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THE PHILADELPHIA PARKING AUTHORITY
001 OFFICE OF GENERAL COUNSEL

BEFORE THE
PHILADELPHIA PARKING AUTHORITY

In Re: Proposed Rulemaking Order : Docket No. PRM – 10 –
Philadelphia Taxicab and :
Limousine Regulations :

COMMENTS OF THE PHILADELPHIA REGIONAL LIMOUSINE ASSOCIATION

The Philadelphia Regional Limousine Association ("PRLA"), an association of owners of limousine services whose members are subject to regulation by the Pennsylvania Public Utility Commission ("PUC") by virtue of the provisions of the Pennsylvania Public Utility Code, 66 Pa. C.S. §101, *et.seq.*, as well as the Philadelphia Parking Authority ("PPA"), pursuant to the provisions of 53 Pa. C.S. §5701 *et. seq.* In accordance with the Order of the PPA, dated November 10, 2010, the PRLA files these comments.

I. Introduction

By Order entered November 10, 2010, the Philadelphia Parking Authority promulgated regulations comprise both the rules of practice and procedure before the PPA and the general regulations governing the furnishing of taxicab and limousine service under the PPA's enabling statute. This statute generally provides that it may be more efficient to regulate the taxicab and limousine industries within the boundaries of a city of the first class by local authorities. While recognizing this legislative finding, the PRLA is supporting the passage of SB 453 which would eliminate dual regulatory oversight, with limited exception, of those providing limousine services pursuant to authority granted by the Pennsylvania Public Utility Commission.

As part of its November 10, 2010 Order, the PPA solicited comments to its proposed regulations to be filed within thirty (30) days of the publication of the proposed regulations in the

Pennsylvania Bulletin. The proposed regulations were published in the *Pennsylvania Bulletin*, Vol. 41, No. 3, January 15, 2011, page 435. These Comments of the PRLA are submitted in compliance with the PPA's November 10, 2010 Order.

II. Background

The PRLA was formed to provide a mechanism for all luxury transportation providers to acquire benefits normally associated with a group type environment. Tony Viscusi (Global Limousine Service owner) founded the Delaware Valley Limousine Association 1982. In seeking to expand their brand, the name of the association was changed to the Philadelphia Regional Limousine Association. The association currently has over 55 transportation company members and a host of service providers necessary to our industry such as: insurance, vehicles, fuel programs, printing service, website design/host, mechanical shops. The members are based in adjoining states as well as from within the state as far away as Pittsburgh to the west and Scranton in the northeast. These companies have Public Utility Commission operating rights, Philadelphia Parking Authority operating rights and most companies are registered with the Unified Carrier program for intra state operations. In total, member companies operate over 2500 vehicles with the corresponding support staff of: reservationists, dispatchers, mechanics, human resources, accounting, vehicle maintenance personnel and detailers for a total of over 4700 jobs in the region.

Prior to the passage of the Act of July 16, 2004, (P.L. 758, No. 94) intrastate limousine service was comprehensively regulated by the PUC. Rates, terms and conditions of service, vehicle requirements, driver requirements, customer complaint procedures, service territories,

etc. were regulated by a uniform statewide comprehensive system of both law[1] and regulations[2]. This pervasive statewide regulatory system provided a uniformity of rules and regulations throughout the Commonwealth. Thus, a company who complied with PUC regulations on a trip from Harrisburg to Allentown could be assured that the same regulations would apply to transportation of a customer from Harrisburg to Philadelphia. The passage of Act 94 altered the regulatory landscape by creating a dual overlapping regulatory system for trips to, from, and between points in cities of the first class.

Within the context of this proceeding, it is the overriding goal of the PRLA to insure that the regulations of the PPA are consistent with the legislative goal of promoting the efficient regulation of the limousine industry not only in Philadelphia but also within the entire Commonwealth. To that end the PRLA proposes that the regulations of the PPA be consistent with those of the PUC as they relate to the providing of limousine service between points in Philadelphia[3]. Such consistency will enable those motor carriers who continue to be subject to regulation by two Commonwealth Agencies with identical purposes to avoid confusion and the inadvertent violation of the regulations of one Commonwealth Agency while complying with the regulations of the other.

