

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners:                    Shari Feist Albrecht, Chair  
   Jay Scott Emler  
   Dwight D. Keen

In the Matter of the Investigation of Danny G.    )  
Lambeth, d/b/a Truck Wholesale of Wellsville,    )  
Kansas, Pursuant to the Kansas Highway Patrol    )  
Issuance of a Notice of Violation for Violation(s) of    )  
the Kansas Motor Carrier Safety Statutes, Rules and    )    Docket No. 17-GIMM-408-KHP  
Regulations and the Commission’s Authority to    )  
Impose Penalties, Sanctions and/or the Revocation    )  
of Motor Carrier Authority.                            )

**FINAL ORDER**

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission). Having examined its files and records, and being fully advised in the premises, the Commission makes the following findings:

**BACKGROUND:**

1.        On January 3, 2017, in Miami County, Kansas, Danny G. Lambeth was stopped at roadside by Kansas Highway Patrol (KHP) Trooper Josh Weber, who conducted a Level II walk-around inspection of both Mr. Lambeth’s power unit and towed unit.<sup>1</sup>

2.        On January 5, 2017, the Commission issued a Notice of Violation(s) to Danny G. Lambeth d/b/a Truck Wholesale (Lambeth), Invoice No. H000566219, stemming from the January 3, 2017 roadside inspection.<sup>2</sup> The Notice stated that the “Kansas Highway Patrol inspected” a vehicle with a VIN # ending in A46298 “on January 3, 2017, and discovered violation(s) of the

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<sup>1</sup> See Kansas Highway Patrol Driver/Vehicle Examination Report No. KSHP02550894, dated January 3, 2017, filed in the instant docket on March 29, 2017.

<sup>2</sup> See Notice of Violation(s), Invoice Number H000566219, p. 1 (Jan. 5, 2017). See also KHP Driver/Vehicle Examination Report No. KSHP02550894 (Jan. 3, 2017) (Page 2 of the Examination Report contains the KHP Officer’s Inspection Notes, detailing the Officer’s observations based on his inspection of Mr. Lambeth’s vehicle.).

Federal Motor Carrier Safety Regulations, as adopted by K.S.A. 66-1,129 and K.A.R. 82-4-3 et seq.”<sup>3</sup> The Notice assessed a \$700 penalty against Mr. Lambeth for having “[n]o/Improper safety chains for towbar, [f]lat tire or fabric exposed, [i]noperative turn signal, and [n]o drivers record of duty status.”<sup>4</sup> The Notice of Violation(s) also informed Mr. Lambeth he could submit a challenge of the violations to the KHP, and if he was not satisfied with the outcome of his KHP challenge, he had “the right to an administrative hearing with the Kansas Corporation Commission. The hearing request must be in writing and received within 15 days of the close of the challenge.”<sup>5</sup>

3. On January 24, 2017, another “Notice of Violation” was issued to Mr. Lambeth, reiterating the above violations and the penalty issued in the January 5, 2017, Notice of Violation(s).<sup>6</sup> However, the January 24, 2017 “Notice of Violation” did *not* state that it was a second notice of any kind.

4. In response to the Notice of Violations, Mr. Lambeth sent a letter to the KHP, challenging the Notice of Violation(s) with the KHP.<sup>7</sup>

5. The KHP issued Mr. Lambeth a challenge denial letter, dated February 27, 2017, stating that “Invoice #H000566219 remains valid,”<sup>8</sup> and that if he wanted a hearing before the Commission, his hearing request must be received by the KHP within fifteen days from the date of the denial letter.<sup>9</sup>

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<sup>3</sup> Notice of Violation(s), Invoice Number H000566219, p. 1.

<sup>4</sup> Notice of Violation(s), p. 2.

<sup>5</sup> Notice of Violation(s), p. 1.

<sup>6</sup> See Notice of Violation, p. 2 (Jan. 24, 2017).

<sup>7</sup> See handwritten letter from Danny Lambeth, dated Feb. 22 by Mr. Lambeth, but filed with the Commission on March 29, 2017.

<sup>8</sup> KHP Challenge Denial Letter (Feb. 27, 2017).

<sup>9</sup> *Id.*

6. Subsequent to the KHP's denial of his challenge, Mr. Lambeth requested a hearing with the Commission regarding KCC Invoice No. H000566219 via handwritten letters, dated March 10, 2017, and March 14, 2017, respectively.<sup>10</sup>

7. On January 29, 2018, Commission Transportation Staff (Staff) filed a Motion to Convert Request for Hearing to Emergency Out of Service Proceeding (Motion to Convert), "for the purpose of obtaining a Commission order directing Respondent to cease and desist motor carrier operations and to assess civil fines and sanctions against Respondent, for the violation of Kansas motor carrier safety rules and regulations."<sup>11</sup>

8. On February 6, 2018, Mr. Lambeth filed an Objection to Staff's Motion to Convert and a Request for Dismissal.<sup>12</sup> Mr. Lambeth argued that he is "not guilty of the alleged violations described on Kansas Highway Patrol report # KSHP02550894 and invoice # H000566219."<sup>13</sup> He also argued that he "timely filed a formal challenge with the Kansas Highway Patrol."<sup>14</sup> Mr. Lambeth stated that "[a] letter from Ahsan A. Latif of the KCC, dated September 13, 2017, stated that my Request for Hearing had been received and the KCC was compiling documents, photos, and video related to the inspection that was conducted on January 3, 2017. The letter stated that the Commission will issue an order setting hearing 'in the near future.' A hearing has never been set."<sup>15</sup> Moreover, Mr. Lambeth argued that the Kansas Administrative Procedures Act (KAPA) "entitle[s] [him] to an administrative hearing with the KCC regarding the alleged violations found during the January 3, 2017 routine motor carrier stop and inspection conducted by the KHP."<sup>16</sup> Ultimately, Mr.

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<sup>10</sup> Lambeth Request for Hearing, pp. 1-2.

<sup>11</sup> Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 8 (Jan. 29, 2018) (Staff's Motion to Convert).

