FILED
8-21-15
04:59 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on Regulations Relating to Passenger Carriers, Ridesharing, And New Online-Enabled Transportation Services	R.12-12-011

COMMENTS OF SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY IN RESPONSE TO ASSIGNED COMMISSIONER'S RULING INSTRUCTING COMMENT ON THE IMPACT OF PUBLIC UTILITY CODE SECTION 5401 ON RIDESHARING FEATURES OFFERED BY TRANSPORTATION NETWORK COMPANIES

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency
One South Van Ness, 7th Floor
San Francisco, CA 94013
(415) 701-4720

These comments are submitted on behalf of the San Francisco Municipal Transit Agency ("SFMTA") to the California Public Utilities Commission ("Commission") in response to the Assigned Commissioner's Ruling Instructing Comment on the Impact of Public Utilities Code Section 5401 on Ridesharing Features Offered by Transportation Network Companies, filed August 6, 2015 ("the August 6 Ruling"). The August 6 Ruling notes that the Commission's Safety and Enforcement Division ("SED") issued letters to Uber, Lyft, and Sidecar on September 8, 2014 warning them that their carpooling programs – Uberpool, Lyft Line and Shared Rides, respectively -- violate Public Utilities Code Section 5401. Specifically, SED's letters stated that Section 5401 "strictly prohibits a charter-party carrier from charging on an individual fare basis," that the Commission "has consistently found that charter party carriers cannot charge an individual fare when carrying multiple persons in a vehicle," and that therefore "a person chartering a charter party carrier vehicle must have exclusive use of the vehicle." (SED letter to Uber dated 9/8/2014.) The August 6 Ruling states that Uber, Lyft and Sidecar have asserted that Section 5401 was not written to prevent the carpooling services offered by UberPool, Lyft Line and Shared Rides, that this issue therefore "remains unresolved," and that the Commission must "render a decision regarding the interpretation of Section 5401."

The Plain Meaning of Section 5401

The August 6 Ruling asks the parties to comment on the following question: "What was the purpose/intent behind the passage of Pub.Util.Code § 5401?"

When a court, or an administrative agency, interprets a statute, its "fundamental task is to determine the Legislature's intent so as to effectuate the law's purpose." (*People v. Murphy* (2001) 25 Cal.4th 136, 142.) The court or agency begins by examining the statutory language because the words of a statute are the most reliable indicator of legislative intent. (*People v. Watson* (2007) 42 Cal.4th 822, 828.) The words of the statute are given their ordinary and usual meaning, and if the language is unambiguous, the plain meaning of the statute governs. (*Whaley v. Sony Computer Entertainment America, Inc*. (2004) 121 Cal.App.4th 479, 484-85; *Von Northdurft. v. Steck* (2014) 227 Cal.App.4th 524, 532 [only when legislative language is ambiguous may court consider extrinsic aids such as legislative history and considerations of public policy].) Here, the Legislature's intent in enacting Section 5401 is clear from the statute's plain language, and the Commission need look no further in determining that its SED was correct in concluding that Section 5401 bars TNCs from operating services such as Uberpool, Lyft Line and Shared Rides.

Public Utilities Code Section 5401 provides as follows:

> Charges for the transportation to be offered or afforded by a charter-party carrier of passengers shall be computed and assessed on a vehicle

> mileage or time of use basis, or on a combination thereof. These charges may vary in accordance with the passenger capacity of the vehicle, or the size of the group to be transported. However, no charter-party carrier of passengers shall, directly or through an agent or otherwise, nor shall any broker, contract, agree, or arrange to charge, or demand or receive compensation, for the transportation offered or afforded that shall be computed, charged, or assessed on an individual-fare basis, except schoolbus contractors who are compensated by parents of children attending public, private, or parochial schools and except operators of round-trip sightseeing tour services conducted under a certificate subject to Section 5371.1, or a permit issued pursuant to subdivision (c) of Section 5384.

The language of Section 5401 is neither unclear nor ambiguous. Its plain meaning is that charter-party carriers must base their fares on mileage or time of use, or on a combination of the two, and that charter-party carriers may charge only one fare per trip. They may not charge individual fares to passengers when transporting multiple passengers. Because the statutory language is clear, the Commission has no choice but to interpret Section 5401 in accordance with its plain meaning. (*Peake v. Underwood* 227 Cal.App.4th 428, 443 [court may not, under the guise of statutory construction, give the statute's language an effect that is different form its plain meaning and direct import].)

