



# California Fair Political Practices Commission

March 31, 1988

Robert S. Allen  
BART  
P.O. Box 12688  
Oakland, California 94604-2688

Re: Your Request for Advice  
Our File No. A-88-094

Dear Mr. Allen:

You have requested advice about application of the conflict of interest provisions of the Political Reform Act (the "Act")<sup>1/</sup> to your duties on the Bay Area Rapid Transit District ("BART") board of directors.

Thank you for providing the information I requested over the telephone on March 7 and 21, 1988.

## QUESTION

You receive income from Southern Pacific Transportation Company ("Southern Pacific") and you own shares in the Santa Fe-Southern Pacific Corporation. BART is negotiating with the San Mateo County Transit District ("SamTrans") to extend BART to San Francisco Airport. The most workable method of extending the line would be to buy Southern Pacific's right of way.

Are you disqualified from participating in BART negotiations with SamTrans to extend BART to San Francisco Airport?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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### CONCLUSION

Your economic interests in Southern Pacific disqualify you from participating in negotiations with SamTrans to extend BART to San Francisco Airport. It is reasonably foreseeable an agreement to extend the line will result in BART'S buying the right of way owned by Southern Pacific. This would have a material financial effect on Southern Pacific.

### FACTS

In September 1987, you began receiving severance pay of \$2040.63 a month from the Southern Pacific Transportation Company. The payments continue through April 1989. At that time you will retire officially and begin receiving railroad retirement benefits.

You also own common stock in Santa Fe-Southern Pacific Corporation through the Employee Stock Ownership Plan. On December 31, 1986, the stock was worth \$1,200 and you believe the current value is about the same. If Santa Fe sells Southern Pacific, you will continue to own stock in Santa Fe Company and not Southern Pacific.<sup>2/</sup>

You are on the BART board of directors. The board has been negotiating the terms of an agreement with SamTrans to extend BART from Daly City to San Francisco Airport. Present negotiations concern general funding arrangements between BART and SamTrans. The two agencies are not yet negotiating how the extension will be accomplished.

Southern Pacific owns the right of way for the peninsula commute line to San Jose and a branch line from San Bruno to Daly City. The branch line meets the BART line in Daly City.

If the transit districts eventually agree to extend BART to the airport, the most likely route would be Southern Pacific's branch line from Daly City to San Bruno. The value of the branch line to Southern Pacific is more than \$1 million. There are also two alternate, but less viable routes: (1) an aerial

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<sup>2/</sup> We obtained information about the status of Santa Fe-Southern Pacific Corporation from telephone conversations with you and Mr. Anderson and Mr. Harriges of Southern Pacific.

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structure along El Camino Real and (2) a rail line along routes 280 and 380. These two alternate routes would not involve Southern Pacific's property.

Currently, Santa Fe is waiting for approval from the Interstate Commerce Commission to sell Southern Pacific to Rio Grande Industries. Rio Grande Industries has announced plans to sell Southern Pacific's right of way on the peninsula, including the commute and branch lines, to a qualified public agency for \$300 million.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or attempting to use his official position to influence a governmental decision in which he has a financial interest. Participating in a governmental decision includes negotiating, without significant substantive review, with a governmental entity about the decision. (Regulation 18700(c)(1), copy enclosed.)

An official has a disqualifying financial interest in a decision that (1) will have a reasonably foreseeable material financial effect on the official's economic interests and (2) will have an effect that is distinguishable from the effect on the public generally. (Section 87103.)

You are a public official. (Section 82048.) You have an economic interest in Southern Pacific because the company pays you more than \$250 annually and you own stock worth more than \$1,000 in Santa Fe-Southern Pacific Corporation. (Section 87103(a) and (c).) Therefore, you must disqualify yourself from participating in any BART decisions that would foreseeably and materially affect Southern Pacific. Whether your severance pay or the value of your stock would be affected is not relevant to this determination.

#### Foreseeability

The effect of a decision is foreseeable if there is a substantial likelihood it will occur. An effect does not have to be certain to be foreseeable. If an effect were a mere possibility, however, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, 206-207, copy enclosed; see Downey Cares v. Downey Community Development Com. (1987) 196 Cal. App. 3d 983, 991, and Witt v. Morrow (1977) 70 Cal. App.3d 817.)