<sup>12</sup> Danny Lambeth's Objection to Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal (Feb. 6, 2018) (Objection to Staff's Motion).

<sup>13</sup> Objection to Staff's Motion, ¶ 2.

<sup>14</sup> Objection to Staff's Motion, ¶ 3.

<sup>15</sup> Objection to Staff's Motion, ¶ 5.

<sup>16</sup> Objection to Staff's Motion, ¶ 7.

Lambeth asked that Staff's Motion to Convert be denied and all the fines on Invoice # H000566219 be dismissed.<sup>17</sup>

9. On February 12, 2018, Staff made a filing in Support of its Motion to Convert, asking again to have the hearing request converted to an Emergency Out of Service proceeding, but also making the alternative suggestion that "the Commission may order a hearing on Respondent's request."<sup>18</sup>

10. On February 23, 2018, Mr. Lambeth filed an Objection to Staff's Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding and Request for Dismissal (Lambeth Objection). Mr. Lambeth alleged that he is exempt from Commission jurisdiction<sup>19</sup> and need not keep a log book unless he travels over 100 miles from his business location.<sup>20</sup> Mr. Lambeth argued that he is "a used vehicle dealer" with a dealer's license plate, over which the Commission has no authority.<sup>21</sup> Mr. Lambeth stated that his "DOT number is 203558."<sup>22</sup> Mr. Lambeth also stated, "As directed by Captain Turner in his February 27, 2017 letter, I timely filed a Request for Hearing on March 10, 2017."<sup>23</sup>

11. Mr. Lambeth noted that in his previous pleading, he "objected to not being allowed *my right to a hearing* before the Commission. *I was entitled to a formal hearing*, to be held in a timely manner."<sup>24</sup> Mr. Lambeth continued, "The KCC does not have the power to 'summarily' dismiss my Request for Hearing based on evidence of what it repeatedly admits and refers to as 'alleged' violations."<sup>25</sup> Mr. Lambeth said he did not respond to Mr. Latif's September 13, 2017,

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<sup>17</sup> Objection to Staff's Motion, p. 3.

<sup>18</sup> Staff's Filing in Support of Its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding, p. 7 (Feb. 12, 2018) (Staff's Filing in Support).

<sup>19</sup> Lambeth Objection, ¶ 1.

<sup>20</sup> Lambeth Objection, ¶ 1.

<sup>21</sup> Lambeth Objection, ¶¶ 1, 9.

<sup>22</sup> Lambeth Objection, ¶ 1.

<sup>23</sup> Lambeth Objection, ¶ 3.

<sup>24</sup> Lambeth Objection, ¶ 2. (Emphasis added).

<sup>25</sup> Lambeth Objection, ¶ 7.

letter “because it was not necessary as I believed I was waiting for KCC to ‘issue an order *setting hearing*.’”<sup>26</sup> Mr. Lambeth quoted K.S.A. 77-511(b), noting that the aforementioned letter from Mr. Latif “was dated over six months after receiving my Request for Hearing.”<sup>27</sup> Mr. Lambeth provided no analysis regarding any remedies for failure to adhere to K.S.A. 77-511(b). Mr. Lambeth argued that he has “been prejudiced by not being allowed to *have a hearing* with the” Commission.<sup>28</sup> Again, Mr. Lambeth asked for dismissal of all fines assessed on Invoice No. H000566219.<sup>29</sup>

12. On February 27, 2018, the Commission issued its *Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding* (Order). The Order found that, because Mr. Lambeth filed his hearing request with the Commission sixteen (16) days after the February 27, 2017, KHP challenge denial letter, Mr. Lambeth’s hearing request was not timely, and therefore, dismissed.<sup>30</sup> The Order also denied Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding because Staff failed “in its pleadings to demonstrate a proper basis for conversion.”<sup>31</sup>

13. On March 12, 2018, Mr. Lambeth filed a Petition for Reconsideration of Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding (PFR). Regarding the Commission’s finding that his request for hearing was filed untimely, Mr. Lambeth stated:

***“I was not required to file and therefore did not file . . . my March 10, 2017 request for hearing letter with the KCC. I mailed both letters to the Kansas Highway Patrol (KHP), timely, as instructed and is evidenced by Captain Turner’s denial letter instructing me to submit my request for hearing to the KHP as well as Mr. Ahsan Latif’s September 13, 2017 letter stating that ‘the Commission will issue an order setting hearing with regard to your request.’”***<sup>32</sup>

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<sup>26</sup> Lambeth Objection, ¶ 12. (Emphasis added).

<sup>27</sup> Lambeth Objection, ¶ 13.

<sup>28</sup> Lambeth Objection, ¶¶ 14-15.

<sup>29</sup> Lambeth Objection, p. 6. (Emphasis added).

<sup>30</sup> Order, ¶ 11 and Ordering Clause A.

<sup>31</sup> Order, ¶ 20 and Ordering Clause B.

<sup>32</sup> PFR, ¶ 1. (Emphasis in original).

14. Mr. Lambeth's PFR discussed the February 27, 2018 Order's finding that Staff, in its Motion to Convert, failed to provide a basis for finding that Mr. Lambeth is a public motor carrier of property.<sup>33</sup> In his prayer for relief, Mr. Lambeth alleged that "the Commission has determined that it has no jurisdiction over me," and thus, he again requested dismissal of all fines assessed on Invoice No. H000566219.<sup>34</sup>

15. On April 10, 2018, the Commission issued its *Order Granting in Part and Denying in Part Danny Lambeth's Petition for Reconsideration* (April 10, 2018 Order). The Commission found the evidence presented in this docket showed that Mr. Lambeth "was denied sufficient due process regarding his request for hearing,"<sup>35</sup> and therefore, "Mr. Lambeth may go forward with his request for hearing."<sup>36</sup>

16. Regarding the jurisdictional issues raised by Mr. Lambeth, the Commission found that "Staff's Motion to Convert 'was conclusory in nature and did not provide a proper evidentiary and legal basis *upon which the Commission may make such a conversion.*"<sup>37</sup> The Order further found:

Staff did not *demonstrate* the necessary jurisdictional elements *to convert the proceeding* from a request for hearing to an emergency out of service proceeding. However, the fact that Staff did not provide appropriate evidence for the Commission's jurisdiction *to convert* the proceedings does not mean Staff can have no additional opportunity to argue for Commission jurisdiction through a hearing process. The Order does *not* preclude the Commission from making *a final determination regarding the jurisdictional status* of Mr. Lambeth's operation as Truck Wholesale of Wellsville, Kansas. The Commission finds Mr. Lambeth has not provided a sufficient basis at this point for dismissal of his fines and for closure of this docket.<sup>38</sup>

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<sup>33</sup> See PFR, ¶¶ 2-4.

