

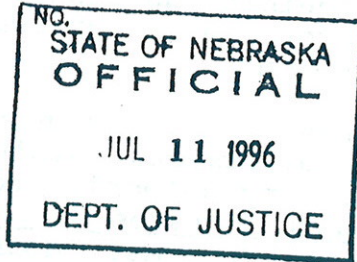


STATE OF NEBRASKA
Office of the Attorney General

2115 STATE CAPITOL BUILDING
LINCOLN, NE 68509-8920
(402) 471-2682
TDD (402) 471-2682
CAPITOL FAX (402) 471-3297
1235 K ST. FAX (402) 471-4725

#96051

DON STENBERG
ATTORNEY GENERAL



STEVE GRASZ
LAURIE SMITH CAMP
DEPUTY ATTORNEYS GENERAL

DATE: July 11, 1996

SUBJECT: Nebraska Attorney General Opinion #96021 Regarding Jurisdiction of Nebraska Public Service Commission Over Taxicab Service Between Epply Airport and Omaha, Nebraska

REQUESTED BY: Rod Johnson, Chairman
Nebraska Public Service Commission

WRITTEN BY: Don Stenberg, Attorney General

It has come to my attention that there is some disagreement concerning the meaning of the above referenced Attorney General's opinion. The language of that opinion which is in dispute is, as I understand it, as follows:

[W]e do not think that, if Petitioner applied for authority to operate in this manner, the Commission could prohibit Petitioner from engaging in common carriage activity over this route, as this would place an improper burden on interstate commerce. Based on the decision in *Broward County*, however, we believe that the Commission would be justified in undertaking regulation of Petitioner's activities with regard to matters such as "safety, operational fees, procedural safeguards, restrictions on the carrier to operations within its exceptional status, and insurance."

I can see where this language could be interpreted in two ways. On the one hand, it might be argued that this language says that in no event could the Public Service Commission prohibit a taxicab company on a route from Epply Airfield to Omaha from engaging in transportation activity.

David K. Arterburn
L. Jay Bartel
J. Kirk Brown
David T. Bydalek
Dale A. Comer
James A. Elworth
Lynne R. Fritz
Royce N. Harper

Lauren L. Hill
Jay C. Hinsley
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James H. Spears
Mark D. Starr
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Timothy J. Texel
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Alfonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

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I did not understand that language to mean that. If the Commission lacked the authority to prohibit the transportation of such passengers, then how could it enforce any requirement to pay fees, meet safety requirements, and so on?

My interpretation of the language of our opinion, which I understand is not shared by all of the lawyers involved in this issue, is that the Commission cannot deny authority to engage in this business merely because a company operates from an out-of-state location. In my view, the Commission may impose the same requirements and may refuse to grant operational approval on the same basis that the Commission would refuse to grant any Nebraska operator the right to conduct this business.

Because of the interstate nature of the transportation involved, the Commission would have a burden, in the event of litigation in federal court, to establish that a decision to deny authority was based on legitimate regulatory issues (not on the out-of-state location of the applicant), was not discriminatory, and did not impose an impermissible burden on interstate commerce.

I hope this clarifies for the Commission my view concerning this matter.

Yours truly,



Don Stenberg
Attorney General

01-02-01