

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Applica-) APPLICATION No. B-1516
tion of Steven E. Gill dba)
GillEase Limousine Service,)
Beatrice, Nebraska, seeking)
authority as a common carrier) APPLICATION DENIED
in the transportation of)
passengers by luxury limousine)
between points in Pawnee,)
Gage, and Jefferson Counties)
and between points within)
said counties, on the hand,) ENTERED: May 2, 2000
and on the other hand, points)
within a 150-mile radius of)
Beatrice over irregular)
routes. RESTRICTION: The)
transportation of railroad)
train crews is not authorized.)

BY THE COMMISSION:

By application filed December 9, 1999, Steven E. Gill dba GillEase Limousine Services, ("Applicant") Beatrice, Nebraska, seeks authority as a common carrier in Nebraska intrastate commerce in the transportation of passengers by luxury limousine between points in Pawnee, Gage, and Jefferson Counties, on the one hand, and, on the other hand, points within a 150-mile radius of Beatrice over irregular routes. A copy of notice of the application was published in the Daily Record, Omaha, Nebraska, on December 13, 1999 pursuant to Commission rules. A protest to the Application was filed on January 3, 2000, by Yellow Cab & Limo Inc., Beatrice ("Protestant") through its attorney, Jack L. Schultz.

A hearing was held February 8, 2000, in the Beatrice Administration Building, Beatrice, Nebraska. A notice of the hearing was sent by first class mail to all interested parties on January 24, 2000. The Applicant was represented by Bradford E. Kistler. Jack Schultz appeared for the Protestant.

Mr. Steven E. Gill, owner of the proposed limousine service, testified in support of the application. In addition to the proposed service, Mr. Gill is a member of the Nebraska State Patrol, and operates other business enterprises in and around Beatrice including A&J Moving, which holds authority from this Commission. Mr. Gill became interested in a possible limousine enterprise after noticing the number of limousines coming to Beatrice from Lincoln, Nebraska, notably the limousines operated by A-1 Ambassador and Good Life. Mr. Gill, ~~noted~~ that due to the

presence of the number of limousines from outside Beatrice, that the service provided by Beatrice area limousines might be inadequate. Mr. Jim Cook, owner of Cookies Limousine Service, told the Applicant that he was possibly interested in selling a limousine, which the Applicant eventually purchased prior to this application for authority. The vehicle purchased was a 1988 Lincoln Towncar, a 70-inch, six passenger, stretch limousine. Mr. Gill also expressed interest in purchasing additional vehicles as demand warranted. The vehicle is stored at a location owned by the Applicant. He testified that he intended to maintain regular office hours but would also accept calls after hours.

All of the Applicant's drivers would be associated with law enforcement in some way. Any future drivers who were not affiliated with law enforcement would be screened. Drivers would wear appropriate dress. The Applicant has also established conditional training for the drivers.

Mr. Gill testified that he intends to focus on proms, weddings, and drives concerned about their ability to drive after drinking alcohol. He testified further that he intends to advertize with bridal shops and has investigated other joint ventures with the city's businesses. As part of his business plan, he has also inquired into insurance requirements, coverages, and costs. Mr. Gill also supplied the Commission with a personal financial statement.

Upon cross-examination, the Applicant indicated that he had figured that he would need to make two trips a weekend or a total of 104 trips per year in order to cover costs. Mr. Gill also confirmed some of the other operational costs that the proposed limo business might incur and detailed as to how he had taken these costs into account in preparing his business plan.

Matt Fralin testified in support of the application. Mr. Fralin is a junior at Beatrice High School. He testified that he attempted to obtain limousine service for the Snow Ball, an annual dance held by the school. He testified that there were no Beatrice limousines available, so he and his date eventually obtained limousine service through a Lincoln-based limousine service. He testified further that, because the limousine came from Lincoln, he was charged an extra hour, covering the time that the limousine traveled from Lincoln to Beatrice.

