METROPOLITAN NASHVILLE-DAVIDSON COUNTY TRANSPORTATION LICENSING COMMISSION

Minutes of

May 22, 2007

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 Holly Sharp, Vice Chair Helen Rogers, and Commissioners Ray Dayal, Kim Thompson, Tom Turner, and James Utley (6). Also attending were Metro Legal Advisor Scott Neely; Commission staff members Milton Bowling, Walter Lawhorn and Lisa Steelman; and Brian McQuistion, Director-Executive Secretary to the Commission.

Chair Holly Sharp called the meeting to order and read the Notice of Appeal statement, advising of the right to appeal decisions of the Transportation Licensing Commission.

The minutes of the April 24, 2007 meeting were unanimously approved.

WRECKER COMPANY DISCIPLINARY HEARING: ABLE TOWING

The Commission continued the April 24, 2007 disciplinary hearing on a complaint received from Kevin Peters of Brentwood, whose car had been towed from the Plaza Art Materials parking lot by Able Towing on December 31, 2006. Counsel Bill Porter appeared, representing Mark Wayman, the owner of Able Towing, who was out of the country.

Director McQuistion summarized the complaint brought by Mr. Peters at the April 24 meeting, and the Tennessee Code section which applied. He read from T.C.A. 55-16-112:

"In order for a garage keeper or a towing firm to tow or to store a vehicle the garage keeper or towing firm shall obtain an express written authorization for towing and storage of each vehicle from a law enforcement officer with appropriate jurisdiction, or from the owner of the vehicle, or from the owner of the private property from which the vehicle is to be towed."

Director McQuistion noted that Ms. Yvonne Flowers had appeared at the April meeting, and had presented a copy of a contract with the manager of Plaza Art Supply which designated her to represent him in authorizing the towing of vehicles from the company parking lot after hours. Ms. Flowers had also verified her signature on the Able Towing tow slip which authorized the towing of Mr. Peters' car. Director McQuistion stated that there were two issues remaining to be resolved: the first was to determine whether the contract produced at the April meeting was valid; the second was whether Ms. Flowers had a connection with Able Towing that would make her designation as an authorizing agent inappropriate. He reminded Commissioners that Ms. Flowers had initially denied having a connection with Able Towing at the April meeting, but after further questioning had stated that she was Mr. Wayman's girlfriend.

Director McQuistion asked Mr. Porter if the summary of the facts presented at the April meeting was correct. Mr. Porter responded that the facts as presented were correct, but that no conclusions had been reached.

Chair Holly Sharp asked Bruce Baker, general manager of Plaza Arts Materials, to appear before the Commission. Mr. Baker examined the copy of the contract provided by Ms. Flowers, and verified that he had signed it. Mr. Porter asked Mr. Baker if he had problems with unauthorized vehicles parking in his lot after hours; Mr. Baker replied that he did, and that was why he had made arrangements to have them towed. Chair Sharp thanked Mr. Baker for appearing.

Director McQuistion stated that he had remembered Ms. Flowers from a visit she and Mr. Wayman had made to the Commission offices months before; this had prompted his concern about whether her relationship with Able Towing made her designation as an authorizing agent for towing of vehicles by Able Towing inappropriate. He added that, since the April meeting, other facts concerning Ms. Flowers' relationship with Able Towing had come to his attention. First, because Mr. Wayman had insisted that notices from the Commission be mailed to his post office box address in Cheatham County, the notice for this hearing had been sent to that address by certified mail; Director McQuistion stated that the person who had signed for that certified letter was Yvonne Flowers. Director McQuistion also pointed out that included in the application packet submitted in November 2006 by Mr. Wayman for licensing Able Towing was a copy of the vehicle registration for one of his tow trucks; the owner of the tow truck was Yvonne Flowers. Director McQuistion stated that there was obviously a close personal and business connection between Ms. Flowers and Able Towing, and he asked Legal Advisor Neely to comment and advise the Commission on how such a connection could relate to the Tennessee Code.

Mr. Neely stated that a fair interpretation of TCA 55-16-112 was that it contemplated preventing the sort of arrangement that existed between Ms. Flowers and Able Towing; that otherwise there were inherent risks of collusion, self-dealing and self-serving. He stated that when there is a designee to authorize towing, there should be some relationship between the private property owner and the designee; when there is no such relationship, then there should at least be no relationship between the designee and the towing company. He recommended that, if the property owner and the towing company were unaware that this relationship was inappropriate, then a corrective action would be to give them notice that it was inappropriate before taking further action. Director McQuistion stated that he had held that conversation with Mr. Wayman long ago, and had told Mr. Wayman that it would be inappropriate to have someone connected with his towing company also in a position to authorize the tows.

