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No. 22-001



SUBJECT: Authority of the Nebraska Public Service Commission to Adopt a Regulation Requiring Licensed Carriers of Railroad Employees to Maintain Uninsured and Underinsured Motorist Coverage in Excess of the Maximum Amounts Established in Neb. Rev. Stat. § 44-6408(2) (2010).

REQUESTED BY: Dan Watermeier, Chair
Nebraska Public Service Commission

WRITTEN BY: Douglas J. Peterson, Attorney General
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INTRODUCTION

The Uninsured and Underinsured Motorist Coverage Act provides that insurers are not required to provide uninsured and underinsured motorist ["UM/UIM"] coverage at "limits higher than one hundred thousand dollars per person and three hundred thousand dollars per accident." Neb. Rev. Stat. § 44-6408(2) (2010)). The Nebraska Public Service Commission's ["Commission"] current regulations require that, in addition to minimum liability insurance, "all carriers of passengers will also carry uninsured and underinsured motorist coverage with a minimum limit of one hundred thousand (\$100,000) per person, three hundred thousand (\$300,000) aggregate per accident coverage." 291 Neb. Admin. Code, ch. 3, § 006.02.

In 2020, the Legislature created a new category of motor carriers engaged in certain transportation of property or persons under a "license." 2020 Neb. Laws LB 461 (codified at Neb. Rev. Stat. §§ 75-109.01, 75-118, 75-124, 75-156, 75-301, 75-302, 75-303, 75-304.03, 75-304.04, 75-307, 75-308, and 75-311 (Cum. Supp. 2020)). Motor carriers operating under a "license" issued by the Commission include "a motor carrier

engaged in the for-hire, intrastate transportation of (a) household goods under section 75-304.03 or (b) employees of a railroad carrier engaged in interstate commerce to or from their work locations under section 75-304.04.” Neb. Rev. Stat. § 75-302(12) (Cum. Supp. 2020). These licensed motor carriers are excluded from the definitions of “regulated motor carrier,” “common carrier,” and “contract carrier.” Neb. Rev. Stat. § 75-302(6), (7), and (19) (Cum. Supp. 2020). Licensed motor carriers are, however, required “to comply with the requirements of section 75-307.” Neb. Rev. Stat. §§ 75-304.03(2) and 75-304.04(2) (Cum. Supp. 2020). Section 75-307 requires certificated intrastate motor carriers, including common and contract carriers, as well as licensed motor carriers as defined in § 75-302(12), to “comply with reasonable rules and regulations” of the Commission, including certain insurance and bond requirements.

You note the Commission is currently updating its Motor Carrier Rules and Regulations, and has been asked by interested parties to consider adopting a rule requiring UM/UIM coverage for licensed carriers of railroad employees in an amount in excess of the maximum amounts established under § 44-6408(2). You have requested our opinion whether the Commission has authority to adopt such a rule.

ANALYSIS

A. Scope of the Commission’s Jurisdiction Over Licensed Motor Carriers.

Neb. Const. art. IV, § 20, provides:

There shall be a Public Service Commission....The powers and duties of such commission shall include the regulation of rates, service and general control of common carriers as the Legislature may provide by law. But, in the absence of specific legislation, the commission shall exercise the powers and perform the duties enumerated in this provision.

This constitutional provision grants the Commission inherent authority to regulate common carriers. *See, e.g., State ex rel. Spire v. Northwestern Bell Tel. Co.*, 233 Neb. 262, 445 N.W.2d 284 (1989) In the absence of specific legislation, the powers of the Commission to regulate common carriers are absolute and unqualified. *Myers v. Blair Tel. Co.*, 194 Neb. 55, 230 N.W.2d 190 (1975); *State ex rel. State Railway Comm’n v. Ramsey*, 151 Neb. 333, 37 N.W.2d 502 (1949).

The Nebraska Supreme Court has recognized, however, that “the powers enumerated in article IV, § 20, apply only to common carriers.” *Nebraska Public Service Comm’n v. Nebraska Public Power Dist.*, 256 Neb. 479, 491, 590 N.W.2d 840, 848 (1999). “Thus, the [Commission’s] constitutional authority over common carriers does not extend to contract carriers.” *Id.* “In the absence of constitutional authority, an administrative agency has only that power which has been granted to it by the Legislature.” *Id.* “When the Legislature grants the [Commission] jurisdiction over non-common carriers, the [Commission] must exercise such authority within the statutory scheme.” *Id.* *See also In*

re Complaint of Fecht, 216 Neb. 535, 540, 344 N.W.2d 636, 639 (1984) (As public grain warehouses are not “common carriers”, Commission regulation of such warehouses “must be exercised completely within the statutory scheme....”).

