(Decision No. R82-413-I)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

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IN THE MATTER OF THE APPLICATION OF EXCALIBUR LIMOUSINE, LTD., 33421 STAGECOACH BOULEVARD, EVERGREEN, COLORADO 80439, FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO OPERATE AS A COMMON CARRIER BY MOTOR VEHICLE FOR HIRE.	APPLICATION NO. 34028
PALACE LIMOUSINE SERVICE, INC. 2260 CALIFORNIA STREET DENVER, COLORADO, Complainant, vs. EXCALIBUR LIMOUSINE, LTD., AND EXCALIBUR SOCIETY, LTD. P. O. BOX 1438 EVERGREEN, COLORADO, Respondent.	CASE NO. 6072
RE: THE MOTOR VEHICLE OPERATIONS OF RESPONDENTS, EXCALIBUR SOCIETY, LTD., AND EXCALIBUR LIMOUSINE, LTD., 33421 STAGE COACH BOULEVARD, EVERGREEN, COLORADO.	CASE NO. 6108 INTERIM ORDER OF EXAMINER THOMAS F. DIXON

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April 8, 1982
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STATEMENT

Excalibur Society, Ltd. filed a Motion To Dismiss for Lack of Jurisdiction, and Excalibur Limousine, Ltd. filed a Motion To Dismiss. Both motions were filed on February 16, 1982. These motions were denied by interim order on March 9, 1982 (Decision No. R82-345-I). On March 18, 1982, Respondents filed a Motion For Reconsideration. The Motion For Reconsideration as well as the previous Motions To Dismiss challenge the jurisdiction of this Commission to hear this complaint on the basis that neither Excalibur Limousine, Ltd. nor Excalibur Society, Ltd. are operating as a public utility and that neither is certificated or licensed by the Commission at this time.

CONCLUSIONS OF LAW

1. This Commission has jurisdiction over public utilities as set forth in 40-1-103(1), CRS 1973. This section makes no distinction between certificated or noncertificated public utilities. The status of public utility is determined by the acts of the business or enterprise not by the label given by the business to itself. Accordingly, the Commission has jurisdiction over businesses which act as public utilities, whether certificated or not. In addition, this Commission has jurisdiction over contract carriers by motor vehicle as set forth at 40-11-103, CRS 1973. Again, the jurisdiction of the Commission is not limited by the fact that the contract carrier by motor vehicle does or does not possess a permit issued by the Commission.

2. Both 40-6-108, CRS 1973, and Rule 12, Rules of Practice and Procedure before the Public Utilities Commission, permit the Commission to entertain complaints concerning, inter alia, any act or thing done by a public utility claimed to be in violation of any provision of law or of any order or rule of the Commission. Once again, no distinction is made between certificated and non-certificated public utilities or contract carriers by motor vehicle with or without permits.

3. It has generally been alleged by Complainant that Respondents have operated as a public utility or contract carrier by motor vehicle by operating a limousine service in violation of 40-10-104, CRS 1973, and/or 40-11-103, CRS 1973, without first having obtained a Certificate of Public Convenience and Necessity or a Class "B" permit.

4. Although a threshhold question in this case involves the jurisdiction of the Commission, this issue can only be decided by determining if Respondents have conducted their business as a public utility or a contract carrier by motor vehicle. The fact that Respondents do not possess a Certificate of Public Convenience and Necessity or a Class "B" permit is not determinative of the jurisdiction of the Commission. It is precisely this factual issue which must be resolved at the hearing. Accordingly, Respondent's Motion For Reconsideration must be denied.

5. Since this Motion for Reconsideration has been filed, a show cause proceeding has been brought against Respondents and that matter, as well as this complaint have been set for hearing on April 14, 1982, at 10 a.m. (Decision No. C82-443). Both of these matters should be consolidated with Application No. 34028. The hearing set for April 14, 1982, at 10 a.m., should be vacated and reset upon notice for hearing on Application No. 34028, Complaint Case No. 6072 and Show Cause Case No. 6108.

6. An appropriate Order will be entered.

O R D E R

THE COMMISSION ORDERS THAT:

1. The Motion For Reconsideration filed by Excalibur Limousine, Ltd. and Excalibur Society, Ltd. is denied.

2. Excalibur Society, Ltd. is hereby ordered to satisfy or answer the complaint in writing within ten (10) days from the date of this Order.

3. This matter will be consolidated with Show Cause Case No. 6108 and Application No. 34028, and all matters will be set for a single hearing date upon appropriate notice.

4. The hearing in this matter previously scheduled for April 14, 1982, at 10 a.m., is hereby vacated.

5. This Order shall be effective forthwith.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Examiner

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