

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

**DISTRICT OF COLUMBIA PROFESSIONAL  
TAXICAB DRIVERS ASSOCIATION, INC, *et al.*,**

**Plaintiffs,**

**v.**

**LEON J. SWAIN, JR., *et al.*,**

**Defendants.**

**2008 CA 001993 B  
Judge Brook Hedge  
Calendar 7**

**MEMORANDUM OPINION AND ORDER**

**Introduction**

Plaintiffs brought this action to declare null and void, and enjoin, regulations issued by the Mayor of the District of Columbia requiring that taxicabs utilize time and distance meters.<sup>1</sup> Before the Court are the parties' dispositive motions regarding the Mayor's substantive authority to issue the regulations mandating such meters, and procedural authority to allow only written comments and not oral ones, as well as to issue the regulations on an emergency basis.<sup>2</sup> For the reasons that follow, the Court holds that the Mayor had authority under the Omnibus Authorization Act to issue the time and distance taxicab meter regulations and that he complied with the D.C. Administrative Procedure Act in doing so.

**Background**

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<sup>1</sup> Plaintiffs are two associations whose membership is comprised of taxicab drivers, a Commissioner on the District of Columbia Taxicab Commission, and a District resident.

<sup>2</sup> What is not before the Court is which meter system should be utilized, time and distance or zone. That decision is one for the other branches of government.

The material facts are undisputed and the case turns on issues of statutory construction. It is necessary, therefore, to set forth the legislative and statutory framework and to place in context this controversy which has existed in one form or another for over seventy years.<sup>3</sup>

## **1. Legislative and Statutory Framework**

### **A. District of Columbia Taxicab Commission**

Through the decades, taxicabs have become an increasingly essential part of public transportation in the District of Columbia. As time went on, regulatory authority over these passenger vehicles for hire became spread out among seven different District administrative offices, in addition to the District's Public Service Commission, the Mayor, and the Council for the District of Columbia ("City Council"). As a result, control of the industry was "fragmented, decentralized, and uncoordinated." D.C. Official Code §50-301(3).

Therefore, over twenty years ago, the City Council enacted the District of Columbia Taxicab Commission Establishment Act of 1985 ("DCTC Establishment Act") (codified at D.C. Official Code §50-301, et seq.). As stated by the City Council:

Recommendations have been made over the course of several decades by various private and commissioned studies, task forces, public and private groups, individuals, and congressional committees and subcommittees urging regulatory reform of the taxicab industry and the creation and consolidation of regulation into a single agency or bureau.

D.C. Official Code §50-301(5). The City Council concluded that "...there should be [a] centralized regulatory mechanism for the furtherance of coherent, efficient, and enforceable regulation, and for the establishment of sound taxi transportation policy."

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<sup>3</sup> See January 3, 2008 Committee Report of the Council of the District of Columbia Committee on Public Works and the Environment, p. 1 (Exhibit 1 to Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment ("Council Committee Report")); *Bell Cab Co. v. Patrick*, 75 F.2d 1005 (D.C.Cir. 1934).

D.C. Official Code §50-301(4). As noted by the Council of the District of Columbia Report on Bill 6-159 (which became the DCTC Establishment Act):

The purpose of [the Act] is to effect a consolidation of the District’s regulation of the taxicab industry in one agency of government. In effecting this purpose the bill proposed to abolish fragmented governmental authority over taxicabs and establishes a District of Columbia Taxicab Commission ...with full regulatory power over the industry. [The Act] also centralizes within the Office of the Mayor authority over other private carriers such as ambulances, funeral cars, and limousines, and places taxicab insurance regulation under the Superintendent of Insurance.

Report, p. 1.<sup>4</sup>

The City Council created the District of Columbia Taxicab Commission “as a subordinate agency within the executive branch of the District government with exclusive authority for intrastate regulation of the taxicab industry as provided by [the Act].” D.C. Official Code §50-304. The Commission is comprised of nine members. Five are members of the public and three are from the industry. The members serve for five year terms, are appointed by the Mayor with the advice and consent of the City Council, and serve for no more than two consecutive terms. D.C. Official Code §§50-305(b) and (c). Individual members may be removed by the Mayor for cause. D.C. Official Code §50-305(c). The ninth person is the Chairperson, who serves at the pleasure of the Mayor. D.C. Official Code §§50-305(b) and (c). The Chairperson is the chief administrative officer of the Commission in charge of the organization and administration of the Commission. D.C. Official Code §50-305(d).

Substantively, the Commission is organized into two “panels,” the membership of which is determined by the Mayor. The two panels are “Rates and Rules” and

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<sup>4</sup> Among the problems created by the decentralization was the lack of meaningful control and resolution of industry issues. As stated in the report, “there has been longstanding public criticism of the taxicab industry that has centered on problems of overcharging, refusal to transport, discourteousness, and inadequate knowledge of the city on the part of some operators.” Report, p. 3

“Consumer and Industry Concerns.” D.C. Official Code §50-306. The Panel on Rates and Rules is central to the instant controversy. Its “original jurisdiction,” in relevant part, is to:

Establish reasonable rates for taxicab service for the transportation of passengers and their property within the District, including all charges incidental and directly related to the provision of taxicab services.