<sup>34</sup> PFR, p. 5.

<sup>35</sup> April 10, 2018 Order, ¶ 21.

<sup>36</sup> April 10, 2018 Order, ¶ 21.

<sup>37</sup> April 10, 2018 Order, ¶ 22. (Emphasis in original).

<sup>38</sup> April 10, 2018 Order, ¶ 22. (Emphasis added).

17. Therefore, the Commission denied Mr. Lambeth's request for dismissal of all fines assessed on Invoice No. H000566219 and for closure of this docket.<sup>39</sup> The Commission granted reconsideration on Mr. Lambeth's original request for hearing and directed Staff and Mr. Lambeth collaboratively to develop a procedural schedule in this matter.<sup>40</sup>

18. On April 24, 2018, Staff filed a Motion for Procedural Schedule, noting that Mr. Lambeth was unresponsive to Staff's attempts to collaborate on a schedule.<sup>41</sup>

19. On April 25, 2018, Mr. Lambeth filed a petition for reconsideration of the Commission's April 10, 2018 Order (PFR # 2).

20. On May 24, 2018, the Commission issued its Order on Mr. Lambeth's PFR #2, granting Mr. Lambeth's original request for hearing, dated March 10, 2017.<sup>42</sup>

21. On July 10, 2018, the Commission issued an *Order Setting Procedural Schedule*, scheduling an evidentiary hearing for August 15, 2018.<sup>43</sup>

22. On July 20, 2018, KHP Trooper Josh Weber and the Commission's Director of Transportation, Mike Hoeme, filed direct testimony on behalf of Staff.<sup>44</sup>

23. On July 27, 2018, Tom Taylor, Joe Lambeth and Danny Lambeth filed direct testimony on behalf of Danny Lambeth.<sup>45</sup> On August 3, 2018, Danny Lambeth filed rebuttal testimony,<sup>46</sup> as did Trooper Weber and Mike Hoeme.<sup>47</sup>

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<sup>39</sup> April 10, 2018 Order, Ordering Clause B.

<sup>40</sup> April 10, 2018 Order, Ordering Clause A.

<sup>41</sup> Staff's Motion for Procedural Schedule, ¶¶ 4-5.

<sup>42</sup> *Order Denying Danny Lambeth's Petition for Reconsideration of Order Granting in Part and Denying in Part Danny Lambeth's Petition for Reconsideration*, Ordering Clause B (May 24, 2018).

<sup>43</sup> *Order Setting Procedural Schedule*, ¶ 10 (July 10, 2018).

<sup>44</sup> Weber Direct (July 20, 2018) and Hoeme Direct (July 20, 2018), respectively.

<sup>45</sup> Taylor Direct (July 27, 2018); Joe Lambeth Direct (July 27, 2018); Lambeth Direct (July 27, 2018), respectively.

<sup>46</sup> Lambeth Rebuttal (Aug. 3, 2018).

<sup>47</sup> Weber Rebuttal (Aug. 3, 2018); Hoeme Rebuttal (Aug. 3, 2018).

24. On August 3, 2018, Staff filed a Motion to Strike portions of Mr. Lambeth's direct testimony as immaterial and improper.<sup>48</sup>

25. On August 14, 2018, the Prehearing Officer granted a continuance of the evidentiary hearing, which had been scheduled for August 15, 2018.<sup>49</sup> Ultimately, the Prehearing Officer rescheduled the evidentiary hearing for November 1, 2018.<sup>50</sup>

26. On November 1, 2018, at 9:00 a.m., in the Commission's First Floor Hearing Room at its Topeka Office, the Commission convened the evidentiary hearing.<sup>51</sup> Mr. Lambeth did not appear; however, the Commission found notice of the hearing to be proper and proceeded with the hearing.<sup>52</sup> The Commission also found Staff's August 3, 2018 Motion to Strike to be moot in light of Mr. Lambeth's absence from the hearing.<sup>53</sup> All of the testimony filed by KHP Trooper Weber and Transportation Director Mike Hoeme was admitted into the record in this docket.<sup>54</sup>

27. On November 6, 2018, the Commission issued its *Order Continuing Evidentiary Hearing*, finding good cause to continue the evidentiary hearing to November 27, 2018.<sup>55</sup>

28. On November 27, 2018, the Commission again convened an evidentiary hearing.<sup>56</sup> The Commission heard live testimony from three witnesses: two for Staff and Mr. Lambeth himself.<sup>57</sup> The parties had the opportunity to cross-examine the witnesses as well as redirect their own witnesses. The Commission closed the record at the conclusion of the hearing.<sup>58</sup>

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<sup>48</sup> Staff's Motion to Strike, p. 1 (Aug. 3, 2018).

<sup>49</sup> *Prehearing Officer Order Continuing Evidentiary Hearing*, Ordering Clause A (Aug. 14, 2018).

<sup>50</sup> *Prehearing Officer Order Resetting Evidentiary Hearing*, Ordering Clause A (Oct. 15, 2018).

<sup>51</sup> *Order Continuing Evidentiary Hearing*, ¶ 5 (Nov. 6, 2018).

<sup>52</sup> *Order Continuing Evidentiary Hearing*, ¶ 5.

<sup>53</sup> *Order Continuing Evidentiary Hearing*, ¶ 5.

<sup>54</sup> *Order Continuing Evidentiary Hearing*, ¶ 6.

<sup>55</sup> *Order Continuing Evidentiary Hearing*, ¶ 8.

