

**METROPOLITAN NASHVILLE-DAVIDSON COUNTY
TRANSPORTATION LICENSING COMMISSION**

Minutes of

August 26, 2008

The Metropolitan Nashville-Davidson County Transportation Licensing Commission (the "Commission") met in regular session on this date at the Metropolitan Courthouse. The Commissioners present were Chair Helen Rogers and Commissioners Jennifer Brundige, Mary Griffin, Tom Turner, Ed Whitmore and James Utley (6). Also attending were Commission staff members Walter Lawhorn, Milton Bowling and Lisa Steelman; and Brian McQuiston, Director-Executive Secretary to the Commission.

Chair Helen Rogers called the meeting to order. She led the Pledge of Allegiance and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the July 22, 2008 meeting were approved.

WRECKER COMPANY HEARING: A. B. COLLIER

David Dunn, general manager, appeared with Edward Hiland, attorney. **Chair Helen Rogers** informed Mr. Dunn that this was not a disciplinary hearing. She explained that TDOT had reported on clearance of major incidents at the annual emergency wrecker meeting in June; because no representative from A. B. had been present, she had requested his appearance at this meeting. **Chair Rogers** emphasized the importance of wrecker companies communicating clearly and honestly with TDOT representatives on the scene of an accident, because TDOT was responsible to notify the public about how long traffic would be affected by the incident.

Mr. Hiland and Mr. Dunn defended A.B. Collier's performance.

Director McQuiston stated that it was important to analyze and evaluate the performance of the entire emergency wrecker system to effect quick clearance, but it appeared that specific information on response and clearance times was not available. He stated that a meeting had been held with the Class C emergency wrecker companies to initiate an effort to keep records on major incidents.

Mr. Hiland and Mr. Dunn complained that the communication problem was with the TDOT HELP supervisor, and asked to rebut remarks made at the June meeting. **Chair Rogers** stated that this was not the purpose of this hearing, but she allowed Mr. Dunn to present his case. At the conclusion, **Commissioner James Utley** advised Mr. Dunn to attend annual emergency wrecker hearings in the future. **Chair Rogers** emphasized that the Commission was concerned about public safety, not personal differences.

APPLICATIONS FOR TAXICAB DRIVER PERMIT:

Tilahun Eshete: Mr. Eshete appeared before the Commission with Johnny White, owner

of American Music City Taxi. Director McQuiston stated that Mr. Eshete's taxicab driver permit had been revoked by the Commission in February 2008 for attempting to charge for a service animal, and that he was applying for a new permit. Mr. Eshete expressed remorse for his actions, and assured the Commission that he would provide good service to all passengers in the future. Mr. White stated that he and his company had been the leaders in providing ADA-accessible taxicabs, and had even received an award from the Accessible Transportation Alliance because of their proven commitment to providing accessible transportation. He stated that he had been in contact with Ms. Griggs, a friend and the complainant in the case, and that she would provide additional training for Mr. Eshete. Mr. White also stated that he had talked to the proctor at the Tennessee Foreign Language Institute about the testing of new drivers related to ADA issues. **Commissioner Tom Turner** recommended approval of the application, contingent upon a background check. **Commissioner Ed Whitmore** seconded, and the motion passed (5-0).

Terry Fair: Mr. Fair appeared with Marvin Sutton, assistant manager at Yellow Cab. Director McQuiston stated that Mr. Fair had disclosed charges for DWI and for possession of a controlled substance in 2001. **Chair Helen Rogers** asked Mr. Fair if he was still using marijuana; he responded that he was not, and that he had been sober and attending AA for seven years. **Commissioner Mary Griffin** moved to approve a temporary permit for a period of six months, restricted to Yellow Cab. **Commissioner Jennifer Brundige** seconded, and the motion passed (5-0).

