

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application)	APPLICATION NO. B-1554
of DJW, Inc., d/b/a Luxury)	SUPPLEMENT 4
Limousine, Syracuse, seeking)	
authority for the transportation)	
of passengers as a limousine)	GRANTED
service between points in)	
Lancaster County and between)	
points within such county on the)	
one hand and, on the other hand,)	
points in Nebraska over)	
irregular routes.)	ENTERED: JANUARY 31, 2006

APPEARANCES:

For the Applicant:

Gerald M. Stilmock
370 Fifth Street, P.O. Box 186
Syracuse, NE 68446

For the Protestants, A-1 Limousine, LLC, VIP Limousine, LLC and
Alford Oil Company d/b/a Omaha Limousine:

Jack Shultz
800 Lincoln Square
121 South 13th Street
Lincoln, NE 68508

For the Commission:

Mark Breiner
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

B A C K G R O U N D

On June 3, 2005, an application was filed with the Public Service Commission (Commission) by DJW Inc., d/b/a Luxury Limousine Service (Applicant) seeking to extend its existing authority as a passenger carrier to operate as a common carrier in limousine service by luxury or stretch limousine between points in Lancaster County and between points within said county on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTIONS: Transportation of railroad train crews and their baggage is not authorized. The governmentally financed transportation of clients of the Nebraska Department of Health and Human Services, such as, but

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1554 Supplement 4

2

not limited to, FHC Option Partners and Curtis and Associates, and or other persons in capacity as such clients and or persons in the custody of the Nebraska Department of Corrections, in capacity as such clients and or persons in custody, is not authorized.

Notice of the above-captioned application was published in The Daily Record on June 6, 2005 pursuant to the rules and regulations of the Commission. Protests were timely filed by VIP Limousine, A-1 Limousine and Omaha Limousine (Protestant) and Yellow Cab and Limo, Inc. Yellow Cab and Limo, Inc. subsequently withdrew its protest on July 15, 2005.

A planning conference was held on September 15, 2005 and a planning conference order and notice of hearing was issued by the Hearing Officer on September 21, 2005. A hearing was held on December 7, 2005 with appearances as shown above.

PROCEDUREAL ISSUES

During the hearing, Mr. Stilmock objected to the witnesses offered by the Protestant on the grounds that the Applicant had not received a witness list from the Protestant as required by the Planning Conference order issued by the Hearing Officer on September 21, 2005. The Hearing Officer reserved ruling on the objection and allowed direct testimony to be entered by the Protestant's witnesses.

At the close of each Protestant witness direct testimony, Mr. Stilmock renewed his objection and moved that the testimony be struck from the record. The Hearing Officer duly noted the objection and motion to strike, and reserved ruling on the motion.

Mr. Schulz offered a letter, Exhibit No. 44 in response to Mr. Stilmock's objection. The Hearing Officer reserved ruling on the admission of Exhibit No. 44.

Upon consideration, we find that Exhibit No. 44 offered by the Protestant should be admitted into evidence and given due weight by the Commission.

A hearing officer order was issued on December 12, 2005 overruling Applicant's objection and motion to strike and initially allowing the Applicant an opportunity to cross-examine the Protestant witnesses. Both the Applicant and the Protestant submitted pleadings on the issue of cross-examination to the Hearing Officer. Upon further consideration, a hearing officer

order dated January 3, 2006 was issued vacating the portion of the previous order allowing cross-examination.

E V I D E N C E

In support of the application, Applicant presented 14 witnesses, including Mr. Dave Mannering, Mr. Jason Moser, Ms. Lea Kinnison, Mr. Charles Lien, Mr. Scott Bolz, Mr. Seth Amen, Ms. Peggy Kapeller, Ms. Carolyn Hoy, Mr. Wayne Roberts, Ms. Amber Warren, Mr. Wayne Lee, Ms. Whitney Hoelsing, Mr. Kurt Verkamp, and Mr. Greg Wymore.

The witnesses with the exception of Mr. Wymore, testified to their experiences attempting to contract for service with one of the Protestant's companies or their experiences with the Protestant's companies they had hired for certain events. Mr. Moser, Ms. Kinnison, Mr. Bolz, Mr. Aman, Ms. Hoyd, and Mr. Verkamp all testified that they had been unable to procure the desired limousine service from the Protestant for their events within Lancaster County. Ms. Kinnison, testified that the size and type of limousine she wanted had not been available, although larger vehicles had been offered. On cross examination by Mr. Schulz, Ms. Kinnison also admitted that she had contacted Limousine companies in Omaha with authority to operate in Lincoln but had declined the contract for service because the price was, in her opinion, prohibitive. Mr. Bolz, Mr. Aman, and Ms. Hoyd also testified that they had declined to rent the services of larger more expensive vehicle that had been available on the date and time of their event.

