

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Appli-)	Application No. B-1498
cation of Running Horse)	
Enterprises, LLC, Hastings,)	
Nebraska, seeking authority)	
as a common carrier in)	MOTION TO VACATE DENIED
Nebraska intrastate commerce)	
in the transportation of)	
passengers by limousine)	
service between points in and)	
within a 200-mile radius of)	
Hastings over irregular)	Entered: September 8, 1999
routes.)	
RESTRICTION: The transporta-)	
tion of railroad train crews)	
and their baggage is not)	
authorized.)	

BY THE COMMISSION:

By application filed February 10, 1999, Running Horse Enterprises, LLC, Hastings, Nebraska ("Running Horse" or "Applicant") seeks authority as a common carrier in Nebraska intrastate commerce by limousine service between points in and within a 200-mile radius of Hastings, Nebraska, over irregular routes. Notice of the application was published in The Daily Record, Omaha, Nebraska, on February 11, 1999, pursuant to Commission rules and regulations.

Protests to the Application were filed by O'Rourke & O'Rourke Buggy Rentals ("O'Rourke") on February 17, 1999; by Prince of the Road through its attorney, John Boehm, on February 24, 1999; and by Special Moments Limousine on March 10, 1999. A hearing was subsequently held April 21, 1999 at the City Council Chambers in Hastings, Nebraska. At that time, the Applicant and protestant O'Rourke introduced testimony related to the application. Due to Commission error, protestant Prince of the Road was not given proper notice of the April 21 hearing.

On May 18, 1999, this Commission, unaware of the error which prevented protestant Prince of the Road from appearing at the April 21 hearing, entered an order granting the Application of Running Horse Enterprises. On May 27, 1999, Prince of the Road through its attorney John Boehm filed a "Motion for Rehearing and to Vacate." This Commission granted the motion for rehearing which was scheduled via video-conference for June 24, 1999. The Commission granted a motion for continuance and the rehearing was

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reset for, and held on, August 18, 1999. The video-conference was held simultaneously at the Commission Library in Lincoln and the Hastings Public Library in Hastings, Nebraska.

On August 27, 1999, the Commission received a letter from Prince of the Road through Mr. Boehm which indicated that he would waive his right to cross-examine the witnesses which testified on April 12, 1999. This Commission then summarizes the hearing held on August 18, 1999 and issues its findings:

Mr. Boehm made an initial statement in which he indicated that Prince of the Road did not object to the granting of the Applicant's authority for limousine service, but noted that the applicant had filed rates for vehicles other than limousines. The protestant objects to the inclusion of these other vehicles as part of the granted application.

Mr. Kent Gilbert, owner of Running Horse Enterprises, testified that, since the granting of authority, his business was going well and that he had transported passengers several cities within the 200-mile radius of Hastings. He also testified that, financially, the business was prospering and that his company was considering adding another limousine to his fleet due to the fact that he has had to turn down potential customers.

Mr. Gilbert further testified that Running Horse did not currently own or operate a van but that the company did receive requests for transportation from the Nebraska Department of Health and Human Services ("HHS") and from Crane Meadows, a company that manages tours during the sandhill crane migration season through the state. He testified that he believed that his application entitled him to operate van service and that, as a result of that understanding, he filed rates for van service with the Commission. He anticipates that, if demand for van service continues, he would be looking at possibly purchasing a van after the first of the year (i.e., January 1, 2000).

Mr. Gilbert testified specifically for the demand for van service. After the contact for services by HHS, he made further inquiry and discovered that HHS would be seeking transportation based on rates that were dictated through the implementation of legislation passed in the 1999 legislative session which requires that HHS offer contracts for transportation at rates set by the new law. He testified that when HHS contacted him, the spokesperson indicated that there would be demand for his services. Mr. Gilbert declined that specific request because he felt it inappropriate to transport a juvenile from the emergency

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protective shelter to the youth detention center by limousine.

Upon questioning by the Commission, Mr. Gilbert testified that the van rates that he listed by the Commission were lower than limousine rates. He also indicated that use of a van would allow him to enter into transportation contracts with government entities.

Answering cross-examination, Mr. Gilbert testified that he did not apply specifically for van authority in the initial application because he thought that limousine service included van service. He also testified that, in addition to the call he took from HHS, he had received a request for transportation of tourists touring the Willa Cather memorials. The individual in charge of that tour was looking for a 15-passenger van. His company has turned down four requests for vans since he started advertising in the Yellow Pages which came out July 1999.

Prince of the Road put on their case in opposition to the application by first calling Mr. Alvin Schroll, president of Prince of the Road, to testify. He testified that his company has Commission authority to transport by van anyplace in the state except for Lincoln. His company's business is geared primarily to hauling clients of HHS, the Options program, Partners, and other entities of government, although Prince of the Road also transports private citizens. Prince of the Road currently has 20 to 24 vans. These vans are dispatched around the state. He testified that there are about 20 vans within a 200-mile radius of Hastings; of these, three vans are within 20 miles of Hastings.

