

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA TRANSPORTATION REGULATION BOARD

Iyanka-Dakota Coaches, Inc.:  
Petition for Charter Carrier  
Authority to Transport  
Passengers Under Charter  
Between All Points  
In Minnesota.

FINDINGS OF FACT,  
CONCLUSIONS AND  
RECOMMENDED-ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Minnesota Office of Administrative Hearings on August 9, 1993, in South St. Paul, Minnesota. Additional hearings were held on August 10 and August 18, 1993, also in South St. Paul.

Appearances: Andrew R. Clark, Kalina, Wills, Woods, Gisvold & Clark, Attorneys at Law, Suite 200, 941 Hillwind Road, Northeast, Minneapolis, Minnesota 55432-5964, appeared on behalf of Amboy Bus Service, Inc., Hicks Bus Service, Koch Bus Service, Inc., Lake Crystal Bus Service, Lee Line Corporation, Lorenz Bus Service, New Ulm Bus Lines, Inc., Osseo-Brooklyn School Bus Co., Philips Bus Service, RSB Coaches, Ludolph Bus Service, South Central Coaches, Inc., and Minnesota Coaches, Inc.; Robert S. Lee, Mackall, Crouse & Moore, 1600 TCF Tower, 121 South Eighth Street, Minneapolis, Minnesota 55402-2859, appeared on behalf of LCS Coaches, Inc. and Shubat Transportation Co.; James B. Hovland, Krause & Rollins, 310 Groveland Avenue, Minneapolis, Minnesota 55403, appeared on behalf of Trobec's Bus Service; Thomas J. Van Osdel, Van Osdel & Miller, Ltd., Suite 310, Burritt Building, 518 NP Avenue, P.O. Box 2943, Fargo, North Dakota 58108, appeared on behalf of Brainerd Bus Lines, Inc., Red River Trails, Inc., Triangle Transportation Co., Inc., Mayers, Inc., d/b/a Mayers Charter Service, Minndakota Coaches, Inc., Carpenter Charter, Inc., Earl LeMieur Charter Bus Service, and Jutz, Inc., d/b/a Bemidji Bus Lines; Dawn M. Parsons, Attorney at Law, 5200 West 73rd Street, Edina, Minnesota 55439, appeared on behalf of Petersen Bus Service, Inc., T & T Coaches, Inc., and Hey, Inc., d/b/a Willmar Bus Service; Patrick J. Leary, Attorney at Law, 109 South Fourth Street, Marshall, Minnesota, appeared on behalf of Southwest Coaches, Inc.; and Maylin Holter, c/o Richfield Bus Company, Inc., 1825 North Broadway, Rochester, Minnesota 55906, appeared on behalf of Richfield Bus Company, Inc. and Rochester City Lines Co.

The record of the proceeding closed on August 27, 1993, with the receipt by the Administrative Law Judge of the Fifth Amendment to Petition and a late-filed exhibit, App. Ex. 16.

Notice is hereby given that, pursuant to Minn. Stat. 14.61, and the Rules of Practice of the Transportation Regulation Board and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

#### STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether the Applicant, Iyanka Dakota Coaches, Inc- has established the statutory prerequisites to a grant of charter carrier permit authority under Minn. Stat. 221.121 (1993).

#### EVIDENTIARY\_RULING

At the hearing, a Protestant who has since withdrawn from the proceeding requested that a witness provide additional information about the bidding process in which Jackpot Junction Casino selected a charter carrier for trips under contract with the casino. The witness who testified at the hearing about the subject matter stated that he would provide the requested information in an affidavit format. No Protestant objected to the provision of such an affidavit by Mr. Dennis Prescott, the general manager of Jackpot Junction Casino, in order to supplement the record. On August 26, 1993, the Administrative Law Judge received from counsel for Iyanka-Dakota Coaches, the affidavit of Mr. Dennis Prescott previously discussed, with an attached Exhibit A, stating the Indian Set Aside Policy for members of the Lower Sioux Community. A copy of the affidavit was served on all parties. No party has objected to the receipt into evidence of the affidavit of Mr. Prescott. The affidavit of Mr. Prescott has been marked Applicant's Ex. 16. Applicant's Exhibit 16, without objection, is hereby received into the record as an exhibit in the proceeding.