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In the Thorner opinion, supra at 204, the Commission relied on the finding of the U.S. Supreme Court in U.S. v. Mississippi Valley Generating Company (1961) 364 U.S. 520, 556. In Mississippi Valley, supra, the U.S. Supreme Court decided that there was a substantial probability that a negotiated agreement to build a power plant would result in a financing contract for First Boston Bank. Therefore, a government negotiator, who also was a vice president and director of First Boston Bank, had a conflict of interest.

To determine substantial probability, the court noted that during negotiations two attorneys and the banker-negotiator knew First Boston Bank had a good chance of receiving the financing contract should an agreement be reached. Therefore, "logic of circumstances" showed First Boston Bank had more than a mere hope the negotiated agreement would result in its getting the financing contract. The court decided the financing contract was not enforceable.

Similarly, you know that if BART and SamTrans successfully negotiate an agreement to fund a BART extension, the most practical way to implement the plan would be for BART to buy Southern Pacific's right of way. Rio Grande Industries also has announced it will sell the right of way for \$300 million. Consequently, it is reasonably foreseeable that the present negotiations will result in BART'S buying the right of way owned by Southern Pacific.

#### Material Financial Effect

Furthermore, in accord with the guidelines in Regulation 18702.2(c)(1) (copy enclosed), the sale of the right of way would materially affect Southern Pacific. Santa Fe-Southern Pacific is listed on the New York Stock Exchange and is a Fortune 500 company. Sale of the right of way would increase Southern Pacific's gross revenues by more than \$1 million. Therefore, you are disqualified from participating in the negotiations for the BART extension because it is reasonably foreseeable the negotiations will have a material financial effect on Southern Pacific.

Of course, by next year your economic interests in Southern Pacific may change. Once Santa Fe sells Southern Pacific, you no longer will have an investment interest in Southern Pacific because your stock will remain in Santa Fe Corporation. Your ownership of Santa Fe stock will present no conflict-of-interest problems under the facts presented.

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In addition, by May 1989 you no longer will receive income from Southern Pacific. Nevertheless, Section 87103(c) requires your disqualification from a decision that would have a material financial effect on Southern Pacific for 12 months after you have been provided, promised, or have received income of \$250 or more from Southern Pacific. Accordingly, until May 1990 you must disqualify yourself from decisions that would foreseeably and materially affect Southern Pacific.

I hope this letter is responsive to your advice request. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:mk



BAY AREA RAPID TRANSIT DISTRICT  
 800 Madison Street  
 P.O. Box 12688  
 Oakland, CA 94604-2688  
 Telephone (415) 464-~~3000~~ 6095

F P F

MAR 2 2 18 PM '88

March 1, 1988

California Fair Political Practices Commission  
 428 J Street, Suite 800  
 Sacramento, CA 95814

- JOHN GLENN  
PRESIDENT
- WILFRED T. USSERY  
VICE-PRESIDENT
- KEITH BERNARD  
GENERAL MANAGER
  
- DIRECTORS
- BARCLAY SIMPSON  
1ST DISTRICT
- NELLO BIANCO  
2ND DISTRICT
- ARTHUR J. SHARTSIS  
3RD DISTRICT
- MARGARET K. PRYOR  
4TH DISTRICT
- ROBERT S. ALLEN  
5TH DISTRICT
- JOHN GLENN  
6TH DISTRICT
- WILFRED T. USSERY  
7TH DISTRICT
- ARLO HALE SMITH  
8TH DISTRICT
- JOHN H. KIRKWOOD  
9TH DISTRICT

Friends:

As a BART director and a "bought-out" employee of the Southern Pacific Transportation Company with a small ESOP holding of Santa Fe Southern Pacific Company stock, I request clarification of whether I may participate in negotiations with San Mateo County Transit District directors on the proposed BART SF Airport station. The station could include a joint use with Caltrans (California Department of Transportation) and Southern Pacific Transportation Company, which operates the peninsula commute service for Caltrans.

