

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 07R-327TR

IN THE MATTER OF THE PROPOSED RULES REGULATING TRANSPORTATION BY
MOTOR VEHICLE, 4 CODE OF COLORADO REGULATIONS 723-6.

**ORDER DENYING APPLICATION FOR REHEARING,
REARGUMENT OR RECONSIDERATION**

Mailed Date: May 30, 2008
Adopted Date: May 22, 2008

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I. BY THE COMMISSION

A. Statement

1. This matter comes before the Commission for consideration of an application for rehearing, reargument, or reconsideration (RRR) of Decision No. C08-0375 filed by Tazco, Inc., doing business as Sunshine Taxi (Sunshine Taxi), and Alpine Taxi, Inc., (Alpine Taxi). In that decision, we granted in part, and denied in part, exceptions to Recommended Decision No. R08-0169 (Recommended Decision) filed by several parties, including Sunshine Taxi and

Alpine Taxi. Now, being fully advised in this matter, we deny the application for RRR filed by Sunshine Taxi and Alpine Taxi, consistent with the discussion below.

B. Background

2. The Commission issued the Notice of Proposed Rulemaking (NOPR), which commenced this docket, on August 30, 2007 to implement House Bills 07-1019, 07-1065, and 07-1249, codified at §§ 40-16-101, *et seq.*, and 40-14-101, *et seq.*, C.R.S. *See*, Decision No. C07-0742. The Commission also sought to modify financial responsibility rules, to clarify the rules for regulated intrastate carriers, and to update civil penalty rules. In response to the NOPR, written comments were filed by several parties, including Sunshine Taxi and Alpine Taxi.

3. The hearing in this docket was held on October 15, 2007, in front of an Administrative Law Judge (ALJ). Staff of the Commission (Staff), Sunshine Taxi, and Alpine Taxi, among other parties, appeared and submitted oral comments. The ALJ issued the Recommended Decision adopting permanent rules on February 21, 2008. By Decision No. C08-0375, we granted in part, and denied in part, exceptions to the Recommended Decision filed by Sunshine Taxi and Alpine Taxi, among other parties.

4. Sunshine Taxi and Alpine Taxi claim three points of error with Decision No. C08-0375 in their RRR. First, Sunshine Taxi contends that the Commission erred in failing to adopt a “safe harbor rule,” which would have permitted prospective drivers to continue to drive while results of their fingerprint checks are pending, regardless of how long that takes. Second, Sunshine Taxi and Alpine Taxi argue that the Commission erred in modifying portions of Rule 6308(a)(III), which permit standard bench seat vans, in which the interior has been enhanced by the installation of both an electronic media system and beverage service amenities to qualify as luxury limousines. Third, Sunshine Taxi argues that the Commission erred in

failing to adopt a rule which would have required the Commission to directly notify transportation carriers of the results of fingerprint-based background checks on their drivers, at least if the identity of the carrier is known to the Commission. We address each of these arguments below.

C. Safe Harbor Provision

5. The ALJ addressed concerns expressed by multiple parties at the hearing related to subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S. These statutes require drivers of taxis and exempt vehicles respectively, to submit a set of their fingerprints to the Commission. The Commission, in turn, must forward these fingerprints to the Colorado Bureau of Investigation (CBI) to obtain a fingerprint-based criminal history record check. Subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S., state:

(3) An individual whose fingerprints are checked ... may, pending the results of the criminal history record check, drive...in connection with his or her employment ...for up to sixty days after the commission forwards the fingerprints to the Colorado bureau of investigation or until the commission receives the results of the check, whichever occurs first. Upon the commission's receipt of the results, the individual may resume driving ... so long as the driving does not violate applicable law and does not occur while the individual has a criminal conviction on his or her record that disqualifies and prohibits him or her from driving...

6. Several interested parties expressed concerns that the CBI may be unable, in some instances, to process these background checks within 60 days and the individuals would be required to stop driving until the results are received. This may cause financial hardship to the individual drivers and staffing concerns to the carriers, possibly penalizing them for actions of the CBI or the Commission.