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



#### FINDINGS OF-FACT

1. On April 5, 1993, the Petitioner corporation, Iyanka-Dakota Coaches, Inc., filed a Petition with the Minnesota Department of Transportation for temporary charter carrier permit authority to transport passengers under charter between all points in Minnesota. By Order dated April 22, 1993, Iyanka-Dakota Coaches, Inc. was granted temporary charter carrier permit authority to serve passengers between named counties and Jackpot Junction Casino at Morton, Minnesota.

2. By Petition filed with the Minnesota Transportation Regulation Board on April 15, 1993, Iyanka-Dakota Coaches, Inc. requested a permanent grant of permit authority to provide charter carrier service to transport passengers under charter between all points in Minnesota.

3. The Board published notice of the Petition in its weekly calendar, commencing on April 23, 1993, and fixed May 14, 1993, as the final date for filing Protests to the Petition.

4. Timely Protests were filed by the following authorized Minnesota intrastate charter carriers and each was made a party to this proceeding: Amboy Bus Service, Inc.; Hicks Bus Service; Koch Bus Service, Inc.; Lake Crystal Bus Service; Lee Line Corporation; Lorenz Bus Service; New Ulm Bus Lines, Inc.; Osseo-Brooklyn School Bus Co.; Philips Bus Service; RSB Coaches; Ludolph Bus Service; South Central Coaches, Inc.; Minnesota Coaches, Inc.; LCS Coaches, Inc.; Shubat Transportation Co.; Trobec's Bus Service; Brainerd Bus Lines, Inc.; Red River Trails, Inc.; Triangle Transportation Co.; Mayers, Inc., d/b/a Mayers Charter Service; Minndakota Coaches, Inc.; Carpenter Charter, Inc.; Earl LeMieur Charter Bus Service; Jutz, Inc., d/b/a Bemidji Bus Lines; Petersen Bus Service, Inc.; T & T Coaches, Inc.; Hey, Inc., d/b/a Willmar Bus Service; Rochester City Lines; Richfield Bus Co.; and Southwest Coaches, Inc.

5. The Board referred the protested Petition to the Office of Administrative Hearings for a contested case proceeding and published notice of the hearing in its weekly bulletin, commencing on July 9, 1993, to and through the date of the scheduled hearing on August 9, 1993.

6. Prior to the hearing, during the hearing, and subsequent to the conclusion of the hearing, the Petitioner and the Protestants agreed on a series of limiting amendments, as a consequence of which all of the Protestants, other than Lake Crystal Bus Service, withdrew their Protests. The final statement of the amended authority sought, styled Fifth Amendment to Petition for Charter Carrier Permit Authority, is as follows:

Petition for charter carrier permit authority to transport passengers under charter as follows:

1. from all points in Pine, Redwood, and Renville counties to all points in Minnesota and return;
2. from all points in Big Stone, Blue Earth, Carver,

Chippewa, Dakota, Douglas, Grant, Hennepin, Kandiyohi,  
Lac Qui Parle, Lyon, McLeod, Meeker, Nicollet, Pope,  
Scott, Sibley, Stevens, Swift, Traverse, Yellow Medicine,

and Wright counties, to the Jackpot Junction Casino at or near Morton, Minnesota and return;

3. from all points in Anoka, Ramsey, and Washington counties to the Jackpot Junction Casino at or near Morton, Minnesota, and return, restricted to passengers who travel to the Casino for the purpose of playing bingo;

RESTRICTIONS: The authority in paragraphs (2) and (3) above is restricted as follows:

a. restricted to service for the account of and under contract with the Jackpot Junction Casino at or near Morton, Minnesota;

b. restricted to exclude as points of origin all points within a 25-mile radius of Melrose, Minnesota;

4. from all points in the City of St. Cloud, Minnesota to the Jackpot Junction Casino at or near Morton, Minnesota and return with the following additional restrictions:

a. restricted in part (4) against service from St. Cloud State University, St. Cloud Area Vocational Technical Institute, and St. Cloud Business College; and

b. restricted in part (4) against service for the accounts of Travel Easy and St. Cloud - AAA;

5. from all points in Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties to the Shooting Star Casino at or near Mahnomon, Minnesota and return, restricted to service for the account of and under contract with the Shooting Star Casino;

6. between the Firefly Creek Casino at or near Granite Falls, Minnesota, on the one hand, and on the other, all points in Carver, Chippewa, Dakota, Hennepin, Lac Qui Parle, Scott, and Yellow Medicine counties, restricted to service for the account of and under contract with the Firefly Creek Casino;

7. from all points in Brown County to Indian lands as defined by 25 U.S.C.

