

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application No. B-1581
of Servant Cab Company, LLC, dba)
Yellow Cab Company & Capital Cab) ORDER DENYING MOTION FOR
Company, Lincoln, seeking an) REHEARING
interpretation of carrier)
authority.) Entered: April 1, 2003

APPEARANCES:

For the Applicant:
Jack Shultz
121 S. 13th Street, #800
Lincoln, NE 68501

For the Protestant:
John Boehm
811 S. 13th Street
Lincoln, NE 68508

For the Commission:
Laura Davenport
300 The Atrium
1200 N Street
Lincoln, NE 68508

BY THE COMMISSION:

This matter comes before the Commission upon a Motion for Reconsideration and/or Reconsideration filed by Protestant R&F Hobbies, Inc., dba Prince of the Road. Said Motion was filed following the Commission's decision to grant as modified the above-referenced application by order entered January 7, 2003. An oral argument was held in the Commission Hearing Room on March 11, 2003, at 1:00 p.m. Mr. John Boehm and Mr. Jack Shultz entered appearances on behalf of the clients as shown above.

On behalf of the moving party, Mr. Boehm argued that the Commission's order of January 7, 2003 in Application B-1581 should be reversed. Mr. Boehm stated that Prince of the Road does not object to Servant Cab transporting passengers within a 25-mile radius of Lincoln, nor does Prince of the Road object to transportation of passengers from Lincoln and points within a 25-mile radius on the one hand, and on the other hand, points in Nebraska over irregular routes. Prince of the Road's objects to the Commission's interpretation in that it allows Servant Cab to transport clients of the Nebraska Department of Health and Human Services (NDHHS) for trips originating in Lincoln and a 25-mile radius thereof to points elsewhere in Nebraska.

Mr. Boehm argued that this Commission, in Rule and Regulation No. 148, determined that a Health and Human Services (HHS) designation is required for a carrier to provide service to clients of NDHHS. Mr. Boehm stated that Rule and Regulation No. 148 provides that the applicant must demonstrate a need for service to NDHHS clients in the proposed service area, separate and apart from the need demonstrated on the underlying certificate of authority. He argued that at hearing, Servant Cab did not prove that a need for service to NDHHS clients existed. He argued that of the approximately 190 trips shown in Servant Cab's Exhibit 6 which details trips provided from March 24, 2002 to September 6, 2002, only a few of those trips were for NDHHS clients. He further argued that no representative of NDHHS testified regarding need for transportation services. He argued that the Commission's ruling in this proceeding disregards its order in Rule and Regulation 148.

Mr. Boehm requested that the Commission restrict Servant Cab from offering service to NDHHS clients for trips between points within 25-mile radius of Lincoln and points in Nebraska. Alternatively, Mr. Boehm requested that at the very least, Servant Cab be allowed to serve NDHHS clients outside of a 25-mile radius of Lincoln only in an emergency situation.

Mr. Shultz, on behalf of Servant Cab, argued that the purpose of the proceeding in Application B-1581 was to interpret use of the term "vicinity" in Servant Cab's authority. Mr. Shultz argued that requiring an HHS designation in this case is not appropriate, because then the Commission would have to shut down all carriers transporting clients of NDHHS. Mr. Shultz argued that the evidence introduced was not tailored toward obtaining an HHS designation, but rather, was intended to assist the Commission in interpreting Servant Cab's current authority. Mr. Shultz argued that Servant Cab and its predecessor have been carrying HHS traffic for many years.

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

The Commission has allowed carriers that served NDHHS clients prior to the passage of Rule and Regulation 148 to continue to serve NDHHS clients after the rule took effect. The Commission anticipates that it will initiate a proceeding at a later date to require all carriers that serve NDHHS clients to show at some level that they are satisfying a need that exists for their service, and to determine whether to add either a HHS designation or restriction to each such carrier's authority.

Although the entity now known as Servant Cab was not in existence when Rule and Regulation No. 148 was adopted, its predecessor entity was certificated and in operation at that time. The Commission transferred the predecessor entity's certificate to Servant Cab effective April 4, 2002. Thus, the Commission's finding regarding Servant Cab is consistent with

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its policy regarding carriers in operation prior to the passage of Rule and Regulation No. 148.

Upon consideration of the arguments presented by all parties, the Commission finds that the Motion for Rehearing and/or Reconsideration filed by the Protestant should be denied. The Commission finds that the evidence presented in the applicant's underlying case supports its decision to grant the application as provided in the Commission's order of January 7, 2003.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that the Motion for Rehearing and/or Reconsideration filed by R&F Hobbies, Inc., dba Prince of the Road shall be and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska this 1st day of April, 2003.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Lowell Johnson

//s//Rod Johnson
//s//Frank E. Landis
//s//Gerald L. Vap

Gerald L. Vap
Vice Chair

ATTEST:

For Pollner
Executive Director

COMMISSIONERS DISSENTING:

//s//Anne C. Boyle

DISSENT, Anne C. Boyle

I respectfully dissent. The motion for reconsideration should be granted, and Servant Cab should be restricted from providing service to clients of NDHHS for trips between points within 25-mile radius of Lincoln and points in Nebraska, except on an emergency basis.

Servant Cab did not sufficiently demonstrate that its authority reading "Lincoln and vicinity" should be interpreted to allow it to transport clients of NDHHS. Although the Commission did not affirmatively grant Servant Cab an HHS designation, Servant Cab's authority was not restricted from carrying NDHHS clients. Based upon the evidence at hearing, Servant Cab has taken very few trips between points within 25-mile radius of Lincoln and points in Nebraska for NDHHS clients. Ms. Donna Corey, Servant Cab's manager and part owner, was

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unable to testify as to exactly how many trips recorded in Exhibit 6 were for NDHHS clients outside of a 35-mile radius of Lincoln (Tr. 42:14 - 44:22). She testified that Servant provided transportation for one particular juvenile from Lincoln to Minden, but provided no additional evidence that Servant Cab has been transporting NDHHS clients outside of a 35-mile, or even a 25-mile, radius of Lincoln. Transportation for one individual alone is insufficient evidence to justify an interpretation of Servant Cab's authority that would allow it to transport NDHHS clients between points within 25-mile radius of Lincoln and points in Nebraska.

For these reasons, I respectfully dissent.