

MEMORANDUM

TO Scott Morris

FROM Alex B. Leath, Matthew A. Hinshaw

DATE November 13, 2015

SUBJECT Delegation of Administrative Duties to a Nonprofit

Purpose

You have asked us to research whether the Board of Directors (the “Board”) of the Unified Carrier Registration Plan (the “Plan”) can delegate administrative functions of the Plan to a nonprofit organization.

Short Answer

Yes, the Board can delegate administrative functions to a nonprofit. The enabling statute allows the Board to contract with any person to perform administrative functions and the relevant definition of person includes nonprofit corporations.

Analysis

The Board is allowed to “contract with any person or any agency of a State to perform administrative functions required under the unified carrier registration agreement, but may not delegate its decision or policy-making responsibilities.” 49 U.S.C.A. § 14504a(d)(6). § 14504a does not explicitly define “person” so one must look for other controlling definitions. If there are no controlling definitions, then an analogous definition must be found.

Controlling Definitions

The Plan is created by § 14504a which is a part of Chapter 145 which is a part of Part B of Subtitle IV of Title 49 of the United States Code. To find a controlling definition, one starts with the most specific (the section) and moves up the chain towards the most general (the title) until a definition is found. If no definition is found in the chain, then one must look to other titles to find analogous definitions.

There is no definition of “person” in the relevant section (§ 14504a – Unified Carrier Registration System plan and agreement), nor is there one in the relevant chapter (145 – Federal-State Relations). However, there is a relevant and controlling definition found in Part B (Motor Carriers, Water Carriers, Brokers, and Freight Forwarders). 49 U.S.C.A. § 13102 provides definitions with are applicable to the entire part. It reads in relevant part:

In this part, the following definitions shall apply:

(18) **Person.**--The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

49 U.S.C.A. § 13102(18). Section 1 of Title 1 reads in relevant part:

In determining the meaning of any Act of Congress, unless the context indicates otherwise--
... the words “person” and “whoever” include corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals[.]

1 U.S.C.A. § 1. Thus, the controlling definition of person for purposes of § 14504a is:

Any individual, corporation, company, association, firm, partnership, society, joint stock company, trustee, receiver, assignee, or personal representative of a person.

The definition above establishes that a corporation is a person for purposes of § 14504a. Nonprofit corporations are generally treated as corporations, depending on the state of incorporation. For example, Alabama treats nonprofit corporations as private, non-governmental corporations. See *Moore v. Andalusia Hospital, Inc.*, 224 So.2d 617 (Ala. 1969).

Alternatively, if states treat nonprofit corporations as an extension of the government, then the nonprofit corporation could potentially qualify as “an agency of the State” and still be a permissible delegation.

Thus, depending upon the state of incorporation for the nonprofit corporation, it is generally permissible for the Board to delegate the administrative functions of the Plan to a nonprofit corporation.

Conclusion

A nonprofit corporation is generally a person and is allowed to contract with the Board to carry out the administrative functions of the Plan. In selecting the jurisdiction of the nonprofit corporation, care should be taken to select a jurisdiction that treats nonprofit corporations as private, non-governmental, corporations as this will provide the most straight-forward basis for qualification under the statute.