8. from all points in Sherburne County excluding the cities of Becker and Clearwater to all points in Minnesota and return, restricted against service from St. Cloud, Minnesota, except as provided in part (4);

RESTRICTIONS: The authority in parts (1) through (8) above is restricted against service for the Girl Scouts or Farmer Union Camps and against the use of



executive lounge coaches with any of the following amenities: galley with a refrigerator and/or microwave; sleeping accommodations; and/or sofa and easy chair seating .

7. The only portion of the amended authority still open to dispute in this proceeding by Lake Crystal Bus Service is that portion of paragraph 2 of the limiting amendment which makes Nicollet County and Blue Earth County authorized origin points for charter transportation to the Jackpot Junction Casino at or near Morton, Minnesota and return, and paragraph 7 which makes Brown County an origin point for trips to Indian lands as defined by 25 U.S.C. 2703(4). The Administrative Law Judge accepts as reasonable and recommends to the Board for adoption as an uncontested Petition all of the amended Petition, except those portions previously noted which are contested by Lake Crystal Bus Service, namely, the origin counties of Blue Earth and Nicollet in paragraph 2 of the amended Petition and Brown County as an origin point to Indian lands as stated in paragraph 7 of the amendment.

The remainder of this Report will consider only those portions of the amended Petition which are disputed by Lake Crystal Bus Service, the origin counties of Nicollet and Blue Earth for trips to Jackpot Junction at or near Morton, Minnesota and return, and service from all points in Brown County to Indian lands, as stated in paragraph 7 of the amendment.

8. Iyanka-Dakota Coaches, Inc. is a Minnesota corporation, wholly owned and operated by Robert D. Larsen and his wife LaVeda Larsen, Rural Route 1, Box 126A, Morton, Minnesota 56270, and their son, Robert L. Larsen, of the same address in Morton, Minnesota. Iyanka-Dakota Coaches, Inc. was incorporated in the State of Minnesota on November 1, 1991. Mr. Robert D. Larsen and his son, Robert L. Larsen, are enrolled members of the Lower Sioux Community, which owns and operates Jackpot Junction Casino at Morton, Minnesota. Since ownership of the corporation is divided equally between the three principals, the company is more than 51% controlled by Lower Sioux Community members, within the Indian Set Aside Policy, attached to App. Ex. 16.

9. Robert D. Larsen, the president of Iyanka-Dakota Coaches, Inc. has worked in the trucking industry for more than 20 years as a driver, Mr. Larsen attended Morton, Minnesota schools and received a high school diploma

in 1971. Mr. Larsen had been licensed as a truck driver since 1971. In 1975 and 1976, he lost his Class A license for two DWI convictions. Since his license was last reinstated in 1976, he has always had a qualifying license.

10. In 1988, Mr. Larsen took a job with Jackpot Junction Casino, Morton, Minnesota as a shuttle driver for the Casino. In 1989, he began working for a travel service. His responsibility at that point was to operate a charter bus from Willmar to the Casino and back. Sometime in 1989, he joined the staff of the Casino as the assistant transportation manager. As assistant transportation manager, Mr. Larsen had responsibility for the casino vans that were providing service to the facility. Mr. Larsen eventually became transportation manager, where he had the responsibility for supervising 25-30 people and a number of on-call vans that transported prospective customers to the Casino. While he was assistant transportation manager, Mr. Larsen established a system at Jackpot Junction for servicing the on-call vans. After a period of time, Mr. Larsen became transportation manager. In 1989, as transportation manager, he had discussions with Mr. Dale Scott, owner of Scott

Bus Service, regarding Mr. Scott providing charter equipment to the Casino for transporting customers. In 1989, 1990 and early 1991, Dale Scott, of Scott Bus Service, was providing service to the Casino. Scott Bus Service was attempting to meet a significantly expanding need for service to the Casino. In 1991, Jackpot Junction officials encouraged Mr. Larsen to purchase charter equipment.

