

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) APPLICATION NO. B-1977  
Application of D&N Event )  
Center, North Platte, seeking )  
authority as a common carrier )  
in Nebraska intrastate commerce )  
in the transportation of )  
passengers by bus in special )  
party and charter service )  
between points within a 60-mile ) DENIED  
radius of North Platte, on the )  
one hand, and, on the other )  
hand, points in Nebraska over )  
irregular routes. RESTRICTIONS: )  
The transportation of railroad )  
train crews and their baggage )  
is not authorized. HHS )  
Designation: No. ) Entered: March 5, 2019

BY THE COMMISSION:

On May 9, 2018, D&N Event Center ("D&N" or "Applicant"), North Platte, filed an application seeking authority as a common carrier to provide transportation of passengers by bus in special party and charter service between points within a sixty mile radius of North Platte, Nebraska. The transportation of railroad train crews and their luggage is not authorized, and HHS designation is no. Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 6, 2018.

No protests were received in this matter. The Commission elected to have a hearing on its own motion based upon an enforcement action conducted by Commission Staff in April 2018. On September 25, 2018, a hearing was held in the Commission Hearing Room, Lincoln. Ms. Ellie Rohr and Ms. Jamie Reyes appeared on behalf of Commission Staff. Mr. Tad Haneborg testified on behalf of Applicant, and was not represented by legal counsel.

EVIDENCE

Ms. Reyes explained the transportation department first became aware of this operation when a party called to file an informal complaint that Applicant was providing transportation services without authority from the Commission. The Department

sent a cease and desist letter on April 11, 2018, along with an application for authority.<sup>1</sup> After this letter was sent, the Department became aware of additional operations by D&N Event Center.<sup>2</sup> Ms. Reyes stated that the Department engaged in an enforcement operation, resulting in two citations being issued to the employee that scheduled the trip and the driver of the bus. Two days after the enforcement operation, D&N submitted their application for authority to the Commission. Ms. Reyes further testified that the Department wanted to give Mr. Haneborg an opportunity to speak to the Commission about his business plans and answer any questions about the information received related to D&N.<sup>3</sup>

Mr. Haneborg next offered testimony on behalf of Applicant. Mr. Haneborg is President of D&N Event Center, whose primary business is sports, particularly youth activities.<sup>4</sup> Mr. Haneborg noted they began offering transportation related to the sporting events a few years ago and began receiving calls about renting out the buses for parties and events shortly thereafter.<sup>5</sup> He further indicated Ms. Abbey Wilkinson, who handled all of the scheduling, began booking private transportation for events without his knowledge.<sup>6</sup> Mr. Haneborg stated they contacted the State Patrol about getting the buses inspected and inquiring whether they were complying with proper procedures to operate the bus outside the event center.<sup>7</sup> Mr. Haneborg further stated he discussed this operation with his insurance carrier to ensure he was compliant.<sup>8</sup> Mr. Haneborg indicated there is a shortage of transportation in the North Platte area. Specifically, he noted there are city and county government officials contacting them for service because the public transit system is not capable of serving their events. D&N had booked transportation for the Rail Days event the weekend prior to the hearing and cancelled those services only upon discussion with a Commission investigator.<sup>9</sup>

Mr. Haneborg explained the D&N operations. D&N is only an event center and is unaffiliated with any hotels. He also

<sup>1</sup>Hrg. Transcr. 2:21-3:5 (June 12, 2018). See also Exhibit 5.

<sup>2</sup> *Id.* at 3:6-8.

<sup>3</sup> *Id.* at 5:1-15.

<sup>4</sup> *Id.* at 6:4-9

<sup>5</sup> *Id.* 6:10-15.

<sup>6</sup> *Id.* 6:15-19.

<sup>7</sup> *Id.* at 6:21-7:3.

<sup>8</sup> *Id.* at 7:7-11.

<sup>9</sup> *Id.* at 7:17-8:6.

pointed out that the Commission's cease and desist letter was sent to the address, 642 N. Willow, North Platte. He noted the Event Center is located at 501 East Walker Road. Mr. Haneborg indicated Ms. Wilkinson had never seen the cease and desist letter because it had gone to the wrong address.<sup>10</sup> Commissioner Rhoades questioned why D&N continued to operate after the contact from the Commission. Mr. Haneborg stated the operations were done without his knowledge because his employee was scheduling them.<sup>11</sup> Commissioner Schram inquired about the buses. Mr. Haneborg noted he had two 2001 buses and one 2003 buses. He further stated the bus with the deadbolt referred to in Exhibit 4 had the doors torn out and replaced by Larry's Glass and Door.<sup>12</sup>

