

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT  
McLEAN COUNTY, ILLINOIS

JULIE CROWE,

Plaintiff,

v.

CITY OF BLOOMINGTON, a  
municipal corporation,

Defendant.

Case No. 12 MR 45

FILED  
FEB 28 2012  
McLEAN COUNTY  
CIRCUIT CLERK  
FIRST CASE MANAGEMENT CONFERENCE  
BEFORE JUDGE Dr. Azewski  
SET ON 8-3-12 AT 2:30 AM/PM

VERIFIED COMPLAINT  
AND PETITION FOR COMMON-LAW WRIT OF CERTIORARI

COMES NOW the plaintiff JULIE CROWE, by Gregory A. Bedell and Jacob Huebert of the Liberty Justice Center, and for her complaint against the City of Bloomington states as follows:

Introduction

1. This civil rights lawsuit seeks to vindicate an entrepreneur's right to earn an honest living free from anticompetitive, arbitrary, and unreasonable government regulation. Plaintiff Julie Crowe is a vehicle-for-hire driver with extensive experience transporting Illinois State University students home from downtown Bloomington late at night. So far she has only worked for companies owned by other people, but she would like to start her own business, drive her own van, and work for herself. The City of Bloomington, however, has told her that she cannot do this. It was able to stop her from entering the business because the Bloomington City Code gives established vehicle-for-hire businesses the right to object to new competition – and gives the City Manager essentially unlimited discretion to turn down any applicant. The City's

decision to deny Ms. Crowe a license was unreasonable, and the City's arbitrary and anticompetitive law, policies, and practices violate the Illinois Constitution's guarantee of due process of law.

### **Parties**

2. Plaintiff Julie Crowe is a resident of the City of Bloomington, Illinois.
3. Defendant City of Bloomington is an Illinois municipal corporation.

### **Factual Allegations**

#### **Bloomington's Vehicle-for-Hire Ordinance**

4. The Bloomington City Code (the "Code") regulates entry into the vehicle-for-hire business in the City of Bloomington (the "City").

5. Under the Code, a "vehicle for hire" is "any motor vehicle engaged in the business of carrying persons for hire" other than taxicabs and limousines, which are subject to different regulations. Bloomington City Code § 40-1001.

6. Anyone who wishes to operate a vehicle-for-hire business in the City must apply for and receive a "certificate of public convenience" from the City Manager. Bloomington City Code §§ 40-1002A, 40-1002B.

7. After receiving an application, the City Manager must hold a hearing on the application, at which "[a]ny interested person" may testify "in support of or in opposition to the issuance of a certificate." An "interested person" may also or instead file a memorandum supporting or opposing the application with the City Manager. Bloomington City Code § 40-1002D.

8. After the hearing, the City Manager "shall issue" a certificate of public convenience if he or she "finds that further vehicle for hire service in the City of Bloomington is

*desirable* and in the public interest, and that the applicant is fit, willing and able personally and financially to perform such public transportation and to conform to the provisions of this Ordinance and the rules promulgated by the City Manager” (emphasis added). Bloomington City Code § 40-1002E.

9. If the City Manager denies a vehicle-for-hire application, the applicant may appeal to the City Council, but the Code provides no procedures for the City Council to follow or standards of review for it to apply. Bloomington City Code § 40-1033.

#### **Julie Crowe’s Application and Denial**

10. On May 4, 2011, Plaintiff Julie Crowe filed an application for a vehicle-for-hire license with the City, using a form the City provided.

11. When Ms. Crowe inquired with the City about its application procedures, a City employee told her that the process was a mere “formality” and that she would not need counsel to represent her.

12. Despite her inquiry, no one at the City advised Ms. Crowe in advance of the nature or extent of the evidence that she could present at her hearing.

13. Despite her inquiry, no one at the City advised Ms. Crowe that she could or should be represented by counsel at her hearing.

14. Despite her inquiry, no one at the City informed Ms. Crowe of the procedures that would be followed at her hearing.

15. On June 24, 2011, Deputy City Manager Barbara Adkins presided over a hearing on Ms. Crowe’s application.

16. At her hearing, Ms. Crowe testified that issuing her a certificate of public convenience to operate a single 15-passenger van would serve the public interest for several reasons:

a. Because some inebriated young women returning home late at night prefer a female vehicle-for-hire driver, and many have demonstrated a preference for Ms. Crowe;

b. Because having a female driver would add to the diversity of vehicle-for-hire operators in the City;

c. Because the addition of a fifteen-passenger van would relieve crowding on buses;

d. Because fights often break out on the larger buses but do not break out as much in smaller vans such as the one she seeks to operate;

e. Because a 15-passenger van is useful earlier in the evenings, when smaller groups need transportation; and

f. Because the addition of a 15-passenger van would help to clear out downtown Bloomington more quickly after the bars close at night, getting inebriated young people off the streets sooner.

