

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) APPLICATION NO. B-1672
of James Leon Dickinson dba Your) SUPPLEMENT 1
Own Limousine, Lincoln,)
Nebraska, seeking authority (to)
transport passengers by and)
their baggage by limousine)
between points in Lancaster,)
Seward and Platte counties, and) DENIED
between points in said counties,)
on the one hand, and, on the)
other hand, points in Nebraska)
over irregular routes.)
)
)
) ENTERED: AUGUST 15, 2006
)

APPEARANCES:

For the Applicant:

Kurt Leffler
5635 O Street, Suite 101
Lincoln, NE 68501

For the Protestants VIP
Limousine, Omaha Limousine,
A-1 Limousine
Services, Inc.:

William Alford, pro se
6215 Grover St.
Omaha, NE 68106

For the Commission Staff:

Mark Breiner
300 The Atrium
1200 N Street
P.O. Box 94927
Lincoln, NE 68509

BY THE COMMISSION:

B A C K G R O U N D

By application filed November 5, 2005, James Leon Dickinson dba Your Own Limousine, Lincoln, Nebraska seeks to extend its authority as a common carrier of passengers in Nebraska intrastate commerce by proposing transportation of passengers and their baggage in limousine service Lancaster, Seward and Platter counties, and between points in said counties, on the one hand, and, on the other hand, points in

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Nebraska over irregular routes. Notice of the application was published in The Daily Record, Omaha, Nebraska, on November 5, 2005. Protests to the application were filed by VIP Limousine, Omaha Limousine, and A-1 Transportation on November 16, 2005; and by Prince of the Road on November 23, 2005. The protest of Prince of the Road was withdrawn on April 18, 2006.

A hearing on the application was held on June 28, 2006, with appearances listed above.

E V I D E N C E

APPLICANT'S EVIDENCE

After an opening statement by counsel, the first witness called by the applicant was Bill Markham. Mr. Markham is a resident of Lancaster County. He testified that he attempted to secure limousine transportation service on two occasions in the recent past and was unable to receive service. He stated that calls were not returned by VIP Limousine.

Upon examination by Commissioner Landis, Mr. Markham stated that the services he attempted to secure were for the night of the day that he called. Upon examination by Mr. Breiner, Mr. Markham stated that the services requested were both for weekend service.

The next witness for the applicant was Danielle Burback. She told the Commission about an incident that involved limousine service provided by VIP Limousine for her wedding in the summer of 2005. The limousine showed up for the wedding transportation without air conditioning on a very hot day. VIP offered to replace the limousine, but that offer was turned down due to time constraints. VIP Limousine did offer a reduced fare, but Ms. Burback was very disappointed in the service.

Gayle Schmidt was next called by the applicant. Ms. Schmidt is a former employee of VIP Limousine. Her employment ended in September of 2005. She testified as to mechanical difficulties that VIP experienced while she was employed there. She said that VIP did not have their own mechanics at that time, and that sometimes limousines were send out with mechanical problems such as no air conditioning. She also testified that she worked in the dispatch area. She told the Commission that there were occasions that VIP did not have any limousines of a particular size available and that VIP would try to negotiate the customer into a different sized vehicle.

Ms. Schmidt also stated that her work in the dispatch area included handling calls from an area that covered most of eastern Nebraska for VIP. She stated that Lancaster County needed a limousine provider that was more attuned to Lincoln.

On examination by Commissioner Landis, Ms. Schmidt stated that VIP did receive calls from Platte and Seward counties and that those calls were handled by VIP. On examination by Mr. Breiner, Ms. Schmidt said that VIP would keep vehicles in Lincoln as needed. She also stated that she had no opinion regarding need for limousine service in Platte or Seward counties.

Doug Rader was the next witness called by the applicant. Mr. Rader told the Commission that he attempted to secure limousine transportation on three occasions. On May 6, 2006, he attempted to secure a limousine to be driven to a concert in Omaha. He was informed by VIP that they did have a limousine of the size requested, but that it was a NASCAR-decaled limousine. Mr. Rader said that this limousine was not acceptable and declined to take it for the service.