The proposed regulations are divided into three subparts: (A) General Provisions relating to practices and procedures before the PPA; (B) provisions relating to the operation of taxicabs; and (C) provisions relating to the operation of limousine service. The PRLA will address only subparts A and C of the proposed regulations.

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[1] The Public Utility Code, 66 Pa. C.S. §101, *et.seq.*

[2] Title 52 of the Pennsylvania Code.

[3] The PRLA has presented testimony before the Consumer Affairs Committee of the House of Representatives in support of HB 2434 which would, *inter alia*, require the PPA's to enforce the regulations of the PUC in the City of Philadelphia. It is our understanding that a co-sponsorship memorandum is being circulated and that this legislation will be re-introduced shortly.

III. Specific Comments – Practice and Procedure Regulations, §§1001.1 – 1005.47

§1001.1(c):

> Rights issued by the Authority through issuance of a waiver prior to the date of these regulations are published in final form in the *Pennsylvania Bulletin* will expire one year from the date of that final publication.

This provision appears to be creating two separate classifications of "rights" which term is not defined within either the statute or these regulations. Additionally, nowhere within the statute or these regulations does the PPA explain what provisions of which validly adopted regulations have been waived or what is meant by those certificates issued by waiver. This needs to be clarified. It is recommended that the PPA, at a minimum clarify this regulation.

The regulation as written creates pre and post adoption categories of "rights" further providing that any rights issued by "waiver" would automatically expire within one year of the final approval of the regulations. The statute does not contemplate the creation of any right to provide service except as a taxicab, medallion cab or limousine nor does it contemplate a preference to be granted to those entities who secured their "rights" from the authority by virtue of an application or a waiver.

Although not defined in the regulations or statute, it is presumed that the Authority permitted those carriers who possessed a certificate of public convenience from the Pennsylvania Public Utility Commission with authority from that Commonwealth agency to provide service in cities of the first class prior to the passage of the Act without going through the application process. Thus, those entities with existing PUC rights were granted a certificate by the PPA through the waiver of the formal process. If approved as written, any limousine company that was granted the authority to provide service in Philadelphia by virtue of this waiver process would have that certificate expire and be required to reapply for a new certificate through the

application process set forth in Subchapter C of the proposed regulations and the payment of a $10,000 application fee. (§§1003.21–1003.36). As set forth in those sections, any such application could be subject to protest ($2,500 fee), hearings ($50 fee) and adjudication by the PPA.

In contrast to this reapplication process, any limousine entity that received its certificate by virtue of the application process (as opposed to waiver) would have its right continue provided it complied with the limousine renewal process set forth in §§ 1051.3 – 1051.4 and the payment of the $300 per vehicle annual renewal fee forth e first 15 vehicles. Pursuant to those provisions, there is no requirement of refilling the data necessary for an initial application, no opportunity to protest, no necessity for hearings or adjudication, etc. As a consequence, those entities that had provided service prior to Act 94, and subsequent to the passage of that Act under the jurisdiction of the PPA by virtue of a waiver will be discriminated against in favor of those who made formal application to the PPA in the first instance.

This distinction is not without a wide disparity in costs. Pursuant to the fee schedule published by the Authority for 2011, the fee for renewing a limousine certificate begins at $300 for the first 15 vehicles. However, in addition to the annual fee, a "waiver" certificate holder would be required to pay the "New Limousine Certificate Application" fee of $10,000 in order to regain the rights he already possesses. This cost disparity unfairly discriminates against those carriers who have consistently served the Philadelphia area prior and subsequent to the passage of Act 94.

Recommendation: Delete this provision. In the alternative, reword this section to make it clear that all certificate holders will be treated in a non-discriminatory manner.

§1001.10

> *Applicant* – A person, who on his own behalf or on the behalf of another, is applying for permission to engage in any act or activity which is regulated under the act or this part. In cases in which the applicant is a person other than an individual, the Authority will determine the associated persons whose qualifications are necessary as a precondition to the approval of the application.

This provision, as written, would permit an individual to apply for a certificate to provide service, protest an application of another carrier, or take other actions on behalf of another individual without proof that the individual is acting with proper legal authority to act. The regulation should require that before any action is taken on behalf of another that proper legal authority to act is present.