11. In August of 1991, Mr. Larsen purchased a 1983 MC-9 coach, which he used to provide service between the Minneapolis-St. Paul Airport and Jackpot Junction. In August of 1991, Mr. Larsen also purchased two additional buses, and, in December of 1991, he purchased a fourth bus.

12. In August of 1991, Mr. Larsen purchased a metal storage building near Morton, Minnesota as a repair facility for his equipment.

13. In the fall of 1991, Mr. Larsen began providing significant charter transportation service to Jackpot Junction Casino. Between August of 1991 and April of 1992, Mr. Larsen provided service to the Casino without having motor carrier authority. In the spring of 1992, Mr. Larsen was made aware of the fact that he could not continue to provide service to the Casino without appropriate motor carrier authority. Mr. Larsen and Scott Bus Service entered into a leasing agreement in April of 1992 under which Mr. Larsen operated under the Scott authority. Mr. Larsen obtained advice from a local DOT official. The lease documents were prepared with the assistance of the attorney for Scott Bus Service.

14. Under the business relationship between Scott Bus Service and Mr. Larsen and Iyanka-Dakota Coaches, Mr. Larsen provided a significant portion of the service to Jackpot Junction. Scott Bus Service did the billing, and paid the drivers, the fuel and the insurance costs. These amounts were withheld by Scott Bus Service from the proceeds that were ultimately remitted to Iyanka-Dakota.

15. In March of 1992, about one month before Mr. Larsen and Scott Bus Service entered their lease arrangement, Jackpot Junction desired to consolidate the number of charter carriers providing service for the account

of the Casino under contract with the Casino. At this time, Mr. Larsen was illegally serving the Casino. The Casino advertised its request for bids in local newspapers and distributed a bid notice to all parties who requested it. The Casino received three bids, including a joint bid of Iyanka-Dakota Coaches, Inc. and Scott Charter. The contract was awarded to Iyanka-Dakota Coaches, Inc. and Scott Charter. Although Iyanka-Dakota Coaches, Inc. had not yet signed a lease allowing it to operate under the Scott Bus Service authority, both Iyanka-Dakota Coaches, Inc. and Scott Charter were parties to the Casino contract.

16. The business relationship between the Larsen family and Iyanka-Dakota Coaches, Inc. and Scott Bus Service lasted until February or April of 1993 when Mr. Scott personally contacted Mr. Larsen and told him that Scott would be pulling its equipment from the Casino. Dale Scott, the owner of Scott Bus Service, had significant financial problems in the spring of 1993 and defaulted on his obligations to Iyanka-Dakota Coaches, Inc. In the spring of 1993, Scott Bus Service owed Iyanka-Dakota Coaches in excess of \$60,000 for services provided. Mr. Larsen brought his conversations with Mr. Scott to the attention of Casino officials who had a significant interest in the continuity

of charter bus service to the facility for the account of the Casino. The general manager of the Casino contacted Mr. Scott in Las Vegas. Mr. Scott reaffirmed his earlier statements that he was taking his equipment out of service to the Casino. It was unclear at that time whether Iyanka-Dakota Coaches, Inc. could continue to provide service under the Scott Bus Service authority. The large sum of money owing by Scott Bus Service to Iyanka-Dakota, however, made Mr. Larsen uneasy about any continued business relationship with Mr. Scott or Scott Bus Service.

17. After experiencing the problems with Scott Bus Service stated in Finding 16, Supra, Mr. Larsen attempted to find another carrier under whose authority he could operate. In his opinion, no other readily available carrier had a sufficient amount of territorial authority to satisfy the contract with Jackpot Junction or, if such territorial authority existed, Mr. Larsen was not comfortable entering into a business relationship with such individual carriers. Iyanka-Dakota Coaches, Inc. decided to file its Petition with the TRB for temporary and permanent authority.

18. Iyanka-Dakota Coaches, Inc., at the time it filed its Petitions, had good reason to believe that Scott Bus Service and Mr. Dale Scott personally were financially unreliable.