Mr. Rader also tried to get limousine service twice in December. The first time he tried to get service for a Christmas lights tour, but was told by VIP that they did not have any vehicles available for that evening. He then tried the next week on December 26 or 27 to get a limousine for New Year's Eve. He was informed by VIP that there were no limousines available for New Year's Eve.

Mr. Michael Keene testified next for the applicant. He stated that he has known the applicant his business contacts, and that Mr. Dickinson is a good businessman and a great mechanic.

The next witness called by the applicant was Scott Nun. Mr. Nun was a former employee of VIP until July of 2005. He testified that VIP experienced maintenance difficulties. He said that he quite often had to drive limousines that had mechanical shortcomings such as lights and stereos not working, air conditioning not working and that the car was in a dirty condition. He stated that there were occasions that the limousine would have mechanical difficulties and he would not be able to get a replacement vehicle due to the unavailability of such vehicles. He also stated that there were times he could get a replacement vehicle.

Mr. Nun was asked by counsel for the applicant if Lincoln needed additional limousine service. He responded that he

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believed that Lincoln did need a service that was more targeted at Lincoln.

On examination by Commissioner Landis, Mr. Nun stated that he did not know how many limousine authorities existed for Lancaster County. He also stated that he did not know the current status of VIP regarding mechanical issues.

The applicant was next called to testify. Mr. Dickinson reviewed some of his background as the owner of Your Own Limousine and his training and experience as a mechanic. He testified that he had a 1991 Lincoln Towncar that came with the authority that he purchased in 2005, and has since added a 1998 14 passenger Lincoln. He stated that they are in excellent condition, and that he does the maintenance on the vehicles himself. His service currently has one full-time driver and several back-up drivers as well as himself.

His future plans include plans to purchase two additional vehicles if he is granted this authority. His longer range goal is to have four to five limousines in Lincoln and one or two in Grand Island.

Mr. Dickinson testified that he believed that there was a need for additional limousine service in that areas sought due to calls that he receives on his phone requesting service as well as friends comments to him. He receives around six calls per day inquiring about service in Lancaster County. He receives requests for business cards from his trips into Lincoln from Grand Island. He tries to refer all individuals that call hi to providers currently operating in Lincoln.

Mr. Dickinson stated he also receives six to eight calls a month inquiring about limousine service from Seward County. He has been informed by friends and relatives from the Columbus area that there is no service that is currently located in Columbus.

Protestant's Evidence

William Alford, appearing pro se, testified that he is the president and owner of VIP Limousine, A-1 Limousine and Omaha Limousine.

Mr. Alford stated that his companies currently operate twenty-eight limousines of all types, with twelve to fourteen usually kept in Lincoln. His companies transport people primarily in Omaha and Lincoln, but have also provided service

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in Seward, Kearney and Hastings. His companies employ seventy-eight people in Omaha, Lincoln and Kearney.

Mr. Alford stated the he now employs three full-time mechanics. He spends around \$10,000 per month on maintenance of the fleet. He ha also employed detailers on Saturday nights to help with cleanliness issues.

Further testimony was received regarding improvements that the protestants have made to improve their service. They have extended their hours and are looking to add GPS to the fleet to help better monitor its movements. They are also looking at adding VoIP in their limousines.

The protestants have also incurred increased expenses. The insurance for the protestant has increased 300% in the recent past.

Mr. Alford stated that his records indicate that they had other limousines available other than the NASCAR limo on the night of May 6 that may have been used by Mr. Rader. Mr. Alford also stated that December is very busy for his companies.

Mr. Alford stated that his company is currently underutilized. National statistics indicate that limousines should bring in about \$7,000 per limousine per month, while his limousines are currently operating at around \$5,000 per month. Mr. Alford stated that this indicates that the vehicles are underutilized and that they can handle increased business. He further stated that he cannot recall not being able to take care of a customer with either an alternate vehicle or by renting another vehicle on a temporary basis.

