

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

Before Commissioners: Jay Scott Emler, Chairman
 Shari Feist Albrecht
 Pat Apple

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.)

ORDER TO DISMISS REQUEST FOR HEARING AND WAIVE CIVIL PENALTY

The above-captioned matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and determination. Having examined its files and records and being fully advised on the premises, the Commission finds and concludes 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.

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. 2015 Supp. 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 Commission finds that the Kansas Highway Patrol does not have jurisdiction to enforce 49 CFR 383.93(b)(2), and the Commission further finds that, 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. On July 20, 2016, Staff filed a Motion to Dismiss, recommending the Commission find that Respondent’s request for hearing be dismissed, the \$150 civil penalty assessed against Respondent be waived and the status of this docket be changed to “closed.”

9. The Commission has jurisdiction over this proceeding pursuant to K.S.A. 66-1,129 and K.A.R. 82-4-3, *et seq.*

10. The Commission finds that Staff’s requests are reasonable and hereby dismisses Respondent’s request for hearing, waives the \$150 in civil penalties assessed against Respondent, with prejudice, and closes the above docket.

IT IS THEREFORE, BY THE COMMISSION ORDERED THAT:

(A) Staff’s Motion to Dismiss Request for Hearing and Waive Civil Penalty is hereby granted.

(B) The \$150 in civil penalties assessed against Respondent are hereby waived, with prejudice.

(C) Respondent’s Request for Hearing is hereby dismissed, with prejudice.

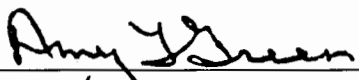
(D) The parties have fifteen days, plus three days if service of this order is by mail, from the date this order was served in which to petition the Commission for reconsideration of any issue or issues decided herein. K.S.A. 66-118b; K.S.A. 2014 Supp. 77-529(a)(1).

(E) The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it may deem necessary and proper.

BY THE COMMISSION IT IS SO ORDERED.

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

Dated: AUG 02 2016



Amy L. Green
Secretary to the Commission

AAL

Order Mailed Date

AUG 03 2016

CERTIFICATE OF SERVICE

17-GIMM-003-KHP

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of first class mail/hand delivered on _____.

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/S/ DeeAnn Shupe

DeeAnn Shupe

Order Mailed Date

AUG 03 2016