The August 6 Ruling also asks the parties to comment on this question: "Does Pub.Util.Code § 5401 apply to the TNCs' ridesharing operations known as "UberPool," "Lyft Line," "Shared Rides," or any other ridesharing operation offered by a TNC?" Clearly, it does. The Legislature intended to bar charter-party carriers from charging fares to more than one passenger per trip, and that is exactly what Uberpool, Lyft Line and Shared Rides purport to do. (*See* http://ridesharetips.com/uberpool-work-video-graphics-explain-real-time-carpooling/; http://techcrunch.com/2014/08/06/lyft-line/; https://www.side.cr/1-for-shared-rides/.) The SFMTA agrees with the Commission's SED that because these services charge individual fares when carrying multiple persons, thereby allowing passengers to "split fares," these services are being conducted in violation of Section 5401.

Finally, the August 6 Ruling asks the parties to comment on this question: "What is the definition of an "individual fare" and should the Commission further define that term?" Because Section 5401's plain meaning is clear, there is no room for the Commission to issue regulations further defining the statute's terms. Section 5401's prohibition against charging "on an individual fare basis" clearly limits a charter-party carrier to charging one fare for per trip, despite the fact that the vehicle is carrying more than one person. Where, as here, the language of a statute is clear, the administrative agency is bound by that plain meaning, and has no discretion to issue

regulations otherwise interpreting the statutory language. (*See United States v. Home Concrete & Supply, LLC* (2012) 132 S.Ct. 1836, 1843 [where the statutory language is unambiguous, there is no room for agency discretion because there is no delegation of authority to the administrative agency to elucidate a particular provision of the statute by regulation].)

Public Policy Considerations

The August 6 Ruling also asks the parties to comment on the following questions:

"What public policy objectives are served by Pub.Util.Code § 5401?"

"What public safety objectives are served by Pub.Util.Code § 5401?"

"Would any public policy objectives be compromised if the Commission were to determine that the TNCs' ridesharing operations were not subject to Pub.Util.Code § 5401?"

"Would any public safety objectives be compromised if the Commission were to determine that the TNCs' ridesharing operations were not subject to Pub.Util.Code § 5401?"

"Should Pub.Util.Code § 5401 apply to the TNCs' ridesharing operations known as "UberPool," "Lyft Line," "Shared Rides," or any other ridesharing operation offered by a TNC?"

These questions are irrelevant to the Commission's interpretation of Public Utilities Code Section 5401. The Legislature has determined that TNCs are charter-party carriers. (CA Pub. Util. Code §§ 5430, 5440.) And, as discussed above, the Legislature manifested a clear intent through the language of Section 5401 to prohibit charter-party carriers carrying multiple passengers from charging individual fares to those passengers. Because services such as Uberpool, Lyft Line and Shared Rides are charging individual fares, the Commission must conclude that these services violate Section 5401.

The TNCs may believe that considerations of public policy dictate that TNCs should be free to operate "carpooling" services such as Uberpool, Lyft Line and Shared Rides that charge individual fares. And the Commission may agree with that assessment. The Commission is not, however, free, in the guise of interpreting Section 5401, to find that because it would be good public policy to encourage these TNC carpooling services, Section 5401 does not bar their operation. (*See Sierra v. Environmental Protection Agency* (D.C. Cir. 2002), 294 F.3d 155, 161 [an administrative agency may not disregard legislative intent as expressed in the statute's clear language because it would prefer what it considers a better policy].) It is up to the Legislature to consider the relevant policy considerations and to amend or repeal Section 5401 if it believes that TNCs should be permitted to charge individual fares so that they may provide services such as Uberpool, Lifeline and Shared

Rides.[1] As SED stated in its September 8, 2014 letters, "[t]he Commission lacks the flexibility to allow a transportation service that is contrary to the statute as approved by the Legislature."

Dated: August 21, 2015

Respectfully submitted,

By: /s/

Edward D. Reiskin
Director of Transportation
San Francisco Municipal Transportation Agency

[1] The Legislature is currently considering such a bill. Assembly Bill 1360 was introduced by Assembly Member Ting on February 27, 2015 and is still pending in the Legislature. It would exempt TNC services that prearrange rides shared by multiples passengers from Section 5401's prohibition on individual fares.