D.C. Official Code §50-307(b)(1)(A), and to

Establish methodologies for the determination of reasonable fares for taxicab service, including, but not limited to, revision of the zone boundaries and zone construct currently employed to determine taxicab fares. The Commission's Panel on Rates and Rules shall neither impose any limitation on the number of taxicabs that may operate in the District, nor shall it authorize a metered system for determining taxicab fares without a 60-day period of Council review of the proposal.

D.C. Official Code §50-307(b)(1)(B).

In exercising its authority, the Panel on Rates and Rules must “adhere to and be subject to” the District of Columbia Administrative Procedure Act (“DCAPA”), and must “afford interested persons an opportunity to submit views and data orally during a public hearing, for which adequate notice has been given.” D.C. Official Code §50-308(b). In addition, “[n]o rule or rate [relating to taxicab service] shall be effective unless a majority of the full Commission has voted affirmatively for the adoption of the rule or rate.” D.C. Official Code §50-308(c).

## **B. The Mayor**

Under various enactments dating from 1877 to today, the District of Columbia was the successor of the corporations of Washington and Georgetown, and all the property of said corporations, and of the County of Washington, was vested in the District of Columbia. D.C. Official Code §1-104. The Corporation was “continued for

all purposes... under all acts”. D.C. Official Code §1-105. Under D.C. Official Code §1-103, the Mayor and members of the City Council are “deemed...officers of such corporation.”

Under the District of Columbia Self-Government and Governmental Reorganization Act (“Home Rule Act”), the executive power of the District is vested in the Mayor, who is the chief executive officer. D.C. Official Code §1-204.22. The Mayor is “responsible for the proper execution of all laws relating to the District, and for the proper administration of the affairs of the District coming under his jurisdiction or control...” D.C. Official Code §1-204.22. Consistent with this grant of authority, “[t]he Mayor shall, through the heads of administrative boards, offices, and agencies, supervise and direct the activities of such boards, offices, and agencies.” D.C. Official Code §1-204.22(4). The Mayor may also “delegate any of his functions ... to any officer, employee, or agency of the executive office of the Mayor . . .” D.C. Official Code § 1-204.22(6). Further, the Mayor “is authorized to issue and enforce administrative orders, not inconsistent with this or any other Act of Congress or any act of the Council, as are necessary to carry out his functions and duties.” D.C. Official Code §1-204.22(11).

### **C. Congressional Action on Taxi Meters**

On October 16, 2006, Congress enacted the 2005 District of Columbia Omnibus Authorization Act, Pub. L. No. 109-356, 120 Stat. 2019 (“Omnibus Act”). Section 105 of that Act (“Section 105”), in its entirety, provides:

(a) *In general.* – Except as provided in subsection (b) of this section and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all taxicabs licensed in the District of Columbia to charge fares by a metered system.

(b) *District of Columbia opt out.* – The Mayor of the District of Columbia may exempt the District of Columbia from the requirement under subsection (a) of this section by issuing an executive order that specifically states that the District of Columbia opts out of the requirement to implement a metered fare system for taxicabs.

This amendment is popularly known as the “Levin Law,” and is codified at D.C. Official Code §50-381.<sup>5</sup>

At oral argument, both sides agreed that there is no specific legislative history for Section 105 of the Omnibus Act. The meter issue, however, has been the subject of discussion on Capitol Hill for many years. For example, seven years ago, Senators Levin and Landrieu remarked:

Mr. LEVIN. Mr. President, since the late-1980s, I have urged the mayors of the District of Columbia and Commissioners of the DC Taxicab Commission toward implementation of recommendations from numerous District of Columbia studies to replace the current taxicab zone fare with a meter system. [T]he District of Columbia is the only major city in the Nation where taxi fares are calculated by a zone system rather than a meter system. The use of the zone system is especially unfair to our great number of out-of-town tourists who have to cope with a complicated, confusing zone fare system with no basis on which to judge the accuracy of a particular fare. In my own experience, as a DC resident, I have encountered at least 10 different cab fares for the exact same trip to and from National Airport. A metered system would eliminate this problem.

There is a lot of correspondence that has transpired over the years on this matter. [T]here have [sic] been broken promise after broken promise. Mayor Williams’ letter sets out a course of action. If it is not followed, I intend to bring this matter to a head next year—after two decades of broken promises.

Ms. LANDRIEU. Mr. President, let me just say from the outset that I appreciate my colleague’s comments. The District of Columbia is the only major city that does not have a meter system in place. The current zone system compromises the integrity of the DC taxicab system. The apparent variance among cab fares to the same destination shows how the current system can be misunderstood and even abused. I deeply appreciate Senator Levin’s decision to withhold an amendment at this time based on the mayor’s letter. And I certainly understand that Senator Levin will be back with his amendment if meters are not in place, as indicated in

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<sup>5</sup> January 3, 2008 Council Committee Report, p. 1.

Mayor Williams' letter, early next year, and I intend to support Senator Levin's efforts to end the current intolerably confusing situation.