17. After Ms. Crowe testified, the Deputy City Manager read aloud a letter from Tami Quinn, the owner (not a driver) for Bloomington-Normal Shuttle, one of Ms. Crowe's would-be competitors in the vehicle-for-hire business.

18. The letter from Ms. Quinn, who was not present at the hearing, asserted that her company's drivers "are verily (sic) making gas money for there (sic) vans" and added: "I believe that all the companies that are downtown now are handling the business. If there's need for more

vehicles[, then] I feel that the companies that are down town (sic) should be able to expand and grow as business grows before allowing another company to come in.”

19. The record includes no evidence supporting Ms. Quinn’s assertions regarding her drivers’ income and expenses.

20. After the Deputy City Manager read Ms. Quinn’s letter, she heard testimony from Aaron Halliday, owner of Checker Cab of Bloomington, another of Ms. Crowe’s would-be competitors in the vehicle-for-hire business.

21. Mr. Halliday testified that he opposed granting the application “only because I don’t think there is a need.”

22. Mr. Halliday further testified that he receives few calls requesting a female driver.

23. Mr. Halliday then offered to give Ms. Crowe a job with his company if her application is denied.

24. The Deputy City Manager next heard testimony from Robert Rotramel, owner of Bob’s Blue Night Limo, one of Ms. Crowe’s would-be competitors.

25. Mr. Rotramel testified that he “think[s] we have all the companies down there we need,” that he “can’t even run all of [his] equipment when all the college kids are [in Bloomington], and that “[t]here’s going to be nowhere to park” downtown.

26. Mr. Rotramel also testified that he has employed a female shuttle driver on a part-time basis during part of the year.

27. Neither Mr. Halliday nor Mr. Rotramel provided evidence that refuted the grounds Ms. Crowe provided for granting her application.

28. Ms. Crowe was not given an opportunity to cross-examine the people who wrote and testified in opposition to her application.

29. Ms. Crowe also was not given an opportunity to offer a rebuttal following the testimony in opposition to her application; instead, the Deputy City Manager ordered the hearing closed immediately following Mr. Rotramel's testimony.

30. On information and belief, before and after the hearing, the Deputy City Manager had *ex parte* communications with interested parties who opposed Ms. Crowe's application regarding the application.

31. On information and belief, the Deputy City Manager also considered and relied upon other non-record evidence in denying Ms. Crowe's application.

32. On August 25, 2011, the Deputy City Manager issued a decision on Ms. Crowe's application that consisted of a single sentence: "The City of Bloomington has determined that there is not a need to have an additional Vehicle for Hire Shuttle, there (sic) your request has been denied."

### **Appeal to the City Council**

33. Ms. Crowe filed an appeal with the City Council on or about September 7, 2011, which the City Council heard at its meeting of September 26, 2011.

34. On information and belief, there is no recording or transcript of the proceedings before the City Council; there are only minutes summarizing the proceedings.

35. The minutes indicate that City "staff" recommended that the City Council deny the appeal "based primarily on two issues": (1) "the applicant's cash flow limits the ability to perform," and (2) "establishing a new vehicle for hire company is not in the public interest [because c]urrently there were eleven (11) vehicle for hire companies, thirty-seven (37) registered vehicles totaling 910 seats [and a]nother vehicle for hire company would saturate the community."

36. The minutes indicate that the Deputy City Manager was given the first opportunity to speak at the hearing, arguing to the City Council that the application should be denied because the Deputy City Manager “believed there were sufficient seats licensed to address need.”

37. The minutes indicate that Todd Greenburg, Corporation Counsel for the City, also argued that the application should be denied; he stated that “[p]art of the hearing process was to ensure that the taxicab companies” – which provide a different service and are subject to a different licensing scheme than vehicles for hire – “were not endangered.”

38. Ms. Crowe spoke on her own behalf, reiterating the reasons to grant her application.

39. There are no published procedures or standards to be followed by the City Council in considering an appeal of a denial of a vehicle-for-hire license application.

40. At Ms. Crowe’s appeal hearing, it was evident that City Council members did not know what procedures to follow or what standards to apply in evaluating the Deputy City Manager’s decision.

