

CAREY Limousine Boston

RECEIVED BY
OFFICE OF CITY CLERK
A & A Limousine Renting, Inc.
161 Broadway P.O. Box 45278 Somerville, Mass. 02145 (617) 623-8700
CAMBRIDGE MA.

10 April 1989

Cambridge License Commission
City of Cambridge
831 Massachusetts Avenue, 1st Floor
Cambridge, Ma. 02139

Attn: James T. McDavitt
License Commission Chair

Re: Limousine/livery vehicles.

Dear Sir:

With respect to the public hearing on the restriction of all limousines and other livery services picking up and or dropping off customers in Cambridge, I am opposed to this action as it is protectionist, not in the interest of the public, and contrary to Federal and Massachusetts law.

My company has been conducting business in the Boston Area for over 65 years. We have all the necessary licences and permits to conduct private livery business anywhere in Massachusetts. In addition we possess ICC licence authority. Restricting us to pick-up or drop off customers continuing on out of state may constitute a violation of Federal ICC Authority.

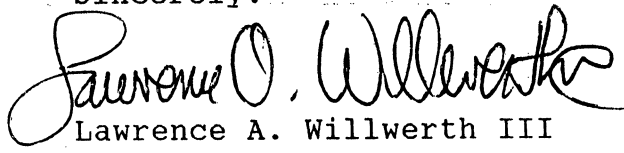
We only pick-up passengers on a pre-arranged basis with payment billed to the customer. We have many satisfied customers in Cambridge who will want to continue to use our service in the future. Our rates are not competitive with taxi's in Cambridge. Our customers use us because they want to and we give them good service to have them keep on using us. We do not solicit on the streets of any city. Our cars are dispatched from only one location in Somerville and do not roam the streets.

With respect to Massachusetts Law, the Town of Andover passed a similar ordinance to restrict "all owners and drivers of public conveyances" in 1985 and the amendment to general by-laws adopted under article 39 of the warrant for Andover Annual Town Meeting held April 2, 1985, was disapproved. A copy is enclosed for your information. Page 4 defines "public conveyances... used for hire" and its right to pick up passengers outside its city when summoned by telephone or radio. Massachusetts General laws, Chapter 40,

Section 22, authorizes towns to make by-laws or the board of selectman to make rules and orders for the regulation of carriages and vehicles used therein as long such by-laws are not universal in scope and be of reasonable control. To require anyone not based in the town being regulated to obtain a licence for activity not affecting the public safety or the surface of public ways constitutes an "extraterritorial application of the licensing power".

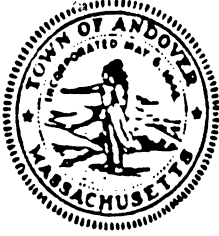
Please contact me if you have any questions on this matter.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lawrence A. Willwerth III". The signature is fluid and cursive, with the first name "Lawrence" being more legible than the last name.

Lawrence A. Willwerth III
General Manager

Info: Cambridge city clerk
John Flynn, Asst city clerk



TOWN OF ANDOVER

ELDEN R. SALTER, *Certified Municipal Clerk*
TOWN CLERK
SUPERVISOR OF ELECTIONS
JUSTICE OF THE PEACE

TOWN OFFICES
BARTLET STREET
ANDOVER, MASSACHUSETTS 01810
(617) 470-3800

TO WHOM IT MAY CONCERN:-

This is to certify that at the Adjourned Annual Town Meeting of the Inhabitants of the Town of Andover held on April 2, 1985, the following Article and VOTE taken thereon, to wit:-

Article 39.

To see if the Town will vote to amend Article XI, Section 1 of the Town Bylaws by adding the following section:

1. (A) All owners and drivers of public conveyances either based in Andover or elsewhere of all kinds that may be used for public hire or for carrying express and baggage from any point in the limits of the Town to any other point within the Commonwealth of Massachusetts, shall be licensed by the Selectmen under such conditions as they may determine.

