the commission: * * *." The agreement, not having been approved by the Commission, is invalid and cannot be given consideration in connection with the allocation of the costs of this improvement. The matters and things involved having been fully considered; THEREFORE,

NOW, to wit, February 25, 1936, IT IS ORDERED: That the Department of Highways pay the County of Luzerne, when and as certified by the Public Service Commission, the fixed sum of \$15,000, to apply on the cost of materials furnished and work done by said County of Luzerne, in accordance with the order of the Commission dated July 3, 1934.

IT IS FURTHER ORDERED: That The Wilkes-Barre Railway Corporation pay the County of Luzerne, when and as certified by the Public Service Commission, the fixed sum of \$1,500, to apply on the cost of materials furnished and work done by said County of Luzerne, in accordance with the order of the Commission dated July 3, 1934.

IT IS FURTHER ORDERED: That The Delaware, Lackawanna and Western Railroad Company pay the County of Luzerne, when and as certified by the Public Service Commission, the fixed sum of \$5,000, to apply on the cost of materials furnished and work done by said County of Luzerne, in accordance with the order of the Commission dated July 3, 1934.

IT IS FURTHER ORDERED: That The Delaware, Lackawanna and Western Railroad Company operate its trains under the bridge in such a manner as to minimize as much as practicable any deteriorating effect of locomotive gases on the superstructure of the bridge.

IT IS FURTHER ORDERED: That The Delaware, Lackawanna and Western Railroad Company pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of the improvement.

IT IS FURTHER ORDERED: That The Wilkes-Barre Railway Corporation pay any money to which it may be entitled as compensation for damages to any of its property taken, injured or destroyed by reason of the improvement.

IT IS FURTHER ORDERED: That the Borough of Plymouth pay all compensation for damages due to the owners of property taken, injured or destroyed in the execution of this improvement,

exclusive of damage to the respondent railroad and railway company for any of their respective properties taken, injured or destroyed by reason of the improvement.

IT IS FURTHER ORDERED: That any relocation of, changes in, or removal of any adjacent structures, equipment or other facilities of any public service company, which may be required as incidental to the execution of the improvement, be made by said public service company at its own expense.

IT IS FURTHER ORDERED: That, upon the completion of the improvement, The Wilkes-Barre Railway Corporation maintain, at its own expense, its track and facilities on the bridge and approaches thereto; that the Department of Highways maintain the concrete roadway paving on the bridge and approaches thereto and the curbs on the approaches; that the Borough of Plymouth maintain the sidewalks on the approaches to the bridge and that the County of Luzerne maintain the balance of the improvement, including the sidewalks and curbs on the bridge and including also the earth fill approaches, exclusive of concrete curbs, sidewalks, roadway paving and facilities of The Wilkes-Barre Railway Corporation thereon.

McKEESPORT TRANSIT COMPANY

v.

McCOY BROTHERS

COMPLAINT DOCKET No. 11041

Motor vehicles—Common carriers—Certificate of public convenience—Violation of terms—Transportation of school groups—Prerequisite of Commission approval—Order to cease and desist.

Upon complaint that a certificate carrier was engaged in transporting groups to points not located on their authorized route, was sustained by the Commission, where it appeared from the undisputed evidence that respondents had provided transportation for high school teams and other groups by special contract, to places outside the scheduled routes, contrary to the terms of their certificate. No penalty was imposed where respondent claimed to have acted under advice of counsel. A cease and desist order issued.

A common carrier cannot lawfully furnish any transportation for compensation not authorized by its certificate simply by entering into a special contract to cover such carriage.