<sup>56</sup> Hearing Transcript, pp. 1, 4 (Nov. 27, 2018) (Tr.).

<sup>57</sup> Mr. Lambeth was aided at the hearing by his daughter, Shelly Plekowski, but Ms. Plekowski was a non-witness and did not take the witness stand.

<sup>58</sup> Tr. at 190.



## FINDINGS AND CONCLUSIONS:

### A. Jurisdiction

29. A threshold issue in this proceeding is whether Danny Lambeth d/b/a Truck Wholesale of Wellsville, Kansas is a private motor carrier pursuant to the Kansas motor carrier statutes and regulations. Mr. Lambeth asserted that he is not any kind of motor carrier under the Commission's jurisdiction.<sup>59</sup> Mr. Hoeme, on the other hand, testified that Mr. Lambeth is a private motor carrier,<sup>60</sup> subject to the Commission's jurisdiction.<sup>61</sup>

30. K.S.A. 66-1,108b gives the Commission "full power, authority and jurisdiction to supervise and control motor carriers, as defined in 49 C.F.R. § 390.5, as in effect on July 1, 2017, or any later version as established in rules and regulations adopted by the state corporation commission, doing business or procuring business in Kansas," and empowers the Commission "to do all things necessary and convenient for the exercise of such power, authority and jurisdiction." K.S.A. 66-1,111 states that "[n]o . . . private motor carrier of property . . . shall operate any motor vehicle for the transportation of . . . property on any public highway in this state except in accordance with the provisions of this act, and amendments thereto, and other applicable laws."

31. Under 49 C.F.R. 390.5, as adopted by K.A.R. 82-4-3f, a "private motor carrier" is defined as "a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." Mr. Lambeth argued that he is not a private motor carrier because, in essence, he is not a person "who provides transportation of property," but is simply a "transporter of property," and that there is legal distinction between the two.<sup>62</sup> Indeed, Mr. Lambeth asserted that "the intent of K.S.A. 66-1,109 is to distinguish the difference between motor carriers

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<sup>59</sup> See e.g. Lambeth Direct, p. 6.

<sup>60</sup> Hoeme Rebuttal, pp. 2-3.

<sup>61</sup> Hoeme Direct, p. 5.

<sup>62</sup> See Tr. at 9 (stating that he does "not provide transportation. The phrase, provides transportation, is not the same as the act of transporting"). See also Lambeth Direct, pp. 7, 11, 13.

operating in intrastate commerce and people engaged in business other than transportation whose transportation functions are only incidental to their primary business,” and because “[t]he occasional transportation of a truck for [his] inventory is only incidental to [his] used truck business,” he is therefore exempt from all Commission jurisdiction.<sup>63</sup>

32. The Commission finds no basis for Mr. Lambeth’s distinction between the phrases “providing transportation of property” and “transporting property.” Mr. Lambeth has not provided any Kansas statute or regulation that makes such a distinction, and, in fact, the only objection raised against the phrase “provides transportation of property” is that it appeared to Ms. Shelly Plekowski, Mr. Lambeth’s daughter, to be “a bit awkward . . . goofy and vague.”<sup>64</sup> Such characterizations of the definitional language are nothing more than Ms. Plekowski’s personal opinions as a non-witness in this matter. Moreover, Mr. Lambeth’s characterization of the intent of K.S.A. 66-1,109 is incorrect. The statute contains no language indicating that its purpose is to distinguish between motor carriers operating in intrastate commerce and people engaged in business other than transportation whose transportation functions are only incidental to their primary business. Mr. Lambeth’s characterization is belied by subsection (b), which is directed specifically at operation by private motor carriers. Further, there is no dispute in this case over whether Mr. Lambeth was towing his own property.<sup>65</sup> Thus, the Commission finds that Mr. Lambeth was providing transportation of property on January 3, 2017.

33. The next element in the definition of a “private motor carrier” is whether the person providing the transportation of property was doing so by commercial motor vehicle. K.A.R. 82-4-1(f) defines a “commercial motor vehicle” as “[a] vehicle that has a gross vehicle weight rating or gross combination weight rating, or a gross vehicle weight or gross combination weight, of 4,536

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<sup>63</sup> Lambeth Rebuttal, p. 3.

<sup>64</sup> Tr. at 142, 144.

<sup>65</sup> See e.g. Lambeth Rebuttal, p. 5.

kg (10,001 pounds) or more, whichever is greater.” KHP Trooper Weber testified that “[t]he gross combined weight rating of the vehicles” that Mr. Lambeth was driving on January 3, 2017 “was 98,000 lbs., which exceeds the 10,001 pound threshold interstate and the 26,000 pound threshold as private intrastate, definition of Commercial Motor Vehicle under K.A.R. 82-4-1 and 49 C.F.R. 390.5 as adopted by K.A.R. 82-4-3f.”<sup>66</sup> Nowhere does Mr. Lambeth dispute Trooper Weber’s testimony on this point. Thus, according to K.A.R. 82-4-1, Mr. Lambeth was driving a commercial motor vehicle, and therefore, he was providing transportation of property by commercial motor vehicle on January 3, 2017.

34. The final element of a “private motor carrier” is that it not be a for-hire motor carrier. Mr. Hoeme testified that he is not aware of Mr. Lambeth engaging in any for-hire public transportation.<sup>67</sup> Mr. Lambeth also stated he has never engaged in for-hire transportation.<sup>68</sup> Thus, the Commission finds Mr. Lambeth is not a for-hire (i.e., public) motor carrier. Therefore, the Commission finds that on January 3, 2017, Mr. Lambeth was acting as an intrastate private motor carrier because he was providing transportation of property, by commercial motor vehicle, and was not a for-hire motor carrier.

35. The Commission addresses several additional arguments raised against the Commission’s jurisdiction over him as a private motor carrier. Both Mr. Lambeth and Ms. Plekowski questioned the authority from which Mr. Hoeme was drawing his assertion that a private motor carrier is one who transports property “in furtherance of a commercial enterprise.”<sup>69</sup> Mr. Hoeme testified that one must look at the Commission’s authority statutes and K.S.A. 66-1,108b in particular, which give the Commission “authority to regulate.”<sup>70</sup> K.S.A. 66-1,108b specifically gives

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<sup>66</sup> Weber Direct, p. 4.