Licensed motor carriers are specifically excluded from the definition of “common carrier.” Neb. Rev. Stat. § 75-302(6) (Cum. Supp. 2020). As licensed motor carriers are not subject to regulation under the Commission’s constitutional authority over common carriers, the Commission can only exercise those powers granted by statute to regulate licensed motor carriers.

B. The Commission’s Statutory Authority to Impose Uninsured and Underinsured Motorist Insurance Requirements on Licensed Motor Carriers of Railroad Employees.

The Commission’s authority to prescribe rules and regulations imposing insurance requirements on motor carriers is found in Neb. Rev. Stat. § 75-307 (Cum. Supp. 2020). Subsection (1) of § 75-307 provides:

Certificated intrastate motor carriers, including common and contract carriers, any motor carrier transporting household goods under a license issued pursuant to section 75-304.03, and any motor carrier transporting employees of a railroad carrier under a license issued pursuant to section 75-304.04 shall comply with reasonable rules and regulations prescribed by the commission governing the filing with the commission, the approval of the filings, and the maintenance of proof at such carrier's principal place of business of surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, in such reasonable amount as required by the commission, conditioned to pay, within the amount of such surety bonds, policies of insurance, qualifications as a self-insurer, or other securities or agreements, any final judgment recovered against such motor carrier for bodily injuries to or the death of any person resulting from the negligent operation, maintenance, or use of motor vehicles under such certificate, permit, or license or for loss or damage to property of others. No certificate or permit shall be issued to a common or contract carrier, no license shall be issued to a motor carrier transporting household goods under section 75-304.03 or employees of a railroad carrier under section 75-304.04, nor shall such certificate, permit, or license remain in force unless such carrier complies with this section and the rules and regulations prescribed by the commission pursuant to this section. (emphasis added).

In Op. Att’y Gen. No. 15-003 (March 4, 2015), we considered whether the Commission was authorized to adopt a regulation requiring minimum UM/UIM coverage for motor carriers of railroad train crews higher than the maximum amounts established in Neb. Rev. Stat. § 44-6408(2). We concluded that the Commission did not have authority to require contract carriers to carry UM/UIM coverage. We reasoned that, as the Commission’s jurisdiction to regulate contract carriers is established solely by statute, and § 75-307 provided only that the Commission could adopt regulations to require

reasonable amounts of insurance to cover liability for negligent operation, maintenance, or use of motor vehicles by motor carriers, the Commission was not permitted to impose any requirement that contract carriers provide UM/UIM coverage, as it did not involve insurance providing benefits as a result of negligence of the regulated carrier. *Id.* at 9. We did, however, recognize that the Commission, in exercising its constitutional authority to regulate common carriers, could require common carriers to obtain UM/UIM coverage, but only in amounts not exceeding the maximums established in § 44-6408(2). *Id.* at 9-10. We concluded that the specific provisions of § 44-6408(2) controlled over any general authority possessed by the Commission to require UM/UIM coverage for common carriers, and that the Commission was thus limited in requiring such coverage by the maximum coverage amounts in § 44-6408(2). *Id.* at 10.

After issuance of this opinion, the Legislature enacted 2015 Neb. Laws LB 629. The primary focus of LB 629 was the establishment of a mechanism to regulate the operation of Transportation Network Companies. LB 629, §§ 2-22. (*codified at* Neb. Rev. Stat. §§ 75-323 to 75-343 (2018)). LB 629 also, however, amended Neb. Rev. Stat. § 75-304, which provides for the Commission's establishment of classifications or groups of motor carriers, by adding the following new subsection: "Contract carriers shall obtain and maintain uninsured and underinsured insurance coverage for each passenger in each motor vehicle in minimum amounts to be established by the commission." LB 629, § 24 (*codified at* Neb. Rev. Stat. § 75-304(2) (2018)). In Op. Att'y Gen. No. 15-009 (June 19, 2015), we concluded that, while LB 629 authorized the Commission to establish minimum amounts of UM/UIM insurance coverage for contract carriers, the maximum UM/UIM coverages in § 44-6408(2) applied to limit the amounts of UM/UIM coverage the Commission could establish for contract carriers.