Mr. Porter clarified that Ms. Flowers was not an employee. He expressed concern that it would be unfair to punish his client when the Commission had not established a clear guideline or boundary on what relationships were appropriate. He advocated that the Commission needed to establish a clear policy.

Director McQuistion stated that enforcement of TCA 55-16-112 is critical to prevent auto theft. He added that it is also important that businesses be allowed to clear their parking lots of unauthorized vehicles. He pointed out that the Code itself, however, makes even the development of a formal policy on the issue of designees problematic. An attorney general's opinion had emphasized that only the owner of the property may authorize tows, and there was no allowance in the statute for a representative or designee to do so. Director McQuistion stated that, in an urban business environment or where property is owned by a corporation, the property owner typically is not resident on the property and may not even be in the state. He stated that the Commission had recognized that some allowance for a

designee had to be given for such an environment; but it had not anticipated that any company would stretch that allowance to the extent that Able Towing had done in this case. He stated that the only option available might be to enforce TCA 55-16-112 literally, as the attorney general's opinion suggested, until there is a change to the statute, because a municipality cannot alter a state law to make it less restrictive. Mr. Neely agreed that the Commission could not expand on the Code to make it less restrictive.

Mr. Porter stated that the question was whether the obligation on the property owner in TCA 55-16-112 was assignable.

Chair Sharp acknowledged that there could be problems with developing a clear policy, but that the question at hand was what to do about Able Towing. Mr. Porter stated that the problem was that Mr. Peters parked his car on Plaza's lot without permission. Chair Sharp stated that the Commission's concerns were with Able Towing, Ms. Flowers' relationship with the company, and Mr. Wayman's lack of responsiveness to the Transportation Licensing Commission. Commissioner James Utley pointed out to Mr. Porter that Mr. Wayman's actions, in arranging for Ms. Flowers to be designated as the authority to sign tow tickets for businesses, did not demonstrate a lack of understanding of the rules; on the contrary, they were deliberate actions to get around the rules. Chair Sharp added that Ms. Flowers had initially attempted to deny a connection with Able Towing, when in fact she had a close connection with the company.

Director McQuistion noted that it might not be possible to find Able Towing in violation of TCA 55-16-112 in this case, but that something had to be done to prevent someone who has a connection with the towing company from being recognized or designated with authority by a property owner to direct towing by that company. He stated that he would expect a voluntary commitment by Mr. Wayman to discontinue that method of patrolling lots; otherwise, the only alternative would be for the Commission to strictly enforce the most literal interpretation of the statute. Mr. Porter responded that his client would voluntarily do that, but requested that the Commission establish written guidelines for all towing companies.

Chair Sharp asked if it would be possible to provide a written interpretation, restating the points brought forward by Mr. Neely, to Able Towing and other companies involved in nonconsent towing. Director McQuistion stated that he would work that with Metro Legal. **Commissioner Ray Dayal** asked if it would be possible, as part of any guidelines provided by the Commission to wrecker companies, to direct those companies involved in contractual arrangements for nonconsent towing from private property to provide the Commission staff with the names and signatures of those individuals who would be authorized to sign their tow slips. Director McQuistion responded that the Commission was doing that with one company already, and that it might present a practical solution.

Mr. Porter asked if the Commission was going to prepare language for a policy on designees. **Vice-Chair Helen Rogers** stated that it would be possible for the Commission to declare that it is the Commission's interpretation that an appropriate designee who was regularly at the premises could authorize the towing of vehicles from private property. Director McQuistion stated that he would include this as a start point in his discussions with Metro Legal.

Mr. Porter stated that he would have a candid discussion with Mr. Wayman about cooperating with the Commission.

TAXICAB SHOW CAUSE HEARING: UNITED CAB

Management representatives of United Cab appeared before the Commission. These included Kuldip Singh, general manager; Roderick Brown, operations manager; and Rajbir Singh, President.

Director McQuistion stated that the purpose of the show cause hearing was to require United Cab to explain to the Commission how Ibrahim Sheikh Ahmed, a taxi driver whose permit previously had been suspended, had been able to drive United Cab #106. On Sunday, February 18, 2007 Mr. Ahmed was arrested and United Cab #106 was impounded by police, after Mr. Ahmed ran over one of his passengers.

