

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF VEHICLE REGULATION
FRANKFORT, KENTUCKY

OFFICE OF GENERAL COUNSEL

2014 AUG 18 P 4:39

In the matter of the application of:

COOK & REEVES WHEELCHAIR TRANSPORTATION, INC.

DOCKET NO. 14-073

**AMENDED NOTICE OF ADMINISTRATIVE
HEARING**

A Memorandum Opinion and Order having been issued and a separate Judgment having been entered by the United States District Court, Eastern District of Kentucky, Central Division, in *Bruner v. Zawacki*, 2014 WL 375601 at *8, E.D.Ky., Feb. 03, 2014, wherein the Court found, “that the notice, protest, and hearing procedures contained in KRS § 281.615 et seq., as applied to the moving service industry in an act of simple economic protectionism, offend and violate the Fourteenth Amendment of the United States Constitution.” The Court issued prospective injunctive relief permanently enjoining the department, “from enforcing the statutes in a way that violates the constitutional rights of new moving companies by allowing existing moving companies to veto new competition.” *Id.* at *1. The same notice, protest, and hearing procedures contained in KRS § 281.615 et seq., apply equally to segments of the passenger motor carrier service industry. The economic and legal justifications for these procedures as applied to the passenger industry being indistinguishable, they amount to a “competitor’s veto” and the department shall not enforce them. The only issue for decision by the department in these matters is therefore whether the applicant for passenger authority is fit, willing, and able properly to

perform the service proposed. The hearing officer being otherwise sufficiently advised;

Pursuant to KRS 13B.050, the parties are placed on notice of the following:

(A) KRS 13B.050(3)(a) Date of Hearing: The hearing in the above matter will be held on a date and at a time and place to be determined by order of the hearing officer. The proceeding is in the nature of an administrative hearing on an application for a certificate or permit of public convenience and necessity issued under KRS Chapter 281 to common or contract carriers seeking authority for the transportation of persons.

(B) KRS 13B.050(3)(b) Hearing Officer: The hearing officer who shall hear further proceedings in this matter is the Hon. Charles Wilkinson, Hearing Officer, Transportation Cabinet, Office of Legal Services, 200 Mero St., Frankfort, KY 40622.

(C) KRS 13B.050(3)(c) Parties: The applicant in this matter is Cook & Reeves Wheelchair Transportation, Inc. An attorney has not entered an appearance on the applicant's behalf. Yellow Cab Company of Louisville LLC, 1601 S. Preston St., Louisville, KY40217 intervened in the matter. The intervention shall relate solely to the fit, willing and able standard. Hon. James D. Liebman, 403 W. Main Street, Frankfort, KY 40622, represents the Intervenor.

(D) KRS 13B.050(3)(d) Factual Basis and Issues: Cook & Reeves Wheelchair Transportation, LLC has filed an application for a certificate of public convenience and necessity authorizing the operation of a disabled persons vehicle for hire, not operating over any regular route, the destination of which motor vehicles are designated by the passengers at the time of such transportation, and the principal operation of which is confined to the corporate limits of the city of Jefferson County, Kentucky, and its suburban area.

A certificate or permit of public convenience and necessity for the transportation of persons shall be issued to any qualified applicant, if it is found that the applicant is fit, willing,

and able properly to perform the service proposed and to conform to the provisions of KRS Chapter 281 and the requirements and the administrative regulations of the department and that the proposed operation will be consistent with the public interest and the transportation policy declared in KRS Chapter 281.

KRS 13B.050(3)(e) Statutes, Regulations and Procedure: The specific statutes and administrative regulations which relate to the issues involved and the procedure to be followed in this proceeding include: KRS 281.630 *et seq.*, Basis for granting or refusing certificate or permit, amendment, transfer, sale, change in routes, or abandonment of certificate or permit – Specification of routes, service, territory, number of vehicles, multiple certificates – Contract carrier permits – Transfer of certificate and permits – Consolidation – Hearings; KRS Chapter 13B Administrative Hearings; and 601 KAR 1:030 Hearings.

(E) KRS 13B.050(3)(f) Right to Counsel: The parties are advised that they have the right to be represented by legal counsel during these proceedings and at their own expense, and registered business organizations must be so represented at every stage of this proceeding or risk dismissal.

(F) KRS 13B.050(3)(g) Right to Disclosure of Witnesses and other Evidence: The parties are advised that they have the right to examine, at least five (5) days prior to the hearing, a list of witnesses the parties expect to call at the hearing, any evidence to be used at the hearing, any exculpatory information in the agency's possession, and are advised that they have the right to present evidence, the right to confront witnesses, and the right to subpoena witnesses and present such witnesses on their behalf, all upon reasonable notice.

(G) KRS 13B.050(3)(h) Default for Failure to Participate: Any party who fails to attend or participate as required at any stage of the administrative hearing process may be held in

default under KRS Chapter 13B.

There having been one or more protests to the applications filed, and the hearing officer being otherwise sufficiently advised;

IT IS HEREBY ORDERED that:

(1) If they are a registered business organization, the applicant and the protestant(s) shall have an attorney enter their appearance in this matter on their behalf within fourteen days of the date of this order.

(2) All original pleadings shall be filed with the Executive Director, Clerk, Transportation Cabinet, Office of Legal Services, 200 Mero Street, Frankfort, KY 40622.

(3) A copy of all pleadings shall be mailed to the parties and to the hearing officer.

Done this Monday, August 18, 2014.



Hon. Jesse W. Rowe
Transportation Cabinet
Office of Legal Services
200 Mero St.
Frankfort, KY 40622

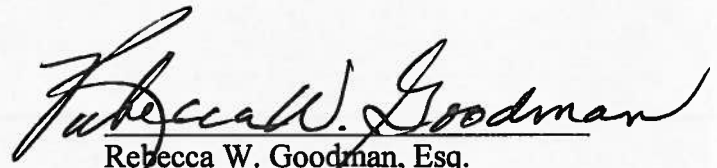
CERTIFICATE

I hereby certify that a true and accurate copy of the foregoing Amended Notice of Administrative Hearing was served by certified mail, return receipt requested, upon the parties this 18th day of August, 2014.

Applicant:
Cook & Reeves Wheelchair Transportation, Inc.
4443 Dixie Highway
Louisville, KY 40216

James D. Liebman, Esq.
403 W. Main St.
Frankfort, KY 40602

Timothy Sandefur, Esq.
Joshua Thompson, Esq.
Pacific Legal Foundation
930 G Street
Sacramento, CA 95814
(Courtesy Copy)

A handwritten signature in cursive script that reads "Rebecca W. Goodman". The signature is written in black ink and is positioned above a horizontal line.

Rebecca W. Goodman, Esq.
Executive Director
Office of Legal Services