

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application ) APPLICATION NO. B-1689  
of Karl Riggs dba Kountry )  
Limousine Company, Bennington, )  
seeking authority as a common )  
carrier in Nebraska intrastate ) GRANTED  
commerce in the transportation )  
of passengers and their baggage )  
in limousine service between )  
points in Douglas, Washington )  
and Dodge counties and between ) ENTERED: MARCH 20, 2007  
points in said counties. )

For the Applicant:

Jeffrey W. McKain  
Attorney at Law  
1907 South 19<sup>th</sup> Street  
Omaha, NE 68108

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 July 7, 2006, Karl Riggs d/b/a Kountry Limousine, Bennington, 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

APPLICATION NO. B-1689

PAGE TWO

points in Douglas, Washington and Dodge counties, and between points in said counties over irregular routes. 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 September 27, 2006. A protest to the application were filed by VIP Limousine, L.L.C., Omaha, Nebraska, on October 24, 2006.

A hearing on the application was held on January 24, 2007, with appearances listed above. Notice of the hearing was sent to all interested parties on November 21, 2006.

#### PRELIMINARY MATTERS

There were four exhibits that were offered into evidence by the protestant VIP Limousine. The Hearing Officer reserved ruling on exhibits until such time as the applicant's attorney had an opportunity to review the proposed exhibits. Mr. McKain did inform the Commission that he had the opportunity to review the exhibits and that he had no objection to their receipt into evidence. The Hearing Officer therefore does receive Exhibits 10, 14, 15 and 16 into evidence.

#### APPLICANT'S EVIDENCE

After an opening statement by Mr. McKain on behalf of the applicant, the first witness called was Julie Opryszko. Ms. Opryszko testified that she had attempted to retain a limousine for Valentine's Day evening. She attempted to secure the limousine three weeks ahead of time but was informed that none was available from VIP Limousine. She did receive a call from A Class Act informing her that they did have one available.

Ms. Opryszko stated that she believed that Omaha had changed and grown over the past few years and that she believed that there should be more competition in the limousine market.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

APPLICATION NO. B-1689

PAGE THREE

On cross-examination by Commissioner Landis on how many companies should be in the market, Ms. Opryszko stated that Omaha had grown 7½ percent in the past two years and that more companies are needed. When Commissioner Landis asked if the total number of vehicles should be based on occasional shortages that may occur during peak times such as Valentines Day, Ms. Opryszko replied that she had also inquired about personal usage twice per week but that in general there were not enough limos available for that level of service.

The next witness called by the applicant was Michael McMorrow. He testified that he had also found limited availability on Valentines Day as well as the weekends before and after Valentines Day. He testified that he called VIP Limousine for service and was informed that they did have limos available. Mr. McMorrow also stated that he had known the applicant for a long time and that he believed that he would make a good businessman.

On cross-examination by Commissioner Landis, Mr. McMorrow stated that his testimony was not that limousines were not available when he called but only that the availability was limited. He further stated that his testimony was not necessarily based upon need but on a desire to see more competition in the field.

On cross-examination by Commissioner Schram, Mr. McMorrow stated that he identified eight limousine companies in the Omaha area. He also stated that he did contact all eight companies to inquire as to availability.

The next witness called was Jim Tanner. On the basis of these contacts, he stated he believes that Omaha needs more companies providing limousine services primarily due to the growth in population over the past few years. Mr. Tanner also made reference to the rate structure that current providers have.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

APPLICATION NO. B-1689

PAGE FOUR

The next witness called was Jim Tanner. On the basis of these contacts, he stated he believes that Omaha needs more companies providing limousine services primarily due to the growth in population over the past few years. Mr. Tanner also made reference to the rate structure that current providers have.

Mr. Tanner also testified that he has extended a letter of credit to the applicant in the amount of \$40,000 for the applicant's use. He stated that the applicant was hoping to not have to use the credit, but that it was available to him if necessary.

On cross-examination by Commissioner Landis, he admitted that he had limited discussions regarding any business plan developed by the applicant. This was said to be due to the anticipated difficulty in receiving the approval of the Commission to commence operations. He stated that he has talked with the applicant about some aspects of the business including the purchase of vehicles and that the applicant has the money to pay for the vehicles and the preparation for the hearing.

On cross-examination by Commissioner Schram, Mr. Tanner stated that all the companies he contacted had limousines available for the dates and times he inquired about.

John Britton was called by the applicant. He testified that he is a resident of Lincoln and had discussed with Bill Alford, president of VIP Limousine, the market conditions in the Omaha area. He stated that Mr. Alford wants to maintain his market share. Mr. Alford is also stated to have said that he would consider subcontracting with the applicant.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

APPLICATION NO. B-1689

PAGE FIVE

Mr. Britton interpreted the conversation as an indication that opportunity is present in the market and indicated that a need existed that the applicant could fill. He also stated that the growth of Omaha also would indicate that more limousines were needed.

On cross-examination by Commissioner Landis, Mr. Britton did state that he had never attempted to retain the use of a limousine service. He also does not have any personal knowledge regarding the number of limousines in the Omaha market, nor if the number of limousines has increased as Omaha has grown.

The applicant next called Mark Schulte. He said he tried to call VIP for a limousine on the night of January 15 but was only able to contact an answering machine. On another night he was able to talk with a person about retaining a 7 passenger limo but was informed that a 10 passenger limo was the only one available and that it had a three hour minimum while he only wanted one hour of service. He stated that the applicant would provide extra flexibility in the hours of service that he proposes to offer.

