

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

June 11, 1985

Hugh B. Fitzpatrick
Deputy Director for Financial Affairs
California Transportation Commission
1120 N Street
P.O. Box 1139
Sacramento, CA 95805

Re: Your Request for Advice
Our File No. A-85-104

Dear Mr. Fitzpatrick:

Thank you for your letter requesting advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/} This letter confirms the advice I gave you by telephone on June 4, 1985.

You are the California Transportation Commission's (CTC) Deputy Director for Financial Affairs. You manage the financial aspects of the State Transportation Improvement Program (STIP), and have responsibility for developing the annual STIP. The STIP funds projects to improve the state highway system and local mass transit systems. As Deputy Director for Financial Affairs you do not recommend funding for specific projects from the STIP.

You have asked whether it would be a conflict of interest for you to work as a consultant on transportation financing issues for the California Business Roundtable. As a consultant, you would present a series of transportation financing issues to the Roundtable and assist the Roundtable in developing a set of general principles they could use to evaluate the merits of specific transportation financing proposals.

^{1/} The Political Reform Act is contained in Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise specified.

Hugh B. Fitzpatrick
June 11, 1985
Page 2

In your letter, you stated that the Roundtable does not take positions on issues that come before the CTC and does not request funding for specific improvement projects financed through the STIP. However, individual companies which are represented on the Roundtable may have a financial interest in the projects.

In our telephone conversations you indicated that the consulting work you would perform for the California Business Roundtable would not include any lobbying for the Roundtable before the CTC or any attempt to further the interests of the Roundtable with regard to the CTC's decisions.

Section 87100 prohibits a public official from making, participating in, or in any way attempting to influence any governmental decision in which he knows or has reason to know he has a financial interest. The Political Reform Act does not prevent you from providing consulting services to the Roundtable, but would require you to disqualify yourself from participating in decisions in which you have a financial interest. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision would have a material financial effect on:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

If you receive or are promised income of \$250 or more in a 12-month period from the California Business Roundtable for your services as a consultant, the Roundtable would be considered a source of income to you. Accordingly, you would be required to disqualify yourself from participating in any governmental decision as an employee of the CTC which would have a reasonably foreseeable material financial effect on the California Business Roundtable. For purposes of Section 87103, a conflict of interest situation exists only if that decision could have a material financial effect on the Roundtable, as distinguished from the individual members of the Roundtable.

Based on the information you have provided about your responsibilities at the CTC and the type of interaction between

Hugh B. Fitzpatrick
June 11, 1985
Page 3

the CTC and the California Business Roundtable, it appears that your participation in the decisions of the CTC would not have a material financial effect on the Roundtable; at most, there may be decisions which would affect individual members of the Roundtable. Therefore, I cannot foresee any situation in which you would be required to disqualify yourself from CTC decisions because you are a consultant to the Roundtable.

Furthermore, the Political Reform Act does not restrict your activities in advising the Roundtable as a consultant. The Act affects only your role as a government official if you have a financial interest in a decision. However, as I stated above, the consulting services you propose to provide to the Roundtable would not affect your ability to participate in the CTC's decisions.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh

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STATE OF CALIFORNIA

GEORGE DEUKMEJIAN
GOVERNOR



CALIFORNIA TRANSPORTATION COMMISSION

1120 N STREET, P.O. BOX 1139
SACRAMENTO 95805
(916) 445-1690

April 30, 1985

Ms. Barbara Milman, Chief
Legal Division
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804

Dear Ms. Milman:

I am writing to request the Commission's written advice, in accordance with Government Code Section 83114(b), of my responsibilities under the Political Reform Act. As the California Transportation Commission's Deputy Director for Financial Affairs, I manage the financial aspects of the State Transportation Improvement Program (STIP), and have responsibility for developing the annual STIP. My duty statement is enclosed. The STIP funds projects to improve the State highway system and local mass transit systems.

I am interested in working as a consultant on transportation financing issues for the California Business Roundtable. My work for the Roundtable would be to present to them a series of transportation financing issues, and to help them develop a set of "principles" they could use to evaluate the merits of specific transportation financing proposals. The enclosed prospectus gives a more detailed outline of the work I would like to do for the Roundtable.

Both the Commission and the Business Roundtable have an interest in transportation financing. However, the Roundtable does not take positions on issues that come before the Commission or request funding for specific transportation improvement projects financed through the STIP. Individual companies with representation on the Roundtable could have a financial interest in such projects, and my position does involve recommending funding for specific projects.