<sup>67</sup> Tr. at 163.

<sup>68</sup> See Lambeth Direct, pp. 11-12.

<sup>69</sup> See Tr. at 129-30, 143. See also Tr. at 120.

<sup>70</sup> Tr. at 143.

the Commission regulatory authority over motor carriers “doing business or procuring business in Kansas.” The Commission finds the “doing” or “procuring” of business to be synonymous with the idea of furthering a commercial enterprise, which provides a satisfactory answer to Mr. Lambeth’s and Ms. Plekowski’s question. Thus, this objection is unpersuasive.

36. Mr. Lambeth also argued that K.S.A. 66-1,109(q) put his operation on January 3, 2017 entirely outside of Commission jurisdiction.<sup>71</sup> However, as found above, K.S.A. 66-1,109 never explicitly distinguishes “between motor carriers operating in intrastate commerce and people engaged in a business other than transportation whose transportation functions are only incidental to their primary business,” as Mr. Lambeth avers.<sup>72</sup> Rather, K.S.A. 66-1,109 at times addresses motor carriers operating in intrastate commerce, such as “[t]ransportation by motor carriers wholly within the corporate limits of a city or village within this state,”<sup>73</sup> “a private motor carrier who operates within a radius of 25 miles beyond the corporate limits of its city or village of domicile,”<sup>74</sup> and Kansas-domiciled private motor carriers operating commercial motor vehicles of certain weights.<sup>75</sup> Moreover, even if Mr. Lambeth’s ostensible distinction existed, it would exist only for the purpose of exemptions pertaining to Commission certificates, licenses, or permits or filing of rates, tariffs, annual reports and proof of insurance.<sup>76</sup> The fact that Mr. Lambeth uses dealer plates in accordance with K.S.A. 66-1,109(q) *only* exempts Mr. Lambeth from obtaining a Commission certificate, license or permit for his transportation.<sup>77</sup> Mr. Lambeth’s theory does not deprive the Commission of its regulatory jurisdiction in safety matters over all intrastate private motor carrier operations covered by K.S.A. 66-1,129, which includes Mr. Lambeth’s operation.<sup>78</sup> Thus, Mr.

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<sup>71</sup> See Lambeth Direct, p. 7; Lambeth Rebuttal, p. 3; Tr. at 8.

<sup>72</sup> See Lambeth Rebuttal, p. 3.

<sup>73</sup> K.S.A. 66-1,109(a).

<sup>74</sup> K.S.A. 66-1,109(b).

<sup>75</sup> K.S.A. 66-1,109(x).

<sup>76</sup> See K.S.A. 66-1,109.

<sup>77</sup> See Lambeth Direct, pp. 7, 10; Tr. at p. 8.

<sup>78</sup> See Tr. at 104, 121, 126, 141-42. See also K.S.A. 66-1,129.

Lambeth's claim that K.S.A. 66-1,109(q) exempts him from the Commission's jurisdiction to enforce the state's motor carrier safety laws against him fails.

37. Mr. Lambeth and non-witness Ms. Plekowski also claimed Mr. Lambeth is exempt from Commission jurisdiction based on federal transportation statutes, specifically 49 U.S.C. §§ 13505 and 13506.<sup>79</sup> However, Mr. Lambeth's transportation on January 3, 2017 was an intrastate transportation,<sup>80</sup> and therefore, the federal statutes are not applicable to him as an intrastate private motor carrier. As Mr. Hoeme correctly testified, 49 U.S.C. §§ 13505 and 13506 are "an interstate guide. We're talking about intrastate commerce for this hearing. So [§§ 13505 and 13506 do not] apply at all."<sup>81</sup> Indeed, 49 U.S.C. § 13501 provides the jurisdictional parameters for federal motor carrier statutes, none of which cover purely intrastate private motor carrier operations such as that carried on by Mr. Lambeth.<sup>82</sup> The fact that the federal statutes may have different definitions for private motor carrier<sup>83</sup> is immaterial to Mr. Lambeth's status as a private motor carrier under Kansas intrastate statutes and regulations. Therefore, the Commission finds Mr. Lambeth's appeals to the United States Code are irrelevant and inapplicable to his situation in this matter.

38. Based on the above, the Commission finds it has jurisdiction over Mr. Lambeth's transportation as an intrastate private motor carrier in accordance with K.S.A. 66-1,108b, K.S.A. 66-1,111, K.A.R. 82-4-1 and K.A.R. 82-4-3f.

## **B. Violations and Penalties**

### ***(1) No/Improper safety chains for tow bar***

39. The first violation listed on Invoice No. H000566219 penalized Mr. Lambeth for having "no/improper safety chains for towbar," in violation of 49 C.F.R. 393.71(h)(10),<sup>84</sup> which is

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<sup>79</sup> See Lambeth Direct, p. 11; Tr. at 9, 125, 139-40, 157.

<sup>80</sup> See Weber Direct, Attachment "A", p. 1.

<sup>81</sup> Tr. at 122.

<sup>82</sup> See 49 U.S.C. § 13501(1)-(2).

<sup>83</sup> See Tr. at 156-57.

<sup>84</sup> Hoeme Direct, Attachment "A", p. 2.

adopted by K.A.R. 82-4-3i. 49 C.F.R. 393.71(h) provides the requirements for tow bars, stating that “[t]ow bars must comply with” the requirements listed throughout subsection (h). Subsection (h)(10) lists requirements for “[s]afety devices in case of tow-bar failure or disconnection.”

40. Trooper Weber testified that Mr. Lambeth was using a tow bar.<sup>85</sup> Mr. Lambeth asserted he was *not* using a tow bar, but “a factory Holmes fifth wheel wrecker unit.”<sup>86</sup> Neither Trooper Weber nor Mr. Lambeth appealed to the definition of a tow bar.

