



Commission did not find that a basis had been provided for Commission jurisdiction over me, the Commission ordered that I pay the \$700 assessed penalty.

4. On March 12, 2018 I submitted a Petition for Reconsideration of the February 27, 2018 Order, arguing, among other things, that I am not a motor carrier nor am I under the jurisdiction of the KCC.

5. On April 10, 2018 the Commission modified its findings in the February 27, 2018 Order and issued an Order on reconsideration finding that I had been denied sufficient due process regarding my request for hearing and granting reconsideration on my request for hearing.

6. On April 25, 2018 I submitted a Petition for Reconsideration of the April 10, 2018 Order arguing, among other things, that I am not a motor carrier under the jurisdiction of the KCC.

7. On May 24, 2018 the Commission issued an order denying my requests and ordered that a procedural schedule for hearing be worked out.

8. On November 27, 2018, the Commission held an evidentiary hearing.

9. On January 10, 2019, the Commission issued a Final Order upholding the violations and penalties assessed against me on Invoice No. H000566219, dated January 5, 2017.

10. On January 25, 2019, I filed Danny Lambeth's Petition for Reconsideration of Final Order. I offered further proof that the violations against me are invalid and continued to argue that I am not a motor carrier under the jurisdiction of the KCC.

11. On February 26, 2019 the Commission modified its findings in the January 25, 2019 Order and issued its Order on Petition for Reconsideration of Final Order. The Commission found “the evidentiary burden against Mr. Lambeth was not met and grants reconsideration of its finding that Mr. Lambeth violated 49 C.F.R. 393.71(h)(10)”. The evidentiary burden had obviously not been met in the previous four orders, either. But, regardless, the Commission found me in violation of 49 C.F.R. 393.71(h)(10) in each of the previous four orders.

12. The Commission’s interpretation of its own statutory jurisdiction in this case is completely without legal basis and in conflict with motor carrier statutes and commercial vehicle registration statutes. The Commission has erroneously interpreted and applied the law.

13. Under K.S.A. 77-621(a), the “burden of proving the invalidity of agency action is on the party asserting invalidity; and . . . the validity of agency action shall be determined in accordance with the standards of judicial review provided in this section, as applied to the agency action at the time it was taken.” Contained herein is proof that the Commission’s actions and findings in this docket, as well as five past dockets (06-DGLM-908-SHO, 09-TRAM-884-PEN, 12-GIMM-246-KHP, 12-TRAM-816-PEN, and 13-TRAM-626-CPL) introduced into this docket and considered by the Commission, are invalid because the Commission lacks jurisdiction, and always has, over me and my vehicle dealer inventory.

14. The Commission has acted beyond the jurisdiction conferred by any provision of law, the Commission has erroneously interpreted or applied the law; the Commission has engaged in an unlawful procedure or has failed to follow prescribed procedure, the Commission's finding is based on determinations of fact, made or implied by the agency, not supported by substantial competent evidence when viewed in light of the record as a whole, and the Commission’s action is otherwise unreasonable, arbitrary or capricious, in accordance with **K.S.A. 77-621(c)(2), K.S.A. 77-621(c)(4), K.S.A. 77-621(c)(5), K.S.A. 77-621(c)(7), and K.S.A. 77-621(c)(8).**

#### **KANSAS CORPORATION COMMISSION AUTHORITY:**

15. Pursuant to Kansas motor carrier statutes, the Commission’s authority is limited to motor carriers. The Commission is *not* empowered to have authority or jurisdiction over a Kansas corporation, limited liability company, partnership, limited liability partnership, or individual who is *not* subject to the commercial vehicle registration provisions of the vehicle registration laws of Kansas.

16. Pursuant to Kansas motor carrier statutes, Kansas corporations, limited liability companies, partnerships, limited liability partnerships, and individuals who register and operate commercial vehicles *as* commercial vehicles may not operate as motor carriers without first obtaining a certificate, permit or license from the KCC. And, the KCC is *required* to issue permits to private motor carriers of property as well as other motor carriers..

17. I have never operated any vehicle in my dealer inventory as a commercial vehicle requiring it to be registered as a commercial vehicle. I have never operated as a motor carrier. The KCC, contrary to its findings in this docket and past dockets, has never had jurisdiction over me or my vehicle dealer inventory.

18. 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 . . . ."

