



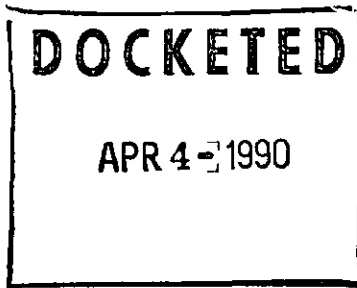
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P. O. BOX 3265, HARRISBURG, Pa. 17120

February 8, 1990

IN REPLY PLEASE
REFER TO OUR FILE

A. 00106803
F. 1, Am-B

J. Bruce Walter, Esquire
P.O. Box 1146
410 North Third Street
Harrisburg, PA 17108-1146



Application of KLEINS' BUS SERVICE - Petition for Reconsideration

Dear Sir:

This is to advise you that an Order has been adopted by the Commission in public meeting held February 1, 1990 in the above entitled proceeding.

Very truly yours,

Jerry Rich, Secretary

EMD
Certified Mail

KLEINS' BUS SERVICE
P.O. Box 246
Route 422
Douglasville, PA 19518

DOCKETED

APR 4 1990

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

Public Meeting held February 1, 1990

Commissioners Present:

Bill Shane, Chairman
William H. Smith, Vice Chairman
Joseph Rhodes, Jr., Commissioner
Frank Fischl, Commissioner
David W. Rolka, Commissioner



Kleins' Bus Service, Douglassville,
PA; Petition for Reconsideration.

Docket No.
A-00106803, F.1, Am-B

J. Bruce Walter for Petitioner.

O R D E R

BY THE COMMISSION:

On November 19, 1987, Kleins' Bus Service (Kleins') filed an application at A-00106803, F.1, Am-B, for an amendment to its common carrier certificate requesting the right to transport, as a common carrier, by motor vehicle, groups and parties of persons on a non-exclusive basis for special excursions and tours or sightseeing trips, for Travel Center, Inc., between the facilities owned or utilized by Boscov's Department Stores, located in West Lebanon Township, Lebanon County; Norwegian Township, Schuylkill County; Monroe Township, Snyder County; city of Wilkes-Barre and Township of Hazle, Luzerne County; Hampden Township, Cumberland County; Lower Paxton Township, Dauphin County; city of Lancaster, Lancaster County; and from said facilities to points in Pennsylvania, and return. Kleins' restrictively amended the application limiting the proposed service to excursions, tours and trips for which Travel Center, Inc. has sold individual tickets. The eleven certificated carriers withdrew their protests upon Kleins' restrictive amendment to its application.

By Order entered July 10, 1989, this Commission denied the application at A-00106803, F.1, Am-B. The reasoning for the denial was that the amended authority sought by Kleins' would abrogate the role of a broker to search out the appropriate carrier. We stated that it would not be in the public interest to allow a carrier to hold authority to transport for a broker. Also, in this instance, the public would be required to utilize the services of a specific broker before the carrier's services could be obtained. Thus, the application was found not to be in

the public interest.

On July 17, 1989, Kleins' filed a Petition for Reconsideration of our July 10, 1989 Order. Kleins' believes that the authority sought would not limit the operations of Travel Center, Inc., a travel agency/broker, but merely supplement its existing service. Kleins' states that no contractual arrangement exists which would limit Travel Center, Inc. to providing service only through Kleins'. Accordingly, Klein's argues that the application ought to be granted as amended. In the alternative, Kleins' requests that the Commission deny the legality of the amendment and consider the unamended application.

Protestants, Rohrer Bus Service, B.K.W. Coach Lines, Inc., R & J Transportation Inc., Wolf's Bus Lines, Inc., Capitol Bus Company, Capitol International Tours, Inc., Conestoga Tours, Inc., Frank Martz Coach Company, Overland Coach Service, Inc., and Penn Highway Transit Company replied to Kleins' petition for reconsideration. They asserted that the amended application must proceed before this Commission, since protestants withdrew their protests in reliance on the restrictive amendment.

The Public Utility Code grants the Commission broad discretionary powers concerning the reconsideration, amendment, rescission, or modification of its orders; such discretion is limited only by the due process considerations of providing notice and an opportunity to be heard by the parties. Pennsylvania Public Utility Commission v. Yellow Cab Co., 51 Pa. P.U.C. 149 (1977). In deciding reconsideration matters, we look to new or novel arguments not previously heard or considerations which appear to have been overlooked or not addressed. Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553, 51 P.U.R.4th 284(1982).

