

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

In the Matter of Stacy's Precious Kargo
Kab, Inc., d/b/a Kar-Go-Cab, 18713
Jasper Way, Lakeville, MN 55044:
Petitioner for Charter Carrier Permit
Authority to Transport Passengers
Under Charter between Points in
Dakota and Scott Counties

FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDED ORDER

The above-entitled matter came on for hearing before Bruce D. Campbell, Administrative Law Judge from the Office of Administrative Hearings on May 11, 1995, in South St. Paul, Minnesota.

Appearances: Joel E. Abrahamson, Krass and Monroe, Attorneys at Law, Suite 1100, Southpoint Office Center, 1650 West 82nd Street, Bloomington, Minnesota 55431-1447, appeared on behalf of Petitioner, Stacy's Precious Kargo Kab, Inc. (Kargo Kab or Petitioner); and Patrick Regan, 2866 White Bear Avenue, St. Paul, Minnesota 55109, appeared on behalf of Protestant Minnesota Coaches, Inc.

The record in the proceeding closed on May 22, 1995, with the receipt by the Administrative Law Judge of a posthearing brief filed on behalf of the Petitioner.

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 for determination in this proceeding is whether the type of service to be provided by Stacy's Precious Kargo Kab, Inc. is appropriately the subject of a charter carrier permit. All other issues were the subject of a stipulation.

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

FINDINGS OF FACT

1. On October 25, 1994, the Petitioner filed with the Transportation Regulation Board a Petition for charter carrier permit authority to transport passengers under charter between points in Dakota and Scott Counties.

2. Notice of the filing of the Petition was published in the Transportation Regulation Board's calendar dated October 28, 1994, setting a protest deadline of November 17, 1994. Timely protests were filed by Lorenz Bus Service, Inc., Voigt's Motorcoach Travel, Inc. and Minnesota Coaches, Inc.

3. The Board published a Notice of Hearing in its weekly calendar dated March 17, 1995, setting a hearing date of April 20, 1995.

4. At the request of the parties, the hearing was rescheduled to be held on May 11, 1995. Notice of the hearing was published in successive weekly calendars of the Board up to the date of hearing.

5. Prior to the hearing, the Petitioner proposed to amend the Petition as follows: Petition for charter carrier permit authority to transport passengers under charter between points in Dakota and Scott Counties, restricted to passengers 18 years of age and under in vehicles not larger than a 15-passenger van. The Administrative Law Judge, by letter dated April 17, 1995, accepted the amendment as reasonable.

6. On the basis of the amendment accepted by the Administrative Law Judge, Protestants Lorenz Bus Service, Inc. and Voigt's Motorcoach Travel, Inc. withdrew their Protests, conditioned on the Board accepting the amendment proposed as reasonable.

7. At the hearing herein, the remaining Protestant, Minnesota Coaches, Inc., appeared to continue to protest the Petition. The sole point of dispute was the position taken by Minnesota Coaches, Inc. that the service to be provided by the Petitioner did not meet the definition of charter carrier service contained in Minn. Stat. § 221.011, subd. 20 and 21 (1994).

8. At the hearing, the Petitioner affirmatively established its fitness and ability and the need for a portal-to-portal service for minors in Dakota and Scott Counties in van-type equipment. The record of the proceeding, including the testimony of a number of existing and potential users of the service, and Pet. Ex. 1, which contains a balance sheet for the corporation, also affirmatively establishes, without contest, the fitness and ability of the Petitioner and the need for the transportation service described in the amended Petition.

9. Although the Petitioner operated its transportation service prior to receiving any permit, it did so only on the specific advice of employees of the Department of Transportation. The Petitioner repeatedly questioned persons at the Department of Transportation about the necessity for obtaining permit authority and the appropriate type of authority for which to apply. The Company was repeatedly given incorrect, erroneous advice.

10. There is no evidence in the record that Minnesota Coaches, Inc., could adequately meet the need for the portal-to-portal transportation of minors within Scott and Dakota Counties in van-type equipment that was established by Petitioner.

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

CONCLUSIONS

1. The Transportation Regulation Board has jurisdiction over the subject matter of the 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. From Petitioner's experience, knowledge of the regulations and financial condition, it is fit and able within the meaning of Minn. Rule 7800.0100, subp. 4.

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

5. Petitioner has established the need for special passenger carrier service within the geographic area of the Petition, as the term "special passenger carrier" is defined in Minn. Stat. § 221.011, subd. 32 (1994).

6. The Protestant has not established that it can adequately meet the need for special passenger carrier service, as that term is defined in Minn. Stat. § 221.011, subd. 32 (1994), demonstrated by the Petitioner.