Mr. Schroll further testified that it was not unusual for HHS to look for other persons to transport their clients in an effort to save money. He testified that he has never had to turn down a request for transportation services. He has fielded requests for information from private parties such as the group that manages tours for the sandhill cranes.

As far as advertising, Mr. Schroll testified that their only Yellow Pages advertisements were in the Ravenna area telephone directories. He also indicated that he was aware of the legislation passed by the Legislature in 1999 that would redefine the rates that could be paid by HHS. He indicated that Prince of the Road would still transport clients of HHS once the new rates mandated by law went into effect.

Upon cross-examination by counsel for the Applicant, Mr.

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Schroll testified that the protest against the application was because his company objects to anybody that has any type of transportation application. Mr. Schroll further stated that his firm advertises under the heading "Transportation" in the Yellow Pages that he believed covered the central part of the state. He went on to state that his company would probably not advertise in all of the Yellow Pages in all of the communities that his company was prepared to offer transportation.

When questioned on the location of his vans, Mr. Schroll testified that no vans are in Omaha, one is in Lincoln, three are in Grand Island, none are in Kearney. Other vans are distributed among 11 or 12 other communities.

On redirect, Mr. Schroll testified that his company advertises in other ways such as brochures and displays at the airport.

Mr. Gerry O'Rourke, another protestant, made a statement in which he requested the Commission to amend the counties in which authority was granted in the initial application and to make further restrictions against the Applicant to include seven additional counties from which the Applicant would be restricted from operating.

FINDINGS AND OPINION

In our initial granting of authority, this Commission found the Applicant to be fit, willing, and able to provide the proposed services. In addition, we found that the proposed intrastate service is or will be required by present or future necessity. Nothing presented in the rehearing challenged our first finding and we need make no further determination.

The rehearing, rather, centered around the "present and future necessity" finding in our original order. In addition, all of the new testimony centered around the Applicant's possible provisioning of transportation through vans. Protestant makes no objections to the original grant of authority provided that such authority is limited to "luxury limousines."

There is some question as to whether the term "limousine" includes transportation services by multi-passenger vans as well. We have not ruled on this question directly in prior orders. We

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find that "limousine service" denotes a type of transportation not necessarily limited by mode to include only those vehicles colloquially known as "stretch limos". That such distinction between types of vehicle has been blurred is without doubt. Airport shuttle service vehicles use the term "Limousine"; there are luxury 15-passenger vans which are known as "limousines."

The term "limousine" is no longer identified only with the type of vehicle, typically the extra-length sedans that have traditionally transported wedding and prom parties in the past. The term, instead, refers to a mode of transportation.

For purposes of this Commission, limousine service shall mean a chauffeur-driven, non-metered passenger vehicle for hire including, but not limited to, full-sized sedans, extended-size sedans, passenger vans, and sports utility vehicles where the rate may be determined on an hourly, daily, weekly, or monthly rental or may be mileage-based.

Taxicab shall mean a chauffeur-driven passenger vehicle engaged in the general transportation of persons for hire, operated on an irregular route where the destination is controlled by the passenger where the route, when not directed by the passenger, must be the most direct and reasonable and where the rate is metered by the operator using a mechanical or electronic device, except where the use of such device is exempted by Commission rule due to the fact that the taxicab operator is operating in a community of 15,000 persons or less.

As such, we find that the Applicant rightfully included vans as types of transportation vehicles included in the type of transportation to which his certificate conferred authority.

The next issue we consider is that of necessity. The protestant, Prince of the Road, has stated that he is willing to meet the transportation needs of HHS and government clients and that he has not turned away any business offered to his company. However, protestant can only cover those persons who are clients of the Department of Health and Human Services and/or FHC Options or similar programs. The protestant has no telephone directory presence within at least part of the area sought to be served by the Applicant. The result is that there may exist a population, namely those who are not clients of HHS or the other government entities mentioned in the record, which cannot be adequately served by the protestant. Other than his HHS telephone contacts, he has no physical presence in the city of Hastings.

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Being fully advised in the premises, we do not disturb our findings in the original grant of authority for the Applicant, Running Horse Enterprises, LLC. The terms and conditions in the original grant of authority in B-1498 are affirmed and the motion to vacate is denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the motion to vacate the authority granted in the Application B-1494 be, and it is hereby, denied.

IT IS FURTHER ORDERED that the certificate of authority conferred in this docket should be, and is hereby, affirmed subject to the conditions of the original certificate granted in this application and subject to the Commission's rules and regulations and to the laws of the state of Nebraska.

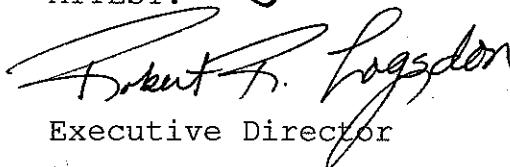
MADE AND ENTERED in Lincoln, Nebraska on this 8th day of September, 1999.

COMMISSIONERS CONCURRING:

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director

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