

Applicant's EXH. 28
Full # 5-26-94

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION
DIVISION OF PUBLIC UTILITIES AND CARRIERS
PROVIDENCE, RHODE ISLAND

IN RE: REQUEST FOR A
DECLARATORY RULING : DOCKET NO. 93 DR 1

DECLARATORY RULING

On May 13, 1993, Newport Scenic Tours, Inc. ("Newport"), 23 America's Cup Avenue, Newport, Rhode Island, filed with the Public Utilities Commission, Division of Public Utilities and Carriers ("Division") a request for a declaratory ruling pursuant to Rhode Island General Laws, Section 42-35-8. In its request for a declaratory ruling, Newport identified several passenger-transportation formats on which they seek a Division jurisdictional ruling. Newport's two-page filing has been attached to this ruling as "Appendix 1", and shall be incorporated by reference.

In response to this inquiry, the Division offers the following declaratory ruling:

As a preliminary statement the Division must describe the modes of passenger-transportation services which it regulates. Broadly speaking, the Division regulates all taxicab and limited public motor vehicle operations (R.I.G.L., Chapter 39-14); all jitney operations (R.I.G.L., Chapter 39-13); and all other passenger-transportation services within the definition of "common carrier" operations. As the de facto definition of these modes of transportation are paramount, the Division has reproduced them below:

TAXICAB

". . . means and includes every motor vehicle for hire, other than a jitney as defined in Section 39-13-1, equipped with a taximeter, used for transporting members of the general public for compensation to any place within this state as may be directed by a passenger on a call and demand basis, when the solicitation or acceptance of the passenger occurs within the location named in the certificate; provided, that, the vehicle's driver may, if and when solicited on a public highway at any location at which he or she is discharging a passenger, which location is not shown in the certificate, provide transportation from the location only to a place named in the certificate" (R.I.G.L., Section 39-14-1 (3)).

LIMITED PUBLIC MOTOR VEHICLE

". . . means and includes every motor vehicle for hire, other than a jitney, as defined in Section 39-13-1, or a taxicab, as defined in this chapter, equipped with a taximeter used for transporting members of the general public for compensation only from a designated location on private property to such points as may be directed by the passenger" (R.I.G.L. Section 39-14-1 (4)).

JITNEY

". . . The term 'jitney' shall include any motor bus or other public service motor vehicle operated in whole or in part upon any street or highway in such manner as to afford a means of transportation similar to that afforded by a street railway company, by indiscriminately receiving or discharging passengers; or running on a regular route or over any portion thereof; or between fixed termini (R.I.G.L., Section 39-13-1 (b)).

COMMON CARRIER

". . . 'Common carrier', except when used in chapters 12, 13, and 14 of this title, means and includes all carriers for hire or compensation including railroads, street railways, express, freight and freight line companies, dining car

companies, steam boat, motor boat, power boat, hydrofoil, and ferry companies and all other companies operating any agency or facility for public use in this conveyance over fixed routes, or between fixed termini within this state or persons or property by or by a combination of land, air, or water (R.I.G.L., Section 39-1-12 (8)).

Additionally, the Division recognizes that "charter carriers" are exempted from Division jurisdiction. A charter carrier is defined as:

". . . all carriers for hire or compensation within this state not included in the definition of common carrier" (R.I.G.L., Section 39-1-2 (9)).

Newport's request for declaratory ruling identifies four passenger-transportation formats. The Division has examined these formats in the context of the above definitions, and has reached several jurisdictional conclusions.

a. weddings

Newport has queried whether the transportation services it provides to a wedding party is regulated. The Division has determined that when "stretch-limousines" are utilized by carriers to provide transportation services to wedding parties, these carriers ought to be considered charter carriers. As such the Division will not seek to regulate these services. Conversely, the Division has determined that the use of ordinary passenger-vehicles for providing services to wedding parties would be akin to a limited public motor vehicle operation and subject to regulation, infra.

b. proms

Newport has queried whether the transportation services

it provides to individuals on "prom night" is regulated.

The Division finds no reason for treating this category of passenger differently from the aforementioned "wedding" passenger group. The Division's jurisdictional comments for "wedding" passengers would also apply to "prom" passengers.

c. tours

Newport has queried whether the transportation services it provides as a scenic tour company are subject to regulation.

The Division finds that if these tours operate over regular routes or between fixed termini Newport would be considered a jitney carrier, subject to regulation. For example, if Newport is contemplating tours of specific attractions within the city of Newport (i.e., mansions, Hammersmith Farm, specific scenic views, etc.) those services would be regulated as a jitney operation. The grounds would be that in order to drive to these locations the carrier must operate over a regular route or a portion thereof. Moreover, the fixed locations of these tour attractions would similarly give the carrier a jitney appearance.

As an additional observation, if these tours are contemplated for one or two persons, rather than a group, the Division would likely treat this service as a limited public motor vehicle operation.

The Division does, however, recognize some tours as conventional unregulated charter operations. Specifically, the Division finds that a true charter service contemplates the transportation of groups, such as lodges, bands, athletic teams,

schools, or other travel groups, assembled by someone other than the carrier, who collectively contract for the exclusive use of certain equipment of the duration of a particular trip or tour. Ashbury Park - New York Transit Corp. v. Bingler Vacation Tours, Inc., 62 M.C.C. 731 (1954). The Division would contrast this type of transportation service from the example of regulated services provided above.

d. transport

Newport has queried whether general transportation services from prearranged location to various destinations is regulated. Newport suggests as an illustration a transportation service between Logan Airport and someone's home.

