STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: JANUARY 9, 2012)

UNIVERSITY OF RHODE ISLAND and the RHODE ISLAND BOARD OF GOVERNORS FOR HIGHER EDUCATION	:	
v.	:	**C.A. No. PC 11-0626**
RHODE ISLAND DIVISION OF PUBLIC UTILITIES AND CARRIERS, THOMAS F. AHEARN, in his capacity as Administrator of the division of public utilities and carriers; and ADAM JOSEPH COMBIES d/b/a Rogue Island Jitney	:	
TOWN OF NARRAGANSETT	:	
v.	:	**C.A. No. PC 11-0839**
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS DIVISION OF PUBLIC UTILITIES AND CARRIERS, and ADAM JOSEPH COMBIES d/b/a Rogue Island Jitney	:	

DECISION

SILVERSTEIN, J. Plaintiff-Appellants University of Rhode Island (URI), the Rhode Island Board of Governors for Higher Education (Board), and the Town of Narragansett's (collectively, Appellants) appeal the Report and Order of the Rhode Island Division of Public Utilities and Carriers (Division), granting Adam Joseph Combies d/b/a Rogue Island Jitney's (Combies) application for a common carrier "certificate of public convenience and necessity" (CPCN). Jurisdiction is pursuant to R.I. Gen. Laws 1956 § 42-35-15.

I

Facts and Travel

On December 1, 2010, Combies filed an application with the Division seeking a CPCN to permit the transportation of passengers through his proposed jitney service. (Record of Administrative Proceeding (hereinafter, R.) Ex. 10.) Combies intends to operate a for-compensation transportation service over a fixed route beginning on Fraternity Circle in Kingston, Rhode Island. (R. Ex. 3 (Order) at 1.) The service would travel through South Kingstown and Narragansett, stopping at three locations in Narragansett and providing return service to Kingston. Id. The three proposed stops in Narragansett are Charlie O's Tavern, Hammerhead Grill, and the Coast Guard House. (R. Ex. 10.) Combies' application was filed pursuant to G.L. 1956 § 39-13-3.

The Division held a duly-noticed public hearing on Combies' CPCN application on January 4, 2011. (Order at 1.) URI appeared as an Intervenor at the application hearing. (Order at 2.) Narragansett and South Kingstown submitted letters in opposition to the application and participated in public comment through representatives of their police departments. Id. On January 13, 2011, the Division issued a Report and Order (Order), approving the application, subject to terms and conditions. (Order at 20-22.)

The Order detailed the testimony and evidence presented at the hearing. See Order at 7-16. During public comment, Lieutenant Paul J. Horoho of the South Kingstown Police Department was the first to testify. (Order at 7.) Lieutenant Horoho spoke on behalf of the police department and also delivered letters from the Town Manager and the Coordinator of the South Kingstown Partnership for Prevention. Id. He expressed concern that the jitney service would facilitate underage drinking by URI students, for whom his department would be responsible once they return to campus. (Order at 7-8.) The testimony of Lieutenant Horoho

and the contents of the two letters all expressed concern that the jitney could increase underage drinking to the detriment of the students and the community. Id.

The next public comment testimony came from Deputy Chief Gerald Driscoll of the Narragansett Police Department. (Order at 8.) He also relayed the opposition of the Chief of Police and the Town Manager of Narragansett. Id. Deputy Chief Driscoll expressed concern that the three stops were all restaurants with liquor licenses in Narragansett, a community already facing issues presented by intoxicated students. Id. The police department and Town oppose any initiative that may make it easier for students to go to the community to drink. Id. Deputy Chief Driscoll explained that other transportation initiatives in the past had problems with intoxicated students. Id. The police and fire departments in Narragansett are already seriously taxed by the issues associated with inebriated, underage students. Id.

Deputy Chief Driscoll agreed that the jitney service may keep some intoxicated students off the road, but he was concerned that it may bring more students to the area. (Order at 9.) However, Deputy Chief Driscoll admitted many of the students frequenting these bars in Narragansett live in the surrounding neighborhoods, and the majority of the police department's problems with intoxicated students arise at house parties, as opposed to bars, throughout Narragansett. Id. Although Deputy Chief Driscoll acknowledged many students already drive down from URI, he was concerned the jitney would bring more students to Narragansett. Id.

