

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application of) APPLICATION NO. B-1415
Rodney D. Oberle, dba Park Avenue Limou-)
sines, Norfolk, Nebraska, seeking to)
acquire, through transfer, the authority) GRANTED AND CERTIFICATE
as a common carrier in Nebraska intra-) B-1300 REVOKED
state commerce granted to J.D. Stewart,)
dba Park Avenue Limousines in Certificate)
B-1300.) ENTERED: SEPTEMBER 17, 1996

APPEARANCES: For the Applicant:
Rodney D. Oberle, pro se
P.O. Box 2078
Norfolk, NE 68702

For the Protestant:
James J. McNally, Esq.
P.O. Box 164
Neligh, Nebraska

BY THE COMMISSION:

OPINION AND FINDINGS

By application filed May 13, 1996, Rodney D. Oberle, dba Park Avenue Limousines seeks authority to acquire, through transfer, the authority as a common carrier in Nebraska intrastate commerce granted to J.D. Stewart, dba Park Avenue Limousines in Certificate B-1300. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 15, 1996, pursuant to the rules of the Commission. A protest to the application was filed by Trease Enterprises, Inc., dba Special Moments Limousine. Hearing on the application was held August 14, 1996, at Norfolk, Nebraska, with appearances as shown. Applicant produced three witnesses.

Rodney Oberle testified: He resides in Vermillion, South Dakota. Park Avenue Limousines has advertised its services on KKOT, which is heard in Platte, Hall, Hamilton, Howard, Merrick, Greeley, Valley, Sherman, Wheeler, Garfield, Holt and Antelope counties. Exhibit 2 shows circulation of the Norfolk Shopper in which Park Avenue has advertised for years. Exhibits 4, 5 and 6 show telephone records of incoming calls from counties covered by the application. He is purchasing the business and the equipment of the transferor as well. Applicant has a current net worth of \$21,800. He has been in business management for more than 15 years. He has been operating transferor's authority since May 21 with nine drivers and five cars. He is familiar with the statutes and the rules of the Commission regarding motor transportation and in particular the limousine business. He would manage the business out of his office in Vermillion. The business comes in through an 800 telephone number. He will operate the service as a full-time job. His current drivers have all worked for transferor. He will administer tests to select future drivers. He will perform background checks and investigate their safety records. He has a sales manager in Norfolk who also makes sure that the equipment is maintained. He uses a cellular phone to stay in touch with Mr. Stewart who has agreed to stay on and work with him. Cars are generally located in Columbus, Fremont, Norfolk and two in Sioux City.

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Gary Schoepf testified: He is manager of the local sales office for applicant. He worked for transferor. Transferee's business is computerized. Transferee operates out of Vermillion because it is a college town and open for new business. Applicant has an SBA loan to purchase a sixth car for another market. His job is to determine where to take the car. Applicant has been looking at the Grand Island, Albion and western area of its authority. In case of a breakdown, applicant has a 1986 Jeep Cherokee with a tow package on it to bring the car from where it breaks down to Norfolk for repairs.

J.D. Stewart testified: During the six years he has operated under his authority, he has expanded first to Columbus, then to Sioux City, then to Fremont. If he were to continue operating, he would be expanding into Grand Island. The size of the territory authorized was the impetus for growth.

Protestant produced one witness, Dwaine Trease, who testified: He operates Special Moments Limousine out of Clearwater and Grand Island. He has been in business nearly four years. He operates four limousines with 13 part-time drivers. He is protesting the transfer of authority which covers Antelope, Holt, Boyd, Rock, Brown, Loup, Wheeler, Valley, Greeley, Sherman, Howard, Merrick, Hamilton and Hall counties.

