



DEPARTMENT OF BUSINESS AND INDUSTRY

Attorney General Office
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RE: Requesting an Attorney General Opinion Defining the Parameters of the
Taxicab Authority Board's Authority.

Attorney General Laxalt:

The Taxicab Authority Administration ("Administration") is requesting an Attorney General's Opinion defining the parameters of the Board's authority. Specifically, whether the Board has the authority (1) to make orders under NRS Chapter 706 defining how Administration must regulate the industry and (2) to authorize "alternate routes" under NRS 706.8846, also known as the long haul statute, without the approval of passengers.

The Taxicab Authority is composed of a Board (created under NRS 706.8818) and Administration (created under NRS 706.882). NRS 706.8821 defines that the powers of the Administrator is to regulate the taxicab industry. It provides:

NRS 706.8821 Powers and duties; employees.

1. The Administrator is responsible for the **control and regulation of the taxicab industry** in any county to which NRS 706.881 to 706.885, inclusive, apply and for the **administration of NRS 706.881 to 706.885**, inclusive. (*Emphasis added.*) See NRS 706.8821.

For instance, this includes but is not limited to permitting drivers (NRS 706.8841); conducting administrative hearings (NRS 706.8822); overseeing taximeters (NRS 706.8836) and industry inspections of their taxicab vehicles (NRS 706.8838 and 706.8839); and auditing industry records, including financials, as needed (NRS 706.8829 and 706.883).

In contrast, the legislature carved out a separate and distinct role for the Board under NRS chapter 706. For example, the Board under NRS 706.8819 conducts hearings and makes final decisions regarding taxicab rates, charges, or fares; applications for certificates of public convenience and necessity ("CPCN"); applications for transferring any interest in a CPCN; changes in medallion allocations; and appeals from final decisions of the Administrator made pursuant to NRS 706.8822. Other Board authority includes the

adoption of regulations consistent with NRS 706.881 to 706.885 (NRS 706.8818); annual review of medallions, rates, charges, or fares (NRS 706.8824); and conduct hearings pursuant to NRS 706.885.

The Governor's Office also recognized the distinct and separate responsibilities between the Board and Administration. In the State of Nevada, Governor's Finance Office Division of Internal Audits, Audit Report dated January 2016 ("Audit"), it stated:

In general, the board's function is to adopt regulations for the industry, set rates, allocate taxicabs, and act in an appellate role for decisions made by the administrator on violations of taxicab regulations. The administrator's function is to control the regulatory process. *See State of Nevada Governor's Finance Office Division of Internal Audits, Audit Report, Department of Business & Industry Taxicab Authority, Report No. 16-01, at 6 (2016).*

The Audit critiqued the Board when it overstepped its role by reprioritizing inspection schedules and exposed the State to potential liability in overturning the Administrator's denial of drivers' permits to applicants that failed to meet background checks. *Id. at 7-8.* The Audit concluded the following:

Adhering to statutory roles and responsibilities will allow the authority to function as intended by statute and state administrative code. Board decisions have minimized authority staff work, relied on taxicab industry representation, changed established procedures, and countered decisions made for the welfare and safety of the public. Consequently, board decisions may erode public confidence in the Taxicab Authority's ability to regulate the industry in Clark County.

Statute and state administrative code exist to guide areas of responsibility and accountability. Board decisions that give the appearance of circumventing statutory intent and the professional judgment of staff may prove counterproductive to the authority's mission. ***The authority will work more efficiently and effectively when the board constrains itself to those functions set in statute and state administrative code, and the administrator controls the regulatory process.***

The board and authority staff should adhere to statutory roles and responsibilities in pursuit of its mission to provide for the safety, comfort, and convenience of the taxicab riding public.
(*Emphasis added.*) *Id. at 8-9.*

The Administration and the Board often work together given their differing roles in order to effectively perform their respective duties as outlined by Nevada statute. Based upon these differing roles, the Administration poses the following questions to define the parameters of the Board's authority when taking action during board meetings.

I. Was the Board Acting Beyond Its Authority Provided in NRS 706.881 to 706.885 When It Voted to Mandate the Administration to Release Long Haul Citations Within 24 Hours From Issuance to Taxicab Companies for Their Respective Employees?

