

EMPLOYER STATUS DETERMINATION

VENTURA COUNTY TRANSPORTATION COMMISSION

This is the decision of the Railroad Retirement Board regarding the status of Ventura County Transportation Commission (VCTC) as an employer under the Railroad Retirement and Railroad Unemployment Insurance Acts.

According to information provided by Charles A. Spitulnik and Richard F. Riley, Jr., attorneys for VCTC, VCTC is a governmental entity of Ventura County, California, responsible for public transportation activities in the county. VCTC is one of five southern California agencies which executed a Joint Powers Agreement in July 1991.¹ Under the Joint Powers Agreement VCTC and the other four county agencies have delegated to SCRRA the administration of all the commuter rail service over rail lines or easements which have been acquired by the five county agencies from the Atchison, Topeka and Santa Fe Railway Company, the Southern Pacific Transportation Co., and the Union Pacific Railroad Co. VCTC has purchased commuter rail easements in rail property located in Ventura County from the Southern Pacific Transportation Co. These are the rail lines over which the SCRRA commuter service operates in Ventura County. SCRRA performs this duty by contracting the actual operation of the rail service to Amtrak². Southern Pacific maintains rail freight service over these lines.

The definition of an employer contained in section 1(a) of the Railroad Retirement Act (45 U.S.C. § 231 (a)) reads in part as follows:

- (1) The term "employer" shall include--

¹The other agencies are Southern California Regional Rail Authority ("SCRRA"), San Bernardino Associated Governments ("SANBAG"), the Los Angeles County Metropolitan Transportation Commission ("LACMTA"), the Orange County Transportation Authority ("OCTA"), and the Riverside County Transportation Commission ("RCTC"). LACMTA, OCTA and RCTC have all been found not to be employers covered by the Acts. See B.C.D. 94-48, B.C.D. 94-47, and B.C.D. 94-47.1, respectively. SANBAG and SCRRA have been submitted for Board opinions simultaneously with this request for VCTC.

² Amtrak is an employer under the Acts, therefore, the employees of Amtrak performing these services are covered under the Acts.

(i) any express company, sleeping car company, and carrier by railroad, subject to [the Interstate Commerce Act];

-2-

VENTURA COUNTY TRANSPORTATION COMMISSION

(ii) any company which is directly or indirectly owned or controlled by, or under common control with, one or more employers as defined in paragraph (i) of this subdivision, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equipment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad * * *.

Section 1(a) of the Railroad Unemployment Insurance Act (45 U.S.C. § 351(a)) provides a substantially identical definition.

VCTC is a governmental entity whose sole involvement in the commuter rail service operated over the lines it has purchased is to collect and disburse commuter rail subsidy funds and to have representatives serve on the Board of directors of SCRRA and provide the general oversight function associated with such board service. It is not involved in the transportation of freight or passengers in interstate commerce and, accordingly, is not subject to the Interstate Commerce Act. VCTC likewise does not provide any service or operate any equipment in connection with the transportation of freight or passengers in interstate commerce. Accordingly, it does not fall within the definition of employer in the Railroad Retirement Act and the Railroad Unemployment Insurance Act. See B.C.D. 94-48, In re Los Angeles County Transportation Commission.

The Board holds that VCTC is not an employer under the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

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