Within the second sentence of that definition, there is no definition of "associated persons". As such, it appears that with respect to corporate entities, the Authority is seeking to determine who may own that entity, be employed by that entity, or provide services to that entity. For example, the Authority may require that a certain individual of its choosing be employed as a mechanic or as a driver or other individuals who have specialized "qualifications" for a limousine company as a precondition to the approval of an application. This provision would permit the PPA to micro manage the operations of a certificate holder by requiring that only "PPA approved" persons are applicants.

Recommendation: Reword the definition to read as follows:

> *Applicant* – A person, who ~~on his own behalf or on the behalf of another~~, is applying for permission to engage in any act or activity which is regulated under the act or this part. ~~In cases in which the applicant is a person other than an individual, the Authority will determine the associated persons whose qualifications are necessary as a precondition to the approval of the application.~~

Approved, approval or approve – The date that an application to the Authority is granted regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of the Authority.

PRLA submits that this definition could be viewed as an attempt by the PPA to deprive a court of competent jurisdiction from issuing a stay order, issuing an injunction or otherwise preventing the implementation of any order of the PPA. For example, if a fine is upheld by PPA order which must be paid within 10 days of the approval of the PPA order, there would exist no opportunity to exercise the statutory 30 day right of appeal to the Commonwealth Court or to request a stay of the PPA order from that Court. *See, generally,* 42 Pa. C.S. §5571. The PPA, through regulation may not divest any Court of competent jurisdiction of its authority to act.

Recommendation:

Approved, approval or approve – The date that a final order of ~~an application to~~ the Authority is granted ~~regardless of the pendency of administrative or judicial appeals or other legal action challenging the decision of the Authority~~.

Broker – An *individual* duly authorized by the Authority as provided in §1029.8 (relating to broker registration approval) to prepare application related documents, appear at settlements, and otherwise act on behalf of a party as to matters related to the sale or transfer of a certificate or medallion.

PRLA is concerned that permitting a broker to prepare application related documents such as sales agreements, and other binding legal documents will promote the unauthorized practice of law with the express approval of the PPA. Additionally, to the extent that the PPA requires the registration of an attorney as a broker in order to prepare transfer documents, such registration and regulation violates the exclusive jurisdiction of the Pennsylvania Supreme Court to regulate the activities of licensed attorneys.

Recommendation

Broker – An individual duly authorized by the Authority as provided in §1029.8 (relating to broker registration approval) ~~to prepare application related documents, appear at settlements, and otherwise act on behalf of a party as to matters related to the sale or transfer of a certificate or medallion~~.

§1001.28

This section presents numerous concerns to PRLA. Initially, the entire section is vague. For example, 1001.28(a) permits the representation of a certificate holder "at certain Authority appointments". Nowhere within this section or other portions of the regulations does the PPA qualify what constitutes "certain Authority appointments." For example, if the "appointments" include hearings or adjudicatory proceedings before the authority, permitting an attorney-in-fact who is not a member of the bar of the Commonwealth of Pennsylvania to represent the certificate holder would place the PPA in the position of sanctioning the unauthorized practice of law.

Section 1001.28(b) permits an attorney-in-fact to execute various approved documents on behalf of the certificate holder. Which documents or document types are not specified.

Section 1001.28(c) presents the potential for discrimination on the part of the PPA with respect to ethnicity and is not within the statutory authority of the PPA to require. This provision sets forth the requirements for an individual to be an attorney-in-fact. In so doing the PPA has established itself as the final arbiter of whether that individual is a "competent adult", what constitutes a clear "response to Authority investigations", and what constitutes fluency in English. The enabling statute does not provide the PPA with authority to evaluate an individual's competency or perform English fluency exams or establish criteria for a determination of what constitutes fluency in English. These requirements are made all the more unreasonable by the fact that there exists no right of appeal from a determination that an individual has failed to meet one or more of the undefined criteria.

§1003.12(b)

> (b) *Drivers.* A driver's certificate issued by the Authority pursuant to section 5706 of the act (relating to driver safety program) may be placed out of service by the Enforcement Department upon determination that the driver's operation of a taxicab or limousine will create a public safety concern or if the driver fails to appear at TLD Headquarters upon direction of the Enforcement Department.

