

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

**DIRECT TESTIMONY**

**OF**

**MIKE HOEME**

**ON BEHALF OF**

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

July 20, 2018

1   **Q.     Please state your name.**

2   A.     Mike Hoeme.

3   **Q.     Are you employed?**

4   A.     Yes.

5   **Q.     Who is your employer?**

6   A.     The Kansas Corporation Commission.

7   **Q.     Where is your employer located?**

8   A.     1500 Southwest Arrowhead Road, Topeka, Kansas 66604.

9   **Q.     How long have you been employed at the Kansas Corporation Commission?**

10  A.     18 years.

11  **Q.     What is your current position with the Kansas Corporation Commission?**

12  A.     I am the Director of the Commission's Transportation Division.

13  **Q.     Please summarize your educational and professional background.**

14  A.     I have a bachelor's degree in business. My professional background is directly  
15         related to safety compliance in the Transportation industry. Prior to joining the  
16         Commission, I worked for a private motor carrier as its Safety Compliance  
17         Director. My responsibilities were to oversee the company's safety program,  
18         including compliance with motor carrier statutes and regulations.

19             In 2000, I accepted a position with the Commission as Public Service  
20         Administrator in its Transportation Division. In 2001, I accepted the position of  
21         Transportation Division Director. In this capacity, I oversee the Commission's  
22         Transportation Division and am responsible for implementation and enforcement  
23         of the Commission's motor carrier safety program.

1           In 2004, I was elected by my peers to the Executive Committee for the  
2           National Conference of State Transportation Specialists, and on May 1, 2012, I  
3           was elected by my peers to the Unified Carrier Registration Board of Directors.  
4           Overall, I have more than twenty years of experience in the transportation  
5           industry.

6   **Q.   Have you previously testified before this Commission?**

7   A.   Yes.

8   **Q.   What is the purpose of your testimony in this proceeding?**

9   A.   The purpose of my testimony is to explain the Commission's jurisdiction as it  
10       pertains to Danny G. Lambeth d/b/a Truck Wholesale of Wellsville, Kansas.

11   **Q.   Please explain this Commission's jurisdiction as it generally relates to motor**  
12       **carriers.**

13   A.   Pursuant to K.S.A. 66-1,108b, the Commission is given full power, authority and  
14       jurisdiction to supervise and control motor carriers doing business or procuring  
15       business in Kansas, and is empowered to do all things necessary and convenient  
16       for the exercise of such power, authority and jurisdiction. Through K.S.A. 66-  
17       1,112, the Commission is vested with broad power and authority in its duty to  
18       license, supervise and regulate every public motor carrier of property, household  
19       goods, or passengers in Kansas.

20       Furthermore, K.S.A. 66-1,111 provides that:

21           "[N]o public motor carrier of property or passengers or private motor  
22           carrier of property or local cartage carrier shall operate any motor  
23           vehicle for the transportation of either persons or property on any  
24           public highway in this state except in accordance with the provisions  
25           of this act, and amendments thereto, and other applicable laws."

1   **Q.     Mr. Lambeth, in his filings with the Commission in this docket, claims that**  
2           **he is exempt from Commission rules and regulations because he operates**  
3           **using dealer plates.**

4   **A.     Mr. Lambeth is mistaken. Kansas statutes are very clear on the limits of the**  
5           **exemption applying to motor carriers that operate using dealer plates.**

6           K.S.A. 66-1,109 states, in relevant part:

7           “This act shall not require the following carriers to obtain a certificate,  
8           license or permit from the commission or file rates, tariffs, annual reports  
9           or provide proof of insurance with the commission:...

10           ... (q) a vehicle being operated with a dealer license plate issued under  
11           K.S.A. 8-2406, and amendments thereto, and in compliance with K.S.A.  
12           8-136, and amendments thereto , and vehicles being operated with a full-  
13           privilege license plate issued under K.S.A. 8-2425, and amendments  
14           thereto;...”