David W. Coates testified as the final witness during the public comment period. Id. Mr. Coates is president of the URI Student Senate, and he spoke as a representative of student senate members, a majority of whom concurred with his position. Id. Mr. Coates testified that students who wanted to go to Narragansett restaurants and bars were already finding ways to get there, and he doubted the jitney service would increase the number of people going. Id. Rather, Mr.

Coates believed that some of his fellow students who currently drive to and from Narragansett to drink would instead take the jitney transportation, reducing the number of drunk drivers on the road. Id.

Following public comment, Combies, the applicant, presented his own case. (Order at 10.) Combies expects the jitney transportation would primarily serve the undergraduate population of URI's Kingston campus. Id. URI enrolls approximately 13,000 undergraduate students, with approximately 5,000 of them living on the Kingston campus during the academic terms. Id. Accordingly, the jitney service would be seasonal, operating on Thursday, Friday, and Saturday evenings during URI's Fall and Spring semesters. Id. Combies anticipates operating two or three fifteen-passenger vans to provide the jitney service. Id.

Mr. Combies himself is the sole owner and proprietor of the proposed jitney service, Rogue Island Jitney. Id. He graduated from Boston College in 2003 with a Bachelor of Science in Finance, and then graduated from Syracuse University College of Law in 2006 with a juris doctor. Id. Mr. Combies has practiced law since 2006, and he co-founded his own firm, Combies Hanson, in 2010. Id. He is admitted to practice in Rhode Island and Massachusetts, as well as before the U.S. District Courts sitting in both states. Id.

Combies established that there is very little public transportation available to URI students on campus, and there is no service comparable to that which he intends to offer. (Order at 11.) The most comparable option was the short-lived and now non-existent "Rhody Ride" program, a URI-run transportation service whose funding expired several years ago. Id. There are currently only three taxi companies that offer any service, however extensive or limited, in either Narragansett or South Kingstown. Id.

According to Combies and the studies he presented, college-aged drivers represent the highest percentage of fatalities caused by motor vehicle accidents, and many of those accidents are alcohol-related. Id. The studies emphasize the importance of safe transportation options for students, particularly at URI's rural campus, and detail statistics for alcohol-related traffic incidents involving college-aged drivers. (R. Ex. 11.) They cite findings that safe ride options can reduce the harm associated with college drinking and driving while not significantly increasing overall drinking. Id. Combies provided evidence from students and former students that there is interest in the service, and the service may remove intoxicated drivers from the roads by providing an alternative form of transportation. (Order at 11-12; R. Ex. 11.)

On cross-examination by the Intervenor, URI, Combies acknowledged that stops chosen were popular student destinations, and he did not include other stops, such as the Wakefield Mall, because he did not see demand for those stops. (Order at 12.) Although the proposed stops are three establishments with liquor licenses, Combies denied the service was a bar crawl, explaining that anyone could use the transportation, and he planned only to pick up and drop off passengers on a continuous loop through the operating hours. (Order at 12-13.)

The first witness for URI was Dr. Jason Pina, Ph.D., the Assistant Vice President for Student Affairs and the Dean of Students at URI. (Order at 13.) Dr. Pina confirmed the prior existence of the "Rhody Ride" program, the intent of which was to provide students with a safe ride back to campus. Id. "Rhody Ride" was discontinued due to lack of funding, particularly because students who were not intoxicated wished to use the ride service, and the service became so popular that URI could not supply enough vans and drivers to meet the demand. Id.

Dr. Pina testified extensively regarding alcohol abuse issues with college students nationally and at URI. (Order at 14.) He cited statistics regarding traffic-related and other

fatalities among college-aged students relating to alcohol, as well as other instances of alcohol-induced destructive behavior. Id.

Dr. Pina explained that in the past, RIPTA offered a service to retail areas in Washington County, but it was cancelled because too few students utilized the bus route. Id. Separately, there was a period of time during which charter buses had been coming to URI's campus to pick up students and take them out to bars in Providence. Id. Issues arose with this service, including counterfeit tickets, students exceeding capacity on the buses, fights occurring, and students becoming sick on the return trip. Id. URI stopped the charter buses from running. Id.

