

SECRETARY'S RECORD, NEBRASKA PUBLIC SERVICE COMMISSION

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the) APPLICATION NO. B-1709
Application of James Bridgeman)
dba Safe Wheels Transportation,))
Omaha, Nebraska, seeking)
authority as a contract carrier))
in Nebraska intrastate Commerce))
in the transportation of) DENIED
clients of the Nebraska)
Department of Health and Human)
Services and their baggage)
by van between points in)
Douglas County, Nebraska over)
irregular routes in open class)
service.) ENTERED: FEBRUARY 24,
2009

APPEARANCES:

For Protestant Prince of the Road	Commission Staff
John Boehm	Mark Breiner
Attorney-at-Law	1200 N Street
811 South 13 th Street	Suite 300
Lincoln, NE 68508	Lincoln, NE 68508

BY THE COMMISSION:

B A C K G R O U N D

By application filed by James Bridgeman dba Safe Wheels Transportation, Omaha, Nebraska seeking to establish an authority as a contract carrier in Nebraska intrastate Commerce in the transportation of clients of the Nebraska Department of Health and Human Services and their baggage by van between points in Douglas County, Nebraska over irregular routes in open class service. Notice of the application was published in The Daily Record, Omaha, Nebraska. Timely protests to the application were filed by R & F Hobbies, Inc., dba Prince of the Road, and by Shared Mobility Coach.

A hearing on the application was held on October 8, 2008, with appearances listed above. Notice of the hearing was sent to all interested parties on September 4, 2008.

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Timely protests were filed by R & F Hobbies, dba Prince of the Road, and by Shared Mobility Coach. Notice of this hearing was sent to all parties on September 4, 2008. This matter was heard on October 8, 2008.

APPLICANTS EVIDENCE

James Bridgeman testified on behalf of the applicant. Mr. Bridgeman testified that he was interested in starting his proposed service because he likes helping people and he believes that there is a need for the service. He stated that his mother, who lives with him in Omaha, uses current transportation providers and that there are times when she is left at a doctors office for hours waiting to be picked up. He further stated that his mother is not the only person who is experiencing these problems.

His proposed service would operate twenty-four hours per day, seven days per week. He would operate his business so as to handle emergencies at any time of the day that they occur. His employees would take first aid and CP classes.

As further evidence of need, Mr. Bridgemen stated that Omaha has grown over the past few years, and will continue to grow. He believes that there are enough people to support his proposed service.

On cross-examination by Mr. Boehm, Mr. Bridgeman stated that he intended to operate four vehicles in his service. He currently owns two and plans to purchase two others. On his financial statement, it was erroneously listed that Mr. Bridgeman held \$5,000 in real estate. While Mr. Bridgeman does not currently own real estate, he believed that the \$5,000 figure on the statement was actually for the van that he had recently purchased.

On further cross-examination by Mr. Boehm, Mr. Bridgeman stated that he had contacted an insurance agent regarding commercial insurance. He did not know the amount of the insurance required, but that the amount discussed would be sufficient to meet state requirements for services of his type. The rate that he would charge would be that as contracted with the Department of Health and Human Services.

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His plan is to retain four drivers in total, including him. Mr. Bridgeman stated that he did not currently have a contract with the state of Nebraska and had not discussed his application with anyone at the Department

On examination by Commissioner Schram, Mr. Bridgeman said that he does plan to do background checks on his drivers. He further stated that he was not aware of any Department requirements other than PSC authority.

Willie Mae Bridgeman testified next for the applicant. She is the mother of James Bridgeman. Mrs. Bridgeman testified as to some problems she has had with Hope Transportation and the lack of availability of wheelchair equipped vans in their fleet. She also stated that Shared Mobility Coach, while it does have wheelchair equipped vans and mostly polite drivers, does have issues regarding timeliness and availability of the vans. She has been left waiting at doctors appointments for extended periods of time. She also has experienced difficulties in scheduling trips due to van availability.

On examination by Commissioner Schram, Mrs. Bridgeman stated that she had used Hope Transportation but she was not able to use them as they do not have wheelchair van capability.

PROTESTANTS EVIDENCE

Mr. Tim Greger was called by the protestant R & F Hobbies, Inc., dba Prince of the Road. Mr. Greger is the office manager for Prince of the Road in Omaha. Prince of the Road operates in Douglas and Sarpy counties in Nebraska and does transport clients of the Department.

Prince currently has 33 available vehicles for 35 drivers on Omaha. The company provides 1,700 trips per week, and operates on a 24/7 basis. Of the 1,700 trips per week that Prince of the Road does per week, approximately 80 percent of them are HHS trips.

Mr. Greger testified that a new operation in Douglas County would be a detriment to Prince of the Road. He further stated that Prince of the Road had the ability to

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hire new drivers and purchase additional vans if demand required that they do so.

Mr. Greger noted that there are at least three other companies provided HHS transportation in Douglas County. With the operation of Prince of the Road and the three other providers listed, Mr. Greger stated that he did not believe that there is a need for an additional transportation service for HHS clients in Douglas County.

