

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE DEPARTMENT OF TRANSPORTATION

In the Matter of the Petition of Jerome  
Daniel Anderson d/b/a Elliott Transfer for  
Extension of Household Goods Mover  
Permit Authority to Transport Household  
Goods Between All Points in Ottertail  
County

FINDINGS OF FACT, CONCLUSIONS,  
RECOMMENDATION AND  
MEMORANDUM

The hearing in this matter took place on October 1, 2004, in Fergus Falls before Allan W. Klein, Administrative Law Judge. The hearing lasted less than half a day, and the record closed upon its conclusion.

Appearing for the Petitioner, Jerome Daniel Anderson, d/b/a Elliott Transfer, was Jamison W. Cichosz, of the firm of Nyckelmoe, Ellig & Nyckelmoe, 106 Washington Avenue East, P.O. Box 936, Fergus Falls, MN 56538-0936.

Protestant Jeffrey A. Anderson, d/b/a Lakes Moving, 25126 County Highway 88, Fergus Falls, MN 56537 appeared on his own behalf, without counsel.

**NOTICE**

This report is a recommendation, not a final decision. The Commissioner of Transportation will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Sergius Phillips, whose telephone number is 651-284-0517 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

## STATEMENT OF ISSUE

Should Petitioner's permit be extended so that Petitioner is allowed to move household goods between points in Ottertail County?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

## FINDINGS OF FACT

### Background and History of Past Operations

1. Elliott Transfer has been moving household goods and other commodities since it began in 1926. It has always been based in Fergus Falls, and has always operated in west central Minnesota and adjoining areas of North and South Dakota.

2. Elliott Transfer was first operated by Claude Elliott, who retired in 1949. It was then acquired by Perry Nettbrook, who operated it himself or leased it to John Schrum into the 1970's. At some time around 1979, it was purchased by Orville Anderson, and around 1979 the state permits were formally transferred from Cathy Nettbrook (who was the successor to Perry Nettbrook) to Orville Anderson.

3. Orville Anderson is the father of both Jerome Anderson (Petitioner) and Jeffrey Anderson (Protestant).<sup>[1]</sup>

4. During the 1992 regular session of the legislature, substantial changes were made to the state regulation of intrastate trucking in Minnesota. These changes required existing carriers, such as Elliott Transfer, to file applications for conversion of authority from the prior system to a new system created by the new legislation. Elliott Transfer did file applications for conversion in September of 1992, and on June 7, 1993, the Minnesota Transportation Regulation Board issued its Order converting Elliott Transfer's authority. In that Order, Elliott Transfer was authorized to transport certain kinds of truckload freight between all points in Minnesota, and certain kinds of less than truckload freight between certain named points in Minnesota. Household goods mover authority and temperature-controlled commodities carrier authority was limited to the following:

Household goods from origin points within the counties of Douglas, Grant, Clay, Becker and Wilkin to all points in Minnesota, and from all points in Minnesota to points in said counties.<sup>[2]</sup>

5. At some point in the 1990's, Jerome Anderson began assuming more and more responsibility for operation of Elliott Transfer. Finally, in September of 2002, Orville Anderson (as transferor) and Jerome Anderson (as transferee) filed a joint petition with the Department of Transportation for an *ex parte* order authorizing and approving the transfer of the household goods mover permit authority from Orville to Jerome under a special statutory provision relating to transfers between family

members. On November 26, 2002, the acting Commissioner of Transportation issued Findings, Conclusions and Order, transferring Authority to Transport Household Goods:

From origin points within the counties of Douglas, Grant, Clay, Becker and Wilkin to all points in Minnesota, and from all points in Minnesota to points in said counties.<sup>[3]</sup>

6. Elliott Transfer, being based in Fergus Falls, was one of the major household goods movers in the Fergus Falls area from at least the time in the 1980's when it was operated by Orville Anderson forward until just before the hearing date. Apparently neither Orville nor Jerome Anderson noticed that both the 1993 Conversion Order and the 2002 Transfer Order did not allow for household goods to be moved from points within Ottertail County to other points within Ottertail County. While there are no statistics in the record, the testimony makes it clear that many, many moves were made within Ottertail County. A number of the supporting shipper witnesses from the Fergus Falls area testified that when they tried to think of a local household goods mover, the only firm that came to mind was Elliott Transfer.

7. Orville Anderson retained a commercial tariff filing service, Associated Motor Carriers Tariff Bureau, to assist him with various regulatory affairs, including filing tariffs. In 1979, when Orville purchased the business from Cathy Nettbrook, AMCTB published an adoption notice which included a statement of Elliott Transfer's authority. Shortly after it was published, Orville Anderson wrote a letter to AMCTB, indicating that the scope of authority failed to mention Ottertail County. An employee of AMCTB then prepared an amendment to the adoption notice, and filed it with the State. The amendment included Ottertail county within the scope of authority. There was no indication from the State that there was any problem with this amendment.<sup>[4]</sup>

8. Twenty-three years later, in 2002, Jerome Anderson asked AMCTB's successor, Associated Transportation Consultants (ATC), to file an adoption notice memorializing the transfer of tariffs for Elliott Transfer from Orville Anderson to Jerome Anderson. This notice was issued on December 20, 2002, to be effective in January of 2003. At that time, the question over the propriety of including Ottertail County within the scope of authority arose. Substantial time and effort was invested in attempting to search old records of the Department of Transportation and the now-defunct Transportation Regulation Board in an attempt to determine whether there was ever any permit recognizing the reality that Elliott Transfer had been serving as a household goods mover within Ottertail County for many years. No such permit could be found (except the tariffs). Ultimately, the Department recommended that Elliott file an application to extend its household goods mover permit authority to include Ottertail County.

