

Agenda

Item# 68

**Additional materials
introduced during the meeting**

1 **BEFORE THE NEVADA TRANSPORTATION AUTHORITY**

2 Re: Application of JBANNES, LLC dba Vegas Mob
3 Weddings for a Certificate of Public Convenience and
4 Necessity to provide scenic tour and charter limousine
5 services with the State of Nevada.

Docket 21-02005



6 **PROTEST**

7 COMES NOW, the Livery Operators Association of Las Vegas ("LOA"), by and through its
8 counsel, Kimberly Maxson-Rushton, Esq. of the law firm Cooper Levenson, P.A., and submits the
9 following Protest of the JBANNES, LLC. dba Vegas Mob Weddings ("Applicant") Application for a
10 Certificate of Public Convenience and Necessity ("CPCN") to provide scenic tour and charter
11 limousine services with the State of Nevada. This Protest is filed pursuant to Nevada Administrative
12 Code ("NAC") 706.397.
13

14 All notices, pleadings documents and correspondence pertaining to this proceeding should be
15 directed to the following individual:

16 Kimberly Maxson-Rushton
17 Cooper Levenson, Attorneys at Law
18 3016 West Charleston Boulevard, Ste. 195
19 Las Vegas, Nevada 89102
20 krushton@cooperlevenson.com

21 **I.**

22 **INTRODUCTION**

23 According to the NTA's September General Meeting materials, on or about February 4,
24 2021, Applicant filed an application for contract carrier authority seeking to provide commercial
25 transportation services pursuant to contracts with six (6) Las Vegas wedding companies¹. Thereafter,
26 on June 21, 2021, the application was amended and notice provided that Applicant was seeking
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28

¹ LOA notes that there is no public notice of the application on the NTA's website.

1 common motor carrier authority to provide scenic tours and charter limousine services in Clark
2 County, Nevada².

3 In support of the Application is Staff's summary which specifically states the following:
4 **"Market – This application has two markets. It is Staff's policy not to verify the Market for**
5 **Scenic Tours."** (emphasis added). In response, the LOA hereby submits this Protest to the subject
6 application based on the fact that is it not ripe for consideration as the market relative to scenic tour
7 authority has not been demonstrated as required pursuant to Nevada Revised Statute ("NRS")
8 706.391(2)(f).
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10 II.
11 **ARGUMENT**

12 NRS 706.391(2)(f) requires an applicant seeking to operate as a common motor carrier to
13 demonstrate that the market it intends to serve will support the proposed operation. The LOA
14 submits that the referenced statutory language [contained in NRS 706.391(2)(f)] is clear and
15 unambiguous and that there is no legal authority authorizing Staff to waive this legal requirement.
16

17 By law "Scenic Tour" is defined as common motor carrier authorized to provide
18 "transportation at a per capita or an hourly rate [to] passengers to various points of interest for the
19 purpose of sight-seeing or visiting those points of interest where a narrated tour is presented to the
20 passengers. The term does not include charter services by bus, charter services by limousine, special
21 services or airport transfer services." Thus, essential to an application for scenic tour authority is a
22 demonstration that the proposed tours will be to points and places of interest OR include a narrated
23 tour **and** that a market exists for said services, which will support the proposed operation. There
24 being no evidence that Applicant's proposed operations meet this definition or the market
25 requirement the Application cannot be deemed ripe for consideration.
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28 ² LOA notes that the Public Notice states that Applicant intends to provide services within Clark County, Nevada
whereas the NTA Meeting agenda states that the services will be within the State of Nevada. Accordingly, the LOA
requests clarification of the geographic territory Applicant intends to operate in if approved.

1 It is a well-settled rule that, "[w]here the language of a statute is plain and unambiguous and its
2 meaning clear and unmistakable, there is no room for construction, and the court are not permitted to
3 search for its meaning beyond the statute itself." Erwin v. State of Nevada, 111 Nev. 1535, 1538, 908
4 P.2d 1367, 1369 (1995) (quoting Charlie Brown Constr. Co. v. Boulder City, 106 Nev. 497, 503, 797
5 P.2d 946, 949 (1990)). Accordingly, the NTA is obligated to ensure that all of the application
6 requirements contained in NRS 706.391 are met prior to submitting an application to the Authority for
7 consideration and approval.