Attached is a copy of my "Dismissal Release and Resignation" from SPT, which runs until April 1989, when I am eligible for a 30-year retirement under the Railroad Retirement Act. I do maintain an employment relationship during that period so far as the Railroad Retirement Board is concerned (see my letter of June 26, 1987 and RRB letter of Sept 9, 1987). The monthly rate of my compensation for the 19 months is set in the release.

I own a small amount of Santa Fe Southern Pacific stock under their Employee Stock Option Plan (ESOP). Attached is the latest annual statement. I understand that I may not redeem it before my retirement, which would be April, 1989. Earlier this year I sold all of my other SFeSP stock, so that all I have left is the ESOP shares.

BART and San Mateo County Transit District (Samtrans) are negotiating a possible extension to SFO - a joint BART-Caltrans station adjacent to the San Francisco Airport. Negotiations could include acquisition of part of SPT's former branch line right of way in San Mateo County as well.

Any decisions made would have virtually no effect on the value of my ESOP shares and no effect that I can imagine on my monthly dismissal allowance. They will be key to our ultimately achieving a rational transit system for the entire SF Bay area.

I would appreciate your clearing my participation with the BART Board in negotiations with Samtrans if you can do so.

Very truly yours,  
  
 Robert S. Allen

Position abolished 735 TCF Clerk Oakland

Plan B1

DISMISSAL RELEASE AND RESIGNATION

The Southern Pacific Transportation Company (Railroad) has offered, and I hereby accept, a monthly dismissal allowance of \$ 2040.63 for a period of 19 months. During this time I understand that I shall not exercise any seniority rights under Rules 39 and 40, but understand that I am subject to recall in accordance with Rule 41(f) of the current B.R.A.C./Railroad Rules Agreement. I understand that I shall not be entitled to any other protective benefits. The Railroad shall withhold and make payments to the Railroad Retirement Board, tax authorities, and union dues in the same manner as employees in active service, including employer payments, to the full extent required or permitted by law. I UNDERSTAND THAT IT IS FOR THE RAILROAD RETIREMENT BOARD ALONE TO DETERMINE WHETHER I WILL RECEIVE CREDITED SERVICE FOR THIS PERIOD AND RAILROAD HAS MADE NO REPRESENTATIONS OR PROMISES TO ME ON THE QUESTION OF WHETHER OR NOT THE RAILROAD RETIREMENT BOARD WILL RULE THAT THIS PERIOD IS CREDITED SERVICE.

I UNDERSTAND THAT UNDER THE METHOD OF RESIGNATION I HAVE SELECTED, THE RAILROAD WILL NOT CONTINUE MY PRESENT HEALTH AND WELFARE COVERAGE FOR THE DURATION OF THE MONTHLY PAYMENTS SPECIFIED HEREIN. I FURTHER UNDERSTAND THAT AS A RESULT OF THIS ELECTION THAT I WILL NOT BE ELIGIBLE FOR TRAVELERS GA-46000 COVERAGE AT THE CONCLUSION OF THE MONTHLY PAYMENTS.

Upon expiration of these monthly payments, I hereby agree that my resignation from service of the Railroad and forfeiture of all seniority employment rights shall become effective. In addition to the monthly allowance, it is understood I shall receive payment for wages earned but not yet paid and for any vacation and/or accrued sick leave earned and not taken. It has been fully and completely explained to me that this action need not be taken by me, and no coercion or undue influence has been exerted to obtain this voluntary resignation. No promises or inducements other than those set forth in this release have been made to me to secure my signature on this document.

I further agree and represent that I have had ample time to consider whether or not to resign before signing this Dismissal Release and Resignation.

I further understand and agree, in consideration of the above monthly payments, that this Agreement constitutes a complete surrender of any rights and benefits under any merger or other protective agreement or arrangement, and that it further constitutes full settlement and release of any and all claims and benefits of any kind which I have or might have against the Railroad, its officers, employees, agents, successors and predecessors, including any claim which I may assert under federal, state or municipal laws pertaining to employee rights or employment discrimination.

I hereby acknowledge receipt of a copy of this Dismissal Release and Resignation. I HAVE CAREFULLY READ THIS DISMISSAL RELEASE AND RESIGNATION. This Dismissal Release and Resignation is to be read as consistent with applicable law.

