

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

2BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) APPLICATION NO. B-1688  
of Darin P. VanNatter dba )  
Prestige Limo, Sidney, Nebraska, )  
seeking authority to transport )  
passengers and their baggage by )  
limousine between points in )  
Cheyenne County, and between ) GRANTED  
points in said on the one hand, )  
and, on the other hand, points )  
in Nebraska over irregular )  
routes. )  
)  
)  
)  
) ENTERED: DECEMBER 5, 2006  
)  
)

APPEARANCES:

For the Applicant:

James Korth  
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Reynolds & Edwards  
Attorneys at Law  
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For the Protestants A Touch  
of Class Limousine, Morrill:

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Chaloupka, Holyoke,  
Snyder & Chaloupka  
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For the Commission Staff:

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Lincoln, NE 68509

BY THE COMMISSION:

B A C K G R O U N D

By application filed April 27, 2006, Darin P. VanNatter d/b/a Prestige Limo, Sidney, Nebraska seeks to establish an authority as a common carrier of passengers in Nebraska intrastate commerce by proposing transportation of passengers and their baggage in limousine service between points in Cheyenne County, and between points in said county on the one

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hand, and, on the other hand, points in Nebraska over irregular routes. All trips will originate and terminate in Cheyenne County. The transportation of railroad train crews and their baggage would not be authorized. Notice of the application was published in The Daily Record, Omaha, Nebraska, on May 10, 2006. A protest to the application were filed by A Touch of Class Limousine, Morrill, Nebraska, on May 19, 2006.

A hearing on the application was held on October 5, 2006, with appearances listed above. Notice of the hearing was sent to all interested parties on August 18<sup>th</sup>, 2006.

#### P R E L I M I N A R Y M A T T E R S

Several matters were addressed by the Commission prior to the presentation of evidence. The first matter regarded a Motion in Limine filed by the applicants regarding witness testimony to be presented to the Commission. A second Motion in Limine filed by the applicant regarded the presentation of exhibits by the protestant. Prehearing meetings were held between the parties regarding these motions, and it was stipulated that the protestant could offer the testimony of an officer of the protestant as well as offer seven exhibits. These stipulations satisfied the parties regarding the two motions, and no further action was taken by the Commission on these motions.

The third matter addressed by the Commission was the request to invoke the rules of evidence in the hearing. This request was granted and the rules of evidence were applied to the hearing in this matter.

The Commission was also asked to take judicial notice of the before it in this matter, as well as judicial notice of the rate application of A Touch of Class Limousine in LR-268. The Commission did take judicial notice of both applications.

#### E V I D E N C E

##### **APPLICANT'S EVIDENCE**

The first witness called by the applicant was Darin P. VanNatter, owner of Prestige Limo. He is the owner of Darin's Auto Repair, Incorporated as well as Affordable Towing, L.L.C., both in Sidney, Nebraska. The repair shop has been open for eight years and the tow truck business for around four years. Mr. VanNatter owns two facilities totaling around 17,000 square feet.

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Mr. VanNatter testified that the need for his service was based upon rates that are charged by the protestant as compared to his rates and that, being located in Cheyenne County, he would be better able to serve the community. He also noted that he has a larger limousine than those owned by the protestant, which would allow him to serve clients in a different way than the protestant is able.

On cross-examination by Commission staff, Mr. VanNatter indicated he was aware of the costs involved in the operation of a business such as that proposed. He has contacted an insurance agency regarding insurance and has made those arrangements. While he did not do a specific business plan for the proposed operation, he stated he has had experience in building new businesses and making them profitable ones.

Mr. VanNatter testified that he believed his net worth to be \$698,000, with his real estate, machinery and other property values being offset by \$122,000 of liabilities. He testified that the assets discussed were valued at appraisal price for the real estate and fair market value for the personal property.

Mr. VanNatter testified that he has not done a specific business survey for his proposed operation. He testified that it is his belief that Sidney, with a population of 6,000, is big enough to provide a customer base for his business, and that people in Sidney would be more likely to use a locally based service rather than one that was farther away and therefore had a higher cost than a local provider would.

Dan Munson was called as a witness on behalf of the applicant. He testified that is a resident of Sidney, Nebraska, and has known and done business with the applicant for several years. Mr. Munson considers Mr. VanNatter to be a good business man. He has seen the limousines that the applicant has purchased for his proposed service and believes that they are in very good condition.