Ms. Reyes questioned Mr. Haneborg about the Rail Days event that had been booked with D&N. Mr. Haneborg indicated D&N cancelled the trips they had booked because of his conversation with Investigator Roche. Mr. Haneborg also stated the organizers had moved the event from September 15 and 16, 2018, to September 22, 2018, and D&N did not have drivers available. He stated he had not understood the organizers were interested in using the bus to go all around town and not just to the events at D&N.<sup>13</sup> Ms. Reyes questioned who handled scheduling now that Ms. Wilkinson was no longer with the company. Mr. Haneborg indicated Ms. Marlana Sheets fills that role but he has full oversight.<sup>14</sup>

Finally, Ms. Rohr inquired whether Mr. Haneborg had the repair records for his vehicles. He stated he did. Subsequently, Commissioner Ridder followed up regarding the State Patrol Inspections he had referenced. Mr. Haneborg indicated those records were in each bus. Commissioner Ridder requested those documents be submitted as a late filed exhibit.<sup>15</sup> Mr. Haneborg failed to provide records of the repairs and subsequently submitted a letter indicating no such repair records exist.<sup>16</sup> Mr. Haneborg's letter was received as Late-Filed Exhibit 6 on January 11, 2019. Commission Exhibits 1 through 5 were received at the hearing. In particular, Exhibit 4 detailed the sting operation taken by Commission investigators

<sup>10</sup> *Id.* at 8:13-24.

<sup>11</sup> *Id.* at 10:12-11:4.

<sup>12</sup> *Id.* at 12:10-18.

<sup>13</sup> *Id.* at 15:4-16:3.

<sup>14</sup> *Id.* at 16:19-17:2.

<sup>15</sup> *Id.* at 14:17-22; 17:7-22

<sup>16</sup> Exhibit 6.

on May 4, 2018. During said operation, Commission investigators were able to schedule and pay a D&N employee for transportation services using a D&N Event Center bus. The transportation service was booked separately from any other D&N Event Center services. The operation resulted in two citations referred to the Lincoln County Attorney's office for prosecution.

O P I N I O N   A N D   F I N D I N G S

In the present case, Applicant is seeking authority to provide transportation of passengers by bus in special party and charter service within a sixty mile radius of North Platte, Nebraska.

Applications for common carrier authority are governed by NEB. REV. STAT. § 75-311(1) (Cum. Supp. 2016), which provides:

A certificate shall be issued to any qualified Applicant authorizing the whole or any part of the operations covered by the application if it is found after notice and hearing that (a) the Applicant is fit, willing, and able properly to perform the service proposed...and (b) the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise, the application should be denied.

The Commission must apply this two-part test in order to grant an application for common carrier authority.

For the first part of the test, an applicant must prove that it is fit, willing and able to provide the proposed service. After reviewing the evidence presented at the hearing, the Commission finds there are fitness concerns for this Applicant.

Mr. Haneborg testified at the hearing that a previous manager handled all bookings and that he had no knowledge of the bookings she made. However, he subsequently testified that they had reached out to the State Patrol to make sure D&N's activities were legitimate and that they had spoken with their

insurance company multiple times to make sure they had the appropriate insurance for this operation.<sup>17</sup>

Additionally, the Commission Investigator's reports from the May 4, 2018 sting operation detailed in Exhibit 4 indicate Ms. Wilkinson made these arrangements at the direction of Mr. Haneborg.<sup>18</sup> Mr. Haneborg specifically denies having any knowledge that Ms. Wilkinson was operating outside the scope of the exempted transportation but then provides specific steps he had taken to make sure they were compliant. Mr. Haneborg further asserts Ms. Wilkinson did not know about the original letter from the Commission because it was sent to the wrong location.<sup>19</sup> However, the address to which the letter was mailed is provided on D&N's Website as the business office, and is listed on the application for authority as the company's mailing address. The address is Mr. Haneborg's Coors Distributorship location. If the letter was not passed on to Ms. Wilkinson, the Commission can only assume Mr. Haneborg himself received the letter. However, Ms. Wilkinson specifically acknowledged receipt of the letter. She also had a conversation with Investigator Rocke in early March wherein he informed her of the Commission rules and that all future bookings needed to be cancelled while they sought authority.<sup>20</sup> Investigator Medeiros had similar conversations with both Ms. Wilkinson and Mr. Haneborg.<sup>21</sup>

These discrepancies raise serious concerns as to whether Mr. Haneborg is effectively managing this business. All responsibility for the events of May 4, 2018 was placed on his employees. However, if Mr. Haneborg was truly unaware of his employees actions, that would be a concern in and of itself. As the owner of D&N, he would be responsible for ensuring compliance with Nebraska statutes and Commission rules and regulations should this application be granted. It would be equally problematic if he in fact did have knowledge of what was happening and chose to continue operations, as it would seem that he willfully ignored the requests of the Commission to cease operations. Based upon the information provided in Mr. Haneborg's testimony and the investigators' reports, Mr. Haneborg did appear to have knowledge of these operations.