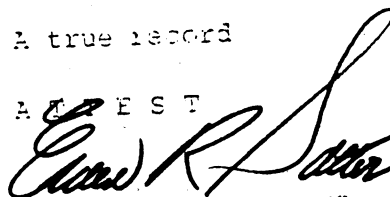
Upon motion made and duly seconded it was VOTED to amend Article XI, Section 1 of the Town By-Laws by adding the following section:

1. (A) All owners and drivers of public conveyances either based in Andover or elsewhere of all kinds that may be used for public hire or carrying express and baggage from any point in the limits of the Town to any other point within the Commonwealth of Massachusetts, shall be licensed by the selectmen under such conditions as they may determine.

ARTICLE 39 passed by a MAJORITY Vote. A Quorum was present.

A true record

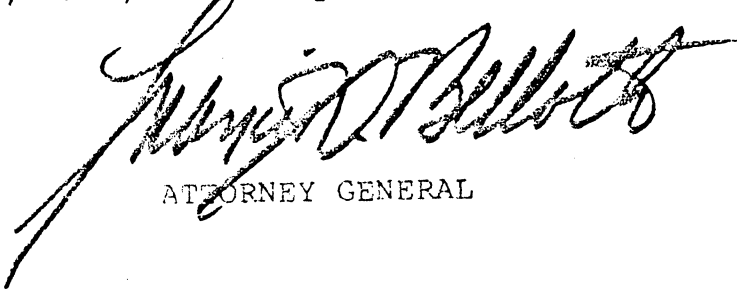
ATTEST


Elden R. Salter, CMC
Town Clerk

Boston, Massachusetts

July 5, 1985

The foregoing amendment to the general by-laws adopted under article 39 of the warrant for the Andover Annual Town Meeting held April 2, 1985, is hereby disapproved.



ATTORNEY GENERAL



THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF THE ATTORNEY GENERAL

JOHN W. MC CORMACK STATE OFFICE BUILDING
ONE ASHBURTON PLACE, BOSTON 02108-1698

FRANCIS X. BELLOTTI
ATTORNEY GENERAL

July 5, 1985

Elden R. Salter, CMC
Town Clerk of Andover
Town Offices
Bartlett Street
Andover, Massachusetts 01810

Dear Mr. Salter:

I regret that I must enclose the amendment to general by-laws adopted under article 39 of the warrant for the Andover Annual Town Meeting held April 2, 1985, with the disapproval of the Attorney General endorsed thereon.

Article 39 would require all owners and drivers of public conveyances either based in Andover or elsewhere of all kinds that may be used for public hire or carrying express and baggage from any point in the limits of the Town to any other point within the Commonwealth to be licensed by the selectmen.

The proposed by-law makes no distinction between vehicular trips that originate in Andover or those that originate in another community and provide enroute services within Andover.

The town meeting has made a determination that fails to take into consideration the authority of the Department of

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Public Utilities (hereinafter called DPU) to issue a license to a person to operate a motor vehicle upon public ways for the carriage of passengers for hire over prescribed routes as to afford a means of transportation similar to that afforded by a railroad company in the event that the Andover licensing authority declines to grant a license. (G.L. c. 159A, §§ 1, 2, 3, 7). City of Worcester v. Department of Public Utilities, 391 Mass. 1007 (1984).

The article 39 by-law is inconsistent with General Laws, Chapter 159B, which mandates a statewide scheme and policy for carriers of property by motor vehicle and establishes the DPU as the licensing and regulatory agency. Chapter 159B includes common carriers by motor vehicle, contract carriers by motor vehicle and irregular route common carriers of property within its regulatory ambit.

An additional statewide statutory procedure has been established by Chapter 527 of the Acts of 1973 and Chapter 306 of the Acts of 1975 giving the DPU authority to issue, with the approval of the mayor of the City of Boston, licenses for the operation of motor vehicles carrying passengers for hire to and from Logan Airport or a major regional transportation terminal in the City of Boston and locations outside the City of Boston. City Council of Boston v. Department of Public Utilities, 7 Mass. App. Ct. 379 (1979). A state license would be of no value if its individual points of origin were subject

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to control by all cities and towns other than Boston. See also City of Boston v. Hospital Transportation Services, Inc., 6 Mass App. Ct. 198 (1978) upholding the granting of licenses by the DPU for bus or limousine services between Logan International Airport and various municipalities under G.L. c. 159A, § 1, as amended by St. 1975, C. 740.