7. The ALJ ruled that subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S., were clear and unambiguous and required that individuals stop driving upon the expiration of the

sixty day period if the results of the background check were still pending. The ALJ stated that the word “resume” in the statutes indicated that legislature contemplated the possibility that a driver may have to stop driving if the results of his or her background check are not received within 60 days for any reason. The ALJ stated that the Commission could not adopt a rule that would effectively ignore a part of the statutes.

8. In Decision No. C08-0375, we agreed with the ALJ’s interpretation of subsections (3) of §§ 40-10-105.5 and 40-16-104.5, C.R.S., and we denied the exceptions filed by Sunshine Taxi and Alpine Taxi on this issue. We also agreed that some individuals with no criminal history at all may be precluded from driving if their background checks take longer than sixty days for any reason. However, we also pointed out that the courts, in interpreting a statute, must look at the plain language of the statute if the language is clear and unambiguous. *See Vaughan v. McMinn*, 945 P.2d 404, 408 (Colo. 1997). We stated that any solution to the apparent inequity resulting from subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S., must be addressed legislatively, and encouraged Staff and other parties to pursue this option.

9. In its RRR, Sunshine Taxi again argues for adoption of a “safe harbor rule.” It claims that we interpreted subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S. too narrowly. Sunshine Taxi argues that the legislative intent was to allow persons to continue to drive while their fingerprint results were pending; otherwise interim driving would have been prohibited entirely. Sunshine Taxi argues that the “up to sixty days...” statutory language must yield to this legislative intent.

10. The courts (and administrative agencies) should not presume that the legislature used any language in a statute idly and without intent that the language be given meaning. *See Blue River Defense Comm’n v. Town of Siverthorne*, 516 P.2d 452, 454 (Colo. 1973); *Vaughan*,

945 P.2d at 408. We affirm our previous ruling that subsections (3) of §§40-10-105.5 and 40-16-104.5, C.R.S. are clear and unambiguous and therefore a “safe harbor rule,” which would permit individuals to drive while results of their fingerprint check are pending, regardless of how long that takes, would effectively ignore the “up to sixty days...” statutory language. We deny RRR filed by Sunshine Taxi on this issue.

11. We note that the Colorado legislature recently passed House Bill 08-1227, which amends subsections (3) of §§40-10-105.5(3) and 40-16-104.5(3), C.R.S., by allowing persons to drive for up to ninety days pending the results of their criminal history record checks. House Bill 08-1227 will go into effect on July 1, 2008. We expect that it will greatly reduce the number of prospective drivers who are precluded from driving because their background checks take longer than usual for reasons unrelated to their criminal history.

D. Notifying the Carriers of the Results of Background Checks

12. Sunshine Taxi argued in its exceptions to the Recommended Decision that a rule should be adopted requiring Staff to directly notify the carriers of the results of the background checks performed on their drivers if the identity of the carriers is known to Staff. In Decision No. C08-0375, we declined to adopt such a rule and we affirm that decision here. In its RRR, Sunshine Taxi again argues for adoption of such a rule.

13. Sections 40-10-105.5 and 40-16-104.5, C.R.S. require all prospective drivers to submit a set of their fingerprints to the Commission. This submission itself does not indicate the identity of the related transportation carrier. The Commission only knows who the carrier is, if at all, when the carrier submits a payment on behalf of the prospective driver. When prospective drivers themselves submit a payment, the Commission has no way of knowing who the related carrier is.

14. Moreover, driver turnover from carrier to carrier is somewhat frequent and some drivers work and contract for multiple transportation carriers at the same time. By the time the fingerprint background check is processed, the driver may no longer be working for the same carrier. The Commission has no way to track the resulting turnover and cannot, with certainty, notify the correct carrier. We see no reason why a carrier cannot require its drivers to present evidence of their qualification status, just as they are required to present their driver's license and other documentation.