Executed at Oakland, Ca on Sept 25, 1987.  
(City & State) (Date)

[Signature]  
(Witness)  
[Signature]  
(Witness)  
R S Allen  
Print Name  
223 Donner Av  
Address  
Livermore, Ca 94550

Sept 25, 1987  
(Date)  
[Signature]  
(Signature)  
721-09-7865  
(Social Security Number)  
0089  
(Employee Account Number)

RULE 41

POSITIONS ABOLISHED, DISPLACEMENTS  
AND REDUCTION IN FORCE

(f) An employe laid off on account of reduction in force, or through displacement, who is unable to displace a junior employe, shall have his name carried on the seniority roster and shall be given preference in the order of seniority over other employes when force is increased or vacancies occur, provided the employing officer is currently advised of his address, and in the event no service has been performed for a period of one (1) year, the employe passes satisfactory physical examination. An employe failing to return to service within fifteen (15) days after being notified by certified mail, registered mail or telegram sent to the last address given, or furnishing good and sufficient reason for not doing so, shall forfeit his accumulated seniority and likewise his employe relationship and shall not be entitled to an investigation under Rule 46 in connection with such termination of employe relationship.

(g) The following will govern in connection with displacement privileges for Guaranteed Extra Board employes:

1. Release from One-Day Vacancy

Generates displacement right against junior employe on hold-down under Rule 34 (c).

2. Release from Training

When placed in training, employe shall be informed of approximate duration of training and shall be informed prior to end of shift on last day on which it is intended he will train that he is released from training effective close of shift. Upon such release from training, GEB employe generates displacement rights against junior employe on hold-down under Rule 34 (b) or (c) except when vacancy on position for which trained will exist within three days, such employe may be held for that vacancy unless a senior qualified GEB employe is available. If senior employe is available for vacancy involved then employe released from training may exercise displacement right.

3. Return from Vacation or Leave of Absence

(a) Generates displacement right against junior employe who has been assigned to or who has displaced on a regular position advertised during his absence, or

(b) May displace junior employe on hold-down under Rule 34 (b) or (c) which arose during returning GEB employe's absence.

NOTE: Provisions cited under (b) will not apply if employe was on hold-down prior to absence and such hold-down still exists upon his return. If still existing, employe must return to prior hold-down unless he has been displaced on such prior hold-down by a senior GEB employe.

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

6-27-87

BUREAU OF COMPENSATION AND CERTIFICATION

Mr. Robert S. Allen  
223 Donner Avenue  
Livermore, CA 94550

In reply refer to  
S.S.A. No. 721-09-7865  
9720

Dear Mr. Allen:

This is in reply to your June 26, 1987 letter. Payments made pursuant to option 3(b) of the Agreement between the Southern Pacific Transportation Company and BRAC, which are payable on a periodic basis to employees who retain their employment relationship with the railroad, are considered dismissal allowance payments by the Railroad Retirement Board. These are considered compensation for service and compensation credit in the month of payment, except that no payments made for periods after death or any other severance of employment relationship are considered creditable compensation.

Yours very truly,

*George F. Traynere*

George F. Traynere  
Director of Compensation  
and Certification

223 Donner Avenue  
Livermore, CA 94550

June 26, 1987

SS# 721-09-7865

US Railroad Retirement Board  
844 Rush Street  
Chicago, IL 60611

Attn: Director of Compensation and Certification

Dear sir:

Attached are copies of my latest BA6, a buyout solicitation from SPT Co., and my application for the buyout. I am still in active railroad service with pay of slightly over \$100/day.

When I asked the Oakland Railroad Retirement Board office whether I would receive Railroad Retirement credits during the proposed 24-month buyout period, they suggested that I write you.

My computation of service months:

Total thru December, 1986 (from BA6)	332 months
1987, January thru June	6 months
Credits if allowed over 24-month period	<u>24 months</u>
Total	362 months

This does not include coverage until they offer a buyout and I accept it.

Please advise if Railroad Retirement credits will accrue over the 24-month buyout period, as suggested in the underlined wording in the third paragraph of SPT's solicitation letter. Because my birthdate was 3-26-26, I would be age 63 at the end of the 24-month period.

