

MINUTES

PUBLIC TRANSPORTATION COMMISSION

WEDNESDAY, JULY 8, 2009

COUNTY COMMISSIONERS' BOARD ROOM

601 E. KENNEDY BLVD., SECOND FLOOR

I. CALL TO ORDER

The meeting of the Public Transportation Commission was called to order by Chairman Kevin White at 9:05 a.m. The following Commission members were present:

*Chairman Kevin White
Commissioner Rose Ferlita
Commissioner Ken Hagan
Commissioner Dan Raulerson
Councilman Joseph Caetano*

*Board of County Commissioners
Board of County Commissioners
Board of County Commissioners
City of Plant City
City of Tampa*

Councilmen Mark A. Knapp and John Dingfelder were not present.

II. INVOCATION AND PLEDGE OF ALLEGIANCE

Commissioner Raulerson led the Commission in the invocation and pledge of allegiance.

III. SWEARING IN OF WITNESSES

Chairman White performed a mass swearing in of the witnesses wishing to speak before the Commission.

IV. AUDIENCE PARTICIPATION

Ndidi Osuji spoke first during audience participation. He said that the Joint Administrative Procedures Committee sent a letter to the PTC. According to Mr. Osuji the Committee looked at PTC Rules and said that the rules are not in compliance with the Administrative Procedures Act. Mr. Osuji used the definitions of limousine, van, taxicab as his example saying that they "enlarge and modify the definitions contained in the Special Act." He said that in his opinion, the PTC needs to order a workshop to correct the problem. He also stated that it was his intention to urge the PTC to do the right thing and appoint a substantive director to the PTC. Mr. Osuji stated that the records show the Chairman's position, and that he felt that Chairman White seemed to castigate him because in the past, the Board has considered Mr. Osuji's concerns regarding injustices he and others had suffered from the previous director. According to Mr. Osuji, it was his opinion that the Chairman wants Mr. Osuji to go along with something that he feels is wrong at the present time because the Board did something right in the past. Mr. Osuji disagrees that the fees collected by the industry fund the PTC and its positions. Mr. Osuji said that the executive directorship and the amount of money earned and the classification of the position is governed by law. Mr. Osuji said that he had spoken with some of the commissioners privately and after every conversation he walks away with the impression that they do not like the fact that there is an interim director that is not a substantive director. He says that he is bothered

that when he brings the matter up, none of the commissioners put statements on record. So, at this meeting, he wanted all of the commission members to present their views on record regarding this issue.

Chairman White spoke next. He said that he did not mind if any other board members had anything to say or even if they had anything to say, but he guaranteed that all of the board members are capable for speaking for themselves. Regarding the statement that Chairman White attempted to castigate Mr. Osuji, Chairman White said that it was not the case or intention at all. He told Mr. Osuji that as long as the rules were benefiting, Mr. Osuji was very happy. However, when the rules do not benefit, Mr. Osuji was not happy. The Chairman said that he is still happy with the way that the Interim Director is doing his job.

Mr. Raulerson wanted to offer a brief comment. He commended Mr. Osuji for speaking out. However, he wanted to speak regarding a couple of points. First, the funding of the Director's position and every position at the PTC is not funded by tax dollars at all. The positions are established by statute, but the money does come from almost a membership organization. The industries that are that are regulated by the PTC are the ones that fund or pay fees to the PTC, so there are no tax dollars from millage, etc. Secondly, Commissioner Raulerson said that he was not aware of a groundswell of dissent, anger, or problems from the industries that are being regulated. He said that he would be glad to go to a meeting and listen to individuals who feel that the Director is not doing a great job. Although he acknowledged that it is not perfect due to technical issues which the PTC is working to resolve, the organization has to work effectively and diligently and it appears to be going well. He acknowledged Mr. Osuji's need to express himself, but he made it clear that he felt the Director is doing a great job, but he would listen to anyone whose opinion is different.

V. REPORTS – For receipt and filing.

- A. Inspector's Report – June, 2009
- B. Fiscal Year Status Report
- C. Year-to-Date Report

Motion to receive and file all reports was made by Commissioner Raulerson seconded by Commissioner Ferlita and carried unanimously.