URI's second witness was J. Vernon Wyman, URI's Assistant Vice President for Business Services. (Order at 15.) Mr. Wyman testified that URI has a policy that buses on campus need the university's permission to operate, and in his view, that rule applied to jitney vans as well. Id. Such a service, he explained, would be subject to the competitive bidding process if it were in the school's interest to offer it. Id.

URI argued that judging from Combies' proposed schedule and destinations, the service would constitute a pub crawl. (Order at 15-16.) URI proffered that its on-campus students—virtually all of whom are underage—are not interested in any other nearby destinations or even in dining at the restaurants near the jitney stops. (Order at 16.) Finally, URI argued that its Board has legal title and control over university property, including the streets on campus. Id. URI will not give Combies permission to operate the jitney service on university property. Id.

On review of the record, the Division determined that Combies proved he is fit, willing, and able to provide the services, and perhaps more qualified than many of the Division's typical applicants. (Order at 16-17.) The Division found that Combies satisfied his burden of proof for the CPCN. (Order at 17.) Specifically, Combies "presented sufficient evidence to overcome its

burden of proving that 'public convenience and necessity require operation over the route.'" Id. The Division ruled that the proposed route "is suited to and tends to promote the accommodation of the public" and the "proposed service is reasonably required to meet a need for such accommodation." Id.

The Division explained that there are no comparable services in Kingston, Rhode Island. Id. There are only three taxi cab companies to service tens of thousands of persons in their service area. (Order at 17-18.) The Division believed "the proposed jitney service will meet an underserved transportation niche." (Order at 18.)

The Division relied on the testimony of Mr. Coates that many students would prefer this transportation and would like a safe way back to campus. Id. Further, the Division noted that while most of the undergraduate students living on campus are underage, some may be twenty-one and over. Id. The Division could not assume, absent evidence, that only underage students would use the jitney service and that the Narragansett restaurants and bars routinely serve underage students. Id.

The most persuasive evidence to the Division was that URI implemented "Rhody Ride" in 2006 to provide intoxicated students with a safe way home, and it was discontinued "because the demand for service exceeded the University's ability to provide the service, largely because sober students, not just intoxicated ones, were using it on a regular basis[.]" (Order at 18-19.) The Division concluded that the jitney service was justified by public convenience and necessity. (Order at 19.)

Addressing URI's argument that the transportation service was a pub crawl, the Division interpreted G.L. 1956 § 3-7-26 to prohibit only a licensee of the chapters regulating liquor licenses from organizing or participating in a pub crawl. Id. Additionally, "[t]he mere fact that a

regularly scheduled carrier of persons such as, for example, the Rhode Island Public Transit Authority . . . happens to have regular bus stops near places of business licensed to sell alcoholic beverages for consumption on the premises does not mean that such stops are evidence of a pub crawl . . . ." Id.

Lastly, the Division disagreed that URI had the power to deny Combies access on streets within the Kingston campus. (Order at 20.) The Division stated that if anyone has authority to deny Combies' use of the streets, it is the Board, not URI. Id. Regardless, even if the Board could deny Combies' access, that is not a reason to deny a CPCN to an applicant who has proven both fitness and public convenience and necessity. Id. Accordingly, the Division ordered that the CPCN be approved, subject to certain conditions, including:

> "[t]hat if it is subsequently determined that the Board of Governors for Higher Education has the authority to deny the Applicant's proposed stop on Fraternity Circle, then the Applicant may establish his initial stop on the nearest state roadway to Fraternity Circle in Kingston, advising the Division of the location of the stop and any necessary adjustments to his proposed operating schedule." (Order at 20-22.)

Following the release of the Division's Order, on February 4, 2011, URI and the Board filed a Complaint in this Court, appealing the Order pursuant to § 42-35-15. On February 11, 2011, Narragansett filed a Complaint also appealing the Order pursuant to § 42-35-15. On or about February 15, 2011, a consent order was entered staying the Order of the Division pending the administrative appeals. On or about June 21, 2011, separate consent orders were entered by this Court, consolidating the two administrative appeals, assigning the matter to the business calendar, establishing a scheduling order, and continuing the stay until further order of this Court.

