

## NOTICE OF CHARTER SERVICE COMPLAINT

Date Served: August 5, 2008

I hereby certify that I have this day served the foregoing Notice of Charter Service Complaint on the following persons at the following addresses by Standard mail:

Mr. Ron Baumgart  
Executive Director, River Cities Public Transit  
PO Box 1025  
Pierre, South Dakota 57501

Dated this 5<sup>th</sup> day of September, 2008.

  
Dawnita Forell, Forell Limousine & Bus Service

# NOTICE OF CHARTER SERVICE COMPLAINT

## **Subject of Complaint:**

River Cities Public Transit  
PO Box 1025  
Pierre, SD 57501

## **Specific provisions of this part that the complainant believes were violated:**

(604.3 (c )), (604.3 (c) (1) (i), (604.3 (c) (1) (ii), (604.3 (c) (1) (iii) and 604.14 (3) (b) (1).

**Notice of Charter Service Complaint was served in accordance with Section 604.31.**

## **Registered charter provider associated with the complaint**

Forell Limousine & Bus Service, Inc.  
106 West Prospect Avenue  
Pierre, South Dakota 57501  
(605) 224-0073 office  
(605) 224-0073 fax

## **Concise but complete statement of the facts relied upon to substantiate each allegation. (Please note attached sworn affidavits supporting complaint)**

On June 10, 2008, a Mr. Jeremy Kelly of Pierre, SD requested charter service from Forell Limousine & Bus Service. The proposed group to be transported for the charter was attending a bachelor party. A round-trip price of \$350 plus tax was agreed upon.

On June 18, 2008, Mr. Kelly called and cancelled the charter and advised he obtained a better price for his charter from River Cities Transit. He advised he was quoted a price of \$135 round-trip.

On June 21, 2008, River Cities Transit provided the charter to Mr. Kelly's group. An attempt was made by an individual outside of the group to board the bus and was advised the bus was in exclusive use (see attached affidavit).

The Charter Service Rule (49 CFR 604) affords the following definition of charter:

### Section 604.3 Definitions

(c) "Charter service" means, but does not include demand response service to individuals:

(1) Transportation provided by a recipient at the request of a third party for the exclusive use of a bus or van for a negotiated price. The following features may be characteristic of charter service:

(i) A third party pays the transit provider a negotiated price for the group;

(ii) Any fares charged to individual members of the group are collected by a third party;

(iii) The service is not part of the transit provider's regularly scheduled service, or is offered or a limited period of time; or

(iv) A third party determines the origin and destination of the trip as well as scheduling; or

(2) Transportation provided by a recipient to the public for events or functions that occur on an irregular basis or for a limited duration and:

(i) A premium fare is charged that is greater than the usual or customary fixed route fare; or

(ii) The service is paid for in whole or in part by a third party.

Forell Limousine & Bus Service asserts that River Cities Transit violated the Charter Service Rule as follows:

- 1) The charter performed by River Cities Transit does not fall under the parameters of demand response as the group does not meet programmatic purposes. (604.3 (c ))
- 2) A third party paid a negotiated price or individuals contributed to a third party. No "regular" per capita fares were charged. (604.3 (c) (1) (i) and (604.3 (c) (1) (ii)
- 3) The service provided was not part of the recipient's regularly scheduled service. (604.3 (c) (1) (iii).

Forell Limousine & Bus Service further asserts that none of the following exceptions applied to the charter:

Sec. 604.6 Government officials on official government business.

Sec. 604.7 Qualified human service organizations.

Sec. 604.8 Leasing FTA funded equipment and drivers.

Sec. 604.9 When no registered charter provider responds to notice from a recipient.

Sec. 604.10 Agreement with registered charter providers.

Sec. 604.11 Petitions to the Administrator.

Additionally, Forell Limousine & Bus Service further asserts that the recipient failed to comply with the following:

Sec. 604.14 Recipient's notification to registered charter providers.

(3) Provide notice to registered charter providers as provided in this section and provide the service pursuant to Sec. 604.9.