19. On January 3, 2017 Trooper Weber declared me "OUT OF SERVICE" according to his Driver/Vehicle Examination Report "Pursuant to the authority contained in Title 49, CFR; K.S.A. 66-1,129; K.C.C. Reg. 82-4-3". I was invoiced for "violation(s) 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." Paragraph 2 of the Order states the same. K.S.A. 66-1,129(a) states "The commission shall adopt rules and regulations necessary to carry out the provisions of this act. No public motor carrier of property, household goods or passengers or private motor carrier of property shall operate or allow the operation of any motor vehicle on any public highway in this state except within the provisions of the rules and regulations adopted by the commission." The Commission's authority under K.S.A. 66-1,129 is also limited to motor carriers. K.S.A. 66-1,129 fails to provide any reference to which "act" the Commission shall adopt rules and regulations to carry out the provisions of.

20. The Commission, in its orders in this docket, cites K.S.A. 66-1,111 as its authority over motor carriers. "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." K.S.A. 66-1,111 fails to provide any reference to which "act" motor carriers must operate in accordance with.

21. None of the Commission's orders in this docket have provided reference to, or a legal analysis of, which "act" the Commission has authority to carry out the provisions of or which "act" motor carriers

must operate in accordance with, but it is indisputable that the KCC only has jurisdiction over motor carriers.

### **MOTOR CARRIERS AND COMMERCIAL VEHICLE REGISTRATION:**

22. The Commission gives much weight to Mr. Hoeme's testimony regarding the definition of private motor carrier and his opinion of whether I am a private motor carrier. In his Direct Testimony, Rebuttal Testimony, and at the evidentiary hearing, Mr. Hoeme repeated such assertions as "Mr. Lambeth is a private motor carrier because he utilizes commercial motor vehicles to tow property, while doing business or procuring business in Kansas" and "Based on this information the trip towing a truck he had purchased undertaken in furtherance of Mr. Lambeth's business. Mr. Lambeth was therefore acting as a private motor carrier." He cited FMCSR 49 C.F.R. § 390.5, as adopted by K.A.R. 82-4-3f, for the definition of private motor carrier as, "a person who provides transportation of property or passengers, by commercial motor vehicle, and is not a for-hire motor carrier." He cited the definition of "motor carrier" in K.A.R. 82-4-1(z) as "any corporation, limited liability company, partnership, limited liability partnership, or individual subject to the provisions of the motor carrier laws of Kansas and under the jurisdiction of the Kansas Corporation Commission." He asserted that a motor carrier must use motor vehicles that meet the definition of a commercial motor vehicle "in the furtherance of a commercial enterprise; meaning they must conduct or procure business in Kansas."

23. The phrases "doing business", "procuring business", "conducting business", and "using commercial motor vehicles in the furtherance of business" are *not* elements of the definition of private motor carrier. They *are* elements of commercial vehicle registration and the limitations of the Commission's authority. Mr. Hoeme, in his attempt to make motor carrier rules and statutes apply to me, incorrectly uses the phrase "in the furtherance of a commercial enterprise". That phrase comes from the definition of "commercial vehicle" as it pertains to "fleet vehicles *engaged in interstate commerce*" in K.S.A. 8-1,100.

24. K.S.A 8-1,100 defines commercial vehicle as "any motor vehicle, other than a passenger vehicle, and any trailer, semitrailer or pole trailer drawn by such motor vehicle, which vehicle is designed, *used*

*and maintained* for the transportation of persons or property for hire, compensation, profit, or in the *furtherance of a commercial enterprise . . .* “ (emphasis added). Fleet vehicles are required to be registered with the Kansas Department of Revenue under K.S. A. 8-1,100 et seq and must display a distinctive permanent plate and cab card issued by the Kansas Department of Revenue. The plates are not transferable to any other commercial motor vehicle.

25. Trucks and truck tractors are required to be registered with the Kansas Department of Revenue, under K.S.A. 8-143, and amendments thereto. Trucks and truck tractors registered for a gross weight of more than 10,000 pounds which are *operating as commercial vehicles* as defined in K.S.A. 8-143m must, in addition to the annual registration fee, pay an annual commercial vehicle fee and must display a permanent “commercial” license plate issued by the Kansas Department of Revenue, pursuant to K.S.A. 8-143m. Such plates are not transferable to any other commercial motor vehicle.