II

Standard of Review

This Court's appellate review of administrative agencies such as the Division is governed by the Rhode Island Administrative Procedures Act, as set forth at § 42-35-1, et. seq. See Rossi

v. Employees' Retirement Sys. of R.I., 895 A.2d 106, 109 (R.I. 2006). The applicable standard of review, codified at § 42-35-15(g), provides in pertinent part:

> "The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings or it may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inference, conclusions or decisions are:
> (1) In violation of constitutional or statutory provisions;
> (2) In excess of the statutory authority of the agency;
> (3) Made upon unlawful procedure;
> (4) Affected by other error of law;
> (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
> (6) Arbitrary or capricious or characterized by abuse of discretion of clearly unwarranted exercise of discretion."

The Superior Court's review is essentially "an extension of the administrative process." R.I. Telecomms. Auth. v. R.I. State Labor Relations Bd., 650 A.2d 479, 484 (R.I. 1994).

"In essence, if 'competent evidence exists in the record, the Superior Court is required to uphold the agency's conclusions.'" Auto Body Ass'n of R.I. v. State of R.I. Dep't of Bus. Regulation, 996 A.2d 91, 95 (R.I. 2010) (quoting Env't Scientific Corp. v. Durfee, 621 A.2d 200, 208 (R.I. 1993)). This Court defers to the administrative agency's factual determinations provided that they are supported by legally competent evidence. Town of Burrillville v. R.I. State Labor Relations Bd., 921 A.2d 113, 118 (R.I. 2007); Arnold v. R.I. Dep't of Labor and Training Bd. of Review, 822 A.2d 164, 167 (R.I. 2003). Legally competent evidence is "'some or any evidence supporting the agency's findings.'" Auto Body Ass'n of R.I., 996 A.2d at 95 (quoting Env't Scientific Corp., 621 A.2d at 208). The amount of competent evidence in support of the agency's decision must only be more than a scintilla and may be less than a preponderance of the evidence. Elias-Clavet v. Bd. of Review, 15 A.3d 1008, 1013 (R.I. 2011) (quoting R.I. Temps, Inc. v. Dep't of Labor and Training Bd. of Review, 749 A.2d 1121, 1125 (R.I. 2000)).

Accordingly, this Court will "reverse factual conclusions of administrative agencies only when they are totally devoid of competent evidentiary support in the record." Baker v. Dep't of Employment Training Bd. of Review, 637 A.2d 360, 363 (R.I. 1994) (citations omitted); see also Elias-Cravet, 15 A.3d at 1012-13.

This court "must not substitute its judgment for that of the agency in regard to the credibility of witnesses or the weight of the evidence concerning questions of fact." Costa v. Registrar of Motor Vehicles, 543 A.2d 1307, 1309 (R.I. 1988); see Lowry v. Faraone, 500 A.2d 950, 952 (R.I. 1985) (finding no fault when trial judge accepts testimony of one expert over that of another). Rather, this Court's review "is limited to determining whether any legally competent evidence exists within the record as a whole, or whether reasonable inferences may be drawn therefrom, to support the decision being reviewed." Elias-Cravet, 15 A.3d at 1013.

On the other hand, this Court may review issues of errors of law de novo. Cohen v. Duncan, 970 A.2d 550, 561 (R.I. 2009); Narragansett Wire Co. v. Norber, 118 R.I. 596, 376 A.2d 1, 6 (1977). Yet, at the same time, where the administrative agency is empowered to enforce the statutes in question, the administrative agency's interpretation of those statutes should be accorded "weight and deference as long as that construction is not clearly erroneous or unauthorized." Labor Ready Ne., Inc. v. McConaghy, 849 A.2d 340, 344 (R.I. 2004). Deference is owed to an agency's interpretation of its own rules and regulations "'even when the agency's interpretation is not the only permissible interpretation that could be applied.'" Auto Body Ass'n of R.I., 996 A.2d at 97 (quoting Pawtucket Power Assocs. Ltd. P'ship v. City of Pawtucket, 622 A.2d 452, 456-57 (R.I. 1993)). Further, this Court will accord considerable deference when the agency's interpretation involves a "technical question within the field of the agency's expertise." R.I. Higher Educ. Assistance Auth. v. Dep't of Educ., 929 F.2d 844, 857 (1st Cir. 1991).