VI. CONSENT ITEMS

- A. June 10, 2009 Public Transportation Commission meeting minutes
- B. Approval of Public Vehicle Driver's Licenses – June, 2009
- C. Administrative Change application from Paradise Limousines of Pinellas County, Inc. d/b/a Paradise Limousines of Tampa Bay for a change of trade name to Paradise Limousines of Pinellas County, Inc. d/b/a Paradise Worldwide Transportation
- D. Administrative Change application from Allpoints Towing & Transport, LLC for an address change (*deferred from the June 10, 2009 PTC meeting*)

Motion to approve the consent items was made by Commissioner Ferlita, seconded by Commissioner Raulerson and carried unanimously.

VII. ATTORNEY'S REPORT

There was no attorney's report.

VIII. OLD BUSINESS

At the 6/10/09 PTC meeting Chairman Kevin requested for the NEV issue be placed on the agenda for discussion by both sides, 15 minutes for each side to speak:

NEV (Neighborhood Electric Vehicles) *for discussion*

Seth Mills addressed the board. He said that he probably represents more of the PTC's regulated certificate holders than anyone else in Hillsborough County for all industries regarding industry matters for a span of up to 20 years. His intention in addressing the PTC at this time was about the PTC's rules as pertains to compensation. Attorney Mills said that the PTC has two types of jurisdiction under the Special Act. The first is over "for-hire vehicles" and the second is the supervision of the drivers or Public Vehicle Driver's License holders. The first issue is whether the NEV's transport people for hire. They transport passengers for tips and receive advertising revenues. He stated the definition under the Special Act and rules and said that the PTC defines "for-hire" but not "compensation" and what that particular word means according to the rules. Attorney Mills said that he had a copy of the City of St. Petersburg local business tax receipt where they applied for Hop Tampa to have with an address in Tampa and be called Hop St. Pete. In St. Petersburg, NEV vehicles have to register as "for-hire" vehicles and are regulated as such over there. Attorney Mills said that the word "compensation" is used many times in the rules and the Special Act in the rules distinguishes between fares and compensation. Attorney Mills dread Rule 6.8 about the collection of fares or compensation. He opined that both because both of the words were used in the same sentence, they must mean something different from each other and he called it a "surplusage" since every word in statute must have some meaning. Attorney Mills then pointed out that Rule 7.11 prohibits anyone from directly or indirectly providing compensation in any form or engaging in any activity in connection with the payment of compensation for the right to pick up passengers, etc. Therefore, according to Mr. Mills, it was clear that compensation can be either direct or indirect—hence his argument that advertising is compensation. He also mentioned rule 1.24 regarding rates, fares, and charges that are different from compensation and that those rates, fares and charges are things that are paid directly by a passenger which is not necessarily so with compensation, but PTC rules say that compensation can be either direct or indirect. His next point was regarding Rule 9.3 which adopts Appendix 4 of the Rules. Attorney Mills opined that this Rule, which deals with the delivery of goods or messages without passengers specifically covers the NEV issue because it was his position that the advertising is the transport of a message by vehicle. Attorney Mills said that Black's Law Dictionary describes compensation as remuneration and other benefits received in return for services, especially salaries and wages. Mr. Mills stressed however that the definition includes any kind of remuneration. The Interstate Motor Carriers Act says that compensation is (in Florida Case in 1970), even a mere reduction in the carrier's cost is deemed compensation according to Federal Court. Therefore, it is his position that NEV companies who are having their expenses reduced by drivers being paid tips or revenue from advertisers would fall under this definition. Attorney Mills referenced testimony of the June 10th PTC meeting from David Byers who said that when he had ridden in electric cars, the drivers ask for money. He also mentioned the testimony of John Egan as one of the first drivers for Hop Tampa who said that drivers are soliciting at the hotels. Mr. Mills also pointed to the further testimony of Mr. Egan at that same PTC meeting wherein he said that drivers are required to pay the NEV companies \$20.00 per day to rent the vehicles they drive. Mr. Mills said that that would be compensation and he played a brief segment of a video from the last PTC meeting of Commissioner Raulerson questioning Mr. Egan: Commissioner Raulerson asked if the tips that the drivers received was paid to the NEV owners. Mr. Egan said no, but he was called by Hop Tampa after he quit and was asked to go back to working there and he could testify that they were

