

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

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) Docket No. 17-GIMM-408-KHP
Violation(s) and Invoice for the Violations of)
the Kansas Motor Carrier Safety Statutes, Rules)
and Regulations.)

**DANNY LAMBETH’S 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**

1) I am not, and never have been, a public motor carrier. I am a used vehicle dealer licensed by the Kansas Department of Revenue as defined in K.S.A. 8-2401 et seq. I am not required to have Kansas Corporation Commission intrastate authority and I am not required to operate within a 25 mile radius of my place of business. I am exempt from requirements to obtain a certificate, license or permit from the Kansas Corporation Commission or file rates, tariffs, annual reports or provide proof of insurance under K.S.A. 66-1,109(q) which states “a vehicle being operated with a dealer license plate issued under K.S.A. 8-2406, and amendments thereto, and in compliance with K.S.A. 8-136, and amendments thereto, and vehicles being operated with a full-privilege license plate issued under K.S.A. 8-2425, and amendments thereto”. At least four District Courts, including Coffey County, Miami County, Franklin County, and Shawnee County, have ruled in my favor regarding my exemption from KCC intrastate authority. I was not charged with not having KCC authority.

My DOT number is 203558.

I am not required to keep a log book unless I travel over one hundred miles from my business. I am not a truck driver. I occasionally drive somewhere to pick up a truck that I’ve purchased for my used truck dealership. I was stopped by the Kansas Highway Patrol officer twenty-six miles from my place of business. Nonetheless, he cited me for “No log on 1/3/2017 Driver had no record of duty current day previous”. I told him that I had gone 38 miles from my business and told him exactly where I had been to

pick up a truck that I had purchased. The officer actually drove to the location I gave him and called the man that I had purchased it from to verify what I had told him.

2) In my **OBJECTION TO STAFF'S MOTION TO CONVERT REQUEST FOR HEARING TO EMERGENCY OUT OF SERVICE PROCEEDING AND REQUEST FOR DISMISSAL** I made many objections including, but not limited to, objecting to the alleged violations described on Kansas Highway Patrol report #KSHP02550894 and invoice #H000566219. I objected to the existence of a Notice of Violation dated January 5, 2017. I objected to the allegation that I had not timely filed a formal challenge with the Kansas Highway Patrol. I 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. The Notice of Violation dated January 5, 2017, found on the KCC website, very clearly states “If you are not satisfied with the outcome of your challenge by the KHP, you have the right to an administrative hearing with the Kansas Corporation Commission”.

The Notice of Violation dated January 24, 2017, very clearly states that I had 30 days to pay the fine or to direct any disputed questions regarding violations to the KHP and that I had “the right to an administrative hearing with the Kansas Corporation Commission”. The attached invoice #H000566219, also dated January 24, 2017, had a due date of February 23, 2017. My challenge letter was received by the KHP on February 22, 2017.

The February 27, 2017 letter, signed by Captain Christopher J. Turner, in response to my challenge letter, very clearly states that I had “the right to an administrative hearing with the Kansas Corporation Commission” and that my request for hearing “must be received within fifteen days from the date of this letter.”

3) As directed by Captain Turner in his February 27, 2017 letter, I timely filed a Request for Hearing on March 10, 2017. In my **OBJECTION TO STAFF'S MOTION TO CONVERT REQUEST FOR HEARING TO EMERGENCY OUT OF SERVICE PROCEEDING AND REQUEST FOR DISMISSAL** I most certainly did NOT say that I could not have timely filed a Request

for Hearing because I didn't receive a Notice dated January 5, 2017. I said I did not receive a January 5, 2017 notice and further went on to question the validity of existence of that Notice.

4) K.S.A. 66-1,142b does not give the KCC the authority to "impose" civil penalties. The statute gives the KCC authority to "prescribe reasonable rules and regulations for the assessment of administrative civil penalties". Further, the statute states "(d) Civil penalties shall be enforced and collected by an attorney for the corporation commission **in the appropriate district court.**". In other words, a *hearing* in the District Court.

5) There is nothing in the Kansas Statutes that indicates that the Commission has the power to "summarily" enforce civil penalties. K.S.A. 66-1,142b does not give the KCC the authority to "enforce" civil penalties, but to "assess" civil penalties. Further, the statute states "(d) Civil penalties shall be enforced and collected by an attorney for the corporation commission **in the appropriate district court.**".

6) For all the reasons contained in this filing, I believe that a conversion of my Request for Hearing to an Emergency Out of Service Proceeding, based on "alleged" violations, does substantially prejudice my rights.

7) 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. A conversion of my Request for Hearing to an Emergency Out of Service Proceeding, nearly one year after my request, does substantially prejudice my rights.

8) For all the reasons contained in this filing, I believe that a conversion of my Request for Hearing to an Emergency Out of Service Proceeding, based on "alleged" violations, does substantially prejudice my rights.

9) The Kansas Corporation Commission has no authority over the licensing of used vehicle dealers or dealer's license plates. I have had the same dealer's license since 1972. The validity of my dealer's license and plates has never been in dispute.