147 Cong. Rec. S11532–11533 (Nov. 7, 2001).

## **2. Factual Background Regarding Action After Passage of The Omnibus Act**

At various times during 2007, the DCTC addressed issues that touched on the fares and the meter issue.<sup>6</sup> On September 11, 2007, the DCTC held a public hearing on meters. It then entertained a number of motions for recommendations to the Mayor, including adopting zone meters, adopting time and distance meters, opting out of the Congressional requirement, and other combinations of options to try and reach a consensus.<sup>7</sup> The DCTC was unable to break a deadlock.<sup>8</sup> In the end, with some members abstaining, it voted the following recommendation to the Mayor with respect to meters:

The commission recommends to the Mayor that he use 31 DCMR section 602.1 as a guide to his decision with the language in section 602.1 which reads “computes fares based on the zone charges set forth in Appendix 8-2” replaced with “computes fares based on zone charges after further review of the zone system and the zone meter” and that the Mayor accept the already written regulation as to Council review of 60 days.<sup>9</sup>

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<sup>6</sup> For example, the June 13, 2007 Minutes of the DCTC reflect that former Mayor Williams established the Taxicab Information Project (TIP) as part of the then Mayor's Task Force on Taxicab Reform to look into the use of time and distance meters and the economic effect on the public and the drivers. The project was based in the Office of the Deputy Mayor for Planning and Economic Development. The project appeared to transfer to the DCTC when a person working on the issue in the Mayor's office became Chairperson of the DCTC. At the June 2007 meeting, the Commission members expressed concern that they were not consulted on the initiation and scope of the TIP, but that “to the extent the issue of meters is squarely before the Commission for its recommendation to Mayor Adrian Fenty,” the report should be disseminated to the public through the Commission. June 13, 2007 Minutes of DCTC Meeting, p. 10.

<sup>7</sup> All DCTC Minutes and hearing transcripts are available at [http://dctaxi.dc.gov/dctaxi/cwp/view,a,1187,q,632502,taxiNav,\[30625\],dctaxiNav,\[30625|34015\].asp](http://dctaxi.dc.gov/dctaxi/cwp/view,a,1187,q,632502,taxiNav,[30625],dctaxiNav,[30625|34015].asp)

<sup>8</sup> Seven votes were taken, *id.* at pp. 136, 138, 147, 148, 149, 157, 159, 160, 171, 172, 179, 188, 190, 197, 201. September 11, 2007 Hearing Transcript.

<sup>9</sup> DCMR Section 602 is titled “Meters.” Section 602.1 states: “A taxicab may be equipped with a device that computes fares based on the zone charges set forth in Appendix 8-2, mechanically or electronically upon notifying the Commission of its use.”

On October 17, 2007, Mayor Adrian M. Fenty issued an administrative order directing that “time and distance” meters be instituted for all taxicabs licensed in the District of Columbia. Mayor’s Order No. 2007-231.<sup>10</sup> Under the order, the “Mayor’s authority to implement the new time and distance metered taxicab system” was delegated to defendant Swain, the Chairperson of the DCTC. *Id.* The order was stated to be issued under the authority of the Omnibus Act and the Home Rule Act, D.C. Official Code §1-204.22(6).

On November 8, 2007, the Council of the District of Columbia Committee on Public Works and the Environment (“Council Committee”) held a “public oversight roundtable” hearing on the proposed regulations.

The next day, November 9, 2007, defendant Swain, “pursuant to the authority set forth under section 105 of the Omnibus Act, D.C. Official Code §50-381(a) (2007 Supp.) and Mayor’s Order, 2007-231, dated October 17, 2007,” issued proposed rules to implement the decision by the Mayor to require time and distance taximeters in licensed District of Columbia taxicabs. 54 D.C. Reg. 10819.<sup>11</sup> Among other things, the proposed rules intended to amend Chapters 6, 8, 10, 11, 12, and add a new Chapter 13 to Title 31 of the District of Columbia Municipal Regulations (DCMR). Sixty days were given for comment before final rulemaking action was to be taken. The Mayor transmitted a copy of the draft regulations to the City Council.<sup>12</sup>

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<sup>10</sup> This Order was published January 4, 2008, 55 D.C. Reg. 167. The subject line read “Delegation of Authority to the D.C. Taxicab Commission.”

<sup>11</sup> D.C. Register publications may be found at: <http://newroom.dc.dc.gov/list.aspx/agency/os/section/37>

<sup>12</sup> January 3, 2008 Council Committee Report, p. 1.

On November 14, 2007, a regularly scheduled meeting of the DCTC was held. At that time, Chairman Swain advised the Commissioners that the proposed November 9, 2007 rules were on the web, and that a special meeting would be held in December so that the members and public could give their comments which would become a part of the “official” record given to the Mayor.<sup>13</sup>

On December 12, 2007, the DCTC held a public special Commission meeting. At the meeting, in response to Commissioner questions regarding the Mayor’s authority to issue the proposed rules, Chairperson Swain indicated the special meeting was called because “several members indicated” they wanted to give the public an opportunity to provide comments to the proposed rulemaking within the sixty-day period. He also “pointed out that the Mayor issued a Mayor’s order that essentially transferred the authority as to this decision making to the Chairperson and that the Commissioners are not involved in voting on the proposed rulemaking.”<sup>14</sup> In response to questions about the Mayor’s authority to act, defendant Swain stated the “Mayor and his legal advisors feel that Congress gave him the authority to implement meters” with the Omnibus Act.<sup>15</sup> He, however, was asking for comments from the Commissioners which he would take into consideration when making the final decision.<sup>16</sup>

On January 3, 2008, Councilmember Jim Graham, as Chairperson of the City Council’s Committee on Public Works and the Environment, issued a report to the City Council members. The Council Committee’s report discusses both the zone and time and distance meter options and, in the end, concludes that “either metered system would

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<sup>13</sup> November 14, 2007 DCTC Minutes, pp. 5-6.