Mr. Frank Schumacher testified on behalf of the protestant, Shared Mobility Coach. He stated that every provider that provides service for HHS as their primary contract would be negatively affected if another transportation entrant was approved. He also raised questions regarding the financial requirements of starting up a service such as that proposed by the Applicant and stated the Commission should look at all proposed services to ensure that they have the wherewithal to conduct the service as proposed.

On examination by Commissioner Vap, Mr. Schumacher said that at the time that Mrs. Bridgeman was experiencing some of her difficulties with Shared Mobility Coach, the company did, in fact, have one of their wheelchair vans totaled. While the company usually has seven wheelchair-equipped vans in its fleet, when one is down it creates an extra load for the remaining six vans that must pick up the rides of the lost van. This situation can create situations wherein there are delays experienced. When Commissioner Vap asked if his company had an emergency plan for such situations, Mr. Schumacher said that they do have a contingency program in place.

OPINION AND FINDINGS

Applications for contract carrier authority are governed by Neb. Rev. Stat. § 75-311(2), which provides:

"(2) A permit shall be issued to any qualified applicant therefor authorizing in whole or in part the operations covered by the application if it appears after notice and hearing from the application or from any hearing held on the

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application that (a) the applicant is fit, willing, and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules, and regulations of the commission under such sections and (b) the proposed operation, to the extent authorized by the permit, will be consistent with the public interest by providing services designed to meet the distinct needs of each individual customer or a specifically designated class of customers as defined in subdivision (6) of section 75-302. Otherwise the application shall be denied."

The Commission's consideration of an applicant's fitness is comprised of two tests. The first part of the test is whether the applicant is fit, willing and able properly to perform the service of a contract carrier by motor vehicle and to conform to the provisions of such sections and the lawful requirements, rules and regulations of the Commission under such sections.

Applicant did provide some evidence as to his financial fitness. He does own two vehicles and has stated that he would be able to add two more. However, there was no other evidence as to the business acumen of the applicant. He stated that he had contacted an insurance provider regarding insurance requirements, but did not know the amount that was required nor did he supply cost figures for that insurance. He did not testify as to experience he has in the transportation field or other business endeavors. There was no business plan presented other than the Applicant's presentation regarding hours of service, number of drivers and number of vehicles.

The Commission finds that the Applicant did not prove that he is fit, willing and able to perform the service. The finding is based upon the lack of evidence of fitness provided by the Applicant, and not on any affirmative finding of unfitness on the part of the Applicant.

The second part of the two-part test is whether the proposed operation, to the extent authorized by the permit, will be consistent with the public interest. In Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., 188

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Neb. 584, 198 N.W. 2nd 195 (1972) the Court established the following criteria to be considered in determining whether a proposed contract carrier operation will be consistent with the public interest:

"In considering an application for a permit to operate as a contract carrier, the burden is upon the applicant to show that the proposed service is specialized and fits the need of the proposed contracting shippers, that the applicant is fit, willing, and able to perform the service, and that the proposed operation will be consistent with the public interest. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., 183 Neb. 229, 159 N.W.2d 310. Where the transportation of specified commodities can be performed as well by common carriers as by contract carriers, a need for contract carriers is not established. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., *supra*. If competent proof is made by the applicant showing the proposed service to be specialized and needed, and is protested by common carriers showing a willingness and ability to perform it, the applicant must then establish that he is better equipped and qualified to meet the special needs of the proposed contracting shippers than the protesting common carriers. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., *supra*. The adequacy of existing services to perform the normal needs of proposed contracting shippers is not conclusive where the new service is better designed to fit the special requirements of the proposed contracting shippers. Samardick of Grand Island-Hastings, Inc. v. B.D.C. Corp., *supra*.

In the application before us, the Applicant failed to show that the proposed operation is one that is specialized and designed to meet the need of the proposed contracting entity. It also appears that the Applicant has failed to make a sufficient showing that the proposed service is designed to meet needs of the Department of Health and Human Services.

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Regarding whether the transportation of specified commodities can be performed as well by common carriers as by contract carriers (see Wells Fargo Armored Service Corp. v. Bankers Dispatch Corp., supra.), an examination of the evidence shows that there was not sufficient evidence that common carriers are unable to perform the transportation of the crews as well as the Applicant. Some evidence was adduced regarding alleged performance inadequacies of the protestant, Prince of the Road, regarding on-time service at certain times, but the Applicant did not produce evidence that its own operations offer better service than the protestant.

Therefore, the Commission finds that the applicant failed to prove that he was fit, willing and able to conduct the proposed operation, and did not show that the proposed service is consistent with the public interest as set forth by Nebraska law.

After due consideration of the evidence and being fully advised in the premises, the Commission is of the opinion and finds:

1. The proposed contract carrier operation will not be consistent with the public interest.
2. The application should be denied.




ORDER

IT IS THEREFORE THE ORDERED by the Nebraska Public Service Commission that Application B-1703, be, and it is hereby denied.

MADE AND ENTERED at Lincoln, Nebraska, this 24th day of February 2009.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

//s// Frank E. Landis


Chairman

ATTEST:


Executive Director