III
Discussion

In their appeal of the Division's award of a CPCN to Combies, Appellants first argue the Division's approval was clearly erroneous in view of the reliable, probative, and substantial evidence in the record, and similarly, was characterized by abuse of discretion. Second, Appellants contend the Division's approval was in violation of statutory provisions, in excess of statutory authority, and otherwise affected by error of law. Specifically, Appellants assert that the Division exceeded its authority in granting the CPCN for a pick-up location and route on-campus at URI. Appellants argue URI has sole control over transportation services operating on its property. In addition, Appellants argue that the jitney service constitutes a pub crawl in violation of Rhode Island law.

This Court notes the basis of the Division's authority and the CPCN. The purpose of the Division is "to provide fair regulation of public utilities and carriers in the interest of the public, to promote availability of adequate, efficient and economical . . . transportation services . . . to the inhabitants of the state . . . ." G.L. 1956 § 39-1-1(b). The Division is vested with "the exclusive power and authority to supervise, regulate, and make orders governing the conduct of companies offering to the public in intrastate commerce . . . transportation services . . . ." Id. at (c). By granting the Division the exclusive power and authority to regulate transportation services, the General Assembly evidenced intent to preempt at least cities and towns from regulating these services. See Town of East Greenwich v. Narragansett Elec. Co., 651 A.2d 725, 729 (R.I. 1994) (holding town enactments invading expressly reserved field of regulation preempted).

Within the Division's scope of authority over transportation services is the power to regulate certain jitneys. See § 39-13-2. Section 39-13-2 provides, in pertinent part:

> "Every person, association, or corporation owning or operating a jitney is hereby declared a common carrier and subject as such to the jurisdiction of the division of public utilities and carriers, and while so operating, to such reasonable rules and regulations as the division may prescribe with respect to routes, fares, speed, schedules, continuity of service, and the convenience and safety of passengers and the public."

Jitneys are defined in the statutory scheme to include:

> "any motor bus or other public service motor vehicle operated in whole or in part on any street or highway in such manner as to afford a means of transportation similar to that afforded by a street railway company, by indiscriminately receiving and discharging passengers; or running on a regular route or over any portion thereof; or between fixed termini." Sec. 39-13-1(b).

Among the regulations pertaining to jitneys is the requirement of a CPCN prior to operation. See § 39-13-3. The requirement provides, in pertinent part:

> "No person, association, or corporation shall operate a jitney until the owner thereof shall have obtained a certificate from the division specifying the route over which the jitney may operate, the number of passengers which it may carry at any one time, the service to be furnished, and that public convenience and necessity require operation over the route." Sec. 39-13-3.

One element in obtaining the requisite CPCN is establishing that public convenience and necessity require the jitney's operation over the particular route. See id. Another requirement is that the CPCN applicant be fit, willing, and able to provide the service proposed and to comply with the regulations of the Division. See § 39-12-7.

A

Evidence in the Record

Appellants contend that the jitney service proposed by Combies is not required by public convenience and necessity, and therefore, the Division should have denied Combies' application

for a CPCN. Combies claims that he met his burden of proving that he is fit, willing, and able to provide the transportation and that public convenience and necessity require the jitney service.

The CPCN applicant must establish that he is fit, willing, and able to provide the jitney service and conform to the associated regulations. See § 39-12-7. While there is little available in controlling interpretation of the phrase "fit, willing, and able," this Court has had occasion in the past to consider the standard in an administrative appeal from the Division. See Interstate Navigation Co. v. Div. of Pub. Utils. and Carriers of R.I., No. 98-4804, 98-4766, 1999 WL 813603, at *7-8 (R.I. Super. Ct. Aug. 31, 1999). In that case, this Court was satisfied that an individual with "proven diligence as a businessman" was fit, willing, and able to operate a high-speed water ferry, even despite his issues with financing the venture. Id.