<sup>14</sup> December 12, 2007 Meeting Minutes, pp. 3.

<sup>15</sup> *Id.* at p. 4

<sup>16</sup> *Id.*

comply with the ‘Levin Law’ and meet the needs of the District of Columbia.”<sup>17</sup> At the Committee markup on session January 3, 2008, the Committee amended its report to include the “Committee’s concern that the final structure should be similar and comparable to current fares, since it was not the Committee’s intent by this amendment to cut revenues for taxicab drivers.”<sup>18</sup>

On January 25, 2008, defendant Swain published a second Notice of Proposed Rulemaking, 55 D.C. Reg. 777, and invited the submission of written comments.<sup>19</sup> Eventually, the comment period was set to expire on March 26, 2008.

One month later, on February 25, 2008, a Notice of Emergency and Proposed Rulemaking was adopted by defendant Swain and made effective February 29, 2008. As with the other notices, Defendant Swain relied upon the Omnibus Authorization Act, D.C. Official Code §50-381(a)(2007 Supp.) and the Mayor’s October 17, 2007 Order 2007-231. 55. D.C. Reg. 2147 for his authority to issue the rulemaking. According to the Notice, the February rules remained substantially unchanged from those published in January 2008.<sup>20</sup> As a result, the comment period was abbreviated to five days or March 5, 2008. Furthermore, the emergency rules made the amendments to Chapter 6 and the new Chapter 13 to the DCMR effective immediately. Emergency rules were said to be

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<sup>17</sup> Council Committee Report, pp. 7-8.

<sup>18</sup> Council Committee Report, p. 8

<sup>19</sup> The Notice contained an internal inconsistency with the preamble indicating a 30-day comment period and the end indicating a 60-day period.

<sup>20</sup> As stated in the Notice: “The Chairperson also gives notice of his intent to take final rulemaking action to adopt the following rules, which include amendments to Chapters 6, 8, 10, 11, and 12, the relevant table of contents and appendices, indexes, and the addition of Chapter 13 to 31 DCMR. Proposed Rulemaking was published on January 25, 2008 at 55 DCR 777. The only substantive change to the proposed rules of January 25, 2008 is to increase the maximum fare from \$ 18.90 to \$ 19.00. The change is required to meet the specification of taximeter industry standards per comment from meter manufacturers. The rules have also been modified to retain the additional passenger surcharge and to keep the current rates for taxicabs hired on an hourly basis. Finally, the Chairperson has also made minor changes to other provisions for clarity. These Proposed Rules supersede those published on January 25, 2008.”

necessary to ensure that the time and distance meters were installed prior to April 6, 2008, to carry out the Mayor's order and to give taxicabs sufficient time to install the devices and to "serve the safety and welfare of the public by providing a reliable taxicab fare system that is clear, transparent, and that allows for the maximum use of taxis for public transportation." The emergency rules, which were adopted February 25, 2008, were to remain in effect for 120 days or until the final rules were published, whichever occurred first.

Plaintiffs filed suit on March 7, 2008, to enjoin the Emergency and Proposed Rulemaking. A hearing on the request for a Temporary Restraining Order was held before another judge of the Court on March, 11, 2008, at which time it was agreed that defendants would extend the notice and comment period to March 26, 2008, for the filing of written comments on the proposed rules and emergency rulemaking of January 25, 2008, and February 29, 2008, and the effective date of implementation of any time and distance meters to May 1, 2008. As a result, plaintiffs withdrew their immediate request for relief.

On March 14, 2008, the DCTC Chairperson, defendant Swain, adopted and, on March 21, 2008, published a further Notice of Emergency and Proposed Rulemaking to alter the comment and compliance dates to reflect the agreement reached in court. 55 D.C. Reg. 002951. These were also effective immediately.<sup>21</sup>

On March 27, 2008, this Court held a hearing on defendants' Motion to Dismiss or, in the alternative, for Summary Judgment, and on plaintiffs' Motion for Partial

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<sup>21</sup> The March 21, 2008 Proposed Regulation added as defendant Swain's authority for the rules, D.C. Official Code §50-313.

Summary Judgment. Each was accompanied by various briefs and exhibits filed in support of and opposition to the motions.

On April 11, 2008, the Mayor through defendant Swain issued final regulations that make final the March 21, 2008 regulations.<sup>22</sup> 55 D.C. Reg. 3831. According to defendants, as a result of the comments received, only limited clarifying changes to the March (and, therefore, the January and February proposed rules) were made in the final rules. The rules amend 31 DCMR, “Taxicabs and Public Vehicles for Hire,” repeal the zone fare system and establish detailed requirements for the implementation of time and distance taxicab meters in taxicabs licensed in the District of Columbia.

