

TAXI OF TOMORROW MEET THE UBER REVOLUTION

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Since its genesis in 2007 New York City's Taxi of Tomorrow program has faced numerous time consuming and costly obstacles, the last of which was overcome three weeks ago when the Court of Appeals in *Greater New York Taxi Association v. New York City Taxi And Limousine Commission*¹ (TLC) found that the TLC in selecting the Nissan NV200 as New York City's official Taxi of Tomorrow had not exceeded its authority under the City Charter or intruded upon the New York City Council's domain. While this eight year battle in now over it may, in fact, have been in vain since in the interim there has been a Smartphone ride-hailing revolution² in New York City where 26,000 Uber drivers³ appear

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ready and willing to deliver "taxi" like services⁴ using the Uber App⁵. Notwithstanding a last ditch effort to save the taxi industry by attempting to place a cap on Uber's growth the struggle for control over New York City's streets may be over⁶.

Replacing The Iconic Checker Cab

As noted by the Court of Appeals "Anyone reminiscing about New York City public transportation from the 1960s through at least the 1980s will probably evoke an image of Checker cabs driving residents and visitors through the busy City streets. Checker Motor Corporation made the iconic American taxicab that was valued by owners for its durability and was appreciated by passengers for its large rear seat and trunk space. That era came to an end when the last Checker cab was produced in 1982 and they were all taken out of service as New York City taxis by the late 1990s. Just as the Checker cab was the iconic taxi of yesteryear, the TLC sought to discover or create an iconic Taxi of Tomorrow (ToT). That process has led to the case that is now before us".

Taxi Medallions

"In order to qualify as a taxi in New York City, a vehicle must carry passengers for compensation and be equipped with a taxi meter; it must be painted yellow and display a current TLC medallion, which indicate that vehicle is duly licensed to pick up passengers via street hails anywhere in the City...A medallion is required to operate a yellow cab, with the number of available medallions set by the State Legislature and th New York City Council...Most medallions are unrestricted although some are limited to wheelchair accessible vehicles or alternative fuel vehicles; an unrestricted medallion may be used for those types of vehicles as well".

Lack Of Uniform Design

"With Checker-which is no longer in business-standing out as a notable exception, car manufacturers typically did not and do not design and produce vehicles with the intention that they be used as taxis. Instead, medallion owners would buy a passenger car meeting certain specifications and then 'hack-up' that vehicle by adding a partition, roof light and other required equipment that is strictly regulated by the TLC...The use of passenger vehicles is less than ideal because taxis are subjected

to long hours and rough driving conditions, as compared with average passenger vehicles. Additionally, the use of hacked-up passenger vehicles may pose safety risks. For example, crash testing is completed on a vehicle model before it is hacked up, and the partition that is added after the crash testing may interfere with the inflation of side-curtain air bags during an actual collision".

Enter The Crown Victoria

"In the early 2000s, after passengers complained about insufficient leg room in vehicle models approved as taxis, Ford began making the stretch Crown Victoria...The TLC acknowledged that, for years, the Crown Victoria was 'the only commercially available vehicle model that has complied' with the taxi vehicle specs...That model became the most popular taxi vehicle, at one point comprising approximately 90% of the City's fleet".

Taxi Of Tomorrow Program

"The TLC commenced the ToT program in 2007, partly spurred by Ford's announcement that it planned to discontinue the Crown

Victoria. The process began with committees and public hearings, engaging all taxi industry stakeholders (drivers, medallion owners and passengers) with the idea of designing a vehicle that would be manufactured primarily for use as a taxi, rather than retro-fitting passenger vehicles for that purpose”.

Request For Proposals

“The TLC initiated a request for proposal in late 2009, seeking a manufacturer of original equipment to provide an innovative vehicle developed as a taxi, based on guidelines that included certain important qualities. The successful bidder would be awarded a 10-year exclusive contract for sales of this vehicle as the City’s official taxi. The TLC narrowed the seven bidders down to three models, sought public and industry opinion, and finally, in mid-2011, selected the Nissan NV200 as the ToT... With limited exceptions, the rules require each taxi owner to purchase an NV200 to replace an existing vehicle when it is retired”.

The NV200 Contract

"The Department of Citywide Administrative Services then entered into a Vehicle Supply Agreement (VSA) with Nissan. The VSA included the 10-year exclusive supply contract, provided the specs for the vehicle and set a minimum manufacturer's suggested retail price, but no minimum. Nissan was also required under the VSA to furnish a wheelchair accessible version, that would be upfitted before delivery to any purchaser making that request and to create a hybrid version in the future. If a vehicle superior to the NV200 becomes available after five years, the TLC may provide notice to Nissan and terminate the VSA, unless Nissan modifies the NV200 or designs a new vehicle to match or exceed the specs of the superior vehicle".