PRLA understands the necessity of removing unsafe drivers or vehicles from the road and does not object to the subsequent hearing process. PRLA's only comment with regard to this section is to suggest that there be a "without just cause" provision being added to the failure to appear. For example an Enforcement Officer may order a driver to appear at a certain time and date and compliance may be impossible for a driver to appear at the specified time and/or date.

Recommendation

> (b) *Drivers.* A driver's certificate issued by the Authority pursuant to section 5706 of the act (relating to driver safety program) may be placed out of service by the Enforcement Department upon determination that the driver's operation of a taxicab or limousine will create a public safety concern or if the driver, without just cause shown, fails to appear at TLD Headquarters upon direction of the Enforcement Department.

§1003.12(h)

> (h) *Order.* An order following an out of service hearing may rescind, modify or continue the out of service designation. When an order of the presiding officer modifies or continues an out of service designation, the order will include a prompt date for a hearing on the Enforcement Department's formal complaint.

This section must be read in conjunction with paragraph (g) (1-2) of the same section. Pursuant to subsection (g) a hearing will be held based upon the averments in the Enforcement Department's complaint which presumably includes presentation of evidence on the underlying cause of the out of service designation. Subparagraph (h) comes into play only if the presiding officer decides not to continue the out of service designation or modifies the initial order issued

after the hearing held pursuant to subsection (g). The interplay of these two sections appears to create a bifurcated hearing process where the initial hearing deals with the reasonableness of the out of service designation and the second would deal with the underlying cause of the out of service designation. In order to save time and expense, PRLA would suggest that all aspects of the Enforcement Department's complaint be adjudicated in one proceeding.

§1003.34(c)

> (c) At *the* time a protest petition is filed the protest fee shall be paid as provided in §§1001.42 and 1001.43 (relating to mode of payment to the Authority; and Authority fee schedule.

Nothing contained in the PPA regulations is as discriminatory against the limousine industry as this provision. There exists no doubt that it is the intention of the PPA to prohibit any member of the limousine industry from protecting whatever rights it has to prevent destructive competition or the granting of rights to any individual the PPA chooses within the City of Philadelphia. A review of the PPA fee schedule indicates **only in the case of a protest to a limousine application** is a fee required. Thus, an individual holder of a certificate for taxicab service may file a protest against the issuance of a certificate to a new entrant for taxicab service without the payment of a fee, but if a member of the limousine industry wishes to protest its financial investment, **it may do so only upon the payment of a $2,500 fee**. In essence, this regulation is nothing more than a pay to play fee that is not imposed upon any other industry in the City. The PPA is requiring that only a limousine company pay a $2,500 fee as a precondition to that entity participating in a PPA proceeding in any effort to insure that its rights are protected. Such a "pay-to-play" fee is the antithesis to the American system of justice.

Compounding this inequitable treatment is various hearing fees and the fee of either $2,500 or $5,000 to secure additional limousine rights. No such fees are imposed upon taxi companies. Rather than promoting the limousine industry in Philadelphia, the imposition of fees and barriers to the protection of investment would only serve to discourage investment in providing service between points in Philadelphia.

§1005.12 and §1005.45 (Motions)

The provisions of this section set forth the respective rights and obligations of any individual issuing or receiving a citation from the PPA. PRLA has concerns regarding the inability to challenge, via preliminary motion, any defect or omission in the citation. Subsection (b) provides:

> (b) *Answer to citations.* No pleading response to a citation is necessary. Preliminary motions may not be filed regarding complaints instituted under this section. Upon receipt of a citation the respondent shall do one of the following:

This subsection must be read in conjunction with subsection (a) which requires the Enforcement Department or Trial Counsel to include certain information within the citation "unless the circumstances of the violation render the information impractical to obtain at the time of the filing." While the PRLA appreciates that circumstances may arise wherein information is not immediately available to an Enforcement Officer, if that information never appears on the citation, the normal legal process of filing a preliminary objection in the nature of a request for more specific pleading is unavailable to any respondent pursuant to the operation of subparagraph (b). Even the inadvertent omission of certain relevant information could lead to a denial of a respondent's ability to mount a defense to a citation or to even file an answer which appears to be permitted. For example, a citation involving a motor vehicle that does not include

the license plate number of the vehicle involved or the name of the driver, or the certificate number of the violator would prevent an owner from performing an internal investigation to determine the truth or validity of the remainder of the complaint or even if the citation of his or her company was correct. The ability to mount a defense to any citation is fundamental to the justice system of this Commonwealth.