Mr. Nicholas Koch, a resident of Fairbury, testified that he was looking for a limousine on the occasion of his marriage. He and his bridal party did obtain service from a Beatrice limousine.

When he and his party were picked up, they were informed that the air conditioner on the vehicle was broken. His wedding date was in mid-July and the temperature in the vehicle was uncomfortable. Mr. Koch testified that he was not satisfied with the level of service he received.

Mike Howard, co-owner of Images Plus Photography of Beatrice, testified that as a professional photographer, he attends many formals, weddings, and family group gatherings. He testified that a limousine is at many of these functions. When he operated in Omaha, he testified, there was never a problem getting a limousine. In Gage County, however, he stated, there seem to be a limited number of limousines. He testified that limousines were used in about 30% of the weddings that he covered. He stated that he has also seen a lot of limousines from other cities at Gage County events.

Mr. Jeff Workman, vice-president of Beatrice National Bank, also testified in favor of the application. He testified that his bank has extended credit to the Applicant for several of his business ventures. Mr. Gill, the applicant, is a credit-worthy individual. Mr. Workman stated that he has worked on the business plan for the proposed limousine service with the Applicant and has discussed many aspects of the proposed business including cash flow, and future credit needs should the Applicant decide to expand. He testified that the financial data that he reviewed regarding the proposed limousine including income projections, demonstrated to his satisfaction that the proposed business would be profitable. He testified that he has known the Applicant for approximately twelve years and that he considered the Applicant to be of good character.

Also testifying for the applicant was Daryl Fletcher, who provided additional positive character reference for the Applicant, and Denise Lear, a senior at Beatrice High School, who testified that she could not obtain satisfactory limousine service for the Snow Ball held at the high school. She described the Beatrice limousine company as being full and not wanting to pay the additional charges to hire a limousine out of Lincoln to travel to Beatrice.

Jim Cook, a resident of Falls City, testified in support of the application. Mr. Cook operates Cookies Limousine Service out of Falls City, a limousine company regulated by this Commission. His limousine, a white Lincoln Towncar, is operated primarily in Richardson County. He testified that he sold another of his vehicles to Mr. Gill. He further testified, while he does not

advertize in the Beatrice area, he still receives calls from interested customers who have heard from him by word of mouth.

Robert N. Schaefer, past president of the Pawnee Chamber of Commerce, testified for the application. Mr. Schaefer testified that, as president of the Chamber, it was his job to promote businesses and economic development throughout Pawnee County. There are businesses in Pawnee County, such as C-J Foods, which constantly fly in executives from around the world. The companies have hired limousines, including those from Lincoln. He also mentioned other civic functions and a bed and breakfast in the county.

In addition, the Applicant called Terry Nelson. Mr. Nelson is the owner of a dinner-supper club in Pickrell and has operated that business for over two years. His club is self-described as upscale. The diner hosts wedding groups, prenuptial, and other social gatherings. He testified that the existence of another limousine service would be beneficial to his business as he contemplates projects such as casino runs and the like. Customers use a limousine service to his restaurant, on the average, of about once every two months. He also testified in support of the business expertise and character of Mr. Gill.

Ron Hippen, owner and operator of Yellow Cab & Limo, testified in opposition to the application. He has operated his limousine business, certificated by this Commission, since 1997. Mr. Hippen operates three limousines. He testified that his total limousine revenues totaled \$13,735 in calendar year 1999. His records showed that his limousine operated for 80 trips on 48 different days in 1999. Debt against the three limousines totals \$48,000. The payments on the vehicles amount to \$850.00 per month and annual insurance coverage totals \$2,725. Mr. Hippen promotes his service by running ads in small newspapers throughout the communities. He further testified that his company runs Yellow Page ads in the Beatrice, York, and Lincoln phone books, and ads are scheduled to appear in the Yellow Pages of Tecumseh, Falls City, and Auburn.

