

AUTHORITY TO ISSUE PASSES TO BOARD MEMBERS



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TO: Board of Directors
North County Transit District

FROM: C. Michael Cowett

DATE: July 2, 1999

RE: Authority to Issue Passes to Board Members

We have been requested to conduct research to determine whether the Board may offer rail and bus passes to its members. We have concluded that a constitutional provision prohibiting the acceptance of such a pass is inapplicable and that the broad powers of the Board of Directors under the Act authorizes the issuance of such passes.

NCTD exists and operates pursuant to the North San Diego County Transit Development Board Act (Public Utilities Code section 12500 et seq.). The Act grants the Board of Directors broad authority to do all things necessary to carry out the purposes of the Act and to maintain and operate a public transit system. We have concluded that the Board of Directors powers are broad enough to authorize it to issue passes to its members.

The California Constitution Article XII, Section 7 prohibits transportation companies from granting free passes or discounts to any person holding office in California.

This Section states as follows:

A transportation company may not grant free passes or discounts to anyone holding an office in this State; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner shall work a forfeiture of that office

The question is whether NCTD is a "transportation company" within the meaning of the Constitutional provision.

A SUBDIVISION OF THE STATE IS NOT A COMPANY

NCTD is not a transportation company. It is a subdivision of the State of California created by the State Legislature. Fundamentally, a political subdivision is defined as follows:

A division of the state made by proper authorities thereof, acting within their constitutional powers, for purposes of carrying out a portion of those functions of state which by long usage and inherent necessities of government have always been regarded as public. (Blacks Law Dictionary, 6th Ed., p. 1159, col. 1.)

NCTD falls within this definition. This is because it is an entity created by the California Legislature for the purpose of "improving existing public transportation services" and to "encourage regional public transportation coordination." (Pub. Util. Code §125001.)

NCTD, further, does not operate as a company, either in its form or in its operation. It is governed by a Board of Directors consisting of one member of each of several City Councils. (Pub. Util. Code § 125050.) Moreover, NCTD's meetings are conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950 et seq., in the same manner as the meetings of all other political subdivisions of the State of California. (Pub. Util. Code § 125104.)

It is also interesting to note that Article XII, Section 3, of the California Constitution, the same Article in which the Constitutional prohibition in question is set forth, provides a description of the type of entities that are subject to the control of the legislature as a result of their public utilities status. Enumerated in Section 3 are the following:

Private corporations and persons that own, operate, control, or manage a line, plant, or system where the transportation of people or property, the transmission of telephone and telegraph messages, or the production, generation, transmission, or furnishing of heat, light, water, power, storage, or wharfage directly or indirectly to or for the public, and common carriers.

LEGISLATIVE HISTORY OF CALIFORNIA CONSTITUTION ARTICLE XII, SECTION 7

An analysis of the legislative history of California Constitution Article XII, Section 7 also clarifies that NCTD is not considered to be a "transportation company" subject to the purview of the Constitutional prohibition.

Article XII, Section 7 is derived from former Article XII, Section 19 of the Constitution of 1879. When it was originally adopted, it read:

No railroad or other transportation company shall grant free passes, or passes or tickets at a discount, to any person holding any office of honor, trust, or profit in this state; and the acceptance of such pass or ticket, by a member of the legislature or any public officer, other than railroad commissioner, shall work a forfeiture of his office.

Article XII, Section 7 has the same substance of its predecessor section.

Shortly after the adoption of Article XII, Section 19, the California Legislature began to adopt a series of acts regarding the scope of the "Railroad Commission."¹ For example, in 1880, the California Legislature adopted an act to "organize and define the powers of the Board of Railroad Commissioners." The act set forth specific provisions regarding the powers of the Railroad Commissioners, their salaries and expenses. Most importantly, for our purposes, this act defined the term "transportation companies" as:

First - all companies owning and operating railroads (other than street railroads) within this State.

Third - . . . "Company" as used in this act, shall be deemed to mean and include corporations, associations, partnerships, trustees, agents, assignees, and individuals. Whenever any railroad company owns and operates in connection with its road and for the purpose of transporting its cars, freight, or passengers, any steamer, or other water craft, such steamer or other water craft shall be deemed part of said road. . . ." (Stats. 1880, Ch. 59, § 14, p. 45 at 48.)

The acts adopted in 1909 and during the 1911 regular legislative session defined the term "transportation companies" in essentially the same manner.

During an extra legislative session in 1911, the California Legislature adopted the Public Utilities Act. The Act was adopted to apply to "the public utilities and public services herein described and to the commission herein referred to." (Stats 1911, Ex. Sess., Chapter 14, Section 1, p. 18 at p. 18.) The Act repealed all previous acts relating to the same subject. Interestingly, the Public Utilities Act did not contain a definition for the term "transportation companies." The Act, as adopted, however, defined several other terms which are of importance. First, the Act defined the term "corporation" as:

¹ The "Railroad Commission" is the predecessor in interest to the modern day Public Utilities Commission.

"A corporation, a company, an association and a joint stock association." (Stats. 1911, Ex.sess., Ch. 14, § 2(c), p. 18. at 18)²

A "railroad corporation" is defined as:

every corporation or person, their lessees, trustees, receivers or trustees appointed by any court whatsoever, owning, controlling, operating, or managing any railroad for compensation within this state. (Stats 1911, Ex.sess., Ch. 14, § 2(j), p. 18 at 19.)³

The term "person" is defined an "individual, a firm and a co-partnership. (*Id.*)

While the term "transportation companies" is not defined in Public Utilities Act, either in its current form or as adopted, the legislative history behind the Act indicates that the term "transportation companies" is synonymous to the term "corporation" as used in the Public Utilities Act. Both terms clearly apply to private companies and corporations as opposed to political subdivisions of the State of California such as NCTD.

CONCLUSION

Based on the above, we believe that the prohibition set forth in California Constitution Article XII, Section 7 is not applicable to NCTD. Further, NCTD's broad grant of power under the North San Diego County Transit Development Board Act, authorizes the issuance of free rail and bus passes to its members if the Board wishes to do so as a matter of policy.

² This same definition is currently found at Section 204 of the Public Utilities Act, Public Utilities Code section 201, et seq.

³ Currently, the Public Utilities Act defines the term railroad corporation as:

"Every corporation or person owning, controlling, operating, or managing any railroad for compensation within this State."