charging the \$20.00 per day to rent the NEV's. Attorney Mills defined compensation by the IRS as any income that occurs regardless of the form or mode by which it was acquired. Attorney Mills asked why the PTC should interpret its own rule and try to interpret the word "compensation" any narrower than Black's Law Dictionary, the IRS, the federal courts or any other agency or jurisdiction has it defined. He felt that it would reduce the PTC's jurisdiction and it would allow the current carriers to be able to make an advertising deal and put a sign on the vehicle and work out an agreement which puts them out of the PTC's regulation. He believed that it would destroy 30 years of regulatory effort. Attorney Mills referenced Attorney Perez's advisement to the board that if there is any type of compensation that can be verified, it would be with the PTC's jurisdiction to regulation. Mr. Mills also said that at that same meeting, Mr. Persico from Hop Tampa admitted that revenues were generated from advertising. Attorney Mills also referenced Councilman Knapp's testimony that he felt that it was clear that these businesses had been receiving compensation from the advertisements on their vehicles. Mr. Mills said that section 5 of the Special Act says that the PTC has to regulate and supervise public vehicles and all other matters affection the relationship of these vehicles and the traveling public. Mr. Mills wanted a five minute extension to speak further. So, he continued that he felt there was a safety impact on the existing public vehicles and also the loss of revenues and how it affects the PTC's regulatory control. He stated that according to the Rules, the advertisers were also in violation and where it states that no commercial business may directly or indirectly subsidize a fare for any passenger through any contractual arrangement. As a result, he felt there was a circumvention going on and that compensation was being received indirectly. Therefore, he wanted the PTC to do one or more of the following: 1) say what is meant by compensation and construe it for the PTC's attorney and staff so that they can enforce 2) tell the PTC staff to enforce the rule 1-G on electric cars 3) adopt temporary rule to define compensation which would be good through each meeting and have to be renewed at each meeting.

Chairman White wanted to acknowledge that Ms. Christine Burdick from the Downtown Tampa Partnership sent a letter to request that this agenda item be continued, but Mr. Mills' calendar was not notified in time and he was present so he gave his presentation. He said that he would do as the PTC wishes, but he felt that they should hear from the Downtown Tampa Partnership first and afford them the same exact time limit with the three minute overage. The he asked the Board if they had any questions.

Commissioner Ferlita said that she did not have questions, but that she was sensitive to the fact that Ms. Burdick wanted to be involved in the dialogue and discussion on behalf of the Downtown Tampa Partnership regarding this matter. Commissioner Ferlita said that she did believe that there is some compensation, and that the PTC should be taking some kind of position regarding the matter before something happens since she had personal testimony that they are not always driven safely.

Commissioner Raulerson spoke next. He agreed with Commissioner Ferlita that action should be taken since there is a public safety interest. Mr. Raulerson asked about the tips and the definition of advertising and he wanted to have that clarified.

Chairman White asked Attorney Perez about taking an emergency action that would only last until the next PTC meeting and Attorney Perez agreed that this option would be available. The Chairman said that he believed that Mr. Mills had defined compensation clearly, and if NEV's are in the PTC's jurisdiction, it would fall under the taxi category. Attorney Perez said that it would depend on how the PTC classifies that vehicle because taxicabs have requirements as far as vehicle standards such as air conditioning, which NEV's do not have, and windows, doors, etc. So, they would not be able to qualify under the taxicab category under the PTC's existing rules. Chairman White asked Attorney Perez if there were any other areas that these vehicles would fall under. Attorney Perez said that there really was not. Vans have to have a certain capacity of ten or more passengers. NEV's do not fit into the BLS ambulance category or handicabs, or even limousines.