I would appreciate receiving your written advice on whether or not, should I perform consulting work for the Roundtable, I would have any specific duties

Ms. Barbara Milman, Chief
April 30, 1985
Page Two

under the Political Reform Act, particularly if a member corporation could gain financially from a transportation improvement project competing for funding through the STIP.

Sincerely,

A handwritten signature in cursive script that reads "Hugh B. Fitzpatrick". The signature is written in dark ink and is positioned above the typed name.

HUGH B. FITZPATRICK
Deputy Director

cc: R. S. Nielsen,
Executive Director, CTC

CALIFORNIA TRANSPORTATION COMMISSION
DUTY STATEMENT

ASSISTANT EXECUTIVE DIRECTOR
Hugh Fitzpatrick

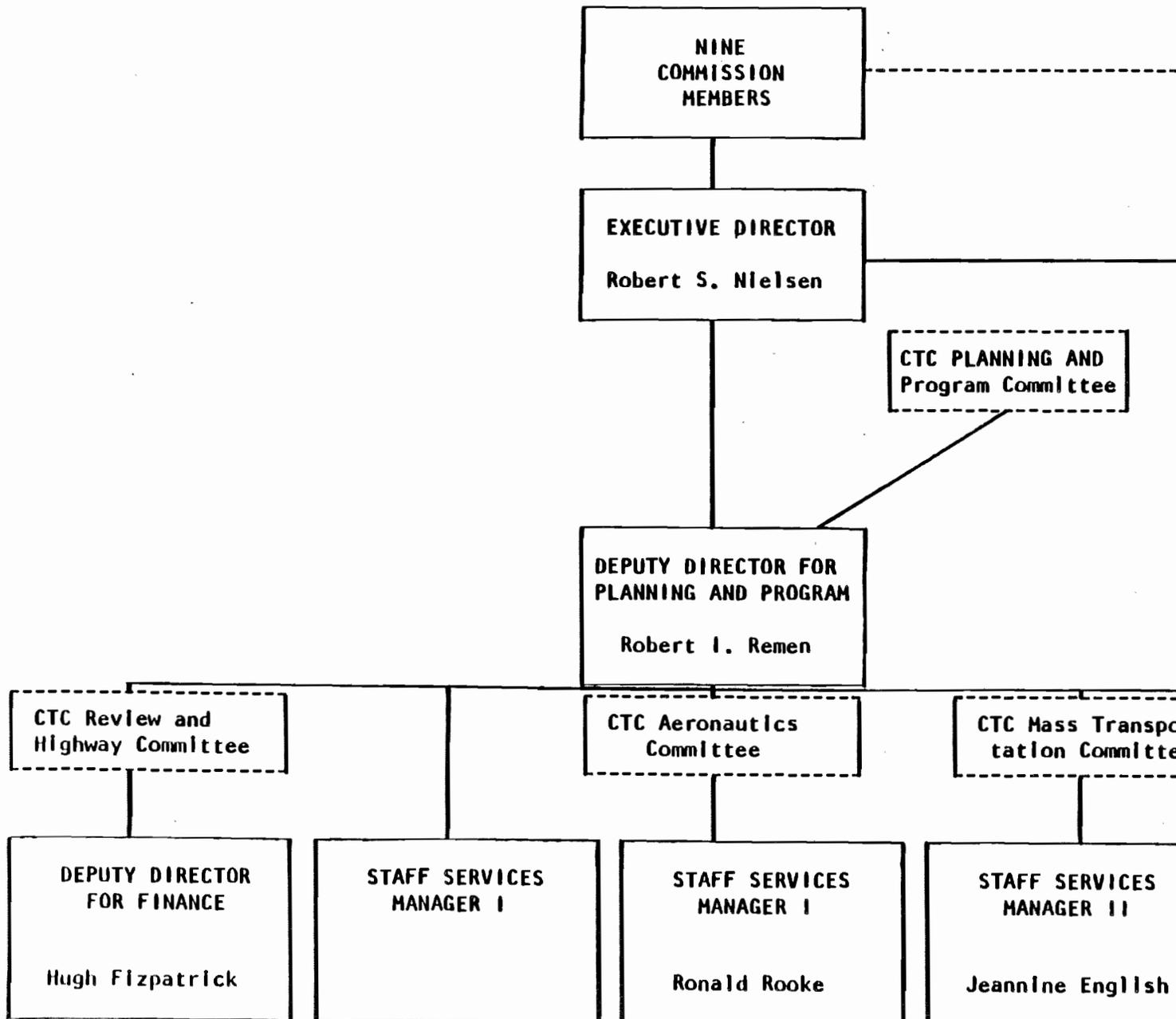
Major Responsibilities

Under the administrative direction of the Commission's Executive Director, manages the financial aspects of the State's transportation program and has overall responsibility for the State Transportation Improvement Program (STIP), which is adopted annually by the Commission.