APPLICATIONS FOR WRECKER DRIVER PERMIT:

Joshua Turner: Mr. Turner appeared with Christie Haley, owner of Turner Towing. **Chair Helen Rogers** noted that Mr. Turner had disclosed nine arrests in his application. She asked about the charges. Mr. Turner stated that he had been in trouble when he was younger. He added that he had been driving a wrecker since 1999. **Chair Rogers** stated that he had only had a wrecker permit for ninety days, in 2003. Mr. Turner responded that the Commission had not issued permits until that time, because of a court case. **Chair Rogers** asked about his conviction for evading arrest in 2006. Mr. Turner stated that he had changed in 2006, and was trying to move forward. **Commissioner Ed Whitmore** asked for clarification on his employment history since 2006; Mr. Turner responded that he had been working as a wrecker company dispatcher and servicing tow trucks. He stated that he had bought a wrecker, to start his own company, Turner Towing. Ms. Haley stated that she was the actual owner of record. She stated that she and Mr. Turner had worked at Southside Towing before. **Chair Rogers** asked Mr. Turner what he was doing to ensure that he did not get into trouble anymore. Mr. Turner stated that he had completed a one-year behavior modification program in North Carolina in July 2007. He added that he had three children, whom he visits on weekends. Director McQuiston asked if he was still on probation; Mr. Turner answered that he was not. **Commissioner Tom Turner** asked if Turner Towing was doing any nonconsent towing. Mr. Turner responded that it was not; that there was too much trouble involved in that business. **Commissioner Whitmore** moved to approve a temporary permit and probation for one year, restricted to Turner Towing; if Mr. Turner violated the law during that time, then he would forfeit his permit. **Commissioner Turner** seconded, and the motion passed (5-0).

Michael Copeland: Mr. Copeland appeared. **Commissioner Mary Griffin** noted that he

had an extensive record of assaults and a 2006 violation of an order of protection. Mr. Copeland stated that he had a long history of problems with his first wife, and that fourteen arrests were related to that person. **Chair Helen Rogers** asked Inspector Bowling if he had anything to report. The inspector stated that he had provided a summary of Mr. Copeland's record of wrecker-related violations and complaints from 1990 through 1999, including a report by the Metro Police related to the crushing of vehicles. **Chair Rogers** asked Mr. Copeland if he had been towing since 1999. Mr. Copeland responded that he had a business out-of-state, but was unable to operate in Davison County without a permit. He added that he was not interested in performing nonconsent towing. Director McQuiston pointed out that Express Towing, which Mr. Copeland had listed on his application, was licensed to do nonconsent towing. **Commissioner Jennifer Brundige** moved to disapprove the application. **Commissioner James Utley** seconded, and the motion passed (5-0).

TAXICAB DRIVER DISCIPLINARY HEARING: RIGOBERT MALIANI

Mr. Maliani appeared before the Commission. Director McQuiston stated that Mr. Maliani had once owned a taxicab company, and had held a driver's permit for many years. He stated that this was not simply a matter of a hearing on a complaint, but that the complaint had initiated a series of events culminating in this hearing. He noted that a complaint had been received in September 2007, concerning a driver who was not displaying his permit, and that it had taken a long time to identify the driver.

Shirley Jacobs appeared before the Commission. She stated that she had taken a cab from the airport to her home in Brentwood one night. She stated that the driver drove his taxicab so slowly on the interstate highway that other cars were swerving around them and honking, and she was fearful for her safety. She stated that she tried to see the speedometer, but the dashboard lights were not on. She added that she could not see his driver permit. She stated that when the taxicab arrived at her house, she was charged forty dollars. **Chair Helen Rogers** asked if she recognized Mr. Maliani as the driver; Ms. Jacobs answered that it was dark, and the driver did not get out of the taxicab. She stated that, after observing the difficulty Mr. Maliani had in getting to his chair at this meeting, she could understand why he had not exited the vehicle to assist with her luggage. She stated that she had identified Mr. Maliani by looking at a picture, but that it had been a long time. Director McQuiston asked Mr. Maliani if he remembered Ms. Jacobs; Mr. Maliani stated that he did not.