The exclusion of the availability of preliminary motions extends not only to any and all actions begun by the Authority but by formal complaints initiated by an informal complainant. See §1005.45(e)(1)(i). As was the case with citations issued by the Authority it is entirely possible that vital information that would enable a respondent to prepare a defense to the complaint may be omitted from a complaint. If this were to occur, a respondent would have no procedural mechanism to challenge the formal complaint prior to being required to file an answer.

Further the elimination of the possibility of filing preliminary objections to any motion or answer to a motion would preclude any party from objecting to "New Matter" which contains averments which are clearly outside the jurisdiction of the Authority, contains scandalous or impertinent matter, be insufficiently specific or indicated the lack of a complainant's ability to bring the complaint. Finally, mistakes do occur and there does not appear to be any procedural mechanism by which these issues can be raised.

Recommendation

§1005.12(b)

(b) *Answer to citations.* No pleading response to a citation is necessary. ~~Preliminary motions may not be filed regarding complaints instituted under this section.~~ Upon receipt of a citation the respondent shall do one of the following:

§1005.45 (Motions)

(e) *Preliminary* motions.

(1) Preliminary motions are available to parties and may be filed in response to a pleading~~, except the following:~~

~~(i) Citation complaints filed pursuant to §§1005.10(a)(1) and 1005.12 (relating to formal complaints generally and citation complaints by the Authority)~~

~~(ii) Motions~~

~~(iii) Answers to Motions~~

§1005.19(d).

(d) Petitions for appeal from actions of the staff shall aver any material factual disputes related to the staff action necessitating an on the record hearing and otherwise comply with the requirements of §1005.16 (relating to petitions generally).

This subsection requires the averment of disputed material facts. In an effort to insure completeness of the record before the PPA, all factual matters, not merely allegations of facts in dispute should be required. Additionally, there may be occasions where the facts are not in dispute, but the interpretation or application of PPA's regulations or the enabling statute are in dispute. This provision would appear to preclude the appeal from an action of the staff where there are no material factual disputes but there is a dispute as to interpretation of the regulation or law.

Recommendation

(d) *Petitions* for appeal from actions of the staff shall aver any material factual or legal disputes related to the staff action necessitating an on the record hearing and otherwise comply with the requirements of §1005.16 (relating to petitions generally).

§1005.52(c)

(c) In oral and documentary hearings, neither the Authority nor the presiding officer will be bound by technical rules of evidence, and all relevant evidence of reasonable probative value may be received. Reasonable examination and cross-

examination will be permitted at all oral hearings. If a party does not testify on his own behalf, the party may be called and examined as if under cross-examination.

While this provision states that only the Authority, and presumably including any trial staff assigned to prosecute a case, shall not be governed by the rules of evidence, it is silent as to whether any other party will be held to the rules of evidence. PRLA has considerable concern regarding the wording of this provision and the potential for the disruption for the orderly presentation of evidence in any contested matter before the Authority. For example, pursuant to this regulation the Authority may receive hearsay evidence, evidence for which no foundation is laid, unauthenticated documentary evidence, etc. Such actions are clearly contrary to law. It is axiomatic that any Commonwealth agency cannot alter the law through regulation. Accordingly, this regulation should be omitted.

Perhaps more disturbing is that portion of the proposed regulation that would **require** an individual to present oral or written testimony in any proceeding. Such a requirement runs directly contrary to and deprives and individual of the protective provisions of the 5th Amendment of the Constitution of the United States.

Recommendation

The entire provision should be stricken.

§§1005.125 and 1005.126 are inconsistent

Section 1005.125(c) provides:

(c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 20 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Clerk.

Section 1005.126(a) provides in pertinent part:

> (a) A party has the right to file a reply to an exception in proceedings before the Authority.

A reading of these two sections reveals an inconsistency. While section 1005.125(c) appears to prohibit the filing of a reply brief while section 1005.126(a) appears sanction such a practice. To the extent that the PPA anticipated the incorporation of a legal brief within the reply exception as one document, the PRLA's comment to these sections may be rendered moot.