Director McQuistion provided information on the suspension of Mr. Ahmed's permit in November 2006. He then summarized the findings of the investigation undertaken by the Commission staff to determine whether Mr. Ahmed had been allowed by United Cab to drive a company-owned taxicab without a permit:

- In the immediate aftermath of the February 18 incident, United Cab office manager Cherrie Machado had stated in a television interview that Mr. Ahmed had been driving for United Cab for a short period.
- Director McQuistion called Mr. Kuldip Singh on February 20; Mr. Singh had told him that Mr. Ahmed had not been approved to drive for United Cab, and that United Cab #106 had been stolen. Director McQuistion provided Commissioners a copy of the stolen vehicle incident report, which showed that the vehicle had been reported as stolen by Mr. Brown on February 20, two days after the incident.
- MNPD Auto Theft Detective Robert Bristol interviewed Mr. Ahmed in jail; Mr. Ahmed stated that he had been sharing a cab with another driver at United Cab for less than a week, and that the company was aware of the arrangement.
- Director McQuistion spoke by telephone to a United Cab dispatcher, Mr. Anthony Hodges; Mr. Hodges had told him that United Cab had forwarded calls to his home number on February 18, and that he had dispatched United Cab #106 to pick up the passenger involved in the incident. Director McQuistion noted that Mr. Hodges had been angry at the time he was questioned, because he had been fired; Mr. Hodges had also told him that he was Ms. Machado's cousin.
- MNPD officer John Pepper, who had arrested Mr. Ahmed on February 18, had conducted some initial investigation on the night of the incident, and had been told by a female employee at United Cab that Mr. Ahmed had been working there for a short time.

Chair Holly Sharp asked Mr. Brown why he had not filed a stolen vehicle report until February 20. Mr. Brown explained that the incident occurred on a holiday weekend, and that when he heard about it by telephone on Sunday he was out of town. He didn't know what car had been involved, so he decided to follow up when he returned; Monday was a holiday, so he wasn't able to follow up until Tuesday. He stated that he did not know initially that Cab #106 was missing.

Chair Sharp asked Mr. K. Singh to explain. Mr. Singh responded that taxicabs are often stolen; this was the first time one had been used as a weapon. He provided a packet of information to the Commissioners, and stated that initially the company thought that the vehicle tag had been stolen, and it took some time to verify that the vehicle itself had been stolen.

Mr. Singh stated that Mr. Ahmed had tried to get a job with the company on Thursday afternoon before the long weekend, but that the company did not hire him. He outlined the

company's process for hiring drivers; and he explained that Mr. Ahmed was not hired because he did not produce a permit, and because the company did not hire any driver whose current MVR was not checked with the insurance company. He stated that the roads were expected to be icy over the President's Day weekend, and that under those circumstances the company would not risk a vehicle to a new driver who owed money and did not have permit. Mr. Singh added that United Cab #106 was at the company offices because it was down for transmission problems. It had been taken in for repairs on February 13, but the mechanic had said to bring it back on the 20th; It had been brought back on the 15th and parked at the company. Mr. Singh stated that the company still had the keys to the vehicle.

Mr. Brown added that Mr. Ahmed had not presented his permit when he applied, but instead provided a photocopy of his permit. Director McQuistion noted that the original permit had been confiscated, and was on his desk at the time of the incident.

Mr. Singh stated that the company does not typically report a cab which appears to be stolen. Sometimes the police tell the company that the issue is a civil matter; in cases when the cab is recovered by the police, it may be taken to the Impound Lot, which costs the company. He stated that, instead of automatically reporting the stolen vehicle, the company organizes their own search for the vehicle, and it usually can be recovered.

Chair Sharp expressed concern that, with the news of a United Cab being used in a crime on February 18, no report had been initiated until February 20. Commissioner Ray Dayal asked Mr. Brown if the company had security cameras on the premises; Mr. Brown replied that it did not, but that he became aware that Cab #106 was missing when he returned on February 20. Commissioner Dayal referred to Mr. Ahmed's statement that the company knew he was driving, and asked Mr. Brown to comment. Mr. Brown responded that he did not know why Mr. Ahmed would say that, but he stated that Mr. Ahmed had an office next door to United Cab's office. Commissioner Dayal expressed concern that United Cab vehicles were left in an open parking lot shared by Kroger's and other businesses. Mr. K. Singh suggested that Mr. Ahmed's arrest history should cast doubt on his credibility. Commissioner Dayal stated that the very purpose of the hearing was to get to the truth.

Chair Sharp noted that statements by Ms. Machado, Mr. Hodges, and Officer Pepper had all indicated that Mr. Ahmed was driving, and that the company knew about it. Mr. K. Singh responded that all of these statements originated with Ms. Machado; he provided a written statement from her, in which she stated that she had seen Mr. Ahmed at United Cab when he came to see Mr. Brown on February 15, and that she had mistakenly assumed that he was hired.

Vice-Chair Helen Rogers stated that, even if United Cab's statements were true, they evidenced a very sloppy operation. She pointed out the potential risk to public safety created by the company's practice of allowing stolen vehicles to go unreported for a month. **Chair Sharp** added that, considering the seriousness of this incident, the company's lack of control and slow response were also insupportable.

