

**Opinion No. 326****Motor Carriers—Licenses—Cancellation—Insurance.**

HELD: Where the holder of a M. R. C. license allows his insurance to lapse, his license is automatically cancelled, and it is necessary, if he wishes to continue in business, for him to file an application for a new license.

September 1, 1933.

A question has arisen in connection with the fifteen suits filed by the Board of Railroad Commissioners in Silver Bow County on last Thursday, seeking to restrain various taxi and truck operators from operating in violation of Chapter 184, Laws of 1931, which you refer to this office for an opinion.

In a majority of the suits filed the facts were that the defendants had in the past secured appropriate certificates from the Board under Chapter 184, supra, had paid the fees called for by said act, and maintained insurance or bonds or other security conditioned for the protection of the public against the negligent operation of their motor vehicles, but had failed to maintain in force such insurance, bond or other security. The position taken by the Board in these suits was that the failure to maintain in force the insurance, bond, or other security, resulted in a termination of the operator's certificate and forfeited his right to operate as a motor carrier. After the filing of the suits above mentioned and the issuance of temporary restraining orders and the orders to show cause for injunction pendente lite, a number of the defendants were able to obtain insurance as required by the act and the rules of the Board. A number of these policies or binders for policies are now on file

with the Board and the question that arises is whether the compliance with the insurance provision of the act and the rules and regulations of the Board acts as a reinstatement of the operator's rights under his original certificate or whether failure to comply with the insurance provisions worked such a termination of the operator's rights that in order to again operate as a motor carrier he must pursue the course of an original applicant and file an application under sections 8, 9 and 10, (whichever applicable) and pay a filing fee and submit to a public hearing upon the application as required by section 11.

Rule 16 of the Board, adopted pursuant to section 13, provides that unless self insurance is authorized, before a certificate shall issue, the applicant shall file with the board a liability and property damage insurance policy, bond, or other approved security, covering each motor vehicle used, or to be used by such applicant, in certain stated sums which vary according to the passenger-carrying capacity of the motor vehicle used, or to be used. The rule concludes in this language: 'Failure to file and keep such insurance policy, security, bond, or other approved security in full force and effect shall automatically terminate a certificate (see sections 12 and 13 of the act).'

The Board has in the past taken the position that once a certificate has been terminated by virtue of the provisions of sections 12 and 13 of the act and rule 16 of the Board, it can not be revitalized or reinstated by the mere subsequent compliance with the insurance provisions of the act, or in other words, that an operator who permits his certificate to terminate by reason of the provision above mentioned is under the necessity of filing a new application, paying the filing fee prescribed by law, and submitting his application to the protest of interested parties and to investigation by the Board at public hearing as to the existence of public convenience and necessity for the applicant's service.

In view of the contentions raised by the parties in interest, you request our opinion whether or not the Board's interpretation is the proper and allowable one.

Sections 12 and 13 of Chapter 184, Laws of 1931, are as follows:

"Section 12. Any right, privilege or certificate held, owned, or obtained by any motor carrier may be sold, assigned, leased, transferred and inherited as other property only by the authorization of the board. The board may issue the certificate, as prayed for, or issue it for the partial exercise only of the privilege sought, and may attach to the exercise of the rights granted by such certificate such terms and conditions as in its judgment the public convenience and necessity may require. When a certificate has once been issued to a motor carrier, as in this Act provided, such certificate shall continue in force until terminated by the board for cause, as herein provided, or until terminated by the owner's failure to comply with Section 13 of this Act."

"Section 13. No certificate shall be issued or remain in force unless the holder thereof shall comply with such rules and regulations of the board as it shall adopt governing the filing of bonds, policies of insurance, or such security or agreement in such form and adequate amount and conditioned as the board may require for: (a) the prompt payment of all compensation or fees due the State under the provisions of this Act, and (b) the payment of any final judgment which may be rendered against any such motor carrier arising out of the death of or injury to any passenger or injury to other persons or property as a result of any negligent operation of the motor vehicles or such motor carrier, with power in the board to permit self-insurance whenever, in its opinion, the financial ability of the motor carrier warrants."

Rule 16 of the Board, in our opinion, is fully authorized by section 13 above and such rule, therefore, has the same force and effect as a provision of the statute. This rule provides that the certificate shall automatically terminate unless the security required is kept in full force and effect. Section 12 of the Act provides that a certificate shall continue in force until terminated by the Board for cause or by the owner's failure to comply with Section 13 of the Act. The rule says "shall automatically terminate." The statute says

"terminate." Terminate means, "to put an end or stop to; bring to a completion; finish; cease to be; come to an end." If the certificate issued to motor vehicle operators has ended it is the same as though it never existed.

When the board issues a certificate to an operator of a motor vehicle section 12 recognizes the holder of such certificate as having a property right therein and it may be your position will be attacked on the ground that some precedent proceedings are necessary to establish the fact that such property right has been forfeited, but with this possible exception, it is our opinion that your proceedings as submitted are in harmony with the law, all rights and privileges under such certificates having terminated by the failure of the parties holding such certificates to comply with sections 12 and 13 and the Board's rule No. 16.