

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1543
of James Santana dba Lexington)
Taxi Cab, Lexington, seeking)
a Certificate of Public)
Convenience and Necessity as)
a common carrier of passengers)
and their baggage by taxicab)
between points in the City)
of Lexington and Dawson) GRANTED
County and between points in)
the City of Lexington and)
Dawson County on the one)
hand, and, on the other hand,)
points in Nebraska over irregular)
routes. RESTRICTION: The)
transportation of railroad train)
crews and their baggage is not)
authorized.) Entered: April 3, 2001

For the Applicant:

James Santana, pro se
43260 Road 750
Lexington, Nebraska 68850

For the Protestants:

Kearney Cab Company:
Daniel Sindt, pro se
110 Avenue C, # 18
Kearney, Nebraska 68847

For the Department:

Shanicee Knutson
300 The Atrium
1200 N Street
Lincoln, Nebraska 68508

Haymarket Limousine:

Elaine Waggoner
825 M Street, Suite 209
Lincoln, Nebraska 68508

BY THE COMMISSION:

By application filed on October 18, 2000, by James Santana dba Lexington Taxi Cab, of Lexington, Nebraska seeks to obtain a Certificate of Public Convenience and Necessity as a common carrier of passengers and their baggage by taxicab between point of the

Application No. B-1543

Page 2

City of Lexington and Dawson County and between points in the City of Lexington and Dawson County on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

Notice of the application was published in The Daily Record, Omaha, Nebraska, on October 23, 2000, pursuant to the Commission rules. Protests to the application were filed on October 26, 2000, by Prince of the Road, through its attorney, John Boehm, on November 9, 2000, by Kearney Cab Company (Kearney Cab), and on November 14, 2000, by Haymarket Limousine (Haymarket), through its attorney Elaine A. Waggoner. On February 28, 2001, Prince of the Road withdrew its protest. A hearing was held in the Commission Library, Lincoln, Nebraska on March 1, 2001 with appearances as shown above. The applicant produced one witness, Mr. James Santana, who testified as follows:

Mr. Santana testified that he wished to provide a taxi service for the residents of Lexington for a number of reasons. He testified that there is a need in the city of Lexington and Dawson County for a Lexington-based taxicab service. Those in need of the proposed taxi service are the elderly, handicapped, students, people needing transportation to and from work and also for citizens leaving the local bars late at night. Mr. Santana further testified that there is a need for a taxi service to transport area residents to the Omaha INS office and back to the city of Lexington and/or Dawson County. Currently, no such distance transportation service is feasible for the local residents. Mr. Santana further testified that there is no 24 hour transportation service in the Lexington vicinity. Testimony was presented that at one time, Lexington did have a taxicab service. Mr. Santana provided an explanation of why the Lexington taxi company went under and described his hopes to do a better job. Mr. Santana further testified that as a bilingual citizen, he can provide better service to the Spanish speaking population in Lexington.

Initially, Mr. Santana plans to use two cars in his business. He has prepared one vehicle for service and has installed a meter. He proposed his rate plan and testified that he thinks the rates will be competitively priced. He will be accessible 24 hours a day by cellular phone to dispatch his vehicles from Lexington. He has also checked into the Commission's insurance requirements and

Application No. B-1543

Page 3

arranged for adequate coverage on the vehicles. He plans to advertise his taxicab service through local radio advertisements and by word of mouth. He also testified as to his general business expertise and his financial competency to run the proposed business.

Upon questioning, Mr. Santana testified that if the Commission placed radius restriction on the authority he would not be able to fulfill the need of Lexington residents and it would be difficult to operate a profitable business. Mr. Santana further testified that there is no taxicab service stationed in Lexington. The closest taxicab service would need to originate in Kearney. Mr. Santana testified that no transportation service was providing cost-feasible and satisfactory to residents in the territory sought.

Mr. Daniel Sindt testified on behalf of Kearney Cab. He testified that the distance between Kearney and Lexington can be achieved in a short 20 minute drive. He confirmed that Kearney Cab was not concerned with Mr. Santana operating within Lexington's city limits. He was concerned about the applicant's business encroaching upon territory which can be served by Kearney Cab.

Mr. Dennis Wagner testified on behalf of Haymarket. Mr. Wagner testified that Haymarket provides service around Lexington, Kearney and points west and north of there. Haymarket has been serving the Health and Human Services (HHS) clients in that area. His testimony further provided that Haymarket does have handicap accessible equipment in the area. Mr. Wagner stated for the record that he did not have any objection to the Commission authorizing the applicant to have some limited authority. However, he testified that he does not want to lose all of Haymarket's HHS business to the applicant. Mr. Wagner testified Haymarket received limousine authority and not taxicab authority. Upon questioning, he further stated that he did have knowledge with respect to the Commission's rule and regulation docket which seeks to define limousines. Mr. Wagner further testified that Haymarket has just one car stationed 15 miles west of Lexington.

