

(Decision No. C93-1504)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

* * *

IN THE MATTER OF PROPOSED RULES)	
AUTHORITY SUMMARY SUSPENSION OF)	DOCKET NO. 93R-545CY
CERTIFICATES OR PERMITS OF REGULATED)	
CARRIERS FOR FAILURE TO MAINTAIN)	ADOPTION OF RULES
MANDATORY INSURANCE COVERAGE,)	
AMENDMENTS TO RULE 73, 4 CCR 723-1.)	

Mailed Date: December 3, 1993
Adopted Date: November 24, 1993

STATEMENT

BY THE COMMISSION:

In Decision No. C93-1163, issued September 28, 1993, the Commission established this docket and gave Notice of Proposed Rulemaking regarding Rule 73, Commission Rules of Practice and Procedure, 4 CCR 723-1. The intent of the proposed rules is to provide for summary suspension of certificates or permits of carriers who fail to maintain insurance coverage as required by statute and Commission regulations. The proposed rules would provide for summary suspension of certificates or permits of carriers failing to maintain required insurance coverage pending permanent revocation proceedings. At the September 8, 1993 Open Meeting, we adopted an emergency rule allowing for such summary suspension. This proceeding is intended to make permanent the procedures adopted in the emergency rulemaking.

A hearing was conducted in this matter before an Administrative Law Judge on November 1, 1993. Interested persons appeared and submitted certain comments, and the Commission has caused those proceedings to be transcribed. The emergency rules adopted at the September 8, 1993 Open Meeting are due to expire on December 10, 1993. In light of the upcoming expiration of the emergency rules and the importance of this matter to the public health, safety, and welfare, as discussed herein, we find that the Commission should make the initial decision in this case, even though we did not preside at the rulemaking hearing. In accordance with the provisions of § 40-6-109(6), C.R.S., we find that due and

timely execution of our functions imperatively and unavoidably require us to make the initial decision in this matter.

The public comment on the proposed rule primarily concerns the Commission's authority to summarily suspend operating authorities. Specifically, some public comment suggests that we do not possess summary suspension authority in light of the provisions of § 40-10-112, C.R.S., and equivalent provisions in other sections of the Commission's statute. We reject such arguments.

Section 40-10-112, C.R.S., states that the Commission may suspend, revoke, alter, or amend certificates or registrations, "after hearing upon notice" to the holder of any certificate or registration. Based upon this requirement of notice and hearing before suspension, certain parties assert that the Commission may not, regardless of the circumstances, summarily suspend any operating authority.¹ In our view, Colorado statutes distinguish between summary suspension and other types of suspension. For example, § 24-4-104(4), C.R.S., provides:

(4) Where the agency has reasonable grounds to believe and finds that the licensee has been guilty of deliberate and willful violation or that the public health, safety, or welfare imperatively requires emergency action and incorporates such findings in its order, it may summarily suspend the license pending proceedings for suspension or revocation which shall be promptly instituted and determined.

(emphasis added). The Colorado Supreme Court has held that this summary suspension provision is constitutional, and empowers state agencies to summarily suspend a license where appropriate grounds exist. Colorado State Board of Med. Exam. v District Court, 551 P.2d 194 (Colo. 1976).

We conclude that the notice and hearing requirements in § 40-10-112, as well as similar provisions in other sections of Title 40, refer to suspensions other than summary suspension in cases of emergency. This is the only conclusion consistent with public necessity. In particular, we note that the contrary finding holds that the Commission lacks the authority to take action even in undisputed cases of emergency where the public health, safety, and welfare would imperatively require summary suspension. This interpretation of the Commission's statutes is expressly inconsistent with the public interest.

In light of this interpretation, there is no inconsistency between the provisions of § 24-4-104(4), C.R.S., and any provision in the Commission's statutes. We therefore determine that § 24-4-104(4), C.R.S., along with provisions in Title 40 (e.g., §§ 40-2-108, 40-3-102, 40-10-110, 40-10-120, 40-11-109, 40-11-111, 40-11-115, 40-13-105, C.R.S.), authorizes us to take summary action against regulated carriers, where appropriate grounds exist.