Director McQuiston stated that the complaint from Ms. Jacobs had been received in September 2007; because she was not able to identify the driver's name or the taxicab number, the investigation was stalled. The director stated that he had been concerned about the possible safety risk to the driver and passengers from driving so slowly on the interstate highway. He stated that in November 2007 another complaint had been received from Mr. James Edwards. Before hearing from Mr. Edwards, **Chair Rogers** asked Mr. Maliani to respond to the complaint by Ms. Jacobs. Mr. Maliani stated that the problem was not between him and anyone else; it was a problem between him and Inspector Lawhorn. He repeated that he did not know Ms. Jacobs.

Chair Rogers asked to hear the next complainant. Mr. Edwards appeared before the Commission. He stated that he and his wife had taken a taxicab from the airport to his home. He stated that other taxicab drivers had loaded their luggage into Mr. Maliani's taxicab. He stated that Mr. Maliani had driven extremely slowly on the interstate. Mr. Edwards added that he had watched the speedometer, and that the taxicab never reached

40 miles per hour. He stated that other cars were honking their horns, and that he could hear brakes screeching behind them. He stated that his wife begged him to ask the driver to pull over and let them out of the cab, but because they were on the interstate that was impossible. He stated that when they got to their house, Mr. Maliani could not see well enough to drive into their driveway, so Mr. Edwards had to guide him in and out. **Chair Rogers** asked if the driver's permit was displayed; Mr. Edwards responded that it was. He stated that he had identified Mr. Maliani by noting the taxicab number and calling the company. He stated that he had then written a letter to the commission. **Commissioner Ed Whitmore** asked for clarification. Director McQuiston referred to the letter by Mr. Edwards, which identified the vehicle as United Cab #99. Mr. Edwards stated that he was too scared to get the driver's name. **Commissioner Whitmore** asked if he had asked the driver to go faster; Mr. Edwards responded that he had, and that the driver had told him that he was doing the best he could. **Chair Rogers** invited Mr. Maliani to respond. Mr. Maliani asked why he was appearing before the Commission. Director McQuiston asked Mr. Maliani if he had any questions for Mr. Edwards; Mr. Maliani stated that he did not know Mr. Edwards. He did not ask Mr. Edwards any questions, but complained about Inspector Lawhorn and Director McQuiston. He stated that he had been in an accident, and had gone to the commission office to report it. He stated that he had filled out a form to take to the doctor. **Chair Rogers** asked Mr. Maliani if he had a driver's license; he stated that he had one. **Chair Rogers** asked if it had been suspended during this year; Mr. Maliani responded that it had not. **Chair Rogers** asked if he had insurance on his taxicab; Mr. Maliani stated that he did not. **Chair Rogers** asked how long he had been without insurance; Mr. Maliani stated that it had only been since he was suspended. **Commissioner James Utley** asked Mr. Maliani if he was still driving his taxicab; Mr. Maliani replied that he was not driving, because he was sick and because he was suspended. **Commissioner Utley** asked who was driving his taxicab; Mr. Maliani stated that no one was driving it. He stated that he owned five taxicabs, and could not operate them. Inspector Lawhorn stated that the company management of United Cab was present, and could testify concerning the cancellation of his insurance. Mr. Maliani stated that he had gone to get a drug test, but that Director McQuiston had told him that was not enough, and had given him a letter suspending his permit.

