

Father & Sons & a Daughter Too vs. Transp. Servs. Auth. of Nev.,
124 Nev. Adv. Op. 24
(May 5, 2008)¹

**ADMINISTRATIVE LAW – NRS CHAPTER 706 ACTIONS
CONCERNING MOTOR CARRIERS**

Summary:

Consolidated appeal from a district court order denying Father & Sons & a Daughter Too's (FSD2) petition for judicial review regarding citations for two violations of NRS 706.386. The Court holds that FSD2 had held itself out to be a common motor carrier and substantial evidence supported the determination that it had violated NRS 706.386.

Disposition/Outcome:

Based on the NRS Chapter 706 definitions of fully regulated common motor carriers and the transportation of household goods, a company that is financially interested in providing referral services to the public to facilitate intrastate moves through individuals who are paid to load, drive, and unpack vehicles containing household goods may qualify as a fully regulated common motor carrier, even though the company itself does not physically move the goods. Therefore TSA's issuance of citations to FSD2 for violating 706.386 was proper and the district court's orders denying FSD2's petition for judicial review are affirmed.

Factual and Procedural History:

This case arises from several penalties levied against appellant FSD2 by TSA for violations of NRS 706.386, which requires fully regulated common motor carriers to obtain a certificate of public convenience and necessity before operating as carriers of intrastate commerce. FSD2 refers customers to loader/packers² for local household moving services, but before making the referral it first requires the customer to rent a vehicle from the Truck Company, which is owned by FSD2. FSD2 then notifies a loader by calling a mobile phone provided by FSD2, and FSD2 also provides the loader with moving supplies as part of the rental service paid for by the customer. Three documents formalize each customer transaction with FSD2 and emphasize that FSD2 is a referral service for independent packing and loading services, and the loading employees are not employees of FSD2.³

FSD2 challenges citations and fines issued on two separate occasions. On the first occasion, TSA questioned two men using a van from the Truck Company and moving goods to and from different residences. One man said he was an FSD2 employee who was assigned to "truck #2" by FSD2, and the other man said he was an independent contractor. The first man provided FSD2's formal documentation to TSA. On a second occasion, TSA again questioned

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² Hereinafter referred to generally as a "loader."

³ These documents will hereinafter be referred to as FSD2's "formal documentation."

two men moving goods between residences. The vehicle's driver stated he worked for the Truck Company and that FSD2 referred him to the job, but later claimed to be an independent contractor. TSA found FSD2's formal documentation in the truck.

TSA issued citations to FSD2 for violating NRS 706.386 on both occasions, and after the hearings, issued findings of fact and conclusions of law which stated that FSD2's conduct constituted point-to-point transportation within the state without proper certification. These conclusions were based on the formal documentation found in the vehicles and that the loaders were not independent contractors, but worked as agents for FSD2.

Discussion

The Court's standard of review is to review the evidence used by the administrative agency's to deny a petition for judicial review and ascertain whether the agency abused its discretion by acting arbitrarily or capriciously.⁴ NRS 706.151(1)(a) gives TSA the power to regulate "fully regulated carriers." This appeal concerns NRS 706.386, which requires such carriers who operate as a carrier of intrastate commerce to obtain from TSA a certificate of public convenience and necessity.

In light of the definitions set forth in NRS Chapter 706, a "fully regulated common motor carrier" is in part defined as one who (1) holds himself out to the public as (2) willing to transport household goods for hire.⁵ Since NRS 706.137 states that the transportation of household goods includes those moved by a rented vehicle driven by someone "associated" with an entity that is commercially or financially interested in providing services for the move, NRS 706.386 essentially requires certification for all types of public intrastate moving services.

FSD2 asserts that it never held itself out to the public as willing to transport property by vehicle; therefore TSA erred in determining that the company falls within the reach of NRS 706.386. The Court disagrees because the record supports TSA's determination that FSD2's course of business illustrates its true identity as a fully regulated common motor carrier. The record reveals that FSD2 held itself out to the public in the telephone directory as a referral service for individual movers. FSD2's conduct plainly falls within TSA's reach because it has a commercial or financial interest in providing services related to the transportation of household goods. FSD2 referred its customers to loaders only after they rented a vehicle from the Truck Company, which is owned by the same people who own FSD2. FSD2 also facilitated the moves by coordinating truck rentals, scheduling moving dates, and keeping track of all customers' formal documentation. In return, the Truck Company and loaders paid FSD2's fees. This scheme was designed to accomplish conduct plainly regulated by the TSA – intrastate operations

⁴ Gandy v. State ex rel. Div. Investigation, 96 Nev. 281, 282, 607 P.2d 581, 582 (1980).

⁵ NRS 706.036 defines a "common motor carrier" as "any person or operator who holds himself out to the public as willing to transport by vehicle from place to place, . . . passengers or property, including . . . a common motor carrier of property. NRS 706.046 defines a "common motor carrier of property" as "any person or operator . . . who holds himself out to the public as willing to transport by motor vehicle from place to place . . . the property of all who may choose to employ him." NRS 706.137 defines the "transportation of household goods" as including any type of moving-related service, including the use of a "rented or other vehicle not owned by the shipper which is driven by someone associated with an entity that has a commercial or financial interest in providing services related to the movement of household goods which are being transported."

carried out by public moving services. Accordingly, TSA's decisions to fine and cite FSD2 for operating a moving service without the appropriate certification were proper.

FSD2 also argues that NRS Chapter 706 violates the U.S. and Nevada Constitutions because (1) NRS 706.137's "association" language is unconstitutionally vague, (2) NRS 706.386's certification requirement violates its first amendment right to free association, and (3) NRS 706.386 violates the contracts clause of the state constitution. As to the first argument, the vagueness doctrine states that a statute which forbids or requires the doing of an act using unduly vague terms violates due process. NRS 706.137 neither forbids nor requires any action and the "transportation of household goods" pertains to only part of the description of people who the TSA may regulate under NRS 706.386. Accordingly, the Court rejects the argument that the statute is unconstitutionally vague. As to the second argument, the Court has previously recognized that the State may infringe upon the right to freely associate by using regulations that serve compelling state interests that cannot be achieved through less restrictive means of associational freedoms.⁶ Here, NRS 706.386 is narrowly tailored to protect the public from unlicensed, uninsured, and unregistered common motor carriers by permitting the TSA to require certification. This statute thus satisfies the relevant standard and FSD2's argument fails. As to FSD2's third and final argument, the contracts clause does not apply for at least one reason – it does not protect prospective contracts and none of the contracts in this case existed prior to the enactment of the relevant statutory provisions.

Conclusion

Substantial evidence supports TSA's determinations that FSD2 violated NRS 706.386 on two separate occasions and FSD2's constitutional arguments lack merit. The Court affirms the district court's orders denying FSD2's petitions for judicial review.

⁶ Burgess v. Storey County, 116 Nev. 121, 125, 992 P.2d 856, 859 (2000).