41. For example, Alderwoman Jennifer McDade stated that she “did not understand” how the City determines whether to issue a vehicle-for hire-license, that she “did not want the Council to be involved on a case by case basis” (even though the Code provides for appellate review), and – immediately before the City Council’s vote was taken – that she “needed better understanding and clarity regarding this issue.”

42. Alderwoman Judith Stearns stated that the “process was arbitrary.”

43. Alderwoman Karen Schmidt stated that she “had hoped that the staff’s decision was based upon a findings of fact (sic)” when in fact the Deputy City Manager’s decision

included no written findings of fact. Alderwoman Schmidt also stated that she “was uncomfortable with the process” and that it was “hard to know what to do.”

44. Statements by City Council members at the appeal hearing also show that the City Council’s decision was the result of blind deference to the Deputy City Manager rather than any genuine appellate review.

45. For example, Mayor Steve Stockton cited – apparently as grounds for his vote to affirm the application’s denial – “his trust in the Deputy City Manager.”

46. Alderwoman Karen Schmidt noted that this was the first appeal of a vehicle-for-hire application denial that had ever come before the City Council, stated that she was “uncomfortable with the process,” and stated that the “issue needed to be turned over to City staff.”

#### **Harm to Plaintiff**

47. The City’s denial of Ms. Crowe’s application for a vehicle-for-hire certificate has prevented her from opening her own vehicle-for-hire service. Ms. Crowe is ready, willing, and able to start her business immediately; the City’s denial of her application is the only thing preventing her from doing so.

#### **COUNT I – VIOLATION OF PROCEDURAL DUE PROCESS (ILLINOIS CONSTITUTION ARTICLE I, SECTION 2)**

48. Plaintiff realleges Paragraphs 1 through 47 of this Complaint as though fully set forth herein.

49. The City’s law, policies, and procedures regarding the awarding of vehicle-for-hire certificates violate the guarantee of procedural due process provided by Article I, Section 2 of the Illinois Constitution, both on their face and as applied to Ms. Crowe.



50. The City's failure to allow cross-examination of witnesses at Ms. Crowe's hearing before the Deputy City Manager violated her right to due process of law.

51. The City's failure to provide Ms. Crowe with an opportunity to consider and evaluate the putative evidence and testimony offered in opposition to her application violated her right to due process of law.

52. The City's failure to provide Ms. Crowe with an opportunity to rebut the putative evidence and testimony offered in opposition to her application violated due process of law.

53. The Deputy City Manager's *ex parte* communications with interested parties who opposed Ms. Crowe's application regarding her application violated Ms. Crowe's right to due process of law.

54. The Deputy City Manager's consideration of non-record evidence in evaluating Ms. Crowe's application violated Ms. Crowe's right to due process of law.

55. The City's failure to provide Ms. Crowe with notice of the procedures it would follow at her hearing violated her right to due process of law.

56. The City's failure to inform Ms. Crowe before its decision and before her appeal that her alleged lack of cash flow formed a basis for the City's decision violated her right to due process of law.

57. The City Council's failure to consider the entire record of the proceedings before the Deputy City Manager before rendering a decision on Ms. Crowe's application violated her right to due process of law.

58. Through each of the above actions – considered either individually or all together – the City's consideration of Ms. Crowe's vehicle-for-hire application resulted in a procedure that was not fair and impartial and denied Ms. Crowe due process of law.

**COUNT II – VIOLATION OF SUBSTANTIVE DUE PROCESS**  
**(ILLINOIS CONSTITUTION ARTICLE I, SECTION 2)**

59. Plaintiff realleges Paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. The City's law, policies, and procedures regarding the awarding of vehicle-for-hire certificates violate the guarantee of substantive due process of law provided in Article I, Section 2 of the Illinois Constitution, both on their face and as applied to Ms. Crowe.

61. The power that Bloomington City Code § 40-1002E gives the City Manager to deny a vehicle-for-hire certificate of public convenience when he or she does not find it "desirable" is vague, arbitrary, and grants the City Manager unfettered discretion. It therefore violates applicants' right to due process of law both on its face and applied to Ms. Crowe.

62. In addition, the City violated Ms. Crowe's right to due process of law when it denied her a certificate of public convenience on the mere say-so of her would-be competitors. The sole basis for denying Ms. Crowe's application supported by the record was a desire to protect a discrete economic group from economic competition, which is not a legitimate governmental purpose and cannot survive the rational-basis test.

63. For each and all of the above reasons, the arbitrary barriers imposed by the City's vehicle-for-hire ordinance – both on its face and as applied to Ms. Crowe – violate the guarantee of substantive due process of law of Article I, Section 2 of the Illinois Constitution.