(b) If a recipient is interested in providing charter service under the exception contained in Sec. 604.9, then upon receipt of a request for charter service, the recipient shall provide e-mail notice to registered charter providers in the recipient's geographic service area in the following manner:

- (1) E-mail notice of the request shall be sent by the close of business on the day the recipient receives the request unless the recipient received the request after 2 p.m., in which case the recipient shall send the notice by the close of business the next business day;

- (2) E-mail notice sent to the list of registered charter providers shall include:
- (i) Customer name, address, phone number, and e-mail address (if available);
  - (ii) Requested date of service;
  - (iii) Approximate number of passengers;
  - (iv) Whether the type of equipment requested is (are) bus(es) or van(s); and
  - (v) Trip itinerary and approximate duration; and
- (3) If the recipient intends to provide service that meets the definition of charter service under Sec. 604.3(c)(2), the e-mail notice must include the fare the recipient intends to charge for the service.
- (c) A recipient shall retain an electronic copy of the e-mail notice and the list of registered charter providers that were sent e-mail notice of the requested charter service for a period of at least three years from the date the e-mail notice was sent.
- (d) If a recipient receives an "undeliverable" notice in response to its e-mail notice, the recipient shall send the notice via facsimile. The recipient shall maintain the record of the undeliverable e-mail notice and the facsimile sent confirmation for a period of three years.

In conclusion the recipient, River Cities Transit, violated the following sections of the Charter Service Rule:

(604.3 (c )), (604.3 (c) (1) (i)), (604.3 (c) (1) (ii)), (604.3 (c) (1) (iii) and 604.14 (3) (b) (1).

Finally, the illegal actions of the recipient brought on by the charter service rule violations culminated in a financial loss of gross revenue previously stated and an immeasurable loss of community goodwill by creating unrealistic expectations for charter bus service pricing.

Evidence exists that witness tampering and or intimidation may have occurred subsequently hindering the investigation of this violation. Forell Limousine & Bus Service respectfully requests that regardless of finding, that the Federal Transit Administration refer the matter to the Department of Justice for further investigation of the recipient's activities surrounding this matter.

Respectfully submitted,

Dawnita Forell  
Forell Limousine & Bus Service

AFFIDAVIT OF DAWNITA FORELL

In the State of South Dakota, Hughes County

I, Dawnita Forell, of 106 West Prospect Avenue, Pierre, South Dakota 57501, being duly sworn, deposes and states that:

I was contacted on June 10, 2008, by Mr. Jeremy Kelly of Pierre, SD. Mr. Kelly requested charter service for June 21, 2008 from Forell Limousine & Bus Service. The charter required a group be transported to a bachelor party. A round-trip price of \$350 plus tax was agreed upon.

I was subsequently contacted on June 18, 2008 by Mr. Kelly to cancel the June 21, 2008 charter. Mr. Kelly advised he obtained a better price for his charter from River Cities Transit. He advised he was quoted a price of approximately \$135 round-trip (\$45 mileage(\$1.50 per mile x15miles per trip) and \$1.55 per person per ride).

Mr. Kelly originally agreed to provide a deposition providing details of his transaction with River Cities Transit bus has withdrawn the offer stating he prefers "not to get involved."

I have obtained a hand written statement from Scott P. Swenson attesting to the June 21<sup>st</sup>, 2008 bachelor party bus ride. Scott clearly states that he and his two sons (Dan & MiKe Swenson) did not pay anything for the bus ride.

I declare under penalty of perjury that the foregoing is true and correct.

Dawnita Forell  
Dawnita Forell

September 5<sup>th</sup>, 2008  
Date

In witness whereof he has hereto set his hand and seal.

Amy Franks  
(Title)

I, Amy Franks, a Notary Public of the County and State aforesaid, hereby certify that Dawnita Forell personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 5 day of September 2008.

Amy Franks  
Notary Public

My Commission expires:

05 / 23 / 2013.

