

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF COLORADO

DOCKET NO. 04A-051CP-WAIVER

IN THE MATTER OF THE APPLICATION OF CHAMPAGNE LIMOUSINE, INC. FOR
AN ORDER OF THE COMMISSION AUTHORIZING A WAIVER OF RULE NO. 2.3
(DISCRETIONARY VEHICLE) OF THE RULES AND REGULATIONS GOVERNING
MOTOR VEHICLE CARRIERS EXEMPT FROM REGULATION AS PUBLIC UTILITIES
AND ESTABLISHING CIVIL PENALTIES, 4 CCR 723-33.

**RECOMMENDED DECISION OF
ADMINISTRATIVE LAW JUDGE
DALE E. ISLEY
GRANTING WAIVER**

Mailed Date: March 8, 2004

I. STATEMENT

1. The captioned application of Champagne Limousine, Inc. (Champagne), was filed with the Colorado Public Utilities Commission (Commission) on January 30, 2003, and was published in the Commission's "Notice of Applications Filed" on February 9, 2004. It seeks a waiver of the Commission's Rules and Regulations Governing Motor Carriers Exempt from Regulation as Public Utilities and Establishing Civil Penalties, 4 *Code of Colorado Regulations* 722-33 (Luxury Limousine Rules). By this application, Champagne seeks to have a 1999 Cadillac Seville STS (the Vehicle) certified as a luxury limousine.

2. No interventions were filed in this matter within the applicable ten-day intervention period.

3. The matter was initially scheduled for hearing on March 23, 2004. However, the hearing was re-scheduled for March 5, 2004, at 10:00 a.m. at the Commission's offices in Denver, Colorado. At the assigned place and time the undersigned called the matter for hearing.

Mr. Peter A. Perrone, Champagne's President, appeared on behalf of that entity. Mr. Robert Laws appeared on behalf of the Commission Staff (Staff).

4. During the course of the hearing testimony was presented by Mr. Perrone and Mr. Laws. Exhibit 1 was identified, offered, and admitted into evidence. At the conclusion of the hearing the matter was then taken under advisement.

II. FINDINGS OF FACT

5. Champagne provides luxury limousine transportation services within the State of Colorado pursuant to a registration (No. LL-01014) issued to it by the Commission. It currently provides this service with two stretched limousines and two executive sedans, both of which have a seating capacity of five, not including the driver.

6. Champagne acquired the Vehicle in late 2003 in anticipation of using it to provide luxury limousine services on behalf of its higher end corporate clients. At the time the Vehicle was purchased, Champagne assumed it would qualify as an executive sedan under § 40-16-101(3)(a)(IV)(B), C.R.S., since it was in exceptional physical condition and had all the general attributes of a luxury sedan-type vehicle (*i.e.*, no external signs or graphics, not equipped with a taxi cab meter, etc.). Also, the motor vehicle title issued in connection with Champagne's purchase of the Vehicle described it as a "sedan." However, when Champagne attempted to certify the Vehicle as a luxury limousine Staff advised that it would not so qualify since it had a total seating capacity of only five (including the driver). Staff then recommended that Champagne file an application seeking a waiver of Luxury Limousine Rule 2.3 (Discretionary Vehicle).

7. As indicated above, the Vehicle has a total seating capacity of five, two in the front (the driver and one passenger) and three in the rear. Mr. Perrone testified that the Vehicle is in excellent mechanical condition. He also indicated that its interior is clean, free of offensive odors, and has no tears, cracks, or major stains on the upholstery, headliner, or carpeting. Exhibit 1, a series of photographs of the Vehicle, confirms its good condition. Champagne paid \$14,000 for the Vehicle. Mr. Perrone indicated that the Manufacturer's Suggested Retail Price for the Vehicle when new was approximately \$35,000.

8. At the hearing, Mr. Perrone testified that, in the event this waiver application is granted, all luxury features required by Luxury Limousine Rule 9 will be installed in the Vehicle. He also acknowledged that the ultimate qualification of the Vehicle as a luxury limousine would be subject to a physical inspection by the Staff.

9. Champagne purchased the Vehicle at an automobile auction. The purchase was financed with a number of high interest rate credit cards. Mr. Perrone testified that demand for use of the Vehicle as a luxury limousine is high and that these financial obligations can be met if it can be qualified as a luxury limousine. Otherwise, he fears the Vehicle will have to be disposed of at a loss. This would, in his opinion, impair Champagne's ability to continue rendering luxury limousine services. Champagne contends, therefore, that the seating capacity and valuation requirements of Rule 2.3 (which would serve to preclude qualification of the Vehicle as a discretionary vehicle) works a financial hardship on it and, therefore, makes compliance with such rule impossible, impractical, or unreasonable.

10. Mr. Laws testified that Staff has no objection to a grant of the waiver requested by this application.

III. DISCUSSION

11. Section 40-16-101(3)(a), C.R.S., defines a luxury limousine as follows:

Luxury Limousine means a chauffeur-driven, luxury motor vehicle with a rear seating capacity of three or more, for hire on a prearranged, charter basis to transport passengers in luxury service, that:

- (I) Is not identified by exterior signs or graphics other than the license plates;
- (II) Is not equipped with a taxicab meter or other device for measuring time or mileage other than a factory installed odometer;
- (III) Offers luxury features that shall include, but need not be limited to, television, telephone, and beverages as specified by rules of the commission; and
- (IV) In addition, qualifies for inclusion in one of the following categories:
 - (A) Stretched limousine, which is a motor vehicle, originally designed as a luxury motor-driven passenger vehicle, whose wheelbase has been lengthened beyond the manufacturer's original specifications, whether at the manufacturer's factory or otherwise, and that meets applicable standards of the federal department of transportation.
 - (B) Executive sedan, which is a full-size, four-door, luxury sedan or sports utility vehicle with a seating capacity of at least five, not including the driver, that has not been altered from the manufacturer's original specifications.
 - (C) Executive van, which is a van with a rear seating capacity of seven or more that may be of standard manufacturer's specifications, but may have been altered from the manufacturer's original specifications, and that meets applicable standards of the federal department of transportation.
 - (D) Luxury vehicle, which is a luxury motor vehicle with a seating capacity of no more than five, not including the driver, that either has a National Automobile Dealer's Association (NADA) "blue book" retail value exceeding fifty thousand dollars at the time of registration or has a manufacturer's suggested retail price exceeding fifty thousand dollars and was purchased new during the current model year by a luxury limousine registrant.
 - (E) Discretionary vehicle, which is any other luxury motor vehicle that in the commission's discretion, qualifies as a luxury limousine.

12. As indicated above, the Vehicle will be equipped with all the luxury features required by Rule 9 of the Luxury Limousine Rules. However, it does not qualify as a stretched limousine since the wheelbase has not been lengthened. It does not qualify as an executive sedan since it does not have a seating capacity of at least five, not including the driver. It does not qualify as an executive van since it is not a van and does not have a rear seating capacity of seven or more. Nor does it qualify as a luxury vehicle since: (a) neither the “blue book” retail value at the time of registration nor the manufacturer’s suggested retail price exceeds \$50,000.00; and (b) it was not purchased new during the current model year.

13. The Luxury Limousine Rules define a discretionary vehicle as follows:

A vehicle may be qualified as a discretionary vehicle if the vehicle would have qualified as a luxury vehicle at the time the vehicle was new and if the vehicle is in exceptional physical condition at the time of registration. A vehicle is in exceptional physical condition if: (1) the body of the vehicle has a good, unfaded paint job, and is devoid of dents, rust, missing or broken chrome, and has no broken or cracked glass or lenses; (2) the interior of the vehicle is clean, free of offensive odors, and has no tears, cracks, or major stains upon the upholstery, head-liner, and carpeting; and (3) is in sound mechanical condition with no safety defects. The applicant shall bear the burden of proving that the original Manufacturer’s Suggested Retail Price of the vehicle was equal to or in excess of that required of a luxury vehicle.

As can be seen, the Vehicle does not qualify as a discretionary vehicle under this definition since it would not have qualified as a luxury vehicle at the time it was new.

14. Rule 10 of the Luxury Limousine Rules authorizes the Commission to permit variance from such rules for good cause if it is satisfied that the public interest will be served, and if it finds compliance to be impossible, impractical, or unreasonable. It is noted that the Commission has, on a number of occasions in the past, granted such waivers to applicants who own or operate similar, if not identical, vehicles to the one involved in this application. *See, for*

example, Decision Nos. C02-0098 (1995 Cadillac STS), C00-808 (1998 Cadillac), and R01-75 (1998 Cadillac Concourse).

15. Champagne has established that, under the circumstances, a strict application of Luxury Limousine Rule 2.3 concerning discretionary vehicles would work a hardship on it. Given the significant financial obligations imposed on Champagne resulting from the manner in which it purchased the Vehicle, its inability to use it as a luxury limousine would likely result in financial hardship to it. It would, therefore, be in the public interest to allow Champagne to qualify the Vehicle as a luxury limousine so that these financial obligations can be met and to allow it to respond to the luxury limousine service requests of the public. For these reasons it is found that requiring strict compliance with the subject rule would be unreasonable. Accordingly, good cause for the requested waiver has been shown and the same should be granted.

16. Prior to receiving certification of the Vehicle as a luxury limousine, however, Champagne will be required to present it to Staff for a physical inspection in order to ensure that it is properly equipped with all the luxury features required by Luxury Limousine Rule 9.

17. In accordance with § 40-6-109, C.R.S., it is recommended that the Commission enter the following order.

IV. ORDER

A. It is Ordered That:

1. Docket No. 04A-051CP-Waiver, being an application of Champagne Limousine, Inc., is granted. Subject to the physical inspection requirement described below, Champagne Limousine Inc.'s 1999 Cadillac Seville STS is a discretionary vehicle within the meaning of

Rule 2.3 of the Luxury Limousine Rules and it is authorized to utilize such vehicle in its luxury limousine operations.

2. Champagne Limousine, Inc., shall present its 1999 Cadillac Seville STS to the Commission's Staff for a physical inspection to ensure that it is properly equipped with all the luxury features required by Luxury Limousine Rule 9. If Champagne Limousine, Inc., does not comply with the provisions of this paragraph, then the ordering paragraph granting the requested waiver shall be void.

3. This Recommended Decision shall be effective on the day it becomes the Decision of the Commission, if that is the case, and is entered as of the date above.

4. As provided by § 40-6-109, C.R.S., copies of this Recommended Decision shall be served upon the parties, who may file exceptions to it.

a) If no exceptions are filed within 20 days after service or within any extended period of time authorized, or unless the decision is stayed by the Commission upon its own motion, the recommended decision shall become the decision of the Commission and subject to the provisions of § 40-6-114, C.R.S.

b) If a party seeks to amend, modify, annul, or reverse basic findings of fact in its exceptions, that party must request and pay for a transcript to be filed, or the parties may stipulate to portions of the transcript according to the procedure stated in § 40-6-113, C.R.S. If no transcript or stipulation is filed, the Commission is bound by the facts set out by the administrative law judge and the parties cannot challenge these facts. This will limit what the Commission can review if exceptions are filed.

5. If exceptions to this Decision are filed, they shall not exceed 30 pages in length, unless the Commission for good cause shown permits this limit to be exceeded.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

Administrative Law Judge