7. Stacy's Precious Kargo Kab, Inc. may only meet the need for special passenger carrier service demonstrated at the hearing is if it receives a charter carrier permit. Minn. Stat. § 221.121, subd. 6b (1994); Minn. Stat. § 221.111 (5) (1994).

8. As a consequence of Conclusions 1-7, supra, it is appropriate to grant the Petitioner the limited charter carrier permit authority sought in the amended Petition. That permit will then authorize the Petitioner to provide special passenger carrier service, as that term is defined in Minn. Stat. § 221.011, subd. 32 (1994), throughout the geographic area of the amended Petition.

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, the Administrative Law Judge recommends to the Transportation Regulation Board that it issue the following:

ORDER

The Petition for charter carrier permit authority sought by Stacy's Precious Kargo Kab, Inc., as amended, to transport passengers under charter between points in Dakota and Scott Counties, restricted to passengers 18 years of age and under in vehicles not larger than a 15-passenger van is GRANTED.

Dated this 15th of June, 1995.

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: Tape Recorded; No Transcript Prepared.

MEMORANDUM

The sole objection to a grant of the requested charter carrier permit authority, as stated by Minnesota Motorcoaches, Inc., is that the service the Petitioner proposes to provide does not meet the definition of charter carrier service.

Minn. Stat. § 221.021 (1994), prohibits an entity from operating as a motor carrier without the appropriate certificate or permit in effect. Minn. Stat. § 221.011, subd. 15 (1994), defines a motor carrier as a carrier operating for hire under the authority of chapter 221 and subject to the rules and orders of the Commissioner or Board. Further, Minn. Stat. § 221.111 (1994) limits the types of permits that the Board may grant. The only permit that even approximates the type of service the Petitioner seeks to provide is stated in Minn. Stat. § 221.111 (5) (1994), a charter carrier permit. The terms “charter” and “charter carrier”, however, are defined in Minn. Stat. § 221.011, subd. 20 and 21 (1994), to require that the passengers, as a group for a specified sum, occupy the motor vehicle for a specified act of transportation at a specified time. Minnesota Motorcoaches argues that charter carrier permit authority must be inappropriate because the Petitioner carries unrelated individuals not having a common destination without an aggregate charge and without a group transportation service. Apparently, then, Minnesota Motorcoaches, Inc. argues that it is necessary that the need established by the Protestants, and testified to by a number of parents, go unsatisfied.

The Administrative Law Judge believes that the result suggested by Minnesota Motorcoaches, Inc. is as inappropriate as the erroneous advice that the Petitioner repeatedly received from the Department of Transportation. The Petitioner has established that a transportation need exists within Scott and Dakota Counties which is not being satisfied and which will not be satisfied by the Protestant. The Petitioner has established its fitness and ability and, on the basis of past actions, has provided an exemplary service. Under such circumstances, the Administrative Law Judge believes it is appropriate for the Board to grant the permit which will allow satisfaction of the public need clearly demonstrated. To say that a recognized need must go unfulfilled because of regulatory definition is the type of thinking that has ultimately led to virtual deregulation of the trucking industry.

The service to be provided by the Petitioners, that is, the portal-to-portal transport of minor children within Scott and Dakota Counties to specified locations most closely approximates a special passenger carrier service, as that term is defined in Minn. Stat. § 221.011, subd. 32 (1994). That is the type of service for which the Petitioner has established a definite need in Scott and Dakota Counties. As a consequence of Minn. Stat. § 221.111 (1994), however, the Board cannot issue a special passenger carrier permit. Under Minn. Stat. § 221.121, subd. 6b (1994), only a person who has received a charter carrier permit from the Board may provide special passenger service within the territory or on the routes granted in the order granting the charter carrier permit. Under the statute, a charter carrier may provide special passenger carrier service, if it files a tariff that shows the rates and charges that apply to the special passenger service.

Minn. Stat. § 221.121 (1994), provides that the Petitioner must demonstrate its fitness and ability, that its vehicles meet the safety standards imposed by the Department of Transportation and that the area to be served has a need for the

transportation services sought to be provided. The Petitioner has established its fitness and ability, the safety of its vehicles, and the existence of a need for portal-to-portal transportation service to minors within Dakota and Scott Counties in van-type vehicles. Since the law has made the ability to provide special passenger carrier service dependent upon the receipt of a charter carrier permit under Minn. Stat. § 221.121, subd. 6b (1994), it is appropriate that the Board grant to the Petitioner the restricted charter carrier permit authority sought, so that it can legally provide special passenger carrier service within Dakota and Scott Counties. To adopt the position of Minnesota Motorcoaches that “you can’t get there from here”, serves no equitable or legal purpose.

The Administrative Law Judge also notes that the Board has granted charter carrier permit authority to a number of businesses that operate almost exactly as is proposed by the Petitioner. CH69621,73974/E-93-202; CHTR66882/A-90-241.

BDC