Attorney Perez said that even though the limousine category is broad, the PTC did not even find that a Toyota Prius would meet the category of a luxury limousine so an NEV would probably not be considered sufficiently luxurious.

Director Padilla said for the record, that prior to the NEV's operating in the downtown area, he met with the Downtown Tampa Partnership and the NEV companies and spoke to them regarding the rules and special act. The NEV does not fit into any of the categories and then they came back again with the idea of providing the service for gratuity. But, there is nothing in the Rules or Special Act that defines the NEV.

Commissioner Ferlita asked Attorney Perez about defining a subclass since NEV's do not comply with the vehicle standards criteria for taxicabs. Also, she felt that the issue should be discussed as far as what is good for tourism downtown which she felt was the Downtown Tampa Partnership's goal. She felt that maybe the area they serve should be defined with boundaries that just included the downtown area.

Attorney Perez again mentioned in order to remind the Board that vehicles like NEV's are only allowed on certain types of roads with speed limits of 35 miles per hour or less, regardless of use. So they cannot be driven on every street. The City of Tampa has the authority to determine where these vehicles can be driven and declare certain streets inappropriate for these vehicles.

Commissioner Ferlita acknowledged that that would fall out of the PTC's jurisdiction because they are already not allowed by law on certain roads. Attorney Perez said that the statute references that cities and counties determine that certain streets are inappropriate for the vehicles. There was further discussion about the subcategory and the issue of what streets are appropriate for these vehicles to drive on.

Commissioner Ferlita asked Councilman Caetano what the City Council had come up with regarding the NEV issue and he said that he did not recall.

Attorney Perez did know that the issue was discussed at City Council two times and he said that Councilman Dingfelder presented it and the outcome was that the City did not want to regulate NEV's even though they regulate pedicabs and horse-drawn carriages and other modes of transportation that fall outside of the jurisdiction of the PTC. They deferred the issue to the PTC.

Chairman White asked Attorney Mills if he had anything further to offer and he said that the noncompliant for-hire vehicles should stop operating until they get a certificate and they could apply for a taxicab certificate with an exception to the rule regarding vehicle standards.

Councilman Caetano asked Attorney Mills about the definition of compensation if tips would fall under that and Mr. Mills agreed it would. He reiterated that the word compensation does need to be clarified.

Attorney Perez wanted to elaborate that the real focus is whether the PTC has clear authority to find that an NEV is a taxicab and whether the vehicles are for hire. It was his position that there is some risk in making that judgment without clear authority because the nature of the PTC is one of limited government. It is not a home rule power government, it is not a city or a county, but an independent special district—limited government. In its capacity, unless there is clear authority, if the advice that is given is in doubt, then the power should not be exercised unless there is a clear authority to take the action. Attorney Perez said that Attorney Mills has presented some reasonable interpretations, but because there are some concepts regarding if the vehicles is for hire or if they are taxicabs, there is a risk in halting operations. Attorney Perez said that the PTC does have authority to adopt rules, but they must be adopted according to the APA which is confining and restrictive and requires a specific law regarding a specific area be given before a rule can be adopted in that area. The PTC would needs laws that say that they can adopt rules in this area which

is relatively new and there is no case law so there is some risk and any PTC enactment in that area could be challenged.

Chairman White then asked Attorney Perez if his recommendation to the PTC was to tread lightly and wait until the other side gets a chance to offer their comments and do some research on how to implement some sort of regulation.

Attorney Perez said that an emergency action also requires the PTC to find that the subject matter is within its jurisdiction, but it is the PTC's decision as far as taking any action to hear from the other side in this matter.

Chairman White said that he would like to afford the other side the same ample time that was given to Mr. Mills in the interest of fairness.

Commissioner Raulerson stated that he felt that the PTC had to define what public vehicles are and if they are being compensated and how it falls under the rule, which would be an internal issue. However, his opinion was that the PTC should not stop an activity of free enterprise. He said that if the PTC is going to set a precedent, it needs to take the time to do it properly and not in a hurry and get a clearer definition of its role and where the NEV's fall.