15           K.S.A. 66-1,109 clearly states that the only rules and regulations a carrier  
16           with dealer plates is exempt from are economic in nature, namely the  
17           requirements “to obtain a certificate, license or permit from the commission or  
18           file rates, tariffs, annual reports or provide proof of insurance with the  
19           commission.” The statute very clearly does not exempt such a carrier from  
20           regulations having to do with safety, among others.

21           K.S.A. 66-1,129 states the Commission’s jurisdiction with regards to  
22           safety over all motor carriers operating within the state of Kansas. Specifically, it  
23           provides:

24           **“Motor carriers; safety rules and regulations adopted by commission;**  
25           **exceptions:** (a) The commission shall adopt rules and regulations  
26           necessary to carry out the provisions of this act. No public motor carrier of  
27           property, household goods or passengers or private motor carrier of  
28           property shall operate or allow the operation of any motor vehicle on any  
29           property shall operate or allow the operation of any motor vehicle on any  
30           property shall operate or allow the operation of any motor vehicle on any

1 public highway in this state except within the provisions of the rules and  
2 regulations adopted by the commission...”

3  
4 K.S.A. 66-1,129 specifically references hours of service requirements in  
5 stating: “Hours of service for operators of all motor carriers to which this act  
6 applies shall be fixed by the commission.” Failure to keep a drivers record of duty  
7 status is one of the violations alleged against Mr. Lambeth.

8 K.S.A. 66-1,129 provides certain very narrow exemptions to the  
9 Commission’s safety regulations, none of which apply to Mr. Lambeth.

10 Therefore, the Commission does retain jurisdiction over Mr. Lambeth regarding  
11 the enforcement of safety rules and regulations.

12 **Q. How do the Commission’s statutes and regulations apply to Danny Lambeth**  
13 **d/b/a Truck Wholesale of Wellsville, Kansas?**

14 With specific respect to Mr. Lambeth, FMCSR 49 C.F.R. § 390.5, as adopted by  
15 K.A.R. 82-4-3f, defines “private motor carrier” as, “a person who provides  
16 transportation of property or passengers, by commercial motor vehicle, and is not  
17 a for-hire motor carrier.”

18 Further, a “Commercial motor vehicle” is defined in K.A.R. 82-4-1(f) as:

- 19 (1) A vehicle that has a gross vehicle weight rating or gross  
20 combination weight rating, or a gross vehicle weight or gross  
21 combination weight, of 4,536 kg (10,001 pounds) or more,  
22 whichever is greater;  
23 (2) a vehicle designed or used to transport more than eight passengers,  
24 including the driver, for compensation;  
25 (3) a vehicle that is designed or used to transport more than 15  
26 passengers, including the driver, and is not used to transport  
27 passengers for compensation; or  
28 (4) a vehicle used in transporting material found by the secretary of  
29 transportation to be hazardous under 49 U.S.C. 5103 and  
30 transported in a quantity requiring placarding according to

1 regulations prescribed by the secretary under 49 C.F.R. Part 172 as  
2 adopted in K.A.R. 82-4-20.

3 **Q. Mr. Hoeme, based on the information in this docket, do you believe that**  
4 **Danny Lambeth d/b/a Truck Wholesale is a motor carrier subject to this**  
5 **Commission's jurisdiction and authority?**

6 A. Yes. Based upon the information in this docket, I have concluded that Danny  
7 Lambeth d/b/a Truck Wholesale is a private motor carrier of property that  
8 operates commercial motor vehicles in intrastate commerce and therefore subject  
9 to the safety rules of the Commission.