### **Discussion**

To prevail on a motion for summary judgment, the moving party must demonstrate that there is no genuine issue as to any material fact and that it is entitled to judgment as a matter of law. Super. Ct. Civ. R. 56(c); *Chang v. Inst. for Public-Private P’ships, Inc.*, 846 A.2d 318, 323 (D.C. 2004).<sup>23</sup> “The moving party bears the initial burden of demonstrating the absence of a genuine issue of material fact, after which the burden shifts to the non-moving party to designate specific facts showing that there is a genuine issue for trial.” *LaPrade v. Rosinsky*, 882 A.2d 192, 196 (D.C. 2005).

In reviewing a motion for summary judgment, the Court must view the evidence in the light most favorable to the non-moving party, drawing all reasonable inferences from the evidence in its favor. *Herbin v. Hoeffel*, 806 A.2d 186, 191 (D.C. 2002). Summary

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<sup>22</sup> The Notice and final regulations are published at:  
<http://newsroom.dc.gov/show.aspx?agency=os&section=37&release=13335&year=2008&file=file.aspx%2frelease%2f13335%2f6%2520-%2520Final%2520Rulemaking.pdf>

<sup>23</sup> Under Sup. Ct. Rule 12(b)(6), when matters outside the pleadings are considered, as they were here, the motion to dismiss is treated as one for summary judgment. Thus, the motions are in the posture of cross-motions for summary judgment.

judgment is proper when the non-moving party fails to establish an essential element of its case on which it bears the burden of proof. *Pannell v. District of Columbia*, 829 A.2d 474, 478 (D.C. 2003).

As stated at the outset, the central issue in this case is a legal one: whether the Mayor had the authority to implement directly or through the Chairperson of the DCTC the time and distance taxicab meter system. The core of plaintiffs' challenge is that the Omnibus Act only gave the Mayor the power to opt out of the requirement that meters be implemented. Beyond that action, any other steps taken with regard to meters had to be done by the DCTC which, by statute, has exclusive jurisdiction to set rates and methodologies for determining fare structures. Section 105 of the Omnibus Act did not repeal or amend the DCTC Establishment Act and, therefore, plaintiffs contend, the Mayor illegally "usurped" the DCTC's authority.

Defendants argue that the Omnibus Act gave the Mayor authority to act, particularly where, as here, the Commission's action thwarts the law. In addition, defendants contend that the DCTC is a subordinate agency under the Mayor and that the Mayor's authority under the Home Rule Act gave him "inherent authority" to justify his actions.<sup>24</sup> The briefs also press the argument that the Mayor has equal and co-extensive power with the DCTC to issue regulations regarding taxicabs under the DCTC Establishment Act, which the Mayor considers are "necessary for the protection of the public." D.C. Official Code §50-313(a). The Court will address these arguments starting with the last first.

## **1. The Mayor's Authority under the DCTC's Establishment Act**

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<sup>24</sup> March 17, 2008 Memorandum in Support of Defendants' Motion to Dismiss or, in the Alternative, for Summary Judgment, p. 9.

The Mayor did not rely on the DCTC Establishment Act as a basis for his authority when he issued his October 17, 2007 Order nor was it relied upon by Chairperson Swain in the initial rulemaking.<sup>25</sup> It is an argument that came to the fore during the first court hearing on March 11, 2008.

Under the DCTC Establishment Act, “[t]he Mayor may issue any reasonable rule relating to the supervision of passenger vehicles for hire he or she considers necessary for the protection of the public.” D.C. Official Code §50-313(a). The key is what is meant by the term “passenger vehicles for hire.” The DCTC Establishment Act specifically defines “passenger vehicles for hire” as:

- (A) Any motor vehicle for hire operated in the District by a private concern or individual as an ambulance, funeral car, sightseeing vehicle, or vehicle used exclusively for contract livery services or for which the rate is fixed solely by the hour;
- (B) Any motor vehicle for hire operated exclusively within the District between fixed termini or on a schedule, exclusive of vehicles operated by the Washington Metropolitan Area Transit Authority or other public authorities; or
- (C) Any other private motor vehicle for hire not operated on a schedule or between fixed termini and operated exclusively in the District, exclusive of taxicabs.

D.C. Official Code §50-303(6). All agree that this subsection excludes taxicabs and that it is the Mayor and not the Commission (absent a delegation of authority from the Mayor) who regulates those vehicles captured by this subsection.

Defendants argue that the Mayor may also regulate taxicabs since the phrase “passenger vehicles for hire” is included within the definition of taxicabs under the DCTC Establishment Act. Under the Act, taxi or taxicabs are defined in a separate subsection as “. . . any passenger vehicle for hire having a seating capacity of 8 or less

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<sup>25</sup> The March 21, 2008 proposed rule is the first time the DC Establishment Act is cited as a source of the Mayor’s rulemaking authority in this area.

passengers, exclusive of the driver, and operated as a vehicle for passenger transportation for hire by taxicab.” D.C. Official Code §50-303(8). Defendants argue that the two provisions are separate “to preclude from the powers of the Commission any authority to regulate non-taxicab passenger vehicles for hire.”<sup>26</sup>

When read in isolation, defendants’ argument is appealing. The argument, however, does not square with other statutory provisions, the purposes of the legislation, or the legislative history.