19. Iyanka-Dakota Coaches, Inc. now operates eight full-size motor coaches. It also has two smaller pieces of equipment. The Company makes motel pickups in Redwood Falls, services the Minneapolis-St. Paul Airport, provides service from an Eden Prairie collection point to Jackpot Junction, and does special trips for Jackpot Junction on an on-call basis. The Applicant also operates "bingo buses" for the Casino from a number of origin points.

20. Iyanka-Dakota has three full-time mechanics who service its equipment. A mechanic is always available, either in person or on call to repair equipment breakdowns. The vehicle inspections and maintenance procedures of Iyanka-Dakota Coaches are stated in Ex. 2, 3, 4, and 5.

21. Iyanka-Dakota Coaches maintains complete files on all of its drivers, with a checklist, to ensure that all driving employees have the appropriate credentials and continuing qualifications. App. Ex. 6. It also has at least one person on staff who has completed MNDOT educational programs to familiarize the operator with Minnesota motor carrier legal requirements. One of its mechanics, Donald G. Lienig, has completed vehicle maintenance courses and a vehicle course provided by the Minnesota State Patrol. App. Ex. 7. The company does initial and random drug testing of its drivers, as is

now required by law. The company exercises care in selecting new drivers and road tests each new driver in coach equipment prior to hire.

22. The company maintains its equipment at its five-stall metal service building near Morton. It also parks equipment at a truck company near Highway 35E and Seventh Street in St. Paul, Minnesota. The company stays in radio contact with its buses by use of the Jackpot Junction Casino radio service and system. Iyanka-Dakota Coaches, Inc. is currently in the process of purchasing its own base station so that it will not be required to rely on the Jackpot Junction equipment for radio communications. Currently, the company uses the Jackpot Junction dispatcher, who is available 24 hours a

day. If the authority requested is granted, Iyanka-Dakota will provide its own dispatching service.

23. The December 31, 1992 balance sheet for Iyanka-Dakota Coaches, Inc. shows total assets of \$623,116.80 and total liabilities of \$539,421.14. The company's net worth is \$83,695.66, Pet. Ex. 8. The balance sheet for 1992 is an accurate reflection of the current financial stability of the company. The owners of the business have made a \$60,000 loan to the corporation to cover the amount owing to the corporation by Scott Bus Service for service provided in 1992 and early 1993. The loan to the owner has been about one-half repaid by the corporation.

24. Iyanka-Dakota currently has three full-time mechanics, five-six full-time drivers and five office personnel, including Mrs. Larsen and the owner's son, who is also a part owner of the business.

25. Iyanka-Dakota Coaches has been approached by representatives of other Native American casinos to provide service, including Prairie Island, Shooting Star Casino, the Leech Lake Casino, and the Firefly Creek Casino. Iyanka-Dakota has declined to provide such service because of its lack of operating authority to do so.

26. Jackpot Junction Casino at Morton, Minnesota is a Native-American gaming establishment permitted by federal law. The Casino is owned by the Lower Sioux Community. Because of the geographic location of Jackpot Junction and its relative distance from the major population centers in the State, busing is of extreme importance to the Casino. Approximately 20,000-25,000 customers per week come to the Casino. Approximately 50-60% of the Casino customers come to Jackpot Junction by bus transport. Approximately 50% of the bus traffic is with independent operators and other originators who have no connection with the Casino other than it being the destination point. Approximately half of the bus traffic is in charter buses where the Casino is the customer who arranges for and pays for the charter.

27. Jackpot Junction also has airline package arrangements with Northwest Airlines. The Casino is attempting to expand its program to other airlines and intends to open a travel agency in Minneapolis to increase Casino attendance. Currently, approximately 15,000 customers per year come to Jackpot Junction through the Minneapolis-St. Paul Airport as part of an airport charter package.