A member of the public was also permitted to speak on the application. Mr. Richard Helvey, of the Lexington Housing Authority stated that Lexington needs a taxicab business very badly. There are a number of IBP plant workers that are in need of

transportation to and from work. He also testified to a need for handicap transportation because he has personally been contacted to provide that service. He expressed doubt as to Haymarket's ability to satisfactorily provide that service. Mr. Helvey then stated that he knows Mr. Santana is a good businessman and can meet the transportation needs of the citizens of Lexington.

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

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

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.

With respect to the first prong of the two part test found in Neb. Rev. Stat. section 75-311 (Reissue 1996), the applicant produced adequate evidence that it is fit, willing, and able properly to perform the service proposed. The applicant has a well thought out business plan, extensive business experience, and the financial resources to start up and maintain the proposed business. The applicant further demonstrated that it does have a vehicle which has been prepared for use as a taxi in business and has made inquiries into the proper insurance coverage.

No person at the hearing disputed the applicant's fitness to provide the proposed transportation service.

From the evidence adduced at the hearing and being fully informed in the premises, we find the applicant to be fit, willing

and able to properly perform the service proposed.

The second prong of the test provided in section 75-311, requires a more detailed review. According to the evidence presented at the hearing, the need for a taxicab service in Lexington was clearly demonstrated by the applicant. The applicant showed that there is a population in and around Lexington which is currently unserved by any transportation carrier. The applicant further demonstrated that the city of Lexington once supported a local taxi service and if provided correctly, the proposed service could meet the demands of the public once more.

The applicant also presented specific evidence of a need for taxi service from Lexington to the Omaha area, and from Lexington to other destinations in Nebraska and back to Lexington. The applicant presented testimony of specific examples of Lexington and Dawson County citizens who need to travel to Omaha on a regular basis. Likewise, the applicant presented testimony that the need for distance transportation was not being met. Kearney Cab's authority is limited by the Commission in such a way as the transportation must originate or terminate in Buffalo County. Kearney Cab's certificate of authority inherently reveals that it cannot meet the same needs Lexington Taxi Cab proposes to meet through its taxicab service.

Information also was provided to the Commission that Greyhound provides bus transportation between Kearney and Lexington. However, this distinction carries decidedly different considerations provided that the taxicab service at issue is demand-responsive while bus service is not.

The testimony presented further demonstrates that for a Lexington citizen to have access to the distance transportation the Protestants claim they can provide, that citizen must wait at least fifteen minutes or longer for that other carrier to send a car to Lexington.

From the evidence presented, we find that the applicant provided sufficient evidence that the proposed service will serve a useful purpose responsive to a specific public demand and that the existing carriers did not adequately meet that need. See *In re Application of Kilthau*, 236 Neb. 811, 464 N.W.2d 162 (1991).

Finally, we turn to the issue of whether a grant of this application would endanger or impair the operations of the existing carriers contrary to public interest. Although the Protestants did indicate that they were willing to serve private pay customers, the crux of their concern rested in the potential loss of Health and Human Service and FHC Options clients and some of the other profitable distance transportation contracts. The Protestants argued that the applicant's taxi service would divert Health and Human Service customers away from them. The witnesses for the Protestants did not testify that the needs of Lexington area residents or those of Dawson county were being met by them, but instead testified that they were fearful that the applicant's proposed service may infringe on some of their existing market share. We find that this showing is inadequate in light of the applicant's testimony. Moreover, we note, as previously held by the court through *In re Application of Nebraskaland Leasing & Assoc.*, 254 Neb. 583, 578 N.W.2d 28 (1998), general fears of potential diversion as contrasted with specific evidence demonstrating probable harm does not constitute proof that harm will result to competitive carriers.

From the evidence adduced, we find that the applicant has met the public need and necessity requirement consistent with applicable state law. Accordingly, we find that the application should be granted with the following authority:

SERVICE AND TERRITORY AUTHORIZED:

COMMON: Transportation of passengers and their baggage by taxicab between points in the city of Lexington and Dawson County and between points in the city of Lexington and Dawson County on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTION: The transportation of railroad train crews and their baggage is not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application No. B-1543 be and it is hereby granted as provided herein and that a Certificate of Public Convenience and Necessity shall be issued to James Santana dba Lexington Taxi Cab

Application No. B-1543

Page 7

authorizing the operations as set forth in our opinions and findings.

IT IS FURTHER ORDERED that the applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until the applicant has fully complied within a reasonable time from the effective date of this Order, with Neb. Rev. Stat. § 75-305 (fees), 75-307 (insurance), and 75-308 (rates), and with the rules and regulations of the Commission; and if upon the expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to the 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 in Lincoln, Nebraska this 3rd day of April, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

James E. Dandis
Aune C. Boyle
Robert J. Johnson

//s//Frank E. Dandis
 //s//Daniel G. Urwiller

Frank E. Dandis
 Chairman

ATTEST:

John L. Latham
 Deputy Director

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION
