

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. B-1352
Executive Limousine Service, Inc., Nor-)
folk, Nebraska, seeking authority as a)
common carrier in Nebraska intrastate)
commerce in the transportation of passen-)
gers and their baggage by limousine bet-)
ween points in Antelope, Boone, Cedar,) GRANTED IN PART
Cuming, Dawson, Holt, Knox, Madison,)
Pierce, Platte, Stanton, and Wayne coun-)
ties over irregular routes. Restriction:)
Restricted against the transportation of)
railroad train crews and their baggage.) ENTERED: NOVEMBER 22, 1993

APPEARANCES: For the Applicant:
Kathleen Rockey, Esq.
P.O. Box 78
Norfolk, NE

For the Protestant:
Marshall D. Becker, Esq.
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105 S. 17th Street
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BY THE COMMISSION:

OPINION AND FINDINGS

By application filed July 12, 1993, Executive Limousine Service, Inc. (ELS), seeks authority to transport passengers and their baggage in limousines between points in Antelope, Boone, Cedar, Cuming, Dawson, Holt, Knox, Madison, Pierce, Platte, Stanton, and Wayne counties over irregular routes, but restricted against the transportation of railroad train crews and their baggage. Notice of the application was published in The Daily Record, Omaha, Nebraska, on July 13, 1993, pursuant to the rules of the Commission. Protests to the application were filed by K & S Expressway, 1st Class Limousine, J.D. Stewart, dba Park Avenue Limousines (Park), and Loren D. Murdock, dba Mr. C's Limo. K & S Expressway, 1st Class Limousine, and Loren D. Murdock withdrew their protests after the filing of a restrictive amendment which deleted Holt County from the territory for which the applicant applied.

Hearing on the application was held October 15, 1993, at Norfolk with appearances as shown.

Applicant produced eight witnesses in support of its application.

Timothy Brazeal testified: His address is Norfolk, but he lives in Stanton County. He is the president and chief executive officer of the Norfolk area Chamber of Commerce. The Norfolk population according the 1990 census was 21,476. The population of Madison County was 32,665. Norfolk has a large trade territory encompassing a number of counties, an estimated 100,000 people. The economic climate is good. Beef America has recently announced that it intends to add 800 employees at its packinghouse in Norfolk.

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Elaine Spader testified: She lives in Randolph, Pierce County. She works in Norfolk. She attempted to rent a limousine in June of 1992 from Park. A limousine was not available on two different weekends in June. She changed her plans and took an available date. She wanted the limousine for a trip to Fort Randall. The limousine arrived ten minutes late. The car had not been properly serviced. Her husband put oil in the car. She will not use Park again because of its service and attitude.

Jim Fischer testified: His address is Norfolk, but he resides in Stanton County. He is a creative director for radio stations WJAG and KEXL. The stations can be heard to Sioux City, past Columbus, towards Grand Island, and into Omaha. The stations have rented limousines from Park and another limousine which was owned by Duane Sohl. The first time he attempted to reserve a limousine through Park was in May 1992. The stations ran a contest for high school students going to the school prom to see who would win a trip to dinner and ride to the prom in the limousine. They tried to use Park for a February 1993 Valentine's Day promotion, but Park was not available on Valentine's Day so the promotion was scheduled for February 13, but Park was also booked on that date. The stations obtained transportation from Paul Spady which was not a limousine. These stations used ELS for a promotion involving a Grain Train and Johnnie Cash. ELS did not receive any compensation for that service. The stations would like to use ELS in the future. ELS did receive advertising in exchange for the service.

Scott Clement testified: He lives in Wayne, Wayne County. He works at Heritage Homes. He attempted to reserve a limousine from Park on August 14, 1993. No car was available for that date. He cancelled his plans. He called for the limousine at 7 p.m. and wanted it that same evening.

Judy Kollmar testified: She lives in Stanton. She operates a lifestyle management system as a counselor. She called Park to rent a limousine for October 23, 1993, for her father's birthday and her husband's birthday. She was told there was not a limousine available. She cancelled the plans. She called for the transportation on October 11, 1993.

Kipton Hirschbach testified: He lives in Norfolk in Madison County. He is general manager of Gillette Dairy. Carl Adle worked for Gillette for 20 years and directly for him for about 10 of those years. Mr. Adle was his fleet manager. Mr. Adle is a very particular person that likes to keep his vehicles in top-notch condition, very clean. Gillette laid off Mr. Adle because it closed its truck-shop operation. He is very interested in seeing Mr. Adle succeed in his new venture. He has had no need for limousine service, but he could possibly use it personally or in connection with his position at Gillette.

