



BEFORE THE
PHILADELPHIA PARKING AUTHORITY

2993

IN RE: Proposed Rulemaking Order :
Philadelphia Taxicab and : Docket No. 126-4
Limousine Regulations :

COMMENTS OF MICHAEL S. HENRY

To the extent the proposed regulations pertain to “partial rights” taxicabs, I make the following comments.

I. JURISDICTION

Act 94 explicitly deals *only* with the *transfer* of the Commission’s functions relating to medallion taxicabs and to limousines with rights to operate in Philadelphia, not with other common carriers, including taxicabs with authorization to provide call or demand service in designated areas of Philadelphia (“partial rights” taxicabs). *See* Section 22 of Act 94.¹ As the Supreme Court has noted, the transfer-related provisions of Act 94 are explicit. *See Germantown Cab Company v. Philadelphia Parking Authority*, 36 A. 3d 105, n.19 (Pa. 2012). They pertain to only two classes of carriers: medallion taxicabs and limousines with operating rights in

¹ Section 22(1) of Act 94 provides: “The Pennsylvania Public Utility Commission's appropriations, allocations, documents, records, equipment, materials, powers, duties, contracts, rights and obligations which are utilized or accrue ***in connection with the functions under 66 Pa.C.S. Ch. 24 and in connection with limousine regulation in cities of the first class*** shall be transferred to the Philadelphia Parking Authority in accordance with an agreement between the commission and the authority.

Philadelphia. All other carriers remain under the regulatory authority of the Commission, even carriers with operating authority in Philadelphia.²

Furthermore, it is undisputed that, subsequent to the effective date of Act 94, “partial rights” taxicabs continue to be regulated by the Commission pursuant the Public Utility Code, 66 Pa. C.S. §101 et seq., and the Commission’s regulations promulgated thereunder. 52 Pa. Code Chapter 29. Such was not the case with regard to medallion taxicabs or limousines with operating rights in Philadelphia. The Commission does not regulate medallion taxicabs and it does not regulate limousines with Philadelphia operating rights, even if they are operating outside of Philadelphia.³ The Authority has exclusive jurisdiction over these carriers.

Thus, while it may be said that Act 94 *transferred* regulatory authority over medallion taxicabs and limousines with operating rights in Philadelphia to the Authority, the same cannot be said about any other common carrier in the Commonwealth. It cannot be said that regulatory

² The Authority seems to have great difficulty comprehending the clear and unambiguous language of Act 94’s explicit transfer-related provisions, even though no one else seems to suffer from this affliction. Sadly, the Authority’s disability in this regard has dire consequences for common carriers that provide transportation services in Philadelphia, as well as the riding public. As the Supreme Court noted in *Germantown Cab Company v. Philadelphia Parking Authority*, 36 A.3d 105, 120 (Pa. 2012): “As explained, the General Assembly took pains to assure that the PUC’s rules and regulations would remain extant until the Authority provided differently, apparently contemplating that the Authority would do so in an orderly and lawful fashion. See Act 94, §22. To the extent that a regulatory void has unfolded, this reasonably may be viewed as a result of the PPA’s failure to take protective measures to maintain the integrity of the regulatory framework it inherited from the PUC throughout the years during which it has been contesting its Commonwealth agency status, see *Blount*, 600 Pa. at 277, 965 A.2d at 226, then litigating the fallback position that it was otherwise exempted from the rulemaking requirements applicable to Commonwealth agencies. In any event, it is the terms of the material statutes — and not the ensuing anecdotal experience — which governs the statutory interpretation.”

³ Some limousines carriers with operating rights in Philadelphia also hold limousine authority from the Commission, which is regulated by the Commission. But these operating rights are completely separate from the operating rights issued by the Authority and are regulated separately by the Commission. In other words, these carriers have two distinct certificates of public convenience defining unique territories, unlike “partial rights” taxicab companies, which have one unified territory described in its Commission-issued certificate of public convenience.

authority over “partial rights” companies was *transferred* to the Authority because the Commission still has regulatory authority over these carriers. If the Commission *transferred* regulatory authority over “partial rights” companies to the Authority, then the Commission would no longer have regulatory authority over these carriers, but such is clearly and indisputably not the case.

In contrast, the Commission does *NOT* retain any regulatory authority over either medallion taxicabs or limousines with operating rights in Philadelphia. The Authority has exclusive jurisdiction over these two classes of carriers. This is true no matter where these carriers operate. So, the Authority regulates them when they are providing service in Pittsburgh, as well as Philadelphia. Such is the nature of common carrier regulation. Common carriers operate vehicles with wheels, which allow them to transport persons, *legally*, throughout the Commonwealth. The Authority’s regulatory authority is statewide with regard to these two classes of carriers. It does not stop at the Philadelphia border. Regulatory authority is not territorial in that sense.⁴

Likewise, the Commission’s regulatory authority extends throughout the Commonwealth, including the entire City of Philadelphia. It has regulatory authority over every carrier within its subject matter jurisdiction, even when those carriers operate within the City of Philadelphia. This includes all carriers throughout the Commonwealth, with the exception of medallion taxicabs and limousines with operating rights in Philadelphia.

Nor is it reasonable to conclude that the transfer of the Commission’s regulatory functions with regard to “partial rights” carriers was less than complete. Clearly, the transfer of

⁴ The statewide nature of the Authority’s regulatory powers is beyond dispute and is a well-settled legal principle explicitly determined by the Pennsylvania Supreme Court. See *Blount v. Philadelphia Parking Authority*, 965 A.2d 226, 232 (Pa. 2009) (“With regard to taxicabs, the PPA operates outside of Philadelphia and statewide.”)

regulatory authority over medallion taxicabs and limousines with operating authority in Philadelphia was a complete transfer. How then could it have been incomplete for only one class of carriers and how is it that only one class of carriers in the entire Commonwealth is subject to dual regulation?

It is well-established that an administrative agency “cannot, by mere usage, invest itself with authority or powers not fairly or properly within the legislative grant: it is the law which is to govern rather than departmental opinions in regard to it.” *Commonwealth v. American Ice Company*, 178 A.2d 768, 773 (Pa. 1962) (quoting *Federal Deposit Insurance Corp. v. Board of Finance & Revenue of Commonwealth*, 84 A.2d 495, 499 (Pa. 1951) (emphasis in the original)). Thus, the Authority’s claim that it has regulated “partial rights” carriers is nothing more than mere opinion, unless it is grounded in a valid interpretation of its enabling statute. I wish to stress this point to the utmost, since it appears that the Authority makes no attempt to argue the basis of its jurisdiction with reference to its enabling act, relying instead on “mere usage” to “invest itself with authority or powers not fairly or properly within the legislative grant.” The Authority’s legal position does not, like fine wine, improve with age.

For the foregoing reasons, the proposed regulations should not be approved.

Respectfully submitted,

Michael S. Henry

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