#### Statutory Considerations for Permit Extension

9. Jerome Anderson currently owns three trucks which he uses in his moving business. He, his wife, and his son John, plus one employee, all have Class C licenses

and health cards, and all drive the trucks on occasion. The trucks are well maintained and in good running order.<sup>[5]</sup>

10. Elliott Transfer has used the same insurance agency since the time that Orville Anderson owned Elliott. Elliott Transfer pays its bills on time, and has made only a handful of small claims over the past 15 years. There are no signs of financial distress, and in fact the insurance is currently paid in advance through the end of 2005.

11. Jerome Anderson is financially able to operate the business. His current financial statement<sup>[6]</sup> indicates a net worth of \$157,000. He owes only \$2,600 on his trucks and trailers. Earlier this year, he purchased a used truck for \$15,000 and there is no balance remaining on that purchase.

12. Jerome Anderson has a “clean” record with regard to enforcement matters, with the exception of a \$2,000 fine which was assessed against him for failing to have a drug-testing program in place. However, he did make many, many moves within Ottertail County apparently without a permit. Some of these are documented in the letters of support which were submitted with the petition, and in the testimony from supporting shippers at the hearing. But before December, 2002, Jerome Anderson believed that he did have authority, and even after questions were raised, he continued in that belief until 2004. Certain business records, including permit-related records, could not be located in Orville Anderson’s home, where they had been stored. On September 23, 2004, the Department faxed Jerome Anderson a copy of the 2002 Order Transferring Authority from his father to himself, as well as a copy of the 1993 Order converting prior authority to the new regulatory system. Neither of those two Orders contained authority to transport within Ottertail County. It was only after he had received them that he became certain that there was nothing he could locate that documented his assumption that Elliott Transfer did have permit authority within Ottertail County. Jerome Anderson has spent time and effort in attempting to establish the existence of prior authority, and he has expended time, effort and funds to comply with the Department’s request that he have his authority extended. The Administrative Law Judge finds that Jerome Anderson is fit and able to perform moving services within Ottertail County.

13. The demographics of Ottertail County have undergone a noticeable change in the last decade. State Representative Bud Nornes testified that people are moving from towns out to lakes, and that many others are moving into the area for their retirement. He was one of the people who called Elliott Transfer when he needed moving services, both for his home and his office, because Elliott “was the first name that came to mind.” He has been in the Fergus Falls area for 38 years. His testimony about moving activities, from towns out to lakes and the countryside, was echoed by Gaylord Folden, who has been a real estate agent in the area for the past twelve years. Folden said Elliott Transfer was the only moving company he was familiar with in the Fergus Falls area. He has used it both personally, and for his clients. A real estate developer who has developed lakeshore projects and a golf course, testified that the market for household moves within the county was “busy”. He thought Elliott Transfer was the only moving company in town after an Allied agent left. Jerome Anderson

indicated that he gets one to two calls every day for intracounty moves, and that over the years intracounty moves have been “a good share” of Elliott Transfer’s business. He advertises in at least four telephone books within the county, but recently has had to tell people that he could not move them because he did not have authority.

14. Within Ottertail County, there are really only three active household goods movers. The predominant one is Elliott Transfer, with the other ones being Lakes Moving and Rogness Leasing, Inc. Lakes Moving has filed a protest in this case; Rogness Leasing has not. Lakes Moving would like to do more work in the Fergus Falls area, but for various reasons the public is more apt to contact Elliott Transfer first. The record does not contain any statement about the number of tractors, trailers, or personnel which Lakes operates, and thus there is no way to determine whether Lakes could fully meet the need demonstrated by Elliott. Rogness Leasing is primarily a storage operation. Its authority (just granted in February of 2003) allows it to transport household goods between points within a 50-mile radius of Fergus Falls, including Fergus Falls, but restricted to the transportation of household goods to or from the storage facilities of Rogness Leasing. While there is no restriction on how long the goods have to stay at Rogness’ storage facility, a review of the Commissioner’s Order granting the authority makes it clear that Rogness does not intend to offer household goods moving independent of its storage operation.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

### **CONCLUSIONS**

1. The Minnesota Department of Transportation and the Administrative Law Judge have authority to consider and rule on the issues in this contested case hearing pursuant to Minn. Stat. § § 14.50 and 147.65.

2. The Department gave proper notice of the hearing, and all relevant substantive and procedural requirements of law and rule have been fulfilled.

