

July 29, 1983

SUBJECT: PUC Regulatory Authority over Medical Transportation Services

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SECRETARY'S OFFICE  
Public Utility Commission

TO: Drew DeCandis  
Office of Policy, Planning and Evaluation

FROM: Charles F. Hoffman, Chief Counsel  
Pennsylvania Public Utility Commission



This is in response to your inquiry of July 19, 1983, concerning the Pennsylvania Public Utility Commission's regulatory authority over medical transportation services. You requested the need for clarification over certain issues and framed those issues in five specific questions. This letter will attempt to clarify each question as designated in that memorandum.

1. Does the PUC regulate non-emergency transportation?

The answer to the above question is yes. The Pennsylvania Public Utility Commission does regulate non-emergency medical transportation as long as it does not fall into the exemption set forth in Section 102 of the Public Utility Code, 66 Pa. C.S.A. §102, as interpreted by Chappell v. Pa. P.U.C., 57 Pa. Commonwealth Court 17, 425 A.2d 873 (1981), and further interpreted by Triage, Inc. v. Pa. P.U.C., \_\_\_ Commonwealth Court \_\_\_, 450 A.2d 790 (1982). Section 102 of the Public Utility Code, 66 Pa. C.S.A. §102 exempts from Commission jurisdiction the transportation of injured, ill or dead persons. The Commonwealth Court in Chappell and Triage did find that an ambulance service, transporting a non-ambulatory person in an ambulance, to a medical facility on a non-emergency basis, was within the exemption above-mentioned. The Pennsylvania Public Utility Commission does therefore regulate non-emergency medical transportation within the parameters of these two Commonwealth Court cases.

2. May counties contract with non-PUC certified carriers to provide this type of transportation service?

The Commission exercises jurisdiction over "public utilities," a term defined in the Code to include "corporations" engaged in providing certain defined utility services. 66 Pa. C.S.A. §102. The term "corporation" as defined in the Code expressly excludes "municipal corporations." 66 Pa. C.S.A. §102. "Municipal corporation" is defined broadly in the Code to include

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All cities, boroughs, towns, townships, or counties of this Commonwealth, and also any public corporation, authority or body whatsoever created or organized under any law of this Commonwealth for the purpose of rendering any service similar to that of a public utility.  
66 Pa. C.S.A. §102.

Therefore, a county is exempt from Public Utility Commission regulation, and may provide a transportation system in its legal service area, which would be subject to review in a court of common pleas, not by the Pennsylvania Public Utility Commission. Although the case law is not clear, it seems that where a county contracts for medical paratransit services with a non-PUC certified carrier, the exercise of jurisdiction by the Commission over the transportation services of such contractors would depend upon the extent of direction, supervision and control that is exerted by the county. If the county by contract or otherwise, retains substantial ongoing control over rates, service, service extensions, and service discontinuances of the carrier contracted with, the exempt status of the county would prevail. If not, the service of such contractor would be subject to the PUC regulation.

3. May transit authorities contract with non-PUC certified carriers?

The Commission has taken the position at C-812799, Brocal Corp. (t/a Alert Medical Carriers and Alert Medical Transport), and O'Steen Transportation Corp., Intervenor v. Wheels, Inc., United Transport Systems, Inc. and the Southeastern Pennsylvania Transport Authority (SEPTA) (Order entered June 16, 1983) that this particular transit authority may contract with non-PUC certified carriers to provide paratransit service within its service area. This decision by the Commission, however, has been appealed to the Commonwealth Court.

Counties and transit authorities are both exempt under the Public Utility Law's definition of a "municipal corporation" as quoted above in question no. 2. 66 Pa. C.S.A. §102. The transit authorities derive their specific functions by enabling legislation, and the enabling legislation is not the same for all transit authorities. For instance, SEPTA derives its power from the Pennsylvania Urban Mass Transportation Law, Act of July 10, 1980, P.L. 247, 55 P.S. §600.301, et seq. Whereas the Port Authority of Allegheny derives its authority from the Second Class Port Authority Act, Act of April 6, 1956, P.L. 1414, as amended, 55 P.S. §551, et seq. Because the enabling legislation is not exactly the same for the different transit authorities, there are issues raised that can be interpreted differently depending upon the exact language of the enabling legislation. As mentioned above in regard to question no. 2 involving counties contracting with non-PUC certified carriers, transit authorities contracting with non-PUC certified carriers would also be required to exercise pervasive control over the service and rates of any contractor or sub-contractor, and this could be determined only on a case-by-case basis.

4. Is the Department of Public Welfare as a government entity exempt from PUC regulation? May we contract with private, non-profit, charitable organizations who are not PUC certified to provide service directly or by a contract to medical assistance eligibles?

The Supreme Court in 1968 determined that an instrumentality of the State cannot, by definition, be a public utility. The Supreme Court in Commonwealth v. Merritt-Chapman and S. Corporation, 432 Pa. 584, (1968) stated:

. . . thus, although it would appear that the operation of a turnpike qualifies as a public utility service, the Turnpike Commission can only be classified as a public utility if it is a "person or corporation." The Commonwealth, however, correctly maintains that if the Turnpike Commission is an agency of the State, it is not a "person or corporation" within the Public Utility Code. It is clearly not a corporation, and Public Utility Code §1102(16) defines "person" as individuals, partnerships, or associations other than corporations . . . ." This definition does not include an instrumentality of the State.

Although the Public Utility Code has been amended, the definition of "corporation," "municipal corporation," "person," and "public utility" are still defined in the same way in Section 102 of the Public Utility Code. This case, therefore, seems to indicate that an agency of the State would be exempt from PUC jurisdiction. Although there seems to be no precedent for a departmental agency to provide a public utility service, it seems that the same principles that apply to counties and transit authorities would also apply to an agency since they are all exempt entities. The primary principle being that PUC regulation be effectively replaced with the ongoing control by the agency. Therefore, for the agency to contract with a non-PUC certified carrier providing paratransit service, the agency would be required to retain substantial ongoing control over rates, service, service extensions, etc. of the carrier.

5. If we must contract with certified carriers, must they be certified as a broker in order for them to contract out portions of the service?

As the answers to questions 1 through 4 indicate that counties, transit authorities, and the Department of Public Welfare are all exempt from the Public Utility Commission's jurisdiction, it is likely that your agency would not be required to contract with certified carriers. However, if your agency did contract with certified carriers, which then had occasion to contract out portions of the service, this would not ordinarily require certification as a broker.

Drew DeCandis  
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The foregoing is my personal opinion and is not necessarily binding on the Commission. If you desire further information, please feel free to contact me.

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Applicant's Exhibit  
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STATEMENT OF FINANCIAL CONDITION

ASSETS

Motor vehicle equipment		\$	_____
Buildings and structures		\$	_____
Other property		\$	153,591.00
Cash		\$	226,692.00
Accounts receivable		\$	34,025.00
Notes receivable		\$	_____
Materials and supplies		\$	_____
Other assets (attach schedule)		\$	_____
Total Assets		\$	414,308.00

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LIABILITIES

Mortgages payable		\$	_____
Equipment obligations		\$	84,567.00
Accounts payable		\$	37,252.00
Contracted Services payable		\$	125,490.00
Other liabilities (attach schedule)		\$	_____
Reserve for depreciation - motor vehicles		\$	_____
Reserve for depreciation - buildings & structures		\$	_____
Reserve for depreciation - other		\$	15,359.00
Net worth (individual or partnership)		\$	_____
Capital stock (corporations only)		\$	_____
Surplus (corporations only)		\$	151,640.00
Total Liabilities		\$	414,308.00

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