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<sup>17</sup> Hrg. Transcr. 6:15-19; 6:21-7:2; 7:7-14

<sup>18</sup> Exhibit 4.

<sup>19</sup> Hrg. Transcr. 8:16-24.

<sup>20</sup> Exhibit 4, Investigator Rocke's Report.

<sup>21</sup> Exhibit 4, Investigator Rocke's Report.

Beyond the managerial fitness concerns, the bus observed by Investigators Medeiros and Rocke had serious safety concerns. At the time of the sting, D&N Event Center was utilizing a bus with an external deadbolt lock instead of an appropriate closure. The driver allowed a passenger (Investigator Medeiros) to board said bus and then locked the passenger in. If an emergency arose, passengers would not be able to escape that vehicle. Despite testifying to completed repairs and the existence of supporting records, Mr. Haneborg's supplemental documents filed by Commission request indicates no such repair records exist. Mr. Haneborg indicated that D&N now only has two buses in its fleet, and the Commission can only assume from the Nebraska State Patrol inspection records submitted that the two buses are in good working condition. Safe operating equipment is essential for a provider. Mr. Haneborg testified that D&N provided non-regulated transportation services as part of overall use of its facility, including transporting children. The Commission has serious concerns about which vehicles have been used to transport passengers in the North Platte community, including children, and whether those vehicles were safe during the time of transport. Applicant had no regard for the investigator's safety when attempting to provide him transport in a vehicle in such a state of disrepair. The Commission Investigators' report raises questions about Applicant's willingness and ability to comply with statutes and regulations.

The Commission has previously found a carrier unfit on the basis that they had received multiple warnings from the Commission about operating without authority. The Nebraska Supreme Court found this to be a reasonable basis for denial of the Application. In that case, Touch of Class Limousine received three separate warnings from the Commission before they applied for proper authority.<sup>22</sup> In the case at hand, both Ms. Wilkinson and Mr. Haneborg spoke with investigators about the improper operations. A formal cease and desist letter was sent from Commission staff to the mailing address for D&N. D&N engaged in additional bookings, and citations were issued by Commission Investigators. It was only after such citations were issued that a proper application for authority was made. Additionally, D&N staff booked additional trips and events, specifically, Rail Days, which was scheduled for the weekend before this hearing. Applicant's failure to adhere to the rules

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<sup>22</sup> *Touch of Class Limousine, Inc., v. Old Market Limousine Service, Inc.*, 243 NEB 33, 35-36 (1993).

despite multiple warnings is sufficient reason to find Applicant unfit for a certificate of Public Convenience and Necessity.

For the second part of the test, an applicant must prove that the service that it wishes to provide is required by public convenience and necessity. The Nebraska Supreme Court set forth the analysis for determining "public convenience and necessity," stating:

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the Applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest.<sup>23</sup>

The issue of whether an applicant has met its burden of demonstrating that the proposed service is required by public convenience and necessity is ordinarily a factual issue.<sup>24</sup>

The Commission finds that the fitness concerns are sufficient to deny the application. It is not necessary to go through the factors to determine whether this Applicant would meet a need. The Commission is aware of the needs that presently exist in parts of the state. The need for a premium charter and special party service, unfortunately, cannot outweigh the managerial fitness concerns that exist in this application and the risk to public safety. The Commission is hopeful additional carriers will emerge to fulfill this need.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the proposed application of D&N Event Center should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1977 be, and is hereby, denied.

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<sup>23</sup> *In re Application of Nebraskaland Leasing & Assocs.*, 254 Neb. 583, 591 (1998).

<sup>24</sup> *Id.*

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ENTERED AND MADE EFFECTIVE at Lincoln, Nebraska, this 5<sup>th</sup> day of March, 2019.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION

*Mary Rude*  
Chair

ATTEST

*Theresa H. S.*  
Executive Director

*Crystal Swades*

*Don Williams*

*Tim Schramm*

*Pat [unclear]*