The by-law would impede and thwart the statutory procedure established in General Laws, Chapter 159 A, § 11A for the DPU to regulate and license motor vehicles carrying ten or more persons, including the driver, in charter service or special service or in school service.

A local licensing authority may adopt rules and regulations implementing Chapter 159A and rules and regulations made by the DPU (G.L. c. 159A, § 12). Even if the town meeting action under article 39 was in lieu of local rules and regulations pursuant to the Home Rule Amendment (Const. Am. Art. II, § 6) it may not prevail since it impedes on areas of exclusive jurisdiction granted to the DPU as discussed above.

To the extent that article 39 requires a license from those based outside Andover to carry express and baggage from a point within the town to a point beyond the town within Massachusetts, it is a facially invalid attempt to convert a private carrier of merchandise into a common carrier by town legislative act. Smith v. Cahoon, 283 U.S. 553, 563 (1931).

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The text of article 39 uses the term, "public conveyances ...used for hire." It would classify a person who accepts a contract to transport a person from a point within to a point without Andover as a common carrier of persons for hire without the showing of any need to control traffic conditions and other matters affecting public safety solely within Andover. Cf. Commonwealth v Reardon, 282 Mass. 345 (1933).

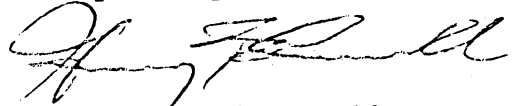
The Massachusetts General Court when enacting special legislation pertaining to the transportation of persons in Boston by taxicab has authorized the driver of a taxicab licensed outside the city to accept passengers for hire within Boston if summoned by telephone or radio for this purpose. St. 1963, c. 386. Taxicabs and private liveries are in juxtaposition in respect to their status to enter into private contracts.

The by-law term "public conveyance" is not defined in the by-law. Webster's Third International Dictionary in its more appropriate definition of the word "public" that fits with the word "conveyance" suggests the meaning, "accessible to or shared by all members of the community." Thus, a public conveyance that may be used for public hire means one that is accessible to or offered for use to members of the public who may thereafter contract with the owners of the conveyance for such use. The owner is under no obligation to enter into a contract.

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Massachusetts General Laws, Chapter 40, Section 22, authorizes towns to make by-laws or the board of selectmen to make rules and orders for the regulation of carriages and vehicles used therein. Such by-laws are not to be universal in scope and in application when regulating the business of carrying people for hire upon public ways but may subject such activity to reasonable control. Morley v. Police Commissioner of Boston, 261 Mass. 269 (1927). The by-law authority is granted in respect to activities on public ways within the town. To require anyone not based in Andover to obtain a license for activity not affecting the public safety or the surface of public ways in Andover constitutes an extraterritorial application of the licensing power. It is the business itself that is being regulated not its vehicles that are properly using the public ways in Andover and in other communities.

Very truly yours,



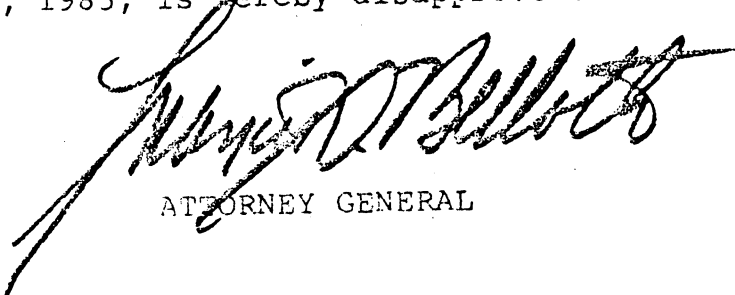
Henry F. O'Connell
Assistant Attorney General

HFO/jl

Boston, Massachusetts

July 5, 1985

The foregoing amendment to the general by-laws adopted under article 39 of the warrant for the Andover Annual Town Meeting held April 2, 1985, is hereby disapproved.



ATTORNEY GENERAL

City of Cambridge

10.

S-293

Comm. from Lawrence A. Willworth, III, General
Mgr., Carey Limousine Boston, in opposition
to the restriction of all limousines & other
livery services picking up or dropping off
customers in Cambridge.

In City Council,

April 24, 1989

4-24-89

Placed on file.