3. Minnesota law provides that persons desiring to hold themselves out as a carrier of household goods or to engage in that business must first apply for and obtain a household goods mover permit from the Department.

4. Minnesota law requires that a petitioner for a household goods mover permit must meet the following four conditions before the Commissioner can grant that authority:

- (a) That the Petitioner is fit and able to conduct the proposed operations;
- (b) That the Petitioner’s vehicles meet the safety standards established by the Department;
- (c) That the area to be served has a need for the transportation services requested in the Petition.

- (d) That existing carriers have failed to prove that they offer sufficient services to fully and adequately meet the need.

5. Petitioner has the burden of proving, by a preponderance of the evidence, that it has met the conditions described in subparagraphs (a), (b) and (c) of Conclusion No. 4. If that burden is met, then existing carriers have the burden of proving, by a preponderance of the evidence, that they offer sufficient services to fully and adequately meet the need.

6. Petitioner has demonstrated that it is fit and able to conduct the proposed operations, that its vehicles meet the safety standards established by the Department, and that the area to be served does have a need for the transportation services requested in the Petition.

7. Protestant has failed to demonstrate that it offers sufficient services to fully and adequately meet the need.

8. The Department is not equitably estopped from considering this petition on the merits. Petitioner has failed to meet its burden to show that past errors require the Department to issue the permit extension without considering the statutory standards.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

### **RECOMMENDATION**

IT IS RESPECTFULLY RECOMMENDED: That the Commissioner GRANT Petitioner's request for expansion of its household goods mover permit authority to include Ottertail County.

Dated this 29<sup>th</sup> day of October 2004.

S/ Allan W. Klein  
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ALLAN W. KLEIN  
Administrative Law Judge

Reported: Tape-recorded  
(Two Tapes)  
No Transcript Prepared

### **MEMORANDUM**

The record in this matter does not demonstrate why Ottertail County was not always included in the scope of Elliott Transfer's authority. Logically, it should have always been a part of the authority, because Elliott Transfer was headquartered in

Fergus Falls, and always conducted moving activities within Ottertail County. Unfortunately, a search of the Department's records was not able to produce any evidence that Ottertail County was within the scope of the authority. The earliest Department records that were found, which only date back to 1992, say nothing about Ottertail County. A search of the Associated Motor Carrier Tariff Bureau's files did locate a 1979-era letter from Orville Anderson to the Tariff Bureau, asking why Ottertail County had been omitted from the tariff which AMCTB had published when authority was transferred from Cathy Nettbrook to Orville Anderson in 1979. The tariff was promptly corrected to add Ottertail County, but for whatever reason, there is no evidence that the Department's permit was similarly corrected.

Petitioner has argued that the Department or its predecessor must have made a mistake when it set forth the scope of Petitioner's authority, and that Petitioner is entitled to have his authority "corrected" because the omission of Ottertail County was the Department's mistake. The technical term for his doctrine is equitable estoppel – that the Department must recognize its error and grant Petitioner's expansion as a matter of fairness.

The Administrative Law Judge does not accept this argument because there has been no affirmative misstatement on the part of any Department employee assuring Petitioner that, in fact, it did have authority in Ottertail County. Nor has there been any conduct, on the part of any Department employee, which would reasonably lead Petitioner to believe it had such authority. Petitioner points to the filing of tariffs that include Ottertail County, and reasons that since the Department never objected to those tariffs, it cannot now fail to grant the petition.

This case is similar to a 1986 case, Petition of Halberg Construction & Supply, Inc., 385 N.W. 2d 381 (Minn. App. 1986). In that case, a lengthy series of communication errors and oversights caused the Court to find that the Department was estopped from denying Halberg's petition. But in Elliott transfer's case the record does not demonstrate such a degree of contact or volume of errors. Instead, all that has been shown here is the filing of tariffs. There has been no affirmative statement by a Department employee, nor has there been anything else to assure Petitioner that it was entitled to move within Ottertail County. The facts in this record simply do not support Petitioner's argument that the Department must expand its authority.

But Petitioner's failure to establish equitable estoppel is not fatal to its petition, because the Petitioner was successful in demonstrating that it had met all of the tests for granting the extension under a normal permit process. It demonstrated that it was fit and able, it demonstrated that its equipment was safely maintained, and it demonstrated that there was the need for its services in the area. The burden then shifted to the protestant to demonstrate that existing carriers could meet the need, and protestant failed to do this. Therefore, the Administrative Law Judge has recommended that the Petition be granted.

**A.W.K.**

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<sup>[1]</sup> The two brothers do not appear to get along well, but the problems between them are irrelevant to this proceeding.

<sup>[2]</sup> Ex. 1. This Order, issued on June 7, 1993, related to Permit #36852, and was issued to Orville H. Anderson, d/b/a Elliott Transfer.

<sup>[3]</sup> Exhibit 2, MnDOT Docket #HHG114124-362425/T02-599, issued November 26, 2002.

<sup>[4]</sup> Testimony of Howard Markus, long time employee and current owner of AMCTB and its successor, ATC.

<sup>[5]</sup> Exhibits 4-6.

<sup>[6]</sup> Exhibit 3.