

SEP 3 1946

The Director of Retirement Claims

The General Counsel

L-48 556

General Building Service
(2485 Vrain Street, Denver, Colorado)

I herewith submit my opinion on the following:

QUESTION

Is service under a contract dated April 13, 1945, between the above-mentioned company and the Denver and Salt Lake Railway Company, covering the construction of a brick, cinder brick and cinder block C.T.C. building at Sulphur Springs, Colorado, creditable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act?

OPINION

It is my opinion that such service is not creditable.

DISCUSSION

Information furnished by the General Building Service is to the effect that it has never been directly or indirectly owned or controlled by or under common control with any express company, sleeping-car company or carrier by railroad; that it has been engaged generally in construction work under contract, and that it has never been set up in business or otherwise financed (other than through contract payments) by the Denver and Salt Lake Railway Company or any other express company, sleeping-car company or carrier by railroad. Since it appears from the foregoing that the General Building Service has been engaged in general construction work under contract and has not been an express company, sleeping-car company or carrier by railroad and that it has not been owned or controlled by or under common control with any such company or carrier, it is my opinion that the General Building Service has not been an "employer" within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Memorandum to
The Director of Retirement Claims

Furthermore, it is my opinion that the individuals engaged in service under the contract in question were not, within the meaning of either the Railroad Retirement Act or the Railroad Unemployment Insurance Act, the "employees" of the Denver and Salt Lake Railway Company but were the employees of the General Building Service. The contract, let after competitive bidding to a company engaged in general construction work under contract, called for the completion, for a lump sum, of a specific job within a specified number of days. All labor, material and supplies were to be furnished by the contractor. The contractor agreed to indemnify the railroad company against all liability, claims, suits, etc., arising out of personal injuries or damage to property in connection with work under the contract. He was required to post a bond conditioned on the faithful performance of the contract. These considerations are clearly indicative of the independent status of the contractor. General Counsel's Opinion L-44-549. Paragraph 5 provided that all "methods and materials" employed in the construction were to be "subject to the inspection, rejection or acceptance" of the engineer of the railroad company. While this provision might be construed to give some degree of control by the railroad company over the contractor, it is, in my opinion, outweighed by the factors pointing to the independent status of the contractor.

Accordingly, service under the contract in question is not creditable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Hyles F. Gibbons
General Counsel

HFC:lr