

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1123
of Airport Transportation) Supp. 1
Company, 10770 I Street, Omaha,)
Nebraska 68127) ORDER
)
) Entered: March 30, 1999

BY THE COMMISSION:

By application filed February 6, 1998, Airport Transportation Co. of Omaha, Nebraska, seeks to extend its authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers and baggage by limousine between points in Douglas and Sarpy counties and between points within those counties and other points over irregular routes. Five parties filed protests and discovery ensued.

The Applicant served interrogatories and production of document requests upon the Protestants. The Protestants objected to most of the interrogatories and request for documents on grounds of relevance and the fact that proprietary information was being requested. The Applicant then filed a Motion to Strike the protest of the Application filed by the Protestants arguing that the answers and documents were not provided and that this failure should result in the protests being stricken. In essence, this would result in the dismissal of the protests. In addition, the Applicant filed a Motion to Compel the answers to the Interrogatories and the Request for the Production of Documents. The Protestants timely filed a Resistance to a Motion to Compel. It should be noted that the questions and documents requested to each protestant are substantially similar.

On December 15, 1998, the Commission held oral arguments on the competing motions. At that time, the Commission held the Applicant's motions in abeyance until such time that the Commission could examine the Interrogatories and the Request for Documents. Subsequently, Applicant filed a Memorandum In Support of Applicant's Motions to Compel.

Rule 016.11 of the Nebraska Public Service Commission Rules of Procedure, Title 291 of the Nebraska Administrative Code, states that the use of discovery in proceedings before the

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Commission is governed by the rules and regulations of the Nebraska Supreme Court. The Nebraska Rules of Civil Procedure are based upon the Federal Rules of Civil Procedure, and in both jurisdictions, the rules have been liberally construed to allow broad discovery. That is not to say that all information discoverable is admissible, but discovery should be allowed when the request appears reasonably calculated to lead to the discovery of admissible evidence. (Hennick v. Lexington State Bank and Trust Co., 1994 Nebraska Appellate Court 228 at 232; Christensen v. Educational Service Unit No. 16, 243 Neb. 553 at 563 (1993))

Based upon the oral argument, the Commission finds that the Motion to Strike the Protest of the Protestants should be, and, hereby, is denied.

Based on an examination of the filed interrogatories and upon the evidence adduced at the oral argument, the Commission finds that the Motion to Compel should be granted in part and denied in part.

The Motion to Compel is granted with respect to the following interrogatories:

- 1) Interrogatory No. 4. Applicant requests the identity of all employees of each of the Protestants, their duties, and their length of service.
- 2) Interrogatory No. 8. Applicant asks for the year, make, serial number, titled owner, and date of acquisition of "each unit of equipment operated" by the Protestant for the past three years (emphasis added). The Commission agrees that the type of vehicles operated by the Protestants may be relevant. Accordingly, the Motion to Compel is granted only to the extent that "equipment" is defined as a vehicle for purposes of this interrogatory.
- 3) Interrogatory No. 10. Applicant seeks information about the dispatch procedures and hours of each of the Protestants.

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- 4) Interrogatory No. 13. Applicant seeks the total number of fares transported by each of the Protestants over a two-year period.

The Motion to Compel is denied with respect to the following interrogatories and Requests for Production:

- 1) Interrogatory No. 6. Applicant asks Protestants for information as to whether the directors or shareholders are involved in any other corporation.
- 2) Interrogatory Nos. 14, 15, 16, 17, 18, and 19. These questions seek information regarding the number of fares transported from a particular point to other particular points, specifically points in Sarpy and Douglas County, and Eppley Airport in Omaha. Inasmuch as the dates covered by the Interrogatory are now stale, the question requires redrafting to be of relevance.
- 3) Request for Production No. 2. This request seeks copies of the trip sheets for a three year period of time. Inasmuch as Commission rules require only that trip sheets for limousines be kept for two years, the Motion to Compel the Production of Documents is denied. (See Rule 010.01L2.)
- 4) Request for Production No. 3. This request seeks information regarding contracts that Protestants have with service providers for a three-year period.
- 5) Request for Production No. 4. The Applicant requests all contracts concerning the provision of any services.

The Commission makes no order in respect to the following interrogatories and Request for Production for the reasons stated:

- 1) Interrogatory No. 9. This interrogatory has been withdrawn by the Applicant.

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- 2) Interrogatory No. 20. While referenced in the Memorandum of Support filed by the Applicant, a review of the copy of Interrogatories served on Airport Transportation which were submitted by the Applicant to the Commission shows no Interrogatory No. 20.
- 3) Request for Production No. 1. This Request for Production of Documents has been withdrawn by the Applicant.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion by the Applicant to Strike the Protest of the Protestants is hereby denied.


IT IS FURTHER ORDERED that the Motion of the Applicant to Compel and the corresponding Motions of the Protestants to Resist the Motion to Compel are granted in part and denied in part in conformance with the findings of this order.

MADE AND ENTERED in Lincoln, Nebraska on this 30th day of March, 1999.

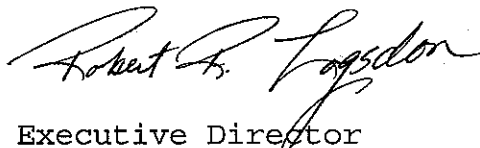
NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s//Lowell C. Johnson
//s//Frank E. Landis
//s//Daniel G. Urwiller


Chairman

ATTEST:


Executive Director