Mr. Moser and Mr. Verkamp testified that no vehicle of any size or price had been available when they inquired concerning service from the Protestant's companies. Upon cross-examination by Mr. Schulz, Mr. Moser stated that he had attempted to procure limousine service from the Protestant companies two to three weeks before the event. Mr. Verkamp testified on direct and cross-examination that he had called a week to ten days before his son's prom night to procure a limousine. Upon questioning by Commissioner Landis, Mr. Verkamp admitted he knew that prom season was a busy time of year for limousine services and early reservations would more likely result in limousine service being available.

Ms. Kappellar testified that the only vehicle available for her son's senior prom was over \$1,000 to reserve, which in her opinion was excessive. Mr. Mannering, Ms. Kinnison, and Mr. Roberts testified to a lack of customer service from the Protestant's companies, namely not returning phone call inquiries in a timely manner. They testified to making numerous

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1554 Supplement 4

4

calls and leaving repeated messages and not having their calls returned for days or weeks. Mr. Moser, Ms. Kinnison, Mr. Bolz, Mr. Aman, Ms. Kappellar, and Ms. Hoyd, did not end up using Limousine service for their events.

Mr. Doug Wymore testified last for the Applicant. Mr. Wymore is the president, part owner and operator of DJW, Inc., d/b/a Luxury Limousine Service. Mr. Wymore's wife owns the remaining shares of the company. Currently, Luxury Limousine Service has authority to operate a limousine service in Otoe, Cass, Johnson, Nemaha, Richardson, Gage, Pawnee, Jefferson, Thayer, Fillmore, Saline, York, and Seward counties. He is seeking to extend his authority granted in Certificate Number B-1554 to include Lancaster County.

Mr. Wymore testified that he employs 21 part-time drivers and maintains workman's compensation coverage for all of his employees. Luxury Limousine Service operates three vehicles, Mr. Wymore testified, including two 14 passenger limousines and a 10 passenger limousine. All of Mr. Wymore's drivers dress in tuxedos unless specifically requested not to by the customer.

If he were to be granted authority in Lancaster County, Mr. Wymore indicated he would consider housing a vehicle in the Lincoln area and expanding his fleet of vehicles as demand required. He also explained that he was currently looking into potential storage space in Lincoln in anticipation of receiving expanded authority from the Commission. Mr. Wymore also testified that he felt he could provide appropriate service out of Syracuse and was prepared to operate out of Syracuse at least at the beginning.

Mr. Wymore indicated that he answered the phone line connected with his limousine business personally and stated he returns calls the same day or the next business day. He testified that his philosophy on conducting business included a commitment to customer service and satisfaction.

Mr. Wymore testified that he calculates time charged to the customer from the point of customer pick-up to drop-off, instead of from the time the vehicle leaves the garage and returns to the garage, or portal to portal. Mr. Wymore then charges a flat rate for fuel for each job more than 30 miles from Syracuse.

Mr. Wymore offered the financial statements of Luxury Limousine Company to demonstrate to the Commission that he possesses financial fitness to operate effectively with the proposed expanded authority. He also submitted statements

indicating that he has the capability to borrow additional capital if necessary to expand his business to accommodate the new authority.

Mr. Wymore testified that he had received somewhere between 250 to 300 phone calls in 2005 from customers with events within Lancaster County inquiring as to the availability of his service. On cross-examination by Mr. Schulz, Mr. Wymore stated that he advertised in the Lincoln telephone book since the Lincoln phonebook also listed towns and counties he had authority to serve. Upon redirect, Mr. Wymore also stated that his business had increased in the past five and one-half years and the increase in phone calls from Lincoln and Lancaster County area were also due to word of mouth referrals from customers.

Upon questioning by Commissioner Landis, Mr. Wymore agreed that there were peak times for limousine service including June, during wedding season and during high school prom season. Mr. Wymore said that there had been occasion when his limousine service had not been able to provide all the service requested during these peak times.

During questioning by Commissioner Landis, Mr. Wymore also testified that he was maintaining an informal list of potential clients waiting for service if he should be granted authority by the Commission to operate in Lancaster County. He further stated that no contract had been signed with these clients and no deposit accepted. Commissioner Landis expressed concern with Mr. Wymore or any company maintaining a conditional customer list while in the process of applying for authority with the Commission.

Protestant called two witnesses, Mr. William Alford, owner of A-1 Limousine, LLC, VIP Limousine, LLC, and Alford Oil Company d/b/a Omaha Limousine, and Mr. Dennis Wagner, manager of Alford Oil Company d/b/a Omaha Limousine and VIP Limousine, LLC. Mr. Alford testified that his three Limousine companies provide service in Lancaster County. Mr. Alford offered financial statements showing the assets of his businesses and lists of vehicles serving Lancaster County. He indicated that he has 30 vehicles on the limousine side of his operations of various sizes and employs 80 drivers as well as other miscellaneous personnel. Mr. Alford also stated that none of his businesses were being operated at capacity and that he had been forced for financial reasons to reduce his fleet of limousines to insure the profitability of each vehicle based on demand. According to Mr. Alford, his limousine businesses lost money in 2004 and were not showing a profit in 2005.