41. 49 C.F.R. 393.5 defines a “tow bar” as “[a] strut or column-like device temporarily attached between the rear of a towing vehicle and the front of the vehicle being towed.” Based on the photographs in Trooper Weber’s Attachment “B” to his direct testimony, the device being used by Mr. Lambeth to tow the towed vehicle is clearly a “strut or column-like device.” There is no direct testimony in the record as to whether this strut or column-like device is “temporarily attached,” as provided in the above definition. However, Mr. Lambeth made no assertion that his Holmes fifth wheel wrecker unit was a permanent towing apparatus. On the contrary, he testified that “when [his Holmes wrecker] *latches in* that fifth wheel, it would be the same scenario as pulling a trailer down the road.”<sup>87</sup> Mr. Lambeth’s use of the phrase “latches in” explains *how* his wrecker unit connects to the fifth wheel, not *whether* it does so. Thus, the logical conclusion is that Mr. Lambeth’s wrecker unit is temporarily, not permanently, attached between the rear of his towing unit and the front of the towed unit.

42. Although the above definition of “tow bar” refers to the towing strut or device being attached to “the front of the vehicle being towed,” no language or guidance states that “front” can refer *only* to the front end of the vehicle (i.e., the end with the headlights, grille, front bumper, etc.). Indeed, it would be an overly literalistic reading of the regulation to understand “front of the vehicle”

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<sup>85</sup> See e.g. Tr. at 31.

<sup>86</sup> Lambeth Direct, p. 2.

<sup>87</sup> Tr. at 176. (Emphasis added).

to mean only the front end. Such a reductionistic reading would lead to the absurd result that only vehicles being towed front-end forward would fall under the definition of tow bar, with vehicles being towed back-end forward excluded. No such exclusion is suggested by the definition or any other regulation. Statutes (and regulations) must be construed to avoid unreasonable or absurd results.<sup>88</sup> The Commission finds Mr. Lambeth's transportation falls under the definition of "tow bar," notwithstanding the fact that he was towing his towed vehicle backwards.<sup>89</sup> Thus, the Commission finds, based on the above definition of "tow bar," Mr. Lambeth was using a tow bar during his transportation on January 3, 2017.

43. However, in order to establish whether Mr. Lambeth was in violation of 49 C.F.R. 393.71, the Commission must determine whether he was involved in a "driveaway-towaway operation." 49 C.F.R. 393.71(g) states: "No motor vehicles or combination of motor vehicles shall be towed *in driveaway-towaway operations* by means other than a tow-bar, ball-and-socket type coupling device, saddle-mount connections which meet the requirements of this section, or in the case of a semi-trailer equipped with an upper coupler assembly, a fifth-wheel meeting the requirements of § 393.70."<sup>90</sup>

44. Neither Trooper Weber nor Mr. Lambeth quote the definition of "driveaway-towaway operation,"<sup>91</sup> yet Trooper Weber testified this was such an operation.<sup>92</sup> Mr. Lambeth did not dispute Trooper Weber's testimony on this point. Moreover, the record reflects that Mr. Lambeth's operation meets the definition of "driveaway-towaway operation" because Mr. Lambeth was conducting "an operation in which an empty or unladen motor vehicle with one or more sets of wheels on the surface of the roadway is being transported . . . [b]etween a dealership, or other entity

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<sup>88</sup> *N. Nat. Gas Co. v. ONEOK Field Servs. Co.*, 296 Kan. 906, 918, 296 P.3d 1106, 1115 (2013).

<sup>89</sup> Contra Mr. Lambeth's assertion one "cannot tow bar a truck backwards," (Tr. at 32) for which he cites no authority.

<sup>90</sup> Emphasis added.

<sup>91</sup> "Driveaway-towaway operation" is defined in 49 C.F.R. 390.5.

<sup>92</sup> Tr. at 31, 106.

selling or leasing the vehicle, and a purchaser or lessee . . . [b]y means of a saddle-mount or tow bar.”<sup>93</sup> Thus, the Commission agrees with Trooper Weber that Mr. Lambeth was engaged in a driveaway-towaway operation on January 3, 2017, and therefore, needed safety devices or chains in accordance with 49 C.F.R. 393.71(h)(10).

45. 49 C.F.R. 393.71(h)(10)(ii) states, in relevant part: If chains or cables are used as the safety device, they shall be crossed and attached to the vehicles near the points of bumper attachments to the chassis of the vehicles . . . The chains shall be attached to the tow-bar at the point of crossing or as close to that point as is practicable.” Trooper Weber stated he “would . . . concede the fact there could be seven chains in the combination but there are no safety chains.”<sup>94</sup> Again, after further questioning, Trooper Weber affirmed: “If Mr. Lambeth says there was seven chains, I would concede the fact that there was a possibility of seven chains. But I did not observe any of these chains as safety chains.”<sup>95</sup> Mr. Lambeth did not rebut Trooper Weber’s observation.<sup>96</sup> Trooper Weber stated that “[e]ven with all the chains still connected, there was nothing to catch the towing unit or nothing to grab hold of it. Nothing to keep it with the power side of it.”<sup>97</sup> However, Trooper Weber averred that “if [Mr. Lambeth] configured it differently, it’s very possible they could have been considered safety chains.”<sup>98</sup>

46. The Commission finds that, according to Trooper Weber, who has significant experience in commercial motor vehicle inspections,<sup>99</sup> and thus, inspections of safety devices, Mr. Lambeth’s chains were not properly configured or connected, and therefore, did not meet the legal

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<sup>93</sup> See 49 C.F.R. 390.5. See also Weber Direct, p. 3; Tr. at 76-77.

<sup>94</sup> Tr. at 41.

<sup>95</sup> Tr. at 43.

<sup>96</sup> See Tr. at 36-46.

<sup>97</sup> Tr. at 107.

<sup>98</sup> Tr. at 108.

<sup>99</sup> Weber Direct, pp. 1-2.



requirement for safety chains. Thus, the Commission finds that Mr. Lambeth was in violation of 49 C.F.R. 393.71(h)(10), as adopted by K.A.R. 82-4-3i, on January 3, 2017.