9 Furthermore, acts such as this are inconsistent with Nevada's Administrative Procedures Act
10 relative to rule making. NRS 233B specifically requires notice and a hearing for all rule making
11 conducted by applicable state agencies. As held by Nevada's Supreme Court, these requirements are
12 not mere technicalities but instead they're essential to the adoption of valid rules and regulations.
13 See, Public Serv. Comm'n v. Southwest Gas, 99 Nev. 268, 273, 662 P.2d 624, 628 (1983) (stressing
14 the importance of following the APA).

16 By electing to take certain actions not expressly authorized by statute or noticed as rule
17 making, the issue becomes whether the agency is engaging in rule making or merely making an
18 "interpretive ruling." Nevada's APA defines a regulation as an "agency rule, standard, directive or
19 statement of general applicability which effectuates or interprets law or policy, or describes the
20 organization, procedure, or practice requirements of an agency." NRS 233B.038; whereas an
21 interpretive ruling is how an agency construes a statute according to the specific facts before it.

23 In this instance the NTA is attempting to create an exemption (for one category of fully
24 regulated, common motor carriers) from a statutory standard, which if authorized will affect not only
25 other scenic tour operators that were previously required to demonstrate a market and limited to a
26 specific number of vehicles as a result, but it will also impact other applicants/carriers subject to
27 NRS 706.391(b). Thus, the NTA's policy has general applicability to a significant portion of the
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1 commercial transportation industry in Nevada and as such constitutes rule making under the APA.
2 See, NRS 233B.038(1).

3 **III.**

4 **CONCLUSION**

5 For the reasons set forth herein, the LOA protests Staff's decision to forgo the market
6 requirement for scenic tour applicants and respectfully requests that the application be returned to
7 Staff for further analysis of Applicant's proposed market and whether it supports the intended
8 operations.
9

10 DATED this 29th day of September, 2021.

11 Respectfully submitted,

12 /s/Kimberly Maxson-Rushton

13 KIMBERLY MAXSON-RUSHTON, ESQ.

14 Nevada Bar No. 5065

15 COOPER LEVENSON, ATTORNEYS AT LAW

16 3016 West Charleston Boulevard, Ste. 195

17 Las Vegas, Nevada 89102

18 *Counsel for LOA*
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4 **CERTIFICATE OF SERVICE**

5 I HEREBY CERTIFY that, on 29th day of September, 2021, I served a copy of the above
6 and foregoing via U.S. Mail, postage prepaid, upon the following:
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8 Louis V. Csoka
9 Senior Deputy Attorney General
10 Office of the Attorney General
11 555 East Washington Avenue, Suite 390
12 Las Vegas, Nevada 89101

Nevada Transportation Authority
Applications Manager
3300 West Sahara Avenue, Suite 200
Las Vegas, Nevada 89102

13
14 /s/Theresa Rutkowski
15 An employee of Cooper Levenson,
16 Attorneys at Law
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January 21, 2020 Agenda item

The request from Staff to change the market verification policy on scenic tour applications. More specifically, the market claimed by a scenic tour applicant would no longer require corroborating evidence such as letters of intent or documents.

Item briefing from the agenda binder

Staff requests to change the market verification policy on scenic tour applications to be the same policy applied on household goods mover applications. More specifically, that corroborating evidence, such as letters of intent or supporting documents, would no longer be required in order to receive staff's support. However, a market plan would continue to be required in the application to comply with NRS 706.391(2)(f).

Staff currently requires, at a minimum, letters of intent be part of a scenic tour market plan. Staff verifies the claim listed in the letters telephonically with the individual making the claim. If an applicant states they cannot obtain any letters of intent, staff has advised applicants in the past to hire a scenic tour carrier, and to apply with the Authority once their revenues can cover the costs of purchasing and operating a vehicle.

When letters of intent are provided in the application, staff encounters a difficult time to get the market to claim the number of tours that would be purchased for:

- A product that does not exist yet, and therefore no feedback is available for them to provide to potential customers.
- A one-of-a-kind vehicle is part of a tour.
- An industry that does not encounter highly repetitive customers such as the limousine or special service industry.
- An industry where many customers searching for tours/activities in the Las Vegas area now rely on the internet and phone applications such as Groupon.

Conclusion

Acknowledging the difficulties staff encounters regarding market verification on a scenic tour application, is there a sufficient argument to change the market policy for scenic tour applicants?

January 31, 2020 General Session

Meeting minutes:

118.

The request from Staff to change the market verification policy for scenic tour applications. More specifically, the market claimed by a scenic tour applicant would no longer require corroborating evidence such as letters of intent or supporting documentation.

Applications Manager Liz Babcock detailed the requested changes and the reasoning for the request. Approved 3-0