Director McQuiston stated that, after learning that Mr. Maliani had been in a single vehicle accident and that his Tennessee driver's license had been suspended, he had checked the status of Mr. Maliani's D.O.T. medical card, and noted that it had expired in August of 2007. He stated that he was concerned about Mr. Maliani's medical condition affecting his driving, and in the interest of public safety he had instructed Mr. Maliani to go to get a D.O.T. physical. The director stated that Mr. Maliani had not provided a new medical card, showing that he was medically qualified to drive a taxicab; therefore, his taxicab driver's license had been suspended. Director McQuiston stated that the issue before the Commission was that Mr. Maliani did not have a current D.O.T. medical card, and had made no effort to get one. The director noted that in the meantime Mr. Maliani's insurance had been cancelled, so that his vehicles were not allowed to be in service. The director stated that in spite of this Mr. Maliani had allowed Said Elmi, who did not have a valid taxi driver permit, to operate one of his taxicabs. Director McQuiston asked Mr. Maliani if the vehicle was still painted and lettered as a United Cab taxicab; if so, this was also a violation of Commission Rule 10. Mr. Maliani did not answer. The director concluded, stating that all of this had resulted because Mr. Maliani would not go to get a physical. Mr. Maliani stated that if his taxicabs were not suspended he had the right to hire drivers. Director McQuiston stated that this was possible, if they were insured.

Chair Rogers invited United Cab to appear. Sukhpritt Mann, representing United Cab, appeared. She stated that the company had confirmed that Mr. Maliani's driver's license had been suspended and his insurance had been cancelled, and had provided him a letter informing him that he could not operate his vehicles under their certificate. She added that the letter also noted that Said Elmi was observed driving #88 downtown on May 12. She stated that she had called Inspector Bowling concerning Mr. Elmi. Ms. Mann stated that even as she had parked her car before this hearing she had observed one of Mr. Maliani's vehicles, #99, still painted and lettered as a United Cab taxicab. Director McQuiston stated that this was a violation of the ordinance.

Inspector Lawhorn argued that Mr. Maliani's health was a safety issue, and that he should not be driving a taxicab.

Commissioner Tom Turner moved to uphold the suspension of Mr. Maliani's taxicab driver permit. **Commissioner Jennifer Brundige** seconded, and the motion passed (4-0, **Commissioner Mary Griffin** abstaining). **Chair Rogers** asked Director McQuiston to refer any future driver permit application by Mr. Maliani to the Commission.

WRECKER COMPANY DISCIPLINARY HEARING: TOW PRO

Doug Williams, president of Tow Pro, Inc. appeared before the Commission with Michael McGovern, attorney.

Director McQuiston noted that Tow Pro was an emergency wrecker company. He noted that at the end of 2007 there had been a number of issues brought before the Commission related to nonconsent towing from apartment complexes. He stated that when this first came to the attention of the commission staff, Inspector Bowling had requested towing records from a number of emergency wrecker companies.

Inspector Bowling reported that he had received a complaint on November 26 from Derrick Druney and Shelia Hearron, stating that they were charged \$75 for a nonconsent tow of their vehicle. The inspector stated that he had requested copies of towing records and receipts related to tows during the period November 1 – December 4 from eight emergency wrecker companies. He noted that he received the requested information from six of the companies the next day, and that one company brought their information in on December 20. He stated that Tow Pro had not delivered their information until December 26. He stated that all of the receipts, except the one for which he had the complaint, showed towing charges of \$65. He stated that he contacted individuals whose cars had been towed by Tow Pro to verify that the amounts reported were correct. He provided copies of four of the receipts turned in by Tow Pro, showing \$65 towing charges, and the receipts or bank records provided by the vehicles' owners, showing that they had paid \$75.

Chair Helen Rogers confirmed that copies of these records had been provided in the Commissioners' packets.

Mr. McGovern stated that there had been questions raised in Commission hearings in 2007 about the appropriate rate for nonconsent towing from private property. He noted that the Commission had eventually made a Rule change to clarify that the \$65 rate applied. He acknowledged that after that clarification Tow Pro had overcharged some customers \$75 for nonconsent tows, due to errors in their office, and they were cited into environmental court where they pled guilty and were fined. He stated that they had also refunded the overcharges back to those customers, in addition to the fines and court costs. Mr. McGovern explained that the reason for the discrepancies between the \$65 amounts shown in the records provided to Inspector Bowling and the \$75 amounts charged to the customers was that the company used two different computer software systems: one for

keeping the records on dispatching and towing (TOPS), and another for keeping financial records in the business office (QUICKEN). He produced briefing boards of the different documents related to the same tow which were produced by these two programs. The documents clearly showed the TOPS record charge of \$75 and the QUICKEN record charge of \$65.

