

Service Date: January 12, 2000

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

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IN THE MATTER of Victor I. Pizzola dba) UTILITY DIVISION
Valley Taxi, Hamilton, Montana, Application)
For a Montana Intrastate Certificate of) DOCKET NO. T-98.32.PCN
Public Convenience and Necessity) ORDER NO. 6469a

ORDER ON RECONSIDERATION

Background

1. Victor Pizzola, doing business as Valley Taxi, applied to the Montana Public Service Commission (Commission) for a Class B authority to transport medical and psychiatric patients to and from all points and places in Ravalli, Missoula, Mineral, Powell and Lewis and Clark counties in private pay and/or under contract for the State of Montana, Medicaid, Veterans Administration or others. Paul Sultzbach, dba Mission Valley Medicab, (Medicab) operating under PSC No. 9199 (Sub B), protested the Application and requested a public hearing.

2. Initially, a public hearing was noticed and scheduled for January 14, 1999, but cancelled at the request of Mr. Pizzola, because he had no witnesses and was depending on the testimony of Protestant's wife, who was in surgery and recovery. In a telephone conference with Mr. Wayne Budt, Administrator of the Transportation Division, Mr. Pizzola waived the 180-day requirement for a final order. The Commission later noticed the hearing for August 26, 1999 in Missoula.

3. On August 23, 1999, Medicab submitted a letter setting forth the terms of an informal resolution with Valley Taxi to limit the authority as follows: "All transports in Missoula County shall originate and terminate outside of Missoula County." The limitation would allow Valley Taxi to pick up a non-emergency patient in Ravalli County for transportation to an appointment in Missoula County, and to provide other related transportation in Missoula, so long as the trip terminated in Ravalli County.

4. On August 25, 1999, Valley Taxi requested that the Commission bring official records to the hearing and a final order granting an authority related to another application, which he believed was for Granite County. Mr. Pizzola intended to "reuse" the application to demonstrate shipper need to support his own application. He also requested that the Commission bring the official records of the application of Ravalli County Council on Aging for Class B

authority (Docket No. T-99.1.PCN), including his testimony, to demonstrate the need for Valley Taxi's request in the present application.

5. The Commission conducted a public hearing on August 26, 1999 in the Missoula City Council Chambers, 435 Ryman Street, Missoula, Montana. At the hearing, Mr. Pizzola agreed with the terms of the proposed Stipulation between him and Mission Valley Medicab, in which Mission Valley Medicab would not object to granting Valley Taxi the authority, if all trips originate or terminate in Ravalli. Mission Valley Medicab agreed that Valley Taxi could take non-emergency medical and psychiatric patients as passengers from one health care provider to another within Missoula as part of a transportation originating or terminating in Ravalli County.

6. Medicab did not object to a grant of authority to the other counties in the application.

Although Medicab could provide the service and was available to do so under the authority in Granite and Powell counties, there was virtually no need and hence no income from those counties. Mr. Pizzola requested to withdraw his application for authority in Granite and Powell counties.

7. Mr. Pizzola was interested in providing service to Lewis and Clark County, because he had an urgent need to make more money. He noted that there were no protests from Lewis and Clark County. He believed that Lewis and Clark County would be a potentially large source of income, and would like to be able to do state contracts. He requested at least a temporary authority in Lewis and Clark County. He would set up a person and a vehicle in Helena, with an apartment, a telephone and fax, to dispatch service out of Lewis and Clark as a separate operation from that in Ravalli County. He believed that as a qualified state of Montana Medicaid contractor, he would have contracts as soon as the Commission permitted him. He anticipated that the cost of operation would be about 25 percent of his cost in the current operation where he serves the general public. Mr. Pizzola had not contacted anyone in Lewis and Clark County to determine the need for this authority.

8. In Order No. 6469 issued November 3, 1999, the Commission accepted the stipulated limitation to allow Valley Taxi to transport non-emergency medical and psychiatric patients to various appointments in Missoula County as part of a continuous transportation, limited to transportation originating or terminating in Ravalli County. The Commission also allowed Mr. Pizzola to withdraw his application for the requested authority in Granite and Powell counties.

However, the Commission denied the request to provide service in Lewis and Clark County, because there were no witnesses or evidence to support the need for the service.

Decisions on Reconsideration

9. On November 9, 1999, Mr. Pizzola filed a Request for Transcripts, Request for Complaints, Request for "Unexcised" Complaints, Requests for Answers to Questions, and Requests for Information. A party to a proceeding is responsible for obtaining and paying for transcripts. If a party requests a transcript from the court reporter, the Commission gets the original and the party gets a copy. Under its contract with court reporters, as well as state law, the Commission cannot copy a transcript for a party. The party must pay for and obtain the copy from the court reporter. The state of Montana is not responsible for financing a party's case. Mr. Pizzola's requests related to complaints are irrelevant and have no bearing on the decisions in Order No. 6469, as outlined herein in 8. Mr. Pizzola obtained the authority that he stipulated to in Missoula County, and failed to obtain the authority in Lewis and Clark County, for which there was no shipper support.

