

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-)	Application No. B-1351
cation of Midwest Special)	Supplement No. 2
Services, Inc., Curtis,)	
seeking to acquire, through)	
transfer, the authority)	GRANTED
granted to Round Trip)	
Transport in Certificate)	Entered: December 12, 2000
C-1395.)	

BY THE COMMISSION:

By application filed August 17, 2000, Midwest Special Services, Inc., Curtis, Nebraska, ("Applicant") seeks to acquire, through transfer, the authority granted to Karibu Enterprises, Inc., dba RT Round Trip Transport ("Round Trip") in Certificate B-1395. The certificate in B-1395 authorized Round Trip to operate as a carrier in Nebraska intrastate commerce in the transportation of passengers and their baggage by passenger van and sport utility vehicles, fifteen (15) passengers or less, between points in Nebraska over irregular routes. The certificate was restricted against the transportation of railroad train crews and their baggage. Notice of the application was published in The Daily Record, Omaha, Nebraska, on August 22, 2000, pursuant to Commission rules and regulations.

On August 24, 2000, R&F Hobbies, Inc., d/b/a Prince of the Road ("Prince of the Road" or "Protestant") filed a protest to the application through its attorney, John Boehm. On September 27, 2000, the Executive Director of the Commission sent by first-class mail a notice of the hearing. The hearing was held on October 30, 2000 in the Commission Library, 1200 N Street, 300 The Atrium, Lincoln, Nebraska. Appearing for the Applicant was Jack Shultz. Appearing for the Protestant, Prince of the Road, was John Boehm. Michael Loeffler appeared for the Commission.

Robert E. Taylor, owner of RT Round Trip Transport, testified for the application. Mr. Taylor testified that he has been in the passenger transportation business for approximately five years and has operated continuously under the certificate granted by the Commission with the exception of the period from May until December 1999. The company has been operated continuously throughout 2000. He further testified that Round Trip offers itself out for business throughout the territory for which it has authority. He detailed the advertising done by his company, including phone book advertisements, flyers, newspaper ads, business cards, and an Internet site. He testified that he did not believe that a grant of the application would significantly enlarge competition and that approval of the application would be in the public interest.

On cross-examination, Mr. Taylor indicated that most of the passengers which his company transports arranges for the transportation at least twelve hours in advance. He further testified that his company operates in interstate transportation, and that the company utilizes primarily minivans, sport utility vehicles, and sedans. Mr. Taylor also stated that he has not, to his knowledge, transported any clients of the Nebraska Department of Health and Human Services (HHS) or of FHC Options, Inc.

Lannie Roblee, president of Midwest Special Services, Inc., testified in favor of the application. He indicated that he and his wife were the stockholders in the company. Midwest Special Services employs twenty-seven employees. Mr. Roblee testified that his company provides prisoner transportation services and has contracts with HHS and FHC Options to transport persons other than prisoners. He has operated under the authority to transport prisoners since 1990. Midwest Special Services operates twenty-three vehicles. All of the vehicles have a capacity of fifteen passengers or less. Midwest Services advertises its services in a variety of ways including ads published in trade magazines. Vehicles are dispatched as necessary through the company's office in Curtis. A background check is performed on drivers and a training officer works with new drivers for the company.

Mr. Roblee further testified that he did not feel that a grant of the application would enlarge competition or restrict competition. He introduced a financial statement from his company in order to demonstrate that he had the financial ability to provide the services sought in his company's application.

Under cross-examination, Mr. Roblee testified that he transported juveniles under the care of the state, or who were state wards, under the part of his authority that allowed him to transport prisoners. He clarified that, while he will handle some emergency cases on a Sunday, his company only operated six days a week.

Mr. Robert Hosick testified in opposition to the application. Mr. Hosick leases vans from Prince of the Road. He lives in Stockwell which is ten miles south of Curtis. He testified that he has occasion to pass the place where Midwest Special Services houses some of their vehicles. He further testified that he observed the vehicles without placards.

Mr. Ron Schroll, the chief operating officer for Prince of the Road, testified against the application. He described his transportation operations as consisting largely of transporting

recipients of Medicare and Medicaid and other clients of HHS. He stated that he has transported juveniles that are wards of the state for HHS. He stated that only very rarely has he been told to treat the juveniles as prisoners. He does not use restraints in transporting these juveniles.

He stated further that he filed a formal complaint against the Applicant with the Commission alleging that Midwest Special Services were transporting clients without having the proper rates on file with the Commission. The Applicant, he stated, subsequently filed rates with the Commission.

Mr. Schroll testified that he had recently come across a van from Midwest Special Services who was transporting a client to a dentist office in apparent violation of the authority granted to the applicant. Mr. Schroll wrote a letter to the Commission inquiring as to the authority held by Midwest Special Services which Mr. Schroll considered to be non-responsive to his allegations that Midwest Special Services had transported an FHC Options client in apparent violation of their authority. He also presented a photograph of a van belonging to Midwest Special Services that displayed a PSC plate but did not have any other identifying placards on the vehicle.