§1005.46

> A record will not be certified as complete until copies of exhibits or other papers have been furnished when necessary to complete the Authority file. Copies will be requested by the Authority.

This section deals with the record on appeal to a Court of competent jurisdiction. PRLA has concern with what could be the practice of the PPA requesting copies of exhibits or other papers after the rendering of a decision. PRLA submits that it is impossible for the PPA to render a reasonably supported decision if the record before it is not complete prior to the rendering of a decision. It is hornbook law that an administrative agency is bound by the record before and may not consider or utilize extra-record documents or testimony as support for its decision. As written, the Authority could render a decision in a matter and then supplement the record that is certified to the Court with any other exhibits or documents that it chose.

Recommendation

This section should be stricken in its entirety.

IV. Specific Comments – Taxicab and Broker Regulations §§1011 – 1029.22

The PRLA will not be providing any comments regarding these provisions.

V. Specific Comments – Limousine Regulations, §§1051.1 – 1065.1

§1051.5(d)

> (d) In the event a criminal prosecution is initiated against a regulated party for a crime that may lead to a conviction as defined in §1051.2, the Enforcement Department of Trial Counsel may initiate a formal complaint against the regulated party as provided in §1005.10 (relating to formal complaints generally) and seek the immediate suspension of rights pending the conclusion of the criminal proceedings.

While PRLA appreciates the concern of the PPA regarding criminal activity of a regulated entity, this proposed regulation may have consequences for an entity having nothing to do with the alleged criminal activity. For example, a "key employee" may be considered subject to regulation by the PPA in that the PPA must approve or disapprove of such an individual being part of a limousine company. This is equally applicable to drivers. In the event that a driver is merely accused of a §1051.2 crime, the proposed regulation would permit the PPA to suspend the rights not only of the driver, but also those of the limousine company despite the non-involvement of the company. Or whether the alleged offense occurred independent of any connection with his employment. PRLA submits that guilt by association has never been the law of the Commonwealth.

Some question also exists as to whether the suspension of a certificate would continue in the event the individual is exonerated, be automatically restored, or require the reapplication by the entity.

Recommendation

> (d) In the event a criminal prosecution is initiated against a regulated party for a crime that may lead to a conviction as defined in §1051.2, the Enforcement Department of Trial Counsel may initiate a formal complaint against the regulated party as provided in §1005.10 (relating to formal complaints generally) and may seek the immediate suspension of that individual's license granted by the PPA ~~rights~~ pending the conclusion of the criminal proceedings. In the event no conviction occurs, the suspension of that individual's license granted by the PPA shall automatically cease.

§1051.6(d)

> (d) Regulated persons and applicants for any right issued by the Authority shall hold and maintain a Business Privilege License issued by the City of Philadelphia and present a copy of the license to the Authority for inspection upon demand.

Pursuant to §1001.10 an applicant is anyone who acts on his own behalf or on behalf of another including an authorized agent who may be completing an application. Additionally, subsection 1051.6(e) would extend the requirement of a City of Philadelphia Business Privilege License be obtained by anyone who possesses a controlling interest in a regulated entity or applicant. This subsection would require a Pennsylvania Business Corporation that is located outside the City of Philadelphia, any foreign corporation that is licensed to do business within Pennsylvania, as well as any individual who owns a controlling interest (an individual who holds "less than five percent" of the stock of a company (§1051.2), or who seeks to act on behalf of a limousine company to obtain a Business Privilege License from the City of Philadelphia even if there is no other contact of or business conducted in the City. For example, by definition if an individual owned one share of stock of a limousine company (which is less than 5% of the

company) would be required not only to pay the $300 for the business license itself (regardless of whether he ever receives any dividends or compensation from the company), but potentially also a Net Profit Tax, General Business Tax, and Business Privilege Tax. Such a requirement imposes conditions upon the owning of stock which is clearly outside the jurisdiction of the PPA. A similar result would befall a "key employee" even if that individual otherwise did not conduct any business within the City of Philadelphia.

Additionally, this regulation is unnecessary and unenforceable by the PPA. The requirement of obtaining any and all business licenses to operate a business within the City of Philadelphia is within the direct jurisdiction of the City of Philadelphia itself and had not been delegated to the PPA by the City or by Act 94. It is duplicative in that all certificate holders must comply with all laws, of which the obtaining of a Business Privilege License may be one.