First, subsection 313(a) upon which the Mayor relies cannot be read in isolation. Section 313, by its terms, addresses the licensing of those vehicles that are covered by the specific definition ‘vehicles for hire’ in Section 303(6). For example, D.C. Official Code §50-313(b) provides that the “Mayor may establish” standards and requirements “for the licensing of the different classes of passenger vehicles for hire,” as well as licensing fees so long as the licensing requirements are not “duplicative of the jurisdiction of the Washington Metropolitan Area Transit Commission,” (which licensing is not within the jurisdiction of the DCTC). To read the Mayor’s regulation of taxicabs into this framework, as long as the Mayor was exercising the power, would render a nullity the carefully crafted legislation creating the DCTC and the rules relating to the licensing of taxicabs.<sup>27</sup> It would also present the opportunity for the fragmented, uncoordinated and inconsistent regulation of the taxicab industry.

Second, defendant’s argument cannot be read to square with the fact that the DCTC Establishment Act explicitly vests exclusive jurisdiction over taxicabs in the

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<sup>26</sup> Defendants’ March 21, 2008 Memorandum in Opposition to Plaintiffs’ Motion for Partial Summary Judgment, p.8.

<sup>27</sup> The circular nature of the argument is reflected in the fact that, if the interpretation were accurate, the DCTC and the explicit statutory requirements could be bypassed by the Mayor merely delegating his authority under Section 313 to the Chairperson to issue rules regulating taxicabs.

Commission, with a specific panel designated to have original jurisdiction over the methodology for rates for taxicabs. Thus, the logical conclusion is that the use of the term ‘vehicles for hire’ in the definition of ‘taxicabs’ was in the descriptive sense, and not as a term of art as that term is used in the definitional section of Sections 303(6) and 313(a).

Under statutory construction principles, all sections of legislation are to be read to give life to each and none are to be rendered a nullity if possible. *Cannerton, Ray & Simon v. Simon*, 791 A. 2d 86, 88 (D.C. 2002). Therefore, since taxicabs are not defined as vehicles for hire under 303(6), the Mayor is precluded from resting on §50-313(a) for regulatory authority over taxicabs.

Similarly, “[w]hen a statute of broad general application is inconsistent with a more specific provision ... the latter provision ‘must govern or control, as a clearer and more definite expression of the legislative will...’” [citations omitted] *Ford v ChartOne, Inc.*, 834 A. 2d 875, 887-888 (D.C. 2003). See also *Onabiya v. District of Columbia Taxicab Comm’n*, 557 A.2d 1317, 1319 (D.C. 1989). Thus, the general grant of authority to the Mayor under Section 313 with regard to a statutorily defined class of non-taxicab vehicles cannot be seen to negate the specific provision vesting of exclusive authority over taxicabs in the DCTC.

The DCTC establishment legislative history is consistent with this conclusion in resolving any tension among three subsections, 303(6) and 303(8) and 313(a). As D.C. Official Code §50-301 reflects, the authority to regulate taxicabs was decentralized and fragmented among seven different administrative agencies, as well as the Mayor and Council. The legislation was to address this situation by creating a “centralized

regulatory mechanism for the furtherance of coherent, efficient, and enforceable regulation, and for the establishment of sound taxi transportation policy.” D.C. Official Code §50-301(4). It created an agency with exclusive jurisdiction to regulate taxicabs and to establish the methodologies for fares.<sup>28</sup> As noted in the City Council’s Report on Bill 6-159, which established the DCTC:

The purpose of Bill 6-159, the ‘District of Columbia Taxicab Commission Establishment Act of 1985’ is to effect a consolidation of the District’s regulation of the taxicab industry in one agency of the government. In effecting this purpose the bill proposes to abolish fragmented governmental authority over taxicabs and establishes a District of Columbia Taxicab Commission (“Commission”) with full regulatory power over the industry. Bill 6-159 also centralizes with the Office of the Mayor authority over other private carriers such as ambulances, funeral cars, and limousines, and places taxicab insurance regulation under the Superintendent of Insurance.

Council of the District of Columbia Report, November 19, 1985, p.1. The Public Service Commission, (P.S.C.), had sought to control the regulation of the taxi industry. As the Report noted in this context, the Bill:

reflects an agreement reached between the Committee and Mayor on the question of centralized regulation of the industry. After considerable debate, public hearings, proposals, and media attention on the issue, both the Mayor and Committee have come to the consensus on the need for and relative benefits that will be derived from consolidation, and propose the creation of a single mission regulatory commission. The P.S.C. has also joined in the consensus on the merits of consolidation, but prefers that its statutory authority over taxicabs be transferred vis a vis a delegation to the Mayor rather than a direct revision of its current statutory mandate. Although the Committee is sensitive to and appreciates the P.S.C. preference, it is nonetheless convinced that the proper legal approach to effecting consolidation under legislation requires a direct transfer of existing authorities.

City Council Committee Report, pp. 1-2.

With regard to the particular provisions at issue, the Council Report, in discussing the terms used in the Bill (under Section 4 of what was the definitional section), stated:

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<sup>28</sup> Indeed, the City Council, well aware of the debate over zone verses time and distance fare charges, specifically provided that the DCTC’s Panel on Rates and Rules could not “authorize a metered system for determining taxicab fares without a 60-day review of the proposal.” D.C. Official Code §50-307(b)(1)(B).