28. Service is the most important attribute for a carrier who is servicing the charter business of Jackpot Junction. If a safe, comfortable ride is not provided, it reflects adversely on the Casino. Timely service is also most important. The lead time that Jackpot Junction may provide to a carrier may be as much as a week for a regularly scheduled run or as short as several hours for an unscheduled run. Jackpot Junction currently has arrangements with tour coordinators, who fill buses to the Casino. Tour coordinators are paid so much a person for filling a bus. The arrangements and compensation to the carrier are from Jackpot Junction rather than the tour coordinator. In addition to shuttle service from motels near the Casino and

airport shuttles, Jackpot Junction also requires service from the collection point in Eden Prairie and on-call service for special, unscheduled transportation runs. Jackpot Junction also still has approximately five

"bingo bus" routes from Marshall, Mankato, Willmar, Minneapolis and New Ulm to the Casino.

29. Initially, the Casino used Scott Bus Service and Iyanka-Dakota under contract to Scott Bus Service because they sought out and obtained the business. The Casino also wished to coordinate its charter needs under one carrier. The Casino was dealing with 50 or 60 different coordinators and carriers. It found it easier and less expensive to use one main carrier. In March of 1992, it advertised for bids on the service contract with the Casino. Three companies provided bids. The lowest bid was provided by the joint venture of Iyanka-Dakota and Scott Bus Service, with Iyanka-Dakota operating under the Scott authority. App. Ex. 16, Affidavit of Dennis Prescott.

30. The Lower Sioux Community also has an Indian Set Aside Policy under which the Community gives preference in all hiring, purchasing goods or services, or contracting to individuals who are members of the Lower Sioux Community and to companies that are controlled at least 51% by members of the Lower Sioux Community. Because Iyanka-Dakota was the low bidder, it and Scott obtained the contract. If it had not been the low bidder, it would have received preference under the Indian Set Aside Preference if its bid had been at or below the average bid price. The Community has adopted the Indian Set Aside Program to attempt to develop employment for members of the Lower Sioux Community.

31. Jackpot Junction encouraged Mr. Larsen to provide service to the Casino because of his Native-American background. They were satisfied with the service provided by Scott Bus Service and Iyanka-Dakota operating under the Scott authority. When Mr. Scott exhibited financial instability and threatened to remove his equipment from service to the Casino, the Community supported Iyanka-Dakota Coaches in its request for temporary and permanent authority to provide service. Under its temporary authority, Iyanka-Dakota Coaches has provided excellent service to the Casino. The equipment provided is in good repair. The drivers are courteous. All service is provided in a timely fashion, responsive to the Casino customers' needs.

32. Lake Crystal Bus Service, Inc. has authority to provide charter service within a radius of 40 miles from the City of Lake Crystal to all points in Minnesota, except for service from the cities of Waseca, New Richland, Waldorf, Waterville, Kilkenny and Montgomery. Pet. Ex. 11. The

major towns within the authority of Lake Crystal Bus Service, Inc., insofar as service to Jackpot Junction Casino is concerned, include points in Nicollet, Blue Earth and Brown Counties. The primary service points in dispute are Mankato, New Ulm and Sleepy Eye, and some smaller towns within those named three counties on the routes from the major population centers to Jackpot Junction.

33. Lake Crystal Bus Service maintains a three-bay shop, work area and building approximately five and one-half miles north and east of Mankato. It employs three full-time drivers and 15 part-time drivers. The Company employs two mechanics and does all of its vehicle repair work in-house, except for major engine overhauls. Lake Crystal Bus Service, Inc. is a family business owned and operated by Mr. and Mrs. Dennis Heinze.

34. Lake Crystal Bus Service, Inc. is currently the "backup carrier" from Nicollet, Blue Earth and Brown Counties to Jackpot Junction. On average, it earns approximately \$1,000 per month yearly in revenues from Jackpot Junction. During peak times, however, it earns significantly more revenue per month from Casino trips. Lake Crystal believes that it would earn approximately \$4,000 per month in revenues, if it were the primary carrier for Jackpot Junction Casino from Nicollet, Blue Earth and Brown Counties.

35. The Protestant operates the equipment stated in Prot. Ex. 12, which includes seven MCI coaches and a 1989 Ford Supreme 24-passenger vehicle.

36. Prior to January of 1993, Lake Crystal Bus Service, Inc. dealt with a number of coordinators who packaged trips to Jackpot Junction. The carrier was paid by the coordinator and not Jackpot Junction. The coordinators with whom the Company worked before January of 1993 are no longer in business. The trips are now paid for under contract with the Casino. All of the transportation service Lake Crystal is now providing for Jackpot Junction is arranged through the coordinator Frances Anderson. The primary carrier used by the Casino through Frances Anderson is Iyanka-Dakota Coaches, Inc.