***(2) Flat tire or fabric exposed***

47. 49 C.F.R. 393.75(a) states: “No motor vehicle shall be operated on any tire that . . . is flat or has an audible leak.” Trooper Weber testified that he “struck the number 3 axle right side, inside tire [and] there was more of an audible thump than ring indicating this tire was low on air pressure.”<sup>100</sup> Further, he testified that when he used a gauge to check the air pressure, it was 22 PSI on a 110 PSI rated tire.<sup>101</sup> Trooper Weber stated that a tire need not be at 0 PSI before it is considered flat.<sup>102</sup> Although Mr. Lambeth asserted that he “never had a low tire when he left,” he also stated that “where I picked up a nail or whatever caused it to go low, I don’t know.”<sup>103</sup> Thus, Mr. Lambeth acknowledged his tire was low. However, he gave no evidence, other than mere speculation, that he “picked up a nail.”

48. Trooper Weber pointed out the safety concerns with an underinflated tire.<sup>104</sup> Moreover, the North American standard out-of-service criteria, which is adopted by the Commission’s regulations,<sup>105</sup> provides the standard for finding that a tire under-inflated by 50% or more is considered flat.<sup>106</sup> The evidence demonstrates that Mr. Lambeth’s number 3 axle right side, inside tire was underinflated by more than 50%, and therefore, the Commission finds that Mr. Lambeth was in violation of 49 C.F.R. 393.75(a), as adopted by K.A.R. 82-4-3i, on January 3, 2017.

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<sup>100</sup> Weber Direct, p. 8.

<sup>101</sup> Weber Direct, p. 8.

<sup>102</sup> Weber Rebuttal, p. 2.

<sup>103</sup> Tr. at 175.

<sup>104</sup> Tr. at 22-23.

<sup>105</sup> See K.A.R. 82-4-1(dd).

<sup>106</sup> See Tr. at 100-01. See North American Standard Out-of-Service Criteria, Part II, Section 11 (“Tires”), Subsection b.(1) (Revised April 1, 2014) (providing that a tire is out of service if it is a non-front steering axle tire which has “fifty (50) percent or less of the maximum inflation pressure marked on the tire sidewall”).

***(3) Inoperative turn signal***

49. 49 C.F.R. 393.9(a) provides that “[a]ll lamps required by this subpart shall be capable of being operated at all times.” Trooper Weber testified that “[d]uring the actual inspection the lights did not function at all.”<sup>107</sup> During his walk-around inspection and other points when he observed Mr. Lambeth’s vehicle in motion, Trooper Weber stated that he “observed the lights going on and off, flashing in opposite directions from power unit to towed unit, and other times the lights on the towed unit would not function at all.”<sup>108</sup>

50. At the evidentiary hearing, Trooper Weber stated that, from a violation standpoint, there is no difference between a light that is not functioning properly and one that is not functioning at all.<sup>109</sup> Moreover, Trooper Weber reiterated that “[a]t the time of the actual inspection [the tail lights] didn’t work at all,” and he based the violation on this fact.<sup>110</sup>

51. Mr. Lambeth attempted to refute Trooper Weber’s observations with the assertion that he “would have had no reason to use my turn signals as I was traveling west on K-68.”<sup>111</sup> However, even if true, this does not address whether Mr. Lambeth’s signals were working during Trooper Weber’s inspection. Mr. Lambeth simply asserted that his lights were working correctly and that Joe Lambeth and Tom Taylor testified that they were working.<sup>112</sup> The Commission finds that Mr. Lambeth’s assertions do not refute Trooper Weber’s inspection observations regarding the inoperative status of Mr. Lambeth’s lights at issue. Further, the pre-filed testimony of Joe Lambeth and Tom Taylor was not admitted into the record,<sup>113</sup> and therefore, the Commission does not consider it.

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<sup>107</sup> Weber Direct, p. 8.

<sup>108</sup> Weber Direct, p. 8.

<sup>109</sup> Tr. at 98.

<sup>110</sup> Tr. at 109.

<sup>111</sup> Lambeth Rebuttal, p. 6.

<sup>112</sup> Lambeth Rebuttal, p. 6.

<sup>113</sup> See Tr. at 188.

52. Mr. Lambeth also showed portions of a video of Trooper Weber's stop of his vehicle on January 3, 2017, which Mr. Lambeth believed demonstrates that his lights were working.<sup>114</sup> However, the video of Trooper Weber's actual inspection was not shown during the evidentiary hearing, and thus, does not disprove Trooper Weber's testimony of what he observed during the inspection. Also, the video itself was never admitted into the record. Thus, the Commission is persuaded by Trooper Weber's testimony that Mr. Lambeth's turn signals were not working properly on January 3, 2017, and therefore, Mr. Lambeth was in violation of 49 C.F.R. 393.9(a), as adopted by K.A.R. 82-4-3i.

***(4) No driver's record of duty status***

53. 49 C.F.R. 395.8(a), as adopted by K.A.R. 82-4-3a, states: "Except for a private motor carrier of passengers (nonbusiness), as defined in § 390.5 as adopted by K.A.R. 82-4-3f, a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in paragraphs (a)(1)(i) through (iv) of this section, as applicable."

54. Trooper Weber testified that during the January 3, 2017 stop, he asked Mr. Lambeth "if he had a log book," and Mr. Lambeth replied that "he did not need a log because he was close to his house. Since [Mr. Lambeth] appeared to be attempting to claim the short haul provision in lieu of a log book, I asked how the driver recorded his time as one of the requirements of the short haul provision. Mr. Lambeth stated he did not record his time and did not need to. Mr. Lambeth stated that no one else recorded his time and he did not have a log book."<sup>115</sup> Trooper Weber further testified that "Mr. Lambeth did not meet the requirements of the short haul provision and therefore could not

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<sup>114</sup> See Tr. at 65.