Commissioner Ferlita said that she agreed with Commissioner Raulerson and that she did not want to make knee-jerk reactions to the issue. She agreed that Attorney Mills had some good points, but also agreed with Attorney Perez that the PTC is limited government which exists by special act of the State. In any case, she did want the process to be fair by giving the other side an opportunity to speak as well regarding this issue and not just stopping the functioning of the businesses by an emergency act.

Chairman White asked Attorney Mills to get with his legislative aide after the meeting and get copies of his presentation for the Board, either hard copy or email would be fine.

IX. NEW BUSINESS

A. Public Hearings

1. Limousine Service Applications

- a. Promenade Limousine & Coachworks, Inc. (St. Petersburg, FL) – application for certificate and four (4) limousine permits

Director Padilla gave a summary of the Hearing Officer's recommendation for approval of the application for a certificate and four (4) limousine permits for Promenade Limousine & Coachworks, Inc. Chairman White asked if anyone wanted to speak regarding the application. The owner was present, but no one had questions.

Motion to approve the application for limousine certificate made by Promenade Limousine Service & Coachworks, Inc. and four (4) limousine permits was made by Commissioner Ferlita, seconded by Councilman Caetano and carried unanimously.

C. Appeals of Public Vehicle Driver's License

1. Michael Viebrock – Bay and Beach Transportation, LLC (*deferred from the 6/10/09 PTC meeting*)

Director Padilla read staff's recommendation for denial the application for PVDL made by Michael Viebrock and reminded the Board that this item was deferred from the 6/10/09 PTC meeting.

Chairman White asked Mr. Viebrock to come forth to speak regarding his case. Mr. Viebrock came forth to address the Board. Mr. Viebrock acknowledged that he had made bad decisions in his early 20s. He said that he had been driving taxi since January of 1998 and owns his own taxi vehicle. He said that he has worked for United Taxi of Clearwater for the last five years and before that, he had worked for Yellow Cab of Clearwater for five and a half years. He said that in the meantime, he had received his pilot's license as well.

He said that he was sorry for his mistakes and that he is haunted by it every day and he would like to have a chance to truly change his life for the better and work for Bay and Beach Taxi to drive in Hillsborough County.

Chairman White asked Mr. Viebrock about his pilot's license and Mr. Viebrock said that he had a private pilot's license and flies Cessna 152 and 172 airplanes. Mr. Viebrock said that his goal is to have his own charter service and buy his own plane so that he can retire as a pilot. He said that although he did not plan on driving a taxi for the rest of his life, he believed that the PVDL will give him a good step in the right direction by being able to drive in Hillsborough County.

Chairman White acknowledged that the PTC received a email from Mr. Viebrock's father, Mr. Charles D. Viebrock. Then he asked if anyone in the audience who wanted to speak regarding the matter to come forward and that they have three minutes to speak.

Michael Moses, Managing Member of Bay and Beach Transportation approached the PTC to say that he wanted to speak on behalf of Mr. Viebrock regarding his appeal. He mentioned that the issues were over a decade old and did no harm to other people only to himself. He said that he felt that Mr. Viebrock has learned his lesson and that he has suffered consequences for those choices. Mr. Moses said that he has known Mr. Viebrock for over two years and that he has driven his family and staff around the Greater Tampa Bay Area and all places that Mr. Moses does business. Mr. Moses said that his business services adult disabled as well as frail and elderly individuals. In addition, he said that Mr. Viebrock has participated in events with Mr. Moses' family and clients and he has trusted Mr. Viebrock who has, on a personal level, supported his son to make sure that he got to is sporting events safely. Also, he has trusted Mr. Viebrock with his 96 year old godfather who has medical conditions and has needed personal assistance with everything from shopping to personal finances. Mr. Moses thanked the PTC for its time.

Chairman White verified that Mr. Viebrock will be driving for Bay and Beach and Mr. Moses said yes. Then he asked if anyone else wanted to speak regarding this petition.

Commissioner Raulerson said that he did not see violent issues in Mr. Viebrock's history, but asked about the probation violation in 1996 and the conviction of selling Marijuana in 1993.

