

Service Date: August 12, 2011

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

IN THE MATTER OF the Commission-Initiated) REGULATORY DIVISION
Declaratory Ruling Proceeding Addressing the)
Scope of Commission Regulation over Non-Profit) DOCKET NO. T-11.21.DR
Or Free or Tips-Only Transportation-of-)
Passenger Service)

Declaratory Ruling Proceeding

On August 8, 2011, the Montana Public Service Commission ("Commission"), voted to initiate a Declaratory Ruling proceeding under the provisions of ARM §§38.2.101 and 1.3.226 through 1.3.229. This matter will be processed under the aforementioned ARM provisions as well as §2-4-501, MCA, and may be the subject of rulemaking following completion of this proceeding.

Introduction

The Commission has received inquiries from a variety of sources seeking clarification of the scope of the Commission's regulatory powers over certain existing or contemplated Montana intrastate passenger motor carrier operations.

Questions Presented

Would the following types of passenger motor carrier operations be regulated by the Commission under the provisions of §§ 69-12-201, 69-12-101(8), and 69-12-101(9), MCA considering the exemptions set forth in § 69-12-102(1)(k):

1. Transportation of passengers by a non-profit corporation organized under §501(c) of the Internal Revenue Code organization if:
 - (a) Passengers are not assessed any charges for the transportation services rendered?
 - (b) Passengers are not assessed any charges for the transportation services rendered, but drivers accept tips? or,
 - (c) Passengers are assessed a fare meant only to assist in offsetting the § 501(c) entity's operating expenses?

2. Transportation of passengers by a sole proprietorship or any other type of legal entity other than a § 501(c) Internal Revenue Code entity in which:
 - (a) Passengers are not assessed any charges for the transportation services rendered?
or;
 - (b) Passengers are not assessed any charges for the transportation services rendered, but drivers accept tips?

Additional Background

Commission's General Regulatory Powers

The Commission has general supervisory and regulatory powers over motor carriers in Montana. Section 69-12-201, MCA provides in relevant part as follows:

- "(1) The Commission has the power and authority and it is its duty to:
- (a) Supervise and regulate every motor carrier in this state;
 - (b) Fix, alter, regulate, and determine specific, just, reasonable, equal, nondiscriminatory and sufficient rates, fares, charges, and classifications for Class A and Class B motor carriers;
 - (c) Regulate the properties, facilities, operations, accounts, service, practices, and affairs of all motor carriers;
 - (d) Require the filing of annual and other reports, tariffs, schedules, or other data by motor carriers;
 - (e) Supervise and regulate motor carriers in all matters affecting the relationship between motor carriers and the traveling and shipping public. ..."

"Motor Carrier"

"(8) 'Motor carrier' means a person or corporation, or its lessees, trustees, or receivers appointed by a court, operating motor vehicles upon a public highway in this state for the transportation of passengers, household goods, or garbage **for hire on a commercial basis**, either as a common carrier or under private contract, agreement, charter, or undertaking." (emphasis added). § 69-12-101(9), MCA.

"Charter Service"

Section 69-12-101(3), MCA reads as follows:

- "(3) 'Charter service' means a service used for the transportation of passengers by a motor carrier with rates not subject to approval by the commission if:
- (a) The transportation of passengers is based on a single contract;
 - (b) The contract is entered into in advance of the transportation and does not result from a spontaneous, curbside agreement;
 - (c) The contract includes a single fixed charge and fares are not assessed per passenger;
 - (d) The passenger or group of passengers acquires exclusive use of the motor vehicle through the contract; and

- (e) When applied to a group of passengers being transported, the group of passengers travels together to a specified destination."

"For Hire"

To be regulated, the passenger service must be a "for hire on a commercial basis" operation. Section § 69-12-101(5), MCA provides:

"'For hire' means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service."

501(c) organization

The Montana Legislature has specifically exempted a number of types of operations from Commission jurisdiction in § 69-12-102, MCA. As pertinent to this declaratory ruling proceeding, the following exemption is provided in this statute:

"(1) This chapter does not affect:

...

(k) the transportation of persons provided by private, nonprofit organizations, including those recognized by the Montana department of transportation as federal transit administration providers pursuant to 49 U.S.C. 5310. As used in this subsection (1)(k), 'private, nonprofit organizations' means organizations recognized as nonprofit under section 501(c) of the Internal Revenue Code."

Scope of Declaratory Ruling Proceeding is Limited

The scope of this declaratory ruling proceeding does not include "charter bus operations" as the federal government exempted "charter bus operations" in the Transportation Equity Act for the 21st Century, Pub. Law. 105-178, amending 49 U.S.C. § 14501(c)(1). The Commission does not, therefore, have any entry-into-the field jurisdiction¹ or any rate regulation over charter bus operations. The 2011 Montana Legislature defined charter bus operations as charter service when the motor vehicle used for the transportation of passengers is designed to carry more than 26 passengers and the motor carrier has obtained a USDOT number from the U. S. Department of Transportation as provided in 49 CFR 390.19. Moreover, the federal government has also preempted state jurisdiction over rate regulation of passenger motor carrier service except

¹ "Entry-into-the field" herein means jurisdiction over initiation and conduct of regulated motor carrier operations. See §§ 69-12-321 through 69-12-323, MCA which require those seeking to conduct regulated motor carrier operations to first seek and secure a certificate of public convenience and necessity from the Commission.

taxicab service. *See* 49 U.S.C. § 14501(c)(1). As a result of the federal and state statutes cited immediately above, the Commission has entry-into-the field jurisdiction over taxicab operations and charter operations if: 1) The service is conducted with vehicles designed to carry 26 or fewer passengers, 2) The carriers has failed to secure a USDOT number from the U.S. Department of Transportation under 49 CFR 390.19, and 3) The carrier conducts passenger motor carrier operations with vehicles, as defined.

Commission's Initial Contentions

If an entity conducting Montana intrastate passenger motor carrier service is, in fact, operating as a non-profit entity under § 501(c) of the Internal Revenue Code, then the operator would not be regulated by the Commission. This would be the case regardless of whether the operator charges for the passenger transportation services rendered or whether no charges were assessed to passengers, but tips would be accepted.

Comments Sought by Commission

A copy of this Notice will be posted on the Commission's web site, <http://psc.mt.gov> . The Commission hereby gives Notice of the initiation of this Declaratory Ruling proceeding and invites interested persons to submit comments upon the questions set forth above. Any such comments or statements must be received by the Commission by close of business on September 9, 2011. Pursuant to ARM § 1.3.227(4)(c), the Commission does not contemplate convening a hearing in this docket unless good cause is shown for conducting a hearing.

DONE AND DATED this 8th day of August, 2011.

BY THE MONTANA PUBLIC SERVICE COMMISSION
TRAVIS KAVULLA, Chairman
GAIL GUTSCHE, Vice Chair
W. A. GALLAGHER, Commissioner
BRAD MOLNAR, Commissioner
JOHN VINCENT, Commissioner