Requiring any individual or entity to obtain a Business Privilege License by the PPA when such a license is not otherwise required by the issuing agency will act as an artificial barrier to entry into the limousine industry in Philadelphia and hinder, rather than promote the development, growth and expansion of business in the City and thereby violate the legislative findings contained in the Act.

Recommendation

Subsections (d) and (e) should be stricken in their entirety.

§1053.23

This section provides vehicle and equipment requirements for luxury limousine service. While the PPA does not oppose this definition as it is similar to that of the Pennsylvania Public Utility Commission, it is clear that the PPA is imposing additional requirements not contained in these proposed regulations. Independent of these regulations, the PPA maintains a list of

approved and not allowed vehicles, which list is subject to change at the whim of the PPA in contravention of the requirements imposed upon a Commonwealth Agency when it wishes to alter its regulations. A review of the PPA approved list indicates that the PPA has excluded certain vehicles for what it considers deficiencies that are not contained in the proposed regulations.

Recommendation

It is recommended that this section remain as stated but that the PPA discontinues the issuance of a separate listing of approved and/or disapproved vehicles.

§1055.11 – 1055.12

These two sections provide that up to 25% of the vehicles in a certificate holders fleet must be presented for inspection by the PPA. These provisions do not differentiate between a carrier that operates between points in the City and a remote carrier as defined by the PPA. The requirement that a remote carrier, regardless of the size of its fleet must present its vehicles to the PPA Enforcement Department despite having undergone required DOT and PUC inspections presents an undue hardship on such a carrier. Pursuant to PUC regulations, not only are the vehicles used in public service subject to annual inspections by PUC Enforcement Officers plus periodic unannounced inspections, any vehicle in excess of 8 model years old must go through a waiver process including an additional inspection, in order to be utilized for the upcoming year. Thus, certain vehicles undergo a minimum of three state inspections on an annual basis. To add an additional annual inspection is unnecessary.

A carrier that operates between points in the City and has its operations within the City will not be unduly inconvenienced by presenting a vehicle to the PPA for inspection. However, a remote carrier from Harrisburg, who is required to obtain a PPA certificate, is required to drive

his vehicles to the City for inspection. Assuming the carrier has a fleet of 20 vehicles, at least 5 of those vehicles will be out of service and incurring costs in the form of lost revenue, fuel expense and wear and tear costs for the 200 mile trip, and driver costs. Section 1055.12. Off-site inspections, does not assist this remote carrier since §1055.12 only applies to carriers who possess their own Pennsylvania Inspection Station, has a fleet in excess of 50 vehicles, and is located within 30 miles of PPA headquarters.

Recommendation

The PRLA submits that the inspection requirements be altered to be inapplicable to remote carriers.

§§1059.4 – 1059.13

These sections provide certain regulations regarding the sale of a certificate by a limousine company. While the PRLA does not contest the authority of the PPA to approve a transfer of a limousine certificate issued by it, it does object to the requirement that any transfer **of any interest** in a certificate holder require the filing of a transfer application; that all forms must be signed in the presence of the director; and further questions the legality of the requirement that documents relating to the sale can be prepared by a broker.

The requirement that the mere transfer of a single share of stock requires the filing of an application with the PPA constitutes an unreasonable burden upon the ability of a corporate entity to freely transfer stock. While PRLA recognizes that the transfer of a 51% interest in an entity would necessitate approval of the transfer in the same manner as that provided by the Public Utility Code, securing approval of the transfer of a single share of stock which pursuant to the provisions of 1051.2(ii) creates a rebuttable presumption of a change in control, is simple unreasonable and, in the case of a publicly traded company could violate the securities laws of

this Commonwealth and the United States. In addition, the possibility exists that an owner may wish to transfer a limited number of shares to members of his family in order to insure continuation of the family company. The regulation would then require the filing of a transfer application, a review of the application by the PPA, a determination of whether that individual meet unspecified PPA criteria as to their suitability to be a stockholder in the company, and all appear at the Director's office to plead their case. PPRL submits that these requirements are simply unworkable and unreasonable.