Mr. Viebrock said that he had moved without properly notifying his probation officer whom he had never met and it was stipulated as a violation in his probation.

Commissioner Raulerson verified that it was not for selling again and Mr. Viebrock said no. Commissioner Raulerson said that the fact that Mr. Viebrock obtained his pilot's license and had done some other things in his life, he would support the application with a probationary period.

Commissioner Ferlita said that she wanted to comment into the record that when violations are committed, it puts passengers who are not aware in harm's way. She did acknowledge and appreciate that Mr. Moses spoke on Mr. Viebrock's behalf. She asked about the charge of a forgery of an altered lottery ticket. So, she wished Mr. Viebrock well, but said that she would not support his application.

Chairman White asked about the lottery ticket charge and Mr. Viebrock said that he did it with a ball point pen and it was a part of his life he would like to forget.

Motion to approve the application for a PVDL to Michael Viebrock was made by Commissioner Raulerson, seconded by Councilman Caetano and carried 3 to 1 with Commissioner Ferlita dissenting.

D. PTC Budget

Chairman White asked Director Padilla and Commissioner Raulerson to give comments regarding this item.

Director Padilla said that he wanted to give a cleaner copy of the budget and two budget amendments recommended by the Clerk's office. One amendment was to cover the cost of Mr. DiMaio's contract and the other is to reconcile funding and realign the beginning fund balance based on the audit by Ernst & Young.

Commissioner Raulerson explained that in 2008 the expenditures exceeded revenues by approximately \$95,000.00 and in 2007, expenditures exceeded revenues by about \$94,000.00 according to the audited financial statements and he verified with Director Padilla. He wanted the Board to look at the financial stability of the PTC. He said that the projected budget for 2010 is a projected fund balance of around \$219,000.00. He said that one of the benchmarks that is used nationally is that if 15% of annual revenues, if the fund balance approaches 15% of those annual revenues, the organization is considered healthy. So, he said that if the Board takes a look at the fund balance and net assets, and take the assets minus the liabilities and the projection is \$219,000.00, that amount is well in excess of 15%. There would be contingencies funds coming up and expenditures of around \$13,000.00 for capital expenditures. Commissioner Raulerson asked Cesar if the Super Bowl revenues were included in the figure \$987,000 and the answer was yes but with the knowledge that the PTC will have a positive income which will be adjusted in the last quarter. Commissioner Raulerson said that he feeling is that it is a matter of quarterly procedure and that his accounting firm will work with Director Padilla to put a decent financial statements and balance sheets together to monitor things better. Commissioner Ferlita thanked Mr. Raulerson for offering his expertise.

Motion to approve the budget report and budget amendments as filed made by Commissioner Ferlita, seconded by Commissioner Raulerson and passed unanimously.

For housekeeping purposes, Director Padilla said that he announced at the last meeting that PTC staff would be receiving applications for six taxi permits. The deadline to receive the applications was July 7, 2009 at 5:00 p.m., the day before this PTC meeting. At that time, PTC staff received nine total applications for the six permits. The applications will be reviewed, but the applicants did procrastinate in turning their applications in and they were mostly received on July 7, 2009 so they were not reviewed in detail. Director Padilla announced that any minor administrative issue would be taken care of, but just by turning the application in at the last minute of the day, does not save an application from being denied and he wanted to make that clear to all who had applied.

Director Padilla also wanted to announced that workshops were scheduled after last month's PTC meeting, however, since some individuals were unavailable and the wanted the workshops to be moved to August. Therefore, they have to be rescheduled.

Chairman White asked everyone for their indulgence and courtesy in making a place in their schedules for the July PTC meeting.

X. ADJOURNMENT

There being no further business, the meeting of the Public Transportation Commission adjourned at 10:14 a.m.

****This is not an official, verbatim transcript of the 7/8/09 PTC meeting. It should be used for informational purposes only****

Jacqueline E. Calleja, Administrative Specialist

NEXT COMMISSION MEETING – August 12, 2009