Here, the Division found Mr. Combies "clearly able properly to perform the services proposed and to conform to the provisions of Rhode Island General Laws . . . and the requirements, orders, rules, and regulations of the Division." (Order at 17.) Citing Mr. Combies' education from Boston College and Syracuse University College of Law, as well as his experience establishing and operating his own law firm, the Division felt he had "far more training and business experience than many of [the other] applicants for common carrier operating authority." Id. This Court must uphold the Division's application of its "fit, willing, and able" standard. See Labor Ready Ne., Inc., 849 A.2d at 344 (according weight and deference to agency's interpretation of statutes it enforces). On the basis of Mr. Combies' testimony and documents in the entire record, this Court is satisfied that the Division's decision that Combies is fit, willing, and able is supported by the evidence and is not clearly erroneous.

In addition to being fit, willing, and able, the applicant must prove that "public convenience and necessity require operation over the route." Sec. 39-13-3. This phrase lacks a

well-defined or precise meaning but has been interpreted by our Supreme Court. See Abbott v. Pub. Utils. Comm'n, 48 R.I. 196, 136 A. 490, 491 (1927) (considering "public convenience and necessity" as applied by public utilities commission). "Convenience" is defined as "something fitting or suited to the public need." Id. "Necessity" does not require that it be an "indispensable necessity," but rather, that the route be "reasonably requisite." Id. The general test is "whether a proposed route is suited to and tends to promote the accommodation of the public and also whether it is reasonably required to meet a need for such accommodation." Id. (providing the public convenience and necessity standard).

The objective in applying the standard is to consider "what will conduce to the general public welfare." Id. at 492. Factors to consider include:

> "the existing means of transportation, as to its substantial character and its probable permanence, also the investments of capital made by the owners of such existing means, the nature of the service that is being rendered, and, if such service is adequate, what will be the probable effect of admitting competition into a field now adequately served, and what effect such competition will probably have upon the receipts of existing lines of transportation, as to whether, in the face of further competition, the adequacy of the existing service will be continued." Id.

Most fundamental to the consideration appears to be the "obligation of securing adequate service for the public." Breen v. Div. of Pub. Utils., 59 R.I. 134, 194 A. 719, 720 (1937); see Abbott, 136 A. at 492 (considering adequacy of existing means of transportation and effect new service would have on existing services).

Where the "general public welfare call[s] for additional and better service," there is public convenience and necessity. Yellow Cab Co. v. Pub. Util. Hearing Bd., 73 R.I. 217, 222, 54 A.2d 28, 31 (1947). The inquiry is "[w]hat is conducive to the general public need, convenience, interest, safety, protection and welfare." Capaldo v. Pub. Util. Hearing Bd., 70 R.I.

356, 360, 38 A.2d 649, 651 (1944). The issue on this type of appeal is "whether or not public convenience and necessity requiring additional [transportation] service is established by the evidence." Id.; see Murray v. LaTulippe's Serv. Station, Inc., 108 R.I. 548, 549, 277 A.2d 301, 302 (1971) (setting forth issue as whether any legal evidence "that there is a public need for the proposed additional service"). A CPCN application will be denied, however, when "there is a complete absence of any competent evidence that the . . . services being afforded . . . are inadequate to meet the public's demand." Murray, 108 R.I. at 550, 277 A.2d at 303.

Here, the Division found that the proposed jitney service "is suited to and tends to promote the accommodation of the public and . . . is reasonably required to meet a need for such accommodation." (Order at 17.) Under the relevant standard, there was competent evidence before the Division to find that the current services offered are inadequate to meet the public demand, and general public welfare calls for additional service, such as that proposed by Combies. See Yellow Cab Co., 73 R.I. at 222, 54 A.2d at 31 (granting application where public welfare called for additional and better service); contra Murray 108 R.I. at 550, 277 A.2d at 303 (denying application where no competent evidence current services were inadequate).