During the November 16, 2017 board meeting, the Board voted to have Administration release all long haul citations within a 24 hour period to taxicab owners for their respective employees. *See 11/16/17 Board Meeting Transcripts, Agenda Item 7, time 9:41, p.10* attached hereto as Attachment A. The Board did not require adherence to public records request procedures but rather established an administrative procedure to provide taxicab companies with these long haul citations within 24 hours from issuance. Board agenda item number 7 stated, “Discussion and Possible Action Regarding Establishing a Policy to Provide Taxi Companies with Citations and Possibly Providing Related Discovery as a Proactive Efficient Approach to Curtail Long Hauling, Including Approving as to Form and Content Motions to Intervene Under NAC 706.894 – *FOR POSSIBLE ACTION.*” *See Board Notice and Agenda for the 11/16/17 Board Meeting.* The Board by taking action created a mandate for Administration despite Administration’s objection and concern that this action exceeded the Board’s statutory authority. *Id. at 9:33, p.7-8.* Even under NRS 706.881(5), any regulations adopted by the Board must be consistent with the provisions of NRS 706.881 to 706.885. Administration questions what statutory authority permits the Board to mandate this procedure when NRS 706.8821 expressly states that the Administrator is responsible for the “regulation of the taxicab industry” and “for the administration of NRS 706.881 to 706.885.” *See NRS 706.8821.*

Administration seeks an Attorney General Opinion defining the parameters of the Board’s authority, and the validity of the Board’s action on agenda item number 7 during the November 16, 2017 board meeting.

II. Is the Board Acting Beyond Its Authority Provided in NRS 706.881 to 706.885 If It Approves “Alternate Routes” Under NRS 706.8846?

Does the Board exceed its authority if it approves “alternate routes” under NRS 706.8846 whether by taking action at a meeting or by adopting regulations to further define exceptions to the long route statute? NRS 706.8846 was recently amended in the 79th Legislative Session in Assembly Bill 487 (“AB487”) where the taxicab industry sought to add language permitting the Taxicab Authority Board (“Board”) to adopt alternate routes. *See AB487 of the 79th (2017) Nevada Legislative Session, Bill as Introduced; Amend. No. 237, Amend. No. 1055, and Amend. No. 1108.* Despite the industry’s efforts, the legislature’s final adoption of AB487 specifically struck any language authorizing the Taxicab Authority to approve “different routes” under the long haul statute. The legislature, despite its opportunity, declined to adopt language that permitted drivers to take anything but the *most direct route to a passenger’s destination absent the permission of the passenger.* The language in NRS 706.8846 emphasizes passengers’ right to choose how to get to their destination(s). NRS 706.8846, as amended, provides:

With respect to a passenger’s destination, [a] *unless a different route is requested or agreed to by the passenger, a driver shall take the most direct route when transporting a passenger to his or her destination. A driver shall not:*

1. Deceive or attempt to deceive any passenger who rides or desires to ride in the driver's taxicab.
 2. Convey or attempt to convey any passenger to a destination other than the one directed by the passenger.
 3. **[Take] Except as otherwise provided in this subsection, intentionally take** a longer route to the passenger's destination than is necessary. **[, unless specifically requested so to do by the passenger.]**
 4. Fail to comply with the reasonable and lawful requests of the passenger as to speed of travel and route to be taken.
- See AB487 of the 79th (2017) Nevada Legislative Session, Sec 13.*

Does this language as amended create any Board authority to adopt regulations allowing approval of different routes under NRS 706.8846 without the prior request or agreement by a passenger?

Second, the Taxicab Authority Administration asks whether the meaning of the "most direct route" permits the Board to adopt alternate routes; thus, deciding for passengers permissible routes under NRS 706.8846. Does the definition of this phrase ("most direct route") include the consideration of time and money, factors that change from moment to moment, or only permit drivers to take the route shortest in distance to a passenger's destination unless the passenger requests or agrees to a different route? Administration interprets NRS 706.8846 to allow for deviations from the most direct route but **only** with the request or approval of the passenger. Interpretation needs to be consistent in order for Administration to be able to apply this statute and determine when or if a violation has occurred.

Lastly, the Taxicab Authority Administration asks whether subsection 3 of NRS 706.8846 permits drivers to decide what constitutes necessity that allows deviation from the most direct route. Is necessity limited to an event outside the driver's control such as a detour, road closure, or something that forces a driver from the most direct route in distance? Or does necessity include *any event* such as routine traffic congestion, concert, convention that may affect time and/or the cost of the ride to justify a driver deviating from the most direct route? Do routine events and/or traffic congestion rise to the definition of "than is necessary" to justify drivers to make the route choice instead of passengers?

All three questions presented regarding the long route statute remove the route choice from the passenger and allow this decision to be made by either the driver or the Board. The Administration seeks clarification in order to write regulatory language consistent with Nevada statutes. These interpretations will directly affect the agency's creation of regulation(s) in response to amendments within AB487.

The Department asks for an Attorney General Opinion answering the two (2) issues presented above.

Sincerely,

C.J. Manthe, Director
Nevada Department of Business and Industry