

**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.)

**PETITION FOR RECONSIDERATION OF ORDER DISMISSING REQUEST FOR HEARING
AND DENYING MOTION TO CONVERT PROCEEDING**

I, Danny G. Lambeth d/b/a Truck Wholesale, pursuant to K.S.A. 66-118b and K.S.A. 77-529(a)(1) hereby request reconsideration of the State Corporation Commission of the State of Kansas' (KCC) Order Dismissing Request for Hearing and Denying Motion to Convert Proceeding issued in this docket on February 27, 2018 (Order). In support thereof, I state the following:

1. The Commission's Order goes into great detail about docket document dates and filing dates and asserts that I did not "file" timely. However, *I was not required to file and therefore did not file my February 22, 2017 challenge letter or 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 Captains 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."

The Order's assertions that I did not "file" timely conflict with what is apparently the correct procedure and also conflict with the instructions contained in the January 24, 2017 Notice of Violation and KHP Captain Turner's February 27, 2017 denial letter. Additionally, those assertions are based on inconsistent and unreliable document filing dates. Document dates, filing dates, file numbers, and tracking numbers are out of order, invoice dates and due dates have been altered, there are missing documents (including Mr. Latif's September 13, 2017 letter), and one document is typed on a two-year

out-of-date letterhead. A simple, common-sense examination of the documents in this docket proves that. There was no timely or organized procedure used by Staff with regard to adding documents to the docket. Or, as I've suggested before, documents have been intentionally changed, back-dated, or omitted.

The Order states that “the Commission issued a Notice of Violation on January 5, 2017 to Danny Lambeth stemming from a January 3, 2017 Kansas Highway Patrol (KHP) roadside inspection.”

However, Staff's Filing in Support of its Motion to Convert Request for Hearing to Emergency Out of Service Proceeding states “Notice of Violations are sent to motor carriers by the KHP in their normal course of business automatically upon the review of out of service violations found in roadside inspections. These documents are not prepared by the Commission and are obtained by Staff upon request from the KHP after a hearing has been requested by a motor carrier.”

In my previous Objections in this docket I incorrectly characterized the submission of my letters as having been “filed” with the KHP. I meant that I had submitted (mailed) the letters to the KHP, as instructed. Presumably, as I was not required to, it was the KHP or KCC staff that untimely “filed” my request for a hearing letter. As previously pointed out, Staff states that documents are obtained from the KHP, upon request, *after a hearing has been requested*. It seems that the Commission, KCC Staff, and KHP do not fully agree on or understand the correct procedure for “filing” documents.

2. Paragraph 13 of the Order states that “Staff has provided no basis for finding that Mr. Lambeth is a public motor carrier of property”. That is true. I am not, and never have been, a private or public motor carrier. I am a used vehicle dealer, and have been for over 45 years, 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.

K.S.A. 66-1,109. Regulation of motor carriers; exemptions of certain carriers, certain transporters and certain uses from act. This act shall not require the following carriers to obtain a certificate, license or permit from the commission or file rates, tariffs, annual reports or provide proof of insurance with the commission:

I am exempt 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”.

Numerous District Courts, including Coffey County, Miami County, Franklin County, Johnson County, and Shawnee County, have ruled that the KCC has no jurisdiction over me.

3. Paragraph 14 of the Order states “findings of Commission jurisdiction in past dockets do not demonstrate Commission jurisdiction in the current matter, for the facts have not been shown to be the same over time.” The facts regarding my business operations have absolutely been the same for over 45 years regardless of what past KCC orders indicate. As documented in numerous District Court cases as well as KCC hearing transcripts, none of the previous dockets referred to in this docket, have demonstrated Commission jurisdiction over me or my used truck business. Nonetheless, past Commission orders, based on Staff recommendations, have shown a distinct pattern of misapplication of administrative regulations and the KCC’s overreaching abuse of its authority.

I’ve been repeatedly harassed by the KHP and the KCC over the past 14 years. In a 10/26/07 email to Paul Behm of the KHP, Captain Turner stated “I double checked with KCC. We, at this point, won’t be going onto his (Lambeth’s) property to take anything. The one vehicle we are talking about is his tow truck, so whether he is towing anything or not they want to seize it, so in commerce or not.” Presumably, it was Mike Hoeme, KCC Director of Transportation, that Captain Turner “double checked” with.

With no jurisdiction over me, the KCC caused me, at the age of 72, to be held in jail for over 24 hours with no bond for failing to have KCC authority. The Johnson County prosecutor dismissed the charges, citing that I am exempt from KCC operating authority.

There are no definitions in Kansas Statutes Annotated, Chapter 66, Article 1 that define me or my business as a motor carrier. Chapter 66, Article 1 limits the powers of the Commission to the regulation of *motor carriers*. Under the direction of Mike Hoeme, Director of Transportation, the KHP has

impounded, in violation of K.S.A. 66-1,129a (**Motor carriers, suspension, revocation or amendment of certificate; notice; hearing; impoundment of motor carrier's vehicles; sale of such vehicles; proceeds; requirements.**) eight of my trucks. The KCC sold two of those trucks, with complete disregard for and in violation of K.S.A. 66-1,129a and K.S.A. 8-1102:

K.S.A. 66-1,129a(d)(3) For the purposes of disposing of a vehicle that has been impounded by the state corporation commission under the authority granted by section (b), if the state corporation commission is in possession of the vehicle, the state corporation commission shall be considered a public agency for the purpose of disposing of an abandoned vehicle under the provisions of K.S.A. 8-1102, and amendments thereto.

K.S.A. 8-1102 gives very clear and specific instructions as to the procedures that are to be used by a state agency in regard to the disposition of impounded or “abandoned” vehicles. Likewise, there are very specific procedures, forms, and affidavits that must be submitted, by the agency, to the Kansas Department of Revenue (KDOR) and a County Treasurer’s office prior to the sale of any impounded or abandoned vehicle. The agency must then issue proper sale documentation, not a title, to the final purchaser so that he may obtain a negotiable title in his name from the KDOR. The KCC did not follow any of the procedures set forth in 8-1102 or State or County regulations. There is absolutely no provision for a public agency to be allowed to obtain a vehicle title in the name of the agency. However, the KCC illegally obtained titles to both of my trucks in the name of the Kansas Corporation Commission.

4. Paragraph 14 of the Order also states that statutes cited in Staff’s Motion to Convert Request for Hearing to Emergency Out of Service Proceeding “do not provide a basis for Commission jurisdiction unless Mr. Lambeth has been shown to be a public or private motor carrier. Staff has not shown this.” I concur with this decision. There are no definitions in Kansas Statutes Annotated, Chapter 66, Article 1 that define me or my business as a motor carrier.

Chapter 66, Article 1 limits the powers and authority of the Commission to the regulation of *motor carriers*.

K.S.A. 66-1,142b(a) states “Any person violating any statute, commission orders or rules and regulations adopted by the state corporation commission pursuant to the motor carrier act and other laws relevant to motor carriers shall be subject to a civil penalty of not less than \$100 and not more than \$1,000 for negligent violations, and not more than \$5,000 for intentional violations.” Therefore, I am not subject to civil penalties issued by the KCC. K.S.A. 66-1,142b(d) states "Civil penalties shall be enforced and collected by an attorney for the corporation commission in the appropriate district court." KCC invoices instructing payment to be remitted to the KCC conflict with Kansas law.

The Order cites no legal basis for the KCC to have power or authority over me or my business or to order the \$700 penalty to be due and payable. Nor does it cite any legal basis for penalties to be remitted to the KCC.

WHEREFORE, for the reasons set forth herein, having determined that no legal basis has been provided to find that I am a public or private motor carrier or that the Commission has jurisdiction over me, the Commission has no legal basis for ordering me to pay the \$700 penalty or to remit any penalties to the Kansas Corporation Commission. Though my request is not required, as the Commission has determined that it has no jurisdiction over me, I request that the Commission reconsider its Order, dismiss all assessed fines on invoice ##H000566219 for alleged violations, and close this docket.

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