There record evidences that there are currently no comparable services offered to residents of Kingston. There are a very limited number of taxi companies to serve a large number of people throughout the greater area, and taxis offer a somewhat different service.[1] The RIPTA service from URI to Washington County retail locations no longer runs. The "Rhody

[1] Although the record clearly indicates that there are a number of public motor vehicle companies that may provide services throughout the state, this type of car service is quite different from the jitney service Combies seeks to provide. See Order at 18 (discussing available alternatives). These car service companies appear to serve a different clientele at a different price point than Combies' intended service.

Rides" program, plainly the most similar service to the proposed jitney, would have serviced the same cross-section of the public, but it no longer operates.

The evidence regarding the "Rhody Rides" program and the testimony of Mr. Coates establish competent evidence that there is a public need or demand for the proposed jitney service. In 2006, URI began the "Rhody Rides" program based on the need to provide resident students with safe transportation to campus from surrounding communities. The service was discontinued because URI could not meet the demand for the transportation. Mr. Coates, a URI student and president of the Student Senate, confirmed that in his opinion many student residents would utilize the jitney service as a safe means of transportation. Furthermore, it may be in the interest of public welfare to provide individuals who may be consuming alcohol with an alternative to driving their personal vehicles after drinking. See Abbott, 136 A. at 492 (considering public welfare in determining whether public convenience and necessity require the route).

Combies' demonstrates that the proposed service is convenient because it is fitting to the public need and necessary because it is reasonably required to meet that public demand. See Abbott, 136 A. at 491 (providing standards for public convenience and necessity). The evidence presented demonstrates that the jitney will conduce to the general welfare by providing a service which is evidently in demand. See Capaldo, 70 R.I. at 360, 38 A.2d at 651 (considering what is conducive to "public need, convenience, interest, safety, protection and welfare"); Abbott, 136 A. at 492. Combies set forth sufficient evidence before the Division to demonstrate that public convenience and necessity. Contra Murray, 108 R.I. at 549-50, 277 A.2d at 301-03 (denying application where no competent evidence of public need for additional service). Based on a full

review of the record, this Court is satisfied that the Division's Order was not clearly erroneous or an abuse of discretion.

B

Statutory Provisions, Statutory Authority, and Errors of Law

URI also contends that the Division's Order was in violation of statutory provisions, in excess of statutory authority, or otherwise an error of law. In particular, URI alleges that the Division exceeded its authority and violated statutory provisions by authorizing a transportation service with a stop within URI's campus. In addition, URI alleges that granting the certificate violated the statutory provisions prohibiting pub crawls. Combies argues that the Division acted within its authority, the ability or inability of the Board to bar pick-up and drop-off on campus is not an issue in granting a CPCN, and the prohibition against pub crawls is inapplicable to the activity Combies is proposing.

As set forth above, the Division has the sole and exclusive power and authority to regulate jitney transportation through the issuance of CPCNs. See § 39-1-1(c). The General Assembly in endowing the Division with this authority "expressed its intent to entirely preempt town and city regulatory activity in the field of public-utilities regulation" Town of East Greenwich, 651 A.2d at 729 (internal citations omitted). Public utilities regulation is "expressly reserved" for the Division. Id. Further, this Court affords weight and deference to an agency's interpretation of its regulations and the statutes it enforces, even if the agency's interpretation is not the only permissible interpretation. See Auto Body Ass'n of R.I., 996 A.2d at 97; Labor Ready Ne., Inc., 849 A.2d at 344 (according deference to agency's interpretation when error of law alleged).

It is well established that URI is not an arm or alter ego of the state, at least for diversity jurisdiction and sovereign immunity purposes, and the Board enjoys an "extraordinary measure of autonomy." Univ. of R.I. v. A.W. Chesterton Co., 2 F.3d 1200, 1202-10 (1st Cir. 1993). Rhode Island law provides the Board legal title to all real and personal property of URI in trust for the state as well as the power to hold and operate that property in trust for the state. See § 16-59-1(a), (b). The Board may also make "rules and regulations for the control and use of all public properties and highways under its care . . . ." Sec. 16-52-1. URI claims that this authority provides the Board with the sole ability to regulate and control use of the roads and property on campus.