Transfer of authority is governed by Neb. Rev. Stat. Section 75-318 which in pertinent part says:

It shall be lawful, only under the conditions specified in this section, for any regulated motor carrier or person or for two or more regulated motor carriers to: *** (2) Purchase, ... the ... certificates, ... of another motor carrier; or *** Whenever a ... purchase ... of the ... certificates ... is proposed, the ... person seeking authority therefor shall present an application to the commission, and thereupon the commission shall notify such carriers and other parties known to have an interest of the time and place for a public hearing in accordance with the rules of the commission. If, after such hearing, the commission finds that the transaction proposed will be consistent with the public interest and does not unduly restrict competition and that the applicant is fit, willing, and able to properly perform the proposed service, it may enter an order approving and authorizing such ... purchase, ... of ... certificate ... upon such terms and conditions as it deems just and reasonable. If any of the certificates or permits proposed to be ... transferred ... are dormant, the commission may approve an application for ... transfer ... only upon proof of and a finding that such ... transfer ... is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. If the proposed ... transfer ... of the certificates ... will permit or result in a new or different service or operation as to territorial scope than that which is or may be rendered or engaged in by the respective parties or, as to passenger motor carriers, will tend to enlarge competition over that then existing, the commission may approve an application for

... transfer ... only upon proof of and a finding that the proposed ... transfer ... is or will be required by the present and future public convenience and necessity, in the same manner as provided in section 75-311. ***

The evidence shows that the applicant has purchased the equipment of the transferor and has made arrangements to augment the fleet. Applicant has retained one of the transferor's staff and maintains a significant presence in Norfolk. Even though the business is organized so as to be conducted out of Vermillion, the record indicates that applicant can serve the territory included in the transferor's certificate in an efficient and expeditious manner. Applicant's financial statement shows more than \$20,000 net worth which should be adequate to sustain the operations proposed. Applicant has familiarized himself with the statutes and the rules of the Commission regarding limousine service and testified that he will abide by those statutes and rules. It is clear that applicant is fit, willing and able properly to perform the proposed service and to conform with the rules of the Commission.

The evidence shows that transferor has advertised in its entire service area and that the transferee has been continuing that practice. There is no evidence that the certificate is dormant. The evidence does show that traffic is unlikely to be generated under this certificate unless the certificate holder disburses its fleet around its territory. The evidence shows that applicant intends to do that. Transfer of the authority would clearly be in the public interest. The protestant produced no evidence that the certificate is dormant.

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

1. Applicant is fit, willing, and able properly to perform the proposed service.
2. The proposed transfer of operating rights will be consistent with the public interest and will not unduly restrict competition.
3. The certificate issued in Application B-1300 is not dormant.
4. A certificate should be issued in Application B-1415 authorizing the following operations:

CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Passengers and their baggage by limousine between points in Antelope, Wayne, Cuming, Boone, Madison, Platte, Colfax, Nance, Polk, Butler, Dodge, Saunders, Pierce, Knox, Cedar, Dixon, Dakota, Thurston, Burt, Holt, Boyd, Rock, Brown, Loup, Garfield, Wheeler, Valley, Greeley, Sherman, Howard, York, Stanton, Merrick, Hamilton, Hall, Douglas, and Seward counties and between points within said counties, on the one hand, and, on the other hand, points in Nebraska over irregular routes. Restrictions: (1) No transportation of railroad train crews is authorized, and (2) no service shall originate and terminate in Douglas County.

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5. The certificate issued in Application B-1300 should be revoked and cancelled.

O R D E R

IT IS, THEREFORE, ORDERED, by the Nebraska Public Service Commission that Application B-1415 be, and it is hereby, granted; 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 Rodney D. Oberle, dba Park Avenue Limousines, Norfolk, Nebraska, in Application B-1415, authorizing the operations set forth in the foregoing findings; and that to avoid a lapse in authority, the Certificate of Public Convenience and Necessity issued in Application B-1300 shall be revoked and cancelled simultaneously with the issuance of a Certificate of Public Convenience and Necessity in Application B-1415.

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.S.SUPP. 1995, 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 17th day of September, 1996.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:


 //s//Rod Johnson
 //s//Frank E. Landis
 //s//James F. Munnelly
 //s//Daniel G. Urwiller

ATTEST:

Chairman 


 Executive Director