



STATE OF WASHINGTON
UTILITIES AND TRANSPORTATION COMMISSION
1300 S. Evergreen Park Dr. S.W., P.O. Box 47250 • Olympia, Washington 98504-7250
(360) 664-1160 • www.utc.wa.gov

June 26, 2014

Steven V. King, Executive Director and Secretary
Utilities and Transportation Commission
1300 S. Evergreen Park Dr. SW
P.O. Box 47250
Olympia, WA 98504-7250

RE: *Washington Utilities and Transportation Commission v. Yelm Adult Community Center*

Commission Staff's Response to Application for Mitigation of Penalties TN-141042

Dear Mr. King:

On May 22, 2014, the Utilities and Transportation Commission issued a \$1,000 Penalty Assessment in Docket TN-141042 against Yelm Adult Community Center for 10 violations of Washington Administrative Code (WAC) 480-30-080, which requires nonprofit special needs transportation provider companies to furnish annual reports to the commission no later than May 1 each year.¹

On June 12, 2014, Yelm Adult Community Center wrote the commission requesting mitigation of penalties (Mitigation Request).² In its Mitigation Request, Yelm Adult Community Center does not dispute that the violation occurred. The company states, "Last September, their Center Manager was dismissed under allegations of financial mismanagement and theft. At that time, the Board of Directors was comprised of senior citizens who, though well intentioned, did not understand the governance and fiduciary responsibilities of a non-profit board." The request continues to provide historical information regarding the company and the devastating effect a financial penalty would cause to the service being provided to the seniors of Yelm.

It is the company's responsibility to ensure that the regulatory fee is paid and the annual report is filed by the May 1 deadline. On February 28, 2014, Annual Report packets were mailed to all regulated nonprofit special needs transportation provider companies. The instructions for annual report completion page of the annual report informed the regulated company that it must complete the annual report form, pay the regulatory fees, and return the materials by May 1, 2014, to avoid enforcement action.

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

²See attachment B for a copy of Yelm Adult Community Center's Mitigation Request received on June 12, 2014

UTC Annual Reports

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On June 16, 2014, Yelm Adult Community Center filed the 2013 annual report and paid the required regulatory fees and late payment penalty. The company has been active since August 4, 2006. No prior violations of WAC 480-30-080 are on commission record. Staff supports the company's request for mitigation. Due to the compelling circumstances provided by the company and past filing history, staff recommends to waive the penalty in full.

If you have any questions regarding this recommendation, please contact Amy Andrews, Regulatory Analyst, at (360) 664-1157, or aandrews@utc.wa.gov.

Sincerely,

Sondra Walsh, Director
Administrative Services

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

²See attachment B for a copy of Yelm Adult Community Center's Mitigation Request received on June 12, 2014

ATTACHMENT A

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

NOTICE OF PENALTIES INCURRED AND DUE FOR VIOLATIONS OF LAWS AND RULES

PENALTY ASSESSMENT: TN-141042
PENALTY AMOUNT: \$1,000

Yelm Adult Community Center
PO Box 474
Yelm, WA 98597

According to Washington Utilities and Transportation Commission (Commission) records, you have violated Washington Administrative Code (WAC) 480-30-080, which requires nonprofit special needs transportation provider companies to file their annual report and pay regulatory fees each year by May 1. You did not file an annual report or pay regulatory fees by May 1, 2014.

Revised Code of Washington (RCW) 81.04.080 authorizes the Commission to assess penalties of \$100 for violations of Commission rules. Each violation is a separate and distinct offense and, in the case of a continuing violation, every day's continuance is a separate and distinct violation. The Commission interprets noncompliance with WAC 480-30-080 beyond May 1 as a continuing violation, and assesses penalties of \$100 for each day a company fails to file its report or pay its regulatory fees after that date.

As a result, the Commission has assessed penalties against you in the amount of \$1,000 on the following basis:

On February 28, 2014, the Commission mailed the 2013 annual report forms and the 2014 regulatory fee packets to all nonprofit special needs transportation provider companies registered in Washington. The instructions page for the annual report form instructed these companies to file annual reports and pay regulatory fees by May 1, 2014. The instructions page also stated that failure to file the annual report by May 1 would result in penalties. The deadline for requesting an extension to file your annual report was April 17. You did not request an extension.

As of May 15, 2014, Yelm Adult Community Center has not filed its 2013 annual report or paid its 2014 regulatory fee. May 15 is 10 business days from May 1, resulting in a total penalty of \$1,000.

Your penalty is due and payable now. If you believe the violation did not occur, you may request a hearing to contest the penalty assessment. The Commission will grant that request only if

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

²See attachment B for a copy of Yelm Adult Community Center's Mitigation Request received on June 12, 2014

material issues of law or fact require consideration of evidence and resolution in a hearing. A request for a hearing must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. If there is a reason for the violation that you think should excuse or reduce the penalty, you may ask for mitigation (reduction) of this penalty through evidence presented at a hearing or in writing. A request for mitigation must include a written statement of the reasons supporting that request. Failure to provide such a statement will result in denial of the request. See RCW81.04.405.

If you properly present your request for a hearing and the Commission grants that request, the Commission will review the evidence supporting your dispute of the violation or application for mitigation in a Brief Adjudicative Proceeding, before an administrative law judge. The administrative law judge will consider the evidence and will notify you of his or her decision.

You must act within 15 days after receiving this notice to do one of the following:

- Pay the amount due.
- Request a hearing to contest the occurrence of the violations.
- Request mitigation to contest the amount of the penalty.

Please indicate your selection on the enclosed form and send it to the Washington Utilities and Transportation Commission, Post Office Box 47250, Olympia, Washington 98504-7250, **within FIFTEEN (15) days** after you receive this notice.