However, whether URI or its Board can prevent a licensed transportation service from operating within its campus boundaries is of no moment here. The Court is not aware of any requirement for obtaining a CPCN that pickup be in a pre-approved location. The only related requirement is that the certificate specifies the route over which the jitney may operate. See § 39-13-3. Here, the Division's Order grants Combies a CPCN for the regular route proposed, but it also provides that if the Board has the authority to deny Combies' proposed stop on Fraternity Circle, Combies may substitute an initial stop off-campus if he advises the Division of that change. (Order at 21-22.) Furthermore, the Division has the sole authority to regulate transportation services. See § 39-1-1(c). The Division does not believe the issue of URI's control of the roads and property on its campus has any effect on its grant of a CPCN—which requires only fitness of the applicant and public need and convenience—and the Division's interpretation of the statutes it enforces is entitled to deference. See Labor Ready Ne., Inc., 849 A.2d at 344 (providing agency's interpretation of statutes it enforces is entitled to deference as long as not clearly erroneous).

Because the Order provides for an alternative stop, it is not necessary for this Court to determine whether Combies may pick up and discharge passengers on URI's campus in affirming the Order with its terms and conditions.[2] This Court finds no error of law or violation of statutory provisions or authority in the Division's finding that any authority of the Board to prevent the stop on campus does not prevent the Division from awarding the CPCN.

URI also argues that grant of the CPCN is in violation of the statutory provision prohibiting pub crawls. The statute provides, in pertinent part:

> "Any licensee is prohibited from knowingly allowing the use of its premises as part of an organized pub crawl, so-called. A pub crawl shall be defined as an organized event intended to promote the organized, commercial travel of significantly large groups of individuals between licensed premises for the primary purpose of consuming alcoholic beverages at more than one premise. Evidence of a pub crawl shall include, but not be limited by:
>
> (i) The existence of advertising, flyers, tickets or other printed or electronic material promoting or describing a planned pub crawl;
>
> (ii) Organized, commercial transportation intended to move a total of fifty (50) or more individuals from one premise to another in an organized fashion; and
>
> (iii) Evidence of compensation paid to an organizer by participants in a pub crawl."
>
> § 3-7-26(b)(2).

By its plain language, the statute applies to licensees allowing the use of their premises for an organized pub crawl. See id. Licensees within that statutory chapter are the holders of retail licenses—for example, a restaurant, bar, or nightclub—for the sale of alcoholic beverages. See § 3-7-1 et. seq. Other prohibited practices within § 3-7-26 include requiring customers to purchase more than one alcoholic beverage, promoting happy hours or drink specials, or allowing drinking

[2] This Court has stated that a Report and Order, such as the Order in this case, is a final, enforceable, and reviewable administrative decision even though it contains conditions. See Interstate Navigation Co., 1999 WL 813603 at *3; see also Barrington Sch. Comm. v. R.I. State Labor Relations Bd., 608 A.2d 1126, 1132 (R.I. 1992) (holding order final when "consequences of such a disposition are substantial and tangible").

games including the consumption or awarding of alcoholic beverages. See § 3-7-26. These regulations, including the prohibition of participation in a pub crawl, clearly apply to establishments holding liquor licenses.

Accordingly, the pub crawl statute cited by URI does not apply to jitney services that do not hold such a license. Combies' proposed service, which would transport a maximum of fifteen passengers at a time to three locations for any purpose is not a so-called pub crawl prohibited by the statute.[3] Anyone could ride the jitney, and there is no evidence in the record that Combies has any intention to advertise the service as a pub crawl. Most importantly, though, Combies is not a licensee prohibited by the statute from participating in a pub crawl. This Court finds no error of law in the Division's finding that Combies is not a licensee within the purview of the pub crawl law or that any control of the Board regarding stops on campus is no reason to deny a CPCN to an applicant who proved both fitness and public convenience and necessity.

IV

Conclusion

After due consideration, this Court affirms the Division's Order approving Combies' application for a CPCN. The decision of the Division was not clearly erroneously in view of the entire record or affected by error of law. Substantial rights of the Appellants have not been prejudiced. Prevailing counsel may present an Order consistent herewith which shall be settled after due notice to counsel of record.

[3] This Court notes that even if the jitney service somehow constituted a pub crawl, it would be the licensees (restaurants and bars in Narragansett) who would be prohibited from participating, not the transportation provider.