

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Commission,)	APPLICATION NO. B-1441/
on its own motion, seeking to)	PI-46
conduct a departmental investiga-)	ORDER INTERPRETING SCOPE
tion of R & F Hobbies, Inc.,)	OF AUTHORITY
dba Prince of the Road.)	
)	ENTERED: OCTOBER 30, 2001

BY THE COMMISSION:

B A C K G R O U N D

This matter comes before the Nebraska Public Service Commission (Commission) upon an investigation of complaints against R & F Hobbies, Inc., d/b/a Prince of the Road (Prince of the Road) originally initiated by inter alia, Husker Cabs, Inc. and filed by the Motor Transportation Department of the Commission (hereinafter referred to as the Departmental Investigation).

As part of its defense, Prince of the Road alleged that it had not operated beyond the scope of its authority as provided in the Commission's book of authorities. Specifically, Prince of the Road interprets its Certificate of Public Convenience and Necessity which reads in pertinent part, "the transportation services of passengers and their baggage originating within Lancaster County of groups of six (6) or less is not authorized" to mean that it can transport one passenger originating within Lancaster County and seven or more passengers originating within Lancaster County. The Motor Transportation Department, on the other hand alleged that it interprets Prince of the Road's Certificate to mean that Prince of the Road cannot originate traffic within Lancaster County when hauling less than seven passengers. The Transportation Department further alleged that the Commission has the exclusive jurisdiction to interpret the scope or meaning of any certificate of public convenience and necessity pursuant to Neb. Rev. Stat., Section 75-110, (Reissue 1996). The Commission agreed. The Commission, therefore, set this matter for hearing upon due notice to Prince of the Road, to permit argument on its interpretation of its Certificate of Public Convenience and Necessity. Subsequently, the Commission received a second complaint from Husker Cabs, Inc., on April 17, 2001, with respect to Prince of the Road's interpretation of its certificate.

A hearing on the matter was held on July 31, 2001, in the Commission Hearing Room. John Boehm appeared on behalf of Prince of the Road. Shanicee Knutson appeared on behalf of the Commission staff. Prince of the Road again alleged that the interpretation of its certificate should follow the "plain meaning" rule of construction. In furtherance of this interpretation, Prince of the Road provided the Commission with the Webster Dictionary definition of the word "group." The dictionary definition of "group" offered by Prince of the Road reads in pertinent part, "two or more figures forming a complete unit in a composition." Therefore, according to

Prince of the Road, it is permitted by the plain language of its certificate to transport one passenger originating in Lancaster County because one passenger does not constitute a "group." Prince of the Road then advanced the notion that the Commission cannot provide an interpretation of its certificate which is contrary to the interpretation given by Prince of the Road. To support this claim, Prince of the Road cites three cases issued by the Interstate Commerce Commission, *T.I. McCormack Trucking Co., Inc. - Investigation and Revocation of Certificates*, 89 M.C.C. 9 (1962); *Alabama Highway Express, Inc. et. al. v. Terminal Transport Company, Inc.* 91 M.C.C. 635 (1962); and *Central Wisconsin Motor Transport v. Steel Transportation Co., Inc.*, 98 M.C.C. 232 (1965). To that end, Prince of the Road argued, the Commission is bound by the plain language of the certificate and according to Prince of the Road, is stuck with the interpretation given to it by this Prince of the Road regardless of Commission intent.

The Commission staff also made a statement to the Commission in response to the arguments raised by Prince of the Road. The Commission staff pointed out "groups" could also ordinarily be used in a restriction to refer to classification or party. With such a meaning, the certificate could restrict Prince of the Road against hauling a "party" of one.

The Commission staff stated that a witness for Prince of the Road previously testified under oath about the restriction. Prince of the Road's witness testified that, in his opinion, Prince of the Road was restricted to transporting six or more from Lancaster County. Another witness for Prince of the Road testified that the certificate forbade Prince of the Road from transporting in "parties" of six or less.

Moreover, the Commission staff argued that "or less" was the operative word in the reading of the restriction rather than "groups." The Commission staff continued that one could just as easily read the restriction to mean that Prince of the Road is prohibited from originating traffic in Lancaster County with less than a "group." The Commission staff argued further that the "s" on the word "groups" made the language in the certificate ambiguous, since it was unclear whether Prince of the Road would be prohibited from carrying less than one group. Finally, the Commission staff argued that using Prince of the Road's reading of the "plain language" of the certificate would lead to an absurd result whereby Prince of the Road could transport one passenger, but not passengers numbering two through six, from Lancaster County.

O P I N I O N S A N D F I N D I N G S

The scope and meaning of a Certificate of Public Convenience and Necessity is a question of law to be decided by the Commission.

Neb. Rev. Stat. § 75-118.01, (Reissue 1996). That section provides that the Commission has the original exclusive jurisdiction to determine the validity of a rule or regulation and the scope or meaning of a certificate, permit, tariff, rule or regulation.

The Commission finds that pursuant to rules of construction, that the Commission should determine the scope and meaning of a certificate at issue by looking at the entire grant and restriction language approved by the Commission, considered in its plain, ordinary and popular sense, unless shown to be ambiguous. To that end, the Commission declines to limit its review to the authority book as Prince of the Road suggests. The certificate itself as prompted by Commission order should be the starting point in the analysis.