26. A prerequisite for applying for any type of commercial vehicle registration is obtaining the proper motor carrier permit from the KCC. The Kansas Commercial Motor Vehicle Intrastate and Interstate (IRP) Registration Manual, page 4, states “There are qualifications and compliance requirements that must be met in Kansas before an application for registration may be accepted or any registration issued. Some of the requirements may have already been met depending on the type of authority registered with the Kansas Corporation Commission and the Federal Highway Administration (FHWA). . . . A Commercial Motor Vehicle Account holder (Intrastate or IRP) must have a USDOT number and Authority to operate in interstate or intrastate commerce *before applying* for Kansas Commercial Motor Vehicle Registration.” And, “A Non Motor Carrier does not have USDOT number but may apply for Kansas CMV Registration if they are leased on to a Motor Carrier with authority; they must complete a Non Motor Carrier Declaration Form and provide a copy of their lease agreement when they register, renew, or make any changes to their vehicles. This does not apply to an account holder who does not travel outside of Kansas.”

27. Vehicle dealers are not required to register *any* vehicle in their dealer inventory, regardless of its gross weight, or to pay annual commercial vehicle fees, or to display permanent plates as described

above, or carry registration or cab cards. Dealer plates may be transferred from one vehicle to another owned by the dealer. Vehicle dealers are engaged in the business of buying, selling or exchanging used vehicles. They are not motor carriers and cannot be motor carriers without having vehicles that are registered as commercial vehicles and a permit from the KCC.

28. K.S.A. 8-136 outlines the requirements for the use of vehicle and trailer dealer license plates issued by the Kansas Department of Revenue Division of Vehicles. K.S.A. 8-136(a) states “A licensed dealer in vehicles demonstrating, displaying or exhibiting any such vehicle upon any highway in lieu of registering each such vehicle, may obtain from the division of vehicles . . . and attach to each such vehicle, one license plate which shall have a distinctive number, . . . together with the word "dealer" . . . .. Any such license plate may, . . . be transferred from one such vehicle to another owned or operated by such manufacturer or dealer. Such a license plate may be used in lieu of regular vehicle registration for the purposes of demonstrating, displaying or exhibiting vehicles held in inventory of such manufacturer or dealer. Such a license plate may also be used on such dealer's service vehicle, or substitute vehicles owned by the dealer but loaned to a customer when the dealer is repairing such customer's vehicle ***and for all other purposes incidental to a dealer's vehicle business***. Except as provided in subsection (d), such a license plate may not be used by a manufacturer or dealer to haul commodities weighing in excess of two tons . . . (b) No manufacturer or dealer in vehicles shall cause or permit any such vehicle owned by such person to be operated or moved upon a highway unless there is displayed upon such vehicle a license plate as required by this section. . . (d) A trailer manufacturer or dealer is authorized to use a license plate issued under this section for the transportation of not more than four trailers. . . “.

29. Driveaway ***transporters***, even though they do “provide transportation”, are not motor carriers because they do not own the vehicles that they transport, nor are the vehicles, while being transported with driveaway transporter plates, required to be registered as commercial vehicles. Driveaway plates may be transferred from one vehicle to another.

**KANSAS CORPORATION COMMISSION ‘PROCEDURES FOR SAFETY COMPLIANCE’  
AND KTRAN REGISTRATION:**

30. The May 2018 Kansas Corporation Commission Procedures for Safety Compliance (Commission Procedures) lists all procedures and requirements for *motor carriers and motor carrier* operations. The flow-chart on page 34 titled “Applying KCC Safety Regulations” and the flow-chart on page 36 titled “Applying Kansas Registrations - Commercial Vehicle Registration and/or IRP “a.k.a. Apportioned Registration”” clearly have no provisions for Kansas vehicle dealers or driveaway transporters whose vehicles are not required to be registered or to display a USDOT number because Kansas vehicle dealers and driveaway transporters are not, and cannot be, motor carriers.

31. The KCC registration system (KTRAN) can be accessed from the KCC website. The KTRAN Wizard states that it’s “a helpful tool for new motor carriers to find out what you need to become compliant with motor carrier laws and regulations in Kansas and give you information about applicable Federal laws.” I attempted to go through the Wizard to determine if I am subject to KCC Authority and could not make it through because I do not provide any kind of transportation “service” and I am not required to register any vehicle in my dealer inventory as a commercial vehicle with the KCC or the KDOR. The same is true for driveaway transporters because they do not own the vehicles that they transport, and nor are the vehicles, while being transported with driveaway transporter plates, required to be registered as commercial vehicles. According to the KCC registration system (KTRAN), the Commission does not have authority over Kansas vehicle dealers and driveaway transporters.