37. Protestant's Ex. 14 shows that on a number of occasions Lake Crystal Bus Service, Inc. has had idle equipment. However, most recently and on peak usage days such as weekends, Lake Crystal Bus Service, Inc. has had little or no idle equipment in 1993. The heaviest demand months for charter equipment to Jackpot Junction include June, July and August and, particularly, summer weekends.

38. At the hearing herein, the Petitioner stipulated that, with respect to paragraph 7 of the amended Petition, the only evidence introduced about a need for service from Brown County to Indian lands related solely to the destination of Jackpot Junction at Morton, Minnesota.

Based on the above Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Transportation Regulation Board have jurisdiction over the subject matter of this hearing.

2. Proper notice of the hearing was timely given, and all relevant substantive and procedural requirements of law or rule have been fulfilled and, therefore, the matter is properly before the Administrative Law Judge.

3. The past illegal activity of the Petitioner while it provided

service for Jackpot Junction before it entered into a leasing agreement with Scott Bus Service does not evidence a character of mind that makes it unlikely that Iyanka-Dakota Coaches, Inc. will comply with applicable transportation statutes and rules in the future.

4. From Petitioner's experience, knowledge of the rules and financial condition, it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

5. Petitioner's vehicles, being regularly maintained and free from defects, are within the safety requirements prescribed by the Department of Transportation.

6. The Petitioner has established a need to provide charter service under contract with, and for the account of, Jackpot Junction Casino from the counties of Blue Earth, Nicollet and Brown to Jackpot Junction Casino at Morton, Minnesota and return.

7. In determining whether a need for service from Blue Earth, Nicollet and Brown Counties to Jackpot Junction has been established, it is appropriate to consider the preference program of the Lower Sioux Community stated in App. Ex. 16, Ex. A.

B. The Protestant has filed to establish that it can fully serve the needs of Jackpot Junction Casino for service under contract and with and for the account of Jackpot Junction Casino from Blue Earth, Nicollet and Brown Counties.

9. Any Finding of Fact more properly termed a Conclusion and any Conclusion more properly termed a Finding of Fact is hereby expressly adopted as such.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE FOLLOWING RECOMMENDATIONS.

Based upon the foregoing Conclusions, it is the Recommendation of the Administrative Law Judge to the Board that it issue an Order granting the request for charter carrier authority as stated in Finding 6, supra, except that paragraph 7 be deleted and that Brown County be included in paragraph 2 of the Amended Petition as stated in Finding 6, supra.

Dated this            day of September, 1993.

BRUCE D. CAMPBELL  
Administrative Law Judge

NOTICE

Pursuant to 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.

Reported: Audio-Magnetic Recording; No Transcript Prepared.



MEMORANDUM

Through a series of negotiations with almost all of the Protestants, the charter carrier authority sought by Iyanka-Dakota Coaches, Inc. was limited to that stated in Finding 6, supra. After that amendment, the only remaining Protestant is Lake Crystal Bus Service, Inc. Lake Crystal is interested in being the primary carrier for Jackpot Junction Casino from Nicollet, Blue Earth and Brown Counties. The main points in dispute include New Ulm, Sleepy Eye, and Mankato, and some adjacent smaller communities.

Iyanka-Dakota Coaches, Inc. has requested a grant of charter carrier permit authority. Under Minn. Stat. 221.121, subd. 1 (1993), Iyanka-Dakota must first establish its "fitness and ability", as that term is defined in Minn. Rules pt. 7800.0100, subp. 4 (1989). The Petitioner must then establish a public need for all or a portion of the permit authority requested. If such need is established, the burden shifts to the active Protestants opposing the Petition to establish that they, individually or collectively, can adequately serve the need established. Appeal of Signal\_Delivery Service, 288 N.W.2d 707, 712 (Minn. 1980); American Courier Corp. v Loomis Armored Car, Inc., 294 Minn. 207, 200 N.W.2d 175 (1972). The Petitioner may not rely on past illegal traffic to establish need for a grant of authority.