Mr. Schroll testified that the number of clients of HHS being transported currently by Midwest Special Services has resulted in a dramatic decrease in the business he does for HHS. He further testified that the granting of this application would adversely affect competition.

On cross-examination, Mr. Schroll testified that while he was aware that Midwest Special Services had a grant of authority when he received his grant of authority in June 1997, he did not know conclusively whether Midwest Special Services was transporting clients of HHS at the time that Mr. Schroll received his grant of authority.

FINDINGS AND OPINION

Based on the evidence adduced, we find that the application for transfer of authority should be granted. The granting of a certificate of public convenience and necessity is governed by Neb. Rev. Stat. § 75-311 (Reissue 1996) which states,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application of it is found after notice

and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed.. Neb. Rev. Stat. §75-311(1) (Reissue 1996).

In other words, the Commission must determine if an applicant is "fit, willing, and able." We find that the applicant has met the fitness test of § 75-311. The Applicant has been in the transportation business since 1990. This experience is credible evidence of their managerial fitness. He has a screening and training program for his drivers. He presented financial evidence that the company could adequately provide the service proposed in the application.

The Protestants made a case during the hearing that the Applicant has held a disregard for Commission rules and procedures and imply that because of these infractions, the application should not be granted. The Protestants allege that Midwest Special Services has been operating vehicles without proper signs and placards identifying the transporting company. The Applicant responds that he was told by the Commission that he did not have to place signs on his vehicle because of security concerns when prisoners were transported. The Commission has no record of any waiver being granted.

Second, the Protestants allege that the Applicant has been transporting passengers outside of its authority because it transports juveniles under the care and custody of HHS under its grant of authority to transport prisoners. The Applicant responds that because these persons are under the custody of the state, they are, by operation of definition, prisoners. Midwest further responds that HHS initiates the contacts for transportation and is aware of the conditions of the Applicant's authority.

Third, the Protestants allege that the Applicant operated without the proper posting of rates in 1994, a deficiency that was corrected by the Applicant only when it was brought to the attention of the Commission.

While we are concerned about these allegations, these allegations alone do not prevent us from finding that the Applicant passes the statutory requirement for fitness. We note further that the Protestant failed to file a formal complaint on any of these allegations at the time of their occurrence. We do not here rule on the veracity of the allegations in this application. We have a formal complaint procedure to deal with these types of allegations. If, and when, any certificate holder is found guilty of a violation of Commission rules, we will make a proper finding and institute

appropriate sanctions. Absent a finding of specific wrongdoing, after proper notice and a full hearing, we cannot find that the Protestant's allegations negate a finding of fitness based on the evidence adduced. We find, therefore, that the Applicant is "fit, willing, and able" to provide the service applied for in this application.

The second test to be applied by the Commission is found in Neb. Rev. Stat. § 75-318 which governs transfers of authority. The provisions set by that statute requires us to examine if the proposed transfer of authority is consistent with the public interest and does not unduly restrict competition. Here, the transferor has already been operating a continuous and successful business. We find that it is in the public interest that the presence of this service continue.

The Applicant has been operating since 1990. We cannot see how the proposed transfer of the authority would significantly expand competition. The main client of the Applicant, namely HHS, exhibits a degree of satisfaction with the services provided as demonstrated by their continued patronage of the Applicant's services.

Based on the evidence, we find that the Applicant has met the fitness test of state law and we find that the transfer of authority does not enlarge competition, does not unduly restrict competition and that its continued service benefits the public interest.

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY TRANSFERRED AND AUTHORIZED:

Passengers and their baggage in vans or sport utility vehicles rated at fifteen (15) passengers or less who have arranged for service at least six hours in advance, except for passengers to and from Eppley Airfield who shall arrange for service at least twelve (12) hours in advance. RESTRICTIONS: The transportation of railroad train crews and their baggage are not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1351, Supplement No. 2, be, and it is hereby, granted and that the authority granted in Application B-1395 as specified above is hereby transferred in whole to the Applicant in B-1351.

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IT IS FURTHER ORDERED that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Midwest Special Services, Inc., of Curtis, Nebraska, authorizing the operations as set forth in the foregoing findings.

IT IS FURTHER ORDERED that the Applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless, and until, the Applicant has fully complied, within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates) and with the rules and regulations of the Commission; and, if upon expiration of such time, Applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to the Applicant, be of no further force and effect.

IT IS FURTHER ORDERED that Applicant shall not conduct operations until a Certificate of Public Convenience and Necessity is issued.

IT IS FURTHER ORDERED that Applicant shall render reasonably continuous and adequate service to the public pursuant to the authority authorized.

IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, limitations and restrictions which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED in Lincoln, Nebraska on this 12th day of December, 2000.

COMMISSIONERS CONCURRING:

Frank E. Landis

Ann C. Boyle

Paul Johnson

//s//Frank E. Landis

NEBRASKA PUBLIC SERVICE COMMISSION

Frank E. Landis
Chairman

ATTEST:

A. S. Pollock
Executive Director