The Division would not distinguish this service from the services provided for weddings and proms, supra. If provided by stretch limousine, the Division would consider this a proper unregulated charter. If provided by a standard automobile, the Division would find the service undistinguishable from a limited public motor vehicle operation.

As an additional comment, the Logan Airport scenario, above, would be an interstate transportation service (if coming back to Rhode Island) and consequently subject to the jurisdiction of the Interstate Commerce Commission.

e. miscellaneous

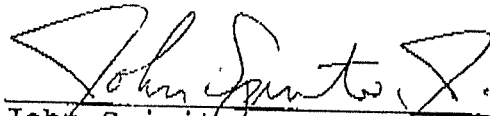
Newport also queries whether it makes a difference, for jurisdictional reasons, if the actual passengers or someone else pays the fare.

Under the law, one criterion for regulation is that the service be for hire or compensation. The Division finds no significance in the issue of who is paying the fare. The only question of import is whether the provider of the transportation service was compensated for the service. Similarly, the issue of whether payment is an hourly or flat fee is unimportant.


As a final note, the Division has determined that transportation services which closely resemble taxicab or limited public motor vehicle operations are not exempted charter carriers simply because these carriers operate without taximeters. The Division maintains that the law requires these carriers to install taximeters. The Division similarly maintains that the law would not exempt currently regulated taxicabs and limited public motor vehicles from regulation if these carriers decided to remove their taximeters (See R.I.G.L., Section 39-14-14.1 and 39-14-1 (5)). The legislature has charged the Division with the responsibility of fostering and regulating a viable taxicab and limited public motor vehicle industry in Rhode Island (R.I.G.L., Chapter 39-14). It would, therefore, be incongruous for the Division to allow a carrier who generally looks and operates like a taxicab or limited public motor vehicle to comparably operate and collect rates, when that same carrier is exempt from the expenses and obligations associated with the myriad regulations imposed on regulated taxicabs and limited public motor vehicles which are necessary to safeguard the public's safety and welfare (See Broadway Auto Livery Service v. State Board of Public Roads., 52 R.I. 109 (1932)).

In conclusion, the Division must rule that when Newport's transportation services are by stretch-limousine, or when provided as a conventional bus charter, as described above, its operations would be exempted. However, the Division also must rule, that when Newport's transportation services are generally undistinguishable from one or more of the various regulated transportation modes, defined above, the Division would seek to regulate or enjoin those services.

DATED AND EFFECTIVE AT PROVIDENCE, RHODE ISLAND THIS TWENTY-THIRD DAY OF MARCH, 1994.

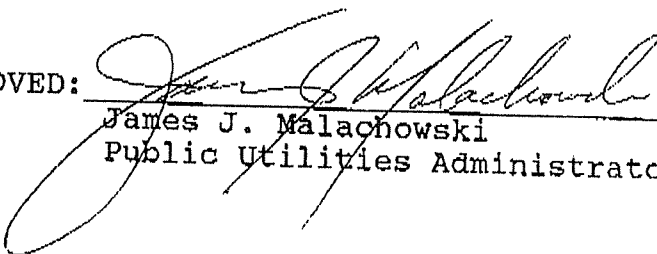


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APPROVED:



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DIVISION OF P.U.C.
MOTOR CARRIERS
PROVIDENCE, R.I.

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(401) 272-5300

May 12, 1993

Rhode Island Public Utilities Commission
100 Orange Street
Providence, RI 02903

Dear Sirs and Madams:

Pursuant to Rhode Island General Law Section 42-35-8, the Administrative Procedures Act, and pursuant to section 1.6(c) of the Public Utilities Commissions Rules with Practice and Procedure, on behalf on my client, Newport Scenic Tours, I hereby respectfully request and petition for a Declaratory Judgment on the following questions.

Is a firm subject to the regulation of the division of carriers of the Public Utilities Commission if it provides the following services:

1 a) Weddings

Picking up the wedding party at the house, transporting the party to the church, transporting the party from the church to the reception, transporting the party from the reception to the airport.

Basis of the charge of said service by the limousine would be a per hour/per vehicle fee or a flat per diem fee.

b) Proms

Pick up groups a pre-arranged location, transport to prom, transport students around town (nonspecific locations i.e. restaurants, etc. at their direction, return home.

Basis of the charge of said service by the limousine would be a per hour/per vehicle fee or a flat per diem fee.

c) Tours

Pick up persons at prearranged location, transport them on tour of areas of scenic interest within or about Rhode Island.

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Basis of the charge of said service by the limousine would be a per hour/per vehicle fee or a flat per diem fee.

d) Transport

Pick up at prearranged location e.g. Logan Airport, drop off at specific location eg. hotel or home. That is, the firm is providing service from fixed point to fixed point or termini to termini.

Basis of the charge of said service by the limousine would be a per hour/per vehicle fee or a flat per diem fee.

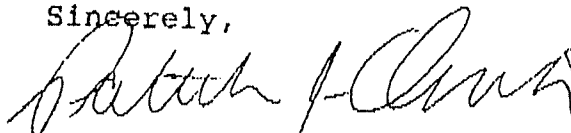
Note: none of the transports done by the limousine company are done on a per person charge.

Lastly, does it make a difference whether the persons transported pay themselves or whether a hotel or employer may pay the limousine service to pick someone from the airport and return them to the hotel.

Therefore, I hereby respectfully request and petition for a Declaratory Opinion on the above issues pursuant to Rhode Island General Law 42-35-8 and pursuant to Section 1.6(c) of the Commission's Rules for Practice and Procedure.

If you have any questions concerning this letter, please call me directly at (401) 272-5300.

Sincerely,



Patrick J. Quinlan, Esq.

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HAND DELIVERED