On cross-examination by Commissioner Landis, Mr. Schulte was asked if it was financially feasible to keep enough drivers for the instant availability that Mr. Schulte thought was appropriate. He answered that he hoped that the limousine market would be similar to that of a cab.

On cross-examination by Commissioner Schram, he stated that he had only contacted two companies for the services he testified on.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

APPLICATION NO. B-1689

PAGE SIX

The applicant was then called to testify. Mr. Riggs informed the Commission that he has purchased two limos, one of which is ready for service now and the other older limo that needs some additional work before it would be ready for service. He said that he has invested \$20,000 to date and does plan to grow the business over time.

He has contacted and put in place insurance on the vehicles and has done so since July of 2006. He has had the 1989 Town Car inspected for safety by Stephens Auto and it has been given a safe report.

He has worked for twenty years as a cook/chef. He also stated that he has operated a landscaping service on a part-time basis. Mr. Riggs said that he believed that there was business to be had. He discussed a conversation that he had with Bill Alford regarding leasing with Mr. Alford's company, but he decided that he wanted to go into business for himself.

On cross-examination by Commissioner Landis, Mr. Riggs stated that he has a business plan that has not been formalized but has considered factors necessary for the operation of the business. He testified that he can pay for his costs with one trip per week and also needs thirty trips to catch up on his investment to date. He plans to house the limousines in a garage.

Mr. Riggs stated that he has two drivers that have been trained as employees. He also informed the Commission that he planned to establish his rates at approximately \$80 an hour and that the rate would be "negotiable".

Mr. Riggs said that he plans to dispatch his limousines on a call basis, but plans to set up a website in the future. He also is planning to have his vehicles undergo a once per month maintenance program through Stephens Auto.

APPLICATION NO. B-1689

PAGE SEVEN

On cross-examination by Commission staff, he did state that he was not really a chef but has been a line cook at the Keno Cabana. He also testified that he was a manager at Dennys in Lincoln for two years after being employed in other capacities there for sixteen years before that. He also stated that he would advertise in the Reader and planned to have a listing in the Yellow Pages next year.

PROTESTANT'S EVIDENCE

The Commission received testimony from Bill Alford, president of VIP Limousine, LLC. He stated that his company employs 100 people and that the staff has grown to keep pace with the population growth of Omaha. His company has invested \$2 million in its own mechanics and phone system, as well as a GPS system and a dry camera system. His vehicles undergo a preventive maintenance program. His drivers undergo a state and federal background check as well.

Mr. Alford offered exhibits that he stated showed that his vehicles have significant downtime at present. He also testified that the exhibit further illustrates the excess capacity that his company has. He stated that VIP Limousine has not turned down a corporate run and does have availability even at peak times. He further stated that the exhibits show that VIP had twenty-two vehicles available on Valentines Day, in contrast with testimony provided earlier by Ms. Opryszko.

Mr. Alford admitted that he had a conversation with Mr. Britton regarding Mr. Riggs, but that it was just a brainstorming discussion and not an offer to lease onto VIP's authority. Mr. Alford sees leasing as a way to limit VIP's expenses by using other individual's limousines instead of his own and thereby reduce his investment in rolling stock.

# SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

---

APPLICATION NO. B-1689

PAGE EIGHT

Mr. Alford stated that the market is currently saturated with vehicles. He stated that the market did not require additional limousines as the current level of service provided by his company and others in the market was sufficient. He also stated that his company needed additional business in its efforts to get to being profitable.

On examination by Commissioner Landis regarding rates, Mr. Alford testified that his rates were competitive with the rates of other companies, and that at off-peak times his rates were, in many instances, lower than his competition.

On examination by Commissioner Schram, Mr. Alford testified that he has never had a situation where all his vehicles had been rented. He also said that he had the capacity to lease additional vehicles for known demands, such as the weekend where Berkshire Hathaway has its stockholders meeting.

On cross-examination by Mr. McKain, Mr. Alford said he did not intend to state that Mr. Riggs was qualified to operate as a limousine operator. He also stated that he has bought other limousine authorities to help make his company more profitable by eliminating non-profitable competition. He also reiterated that VIP Limousine was not yet profitable.

The Commission also took notice of a letter received from Gary Gernandt of the Omaha City Council. His letter was in support of the application.

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

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



APPLICATION B-1689

PAGE NINE

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. Riggs appears to have the business acumen to operate the proposed service. He has made a significant investment in vehicles. He appears to have 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 determining "need and necessity" was set forth by the Supreme Court in its May 8, 1998, ruling,

APPLICATION B-1689

PAGE TEN

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. Mr. Riggs presented testimony regarding shortages of vehicles on certain days, especially around Valentines Day. He also presented evidence that Ms. Opryszko had inquired regarding usage of a limousine on a twice weekly basis and was informed that there were not enough vehicles available to provide that level of service. Many witnesses also noted the substantial increase in the population of Omaha as another factor.

Mr. Riggs also presented testimony of a number of individuals that he has contact with that would use his services. He noted that this was the case now, before any advertising had been done in the effort to grow the business.

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

APPLICATION B-1689

PAGE ELEVEN

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 good position to provide service in his area. The Applicant did offer evidence that there are gaps in service currently provided that he can help fill. The Applicant would present additional, needed service to the community to help fill these gaps.

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. The Commission finds that the granting of this application should not endanger 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-1689, be, and it is hereby, granted.

MADE AND ENTERED at Lincoln, Nebraska, this 20<sup>th</sup> day of March, 2007.


NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:



//s// Anne C. Boyle

//s// Rod Johnson

Chairman 

ATTEST:

  
Executive Director

COMMISSIONERS DISSENTING:



//s// Frank E. Landis