Mr. Brown reported on steps the company was undertaking to prevent recurrences of some of these problems, including a requirement for owners and drivers to keep and secure all vehicles at their own property; no vehicles would be kept at the company lot. He stated that he had followed up with Mr. Hodges, and that Mr. Hodges had not dispatched Mr. Ahmed that night. Following discussion on how vehicles are dispatched, **Chair Sharp** asked Inspector Lawhorn to provide some insight into how companies should manage dispatch operations. Inspector Lawhorn responded that control was critical; when a driver reported on duty/in service, the dispatcher logs in the vehicle number, the driver's name, what time they came on, and what time they went out of service. Mr. Brown responded that United was doing this

now. Inspector Lawhorn asked who had given Mr. Ahmed a key to the vehicle; Mr. Brown stated that he did not provide a key.

Commissioner Dayal asked if Ms. Machado was an employee of the company. Mr. K. Singh responded that she had been. Commissioner Dayal asked why she had stated that Mr. Ahmed was working for United Cab. Mr. Brown referred to her later statement that she had been mistaken. Mr. K. Singh stated that Ms. Machado had exceeded her authority, that the company had subsequently filed embezzlement charges against her, and that she was no longer working for the company.

Vice-Chair Rogers stated that, employee issues aside, United Cab had to make significant policy and procedural changes. Inspector Lawhorn asked if it was United Cab's policy to allow dispatchers to handle money; Mr. K. Singh responded that they allowed the head dispatcher to collect money from drivers. Inspector Lawhorn asked if they were bonded; Mr. Singh replied that they could not get a dispatcher if they required a bond. He stated that they trusted their employees; Inspector Lawhorn expressed concern about this response, in light of the embezzlement charges.

Chair Sharp noted that the stolen vehicle was discovered after the fact, and the embezzlement was also discovered after the fact. She summarized that the information provided to the Commission demonstrated that United Cab's actions were only reaction-based. She stated that the incident of February 18 should not have happened, and could have been prevented.

Director McQuistion asked Inspector Lawhorn whether it was unusual for a dispatcher to operate a company within a company, or otherwise violate required practices for personal gain; and, if so, to comment on how that could be prevented. Inspector Lawhorn answered that it was a common problem, and that the introduction of the cell phone made this possible; because each taxicab could then operate independently. He stated that the only way to address the resulting problems was with strict control; the looser control a company maintained over its operations, the more problems would ensue.

Doug Trimble, president of Yellow Cab, stated that after Mr. Ahmed had been suspended in November 2006, he had called all the other companies, including United Cab, to warn them not to hire him. **Commissioner Dayal** asked Mr. Brown if he had known about Mr. Ahmed's suspension. Mr. Brown replied that he did not, but that the fact that Mr. Ahmed showed him only a photocopy of his permit had been a red flag; that was among the reasons he refused to hire him. **Commissioner Dayal** expressed concern about the lack of internal communications about such matters.

Chair Sharp closed the hearing. **Vice-Chair Rogers** stated that there was sufficient evidence of poor business and operations practices by United Cab. She moved to place United Cab's Certificate of Public Convenience and Necessity under probation for six months, and to require the company to report on, a monthly basis, the following information: if there have been any taxicabs stolen, what the company is doing about supervising dispatchers, and who is driving for the company. **Commissioner James Utley** seconded, and the motion passed unanimously (5-0).

DIRECTOR'S COMMENTS

Director McQuistion stated that there were a number of changes to the ordinances and Commission Rules that were necessary, and that the staff would bring those recommendations to the next meeting. He reminded the Commission that the June meeting would be the annual public hearing on emergency wrecker zones, so that a public hearing on any specific changes would likely be scheduled for July.

TAXICAB DRIVER APPLICATION: ALI SUGULE

Ali Sugule, who had arrived late, appeared before the Commission. Chair Holly Sharp reminded Mr. Sugule that his permit application had been referred to the Commission because he had some background issues, which he should be prepared to address. She asked him why he should be granted a permit. Mr. Sugule stated that he had been in a fight with another driver at the airport. Chair Sharp noted that the airport had terminated his privileges over the incident, and asked why he had fought with the other driver. Mr. Sugule replied that he was only defending himself. Director McQuistion stated that the video of the altercation had been presented to the Commission in April 2006, at which time both drivers' permits had been revoked. He noted that the airport had permanently barred Mr. Sugule from the airport. Commissioner Ray Dayal recalled that the fight had been instigated when one driver had spit at the other. Chair Sharp noted that Mr. Sugule had done the spitting. Director McQuistion added that Mr. Sugule had been permitted at the time with Yellow Cab, but was driving an Allied Cab. Chair Sharp asked Mr. Sugule if he had anything else to present; he did not respond. Commissioner Tom Turner moved to disapprove Mr. Sugule's application. Vice-Chair Helen Rogers seconded, and the motion passed unanimously (5-0).

OTHER BUSINESS

ATTEST:

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

Brian E. McQuistion Holland Conner Sharp
Director-Executive Secretary Chair

APPROVED: