

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

In the Matter of the Investigation of **Quality**)
Drive Away, Inc. of Goshen, Indiana,)
Pursuant to the Kansas Highway Patrol)
Issuance of a Notice of Violation(s) and) Docket No. 17-GIMM-003-KHP
Invoice for the Violations of the Kansas Motor)
Carrier Safety Statutes, Rules and Regulations.)

STAFF'S MOTION TO DISMISS AND WAIVE CIVIL PENALTY

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) presents the above-captioned matter to the Commission for dismissal of the enforcement action, with prejudice, against Quality Drive Away, Inc. (Respondent). In support of its Motion, Staff states as follows:

1. On May 2, 2016, the Kansas Highway Patrol issued a Notice of Violation against Quality Drive Away, Inc. (Respondent), for an alleged violation found during an April 27, 2016, routine motor carrier stop and inspection conducted by the Kansas Highway Patrol. Respondent was assessed a \$150.00 civil fine for "No passenger vehicle endorsement on CDL," citing 383.93B2.

2. On June 1, 2016, Respondent initiated a formal challenge, claiming the violation was not valid because the guidance accompanying the 49 CFR 383.93 contained contradictory interpretations. Respondent also relied on correspondence from T.F. Scott Darling, III, Acting Administrator of the Federal Motor Carrier Safety Association, stating that the guidance section would be changed in the future removing the requirement of a passenger endorsement for drivers of buses in driveaway-towaway operations from the manufacturer to dealers and distributors.

3. On June 21, 2016, the Kansas Highway Patrol denied Respondent's challenge and advised Quality Drive Away, Inc. of its right to an administrative hearing before the Commission.

4. On June 28, 2016, Respondent requested a hearing before the Commission, alleging that the Kansas Highway Patrol lacked jurisdiction to enforce 49 CFR 383.93.

5. Staff has reviewed the facts surrounding the April 27, 2016, traffic stop and has determined that the available evidence does not support a violation and civil penalty against Respondent and that a hearing is not necessary.

6. Staff determined the violation is unsupported because the Notice of Violation issued related to the April 27, 2016 inspection specifically alleged a violation of 49 CFR 383.93(b)(2) of the "Federal Motor Carrier Safety Regulations, as adopted by K.S.A. 66-1,129 and K.A.R. 82-4-3 *et seq.*" However, K.S.A. 2015 Supp. 66-1,129 and K.A.R. 82-4-3 *et seq.* do not adopt 49 CFR 383.93(b)(2). Instead, Kansas enforces the proper use of endorsements of Commercial Driver's Licenses at K.S.A. 2015 Supp. 8-2,135. K.S.A. 8-2,135(b)(4) limits the requirement for a "P" (passenger) endorsement to those "driving vehicles carrying passengers." Respondent's driver was transporting an empty bus at the time of the inspection; therefore no "P" endorsement was required.

7. Accordingly, the Kansas Highway Patrol does not have jurisdiction to enforce 49 CFR 383.93(b)(2), and by virtue of K.S.A. 2015 Supp. 8-2,135(b)(4), the Kansas Highway Patrol does not have authority to issue a citation to the operator of an empty passenger vehicle for failure to have a "P" (passenger) endorsement on the operator's Commercial Driver's License.

8. Therefore, Staff recommends the Commission find that Respondent's request for hearing be dismissed, the \$150 in civil penalties assessed against Respondent be waived, with prejudice, and the status of this docket be changed to "closed."

WHEREFORE, for the reasons set forth above, Staff respectfully requests the Commission find that the above enforcement action against Respondent be dismissed, with prejudice, and that the docket be closed.

Respectfully submitted,



Ahsan A. Latif, #24709

Litigation Counsel

Kansas Corporation Commission

1500 SW Arrowhead Road

Topeka, Kansas 66604

(785) 271-3118 (Telephone)

(785) 271-3124 (Facsimile)

For Commission Staff

VERIFICATION

STATE OF KANSAS)
) ss.
COUNTY OF SHAWNEE)

Ahsan A. Latif, of lawful age, being duly sworn upon his oath deposes and states that he is Litigation Counsel for the State Corporation Commission of the State of Kansas; that he has read and is familiar with the foregoing *Staff's Motion to Dismiss* and attests that the statements therein are true to the best of his knowledge, information and belief.



Ahsan A. Latif #24709
Litigation Counsel
The State Corporation Commission
of the State of Kansas

SUBSCRIBED AND SWORN to before me this 20th day of July, 2016.


Notary Public

My Appointment Expires: 6-30-18

CERTIFICATE OF SERVICE

17-GIMM-003-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Staff's Motion to Dismiss and Waive Civil Penalty was served via e-mail this 20th day of July, 2016, to the following:

W. ROBERT ALDERSON, JR., ATTORNEY
ALDERSON ALDERSON WEILER CONKLIN BURGHART &
CROW LLC
2101 SW 21ST STREET (66604)
PO BOX 237
TOPEKA, KS 66601-0237
Fax: 785-232-1866
boba@aldersonlaw.com

AHSAN LATIF, LITIGATION COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3354
a.latif@kcc.ks.gov

SAMUEL FEATHER, OFFICE OF GENERAL COUNSEL
KANSAS CORPORATION COMMISSION
1500 SW ARROWHEAD RD
TOPEKA, KS 66604-4027
Fax: 785-271-3167
s.feather@kcc.ks.gov



Vicki Jacobsen