Nothing in this proceeding persuades us that our rejection of the restrictive amendment was erroneous. We do not agree that restricting a carrier's group and party service to arrangements made exclusively by a specific broker is in any way beneficial to the public. To the contrary, it carries with it potential for a shift in priorities for the broker and interposes a required middleman for the public. These factors are not countered by any other considerations of record.

We will consider the application as originally filed. As to the protestants' arguments regarding our ability to consider the application without the stipulated amendment, when stipulations are agreed to in a proceeding, the protestants withdraw before a final decision at their own peril. Re Eagle Courier and Limousine Service, Inc., 57 Pa. P.U.C. 404 (1983). Since protestants voluntarily withdrew from this proceeding, they cannot now object if the Commission decides to reject the

stipulation as against the public interest. Glenside Suburban Radio Cab, Inc., v. Pennsylvania Public Utility Commission, 49 Pa. Commonwealth Ct. 523, 411 A.2d 874 (1980).

Discussion and Findings:

Kleins' Bus Service Inc. sought by the instant application to expand its current group and party operations to include the transportation of groups and parties of persons between the facilities owned or utilized by Boscov's Department Stores located in West Lebanon Township, Lebanon County; Norwegian Township, Schuylkill County; Monroe Township, Snyder County; city of Wilkes-Barre and Township of Hazle, Luzerne County; Hampden Township, Cumberland County; Lower Paxton Township, Dauphin County; city of Lancaster, Lancaster County, and from said facilities, to points in Pennsylvania and return. Although it may appear otherwise, this is an extremely broad authority request.

Kleins' operates from facilities located in Douglassville, Berks County. To provide transportation, the applicant has available twenty-eight coach buses and twenty school buses. Employed by Kleins' are nine full-time coach drivers and thirteen part-time coach drivers.

As a certificated group and party carrier in both intrastate and interstate commerce, the applicant provides tours, special excursions and sight-seeing type services. Currently, services include transportation, the arranging of rooms, accommodations, entrance fees to attractions and the arranging of mail.

The applicant is currently authorized to render group and party service between points in portions of Berks County, Chester County, Montgomery County and Lancaster County, and from specifically named points in the four counties to points in Pennsylvania, and return. The applicant is now seeking to expand the number of municipalities in the four counties it can currently serve.

Ike Matza, president of Travel Center, Inc., states in support of the pending application that Travel Center, Inc. is a travel agency/broker. The broker's license was issued December 12, 1975, and as amended currently authorizes the broker to arrange transportation of persons and their baggage from points in the counties of Berks, Schuylkill, Lebanon, Lancaster, Cumberland, Dauphin, Luzerne and Snyder, to points in Pennsylvania and vice versa.

Travel Center, Inc. utilizes transportation services of the applicant on an interstate basis. These tours originate at stores owned or utilized by Boscov's Department Stores, of which

Travel Center, Inc. is affiliated. Boscov's Stores are located in West Lebanon Township, Lebanon County; Norwegian Township, Schuylkill County; Monroe Township, Snyder County; city of Wilkes-Barre and Township of Hazle, Luzerne County; Hampden Township, Cumberland County; Lower Paxton Township, Dauphin County; and city of Lancaster, Lancaster County. Destinations would be any point in Pennsylvania.

Evelyn L. Gibson, a resident of Shoemakersville, PA, supports the application as an individual and also on behalf of a group of 200 people. She states that she has used Kleins' in the past and has had no complaints. She proposes to use Kleins' a few times per year on trips originating in Berks County to dinner theatres, Philadelphia, lakes and the Poconos.

Wayne R. Weidner is president and chief operating officer of the National Bank of Boyertown, Boyertown, Berks County, and has entered a supporting verified statement on behalf of 350 employees who propose to take twelve trips annually with Kleins' on trips originating in Berks County to Pittsburgh, Philadelphia and the Poconos. His employees and customers continually request Kleins' for bus service.

John J. Stevenson is co-owner and treasurer of Berkshire Travel Agency, Inc., Berks County, and has entered a verified statement on behalf of his business. He stated that in the past, he has encountered problems with another bus company. He proposes that his business would use Kleins' for 50 to 100 trips originating in Berks County to the Poconos, Pittsburgh, Philadelphia and Allentown. He states that competition would bring lower rates and better service.

Thomas E. Roberts is president of Traveltime, Inc., in Berks County and has entered a verified statement on behalf of his three employees. He stated that he has encountered problems with availability of motor coaches with other local bus companies. He stated that he believes that increased bus service is warranted due to the increased demand for charter/vacation travel. He also stated that he proposes to use Kleins' for 20 trips per year on trips originating in Berks County to Lancaster, the Pocono Mountains, Gettysburg, Hershey and Philadelphia.