<sup>115</sup> Weber Direct, p. 9.

claim this as a substitute for [a] log book. Mr. Lambeth could not produce a current day or his previous seven days of log upon request.”<sup>116</sup>

55. Mike Hoeme testified that Mr. Lambeth is subject to Commission safety jurisdiction under K.S.A. 66-1,129 and that “K.S.A. 66-1,129 specifically references hours of service requirements in stating, ‘Hours of service for operators of all motor carriers to which this act applies shall be fixed by the commission.’”<sup>117</sup>

56. 49 C.F.R. 395.1(e) provides the “short-haul operations” requirements, stating that “[a] driver is exempt from the requirements of §§ 395.8 and 395.11 if . . . [t]he motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing [t]he time the driver reports for duty each day; [t]he total number of hours the driver is on duty each day; [t]he time the driver is released from duty each day; and [t]he total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used . . . intermittently.” As shown above, Mr. Lambeth had no such records. At the evidentiary hearing, Mr. Lambeth produced a piece of paper purporting to be a record of duty status, but upon analyzing it, Trooper Weber confirmed that it “would not meet the requirements of the short haul provision.”<sup>118</sup> Trooper Weber stated that keeping a record of duty status has the important safety purpose of guarding against driver fatigue.<sup>119</sup>

57. Based on the above, the Commission finds that Mr. Lambeth produced no driver’s record of duty status during his stop on January 3, 2017, and therefore he was in violation of 49 C.F.R. 395.8, as adopted by K.A.R. 82-4-3a.

58. Based on Commission Invoice No. H000566219, the penalties for the above violations totaled \$700. Mr. Lambeth claimed these penalties were unlawful because, according to

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<sup>116</sup> Weber Direct, p. 9. *See* Tr. at 16, 75-76.

<sup>117</sup> Hoeme Direct, p. 5.

<sup>118</sup> *See* Tr. at 82-85. *See* Lambeth, Exhibit 1 (Nov. 27, 2018), attached to this Order. The handwritten date appears to be “Jan 2, 2017”).

<sup>119</sup> Weber Direct, p. 10.

him, “K.S.A. 66-1,130(b)(1) specifically addresses the assessment of fines” wherein carriers who violate the rules and regulations adopted under K.S.A. 66-1,129, with certain exceptions, “shall pay a fine in accordance with 8-2118, and amendments thereto.”<sup>120</sup> Mr. Lambeth stated that the fines in this case “far exceed the uniform fines prescribed in K.S.A. 8-2118.”<sup>121</sup> Mr. Lambeth also questioned the validity of the Commission’s “Uniform Penalty Assessment Table” in Docket No. 16-TRAM-588-MIS.<sup>122</sup>

59. However, Mr. Hoeme testified that “Mr. Lambeth, d/b/a Truck Wholesale was . . . assessed for civil fines for its violations of the motor carrier rules and regulations under K.S.A. 66-1,142b. K.S.A. 66-1,142b(h) grants the Commission the power to ‘prescribe reasonable rules and regulations for the assessment of administrative civil penalties and sanctions for violations of any statute, commission orders or rules and regulations adopted by the commission.’”<sup>123</sup> Further, K.S.A. 8-2118 refers specifically to traffic infraction violations, and thus, it does not put a cap on the Commission’s “assessment of administrative civil penalties and sanctions for violations of any statute, commission orders or rules and regulations adopted by the commission,” as have been assessed here. Mr. Hoeme stated: “The Transportation Division, in collaboration with the Kansas Highway Patrol[,] has established an internal fee schedule to assess civil penalties that are issued to a motor carrier for out of service violations found during roadside inspections.”<sup>124</sup> None of the individual penalties assessed against Mr. Lambeth exceeded \$250, and the first three penalties were for \$150. Thus, in accordance with K.S.A. 66-1,142b(h) and the above-referenced internal fee schedule, the Commission finds the penalties assessed against Mr. Lambeth were both lawful and reasonable. The Commission affirms the \$700 total penalty.

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<sup>120</sup> Lambeth Direct, p. 5.

<sup>121</sup> Lambeth Direct, p. 5.

<sup>122</sup> Lambeth Direct, p. 6.

<sup>123</sup> Hoeme Rebuttal, p. 5.

<sup>124</sup> Hoeme Rebuttal, p. 5.

**C. Conclusion**

60. Based on the above, the Commission finds it has jurisdiction over the transportation as a private motor carrier by Danny G. Lambeth, d/b/a Truck Wholesale of Wellsville, Kansas, on January 3, 3017. Moreover, the Commission affirms that on January 3, 2017, Mr. Lambeth was in violation of the four Commission regulations as explained above. The Commission further affirms that the \$700 total penalty is lawful and reasonable and should be upheld against Mr. Lambeth.

**THEREFORE, THE COMMISSION ORDERS:**

A. The violations and penalties assessed against Danny G. Lambeth, d/b/a Truck Wholesale of Wellsville, Kansas, on Invoice No. H000566219, dated January 5, 2017, are upheld. Mr. Lambeth is assessed a total penalty of \$700.

B. Any party may file and serve a petition for reconsideration pursuant to the requirements and time limits established by K.S.A. 77-529(a)(1).<sup>125</sup>

C. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Albrecht, Chair; Emler, Commissioner; Keen, Commissioner

Dated: 01/10/2019  
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Lynn M. Retz  
Secretary to the Commission

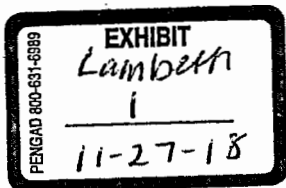
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<sup>125</sup> K.S.A. 66-118b; K.S.A. 77-503(c); K.S.A. 77-531(b).

Danny Lambert  
Off Duty Dec 1, 2016  
to Jan 8, 2017

Jan 2, 2017 off Duty  
to 2:00 PM at Home  
in Wellville, Kansas  
3:00 PM to 4:50 Driving  
on Duty to pickup  
Trucks in rural Miami  
County south of Lansingburg  
about 35 miles + return  
to Lansingburg west of K-68  
Trooper put me out  
of service at sunset  
at app 7:00 PM Total  
miles 49



**CERTIFICATE OF SERVICE**

17-GIMM-408-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of electronic service on 01/10/2019.

DANNY G. LAMBETH  
D/B/A TRUCK WHOLESAL  
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/S/ DeeAnn Shupe  
\_\_\_\_\_  
DeeAnn Shupe