**MOTOR CARRIERS ARE REQUIRED TO OBTAIN PERMITS ISSUED BY KCC:**

32. K.S.A. 66-1,112g, K.S.A. 66-1,115, and K.S.A. 66-1,114b *require* motor carriers and private motor carriers to obtain permits and registration, among other things, and *require* the Commission to issue permits, with no provision for exemptions.

33. K.S.A. 66-1,112g states “The commission *shall* issue permits to private motor carriers of property and require the filing of annual and other reports, and such additional data as may be required by the



commission in carrying out the provisions of this act. The commission may adopt rules and regulations relating to private motor carriers of property.” (emphasis added).

34. K.S.A. 66-1,115 states “It *shall* be unlawful for any private motor carrier *to operate as a carrier of property or passengers within this state either in intrastate commerce or in interstate commerce* without first having obtained from the commission a license or permit or without being registered pursuant to federal statutes. An application shall be made . . . the commission *shall* issue a license or permit to such applicant.” (emphasis added).

35. K.S.A. 66-1,114b “. . . it *shall* be unlawful for any public motor carrier *to operate as a carrier of property* . . . without first having obtained from the commission a certificate of public service to transport property other than household goods or to transport passengers. . . .”

36. K.S.A. 66-1,126 requires *any person* who operates as any carrier to comply with the “act” (whatever that may be). The statute states “Any person who shall *operate as any carrier* to which this act applies without first obtaining a certificate, permit or license or in violation of any of the terms thereof, or who fails to make any return or report required by this act or by the commission, or who denies to the commission access to such carrier's books or records, or who fails to comply with any commission order requiring the payment of a penalty, orders requiring the cease and desist of certain operations or orders placing a motor carrier out of service, *shall* be guilty of a misdemeanor and *shall* be punished as provided in K.S.A. 66-1,130, and amendments thereto.”

37. “Operate as a carrier” means “do business as a carrier”. Motor carriers are persons or businesses engaged in the trucking or transportation industry. Their vehicles are used, maintained, and *operated as* commercial vehicles, and are required to be registered as commercial vehicles, as described above. Motor carriers are required to obtain permits from the KCC, along with meeting other requirements. Only persons or companies that have registered commercial vehicles can be motor carriers.

**I AM NOT A MOTOR CARRIER NOR AM I UNDER THE JURISDICTION OF THE KCC:**

38. The Commission, in its January 10, 2019 Final Order, spent ten paragraphs attempting to make the argument that I am a private motor carrier and concluded, in paragraph 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.”

39. The Commission’s interpretation, in this docket, of the definition of “private motor carrier” clearly conflicts with the requirements in all of the statutes regarding commercial vehicle registration and dealer licensing. It also conflicts with the KCC’s Procedures for Safety Compliance and KTRAN registration. The Commission has provided no analysis or remedy for such conflicts.

40. On at least four different occasions, Kansas District Court judges have found that I am not under the jurisdiction of the KCC’s economic or safety regulations. By finding that I am a private motor carrier under the jurisdiction of the KCC, the Commission has acted beyond the jurisdiction conferred by any provision of law, the Commission has erroneously interpreted or applied the law; the Commission has engaged in an unlawful procedure or has failed to follow prescribed procedure, the Commission's finding is based on determinations of fact, made or implied by the agency, not supported by substantial competent evidence when viewed in light of the record as a whole, and the Commission’s action is otherwise unreasonable, arbitrary or capricious, in accordance with **K.S.A. 77-621(c)(2), K.S.A. 77-621(c)(4), K.S.A. 77-621(c)(5), K.S.A. 77-621(c)(7), and K.S.A. 77-621(c)(8).**

**VIOLATIONS:**

Even though I am not a motor carrier and the KCC does not have jurisdiction over me, I will *again* address the issues of the violations because the Commission’s findings are incorrect.