Jerry Koch testified: He lives in Stanton County. He is manager of the Goodyear Service Center at Sunset Plaza. He supports the application of Mr. and Mrs. Adle. He feels that everyone has the privilege and the opportunity to provide a service. Customers go

where the service is the best. He thinks that everyone should have a chance to be in business. He called Park on October 12, 1993. He inquired at Park and found that he could not obtain a limousine for the weekend of October 23, nor the weekend of October 30, except after 7 p.m. on October 23. Nothing was available for October 30. He has talked to the applicant about using its service in sales promotion.

Carl Adle testified: He lives in Norfolk in Madison County. He was a driver for Park for a year and a half. His wife is Marsha. They have been married 23 years. They have recently purchased a limousine, a 1989 super stretch, 113-inch Lincoln town car. It has two color televisions, a video cassette recorder, and a stereo system. Exhibits 3 and 4 show his Interstate Commerce Commission authority. If the application is granted, some of the services the applicant would provide are baby pickups, birthdays, corporate runs, Valentine's Day promotions, and transportation for other special occasions. Even though he has not advertised the service, he has had requests for service. He would be willing to comply with the rules and regulations of the Public Service Commission. Applicant was incorporated in June 1993. It has no debt. He is looking for additional limousines to purchase. The casino runs keep his present vehicle busy most weekends. Monday, Tuesday, Wednesday, and Thursday nights the vehicle is not used very much.

Protestant produced one witness, J.D. Stewart, who testified: He owns Park. It has been in business three and a half years. Exhibit 7 shows the authority it holds. Park operates out of his house. He has a six-car garage at his home. Some of his drivers park the limousines at their homes. Exhibit 8 shows Park's equipment. Park recently purchased a 1990 60-inch, 6-passenger stretch and a 1990 110-inch super stretch. In March of 1993, it purchased a 1989 88-inch stretch. The most recent addition to the fleet was made about 45 days ago. Park employs drivers on both full-time and part-time basis. Most of the time Park has two or three full-time employees. One driver lives in Sioux City and another in Columbus. It communicates with its drivers through pagers in some of the cars and with CB radios in all of the cars. Saturday nights are the busiest in the business. On weekdays Park has cars sitting around all the time. Proms are heavy business times. There are usually three Saturdays for proms in the northeast part of Nebraska. Forty cars would not be enough on those days. He remembers the conversation with Scott Clement. Mr. Clement did not want to pay for a super stretch car which was available. It would have cost Mr. Clement \$31.00 in mileage plus \$65.00 an hour once it was in Wayne. He could have furnished Mr. Fischer with a vehicle on February 13, 1993. He could furnish Mr. Koch with a vehicle on October 30, except the hours of 6:30 to 8:30. He offered to sell his business to Mr. and Mrs. Adle in March, 1993. His business is no longer for sale. Park has a limousine stationed in Clearwater owned by Dwaine Trease which is leased to Park. Ninety percent of Park's business is interstate casino oriented. His protest does not include Stanton County. Park is willing to purchase more limousines. It has the capability of purchasing a new car every two months. Park expects to gross between \$160,000 and \$180,000 in 1993. Intrastate business would account for \$40,000 to \$50,000 of the total. Ninety percent of the time is spent in interstate

transportation, but the interstate business is not as lucrative as the wedding business.

Section 75-311, R.R.S. 1943, as amended, provides:

A certificate shall be issued to any qualified applicant, therefor, authorizing the whole or any part of the operations covered by the application, if it is found after notice and hearing that applicant is fit, willing and able properly to perform the service proposed, and to conform to the provisions of sections 75-301 to 75-322.04 and the requirements, rules, and regulations of the commission thereunder and that the proposed service, to the extent to be authorized by the certificate, whether regular or irregular, passenger or property, is or will be required by the present or future public convenience and necessity; ***

At the request of the applicant, the Commission will take notice of the application which contains a financial statement showing that applicant has approximately \$140,000 in net worth. Applicant has shown that it is experienced in the limousine business. It has at least one vehicle with which to begin business. Clearly, applicant is fit, willing, and able properly to perform the services proposed and conform with the statutes and the rules of the Commission thereunder.

