

# North Carolina Supreme Court Upholds Corporate Status of North Carolina Railroad for Purposes of State Public Records Act

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A great deal of interest has been born in the wake of the North Carolina Business Court's 2020 conclusion that the North Carolina Railroad Company "NCRR" is *not* an agency of the state subject to the provisions of the North Carolina Public Records Act. *Southern Environmental Law Center v. North Carolina Railroad Company*, 2020 NCBC 61. On August 13, 2021, the Supreme Court issued an opinion affirming the Business Court's determination that the NCRR was not subject to the Public Records Act (N. C. Gen. Stat. §§ 132-1 et seq).

Historically, the General Assembly first recognized the public's right to inspect public records in 1935. Act of May 2, 1935, ch. 265, § 1, 1935 N.C. Sess. Laws. 288. Since its enactment, our Courts emphasized that the Public Records Act is "to be liberally construed." *News and Observer Pub. Co. v. State ex Rel Starling*, 312 N.C. 276, 281 (1984); See also Thomas H. Moore, Comment, *You Can't Always Get What You Want: A Look at North Carolina's Public Records Law*, 72 N.C. L. Rev. 1527, 1528 (1994) ("Legal commentators have labeled North Carolina's public records act, North Carolina General Statutes Section 132-1, one of the more liberal in the country.").

The North Carolina Railroad Company, the State's oldest continuously operating business corporation, has existed for more than 175 years under its corporate charter, and for 24 of those years, the State of North Carolina has been the sole voting shareholder. By statute, the Governor holds the proxy to vote the State's shares of the company. For this reason, the Southern Environmental Law Center contended that the NCRR should be deemed a state governmental agency for the purposes of the Public Records Act. The NCRR argued that the General Assembly has consistently treated the NCRR as a private corporation and therefore should not be subject to inspection requests under the Public Records Act.

In support of this argument, the NCRR asserted to the Business Court and the North Carolina Supreme Court that it pays franchise and property taxes to the State of North Carolina, owns a for-profit subsidiary that pays federal and state income taxes, and operates under Chapter 55 of the North Carolina General Statutes which governs corporations. See e.g., *North Carolina Railroad Company—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Railway Company, Norfolk & Western Railway Company, and Atlantic and East Carolina Railway Company*, STB Finance Docket No. 33134 (STB served May 29, 1997).

SELC argued that it is “the nature of the State’s authority over the Railroad, rather than the source of that authority, should be deemed controlling.” *SELC v. N.C. Railroad Company*, 2021 NCSC 84 (Aug. 13, 2021). The Court rejected this argument, stating that SELC’s argument “relies in seeking to persuade us that the Railroad should be deemed subject to the Public Records Act is the direct result of the State’s status as the Railroad’s sole shareholder rather than the exercise of the State’s sovereign authority.” *Id.*

The NCRR emphasized that the State holds no power over the railroad other than that of a shareholder and reminded the court that entities are separate from their shareholders and not explicitly alter-egos of said shareholders. Finally, the NCRR focused on several expressions of legislative intent made by the General Assembly recognizing the NCRR as an entity not subject to the Public Records Act. Most notable is the 2013 Session Law which established a separate standard for confidential material held by the NCRR as compared with agencies of the State. The NCRR argued that such a measure would not be necessary if the legislature intended for the NCRR to operate under the purview of the Public Records Act as it already contains a separate standard for confidential material subject to the Public Records Act.

In the light of the arguments, the North Carolina Supreme Court issued its decision on August 13, 2021, upholding Judge Robinson’s decision in favor of the NCRR. *SELC v. N.C. Railroad Company*, 2021 NCSC 84 (Aug. 13, 2021). This ruling is significant in that it cements the NCRR’s status as a business corporation separate from the State and that the shareholder relationship has not transformed the NCRR into a governmental alter-ego of the State.