The Challenge

"The current challenge is limited to the TLC's selection of one vehicle model as the exclusive gas-powered taxi eligible for use by taxi medallion owners...Petitioners allege that the regulations challenged here are beyond the TLC's authority because they mandate a single gas-powered model as the City's official taxi vehicle, rather than setting specifications that could potentially be met by other makes and models. Petitioners

acknowledge that the TLC has the authority to enact rules with stringent specs that can only be met by one model at the time the rules are enacted. In addition, Petitioners do not dispute that the TLC has the authority to approve the use of a single vehicle model as part of a pilot project for limited periods of time...It is also undisputed that the City Council, itself, could enact a law limiting taxis to one model or could grant the TLC the authority to do so. Thus, the limited issue presented here is whether the TLC had the authority to require the use of a particular vehicle make and model as a taxi, as opposed to requiring taxi vehicles to meet certain specs, without the City Council explicitly specifying such authority, or whether the TLC intruded on the City Council's domain by enacting the ToT rules".

TLC Did Not Exceed Authority

"Given the broad statutory powers granted to the TLC to set policy as guided by enumerated safeguards and guidelines, the TLC did not exceed its authority or intrude on the City Council's domain in violation of the separation of powers doctrine by enacting the ToT rules".

Conclusion

As the value of taxi medallions continues to decline⁷ with taxi owners seeking a "bailout"⁸, Uber is close to "overtak[ing] taxis in major American cities in terms of expensed business travel"⁹. It may be that the real [and unanticipated] winners of the Taxi of Tomorrow program are ride-hailing vehicles provided by Uber and other ride sharing economy companies¹⁰.

ENDNOTES

1. Greater New York Taxi Association v. New York City Taxi And Limousine Commission, 2015 WL 3885462 (N.Y. 2015)

2. See Dickerson & Hinds-Radix, Apartment and Car Sharing: A Disruptive Internet Revolution, New York Law Journal, August 12, 2014, p. 4.

3. In Isaac & Singer, *California Says Uber Driver Is Employee, Not A Contractor*, www.nytimes.com (6/17/2015) it was noted that "Uber...is now operating in more than 300 cities across six continents. To meet consumer demand, Uber's driver ranks have swelled. At a presentation this month celebrating Uber's fifth anniversary, Mr. Kalanick said the company had 26,000 drivers in New York City alone; 15,000 in London; 22,000 in San Francisco; 10,000 in Paris; and 20,000 in Chengdu, China. 'Every single month, Uber is adding hundreds of thousands of drivers around the world', Mr. Kalanick said".

4. See Joshi, *Taxis: Yellow, Green and Black: Competition & Evolution*, City Law, New York Law School, Vol. 21, No. 3 (May/June 2015) ("Today there are over 70,000 for-hire vehicle drivers (livery and black car) transporting over 400,000 people a day").

5. There are many ride-hailing companies in New York City including "Uber, Lyft, Gett, Hailo, Curb, Way2Ride, Ride Ling, Bandwagon") (See N. 4, supra).

6. See Flegenheimer & Fitzsimmons, *City Hall and Uber in Struggle Over New York City Streets*, www.nytimes.com (7/16/2015) ("For months the clash has seemed inevitable: the professed disrupters of municipal transportation policy and the chief executive of the country's largest city government, tussling over who should rule the roads of New York City...the yellow cab industry, which includes some of Mr. DeBlasio's most prolific campaign contributors, has pressured the administration to clamp down on Uber, a grave threat to owners amid the faltering values of the yellow-taxi medallion").

7. See N. 4, supra ("The question I get is what about medallion values?...When medallion values hit an all-time high in April 2013 of \$1.3 million people described owners—all 13,600 plus corporate and individual owners—as a cartel, a monopoly and litigious. Now that medallion values have come down about 25%, Council Members and members of the public ask me—'What about the City's budget? Can we depend on auction funds for school lunches, firehouse and libraries?...Any discussion about medallion values quickly turns back to topic number one, Uber, and is Uber destroying medallion values?").

8. In Barro, *New York Taxi Mogul, Seeking a Bailout, Says He's Too Big to Fail*, www.nytimes.com (4/10/2015) it was noted that "One of New York City's largest taxi fleet owners is asking for a bailout...Prices peaked in 2013, not just in New York but also in other large markets like Boston and Chicago. Prices have declined as taxis have faced competition from car service apps like Uber. At the top, the price for New York mini-fleet medallions, which may be owned by nondrivers, was over \$1.2 million".

9. In Mouawad, *Business Travelers Want to Be Left to Their Own Devices*, www.nytimes.com (5/6/2015) it was stated that "According to one estimate by Certify, an expense management company, Uber has nearly overtaken taxis in major American cities in terms of expensed business travel. Uber rides accounted for 47 percent of all expensed rides as of this March, up from just 14 percent in January 2014. The share spent on taxis, limousines and hotel shuttles dropped to 52 percent, from 86 percent, in the same

period”.

10. See N. 5, *supra*. See also: Dickerson & Hinds-Radix, *Apartment and Car Sharing: A Disruptive Internet Revolution*, *New York Law Journal*, August 12, 2014, p. 4.