Mr. Alford also stated a concern regarding the impact of Luxury Limousine on his business. Luxury was granted authority in Lancaster County in January of 2006. Mr. Alford stated that he does not know what the impact of their operation will be on his bottom line.

Mr. Alford stated to the Commission that he is desirous of additional business, has added to his fleet on a temporary basis when necessary, and will add vehicles to the fleet when necessary. He asked that the Commission find that there is no need for further service in the proposed areas.

On examination by Commissioner Landis, Mr. Alford reiterated that his companies station between twelve and fourteen vehicles in Lincoln, but that they do not have any stationed in Platte County of Seward.

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On examination by Mr. Leffler, Mr. Alford stated that they did receive calls from Platter County, and that those calls would be filled by limousines stationed in Lincoln.

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

In this particular case, Applicant is seeking to extend its authority so that it may transport passengers by limousine as a common carrier between points in Lancaster County, Seward County and Platter County and points in Nebraska over irregular routes. Applicant is currently certificated in seven counties in central Nebraska.

Applications for common carrier authority are governed by Neb. Rev. Stat. § 75-311 (2000), which provides,

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 to properly 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 should 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." In this matter, the evidence is that the applicant is fit, willing and able to provide the proposed service. Mr. Dickinson was approved for the transfer of the authority he currently holds, and no evidence was presented to indicate that there are any problems or issues involving Mr. Dickinson. Based on the evidence before us and adduced from the record in the instant case, we find that the applicant has met the fitness test of Neb. Rev. Stat. Section 75-311.

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 "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

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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.* Given the record before us, we find that the applicant has not demonstrated a sufficient level of need and necessity to support a grant of the application.

The applicant presented six witnesses in addition to the testimony of the applicant. One of the witnesses testified regarding the fitness of Mr. Dickinson. One witness, Ms. Burback, testified as to a failure in the service of VIP Limousine on her wedding day. Two other witnesses testified as to events regarding limousine availability and mechanical problems experienced by VIP Limousine. Their testimony, however, was all dated to at least one year ago, and is of little probative value for the issues considered here by the Commission.

The two witnesses presented by the applicant regarding need were Mr. Markham and Mr. Rader. Mr. Markham testified that he failed to book a limousine through VIP on two different occasions, but admitted that both were for weekend services and were requested on the day of the service desired.

Mr. Rader testified that he attempted to secure the services of VIP Limousine on three occasions. The first occasion was on May 6, 2006, to be transported to Omaha that night for a concert. Mr. Alford testified that his records indicated that VIP Limousine did have other vehicles available the night of May 6 that was not the NASCAR limousine. A second time was to try to arrange a ride for a Christmas lights tour that night, and a third was on December 26 or 27 to secure a limousine for New Year's Eve. Mr. Alford testified that December is a very busy time for his companies.

The evidence presented for service in Seward and Platte counties consisted solely of the testimony of the applicant.

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Mr. Dickinson stated that he receives approximately six calls per month for services in Seward County. Mr. Dickinson stated that he has talked with friends and relatives in Columbus who have told him that limousine service is needed in that town. This evidence fails to rise to the level necessary to find a need exists in either of these counties.

The Commission notes that of the five instances presented by the applicant, four were for services that night and the fifth was to arrange services for New Year's Eve four or five days in advance. The evidence as presented is not sufficient for the Commission to find that there is a need for additional services in the areas proposed.

From the evidence adduced and being fully informed in the premises, the Commission is of the opinion and finds that the application should be denied.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1672, Supplement 1 be, and it is hereby, denied.

MADE AND ENTERED at Lincoln, Nebraska, this 15th day of August, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s// Lowell C. Johnson



//s// Frank E. Landis


Chairman

ATTEST:


Executive Director