“It should be noted that the definition of “passenger vehicle for hire” and “taxicab” differ, and that the bill makes a clear distinction between the two.” Report, p. 6. In further discussion of the specific provisions of the Bill, the Report noted under Section 5, that the provision “establishes the District of Columbia Taxicab Commission and sets forth its exclusive jurisdiction over the taxicab industry [intra-state].” Report, p. 6. With regard to the provision that became §50-313(a), the Report described the provision’s reach as centralizing “control over passenger vehicles for hire in the Mayor.” Report, p. 10.<sup>29</sup>

Significantly, the legislative history is devoid of any suggestion that the Mayor could exercise equal and co-extensive authority with the Commission to regulate taxicabs under the DCTC Establishment Act. Given that the purpose of the DCTC Establishment Act was to centralize the regulation of taxicabs in a specialized Commission, creating a co-equal authority would run directly counter to the goal of the legislation. Accordingly, D.C. Official Code §50-313(a) does not grant the Mayor co-extensive power with the DCTC to regulate taxicabs.

## **2. The Mayor’s Plenary Authority Under the Home Rule Act**

Defendants argue that the Mayor’s “inherent authority is sufficient to justify his actions here.”<sup>30</sup> To be sure, the Home Rule Act vests the Mayor with the “executive power of the District,” and makes him “responsible for the proper execution of all laws relating to the District.” D.C. Official Code §1-204.22(2006). He also is charged with

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<sup>29</sup> During the Council’s first session to consider Bill 6-159, Councilwoman Mason made a motion to replace the word “Mayor” with “Commission” in Section 14 (50-313(a)). In presenting the amendment, she noted that Subsection 4 of the Bill defined passenger vehicles for hire “so as to exclude taxicabs as defined in section 4(8). In other words, these are two mutually exclusive categories. Only taxicabs are under the jurisdiction of the Taxicab commission set up by Section 5.” The amendment was defeated because the other vehicles for hire under the Mayor, such as ambulances, were not properly within the Taxi Commission’s scope. City Council Period VI, First Session, Transcript, pp. 64-66 (submitted by counsel at the Court’s request).

<sup>30</sup> Defendants’ March 17, 2008 Memorandum in Support of their dispositive motion, p. 9.

supervising and directing the activities of “such boards, offices and agencies through the respective heads of each. To this end, he may delegate any of his functions ... to any officer, employee, or agency of the executive office of the Mayor.” D.C. Official Code §§1-204.22(4) and (6).

Defendants’ argument is essentially that, since the DCTC is not an independent agency but, by statute, a subordinate one, the Mayor may exercise regulatory power and set policy co-extensive with that of the DCTC. Furthermore, he can exercise that power by delegating it to the agency’s head, the Chairperson of the DCTC. Whether the agency is independent or subordinate, however, does not answer the inquiry.<sup>31</sup>

As discussed earlier, the Mayor has powers with regard to the DCTC. He can appoint and remove the Chairperson at will. He can appoint and remove for cause the individual members. He also designates which members serve on which of the two DCTC panels. D.C. Official Code §50-306. The City Council, however, can limit the Mayor’s authority. *See Francis v. Recycling Solutions, Inc.*, 695 A. 2d 63, 72-73 (D.C. 1997); *Barry v. Bush*, 581 A. 2d 308, 313 (D.C. 1990). Therefore, unless the Mayor has the authority, he has none to delegate. *Francis v. Recycling Solutions, Inc.* 695 A. 2d at 75. As discussed above, the DCTC Establishment Act cabins the Mayor’s authority, leaving regulation of taxicabs to the Commission. Therefore, the Mayor has no inherent authority to act in the field, absent some other statutory provision, because any inherent authority was curtailed by the City Council just as it was in *Francis*.

### **3. The Omnibus Act**

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<sup>31</sup> As defendants argue, “[b]ecause the Mayor has the inherent power to issue rules to carry out his express statutory power, under Mayor’s Order No. 2007-231, the Chair ... can issue any needed rules to implement a time and distance metering system. The rulemaking power is independent of the DCTC’s rulemaking power.” Defendants’ March 17, 2008 Memorandum, p 10.

The Mayor's October 17, 2007 Order establishing time and distance meters for District taxicabs rests his authority to do so on the congressional enactment, the Omnibus Act. D.C. Official Code §50-381 (2007 Supp.). If the Mayor had the authority through the Omnibus Act to enact the meter regulations, then he could delegate that authority to defendant Swain, the Chairperson of the DCTC, pursuant to D.C. Official Code §1-204.22(6). The Omnibus Act provided in its entirety:

(a) *In general.* – Except as provided in subsection (b) of this section and not later than 1 year after the date of enactment of this Act, the District of Columbia shall require all taxicabs licensed in the District of Columbia to charge fares by a metered system.

(b) *District of Columbia opt out.* – The Mayor of the District of Columbia may exempt the District of Columbia from the requirement under subsection (a) of this section by issuing an executive order that specifically states that the District of Columbia opts out of the requirement to implement a metered fare system for taxicabs.

