

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Applica-)
tion of Jack Ernest dba)
Presidential Limousine, Omaha,)
seeking authority as a common)
carrier in Nebraska intra-)
state commerce in the trans-)
portation of passengers by)
luxury limousine between)
points in Douglas and Sarpy)
Counties and between points)
within said counties, on the)
one hand, and, on the other)
hand, points within a 75-mile)
radius of Omaha over)
irregular routes.)
RESTRICTION: The transporta-)
tion of railroad train crews)
and their baggage is not)
authorized.)

Application No. B-1513

APPLICATION DENIED

Entered: March 21, 2000

BY THE COMMISSION:

By application filed October 14, 1999, Jack Ernest dba Presidential Limousine, Omaha, Nebraska, ("Applicant") seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by luxury limousine between points in Douglas and Sarpy Counties and between points within said counties, on the one hand, and, on the other hand, points within a 75-mile radius of Omaha over irregular routes. Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 19, 1999. A protest was filed November 19, 1999, by Total Transportation & Luxor Limousine Service ("Protestant") through their attorney David S. Wintroub, Omaha, Nebraska. A hearing was held on December 16, 1999, in the State Office Building, 1313 Farnam-on-the-Mall, Omaha, Nebraska.

Jack Ernest appeared pro se, explaining that he had attempted to obtain professional legal representation, but that the counsel that had agreed to represent him in his application was unable to appear.

In support of the application, Mr. Ernest called Mr. Gary Vecchio, part owner of Embassy Limousine in Council Bluffs, Iowa. Mr. Vecchio currently has a certificate of public convenience and necessity from the Commission.

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Mr. Vecchio testified that he has known the Applicant for about ten years and that the Applicant works part-time as a driver off and on for Embassy Limousine on a contractual basis. He further testified that he had experienced no problems with the Applicant. As to the need for the proposed services of the Applicant, Mr. Vecchio testified that it was his opinion that additional limousine services could operate in the city of Omaha. He also stated that it was his company's policy not to protest additional limousine applications before the Commission, believing that survival in the market place was a superior test of ability to operate over governmental regulation.

Upon questioning by the Commission, the Applicant indicated that the major part of the assets listed in the application came from the value of a stamp and coin collection owned by the Applicant which has previously been appraised at \$40,000. The Applicant indicated that he did not currently own a car for use in the proposed business. His only vehicle was a personally owned 1981 Crown Victoria. Mr. Ernest indicated that he intended to share a vehicle with another operator and to have some interest in the car transferred upon the granting of a certificate but that no written agreement had been entered into between the two parties. He has inquired into purchasing insurance and that he had plans for the vehicles maintenance and storage. He thought that he needed twelve trips a month to break even financially.

Upon inquiry by the Commission, the Applicant also indicated that he had a history of burglary-related offense for which he has been incarcerated, serving a total of 27 years in prison. He has been out of prison for the past ten years.

FINDINGS AND OPINION

Nebraska Rev. Stat. section 75-311(1) (Reissue 1996) requires the Commission find that (a) an applicant is fit, willing, and able to properly perform the service proposed and (b) the proposed service is or will be required by the present or future public convenience and necessity. We find that the Applicant in the instant case has failed to demonstrate either of these two statutory requirements. Accordingly, the application should be denied.

On the issue of fitness, we have several concerns. First, we are concerned about the past criminal record of the Applicant. Although we commend Mr. Ernest on his apparent rehabilitation and his efforts to reintegrate into society, our primary duty is to the

public interest. Many opportunities lie open for Mr. Ernest in the public and private sector. Unfortunately, the transportation of persons and their property as a common carrier is not one of those. We are especially mindful that we are guardians of the public welfare and safety when it comes to qualifying persons to serve the public. While we are confident that Mr. Ernest's character may be completely rehabilitated, especially given the long period since his last incarceration, we cannot ignore that he has a long and repeated history of property crimes.

Beyond that, the Applicant has wholly failed to demonstrate his fitness to provide the proposed service. His assets consist largely of a coin and stamp collection which he owns. He has no vehicle other than his own personal vehicle, for which to transport persons. His agreement with another operator to use his limousine is unwritten and unenforceable. Since he has no vehicle, it is not available to inspection for safety and compliance with Commission regulations. His business plan is woefully inadequate and he has made no determination that there is sufficient demand such that his operation will not fail financially. In short, we cannot find that the Applicant is fit financially to undertake the proposed service in his application.

On the issue of public need and necessity, we find that the Applicant has fallen far short of his burden of showing that the proposed service will serve a purpose responsive to public demand or need, that the purpose cannot be served by existing carriers, or that the proposed service will not endanger or impair the operations of existing carriers. See *In Re Application of Nebraska Transport Co., Inc.*, 210 Neb. 269, 313 N.W.2d 686.

The Applicant presented only the testimony of another operator that there is "always room for expansion." No other evidence was offered that the existing public need was not being met by adequately and satisfactorily by existing carriers.

Because the Applicant has failed to demonstrate the statutory requirements for a successful application, we find that this application should be, and is hereby, denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1513 be, and it is hereby, denied.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

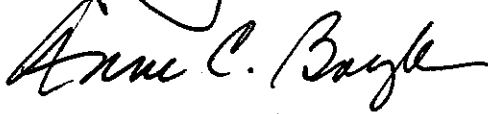
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MADE AND ENTERED in Lincoln, Nebraska on this 21st day of March, 2000.

COMMISSIONERS CONCURRING:



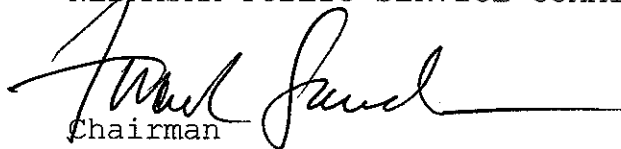




//s//Frank E. Landis

//s//Daniel G. Urwiller

NEBRASKA PUBLIC SERVICE COMMISSION


Chairman

ATTEST:


Executive Director