- A. Administers for the Commission the development of the annual STIP - 50%
1. Formulates goals for the annual STIP and develops policy alternatives for achieving these goals. Upon the Commission's selection of specific goals and policies, develops and implements procedures for achieving the goals.
 2. Develops, in cooperation with the Department's management staff, representatives of the Legislature, and representatives of the regional and local transportation agencies, a methodology for estimating funds available for the five-year program.
 3. Analyzes the Department's proposed fund estimate and its underlying economic assumptions, and recommends a specific fund estimate to the Commission each year.
 4. Formulates the Commission's guidelines for preparing the Department's proposed STIP and the regional agencies' proposed programs for their areas to insure that these proposals conform to the Commission's policies and State law. Implements the guidelines approved by the Commission.
 5. Manages the preparation by the Commission staff of the recommended STIP, and has lead responsibility for recommendations related to the \$5.9 billion State highway capital improvement element.
- B. Evaluates the Department of Transportation's annual budget and presents the evaluation to the Commission and the Legislature - 15%
1. Reviews the proposed budget with Caltrans management; assesses the adequacy of revenue identified in the budget to accomplish the STIP, and the consistency of the budget with the STIP.
 2. Develops and recommends to the Commission the proposed policy issues to be discussed in the budget evaluation.
 3. Manages the analysis of the budget; conducts the analysis of the more complex issues.

4. Prepares the written evaluation of the Caltrans budget for transmittal to the Legislature by the Commission.
 5. Provides testimony to the legislative budget sub-committees on the Caltrans budget.
- C. Administers the computer data base used in the development and monitoring of the STIP - 15%
1. Manages and maintains the STIP computer base and the associated programming and data entry activities.
 2. Assists regional agencies in the computer data base operations for the RTIP and the STIP preparation and analysis.
 3. Represents the Commission on data-processing issues involving the Commission, regional agencies, the Teale Data Center, and the Department of Transportation.
- D. Formulates policy alternatives related to financial and highway issues of concern to the Commission - 20%
1. Develops responses to concerns raised by the Legislature, the local agencies, and the administration relating to the Commission's financial policies and procedures, and to highway related issues.
 2. Presents recommendations and proposes policy on highway program financial matters to the Commission.

CALIFORNIA TRANSPORTATION COMMISSION
ORGANIZATION CHART
February 4, 1985



247 Baja Avenue
Davis, CA 95616

April 7, 1985

Mr. Robert Shelton
The Irvine Company
550 Newport Center Drive
P.O. Box 1
Newport Beach, CA 92658-8904

Dear Mr. Shelton:

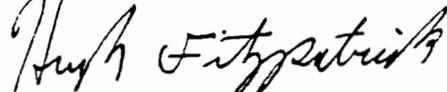
I hope you find the enclosed paper useful.

The paper sidesteps the bewildering complexity of transportation financing mechanisms, and deals instead with the fundamental issues of how much money goes to transportation and how that money is spent on transit, local roads, and State highways. Taxing and spending should be issues more familiar to the Business Roundtable (perhaps all too familiar) than transportation's many different tax mechanisms and allocation formulas.

Once the Roundtable decides where they stand on taxing and spending for transportation, they can deal with the specific mechanisms, which after all are of secondary importance.

I have also enclosed a list of some specific transportation issues the Business Roundtable may want to consider when they develop their policy on transportation.

Sincerely,



Hugh Fitzpatrick

HF:pl
Enclosures

AN APPROACH TO DEVELOPING A POLICY ON TRANSPORTATION FINANCING

Transportation financing in California is so complicated that even specialists have difficulty understanding how it works. Because of this complexity, the best approach the Business Roundtable can take when developing a coherent policy on transportation is to commission a series of brief papers. Each paper should deal with an individual issue and should lead to a position, or "principle," on its issue. After deciding on their preferences on each issue, the Business Roundtable could then develop a single, coherent policy paper, or set of principles. These principles would be the Roundtable's yardstick for measuring the merit of specific proposals for financing transportation in California.