The applicable law regarding the issue of public convenience and necessity was set forth in the syllabus of the Supreme Court in Shanks v. Watson Brothers Van Lines, 173 Neb. 829, 115 N.W.2d 441:

The burden is on the applicant for a certificate of public convenience and necessity to show that the proposed service is required by the present or future public convenience and necessity. The purpose of the Nebraska Motor Carrier Act was regulation for the public interest. Its purpose was not to stifle legitimate competition but to foster it. Its purpose was not to create monopolies in the transportation industry, but to eliminate discrimination, undue preferences or advantages, and unfair destructive competitive practices. Legitimate competition is a normal attribute of our free enterprise system. It must be permitted to exist and the law contemplates that it shall.

In determining public convenience and necessity, the controlling questions are whether the operation will serve some useful purpose responsive to public demands or needs; whether this purpose can or will be served as well by existing carriers; and whether it can be served as well by applicant in a specified operation without endangering or impairing the operations of existing carriers contrary to the public interest.

At page 833 of the Shanks case, the Court said:

It is the duty of the commission to protect the public interest, as well as to protect, within reasonable limits,

the investment of certificate holders. It is the prerogative of the commission to determine whether or not a new carrier in the field is required by public convenience and necessity. If the granting of an application will endanger or impair the operation of an existing carrier, certainly that would be contrary to the public interest.

In the case of Hagen Truck Lines, Inc. v. Ross, 174 Neb. 646, 119 N.W.2d 76, at page 652, the Supreme Court said:

Even if existing carriers suffered some loss of revenue by the grant of the application, it is not a conclusive factor, although it must be considered. Common carriers are not granted a monopoly in the area covered by their certificates. It is only where a loss of revenue to existing carriers occur which is not in the public interest that such loss of revenue has a controlling effect. Black Hills Stage Lines, Inc. v. Greyhound Corporation, 174 Neb. 425, 118 N.W.2d 498.

Applicant produced evidence that public convenience and necessity requires additional limousine service in Madison, Pierce, Stanton, and Wayne counties. No evidence was adduced with regard to Antelope, Boone, Cedar, Cuming, Dawson, Holt, Knox, or Platte counties. Both the applicant and the protestant showed that the bulk of their operations are and would be in interstate commerce plying routes between northeast Nebraska and casinos in adjoining states. It is readily apparent that the limousine business is primarily a feast or famine business. Anyone that gets into it must know that. The feasts come on the weekends and prom nights, and the lean times will always be there Monday through Thursday. Nothing this Commission could do would change that pattern. Once a community becomes accustomed to limousine service, it demands it on weekends and special occasions. The evidence shows that Norfolk and the surrounding communities as far east as Wayne require additional service.

The evidence shows that the protestants business is healthy; that applicant has operated in the same market as protestant in interstate commerce and both have survived. A grant of authority in this application will not significantly impair the revenues of protestant. There is room for both of them in the Norfolk area. The fact that the protestant's fleet is idle much of the time between Monday and Thursday would not be altered if this application were denied. The application should be granted in part, i.e. for service to Madison, Pierce, Stanton, and Wayne counties, and denied as to all other counties.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds:

1. Applicant is fit, willing, and able properly to perform the service proposed and to conform to the provisions of Sections 75-301 to 75-322.04, R.R.S. 1943, as amended, and the requirements, rules and regulations of the Commission thereunder.

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2. The proposed intrastate service is or will be required by the present or future Public Convenience and Necessity to the following extent:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers and their baggage by limousine between points in Madison, Pierce, Stanton, and Wayne counties over irregular routes. Restriction: No transportation of railroad train crews and their baggage is authorized.

3. The application should be granted in part.

O R D E R

IT IS, THEREFORE, ORDERED by the Nebraska Public Service Commission that Application B-1352 be, and it is hereby, granted in part; and that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Executive Limousine Service, Inc., Norfolk, Nebraska, in Application B-1352, authorizing the operations set forth in Paragraph No. 2 of the foregoing findings.

IT IS FURTHER ORDERED that applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until applicant has fully complied, within a reasonable time from the effective date of this Order, with Sections 75-305 (fees), 75-307 (insurance), and 75-308 (rates), R.R.S. 1943, as amended, 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 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, and limitations which have been, or may hereafter be, prescribed by the Commission.

MADE AND ENTERED at Lincoln, Nebraska, this 22nd day November, 1993.

COMMISSIONERS CONCURRING:

Daniel S. Giville
Duane D. Goss

//s//Rod Johnson
//s//Frank E. Landis, Jr.
//s//James F. Munnelly

NEBRASKA PUBLIC SERVICE COMMISSION

ATTEST:

James S. Sauer
Chairman
Robert R. King
Executive Director