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Director of Data Processing and Accounts

Acting General Counsel

Kyle Railways, Inc.
Employer Status

Because of your inquiry dated June 9, 1980, requesting my opinion regarding the employer status of the St. Maries River Railroad Company and the Idaho Western Railroad Company, this office sought pertinent information from Kyle Railways, Inc. because of its apparent association with the St. Maries River Railroad Company and numerous other employers covered under the Railroad Retirement and Railroad Unemployment Insurance Acts. This railroad holding company has not previously been an employer under the Acts.

In a letter written on Kyle Railways, Inc.'s stationery, Ms. Phyllis Moody, Administrative Assistant, informed the Board that the Idaho Western Railway Company commenced operation on May 24, 1980. Upon further inquiry by this office, Ms. Moody stated in a letter dated August 18, 1980, that Idaho Western Railway Company is a wholly owned subsidiary of Kyle Railways, Inc. In addition, she stated that the Idaho Western Railway Company is the operator of the St. Maries River Railroad under the terms of a management contract. Moreover, Ms. Moody stated that:

"The principal officers of Kyle Railways, Inc. are Willis B. Kyle, President, and Lynn T. Cecil, Executive Vice President. They are also the principal officers of Idaho Western Railway in addition to Richard L. Roy who is Vice President and General Manager. Messrs. Kyle and Cecil are also officers of the following railroads which are wholly [sic] owned subsidiaries of Kyle Railways, Inc: Bellefonte Central, Mendocino Coast Railway, Port Railroads, Pend Oreille Valley Railroad, Yreka Western, San Diego & Arizona Eastern Transportation Co. and South Central Tennessee Railroad. In addition they are officers and employees of the Oregon Pacific & Eastern Railway Co."

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In the same letter, Ms. Moody stated that Kyle Railways, Inc. is a holding Company which has no employees and has been held to be a carrier by the Interstate Commerce Commission. At my request, Ms. Moody furnished a copy of Finance Docket No. 28917, decided August 20, 1979, wherein, at page 6, it is stated that:

"Kyle Railways, Inc. and Willis B. Kyle, Inc., are authorized to control through management the property of the San Diego & Arizona Eastern Railway."

As you know, section 1(a)(1) of the Railroad Retirement Act (45 U.S.C. § 231(a)(1)) and a similar provision of the Railroad Unemployment Insurance Act provide, in pertinent part, as follows:

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

"(i) any * * * carrier by railroad, subject to part I of the Interstate Commerce Act;

"(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 * * *."

In accordance with the foregoing provisions, this office held the South Central Tennessee Railroad Company to be an employer under the Acts effective July 1, 1978, as a carrier by railroad subject to Part I of the Interstate Commerce Act. See General Counsel's opinion L-78-462, dated August 1, 1978. As noted above, Willis B. Kyle and Lynn T. Cecil are the principal officers of Kyle Railways, Inc. as well as officers of the South Central Tennessee Railroad Company. Of the railroads controlled by Kyle Railways Inc., the South Central Tennessee Railroad Company was the

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earliest of those determined to be an employer covered by the Acts, while then shown to be controlled by Kyle Railways, Inc. According to Finance Docket No. 28917, at page 4, Kyle has controlled various rail carriers since at least sometime in 1976. With the assistance of Mr. Robert Elling of your bureau, I have been advised that the three persons known to be associated directly with Kyle Railways, Inc. have had earnings reported through various of the company's subsidiary employers. Accordingly, there being no evidence to the contrary, Ms. Moody's statement that Kyle Railways, Inc. has no employees may be accepted, the use of the corporate letterhead and the fact that the corporation appears to have been represented before the Interstate Commerce Commission notwithstanding. In view of the foregoing, it appears that in reality Kyle Railways has compensated employees, but that their compensation for services rendered to Kyle Railways, Inc. is reported through subsidiary employers. Since Kyle Railways, Inc. is under common control with the South Central Tennessee Railroad Company and other employers covered by the Acts and performs services in connection with railroad transportation, as set forth above, it is my opinion that Kyle Railways, Inc., became an employer within the meaning of the Acts at least concurrently with the South Central Tennessee Railroad Company's commencement of operations as a carrier by railroad on July 1, 1978.

An appropriate Form G-341 giving effect to the foregoing is attached.

Steven A. Bartholow

Attachment

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