

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the ) APPLICATION NO. B-1561  
Application of Extreme )  
Limousine, Inc., Omaha, )  
seeking authority as a common )  
carrier in Nebraska intrastate )  
commerce to provide limousine )  
service between points in )  
Douglas, Sarpy, Washington, )  
Dodge, Lancaster Cass and )  
Saunders counties, and between )  
points in said counties on the ) GRANTED  
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. The )  
transportation of clients for )  
the Nebraska Department of )  
Health and Human Services or )  
subcontractors thereof is not )  
authorized. ) ENTERED: October 30, 2001

APPEARANCES:

For the Applicant:  
Geoffrey C. Hall  
P.O. Box 216  
Blair, NE 68008

For the Protestant:  
Marshall D. Becker  
7901 Wakeley Plaza  
Omaha, NE 68114

For the Commission staff:  
Laura Davenport  
300 The Atrium  
1200 N Street  
Lincoln,  
NE 68509

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BY THE COMMISSION:

By application filed April 30, 2001, Charles J. Graeve, II, owner of Extreme Limousine, Inc., hereinafter referred to as applicant, seeks a Certificate of Public Convenience and Necessity to operate as a common carrier of passengers by motor vehicle as follows:

AUTHORITY SOUGHT

Transportation of passengers by limousine between points in Douglas, Sarpy, Washington, Dodge, Lancaster Cass and Saunders counties, and between points in said counties 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. The transportation of clients for the Nebraska Department of Health and Human Services or subcontractors thereof is not authorized.

Notice of this application appeared in The Daily Record, Omaha, Nebraska, on May 2, 2001. A protest to this application was filed on May 17, 2001, by Old Market Limousine Service and Accent Limousine Service, hereinafter referred to as protestants. A hearing on this application was held on August 31, 2001, in the Commission Library, with appearances as shown above.

E V I D E N C E

In support of his application, the applicant presented three witnesses who testified as follows:

Charles Graeve, II, testified that he is a principal in Extreme Limousine, Inc. He testified that he has purchased a 1998 Lincoln Navigator and had it modified to a stretch limousine. He testified that the vehicle would seat up to 18 people. He testified that he has obtained insurance in the amount of \$5 million dollars on the vehicle.

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Mr. Graeve testified as to Exhibit 7, which sets forth population trends in Douglas, Lancaster, Sarpy, Dodge, Cass, Saunders and Washington Counties. Exhibit 7 was received into evidence. Mr. Graeve testified that convention centers are being built in Omaha and Council Bluffs, that more events will be taking place because of the new facilities, and that as a result, more transportation services will be needed.

Mr. Graeve also presented evidence of long-term transportation needs in the Omaha metropolitan area (Exhibit 8), which was received into evidence. He presented a MAPA (Metropolitan Area Planning Agency) study indicating significant population growth in Sarpy and Douglas Counties over the next 25 years, and he testified that he believes that growth will facilitate the need for additional limousine service.

Mr. Graeve also presented several affidavits signed by individuals regarding their opinion as to need for additional limousine service and citing specific instances when they attempted to obtain a limousine service and were unsuccessful or when they needed a larger vehicle than was available. Mr. Graeve also presented several letters of support from business entities that have indicated they would be interested in using the limousine services of his company. Mr. Graeve indicated that because of the 18-passenger capacity of his vehicle, he will be able to serve larger parties that often require two smaller limousines.

Mr. Graeve testified that he and Mr. John Grund, his business partner, will drive the vehicle. He testified that he advertises in the yellow pages and that he will pursue personal contacts with various businesses so that they may call him when their customers desire a limousine.

On cross-examination, Mr. Graeve testified that the vehicle has been certified by the manufacturer and that it meets all of the National Highway Traffic and Safety Administration (NHTSA) safety standards.

Upon questioning by Commissioner Landis, Mr. Graeve testified that he and his business partner have obtained CDL licenses, which are required to operate the vehicle.

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John Grund testified second for the applicant. Mr. Grund is Mr. Graeve's business partner in Extreme Limousine, Inc. Mr. Grund testified that he will be actively involved in the business of Extreme Limousine. He testified that he is self-employed and that his schedule will be flexible and can accommodate daytime limousine transports. He testified that in his opinion, there is a need for larger vehicles to transport large wedding parties.