10) Staff's explanation for the change in letterhead between the January 5, 2017 Notice to the January 24, 2017 Notice fails to explain how letterhead from Chairwoman Albrecht's term that ended in January 2016 had been used on the January 5, 2017 Notice, why the January 5, 2017 is different than the January 24, 2017 Notice, why and how invoice dates were changed, and why the January 5, 2017 Notice and invoice were posted to the docket 2 weeks after the January 24, 2017 Notice and invoice were posted.

The January 5, 2017 Notice that I found on the KCC website is on letterhead showing Shari Feist Albrecht as Chair. She was replaced on January 14, **2016** by Jay Scott Emler. The January 5, 2017 Notice is on letterhead that was over one year and two Commission Chair terms out of date. On the January 24, 2017 Notice Commissioner Apple was Chairman, and is printed on the correct letterhead. The wording on this notice is very different from the January 24, 2017 Notice and invoice date and due date was changed.

Staff failed to explain why the January 24, 2017 Notice doesn't indicate in any way that it was a second notice and why Captain Turner's response to my challenge letter didn't indicate that I had filed out of time but, in fact, indicated that I had fifteen days to request a hearing.

11) As indicated by all subsequent documentation from the KHP and the KCC, I filed both my challenge letter and Request for Hearing timely. My Request for Hearing letter is missing from the docket documents. It seems unlikely that staff would review records 'going back over a decade' if I had filed out of time and was not entitled to a hearing, as is now alleged.

The September 13, 2017 "courtesy letter" from Mr. Latif said that the KCC was compiling information "related to the inspection" and that it "will issue an order setting hearing with regard to your request". No mention was made of reviewing thirteen years of records. Such records have absolutely no bearing on the January 3, 2017 inspection and alleged violations.

12) No response to the September 13, 2017 was sent because it was not necessary as I believed I was waiting for KCC to "issue an order setting hearing". Until receipt of the Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding there was no reason for communication or inquiry from me.

13) K.S.A. 77-511(b)(1) states “Within 30 days after receipt of the request, the state agency shall acknowledge receipt thereof and if the state agency has not previously done so, the state agency shall notify the applicant of the name, official title, mailing address and telephone number of a state agency member or employee who may be contacted regarding the request;”.

The September 13, 2017 “courtesy letter” from Mr. Latif said that the KCC was compiling information “related to the inspection” and that it “will issue an order setting hearing with regard to your request”. This letter was dated over six months after receiving my Request for Hearing.

14) I have been prejudiced by not being allowed to have a hearing with the Kansas Corporation Commission but instead staff is now seeking to convert my request to an “Emergency” Out of Service Order.

15) I have been prejudiced by not being allowed to have a hearing with the Kansas Corporation Commission but instead staff is now seeking to convert my request to an “Emergency” Out of Service Order. Staff takes liberties with its accusation that I have failed to abide by “any of the economic and safety rules”. That is simply not true.

16) I have requested a hearing with the KCC to defend myself, a right I would be afforded in any District Court, against the “alleged” violations.

I am not, and never have been, a public motor carrier. I am a used vehicle dealer licensed by the Kansas Department of Revenue as defined in K.S.A. 8-2401 et seq. I am not required to have Kansas Corporation Commission intrastate authority and I am not required to operate within a 25 mile radius of my place of business. I am exempt from requirements to obtain a certificate, license or permit from the Kansas Corporation Commission or file rates, tariffs, annual reports or provide proof of insurance under K.S.A. 66-1,109(q) which states “a vehicle being operated with a dealer license plate issued under K.S.A. 8-2406, and amendments thereto, and in compliance with K.S.A. 8-136, and amendments thereto, and vehicles being operated with a full-privilege license plate issued under K.S.A. 8-2425, and amendments thereto”. At least four District Courts have ruled in my favor regarding my exemption from KCC intrastate authority.

My DOT number is 203558.

I am not required to keep a log book unless I travel over one hundred miles from my business. I am not a truck driver. I occasionally drive somewhere to pick up a truck that I've purchased for my used truck dealership. I was stopped by the Kansas Highway Patrol officer twenty-six miles from my place of business.

17) No reasonable person would say that my "continued operation poses a potential immediate threat" when KCC took over a year to make that determination based on "alleged" violations.

WHEREFORE, for the reasons set forth herein, I request that the Commission deny Staff's Motion to Convert Request for Hearing to Emergency Out of Service Proceeding against me, Danny G. Lambeth d/b/a Truck Wholesale of Wellsville, Kansas ("Respondent") and dismiss all assessed fines on invoice ##H000566219 for alleged violations.

Respectfully submitted,

Danny G. Lambeth
Danny G. Lambeth
d/b/a Truck Wholesale
P.O. Box 501
Wellsville, KS 66092
785/550-9073

CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Danny Lambeth's Objections to Staff's Filing in Support of Its Motion to Convert Request For Hearing to Emergency Out of Service Proceeding and Request for Dismissal was served by electronic service and a copy placed in the United States mail, postage prepaid, this 22nd day of February, 2018, to the following:

KANSAS CORPORATION COMMISSION
COMMISSION'S DOCKET ROOM
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027

Danny G. Lambeth
Danny G. Lambeth