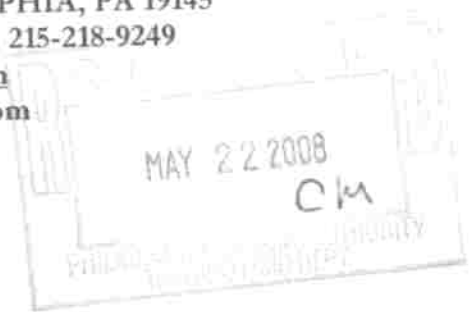


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May 22, 2008



Charles Milstein, Assistant Director  
Philadelphia Parking Authority  
2415 S. Swanson Street  
Philadelphia, PA 19148

RE: Proposed Regulations

Dear Mr. Milstein:

Enclosed please find my comments to the proposed regulations.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Michael S. Henry".

MICHAEL S. HENRY

the responsibility and authority to regulate taxicab and limousine service as follows: (1) between points in the City of Philadelphia; (2) from any point in Philadelphia to any point in this Commonwealth; (3) from any point in this Commonwealth to any point in Philadelphia if the request for service for such transportation is received by call to its centralized dispatch system; and (4) from any point in Philadelphia to any point outside this Commonwealth as a continuous part of a trip. The General Assembly has also charged PPA with the responsibility and authority to regulate taxicab and limousine drivers who provide such service and dispatch companies that provide radio service to taxicabs and limousines that provide such service.

We recognize that the Commonwealth Court ruled that the PPA is not a “Commonwealth agency” in its recent decision in Blount v. PPA, 920 A.2d 215 (Pa.Commonwealth 2007), however, the issue remains unresolved as that matter is currently on appeal to the Pennsylvania Supreme Court. Notwithstanding the Commonwealth Court’s decision, we reserve the right to challenge the legality of the PPA’s regulations with the filing of these comments.

Section 22(2) of Act 94 provides: “Regulations, orders, programs and policies of the [PUC] under [the Medallion Act] and concerning limousine service regulation within [Philadelphia] shall remain in effect until specifically amended, rescinded or altered by the [PPA].” PPA has the authority under 53 Pa.C.S.A. §5722 and §5742 to “prescribe such rules and regulations as it deems necessary to govern the regulation of taxicabs [and limousines] within cities of the first class.” Because the PPA is an independent commission of the Commonwealth, it is subject to and must comply with the Commonwealth Documents Law, 45 P.S. §§1102, 1201-1208, 1602; 45 Pa.C.S. §§501 et

seq., and regulations issued thereunder by the Joint Committee on Documents, when it promulgates such rules and regulations.

When an agency, such as the PPA, undertakes the executive function of administering laws enacted by the legislature, which set out policy in varying degrees of detail, it promulgates "rules" and "regulations," which ideally constitute understandable, reasoned, public statements of a method of operation chosen by the executive to insure fairness in pursuing its responsibility to execute the laws enacted by the legislature. An administrative agency has wide discretion in establishing rules, regulations, and standards. In carrying out this function, however, an agency may not act arbitrarily; it must follow applicable procedures mandated by law when issuing or changing regulations, and it may adopt only such rules and regulations as are reasonable, understandable, and consistent with constitutional rights, enabling legislation, and other law.

The Commonwealth Documents Law and its implementing rules prescribe certain procedures which must be followed as a prerequisite to the validity of any administrative pronouncement establishing a legally binding norm, rule, or standard of conduct. In general, the agency is required: (1) to give public notice of its intent to promulgate, amend, or repeal such a regulation, and to accept, review, and consider any submitted written comments thereon; (2) to obtain legal review and approval of the proposed regulation; and (3) to deposit the text of the regulation with the Legislative Reference Bureau for publication and codification.

This process protects against the unwise or improper exercise of administrative discretion, and provides affected persons with an opportunity for democratic participation

in the formulation of standards governing their conduct, thereby increasing the likelihood of agency responsiveness to their needs and concerns. Moreover, it enables the agency to obtain information relevant to the proposed rule, and facilitates the consideration of alternatives, detrimental effects, criticism, and advice, thereby contributing to the soundness of the proposed regulation. Substantive regulations, when properly enacted under the Commonwealth Documents Law, have the force of law and enjoy a general presumption of reasonableness. On the other hand, failure to comply with the requirements of the Commonwealth Documents Law renders any regulation adopted by the agency invalid and unenforceable pursuant to 45 P.S. §1208.

On April 10, 2005, pursuant to Act 94, the PPA, assumed control of the regulation of taxicab and limousine service (1) between points in the City of Philadelphia; (2) from any point in Philadelphia to any point in this Commonwealth; (3) from any point in this Commonwealth to any point in Philadelphia if the request for service for such transportation is received by call to its centralized dispatch system; and (4) from any point in Philadelphia to any point outside this Commonwealth as a continuous part of a trip. On June 27, 2005, the board of the PPA approved rules and regulations entitled "Philadelphia Parking Authority – Taxicab and Limousine Regulations." Since June 27, 2005, the PPA has been enforcing said rules and regulations by issuing thousands of citations, complaints, and petitions, impounding hundreds of vehicles, conducting hundreds of violation hearings and imposing hundreds of thousands of dollars of fines and penalties against taxicab and limousine drivers and owners.