Consistent with our earlier opinions, the Commission adopted a regulation requiring that, in addition to the minimum liability insurance coverage required by Rule 003.03, all carriers of passengers must carry UM/UIM coverage at the maximum coverages allowed in § 44-6408(2). 291 Neb. Admin. Code, ch. 3, § 006.02. In 2020, however, the Legislature created a new category of motor carriers engaged in certain transportation of property or persons under a "license." 2020 Neb. Laws LB 461 (*codified at* Neb. Rev. Stat. §§ 75-109.01, 75-118, 75-124, 75-156, 75-301, 75-302, 75-303, 75-304.03, 75-304.04, 75-307, 75-308, and 75-311 (Cum. Supp. 2020)). Motor carriers operating under a "license" issued by the Commission include "a motor carrier engaged in the for-hire, intrastate transportation of. . . (b) employees of a railroad carrier engaged in interstate commerce to or from their work locations under section 75-304.04. . . ." Neb. Rev. Stat. § 75-302(12) (Cum. Supp. 2020). Licensed motor carriers are excluded from the definitions of "regulated motor carrier," "common carrier," and "contract carrier." Neb. Rev. Stat. § 75-302(6), (7), and (19) (Cum. Supp. 2020). Licensed motor carriers are, however, required "to comply with the requirements of section 75-307." Neb. Rev. Stat. §§ 75-304.03(2) and 75-304.04(2) (Cum. Supp. 2020).

As we explained in our earlier opinion:

Section 75-307(1), by its terms, is limited to the Commission's establishment by regulation of a "reasonable amount" of insurance for regulated motor carriers to provide for recovery of damages against the motor carrier for bodily injury or death resulting from the negligent operation, maintenance, or use of the carrier's motor vehicles. This language limits the Commission to adopting regulations requiring carriers to obtain an insurance policy providing liability insurance to cover bodily injury or death occurring as a result of negligence by the motor carrier in the operation, maintenance, or use of the carrier's motor vehicles. Imposing a requirement that motor carriers maintain UM/UIM automobile insurance, however, does not involve insurance coverage providing benefits as a result of negligent operation of a motor vehicle by a regulated motor carrier.... UM/UIM insurance provides coverage for damages, including bodily injury or death, resulting from the negligence of another driver, and not any negligence attributable to negligent operation, maintenance, or use of the regulated carrier's motor vehicle. Thus, § 75-307(1) provides only for Commission regulations requiring financial responsibility or liability insurance coverage for damages attributable to the motor carrier's negligent operation, maintenance, or use of the carrier's motor vehicles. As UM/UIM insurance coverage is not based on liability of the motor carrier, § 75-307(1) does not, by its plain terms, permit the Commission to impose any requirement for a motor carrier to provide UM/UIM coverage beyond what the carrier is required to provide under the Uninsured and Underinsured Motorist Coverage Act. Op. Att'y Gen. No. 15-003 at 9.

Section 75-307(1), as amended by LB 461, requires certificated intrastate motor carriers, including common and contract carriers, as well as licensed motor carriers as defined in § 75-302(12), to "comply with reasonable rules and regulations" of the Commission, including certain insurance and bond requirements. The insurance coverage requirement authorized in § 75-307(1), however, is still limited to liability insurance coverage for damages attributable to a motor carrier's negligent operation, maintenance, or use of the carrier's motor vehicles. Because UM/UIM insurance coverage is not based on the carrier's liability, § 75-307(1) provides no authority for the Commission to adopt a rule requiring licensed motor carriers to provide UM/UIM insurance coverage.

Further, while § 75-304(2) provides that "[c]ontract carriers shall obtain and maintain uninsured and underinsured motorist coverage for each passenger in each motor vehicle in minimum amounts to be established by the commission," licensed motor carriers transporting railroad employees were specifically excluded from the definition of "contract carrier" by LB 461. Neb. Rev. Stat. § 75-302(7) (Cum. Supp. 2020) (*codifying* 2020 Neb. Laws LB 461, § 6). "Statutory language is to be given its plain and ordinary meaning, and an appellate court will not resort to interpretation to ascertain the meaning of statutory words which are plain, direct, and unambiguous." *Stewart v. Nebraska Dep't of Revenue*, 294 Neb. 1010, 1015–16, 885 N.W.2d 723, 728 (2016). "It is not within the

province of the courts to read a meaning into a statute that is not there or to read anything direct and plain out of a statute.” *Id.* The exclusion of the newly created class of licensed carriers from the definition of contract carrier forecloses the Commission from relying on § 75-304(2) to require licensed carriers to obtain UM/UIM insurance coverage. As no statute currently allows the Commission to require licensed carriers to maintain UM/UIM coverage, the Commission lacks authority to adopt such a requirement by regulation.