Sarah Brubaker is a resident of Mohrsville, Berks County, and a leader of Mohrsville Campfire Girls. She is representing a group of 36 members and proposes to use Kleins' every two years on trips originating in Berks County to Gettysburg, Philadelphia and Harrisburg.

Stanley R. Snyder is a teacher in the Hamburg Area School District, and has entered a supporting witness statement on behalf of 126 people. He proposes to use Kleins' one time per year for ski trips to the Poconos, and field trips originating in

Berks County to Philadelphia and Harrisburg. He states that more options, i.e., bus companies, need to be available to the Hamburg Area School District.

David Nyce is a resident of Morgantown, PA, and is a manager of Pilgrim Tours. He has entered a supporting witness statement on behalf of a group of 1200 to 1800 people. He proposes to take 15 to 20 trips per year originating in Berks County to Pittsburgh, Philadelphia Airport, Erie and the Amtrack Station. He states that Kleins' has a superior well-rounded operation whose drivers are familiar with their needs and will best serve his clients in Northern Berks County.

Linda H. Althouse is a resident of Hamburg, PA, and is a teacher of 110 students. She proposes to use Kleins' once per year to take trips originating in Berks County to Gettysburg and Philadelphia. She states that the rural areas of Northern Berks County would be well served by an efficient company such as Kleins'.

Helene G. Singer, is president of Elan Ltd. d/b/a Singer Travel, and has entered a supporting witness statement on behalf of a group of 1000 people. She proposes to use Kleins' once a month to travel from Berks County to all points in Pennsylvania. She states that another carrier is needed to transport her clients in points in Pennsylvania.

We must point out, however, that we are giving little weight to the statements of Thomas E. Roberts, president of Traveltime, Inc., David Nyce, Manager/Owner of Pilgrim Tours, and Helene G. Singer, president of Elan Ltd., t/d/b/a Singer Travel, as Commission records do not show these three companies licensed as travel brokers for the arrangements of trips within Pennsylvania.

The authority requested is extremely broad, both in geography and in nature. The authority requested would permit Kleins' to transport persons and groups of persons from major shopping malls in central and eastern Pennsylvania to all points in Pennsylvania and return. The evidence submitted for our review does not show a need for the authority requested. The only support aside from brokers revolves around origins in Berks County. This falls far short of the extensive area sought. Kleins' must also show that a need for additional bus service exists in Lebanon County, Schuylkill County, Snyder County, Luzerne County, Cumberland County, Dauphin County and Lancaster County. Kleins' has not demonstrated that a need exists for the service as proposed. Accordingly, the application must be denied. In addition, we would be remiss if we failed to note that we consider it somewhat unartful (albeit clever) for an applicant to negotiate parties out of a case and then, when the stipulation is rejected, suggest that the unamended application

be considered on reconsideration. THEREFORE,

IT IS ORDERED: That the Petition for Reconsideration filed by Kleins' Bus Service on July 17, 1989, is hereby denied.

BY THE COMMISSION,



Jerry Rich
Secretary

(SEAL)

ORDER ADOPTED: February 1, 1990

ORDER ENTERED: February 8, 1990

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
 Put your address in the "RETURN TO" Space on the reverse side. Failure to do this will prevent this card from being returned to you. The return receipt fee will provide you the name of the person delivered to and the date of delivery. For additional fees the following services are available. Consult postmaster for fees and check box(es) for additional service(s) requested.

1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to: <i>A-106803 FI Am B</i>	4. Article Number 044674
<i>J. Bruce Walter Esq.</i>	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Address X	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X <i>Karol Hoff</i>	
7. Date of Delivery <i>FEB - 8 1990</i>	

PS Form 3811, Mar. 1988 * U.S.G.P.O. 1988-212-865 DOMESTIC RETURN RECEIPT

SENDER: Complete items 1 and 2 when additional services are desired, and complete items 3 and 4.
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1. Show to whom delivered, date, and addressee's address. (Extra charge) 2. Restricted Delivery (Extra charge)

3. Article Addressed to: <i>A-106803 FI Am B</i>	4. Article Number 044675
<i>Klein's Bus Service</i>	Type of Service: <input type="checkbox"/> Registered <input type="checkbox"/> Insured <input checked="" type="checkbox"/> Certified <input type="checkbox"/> COD <input type="checkbox"/> Express Mail <input type="checkbox"/> Return Receipt for Merchandise
	Always obtain signature of addressee or agent and DATE DELIVERED.
5. Signature - Address X <i>J. P. Deeseh</i>	8. Addressee's Address (ONLY if requested and fee paid)
6. Signature - Agent X	
7. Date of Delivery <i>2/8/90</i>	

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