PRLA recognizes that Act 94 specifically provides that a taxicab medallion may not be sold unless the transaction occurs at PPA offices. (53 Pa.C.S. §5718). However, with respect to the transfer of a limousine certificate, the statute only requires approval of the transfer by the PPA. (53 Pa.C.S. §5741.1). Noticeably absent is the requirement that the transaction take place at PPA offices. The Constitution of this Commonwealth (Art. 2, §1) essentially provides that an administrative agency such as the PPA may only exercise that authority given to it by the legislature. A corollary to that rule of law is that a Commonwealth Agency such as the PPA may not, by regulation, expand its authority absent clear statutory authority to do so. In this instance, had the legislature desired to require all sales transactions to occur at PPA headquarters in the same manner as medallion transfers, it could have so provided. It did not. Accordingly PRLA submits that while the PPA may establish the forms necessary for a transfer application and also require that it approve any transfer, the regulations to require a transfer to take place at PPA headquarters and before a PPA employee (§§1059.12(b) and (c)), is beyond its statutory authority and should be stricken. In addition, such a requirement poses an undue hardship on both buyers and sellers who are not located within the immediate Philadelphia area and who, along with other indispensible parties must travel to Philadelphia in order to effectuate a transfer and potentially pay a fee to the PPA employee for witnessing the closing. No other agency of this

Commonwealth requires such transactions to occur in the offices of the agency or in the presence of agency personnel. Such a requirement is simply overreaching by the Authority and is unreasonable.

Subsection (e) further requires that all documents may be prepared by a broker registered with the authority. While PRLA appreciates the valuable services that a broker can offer to any transaction, it is concerned that the PPA may be facilitating the unauthorized practice of law by brokers through this and other portions of its regulations. For example, a broker could prepare the sales agreement as required by §1059.8(a) and loan documents as provided in §1059.8(c). The preparation of these documents requires the explanation of various legal rights and obligations on the part of the parties to the transaction. Providing such explanations constitutes the practice of law.

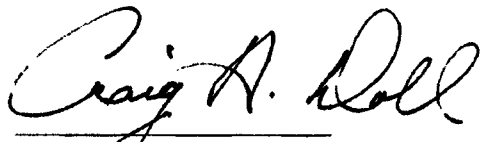
Recommendation

§§1059.4(b), 1059.5(b), 1059.6(b)(1), and 1059.8(b)(1) should be stricken.

VI. Conclusion

PRLA appreciates the opportunity to comment on the regulations proposed by the PPA. As pointed out in these comments, certain provisions are not within the authority of the PPA to propound, are contrary to law, or constitute an unreasonable burden on those entities that would be subject to those regulations. The PRLA remains committed to providing excellent limousine services throughout the Commonwealth of Pennsylvania including between points in the City and County of Philadelphia, and is more than willing to work with the PPA in revising the proposed regulations to insure superior limousine service is available to all citizens of Pennsylvania.

Respectfully submitted,



Craig A. Doll, Esquire
25 West Second Street
P.O. Box 403
Hummelstown, PA 17036-0403

(717) 566-9000
(717) 566-9901 (fax)
cdoll76342@aol.com

Attorney I.D. # 22814

Attorney for The Philadelphia Regional Limousine Association

Dated: February 10, 2011

2885

Cooper, Kathy

From:	Patricia DeMarco [PDeMarco@philapark.org]
Sent:	Friday, February 11, 2011 1:30 PM
To:	IRRC
Cc:	Smith, James M.; Dennis Weldon
Subject:	Public Comments by Craig A. Doll, Esq on behalf of Philadelphia Regional Limousine Association
Attachments:	Comments by Craig A. Doll, Esq (Phila Regional Limo Assoc) - #008.pdf; 110211.ltr 2 IRRC with Comments by Phila Regional Limo - #008.pdf

Good Afternoon:

Please see the attached Public Comments from Craig A. Doll, Esquire, attorney for Philadelphia Regional Limousine Association. The Public Comments were received by The Philadelphia Parking Authority via Federal Express on February 11, 2011 and numbered as The Philadelphia Parking Authority's Comment #008.

Please record and post the Philadelphia Regional Limousine Association's Comments on IRRC's website.

These comments will also be sent to IRRC via Regular U.S. Mail.

Thank you.