**COUNT III – PETITION FOR COMMON-LAW WRIT OF CERTIORARI**

64. Plaintiff realleges Paragraphs 1 through 63 of this Complaint as though fully set forth herein.

65. The evidence at Plaintiff's hearing before the Deputy City Manager did not support the conclusions cited by the Deputy City Manager in support of her decision to deny the application.

66. The record contains no evidence to support the City's conclusion that Ms. Crowe's "cash flow limits [her] ability to perform."

67. In fact, the City never requested information regarding projected "cash flow" from Ms. Crowe, and it did not ask any questions regarding projected cash flow at Ms. Crowe's hearing.

68. The record contains insufficient evidence to support the City's conclusion that a certificate was not in the public interest or that it would "saturate the community."

69. Indeed, the record lacks evidence that would be necessary to reach such a conclusion. For example, the record lacks evidence of:

- a. How many of the vehicles-for-hire that the City has licensed actually operate (and thus how many seats are actually available) on any given night;
- b. Why some licensed vehicles are not actually operated;
- c. How the City or anyone else determines the number of seats that is appropriate for the level of demand present in the City;
- d. How the public would suffer harm as a result of granting Ms. Crowe a license; and

e. Anything that contradicts Ms. Crowe's stated reasons for granting the license.

70. In addition, the other evidence presented at Ms. Crowe's hearing did not support a denial of her application.

71. In addition, because its procedures failed to comport with basic requirements of due process, the City did not provide a genuine "hearing" as the Code requires.

72. In addition, the City Council failed to provide appellate review as the Code requires because it did not have a complete record of the proceedings below, because its members did not understand what standards they should apply, and because it blindly deferred to the Deputy City Manager.

73. For each and all of the above reasons, the City's denial of Ms. Crowe's vehicle-for-hire application was both unreasonable and contrary to the manifest weight of the evidence.

74. The Administrative Review Law, 735 ILCS 5/3-101 *et seq.*, does not govern review of the City's denial of a certificate of public convenience because the City has not passed an ordinance stating that the Administrative Review Law applies to such decisions.

75. When the Administrative Review Law does not apply to a particular administrative decision, a party may seek relief in this Court through a petition for a common-law writ of certiorari.

76. Accordingly, Plaintiff petitions this Court for a common-law writ of certiorari to review and set aside the City's denial of her application.

77. The City must file with its response to the petition a certified copy of the entire record of the proceedings before it, including but not limited to any transcripts or minutes of hearings, letters submitted in support of or opposition to Ms. Crowe's application, and any

documents or other evidence the City relied upon in denying Ms. Crowe's application and appeal.

**Relief Requested**

**WHEREFORE**, Plaintiff Julie Crowe prays that this honorable Court:

A. Enter a declaratory judgment that the procedures employed by the City of Bloomington to determine whether to grant a certificate of public convenience to operate a vehicle-for-hire business violate the due-process guarantee of Article I, Section 2 of the Illinois Constitution, both on their face and as applied to Ms. Crowe;

B. Enter a declaratory judgment that Article X, Section 1002E of the Bloomington City Code violates the due-process guarantee of Article I, Section 2 of the Illinois Constitution both on its face and as applied to Ms. Crowe;

C. Enter a declaratory judgment that the City's denial of Ms. Crowe's application for the purpose of protecting existing businesses from competition violated the due-process guarantee of Article I, Section 2 of the Illinois Constitution both on its face and as applied to Ms. Crowe;

D. Overturn the decisions of the City Manager and City Council denying Ms. Crowe's application and direct the City Manager to issue Ms. Crowe a certificate of public convenience to operate a fifteen-passenger vehicle;

E. Award Ms. Crowe her reasonable costs and attorneys fees; and

F. Award Ms. Crowe any additional relief it deems just and proper.

Dated this 28th day of February, 2012.

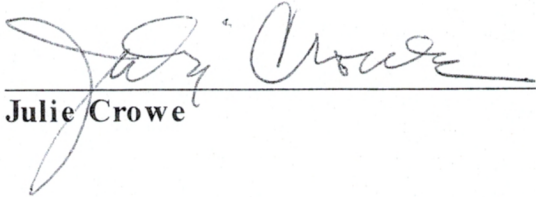
**JULIE CROWE**

By:   
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**VERIFICATION BY CERTIFICATION**

I, **JULIE CROWE**, under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, do certify that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as above that I verily believe the same to be true.

  
\_\_\_\_\_  
**Julie Crowe**