The Legislature’s failure to amend § 75-304(2) to include the new category of licensed carriers along with contract carriers in granting authority to the Commission to require UM/UIM coverage may well have been inadvertent and unintentional. We are not, however, free to interpret the statute to expand the Commission’s authority to require licensed carriers to obtain UM/UIM coverage when the Legislature has failed to do so. The Commission may wish to pursue legislation to amend § 75-304(2) to correct this apparent oversight.

Finally, in order for the Commission to be granted authority to require licensed carriers of railroad employees to carry UM/UIM coverage in excess of the amounts contained in § 44-6408(2), or to require a specific amount of coverage greater than those amounts, the amendatory legislation would need to expressly grant such authority. In Op. Att’y Gen. No. 15-009, we pointed out that LB 597, introduced in the 2015 session, included a requirement that contract carriers transporting railroad employees maintain a minimum of \$500,000 UM/UIM coverage for each passenger in each motor vehicle that transported such employees. *Id.* at 3. We noted the omission of a specific amount or maximum of UM/UIM coverage which could be required by the Commission for contract carriers in LB 629 supported the conclusion that the maximum coverage amounts in § 44-6408(2) applied to any UM/UIM coverage for contract carriers established by the Commission. *Id.* Indeed, other states have enacted legislation requiring motor carriers transporting railroad or other employees to carry specific amounts of UM/UIM coverage.¹ Legislation of this type, or which specifically grants the Commission authority to exceed the maximum amounts in § 44-6408(2), is necessary to require licensed carriers transporting railroad employees to obtain UM/UIM insurance coverage in excess of those maximums.

¹ See, e.g., Minn. Stat. § 221.0255 subd. 4(b)(5) (Requiring motor carrier transporting railroad employees to “maintain uninsured and underinsured coverage in a minimum amount of \$1,000,000.”); 625 Ill. Comp. Stat. Ann. § 5/8-101(c) (“As part of proof of financial responsibility, a contract carrier transporting employees, including, but not limited to, railroad employees, in the course of their employment is required to verify hit and run and uninsured motorist motor vehicle coverage,..., and underinsured motor vehicle coverage,..., in a total amount of not less than...\$500,000 per passenger.”); La. Stat. Ann. § 32.900.1.C. (For-hire person, firm, corporation, or contract carrier using vehicles designed to carry fifteen or fewer passengers to transport passengers employed as workers by a railroad company in the course of their employment required to maintain “uninsured and underinsured motor vehicle coverage in a total amount of not less than five hundred thousand dollars per passenger.”); Wash. Rev. Code Ann. § 81.61.050(3)(a) (“The commission must require insurance coverage for each [railroad] contract crew transportation vehicle that satisfies the following minimum amounts:... (ii) Uninsured and underinsured motorist coverage of one million dollars.”).

CONCLUSION

Section 75-307(1), while applicable to common, contract, and licensed carriers, only authorizes the Commission to adopt rules requiring liability insurance coverage for damages attributable to a motor carrier's negligent operation, maintenance, or use of the carrier's motor vehicles. Because UM/UIM insurance coverage is not based on the carrier's liability, § 75-307(1) provides no authority for the Commission to adopt a rule requiring licensed motor carriers to provide UM/UIM insurance coverage. Further, as licensed carriers engaged in this activity are now excluded from the definition of "contract carrier," the Commission has no authority to require licensed carriers to maintain UM/UIM coverage under Neb. Rev. Stat. § 75-304(2) (2018). Because no statute authorizes the Commission to require licensed carriers to maintain UM/UIM coverage, the Commission necessarily lacks authority to adopt a rule requiring licensed carriers of railroad employees to maintain UM/UIM coverage exceeding the maximum amounts in § 44-6408(2).


Very truly yours,

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Approved by:



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