Mr. Alford testified that his limousine businesses currently faced competition in the Lincoln market from other limousine companies doing business in Lancaster County. Further, he testified that the Lincoln, Lancaster County market could not, in his opinion, support another Limousine service. Mr. Alford indicated that he may have to close his Lincoln based businesses if they lost any more money.

Mr. Dennis Wagner testified lastly for the Protestant. Mr. Wagner indicated that he was employed by the Protestant and was the dispatch manager for the Lincoln portion of the Protestant's business. Mr. Wagner testified that he had worked in the Limousine business in the Lincoln area for around ten years. Mr. Wagner testified concerning the required profit per vehicle to make a limousine service profitable and discussed various rate schemes and services available from the Protestant companies.

Various members of the public also offered comments on the record during the hearing concerning the proposed authority and the Protestant's service.

O P I N I O N S 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. § 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 if 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).

The statute sets out a two-part test the Commission must apply. First, the Commission must determine if an applicant is "fit, willing, and able." Upon consideration of the evidence adduced at the hearing, the Commission is of the opinion that the applicant has met the fitness test of § 75-311. The applicant presented credible evidence as to both the fitness of

his character, financial fitness and fitness of his business acumen.

Next, the Commission will consider whether the proposed service is or will be required by the present or future public convenience and necessity. The traditional analysis for determining "need and necessity" was set forth by the Supreme Court in its May 8, 1998 ruling,

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 Nebraskaland Leasing & Assocs., 254 Neb. 583, 591 (1998).

The issue of whether an applicant has met its burden of demonstrating that the proposed service is consistent with public convenience and necessity is ordinarily a factual issue. *Id.* Upon the evidence adduced, we find that the applicant has demonstrated that a need exists which has not been met nor cannot be adequately met by existing carriers. The testimony indicates customers have frequently been unable to contract for the services of a limousine to meet their needs. There is also evidence of insufficient and unsatisfactory customer service from providers with current authority to conduct business in Lancaster County. Therefore, we find that the Applicant's business will serve a useful purpose responsive to customer demand or need.

Secondly, the Commission must consider whether this purpose can or will be served as well by an existing carrier. The evidence at the hearing included testimony from several witnesses throughout the proposed service territory who could not find adequate limousine service. The Commission does not find the Protestant testimony persuasive concerning its ability to meet the existing and future need demonstrated by the Applicant. Finally, in our opinion the Applicant's service will not endanger or impair the operations of existing limousine carriers including the Protestant. Evidence and testimony

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1554 Supplement 4

8

indicates that the Lincoln and Lancaster area market is growing and expanding enabling the market to support more competitive enterprises in this area. Accordingly, we find that the Applicant is fit, willing, and able and has met the need and necessity test of Nebraska statutes. The Commission, therefore, finds that the application should be granted.

SERVICE AND TERRITORY AUTHORIZED

Transportation of passengers as a common carrier in limousine service by luxury or stretch limousine between points in Lancaster County and between points within said county on the one hand, and, on the other hand, points in Nebraska over irregular routes. RESTRICTIONS: Transportation of railroad train crews and their baggage is not authorized. The governmentally financed transportation of clients of the Nebraska Department of Health and Human Services, such as, but not limited to, FHC Option Partners and Curtis and Associates, and or other persons in capacity as such clients and or persons in the custody of the Nebraska Department of Corrections, in capacity as such clients and or persons in custody, is not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1554, Supplement 4, be and is hereby, granted.

IT IS FURTHER ORDERED that upon compliance with the terms and conditions set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to DJW, Inc., d/b/a Luxury Limousine Service, Syracuse, Nebraska, in Application No. B-1554, Supplement 4 authorizing the operations set forth in the foregoing findings.

IT IS FURTHER ORDERED that Applicant shall not be issued the Certificate of Public Convenience and Necessity authorized by the Commission unless and until 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) (Reissue 2003), and with the rules and regulations of the Commission, and if upon expiration of such time applicant has not complied with such terms and conditions, this Order shall, after reasonable notice to Applicant, be of no further force and effect.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

Application No. B-1554 Supplement 4

9

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 operations authorized herein 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 on this 31st day of January, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

David May
Anne C. Boyle
Lowell C. Johnson

//s// Lowell C. Johnson
//s// Frank E. Landis

Lowell C. Johnson
Chairman

ATTEST:

And J. Pollack
Executive Director