15. Lastly, the Department of Regulatory Agencies' Information Technology Section (IT) is currently constructing a Web-based solution that would allow transportation carriers to securely access information pertaining to qualified and disqualified drivers.¹ We therefore deny RRR filed by Sunshine Taxi on this issue.

E. Defining a Luxury Motor Vehicle

16. Sunshine Taxi and Alpine Taxi argue that the Commission erred in modifying Rule 6308(a)(III) to permit a standard bench seat van in which the interior has been enhanced by the installation of both an electronic video media system and beverage service to qualify as a luxury limousine. Sunshine Taxi and Alpine Taxi claim that Rule 6308(a)(III), as modified, exceeds the Commission's statutory authority contained in §40-16-101(3), C.R.S., and disregards the factual findings made by the ALJ.

17. In Decision No. C08-0375, we agreed with the Limousine Association of Colorado (LAOC) and other interested parties that the definition of "executive vans" in Rule 6308(a)(III) as recommended by the ALJ should be modified to include certain standard bench seat vans. We redrafted Rule 6308(a)(III) as follows:

¹ See Hearing Transcript at p. 108.

(III) Executive van, which is a motor vehicle built on a cutaway chassis, a motor coach, or a van (but not a mini van as classified by the manufacturer) whose interior has been enhanced by the installation of either:

(A) captain's chairs, couch seats, or similar seating in place of standard bench seating; or

(B) both of the following:

(i) An electronic video media system such as television, DVD, or VHS that is securely attached to the motor vehicle in a professional manner. The screen shall have a diagonal measurement of at least three inches, be viewable by passengers seated to the rear of the driver, and be in compliance with 49 C.F.R., § 393.88.

(ii) Beverages and beverage service amenities, including at least an ice container and glasses or cups. The beverages and amenities shall be securely positioned inside a console or cabinet located inside the passenger compartment, to include any containment system, console and cup holder built into the motor vehicle by the manufacturer, and securely attached to the motor vehicle in a professional manner. The beverages are not required to be alcoholic in nature.

18. The Commission has the authority to promulgate rules defining what constitutes a "luxury limousine" pursuant to §§40-2-108(1), 40-16-101(3), and 40-16-103.8, C.R.S. Section 40-16-101(3), C.R.S., specifically provides that "'Luxury limousine' means a chauffeur-driven, luxury motor vehicle as defined by the commission." House Bill 07-1019 amended §40-16-101(3), C.R.S., by deleting, among other portions, references to television and beverage services as criteria that qualify certain motor vehicles as luxurious.

19. We do not agree with Sunshine Taxi and Alpine Taxi that Rule 6308(a)(III), as modified by Decision No. C08-0375, exceeds the Commission's statutory authority. We believe that the installation of an electronic video media system and beverage amenities sufficiently enhances the interior of a standard bench seat van to qualify it as a luxury motor vehicle. We disagree with the ALJ's conclusion that deletion of these specific requirements from §40-16-101(3), C.R.S., by House Bill 07-1019 reflects a legislative belief that technological changes now render these amenities non-luxurious. Instead, we find it is more likely that the legislature,

by enacting House Bill 07-1019, deferred to the Commission the determination of what is a luxury motor vehicle and intended for the Commission to have more flexibility in this area. We therefore deny RRR filed by Sunshine Taxi and Alpine Taxi on this issue.

II. ORDER

A. The Commission Orders That:

1. The application for Rehearing, Reargument or Reconsideration filed by Tazco, Inc., doing business as Sunshine Taxi, to Commission Decision No. C08-0375 is denied in its entirety consistent with the discussion above.

2. The application for Rehearing, Reargument or Reconsideration filed by Alpine Taxi, Inc., to Commission Decision No. C08-0375 is denied in its entirety consistent with the discussion above.

3. This Order is effective upon its Mailed Date.

B. ADOPTED IN COMMISSIONERS' WEEKLY MEETING May 22, 2008

(S E A L)



ATTEST: A TRUE COPY

Doug Dean

Doug Dean,
Director

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

RON BINZ

JAMES K. TARPEY

MATT BAKER

Commissioners