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

41. Though the Commission found “the evidentiary burden against Mr. Lambeth was not met and grants reconsideration of its finding that Mr. Lambeth violated 49 C.F.R. 393.71(h)(10), as adopted by

K.A.R. 82-4-3i. Mr. Lambeth shall not be assessed the \$150 penalty attached to the violation” I feel compelled to point out that it is preposterous that I have had to spend so much time and effort attempting to explain towing equipment to the Commission, the very agency that supervises motor carriers and the equipment used by motor carriers. The Order states “Mr. Lambeth was not using a saddle-mount, and thus, the question remains whether Mr. Lambeth was using a tow bar.” While the Commission is very certain that I was not using a saddle-mount, providing no basis for its opinion, it still questions whether I was using a tow bar. If the Commission doesn’t know what a tow bar is, it most definitely would not know what a saddle-mount is or whether I was using one. It’s quite clear that the Commission has decided that it will not concede, for any reason, that Trooper Weber is incorrect and the towing device I was using is not a tow bar.

42. The Commission found that “upon reconsideration, while 49 C.F.R. 393.5; 393.71(h)(6) and 393.71(h)(7) may hint at the notion that tow bars can only tow other vehicles from the front end, Mr. Lambeth has not provided sufficient analysis to demonstrate this as a fact.” The definition, in 49 C.F.R. 393.5, of tow-bar is a device that attaches “between the rear of a towing vehicle and the front of the vehicle being towed” (the headlights of both vehicles face forward. Forward means the direction both vehicles will move when the towing vehicle’s transmission is shifted into any gear other than neutral or reverse). 49 C.F.R. 393.71(h)(6) *requires* the tow-bar to “be provided with suitable means of attachment to and actuation of the steering mechanism, if any, of the towed vehicle.” Steering mechanisms are in the front (the end with the headlights) of motor vehicles. The regulations are very clear and do not “hint” at that notion at all as the Commission asserts. I don’t know what further analysis I could have offered. All one must do is read all of 49 C.F.R. 393.71, and use a little common sense, to understand that the device I was using is not, and could not be, a tow bar.

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

43. In his Response to my PFR, Staff twice uses the phrase “dangerously flat” but Trooper Weber did not ever use that phrase. Certainly, Trooper Weber would have discovered a “dangerously flat” tire when

he pulled me over on the highway and he would not have directed me to proceed approximately six miles further on the highway to his suggested location to put me “out of service”. Though I didn’t know the tire was low until Trooper Weber’s inspection was performed later, it was I who suggested we proceed to a much closer location to park my truck.

44. In paragraph 31 of the Order, the Commission is deceptive in its citation of K.A.R. 82-4-l(dd) that defines “out-of-service”. The Order cites only the portion of the regulation that serves its argument. The Order further states “At the hearing, it was specified that Mr. Lambeth's out-of-service violation for a flat tire came from the North American standard out- of-service criteria. . . . “ According to Trooper Weber’s inspection, he put me (my truck) out-of-service for violation of “393.75(a)”, *not* the North American standard out-of-service criteria. The Commission invoiced me for, and found me to be in violation of, “49 C.F.R. 393.75(a), as adopted by K.A.R. 82-4-3i”, *not* the North American standard out-of-service criteria adopted in K.A.R. 82-4-1.

45. There is no definition of “flat” in the Federal regulations, nor any reference to the North American standard out-of-service criteria in 49 C.F.R. 393.75. There is no definition of “flat” in the Motor Carrier Regulations of the KCC or in the Kansas statutes. In K.S.A. 8-1742 titled “Restrictions as to tire equipment” under section (e) a pneumatic tire is in an unsafe condition if it has “(1) Any part of the ply or cord exposed; (2) any bump, bulge or separation; (3) a tread design depth of less than 1/16 inch . . . .; (4) a marking "not for highway use" . . . .; (5) tread of sidewall cracks, cuts or snags deep enough to expose the body cord; (6) been regrooved or recut below the original tread design depth . . . .; or (7) such other conditions as may be reasonably demonstrated to render it unsafe.” Those conditions do not happen suddenly while driving on roads or highways, they are vehicle maintenance issues of which the vehicle owner or driver should be aware before driving it. Because a flat tire is something that happens accidentally, like unknowingly running over a nail or another object, “flat tire” is not listed as a violation under Kansas statutes.