10 **Q. Why do you believe Danny Lambeth d/b/a Truck Wholesale is a private**  
11 **motor carrier of property and therefore subject to this Commission's**  
12 **jurisdiction and authority?**

13 A. Mr. Lambeth s a private motor carrier because he utilizes commercial motor  
14 vehicles to tow property, while doing business or procuring business in Kansas.  
15 According to the Kansas Highway Patrol Driver/Vehicle Inspection Report  
16 KSHP02550894 attached to Trooper Weber's testimony, the commercial motor  
17 vehicle operated by Mr. Lambeth had a Gross Vehicle Weight Rating (GVWR) of  
18 48,000 pounds and was pulling a vehicle with a GVWR of 50,000. The combined  
19 vehicle weight ratings of these vehicles exceeds the 10,001 pound threshold to be  
20 classified as a commercial motor vehicle as defined in K.A.R. 82-4-1(f)(1),  
21 additionally the commercial motor vehicle exceeds the exemption in K.S.A. 66-  
22 1,129 (c)(3) because the GVWR was greater than 26,000 pounds. According to  
23 the Inspection Notes in Trooper Weber's report "Driver stated he had purchased  
24 towed unit for truck business." Based on this information the trip towing a truck

1 he had purchased undertaken in furtherance of Mr. Lambeth's business. Mr.

2 Lambeth was therefore acting as a private motor carrier.

3 **Q. Please list the elements necessary for a person or business to be classified as a**  
4 **motor carrier.**

5 A. A "motor carrier" is defined by K.A.R. 82-4-1(z) as "any corporation, limited  
6 liability company, partnership, limited liability partnership, or individual subject  
7 to the provisions of the motor carrier laws of Kansas and under the jurisdiction of  
8 the Kansas Corporation Commission." They must use motor vehicles that meet  
9 the definition of a commercial motor vehicle in the furtherance of a commercial  
10 enterprise; meaning they must conduct or procure business in Kansas. The  
11 specific definition and elements of a private motor carrier are detailed in my  
12 testimony, above.

13 **Q. Does Mr. Lambeth satisfy those elements?**

14 A. Yes. Mr. Lambeth transports property by commercial motor vehicle while  
15 conducting or procuring business in Kansas.

16 Prior to being subject to the Kansas Corporation Commission's  
17 jurisdiction, a business entity must be a motor carrier. As evidenced in Kansas  
18 Highway Patrol Trooper Weber's testimony, Mr. Lambeth was the carrier of  
19 responsibility for the vehicles inspected. As evidenced by the Inspection Notes  
20 on the Driver/Vehicle Examination Report, Mr. Lambeth admitted to be traveling  
21 in commerce in the advancement of his business. As discussed above, the Gross  
22 Combination Vehicle Weight Rating (GCVWR) of the vehicles was 98,000 lbs.  
23 K.A.R. 82-4-1(f)(1) defines a commercial motor vehicle in part as "[A] vehicle

1       that has a gross vehicle weight rating or gross combination weight rating, or a  
2       gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or  
3       more, whichever is greater.” As evidenced by Kansas Highway Patrol Trooper  
4       Weber’s testimony and evidence, and as described in my testimony, the combined  
5       weight of each vehicle inspected meets the regulatory definition of a commercial  
6       motor vehicle.

7               In Kansas, motor carriers are subject to the Kansas Corporation  
8       Commission’s jurisdiction if they are engaged in a commercial enterprise. K.S.A.  
9       66-1,108b gives the Commission the authority and jurisdiction to supervise and  
10      control motor carriers doing business or procuring business in Kansas. Danny  
11      Lambeth d/b/a Truck Wholesale is a business that sells, among other things,  
12      vehicles and vehicle parts. The commercial motor vehicles they use are: (1)  
13      necessary to physically transport the vehicles they tow (i.e. property), (2) engage  
14      in successful commercial operations, and (3) are clearly used in furtherance of  
15      their commercial enterprise. Therefore, Mr. Lambeth satisfies every element  
16      necessary to be considered a private motor carrier.

