DATE:    July 11, 1996

SUBJECT:  Nebraska Attorney General Opinion #96021 Regarding
          Jurisdiction of Nebraska Public Service Commission
          Over Taxicab Service Between Epply Airport and
          Omaha, Nebraska

REQUESTED BY:  Rod Johnson, Chairman
                Nebraska Public Service Commission

WRITTEN BY:  Don Stenberg, Attorney General

It has come to my attention that there is some disagreement
concerning the meaning of the above referenced Attorney General's
opinion. The language of that opinion which is in dispute is, as
I understand it, as follows:

[W]e do not think that, if Petitioner applied for
authority to operate in this manner, the Commission could
prohibit Petitioner from engaging in common carriage activity
over this route, as this would place an improper burden on
interstate commerce. Based on the decision in Broward County,
however, we believe that the Commission would be justified in
undertaking regulation of Petitioner's activities with regard
to matters such as "safety, operational fees, procedural
safeguards, restrictions on the carrier to operations within
its exceptional status, and insurance."

I can see where this language could be interpreted in two
ways. On the one hand, it might be argued that this language says
that in no event could the Public Service Commission prohibit a
taxicab company on a route from Epply Airfield to Omaha from
engaging in transportation activity.
I did not understand that language to mean that. If the Commission lacked the authority to prohibit the transportation of such passengers, then how could it enforce any requirement to pay fees, meet safety requirements, and so on?

My interpretation of the language of our opinion, which I understand is not shared by all of the lawyers involved in this issue, is that the Commission cannot deny authority to engage in this business merely because a company operates from an out-of-state location. In my view, the Commission may impose the same requirements and may refuse to grant operational approval on the same basis that the Commission would refuse to grant any Nebraska operator the right to conduct this business.

Because of the interstate nature of the transportation involved, the Commission would have a burden, in the event of litigation in federal court, to establish that a decision to deny authority was based on legitimate regulatory issues (not on the out-of-state location of the applicant), was not discriminatory, and did not impose an impermissible burden on interstate commerce.

I hope this clarifies for the Commission my view concerning this matter.

Yours truly,

[Signature]

Don Stenberg
Attorney General

01-02-01