46. The Commission rejected my argument that I would have been permitted under 49 C.F.R. 397.17(b), as adopted by K.A.R. 82-4-3k, to drive to the nearest safe place to repair or replace the tire by

inferring that all of the regulations in 49 C.F.R. Part 397 apply *only* to transportation of hazardous materials. C.F.R. Title 49, Subtitle B, Chapter III, Subchapter B “Federal Motor Carrier Safety Regulations” applies, in general, to all commercial vehicle transportation. While the rules in 49 C.F.R. Part 397 “apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded”, they do not apply *only* to motor carriers engaged in the transportation of hazardous materials, nor do they *exclude* any other motor carrier. Further, *every* section under 49 C.F.R. Part 397, *except* 49 C.F.R. 397.17, specifically *includes* the transportation of hazardous materials, motor vehicles containing hazardous materials, motor vehicles containing explosive materials; and motor carriers, employees, drivers, and persons who operate, supervise, or who are in charge of motor vehicles containing hazardous or explosive materials. 49 C.F.R. 397.17 contains no language that specifically *includes*, as each of the other sections do, the transportation of hazardous or explosive materials. It is absurd to conclude that the FMCSA regulations place less stringent regulations on vehicles containing hazardous or explosive materials, by allowing them to be driven with a flat, leaking, or improperly inflated tire, to the nearest safe place to repair, replace, or inflate the tire, than on vehicles carrying anything other than hazardous or explosive materials.

47. The Commission is incorrect in its opinion that 49 C.F.R. 397.17(b) applies only to transportation of hazardous materials requiring markings or placards and is not applicable to the January 3, 2017 stop and inspection. The Commission has provided no definition of a “flat” tire nor any regulatory basis for determining that my tire was “flat”. Therefore, in accordance with **K.S.A. 77-621(c)(2) and K.S.A. 77-621(c)(5)**, the Commission has acted beyond the jurisdiction conferred by any provision of law and has engaged in an unlawful procedure or has failed to follow prescribed procedure by finding me in violation of 49 C.F.R. 393.75(a), as adopted by K.A.R. 82-4-3i.

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

48. At the November 27, 2018 evidentiary hearing I asked that Trooper Weber’s video be shown because the video would show that my turn signals were working when he stopped me on January 3,

2017. Staff indicated that it decided not to use it as part of their case and was not introduced into evidence. My statement “we need to introduce it. It’s evidence.” (transcript pages 51-52) was intended to be a request for the video to be entered into evidence. After some discussion, Staff made the video available. When asked how I had obtained the video and if I received it in “part of the discovery or the exchange of evidence prior to coming before the Commission for this evidentiary hearing I replied that it was sent to me by Mr. Latif.

49. Portions of Trooper Weber’s video were seen by the Commission at the evidentiary hearing. But, because of the length of the video and the fact that Trooper Weber was excused early from the hearing, the portion of the video showing the inspection of the rear turn signals was not shown. Commissioner Keen asked Trooper Weber about the light bar that was shown “in the video that was a part of some of the previous evidentiary record that we developed this morning . . . .” (transcript page 93) Towards the conclusion of the hearing Chair Albrecht stated “We’ll consider the evidence and we’ll issue a decision.” (transcript page 188). Based on those statements made by the Commissioners, and the fact that a portion of the video was viewed in the evidentiary hearing, I believed the video was entered into evidence. Prior to the hearing, I believed that Trooper Weber’s video was already part of the evidentiary record. I didn’t realize that the video hadn’t been entered into evidence until I received the January 10, 2019 Final Order.

50. The Commission and Staff appear to be fighting hard to suppress Trooper Weber’s video from the record of evidence. Obviously, the Commission has no desire to know the fact of whether my turn signals were working or the violation is valid but most definitely desire to substantiate the fact that the video was never admitted into evident. It’s easy to draw the conclusion that Staff doesn’t want the video entered into evidence because it *will* disprove Trooper Weber’s testimony that my turn signals were inoperable. The Commission, knowing that Trooper Weber’s video showed the inspection, knowing that Staff is attempting to keep it *out* of the record, and knowing that I requested the video be entered *into* evidence, should consider all available evidence, rather than relying solely on Trooper Weber’s testimony that the turn signals were not working.

51. The Commission essentially based its finding on the fact that the portion of Trooper Weber's video that showed the inspection was not shown, nor was the video entered into evidence. The January 10, 2019 Final Order states "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." In the Order of February 26, 2019, the Commission finds that the factual basis for its finding in the January 10, 2019 Final Order is sound, however the Commission offered no proof or factual basis but only the persuasion of Trooper Weber's testimony.