17   **Q.    Can you explain the differences between a public motor carrier, a for-hire**  
18   **motor carrier, and a private motor carrier?**

19   A.    A public motor carrier and a for-hire motor carrier is a person or business that  
20   holds itself out to transport the property of others for compensation. “Public” and  
21   “for-hire” denote the same type of operation, and the classification is used  
22   interchangeably. A private motor carrier only transports their *own* property or  
23   supplies, and does not hold themselves out for-hire. Aside from those differences,



1 they remain subject to identical commercial motor vehicle and commerce  
2 requirements described above.

3 **Q. Despite those differences, are public motor carriers, for-hire motor carriers,**  
4 **and private motor carriers subject to the Commission's authority and**  
5 **jurisdiction?**

6 A. Yes.

7 **Q. What is your understanding of Danny Lambeth d/b/a Truck Wholesale's**  
8 **reasons for requesting this hearing?**

9 A. It appears that Mr. Lambeth is contesting violations that were identified during  
10 the January 3, 2017, routine motor carrier inspections, in addition to civil  
11 penalties that were assessed as a result of those same inspections. The following  
12 civil penalties were documented in the Kansas Corporation Commission's Invoice  
13 No. H000566219:

14 1. 393.71H10 – No/Improper safety chains for towbar - \$150.00;

15 1. 393.41 – No parking brake - \$150.00;

16 2. 393.75A – Flat tire or fabric exposed - \$150.00;

17 3. 393.9TS – Inoperative Turn Signal – \$150.00; and

18 4. 395.8A – No drivers record of duty status – \$250.00.

19 A true and correct copy of the Kansas Corporation Commission's Invoice  
20 No. H000566219 is attached to this testimony as Hoeme Attachment "A."

21 **Q. Based on your experience with the Commission policies and practices as it**  
22 **applies to the issuance of civil penalties, do you believe the assessment of the**

1           **recommended penalty is fair and consistent with Kansas law and**

2           **Commission practices?**

3    A.     Yes.


4    **Q.     Does this conclude your testimony?**

5    A.     Yes

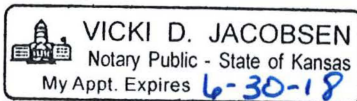
STATE OF KANSAS                     )  
  ) ss.  
COUNTY OF SHAWNEE            )

**VERIFICATION**

Mike Hoeme, being duly sworn upon his oath deposes and states that he is the Director for the Transportation Division of the Kansas Corporation Commission of the State of Kansas, that he has read and is familiar with the foregoing *Direct Testimony*, and attests that the statements contained therein are true and correct to the best of his knowledge, information and belief.

  
\_\_\_\_\_  
Mike Hoeme  
Director of Transportation  
State Corporation Commission of the  
State of Kansas

Subscribed and sworn to before me this 20<sup>th</sup> day of July, 2018.



  
\_\_\_\_\_  
Notary Public

My Appointment Expires: June 30, 2018

# **Hoeme Attachment “A”**



Shari Feist Albrecht, Chair  
Jay Scott Emler, Commissioner  
Pat Apple, Commissioner

Sam Brownback, Governor

## NOTICE OF VIOLATION(S)

January 5, 2017

DANNY G LAMBETH D/B/A TRUCK WHOLESALE

WELLSVILLE, KS 66092-9803

Re: Roadside Driver/Vehicle Examination Report No. KSHP02550894

This is a Notice of Violation(s) of Kansas Motor Carrier Safety Statutes and/or Rules and Regulations discovered during a roadside inspection conducted by the Kansas Highway Patrol.

The Kansas Highway Patrol inspected vehicle A46298, on January 3, 2017, and discovered 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. The civilly assessed violation(s) are set out in the attached invoice along with the fine(s) assessed.

