

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

In the matter of the Commission-) REGULATORY DIVISION
Initiated Declaratory Ruling)
Proceeding Addressing the Scope of) DOCKET NO. T-11-21.DR
Commission Regulation over Non-)
Profit or Free or Tips-Only) DECLARATORY RULING
Transportation of Passenger Service)

DECLARATORY RULING

Findings of Fact

Declaratory Ruling Proceeding

1. 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. The matter was processed under the aforementioned ARM provisions as well as §2-4-501, MCA. The Commission notes that this matter may be the subject of rulemaking following completion of this proceeding.

Questions Presented

2. 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):

A. Transportation of passengers by a non-profit corporation organized under §501(c) of the Internal Revenue Code organization if:

(i) Passengers are not assessed any charges for the transportation services rendered?

(ii) Passengers are not assessed any charges for the transportation services rendered, but drivers accept tips? or,

(iii) Passengers are assessed a fare meant only to assist in offsetting the § 501(c) entity's operating expenses?

B. 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:

(i) Passengers are not assessed any charges for the transportation services rendered? or;

(ii) Passengers are not assessed any charges for the transportation services rendered, but drivers accept tips?

Background

Commission's General Regulatory Powers

3. The statutory provisions described below provide background and standards that assist the Commission in issuing its declaratory ruling. 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

4. 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

5. 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 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.

Comments

6. The Commission received three comments in response to its August 11, 2011 Notice of Declaratory Ruling proceeding:

A. Capitol Taxi & Courier, 1025 Phoenix, Helena, Montana stated that it was important for the Commission to note the effect non-profits have on the "paying users and tax-paying business" that provides the same or like service. Tax

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.

supported businesses operate at the most efficient times of the day and take "the cream" of the business time leaving the regulated business to cover the rest of the day and the most expensive times to operate. If it is the goal of government to keep small business in business so they can pay property tax and maintain a base for the economy, there must be some consideration given to the competition provided by government.

B. Billings Yellow Cab ("Yellow Cab"), 720 1st Ave., North, Billings, Montana provided comments on the questions identified in the Notice. Yellow Cab contends that it is unacceptable for non-profit drivers to accept tips or for non-profit entity's assessing a fare to offset operating expenses. Yellow Cab also objects to a non-501(c) operator providing free transportation services or accepting tips from passengers.

C. The Boone Karlberg law firm, 201 West Main St., Suite 300, Missoula, Montana, representing Mr. Kevin Sandberg of Ucallus, Inc.², filed strongly supporting the Commission's initial conclusion that the agency has no jurisdiction of any 501(c) motor carrier operator. The firm also contends that this "exempt-from-regulation" position will help foster and support organizations such as Ucallus, Inc., which seeks to improve safety for all of Montana's citizens.

Analysis

7. When interpreting a statute, in this case § 69-12-102, MCA, this agency's purpose, like Montana courts, is to implement the objectives the legislature sought to achieve. *Western Energy Co. v. State, Dept. of Revenue*, 1999 MT 289, P11, 297 Mont. 55, P11, 990 P.2d 767, P11. If the intent of the legislature can be determined from the plain language of the statute, the plain language controls and we may go no further nor apply other means of interpretation. *Western Energy Co.*, P11. Moreover, the Commission is required to simply ascertain and declare what is in terms of in substance contained in the statute, neither inserting what has been omitted nor omitting what has been inserted. *Wild v. Fregein Constr.*, 2003 MT 115, P20, 315 Mont. 425, P20, 68 P.3d 855, P20. The Commission finds that § 69-12-102, MCA (1)(k) is straightforward and unambiguous. The statute makes clear that the Commission's jurisdiction over motor carriers (ch. 12 of Title 69) does not affect; i.e., is not applicable, to the transportation of persons provided by organizations recognized as nonprofit under section 501(c) of the Internal Revenue Code. 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.

8. The Commission further finds that any person or legal entity other than a recognized 501(c) corporation that provides passenger motor carrier service and assesses no fee and accepts no tips does not meet the definition of "for hire" under § 69-12-101(5), MCA which requires receipt of remuneration of any kind before meeting the definition of a "for hire." In order to be a regulated "motor carrier," the person or legal entity must be operating motor vehicles on the highways of Montana

² Ucallus, Inc. proposes to operate as a non-profit carrier transporting those who are too intoxicated to drive safely.

"for hire on a commercial basis," according to the provisions of § 69-12-101(9), MCA. As an operator that does not assess fees to passengers or accepts tips is not operating on a "for hire" basis, these types of operators are not regulated Montana motor carriers. Conversely, any non-501(c) corporation motor carrier operator that does accept tips does meet the definition of a for hire motor carrier under §§ 69-12-101(9) and 69-12-101(5),MCA and is therefore subject to Commission regulation.

DECLARATORY RULING

Fully apprised of all premises, the Montana Public Service Commission hereby DECLARES that:

1. Any operator of a passenger motor carrier service that is providing such service as a recognized 501(c) organization under the Internal Revenue Code, and such service is related to, or within, the organization's exempt purpose, is not a regulated motor carrier in Montana under the jurisdiction of the Montana Public Service Commission;
2. Any operator of a passenger motor carrier service that does not assess fees to passengers and whose drivers do not accept tips, is not a for-hire motor carrier in Montana under the jurisdiction of the Montana Public Service Commission; and,
3. Any non-501(c) operator that assesses fees on passengers or whose drivers accepts tips, is a regulated motor carrier in Montana and is subject to the jurisdiction and regulation of the Montana Public Service Commission.

Done and dated this 17th day of October, 2011.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

/s/TRAVIS KAVULLA
TRAVIS KAVULLA
Chairman

/s/GAIL GUTSCHE
GAIL GUTSCHE
Vice Chair

/s/ W.A. GALLAGHER
W. A. GALLAGHER
Commissioner

/s/ BRAD MOLNAR
BRAD MOLNAR
Commissioner

/s/ JOHN VINCENT
JOHN VINCENT
Commissioner

NOTICE: Petitioner has the right to appeal the decision of this agency by filling a petition for judicial review in district court within 30 days after service of this decision. Judicial review is conducted pursuant to §16-4-411, MCA.

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 17th day of October 2011, a true and correct copy of the foregoing has been serviced by placing the same in the United States Mail, postage prepaid, to the service list in the PSC's master file which can be viewed at 1701 Prospect Avenue, Helena, MT 59601.

/s/Aleisha Solem
PSC Commission Secretary