We also determine that uninsured carrier operations pose unacceptable risks to the public. As noted in our adoption of the emergency rules (Decision No. C93-1128), such carrier operations present the risk that members of the public will fail to receive adequate compensation in the event of personal injury or property loss caused by uninsured carriers. The rule providing for summary suspension increases the likelihood that carriers will comply with insurance requirements, and will cease operations where insurance coverage has expired.

Based upon the maxim of statutory construction expressio unius est exclusio alterius, commenting parties also suggested that the legislature's adoption of summary revocation measures for interstate carriers in § 40-10-112(2), C.R.S., signifies its intent to deprive the Commission of summary suspension authority with respect to intrastate carriers. We determine that this contention is incorrect. In the first place, we note that § 40-10-112(2), C.R.S., refers to summary revocation, not suspension. Therefore, the rule of statutory construction (i.e., expression of one thing is the exclusion of another) does not apply. Furthermore, we observe that expressio unius est exclusio alterius is simply an aid to statutory construction and is not a rule of universal application. People v. Y.D.M., 593 P.2d 1356 (Colo 1979). Where the meaning of the statutes are plain, there is no need to resort to maxims of statutory construction. Office Of Consumer Counsel v. Public Utilities Comm., 752 P.2d 1049 (Colo. 1988). Here, we find that the statutes are sufficiently clear that no need exists to resort to the principle of construction relied upon by the commenters.

THEREFORE THE COMMISSION ORDERS THAT:

1. The rule attached to this Decision as Rule 73(f) is hereby adopted.

2. The 20-day period provided for by § 40-6-114(1), C.R.S., within which to file applications for rehearing, reargument, or reconsideration begins on the first day following the mailing or serving of this decision.

Unless modified by further order of the Commission, this Decision is effective 25 days following its Mailed Date.

ADOPTED IN OPEN MEETING November 24, 1993.

(S E A L)



ATTEST: A TRUE COPY

Bruce N. Smith
Bruce N. Smith
Executive Secretary

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

ROBERT E. TEMMER

CHRISTINE E. M. ALVAREZ

VINCENT MAJKOWSKI

Commissioners

TM:srs

1. Summary suspension entails temporary suspension of an authority without hearing, where the Commission concludes that the public health, safety, or welfare imperatively requires emergency action. See: § 24-4-104(4), C.R.S.

4 Code of Colorado Regulations 723-1

NEW RULE 73(f)

(f) MOTOR CARRIER INSURANCE SHOW CAUSE PROCEEDINGS

(1) WHENEVER THE COMMISSION RECORDS INDICATE THAT A MOTOR CARRIER'S LIABILITY INSURANCE IS CANCELED, AND THERE IS NO PROOF ON FILE WITH THE COMMISSION INDICATING REPLACEMENT COVERAGE, THE CARRIER'S AUTHORITY WILL BE SUMMARILY SUSPENDED UNTIL THE COMMISSION RECEIVES PROPER PROOF OF NEW COVERAGE AS REQUIRED BY COMMISSION RULES, OR UNTIL THE CARRIER'S AUTHORITY IS REVOKED PURSUANT TO THE COMMISSION'S SHOW CAUSE PROCEDURES.

(A) A CARRIER RECEIVING NOTICE OF SUMMARY SUSPENSION SHALL NOT CONDUCT OPERATIONS UNDER ITS AUTHORITY OR PERMIT UNTIL PROPER PROOF OF INSURANCE IS FILED WITH THE COMMISSION.

(B) WHEN PROPER PROOF OF INSURANCE IS RECEIVED BY THE COMMISSION, THE SUMMARY SUSPENSION WILL BE LIFTED WITHOUT FURTHER ORDER OF THE COMMISSION.

(2) THE DIRECTOR OF THE COMMISSION SHALL SEND A NOTICE OF SHOW CAUSE PROCEEDINGS TO A MOTOR CARRIER THAT FAILS TO MAINTAIN PROPER PROOF OF INSURANCE AS REQUIRED BY COMMISSION RULES. THE NOTICE SHALL ADVISE THE CARRIER THAT ITS AUTHORITY TO OPERATE IS SUMMARILY SUSPENDED.