Although there is some evidence in the record of past illegal activity on the part of Mr. Larsen in providing service to Jackpot Junction without authority, the Administrative Law Judge concludes that Iyanka-Dakota is fit and able within the meaning of Minn. Rules pt. 7800.0100, subp. 4 (1989). Past illegal activity will disqualify a company from receiving a grant of authority when it is flagrant and widespread so as not to be fairly characterized as inadvertent, and when such past illegal activity evidences a cast of mind making it unlikely that the company will fully comply with the transportation law in the future. Spirit\_Coaches\_Inc., CHTR 59202, Sub. 1, TRB, October 23, 1990, aff'd, Spirit\_Coaches,\_Inc.\_y. Minnesota\_Transportation\_Regulation Board, C7-90-2488 (Minn. App. 1991) (unpublished); Brinks. Inc. v. Minnesota Public Utilities Commission, 355 N.W.2d 446, 450 (Minn. App. 1984). The Administrative Law Judge does not believe that there is sufficient evidence in the record from which one could conclude that Iyanka-Dakota Coaches, Inc. will not fully comply with all transportation statutes and rules in the future.

With respect to a showing of need, the Applicant has established through the testimony of the general manager of Jackpot Junction that the Casino has a need for charter service for the account of the Casino from Blue Earth, Nicollet and Brown Counties to Morton and return. The Petitioner had largely

fulfilled that need by operating under the authority of Scott in 1992 and under its temporary authority.

The Administrative Law Judge believes it is appropriate to consider the activities of Iyanka-Dakota Coaches, Inc. under the Scott authority as evidence of need. The Administrative Law Judge is aware of a number of cases in which the Board has considered the issue of whether operations under a leasing arrangement may be used to establish need for service. These cases include Mississippi Transport, Riteway Mobile Home-Repair, and Twin City Freight. The general rule derived from those cases is that such service under lease may not be relied upon to establish need, when service under the leasing arrangement has been entirely satisfactory and there is no evidence that the leasing arrangement could not continue in the future.

In this case, however, Scott Bus Service demonstrated financial instability and defaulted on approximately \$60,000 of obligations it owed Iyanka-Dakota Coaches, Inc. Under such circumstances, continuation of the leasing arrangement would not have been prudent for the Petitioner. Under the decisions of the Board previously discussed, therefore, the inability to continue the successful leasing arrangement allows the Petitioner to demonstrate need through service provided under the lease.

The primary argument made by Lake Crystal Bus Service, Inc. is that it can fully satisfy the need of Jackpot Junction for service to the Casino from Blue Earth, Brown and Nicollet Counties. The Administrative Law Judge does not agree. The charter business the Protestant had with Jackpot Junction as a destination point was with coordinators who no longer are responsible for Casino transportation. The Protestant never had a direct relationship with the Casino. Moreover, even in its backup capacity, the Protestant derives significant revenues from providing service for Jackpot Junction. Lake Crystal Bus Service, Inc. never did have, historically, the business now enjoyed by Iyanka-Dakota from the named counties. Previously, Iyanka-Dakota provided that service under lease with Scott. The record demonstrates a sufficient amount of traffic from these locations that it would be appropriate to have two carriers able to provide service to the Casino from these counties.

Although not critical to the decision of the Administrative Law Judge in this case, it is also appropriate to consider the fact that the Petitioner is controlled by Native-American individuals and would qualify for the preference the Lower Sioux Community has adopted for dealing with bona fide members of the Community. That policy and preference is stated in App. Ex. 16, Ex. A. The Board considered a similar issue in Benco-Messenger, Inc., CSC 64884/E-92-346, Sub. 1, August 6, 1993. This case is somewhat different in that no government purchasing requirement imposes a minority set aside. The Lower Sioux Community has, however, adopted a preference for dealing with members of its own Community when the bid received from that member is at or below the average price of other bidders. The Administrative Law Judge believes that the preference expressed in the Lower Sioux Set Aside Policy is within the reasoning the Board adopted in Benco-Messenger Inc., supra. The sole Protestant in this proceeding remaining, Lake Crystal Bus Service, Inc., is not a Native-American enterprise within the set aside policy of the Lower Sioux Community stated in App. Ex. 16,

Ex. A.

B.D.C.

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