You have thirty (30) days from the date of this letter to pay the fine amount as indicated in the enclosed invoice or thirty (30) days from the date of this letter to submit a challenge as described below. Failure to address this matter may negatively impact your KCC operating authority or result in the issuance of an Out-of-Service Order in the State of Kansas. You have the following options:

1. Pay the fine amount shown on the enclosed invoice: H000566219.
2. If you contest the violation(s) and/or fine(s) you may first submit a challenge to:

Kansas Highway Patrol  
Motor Carrier Safety Assistance Program (MCSAP)  
700 SW Jackson, Suite 704  
Topeka, Kansas 66603  
(785) 296-8157 fax (785) 296-2858

In your "challenge", please specifically describe your contested issues. The KHP will review your issues and either grant, modify or dismiss your challenge.

3. 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 hearing request must be in writing and received within 15 days of the close of the challenge, and forwarded to the Kansas Highway patrol at the above address.

Failure to pay will result in the carrier being in default. Default status prohibits changes to KCC authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

###

**KANSAS CORPORATION COMMISSION**

Kansas Corporation Commission  
Transportation Division  
1500 SW Arrowhead Road  
Topeka, Kansas 66604-4027  
(785) 271-3145  
FEIN: 48-1124839

**INVOICE**

DANNY G LAMBETH D/B/A TRUCK WHOLESale

WELLSVILLE, KS 66092-9803

Invoice Date: January 5, 2017

Invoice Number: H000566219

Due Date: February 4, 2017

**Power Unit Identification at Time of Inspection:**

Unit #	Unit Make	Unit License	VIN	License Number	Company ID
1	FRHT		16298		1
2	MAHA				

Unit	Violation	Violation Description	Penalty
1	393.71H10	No/Improper safety chains for towbar	150.00
1	393.75A	Flat tire or fabric exposed	150.00
2	393.9TS	Inoperative turn signal	150.00
	395.8A	No drivers record of duty status	250.00
Total Due:			\$700.00

Please return this invoice with your payment, payable to the  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027  
Fax: (785) 271-3124

Failure to pay as provided in the Notice of Violation will result in the carrier being in default. Default status will prohibit carriers from making changes to KCC authority, including but not limited to adding vehicles, name changes or renewal of authority, until the fine has been paid or the matter is resolved.

Payment options: check, money order or credit card

Circle type of credit card: Visa, MasterCard, Discover or American Express

Card Holder Name \_\_\_\_\_

Credit card number: \_\_\_\_\_ Expires: Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Please direct questions regarding the violation(s) and/or assessment to the

# KANSAS CORPORATION COMMISSION



Kansas Corporation Commission  
Transportation Division  
1500 SW Arrowhead Road  
Topeka, Kansas 66604-4027  
(785) 271-3145  
FEIN: 48-1124839

## INVOICE

DANNY G LAMBETH D/B/A TRUCK WHOLESAL  
22640 PLEASANT VALLEY RD  
WELLSVILLE, KS 66092-9803

Invoice Date: January 5, 2017  
Invoice Number: H000566219  
Due Date: February 4, 2017

Please return this invoice with your payment, payable to the  
Kansas Corporation Commission  
1500 SW Arrowhead Road  
Topeka, KS 66604-4027  
Fax: (785) 271-3124

Kansas Highway Patrol, MCSAP at (785) 296-8157.

## CERTIFICATE OF SERVICE

17-GIMM-408-KHP

I, the undersigned, certify that a true and correct copy of the above and foregoing Direct Testimony of Mike Hoeme on Behalf of the Kansas Corporation Commission was served via electronic service and via certified mail, return receipt requested this 20th day of July, 2018, to the following:

DANNY G. LAMBETH  
D/B/A TRUCK WHOLESale  
PO BOX 501  
22640 PLEASANT VALLEY RD  
WELLSVILLE, KS 66092  
Fax: 913-262-8155  
truckwholesale@gmail.com

MICHAEL DUENES, ASSISTANT GENERAL COUNSEL  
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1500 SW ARROWHEAD RD  
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Fax: 785-271-3354  
a.latif@kcc.ks.gov

  
\_\_\_\_\_  
Vicki Jacobsen