If you do not act within 15 days, the Commission may refer this matter to the Office of the Attorney General for collection, which may file suit in state court to collect the penalty. The Commission may also initiate proceedings under WAC 480-31-052 to revoke your authority to provide nonprofit transportation services in Washington.

DATED at Olympia, Washington, and effective May 22, 2014.

GREGORY J. KOPTA
Administrative Law Judge

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

²See attachment B for a copy of Yelm Adult Community Center's Mitigation Request received on June 12, 2014

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TN-141042

PLEASE NOTE: You must complete and sign this document, and send it to the Commission within 15 days after you receive the penalty assessment. Use additional paper if needed.

I have read and understand RCW 9A.72.020 (printed below), which states that making false statements under oath is a class B felony. I am over the age of 18, am competent to testify to the matters set forth below and I have personal knowledge of those matters. I hereby make, under oath, the following statements.

1. **Payment of penalty.** I admit that the violations occurred. I have:

Enclosed \$ _____ in payment of the penalty

Submitted my payment of \$ _____ online at www.utc.wa.gov. My confirmation number is _____.

2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:

3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:

a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision

OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: _____ [month/day/year], at _____ [city, state]

Name of Respondent (company) – please print

Signature of Applicant

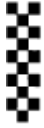
RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

²See attachment B for a copy of Yelm Adult Community Center’s Mitigation Request received on June 12, 2014

ATTACHMENT B



06/12/2014 15:47 13604001222

YELM UPS STORE

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**Yelm Adult Community Center
16530 103rd Ave SE
Mailing: P.O. Box 474
Yelm, WA 98597
360-458-7733**

June 11, 2014

Gregory J Kopta
Administrative Law Judge
Washington Utilities and Transportation Commission
P.O. Box 47250
Olympia, WA 98504-7250

Dear Judge Kopta,

I am writing on behalf of The Yelm Adult Community Center Board of Directors to request mitigation for a Penalty Assessment from WUTC that we received last month for the vehicles that are used to transport seniors to the Yelm Senior Center. We are a grassroots non-profit that has faced a challenging year.

Last September, their Center Manager was dismissed under allegations of financial mismanagement and theft. At that time, the Board of Directors was comprised of senior citizens who, though well intentioned, did not understand the governance and fiduciary responsibilities of a non-profit board. The Mayor of Yelm, Ron Harding, was called on to counsel the board and he helped recruit a number of community members who have more experience with non-profits. I was elected board president a few months ago and with the help of the other board members am trying to bring the Yelm Senior Center into compliance in a number of ways.

Recently we received the Penalty Assessment mailing from WUTC. The board members were unaware of the requirement of sending in an Annual Report for the vehicles that our agency owns. I have enclosed a completed Annual Report with this letter along with payment. I have also enclosed the form requesting mitigation and a Commission decision.

Yelm Adult Community Center has served older adults in our community and the surrounding rural area for over 30 years. We are a small center with approximately 116 members. Because of the misuse and theft of funds and lack of leadership on the former Board of Directors, the Yelm Adult Community Center is struggling financially. Fortunately we are subcontractors of Senior Services for South Sound and receive reimbursement funds for mileage driven providing transportation of elders who can no longer drive to get to the Senior Center.

2014 JUN 12 PM 3:51

¹See attachment A for a copy of the penalty assessment sent on May 22, 2014

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Yelm is a very rural community and the Senior Center uses volunteers to transport seniors into the Center for meals and essential services. One of our board members has stepped up to coordinate drivers, fill out mileage reimbursement reports, and keep the two vehicles in safe repair. We are working closely with Senior Services for South Sound to keep our transportation service in compliance.

The seniors in Yelm and in the surrounding rural area depend on this transportation for their socialization, nutrition and health. Our agency cannot afford the penalty and we would have to discontinue transportation as a service to our seniors. I would appreciate your consideration and leniency in waving any penalty assessment.

Thank you for your consideration. If you have any questions please contact me at 360-561-7223 or contact Cathy English, the board member who is currently helping to manage the Yelm Senior Center Tuesday through Friday at 360-458-7733.

Sincerely,



E. J. Curry
President of the Board of Directors
Yelm Adult Community Center
Yelm Senior Center

enclosures

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WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

PENALTY ASSESSMENT TN-141042

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2014 JUN 12 PM 3:51

- 1. **Payment of penalty.** I admit that the violations occurred. I have:
 - Enclosed \$ _____ in payment of the penalty
 - Submitted my payment of \$ _____ online at www.utc.wa.gov. My confirmation number is _____.
- 2. **Request for a hearing.** I believe that one or more of the alleged violations did not occur, for the reasons I describe below, and I request a hearing based on those reasons for a decision by an administrative law judge:
- 3. **Application for mitigation.** I admit the violations, but I believe that the penalty should be reduced for the reasons set out below:
 - a) I ask for a hearing to present evidence on the information I provide above to an administrative law judge for a decision
 - OR b) I ask for a Commission decision based solely on the information I provide above.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing, including information I have presented on any attachments, is true and correct.

Dated: June 11, 2014 (month/day/year), at Yelm, WA [city, state]

Yelm Adult Community Center
Name of Respondent (company) – please print

EJ Cherry by mee
Signature of Applicant

RCW 9A.72.020:

“Perjury in the first degree. (1) A person is guilty of perjury in the first degree if in any official proceeding he makes a materially false statement which he knows to be false under an oath required or authorized by law. (2) Knowledge of the materiality of the statement is not an element of this crime, and the actor’s mistaken belief that his statement was not material is not a defense to a prosecution under this section. (3) Perjury in the first degree is a class B felony.”

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