The PPA's initial rules and regulations are neither valid nor enforceable because they were not promulgated in accordance with the Commonwealth Documents Law.

Likewise, the present proposed changes to those regulations are invalid because of the PPA's failure to comply with the Commonwealth Documents Law.

**PPA FAILED TO PUBLISH NOTICE OF A PROPOSED RULEMAKING  
IN THE PENNSYLVANIA BULLETIN**

The PPA's rules and regulations, and any amendments thereto, are invalid because the PPA failed to comply with the provisions of the Commonwealth Documents Law requiring public notice of its intention to promulgate its regulations. With limited exceptions, a Commonwealth agency must give public notice of its intention to promulgate, amend, or repeal an administrative regulation by publication, in the Pennsylvania Bulletin, of a notice of proposed rulemaking. The PPA has only published notices concerning its regulations by posting them on its website and mailing notices to members of the Philadelphia Taxicab and Limousine Industry identified through records supplied to it by the PUC.

**THE PPA FAILED TO SUBMIT ITS PROPOSED RULES AND  
REGULATIONS TO THE ATTORNEY GENERAL AND THE OFFICE OF  
GENERAL COUNSEL TO BE REVIEWED FOR FORM AND LEGALITY  
BEFORE TO DEPOSITING THEM FOR PUBLICATION WITH THE  
LEGISLATIVE REFERENCE BUREAU**

The PPA's rules regulations, and any amendments thereto, are invalid because the PPA failed to comply with the provisions of the Commonwealth Documents Law requiring submission of its proposed rules and regulations to the Attorney General and Office of General Counsel. The Attorney General must review all proposed rules and regulations of a Commonwealth agency for form and legality before they are deposited for publication with the Legislative Reference Bureau. In addition to their review and approval by the Attorney General, all proposed rules and regulations of "executive

agencies” must be reviewed and approved for form and legality by the Office of General Counsel before they are deposited for publication with the Legislative Reference Bureau.

**THE PPA FAILED TO HOLD A PUBLIC COMMENT PERIOD FOR AT LEAST THIRTY DAYS AFTER PUBLICATION OF THE PROPOSED RULEMAKING IN THE PENNSYLVANIA BULLETIN**

The PPA’s regulations, and any amendments thereto, are invalid because the PPA failed to hold a public comment period for at least thirty days after publication of the proposed rulemaking in the Pennsylvania Bulletin. The agency must hold a public comment period, which must commence with the publication of the notice of proposed rulemaking and must continue for not less than 30 days.

**THE PPA FAILED TO SUBMIT A COPY OF ITS PROPOSED REGULATIONS ALONG WITH A REGULATORY ANALYSIS IN THE REQUIRED FORM TO THE INDEPENDENT REGULATORY REVIEW COMMISSION THEREBY DEPRIVING THE COMMISSION OF THE OPPORTUNITY TO CONVEY COMMENTS OR OBJECTIONS TO THE AUTHORITY**

The PPA’s regulations, and any amendments thereto, are invalid because it failed to comply with the provisions of the Commonwealth Documents Law requiring submission of its proposed rules and regulations to the Independent Regulatory Review Commission. On the same date that an agency submits a proposed regulation to the Legislative Reference Bureau for publication of notice of proposed rulemaking in the Pennsylvania Bulletin as required by the Commonwealth Documents Law, the agency must submit to the Independent Regulatory Review Commission and its committees a copy of the proposed regulation and a regulatory analysis form which includes:

- (1) the title of the agency and the names, office addresses and the telephone numbers of the agency officials responsible for responding to questions regarding the regulation or for receiving comments relating to the regulation;

- (2) a specific citation to the Federal or State statutory or regulatory authority, or the decision of a Federal or State court, under which the agency is proposing the regulation, which the regulation is designed to implement or which may mandate or affect compliance with the regulation;
- (3) a concise and, when possible, nontechnical explanation of the proposed regulation;
- (4) a statement of the need for the regulation;
- (5) estimates of the direct and indirect costs to the Commonwealth and to its political subdivisions and to the private sector;
- (6) a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation, and an explanation of measures which have been taken to minimize these requirements;
- (7) a schedule for review of the proposed regulation, including the date by which the agency must receive comments, the date or dates on which public hearings will be held, the expected date of promulgation of the proposed regulation as a final-form regulation, the expected effective date of the final-form regulation, the date by which compliance with the final-form regulation will be required and the date by which required permits, licenses or other approvals must be obtained;
- (8) an identification of the types of persons, businesses and organizations which would be affected by the regulation;
- (9) an identification of the financial, economic and social impact of the regulation on individuals, business and labor communities and other public and private organizations and, when practicable, an evaluation of the benefits expected as a result of the regulation;
- (10) a description of any special provisions which have been developed to meet the particular needs of affected groups and persons, including minorities, the elderly, small businesses and farmers;
- (11) a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected; and
- (12) a description of the plan developed for evaluating the continuing effectiveness of the regulation after its implementation.

The Independent Regulatory Review Commission committees may, within 20 days from the closing date of the public comment period, convey to the agency their comments and objections to the proposed regulation and a copy of any staff reports deemed pertinent; and the comments and objections must include the lack of statutory