Mr. Munson testified that he believes that there is a need for the proposed service in Sidney. He stated that the applicant placed a limousine he had purchased on Mr. Munson's property for storage and that Mr. Munson then received a number of inquiries regarding its availability for service. He also stated that Cabela's in Sidney would probably provide many customers for the proposed service.

On cross-examination by Mr. Snyder, Mr. Munson admitted that he did not quote any rates to the people who inquired about

the limousine's availability. He also did not refer any of the people inquiring to any other limousine service, nor does he know if anyone who inquired actually called another provider to retain service.

John Weiser was called next by the applicant. He stated that he had known the applicant for a number of years through the auto repair service owned by the applicant and used by Mr. Weiser's general contracting company. He told the Commission that the applicant is very intelligent and reliable.

Mr. Weiser stated that he believed that a need was present in Sidney for the proposed service due to the handiness of the service to Sidney, the rates that are charged by other providers due to their distance from Sidney, and Cabelas.

#### **Protestant's Evidence**

Kathy Flippin was called to testify on behalf of the A Touch of Class Limousine. She testified that she is the office manager for the protestant and handles all the phone calls, bookings and billings. She testified that A Touch of Class operates in seven counties in western Nebraska.

A Touch of Class operates two limousines in the seven county area, which includes Cheyenne County. She informed the Commission that they did advertise in the Cheyenne County area, and had done specific advertising in the Sidney Sun Telegraph in February of 2006. According to logs kept in the routine course of business by the protestant, they received two calls and no bookings from the Sidney area during this time period. Since August of 2005, Ms. Flippin testified that the protestant had booked two clients in the Sidney area.

Ms. Flippin testified as to a phone conversation that she had with the applicant in May of 2006. He is said to have stated that he had not provided service for more than one month and that he intended to conduct business in Kimball, which is outside of Cheyenne County,

Ms. Flippin lastly stated that the protestant currently had enough vehicles to meet the demand in its seven county area, and that they were willing to expand its fleet if it felt a need to do so was present.

On cross-examination issues as to the total fleet size were addressed. Another issue addressed was a wedding party for Jodi Hiat that the protestant was unable to serve as its largest limousine was too small for the wedding party. A Touch of Class

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Limousine, while not able to provide the service, did refer them to another company who did provide a suitable limousine.

Ms. Flippin did also testify that she did talk with the applicant regarding the availability of a limousine that the applicant owned. She stated that she was interested in the vehicle as they may expand their fleet in the future if necessary.

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 establish and authority so that it may transport passengers by limousine as a common carrier between points in Cheyenne County, and between points in said county, on the one hand and, on the other hand, points in Nebraska over irregular routes.

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. VanNatter appears to have the business acumen to operate the proposed service. He has started two other companies that appear to be successful, has a good reputation in the community, and also appears to be financially stable. He has made the appropriate contacts with insurance. 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

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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. Given the record before us, we find that the applicant has presented sufficient evidence of need and necessity to support a grant of the application.

The first part of the test is whether the operation will serve a useful purpose responsive to a public demand or need. The testimony presented does show a public demand or need. The testimony of Mr. Munson was that he was approached by numerous people in the community about the availability of the limousine when parked in front of his auto dealership. The Commission finds that these inquiries illustrate

There is also the testimony of the applicant that he referred two people who had contacted him for service to the protestant. While their needs were met in one instance by the protestant and in the second instance by another provider, it remains that had Mr. VanNatter had the authority to operate at the time he was approached he could have provided the service requested in his community.

The second part of the test is whether the purpose can or will be served as well by existing carriers. In this matter, the Commission finds that the applicant would be in a better position to provide service in his area than existing carriers. There are no carriers in Cheyenne County that do not have to come from a distance to provide the service. While there is nothing in the record to indicate that the protestant is operating in any inadequate manner, the cost factor of coming

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from Morrill to Cheyenne County does have a material impact on the service.

The third part of the test is whether the public demand or need 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 this matter the evidence is that the current provider has only booked two trips in Cheyenne County in a period of over a year. This indicates that most of the business of the protestant is not in Cheyenne County. The applicant is limited in this application to beginning and ending in Cheyenne County. The Commission therefore finds that the granting of this application should not endanger the operations the operations of the protestant contrary to the public interest.

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

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that Application B-1688, be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 5<sup>th</sup> day of December, 2006.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

*Lowell C. Johnson*

*Frank E. Landis*

//s// Lowell C. Johnson

//s// Frank E. Landis

*Lowell C. Johnson*  
Chairman

ATTEST:

*A. S. P. [Signature]*

Executive Director