A certificate should be open for construction when the language used requires interpretation or may reasonably be considered ambiguous. *Tighe v. Combined Insurance Co. of America* 261 Neb. 993, ____ N.W.2d ____ (2001) (Holding that interpreting a contract, the court must first determine, as a matter of law, whether the contract is ambiguous.) All of the cases cited by Prince of the Road provide the reviewing agency or tribunal should first determine whether the certificate is clear or ambiguous. *T.I. McCormack Trucking Co., Inc.-Investigation and Revocation of Certificates*, 89 M.C.C. 5,9 (1962) (Stating if the respondent's certificate is ambiguous, the Commission must resolve the ambiguity by examination of the record in the underlying proceeding.); *Central Wisconsin Motor Transportation et al. v. Steel Trans. Co., Inc.*, 98 M.C.C. 232, 238 (1965) (The Interstate Commerce Commission analyzing first whether a patent ambiguity existed before resorting to plain meaning of certificate.); *Alabama Highway Exp., Inc. v. Terminal Transport Co.* 91 M.C.C. 635, 639 (1962) (That Commission first determined whether the language in the certificate was reasonably susceptible to more than one interpretation.)

Upon consideration of the arguments before us, we find that the phrase "in groups of six or less" is ambiguous.¹ Not only is the phrase as a whole susceptible to two interpretations, but the word "groups" is as well. See *Tighe, supra*. In addition, the Commission finds that Prince of the Road's reading of the certificate would create an absurd result. *State v. Levell*, 181 Neb. 401, 149 N.W.2d 46 (1967) (Holding that the defendant's argument that the court must accept the strict construction of a

¹ Even if the Commission were to decide that the certificate was unambiguous, the Commission does not believe that Prince of the Road was reasonable in believing that its certificate would permit it to carry one passenger originating in Lancaster County.

penal statute was flawed since it created an absurd and unreasonable result.) We therefore look to the surrounding facts to ascertain the appropriate interpretation of Prince of the Road's Certificate of Public Convenience and Necessity.

Prince of the Road filed an application for statewide authority on July 1, 1997. The application was protested by Husker Cabs, Inc. (Husker Cabs). Husker Cabs possesses taxicab authority in Lincoln and the vicinity. On August 14, 1997, a letter was filed by Alvin Schroll, the President of Prince of the Road, requesting an amendment to the application for authority to wit:

(A) Applicant agrees not to provide point to point transportation service within Lancaster County; and

(B) Applicant restricts transportation services originating within Lancaster County to groups of seven(7) or more.

The foregoing amendment was accepted by the Protestant and the Protest was withdrawn. The Commission then processed Prince of the Road's application by modified procedure.

Prince of the Road argued that there was a lack of Commission intent when the Commission processed its application for authority. Therefore, there is no other way to interpret a certificate beyond the plain language rules of construction. The Commission finds error in that argument. The Commission is obligated by state law to weigh the factors prescribed by the legislature and to determine independently whether it would be in the public interest to grant a particular carrier a certificate of public convenience and necessity.

Although the Commission processes uncontested applications through its rules of modified procedure, the Commission is still obligated to make an independent determination as to whether the applicant is fit, willing, and able to properly perform the service proposed and to conform with the provisions of Neb. Rev. Stat. Sections 75-301 to 75-322 (Reissue 1996), and the requirements, rules and regulations of the Commission thereunder. The Commission must also independently determine whether the proposed service is or will be required by the present or future public convenience and necessity. Prince of the Road argues that if the certificate doesn't provide for what the Commission intended that the Commission is stuck with Prince of the Road's reading nonetheless because of the three cases cited. If the Commission was bound as Prince of the Road so suggests, it would render Neb. Rev. Stat. S 75-118.01 virtually meaningless.

The Commission's intention in this case was clear. Its intent

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was to restrict Prince of the Road's authority so that its operations would not harm the business and activities of the Protestant, Husker Cabs, Inc. The Commission finds the correct interpretation of the restriction in the certificate held by R & F Hobbies, Inc., dba Prince of the Road would prohibit Prince of the Road from transporting any number of passengers less than seven originating out of Lancaster County. Moreover, we find that there was no reasonable basis for Prince of the Road to discern that it could transport one passenger but not two or three passengers out of Lancaster County. Therefore, the Commission finds that Prince of the Road is restricted against originating transportation service in Lancaster County while carrying one passenger. Prince of the Road's Certificate of Public Convenience and Necessity should be interpreted accordingly.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the certificate of public convenience and necessity held by R & F Hobbies, Inc., dba Prince of the Road shall be and it is hereby interpreted as prescribed herein.

IT IS FURTHER ORDERED that it shall be a violation for R & F Hobbies, Inc., dba Prince of the Road to originate transportation in Lancaster County with any vehicle containing less than seven passengers.

MADE AND ENTERED at Lincoln, Nebraska, this 30th day of October, 2001.

COMMISSIONERS CONCURRING:

James Johnson
Gerald L. Up
Anne C. Boyle
Paul Johnson

//s//Frank E. Landis

NEBRASKA PUBLIC SERVICE COMMISSION

David L. French
 Chairman

ATTEST:

And S. Pollard
 Executive Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