Mr. Williams explained that there were three different fees authorized for towing of cars: \$65 for private property tows, \$75 for Police tows, and \$85 for wrecks. He stated that the field in the TOPS program only allowed for two charges; therefore, the company had to make a "forced" entry for any of the \$65 charges. He added that during December there had been a number of people on vacation, which resulted in the delayed turn-in of records to Inspector Bowling. Mr. Williams and Mr. McGovern explained that the bookkeeper in the back office received the TOPS-produced documents from the dispatcher in the front office, and then entered the information into her QUICKEN system. Mr. Williams stated that the dispatchers should have entered the \$65 charge into TOPS when they collected from the customer, but they had not. He stated that, when the bookkeeper came in to work some days later, she imported those TOPS reports, but then entered the correct amount for the tows, or \$65, into her QUICKEN report. He concluded that the documents provided to Inspector Bowling had been QUICKEN reports produced by the bookkeeper.

Inspector Bowling asked why one of the QUICKEN receipts generated by the bookkeeper and turned in to him on December 26 did show \$75. He noted that this one receipt was the one related to the complaint of Mr. Druney and Ms. Hearron, and concluded that the management of Tow Pro knew before turning in their receipts that this \$75 charge had already been discovered. Inspector Bowling produced the stack of 56 receipts turned in by Mr. Williams. **Commissioner Jennifer Brundige** expressed concern that the \$10 differences between the amounts collected by the front office and the amounts entered by the bookkeeper should show in an audit, and asked what the bookkeeper did with the extra cash. Mr. Williams stated that the variance for the whole year showed only \$109. Mr. McGovern stated that the bookkeeper did not make the deposits. **Commissioner Mary Griffin** asked how the overcharges were being returned to the customers; Mr. Williams responded that the company had refunded the \$10 to the four customers for which they were cited, plus \$500 in fines and court costs. **Commissioner Griffin** asked about the other 52 customers; Mr. Williams stated that Tow Pro would be glad to reimburse them, if they had been overcharged. Director McQuiston stated that the way to determine that would be for the company to run the TOPS reports on those tows, to see if they had been charged \$75. Mr. Williams stated that he would be glad to do that.

Commissioner Tom Turner asked about the specific date of the Rule setting the \$65 rate for nonconsent towing from private property. Director McQuiston stated that the \$65 rate had already been in the ordinance, but that the Commission had clarified that this was the rate in Rule 24 on September 25, 2007.

Commissioner Griffin asked who was responsible for entering the "forced" \$65 amount in the TOPS program; Mr. Williams responded that this was the dispatcher's job. **Commissioner Griffin** asked how this was being corrected; Mr. Williams responded that this was an ongoing training issue. He added that the company was doing approximately thirty private property tows per month. **Commissioner Griffin** asked how many dispatchers there were; Mr. Williams responded that there were three.

Commissioner Turner noted that the clarification of the \$65 charge had been made in September, and that the overcharges had occurred into November – a period of about six weeks. He also noted the time required before records were provided to the commission inspector.

Commissioner Turner moved to restrict the license of Tow Pro, Inc. by suspending the company from performing nonconsent towing from private property for a period of ninety days. **Commissioner Griffin** seconded the motion, and the motion passed (5-0).

OTHER BUSINESS

Director McQuiston noted that the second reading of BL2008-284 by the Metropolitan Council was scheduled for September 16, 2008.

There was no further business, and the meeting was adjourned.

ATTEST:

APPROVED:

Brian E. McQuiston
Director-Executive Secretary

Helen S. Rogers
Chair