52. Both Orders selectively omit my examination of Trooper Weber at the evidentiary hearing regarding the inspection of my rear turn signals on January 3, 2017. That part of the examination is on pages 60 through 65 of the hearing transcript. There are questions and answers regarding the fact that it was dark and cold that night and Trooper Weber's inspection of the rear turn signals. I tried to demonstrate, by examining Trooper Weber, that he was standing approximately 60 or 65 feet behind where I was sitting in the cab of the truck. On line 5 of page 64 of the transcript I asked if Trooper Weber came back up to the truck to ask me to turn the turn signals on so he could check the rear ones. He answered "No". Not hearing the instruction to demonstrate the turn signals does not make them inoperative. Therefore, the Commission should correct its finding and dismiss the violation of 49 C.F.R. 393.9(a) and the civil penalty.

53. Having disregarded the evidence shown in Trooper Weber's photographs, in accordance with **K.S.A. 77-621(c)(7)**, the Commission's finding is based on determinations of fact, made or implied by the agency, not supported by substantial competent evidence when viewed in light of the record as a whole.

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

54. 49 C.F.R. Part 395 is adopted by reference in K.A.R. 82-4-3a. 49 C.F.R. 395.1 titled "Scope of rules in this part." describes the applicability of the rules in Part 395 titled "Hours of Service of Drivers". 49 C.F.R. 395.1(a)(1) states "The rules in this part apply to all motor carriers and drivers, except as

provided in paragraphs (b) through (r) of this section.” 49 C.F.R. 395.1(e) states in part “*Short-haul operations—(1) 100 air-mile radius driver.* A driver is exempt from the requirements of §§395.8 and 395.11 if: (i) The driver operates within a 100 air-mile radius of the normal work reporting location; . . . .”

55. Paragraph 34 of the Commission’s Order states “This argument fails because Trooper Weber explained that Mr. Lambeth did not meet the requirements of the short haul provision because he did not meet the elements of 49 C.F.R. 395.1(e)(v), as adopted by K.A.R. 82-4-3a, which are the elements for the short haul provision.” 49 C.F.R. 395.1(e)(v) states “The *motor carrier that employs the driver* maintains and retains for a period of 6 months accurate and true time records showing: (A) The time the driver reports for duty each day; (B) The total number of hours the driver is on duty each day; (C) The time the driver is released from duty each day; (D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.”

56. In approximately sixty years of being a used vehicle dealer I have never, before now, been asked to produce time records for myself. However, at the evidentiary hearing, I produced a time record, entered as Lambeth Exhibit 1 (transcript page 83). Even so, 49 C.F.R. 395.1(e)(v) does not apply to me because I am not a *driver employed by a motor carrier*, which is a ridiculous stretch of the application of 49 C.F.R. 395.1(e)(v). I’m not a truck driver or a motor carrier. Therefore, the Commission should correct it’s finding and dismiss the violation of 49 C.F.R. 395.8(a) and the civil penalty. In accordance with **K.S.A. 77-621(c)(2)**, the Commission has acted beyond the jurisdiction conferred by any provision of law by finding me in violation of violation of 49 C.F.R. 395.8, as adopted by K.A.R. 82-4-3a.

WHEREFORE, for the reasons set forth herein, I request that the Commission declare that I do not operate as a private motor carrier while operating and moving my vehicle dealer inventory on the highways in accordance with the provisions of K.S.A. 8-136, and amendments thereto, and therefore I am not a private motor carrier under the jurisdiction of the Kansas Corporation Commission.



FURTHER, I request that the Commission modify all Orders in past docket numbers 06-DGLM-908-SHO, 09-TRAM-884-PEN, 12-GIMM-246-KHP, 12-TRAM-816-PEN, and 13-TRAM-626-CPL, introduced into this docket and considered by the Commission, because I have never been a private motor carrier under the jurisdiction of the Kansas Corporation Commission.

FURTHER, I request that the Commission reconsider its Order on Petition for Reconsideration of Final Order issued on February 26, 2019 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 Petition for Reconsideration of Order on Petition for Reconsideration was served by electronic service this 13<sup>th</sup> day of March, 2019, to the following:

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

Danny G. Lambeth  
Danny G. Lambeth