

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Formal Complaint)	Application No. FC-1185
by Neoteric, Inc., dba Chief Bus)	
Service)	
)	
Complainant,)	
)	
vs.)	DISMISSED
)	
R.W. Harmon & Sons, Inc.)	
)	
Defendant)	ENTERED: April 3, 1984

APPEARANCES:

For the complainant:
Marshall D. Becker, Esq.
7171 Mercy Road
Omaha, Nebraska

For the respondent:
Thomas J. Walsh, Jr., Esq.
11440 West Center Road
Omaha, Nebraska

BY THE COMMISSION:

OPINION AND FINDINGS

By Formal Complaint filed September 2, 1983 by Neoteric, Inc. dba Chief Bus Service, Omaha, Nebraska complainant, alleges that R.W. Harmon & Sons, Inc., respondent, had been conducting unauthorized transportation of the elderly in Nebraska Intrastate Commerce. Hearing was held October 31, 1983 in the Commission Hearing Room, State Office Building, Lincoln, Nebraska before Commissioner James F. Munnelly.

The complainant called one witness, Mr. Peter Kazakevicius, manager and owner of Chief Bus Service. He testified that he held authority from this Commission granted in June of 1983 which authorizes him to haul passengers and their baggage by charter and special party operations between Lancaster, Douglas, Sarpy and Washington counties, on the one hand, and, on the other hand all points in Nebraska over irregular routes. He said that his company was interested in performing transportation within the city of Omaha or anywhere in the state in the transportation of the elderly. He said they had bid on a contract by the Eastern Nebraska Human Services Agency to haul the elderly, but did not win the contract. He stated that Harmon & Sons, the respondent was the low bid on the contract and that he filed this complaint because he understood that a carrier had to have Commission authority to haul charter groups within the state of Nebraska. He further understood that a tariff was necessary to be filed with the Public Service Commission. He stated he would be glad to perform the transportation service for the elderly and that he had the equipment necessary, namely a total of 98 vehicles that break down to 45 school buses and 36 15-passenger vans all of which are licensed by the this Commission.

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The respondent called three witnesses. Mr. Jim Parris, area manager testified that his company has the present contract with the Omaha Public Schools for the transportation of school children. Further that he was contacted by the Eastern Nebraska Human Services Agency during May of 1983 and later submitted a bid and was awarded the contract based on their specifications in the contract. He stated that he was under the impression that his company fell under the exemption in Section 75-303(17) R.R.S. 1943 as amended. They have 155 passenger units stationed in the Omaha area and intended to transport the elderly in this equipment. He explained that the billing is done directly with the Kansas City office of the respondent. He further explained that they were operating under the written contract however, the contract had not been signed that they had made approximately made 10 to 12 trips during June and July.

Ms. Beverly Griffith, Director of Community Services Division for the Eastern Nebraska Human Services Agency. She explained that she met with Mr. Parris and outlined the needs for transportation of the elderly by her agency. She explained that they put out the bids specifications and as a result picked R.W. Harmon & Sons because they were the lowest bid. She received a call from Mr. Kazakevicius of Chief Bus Service who asked if the witness was aware of any permits, either intrastate or interstate necessary and she stated she did not. He suggested that she contact the Public Service Commission which she did and was informed that in their opinion, the transportation she outlined to them was exempt under Section 75-303, however, she did not recall to whom she spoke to at the Commission. She testified that the person at the Commission told her that her agency would probably be exempt from having permits by whatever bus company they picked. That person suggested that they contact their agency attorney and request legal opinion. Which she did immediately and was informed by the agency attorney that his interpretation of the law was that their contractor R.W. Harmon & Sons, Inc. would be exempt. The witness testified that the agencies governing board verbally approved the contract with R.W. Harmon at their June meeting and that R.W. Harmon & Sons had been operating under that unsigned contract since June.

This witness explained that the average person transported by bus is around 73 however, there are some younger people who are under 62 and are in the program because of mental or physical handicaps. She further explained that the agency receives funding from Douglas and five other counties under an inter-local agreement.

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Mr. Ken Fancolly, director of the Eastern Nebraska Office of Aging of The Human Services Agency. Testified that the charter bus program is funded by Douglas county funds he explained that they receive federal funds from different sources designed for Older American Programs. He explained the attorney for the agency had stated that in his opinion the defendant was an exempt carrier and therefore was eligible to haul the elderly. He explained that in past they had used primarily city school buses and any other buses that were available. He explained that they were interested too in the lowest rate possibly because of their funding. He further explained that sometimes the senior citizens donate a dollar or fifty cents to help defray the cost of transportation.

DISCUSSION

The question presented by this Formal Complaint is whether or not a motor carrier must be certified under the provisions of the Nebraska Motor Carrier Act in the transportation of senior citizens.

Section 75-303(11) exempts a motor carrier from the statutory requirements if that carrier hauls for hire "(d) the elderly, their spouses and dependents as defined in Section 19-3903 under a contract with a municipality or a county authorized in Section 19-3908;."

Section 19-3903 R.R.S. 1943 defines public transportation to mean the transportation of passengers on a regular and continuing basis by a motor carrier for hire, including special public transportation systems to include portal to portal escorted service for the elderly or handicapped.

Also Section 19-3903(4) as amended defines elderly to mean any person 62 years of age or older who is drawing social security and every person 65 years of age and older.

It is clear that the clients of Eastern Nebraska Office on Aging meet the elderly definition part of Section 75-303(11)(d) R.R.S 1943 as amended. Further ENOA was established, under inter-local cooperation under the inter-local cooperation act as a part of ENHSA which is qualified under the Eastern Nebraska Human Services and therefore qualifies under the statute Section 19-3908 that allows any municipality or county to lease, purchase, construct, own, maintain and operate or contract for the operation of public transportation including special transportation for the elderly or handicapped, and apply for and accept advances, loans, grants and contributions from any other form of assistance from the Federal Government, the State or from any public or private sources for the purposes of providing a public transportation system. Therefore, according to Section 19-3908 a motor carrier who contracts with the Eastern Nebraska Office on Aging to provide transportation services for the elderly is in our opinion exempt from the provisions of the Nebraska Motor Carrier Act and specifically the certification requirement under the authority in Section 303(11)(d) R.R.S 1943.

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After due consideration of the evidence adduced and being fully advised in the premises, the Commission is of the opinion and finds:

1. The Formal Complaint filed by Neoteric, Inc., dba Chief Bus Service, complainant, vs. R. W. Harmon & Sons, Inc., defendant, should be dismissed.

O R D E R

IT IS, THEREFORE, ORDERED BY the Nebraska Public Service Commission that Formal Complaint FC-1185 by Neoteric, Inc., dba Chief Bus Service, complainant, vs. R. W. Harmon & Sons, Inc., defendant be and it is hereby, dismissed.

MADE AND ENTERED at Lincoln, Nebraska this 3rd day of April, 1984.

NEBRASKA PUBLIC SERVICE COMMISSION

Harold D. Simpson
Chairman

ATTEST:

Terence L. Kubacki
Executive Secretary

COMMISSIONERS CONCURRING:

Quane D. Gay