The question then is who acts for the District of Columbia under subsection (a) of the Act.

Plaintiffs' argument is that the DCTC is the District for purposes of this provision. Although the Mayor has the authority to opt out of the meter requirements, the DCTC has "exclusive jurisdiction" to regulate taxicabs. Therefore, only the Commission can implement the meter system. In short, for purposes of taxi regulation, the Commission is the District, according to the plaintiffs. This argument, however, would grant superior power to an agency subordinate to the Mayor without any indication of such an intention. Placed in context with the Home Rule Act, the "District," as used in the Omnibus Act, is not the DCTC.

The District of Columbia is a governmental corporation, D.C. Official Code §1-105, whose officers are the Mayor and the City Council members. D.C. Official Code §50-103. The Mayor is “responsible for the proper execution of all laws relating to the District, and for the proper affairs of the District coming under his jurisdiction and control...” D.C. Official Code §1-204.22.

The Omnibus Act is legislation which does not purport to amend the DCTC Establishment Act. Instead, it independently required the District to implement taxicab meters within a year’s time. Congress knew the DCTC had jurisdiction to make the changes, if it chose to do so. Although there is no legislative history for this specific legislation, the “Levin law’s” concerns were addressed in other sessions.<sup>32</sup> Congress could have named the DCTC in §50-381(a) as specifically as it named the Mayor in subsection (b), but it did not. It also could have left the opt out authority to the DCTC by allowing the Commission to decline adoption of a meter system, but it did not. Instead, knowing the Mayor was charged with ensuring the laws be faithfully executed, Congress required the Mayor to make an affirmative decision to implement a meter system or not by the opt out provision. If the Mayor’s decision was not to opt out, then he had the responsibility to ensure that the law be executed, which meant implementing a meter system for taxicabs. Furthermore, without the DCTC being specifically identified as the District for the Omnibus Act, the District is, at a minimum, the Mayor. The Mayor, therefore, had the authority to implement the meter system pursuant to this independent enactment. Since he

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<sup>32</sup> The central concern expressed was the impact of the non-metered zone fare system on those who visit the Nation’s Capitol from all over the world. The fare is calculated in a manner that the rider cannot independently verify.

had that authority to so act, the Mayor could delegate such authority to the head of the agency under the Home Rule Act.

#### **4. Rulemaking**

When the suit was commenced, plaintiffs' procedural challenge was to (1) the lack of an opportunity for oral comments, (2) the inconsistency in the January 2008 Notice as to whether the comment period was for 30 or 60 days, and (3) the need for emergency rulemaking on February 29, 2008.

At the first hearing in this case, defendants agreed to extend the comment period to March 26, 2008, and to extend the date by which meters had to be installed in taxicabs from April 6, 2008 to May 1, 2008.<sup>33</sup> The length of the comment period, therefore, had been resolved. On April 11, 2008, the defendants issued the Final Rules thereby rendering moot the emergency exercise of authority with the February and March 2008. The only procedural issue, therefore, is whether an opportunity for oral comments is required.

Before proposed rules may become final, the D.C. Administrative Procedure Act ("DCAPA") requires notice and an opportunity for public comment for not less than thirty days prior to the effective date. D.C. Official Code §2-505(c). The DCAPA does not mandate an opportunity for oral comments. DCTC Establishment Act, however, does require a period for both written and oral comments.

Since the Court concludes that the Mayor had authority to issue the regulations in question under the Omnibus Act but not under the DCTC Establishment Act, the

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<sup>33</sup> Defendants indicated before the March 27, 2008 hearing that amended regulations would be published to place in effect the agreement reached in Court. There was no substantive change to the February 29, 2008 proposed rules by the March 21, 2008 publication other than the change of these two dates and the further citation to authority (D.C. Official Code §50-313) allegedly supporting the action.

rulemaking requirements of the DCTC Establishment Act did not apply. Instead, the DCAPA requirements controlled. Accordingly, an opportunity for oral comments was not required.

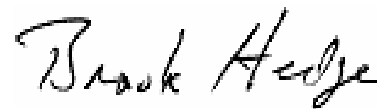
### **Conclusion**

Under the Omnibus Authorization Act, the Mayor was granted authority to require taxicab meters in taxicabs licensed in the District of Columbia. The Mayor also had authority, under the Home Rule Act, to delegate his authority to the Chairperson of the D.C. Taxicab Commission to issue regulations implementing this decision. Since the Mayor had authority to issue rules, he had authority to decide which meter system (time and distance or zone) was in the best interests of the District of Columbia. In so doing, the Mayor and the Chairman of the D.C. Taxicab Commission, who exercised the Mayor's delegated authority, complied with the provisions of the D.C. Administrative Procedure Act in giving the opportunity for written comments and in establishing the effective date by which time and distance meters were required in taxicabs licensed in the District of Columbia.

Accordingly, it is this 21<sup>st</sup> day of April 2008,

**ORDERED** that Plaintiffs' Motion for Partial Summary Judgment is **DENIED**;  
and it is further

**ORDERED** that Defendants' Motion for Summary Judgment is **GRANTED**.



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BROOK HEDGE  
JUDGE  
(Signed in Chambers)

Copies filed and served electronically through eFiling for Courts, this 21st day of April, 2008:

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