Mr. Hippen testified that from January 1, 2000, until the time of the hearing (February 28, 2000), he had all three of his vehicles running only once, during the Snow Ball. He stated that there were other limousines present at the Snow Ball.

He further testified that he dispatches the limousines according to the calls he receives, that his drivers are drug tested and screened. His drivers take driving courses at Southeast Community College.

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Mr. Hippen testified that he did not think that there was enough demand for another limousine company. He also stated that if he felt there was additional demand, that he was in a position to purchase additional vehicles. If he finds his company totally booked for an occasion, he does refer customers to other limousine operators.

Mr. Hippen testified under cross-examination that he was aware of the problem with the limousine with the inoperative air conditioning. He stated that he would have offered another limousine except that the other two were booked. He does not do active promoting of his business such as joint ventures with other businesses, but relies on his advertizing to bring in business.

FINDINGS AND OPINION

The granting of a certificate of public convenience and necessity is governed by Neb. Rev. Stat. § 75-311 (Reissue 1996) which states,

A certificate shall be issued to any qualified applicant authorizing the whole or any part of the operations covered by the application of it is found after notice and hearing that (a) the applicant is fit, willing, and able properly to perform the service proposed...and (b) the proposed service, is to the extent to be authorized by the certificate, whether regular or irregular, passenger or household goods, is or will be required by the present or future public convenience and necessity. Otherwise the application shall be denied. Neb. Rev. Stat. §75-311(1) (Reissue 1996).

In other words, the Commission must apply a two-part test. First, the Commission must determine if an applicant is "fit, willing, and able." We find that the applicant has met the fitness test of § 75-311. The applicant presented credible evidence as to both the fitness of his character, and to the fitness of his business acumen. The Applicant already successfully operates several business ventures. He presented a knowledge of the industry, Commission requirements, and a sound business plan. If state law did not require us to go further, this application would be granted.

The second test of § 75-311 requires us to examine if the applicant demonstrated whether the proposed service is required by

the present and future public convenience and necessity, commonly referred to as "need and necessity." The elements to a need and necessity finding were detailed by the Nebraska Supreme Court,

In determining public convenience and necessity, the deciding factors are (1) whether the operation will serve a useful purpose responsive to a public demand or need, (2) whether this purpose can or will be served as well by existing carriers, and (3) whether it can be served by the applicant in a specified manner without endangering or impairing the operations of existing carriers contrary to the public interest. *In Re Application of Kilthau*, 236 Neb. 811, at 815.

The Court went on to say,

Of the three public convenience and necessity factors, not all need to be addressed, because an affirmative response to the second factor negates any response to the first factor...The existence of an adequate and satisfactory service is complete negation of public need and demand for added service by another carrier. *Id.*, at 816.

We find that the applicant has not shown to the satisfaction of this Commission that the purpose proposed to be served by the applicant cannot or will not be served as well by existing carriers. Accordingly, we must find that the applicant fails the need and necessity requirement of § 75-311(1).

The Protestant in the instant case detailed his activity for his limousine over the last year and two months. During that time, out of 385 possible dates, the Protestant operated on only 48 different dates and that all of his three limousines were not operating on even each of those 48 dates. On those occasion when he was fully booked, he was able to refer potential customers to other certificate holders in the area. The Protestant also testified that he would welcome additional business as his limousines sat unused for a majority of the time. Overall, we cannot find the anecdotal evidence regarding the inoperative air conditioner on one of the vehicles for one trip to be demonstrative of inadequate or unsatisfactory service such that a grant of authority is necessary.

Because the Applicant has not met the "need and necessity" conditions for certification by this Commission, the Commission, therefore, finds that the application should be denied.

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O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1516 be, and it is hereby, denied.

MADE AND ENTERED in Lincoln, Nebraska on this 2nd day of May, 2000.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Anne C. Boyle *Frank Landis*
Chairman

ATTEST:

Robert R. Logsdon
//s//Frank E. Landis
//s//Daniel G. Urwiller

Robert R. Logsdon
Executive Director

