

Service Date: August 7, 2003

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

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IN THE MATTER OF BRIAN D. PARKS,)	TRANSPORTATION DIVISION
dba BLACK TIE LIMOUSINE CHARTER,)	
Missoula, Montana, Application for a Montana)	DOCKET NO. T-02.28.PCN
Intrastate certificate of Public Convenience)	
and Necessity)	ORDER NO. 6538

FINAL ORDER

INTRODUCTION

1. On May 30, 2002, Brian D. Parks, dba Black Tie Limousine Charter (Parks), Missoula, Montana, filed before the Public Service Commission (PSC) an application for motor carrier authority to transport passengers. Parks requests Class B motor carrier authority, passengers in limousine service between all points and places in Lake, Missoula, and Ravalli counties, Montana.

2. Hearing on Parks' application was held May 2, 2003, in Missoula. Parks appeared at hearing. Protestant, Valet Limousine, Inc. (Valet), appeared at hearing. Evidence has been taken, the matter has been fully considered, and the requested authority is DENIED, for the reasons expressed in the following findings of fact and conclusions of law.

FINDINGS OF FACT

3. All introductory statements which can properly be considered findings of fact and which should be considered as such to preserve the integrity of this order are incorporated herein as findings of fact.

4. Parks intends to operate a limousine service in three Montana counties (Lake, Missoula, and Ravalli). Valet is a motor carrier with competing authority in the

proposed service area.

5. Parks presented passenger witnesses testifying in regard to the need for service in Missoula County, but not in regard to the need for service in Lake or Ravalli counties. Regarding Missoula County, at least two of the four Parks' passenger witnesses had never used the service of a limousine, one or more simply expressed an interest in free enterprise and competition and suggested Missoula could support another limousine service, at least two witnesses commented that existing limousine service is not affordable, and all suggested there are insufficient limousines available in Missoula for the annual event of high school proms.

6. Valet agrees there is a problem with service on prom nights, but suggests that addition of another limousine service will not cure that problem. Valet demonstrated that during the majority of time there is not enough service to fill the available time of the existing limousine carriers.

CONCLUSIONS OF LAW

7. All findings of fact which can properly be considered conclusions of law and which should be considered as such to preserve the integrity of this order are incorporated herein as conclusions of law.

8. The PSC has jurisdiction over applications for motor carrier authority pursuant to Title 69, Chapter 12, MCA. The application of Parks is proper in form and was properly noticed, protested, and heard in accordance with Title 69, Chapter 12, MCA, and Title 2, Chapter 4, MCA (Montana Administrative Procedures Act). The PSC regulates motor carriers pursuant to Title 69, Ch. 12, MCA. A part of that regulation includes control over entry of additional carriers. Parks is an additional carrier.

9. The merits of Parks' case turn on the elements of public convenience and necessity. The PSC will generally grant motor carrier authority when the "public convenience and necessity" requires authorization of the service proposed. In this regard, §

69-12-323(2), MCA, provides:

(a) If after hearing upon application for a certificate, the commission finds from the evidence that public convenience and necessity require the authorization of the service proposed or any part thereof, as the commission shall determine, a certificate therefor shall be issued. In determining whether a certificate should be issued, the commission shall give reasonable consideration to the transportation service being furnished or that will be furnished by any railroad or other existing transportation agency and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year and the effect which the proposed transportation service may have upon other forms of transportation service which are essential and indispensable to the communities to be affected by such proposed transportation service or that might be affected thereby.

10. Additionally, § 69-12-415, MCA, provides that an authority may not be issued (or remain in force) unless the holder is fit, willing, and able to perform the service authorized and conforms to applicable legal requirements.

11. As the above statutes reflect, there are specific elements involved in reaching a determination on whether public convenience and necessity requires authority. Public convenience and necessity will be deemed as requiring a grant of intrastate motor carrier authority in Montana when each of the required elements demonstrate that authority should be granted. Matter of Jones Brothers Trucking, Inc., PSC Docket No. T-9469, Order No. 5987a, p. 8 (July 17, 1990), includes a narrative statement of the required elements (the elements have been described in numerous other PSC opinions, sometimes in slightly different ways, but all the same in substance):

Applying this language [sec. 69-12-323(2), MCA] to the facts presented by any application for authority, the Commission

has traditionally undertaken the following analysis: First, it asks whether the Applicant has demonstrated that there is a public need for the proposed services. If the Applicant has not demonstrated public need then the application is denied and there is no further inquiry. Second, if the Applicant has demonstrated a public need for the proposed service, then the Commission asks whether existing carriers can and will meet that need. If demonstrated public need can be met as well by existing carriers as by an Applicant, then, as a general rule, an application for additional authority will be denied. Third, once it is clear that there is public need that cannot be met as well by existing carriers, the Commission asks whether a grant of additional authority will harm the operations of existing carriers contrary to the public interest. If the answer is yes, then the application for new authority will be denied. If the answer is no, then the application will be granted, assuming the Commission determines the Applicant fit to provide the proposed service.

12. The "fit, willing, and able" language of Section 69-12-415, MCA, was enacted subsequent to the opinion in Jones Brothers. However, as the quote from Jones Brothers indicates, the PSC has historically treated fitness as an element.

13. In accordance with the above, the PSC will grant additional authority when the following elements exist: (a) there is a public need; (b) existing carriers cannot meet that need; (c) additional authority will not harm existing carriers contrary to the public interest; and (d) the applicant is fit, willing, and able to provide the proposed services.

14. The first element to consider in determining whether public convenience and necessity requires a grant is public need. In regard to public need, Parks presented shippers generally supportive of the authority applied for. However, the witnesses supporting Parks' requested authority did not testify at all regarding Lake and Ravalli counties and did not establish a qualifying need or that existing carriers could not meet that need in Missoula County.

ORDER

15. All conclusions of law which can properly be considered an order and which should be considered as such to preserve the integrity of this order are incorporated herein as an order.

16. All pending objections, motions, and arguments not specifically having been ruled on in this order (if any) shall be deemed denied, to the extent that such denial is consistent with this order.

IT IS HEREBY ORDERED the application of Brian D. Parks, Missoula, Montana, is DENIED.

Done and dated this 8th day of July, 2003, by a vote of 4 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

BOB ROWE, Chairman and Hearings Examiner
(separate statement attached)

THOMAS J. SCHNEIDER, Vice-Chairman

GREG JERGESON, Commissioner

JAY STOVALL, Commissioner

ATTEST:

Acting Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.

Additional Statement of Chairman Bob Rowe

The applicant and his witnesses raised questions about the role of limousine regulation. I have personally raised similar questions over many years. The Legislature has on several occasions considered bills to eliminate regulation of this form of transportation, and has declined to do so. While the Commission has a certain amount of discretion, that discretion is bounded by the law. In this instance, whether one agrees or disagrees with the law, it is not possible to grant the application consistent with the law.

Bob Rowe, Chairman PSC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Final Order 6538, issued in Docket T-02.28.PCN in the matter of Brian D. Parks dba Black Tie Limousine Charter, Missoula, Montana, has today been sent to all parties listed.

MAILING DATE: August 7, 2003

FOR THE COMMISSION

FIRST CLASS MAIL

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