10. On November 13, 1999, Mr. Pizzola filed a Motion to Reconsider, which he supplemented on November 15, 1999. He challenged the decision as being harmful to Valley Taxi and Ravalli County. First, the Commission points out that Mr. Pizzola got the authority to which he stipulated for serving Ravalli County residents on subsequent medical-related trips within Missoula County, which should benefit Ravalli County. Second, he did not get the authority for Lewis and Clark County, where he proposed to perform a separate operation from that in Ravalli County. Although he does not represent them, the citizens of Ravalli County have not been harmed by the decision. Mr. Pizzola failed to demonstrate that the decision would harm him financially. He provided no evidence that his operation in Ravalli County would improve as a result of a separate operation in Lewis and Clark County. He presented no evidence of a need in Lewis and Clark County that he was financially fit to provide.

Financial desperation is not a basis for the Commission to grant an authority. On the contrary, it demonstrates a lack of financial fitness to perform the expanded service.

11. In his November 13, 1999 pleading, Mr. Pizzola made a number of accusations. He has made no showing to persuade the Commission to reconsider its decision and determine that it was unjust, unwarranted or should be changed, as is required by ARM 38.2.4807(3). The Commission's decision was well-reasoned and was not arbitrary and capricious. However, Mr. Pizzola should not make these arguments

to the Commission but rather to the District Court on judicial review. To the Commission, he should point to specific grounds in the record or the conclusions of law on which it is unlawful and unreasonable. For example, the amendments to the scope of authority recommended by the Commission Staff have nothing to do with the ultimate authority that Mr. Pizzola requested. When he found out there was no money in those counties, he withdrew the request for authority there. He was confused about what county Alberton was in, and did not seem to know where the counties were for which he applied. The fact that the Commission Staff assisted him in formulating an application, under these circumstances, did not prejudice the outcome. Mr. Pizzola agreed to waive the 180-day requirement. He had no case to present at a hearing in January, and the additional time was for his benefit to bring evidence and witnesses to the table to demonstrate need. Instead, he demanded that the Commission and/or the Protestant bring the evidence and the witnesses. The records he requested did not bear on the need for his services in the counties for which he applied. The administrative record is replete with efforts to reach Mr. Pizzola without success. Further, the Commission took to the hearing the final orders and the administrative record Mr. Pizzola requested the day before the hearing.

12. On November 15, 1999, Mr. Pizzola filed Part II, Motion to Reconsider. Again, he focused on the initial application and the Commission Staff's informing him that he should amend his initial application. He was told that he would have to apply in the name of Valley Taxi, under which he holds his authority. Later, he was told to amend the scope of authority because he needed to specify that the patients were "non-emergency." Mr. Pizzola alleges that he was "conned" by a conspiracy of huge political proportions. He has the right to appear pro se as a sole proprietor, but his self-representation has been contrary to his interest. The Commission has attempted to assist Mr. Pizzola with his case before and during the hearing at every juncture.

However, the Commission cannot put on his case for him. None of the allegations are supported by evidence. It is impossible to discern how amending the application and the scope of authority to look more like an application conforming with legal requirements has prejudiced him. He had to apply for the authority under the certificate that enables Valley Taxi to operate.

13. The Commission is a regulator, not a protector, of the parties before it who are seeking authority to provide motor carrier service. The Commission must determine whether there is a need for the proposed service, whether the applicant is financially fit to provide the service, and whether granting the

authority will harm other carriers, contrary to the public interest. The requirement of the applicant is to present evidence and witnesses to support the need and financial fitness, which the Commission repeatedly advised Mr. Pizzola. Throughout this process, Mr. Pizzola made one accusation after another, failed to respond to telephone messages and written correspondence, demanded that the Commission and the Protestant provide witnesses and evidence to demonstrate the need for his service, and finally begged to have a chance because he was in financial difficulty. Never did he proffer one iota of evidence or a witness. Plainly, he failed to demonstrate the need for the proposed service and his financial fitness to perform the service. Nevertheless, he got what he asked for in Missoula-Ravalli counties, solely because the Protestant was willing to stipulate to that authority. He withdrew his request for all counties except Lewis and Clark, and demonstrated no need for service there or a financial ability to perform that service. On reconsideration, the Commission affirms its decisions in Order No. 6469.

CONCLUSIONS OF LAW

1. The Montana Public Service Commission properly exercises jurisdiction over the parties and matters in this proceeding pursuant to Title 69, Chapter 12, Montana Code Annotated (MCA).
2. The Commission has provided adequate notice and opportunity to be heard to all interested parties in this matter pursuant to the Montana Administrative Procedures Act (MAPA) requirements for contested case procedures. §§ 2-4-601, et seq., MCA.
3. An applicant for a certificate of Class B operating authority must show that the public convenience and necessity require the proposed service. § 69-12-323, MCA.

ORDER

Wherefore, the Commission on reconsideration affirms its decisions in Order No. 6469, and directs Applicant to comply with the requirements therein. Done and dated this 11th day of January, 2000 by a vote of 3-0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chairman

BOB ANDERSON, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
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 ARM 38.2.4806.