There are two fundamental transportation policy issues now before the public: Should our surface transportation system receive more public funds? How large a share of the overall transportation funding should go to each of its major elements: State highways, local streets and roads, public transit? The first question relates to taxing for transportation, and the second to spending on transportation.

The Business Roundtable must first decide which of the questions, taxing or spending, has priority. Emphasizing one is inevitable, but it makes dealing with the other more difficult. For example, increasing transportation taxes, such as Senator Foran's SB 290 does, takes the pressure off the transportation community to spend its money more efficiently. What incentive does the community have to make painful redistribution decisions if, by joining together, public transit, local streets and roads, and State highways can all get more money? On the other hand, a decision to insist upon a redistribution of transportation resources tends to split the constituency for higher transportation taxes, and hence makes an overall tax hike for transportation more difficult to get.

The first step toward a coherent policy on transportation financing then, is deciding whether the taxing or spending question should take priority at this time.

After making this difficult decision, the Business Roundtable can proceed to deal with specific taxing and spending issues. Consider, for example, this spending issue. According to the State Controller, in 1982/83, California's transportation revenue was spent in this way:

Public Transit	\$1.4 billion	34%
City Streets/County Roads	\$1.4 billion	34%
State Highways	\$1.3 billion	32%

Since public transit carries less than 10% of the trips in the State, should we allocate over a third of the available money to it? At the same time public transit is seeking massive capital investments for new rail systems in a few urban transportation corridors (the \$3.5 billion Los Angeles Metro Rail, for example) expenditures on local streets and roads fall short of meeting minimum maintenance and rehabilitation needs by over \$500 million a year.

A second spending issue is California's share of Federal highway aid programs. Federal highway programs provide more than 90% of the money for capital improvements to the State highway system. Since 1982, California has received highway funds equal to about 85% of the user fees its citizens contribute to the Federal Highway Trust fund. Between 1957, when the Trust Fund was set up, and 1982, we received only about 81% of our contributions back. However much California benefits from other federal expenditures, the State should be able to do better for its underfinanced State highway system than an 85% return on our contributions. Increasing the return to 100% would bring an extra \$190 million a year to the State.

There are also some important taxing issues. For example, traditionally surface transportation in America has been financed by user fees. The traditional, and still important, issue has been how much each group of users--car drivers, bus riders, and truckers--should pay to maintain and expand the system. The amount raised by truck weight fees will be an important issue in California when transportation taxing is considered by the Legislature and the Administration.

In recent years, a second taxing issue has developed: Should those who benefit from the surface transportation system help to pay for it, as well as the system's users? The inability of user fees to satisfy the demand for transportation services has caused this issue. For example, local governments now require land developers to pay for some of the road improvements that will benefit their subdivisions. And the California Transportation Commission now requires some highway interchange projects to be financed in part by the local communities and businesses that will benefit from them.

The list on the next page identifies some of the major transportation taxing and spending issues that are candidates for individual policy papers.

SOME IMPORTANT TRANSPORTATION FINANCING ISSUES

First Issue

What is more important to the Business Roundtable: increasing taxes for transportation or changing the relative share of transportation revenues that goes to State highways, local streets and roads, and public transportation?

Spending Issues

Should local streets and roads receive a larger share of transportation revenue than they now get, and public transit less?

What can be done to increase California's return on its contributions to the Federal Highway Trust Fund from its present return rate of 85%?

What can be done to eliminate some of the expenditure restrictions on Federal highway aid programs, which conflict with State priorities for improvements to the State highway system?

Taxing Issues

Should transportation rely on the traditional user fee concept, or should California begin to levy taxes on the basis of who benefits from the transportation system as well?

As part of a general transportation tax increase, should truck weight fees be changed to a weight/distance basis, instead of the current unladen weight basis?

Should the State or local governments be responsible for increasing taxes to finance local streets and roads and public transit?

Memorandum

To : File No. A-85-104

Date : July 15, 1985

From : FAIR POLITICAL PRACTICES COMMISSION

Kathy Donovan *Ked*

Subject : Deadline Extension

On June 3, 1985, I talked to Fitzpatrick about his request for advice and informed him that he would not have a conflict of interest situation if he accepted the job as consultant for the Business Roundtable. I explained that I did not have the letter ready for him at that time, but he could expect one shortly.