**AFFIDAVIT OF TYSON ZANE FORELL**

In the State of South Dakota, Hughes County

I, **Tyson Zane Forell**, of 106 West Prospect Avenue, Pierre, South Dakota 57501, being duly sworn, deposes and states that he was present on June 21, 2008 from approximately 1:00 PM to 1:40 PM and witnessed the following:

A group of passengers, previously known to me as a group originally chartered to Forell Limousine & Bus Service, that appeared to be acquaintances and were destined to a common destination boarded a bus identified as operated by River Cities Transit vehicle.

I was present and observed Taylor Melvin Maier at the scene. Taylor Melvin Maier attempted to board the bus and was denied a ride.

As passengers arrived, I observed the passengers loading guns and supplies onto the bus. I observed the bus driver get out of the bus and walk around while he waited for the party to load the bus. I carefully observed that none of the passengers were paying a fare.

I also took several of the photographs submitted.

I declare under penalty of perjury that the foregoing is true and correct.

Tyson Zane Forell  
Tyson Zane Forell

9-5-08  
Date

In witness whereof he has hereto set his hand and seal.



Amy Franks  
(Title)

I, Amy Franks, a Notary Public of the County and State aforesaid, hereby certify that Tyson Zane Forell personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 5 day of September, 2008.

(SEAL)

Amy Franks  
Notary Public

My Commission expires:

05 / 23 / 2013



**AFFIDAVIT OF TAYLOR MELVIN MAIER**

In the State of South Dakota, Hughes County

I, **Taylor Melvin Maier**, of 2700-293 Avenue, Pierre, South Dakota 57501, being duly sworn, deposes and states that he was present on June 21, 2008 from approximately 1:00 PM to 1:40 PM and witnessed the following:

A group of passengers, previously known to me as a group originally chartered to Forell Limousine & Bus Service, that appeared to be acquaintances and shared a common destination; boarded a bus identified as being operated by River Cities Transit.

I attempted to board the bus and was advised by the driver that the bus was for the exclusive use of the group of passengers boarding the bus. He told me I could call the transit and they would send out another bus. I asked the driver of the River Cities Bus how much it would cost me to ride the bus. The driver could not tell me what the amount of the fare was. I asked the bus driver what the number was for River Cities Transit and he couldn't find it inside the bus. I then told him it was written on the side of his bus. We took a picture of the bus number on the side of the bus.

As passengers arrived, I carefully observed that none of the passengers were paying a fare. I watched the passengers load guns and other things onto the bus. The bus sat at the Kelly's Construction building for 40-45 minutes.

I also took several of the photographs submitted.

I declare under penalty of perjury that the foregoing is true and correct.

Taylor Melvin Maier  
Taylor Melvin Maier

9-5-2008  
Date

In witness whereof he has hereto set his hand and seal.

(SEAL)

Amy Franks  
(Title)

I, Amy Franks, a Notary Public of the County and State aforesaid, hereby certify that Taylor Melvin Maier personally known to me to be the affiant in the foregoing affidavit, personally appeared before me this day and having been by me duly sworn deposes and says that the facts set forth in the above affidavit are true and correct.

Witness my hand and official seal this the 5 day of September, 2008.

(SEAL)

Amy Franks  
Notary Public

My Commission expires:

05/23/2013.

Name: Scott P. Swenson  
Address: 615 S. Taylor  
City & State: Pierre SD  
Phone # 605-224-1252  
Cell # 605-222-7585

**I hereby affirm that on June 21<sup>st</sup>, 2008 I witnessed:**

I believe on the day in question that Jeremy Kelley chartered the River cities Transit bus to haul a load of Bachelor parties to Willow creek sporting days. We agreed to all meet at Kelley Const. I and my 2 sons rode the bus. The bus sat there for sometime at least 1/2 hour or more I was the last person on I nor either of my sons paid anything I assumed that Jeremy had paid for everyone I don't remember exact count as to how many were on bus but I do know a vehicle had to follow as there were no seats left on bus. But it cost whether of my sons or I anything for trip!

Signature: Scott P. Swenson

Date: 8/24/08