Kirk Crook testified next for the applicant. Mr. Crook testified that he lives in Chicago, Illinois, and that he frequently travels to Omaha, Nebraska for business and for pleasure. He testified that he has unsuccessfully attempted to hire a limousine in Omaha in the past. He testified that on February 15, 2000, he hired a limousine for the evening. He testified that the limousine arrived a couple of hours late, and did not wait for the party as instructed. Mr. Crook testified that on May 4, 2001, he called a limousine company reserved a limousine for later the same day. He testified that no car was available from that company, and that the company did not provide satisfactory customer service. He testified that on May 18, 2001, a representative of the hotel where he was staying attempted to reserve a limousine for him, and that again, Mr. Crook was unable to obtain a limousine.

Ms. Jodi Jones testified on behalf of protestant Old Market Limousine Service. Ms. Jones testified that she is Vice President of the company. Ms. Jones testified that Old Market has six, eight and ten passenger limousines. She testified that the proposed limousine service would interfere with the business she has with eight and ten passenger trips. She testified that if she found that a need for a larger vehicle in fact existed, she would consider purchasing a larger vehicle.

On cross-examination, Ms. Jones testified that there is a need for same day and next day limousine service, as documented by Exhibit 9, which is a record of requests for same day and next day service from July 6, 2001 to August 27, 2001.

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

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, to the extent to be authorized by the certificate, whether regular or irregular, is or will be required by present or future public convenience and necessity. Otherwise the application shall be denied.

In other words, the Commission must apply a two-part test. First, the Commission must determine if an applicant is "fit, willing and able." Upon consideration of the evidence adduced at the hearing, 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, financial fitness and fitness of his business acumen. He presented knowledge of the area, the industry, and Commission requirements.

We therefore turn to the issue of whether the proposed service is or will be required by the present or future public convenience and necessity. The traditional analysis for determining public convenience and necessity was set forth by the Nebraska 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

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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. Based upon the evidence adduced, we find that the applicant has demonstrated that a need exists which has not been met nor can be adequately met by existing carriers. In particular, a need for transportation for larger parties by limousine is currently unmet.

Second, the applicant has demonstrated that this purpose cannot be served as well by existing carriers. The evidence at the hearing included testimony from parties throughout the proposed service territory that could not find adequate limousine providers, in particular, parties cannot find limousines to carry larger parties. The Commission finds further that the protestant failed to present sufficient evidence that the protestant can meet the need that was demonstrated to exist by the applicant. Nor do we find that the applicant's service will endanger or impair the operations of existing carriers, including the protestant. The applicant's business plan includes that the applicant will seek additional business in areas in which the protestant has not sought business, namely, by making personal contacts with businesses to provide transportation for their customers.

Accordingly, we must find that the applicant is fit, willing, and able and has met the public convenience and necessity test of Nebraska law. The Commission, therefore, finds that the application should be granted.

These opinions and findings carry no precedential value other than establishing minimum standards and criteria to apply when considering applications to provide transportation service for hire in the above-mentioned territories. All carriers seeking such a certificate must demonstrate that they meet, at a minimum, the standards and criteria set forth herein.

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CERTIFICATE AUTHORIZED

SERVICE AND TERRITORY AUTHORIZED:

Transportation of passengers by limousine between points in Douglas, Sarpy, Washington, Dodge, Lancaster Cass and Saunders counties, and between points in said counties 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. The transportation of clients for the Nebraska Department of Health and Human Services or subcontractors thereof is not authorized.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1561 be, and is hereby, granted; and that upon compliance with the terms and conditions as set forth in this Order, a Certificate of Public Convenience and Necessity shall be issued to Extreme Limousine, Inc., authorizing operations as set forth in the foregoing 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 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.

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 reasonable continuous and adequate service to the public pursuant to the authority authorized.

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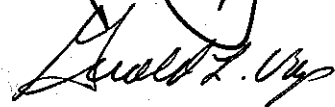
IT IS FURTHER ORDERED that the Certificate of Public Convenience and Necessity authorized shall be subject to the terms, conditions, and limitations which have been, or may hereafter be, prescribed by the Commission.

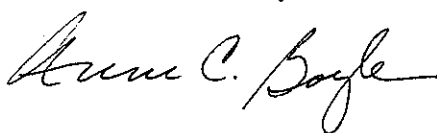
MADE AND ENTERED at Lincoln, Nebraska, this 30<sup>th</sup> day of October, 2001.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

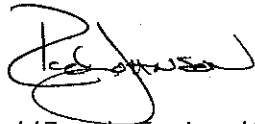
   
Chairman





ATTEST:

  
Executive Director



//s//Frank E. Landis