Very truly yours,

Robert S. Allen

PS: I would appreciate a prompt response, as I do not know when I must execute the irrevocable release and resignation, or even when or if I will be offered the buyout.

JUN 23 1987

Labor Relations Department  
Attn: Ray Winkenbach  
Southern Pacific Transportation Company  
One Market Plaza, Room 304  
San Francisco, California 94105

In conjunction with the agreement dated June 9, 1987 between SPTCo. (Western Lines) and BRAC, I hereby apply for the following separation allowance option (check the appropriate box):

Option (a)

360 day gross lump sum separation allowance\* less the equivalent of one year's union dues.

Option (b) (Only applicable to employees 59 years of age and over.)

360 day gross dismissal allowance\* distributed equally for a period of 24 months (not to exceed 24 months). Normal deductions for taxes, railroad retirement and union dues will be taken in each monthly period.

I  do  do not wish to continue present health and welfare coverage for a period of time equal to the duration of the monthly payments. I understand the Company's cost of providing such coverage (currently \$284.35 per month) will be deducted from the monthly payments.

\* 360 day allowances to be based on the actual rate of position held at time of resignation.

The undersigned hereby authorizes SPTCo. (Western Lines) to deduct from this separation payment the union dues as specified above and remit same to his/her collective bargaining representative.

I understand that this application must be received in Labor Relations in San Francisco not later than June 23, 1987. I also understand that turning in this form is not a firm commitment to accept the buyout. (I have not yet had an opportunity to check with Railroad Retirement).

June 23, 1987  
Date

Robert S. Allen  
Signature

721-09-7865-1  
Social Security No. (incl. Check Digit)

3-26-26      443/0089  
Date of Birth      Employee Acct. No.

7      11-6-81  
Master Roster      Seniority Date

Robert See Allen  
Print Name  
223 Donner Avenue  
Address  
Livermore, CA 94550  
City, State, Zip Code

Oakland - Operating  
Location and Department  
103- Crew Dispatcher  
Position No. and Title

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

June 11, 1987

Dear Clerical Employee:

An agreement was signed on June 9, 1987 which will afford all Western Lines clerical employees, including those who might be affected by the Company's reorganization plans, the opportunity to apply for scheduled severance payments as provided in the TOPS agreement.

If you have five or more years service, your TOPS severance allowance can be calculated by multiplying the daily rate of the position you occupy on the day you resign times 360 days. In addition, we have agreed to pay you for all vacation earned at 100% of your daily rate, and all sick leave earned at 50% of your daily rate.

If you are at least 59 years old, you can elect to receive a dismissal allowance totaling that of the severance allowance to which you are entitled, paid in up to 24 equal monthly payments. Judging by prior programs, you should receive Railroad Retirement credit during this period. You can verify this through the Railroad Retirement Board. Medical and dental coverage can be continued at your own expense. If you or your spouse have other medical coverage, you may not want to continue railroad medical; however, in order to convert to GA-46000 (early retirement medical coverage), you must be a participant in GA-23000, at least 61 years old, and with 30 or more years of service at the time of your retirement.

Union dues, railroad retirement, and federal and state taxes will be deducted from all payments.

If you are currently a clerk regularly assigned to permanent or guaranteed extra board position, you may submit the attached application. The application must be received in San Francisco by June 23, 1987, which means you should have it in the mail no later than Friday, June 19, 1987. We do not intend to have another application period. Applications will be awarded based on the requirements of service at each location.

At the conclusion of the application period, the successful applicants will be contacted and required to complete an irrevocable release and resignation. The Company will then make arrangements to send the lump sum separation allowance or the semimonthly dismissal allowances to the your address. In all cases, current earnings, as well as "payments in lieu" for vacation and sick leave, will be mailed to the your address following the close of the payroll period.

Any questions should be addressed to the Labor Relations Office in San Francisco, Extensions 2622, 2615 or 2627, or your BRAC representative.

Thank you for your cooperation.



R. B. Brackbill  
General Chairman  
BRAC



K. R. Peifer  
Assistant Vice President  
Labor Relations

# **Southern Pacific**

## **Employee Stock Ownership Plan Committee**

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

### **SOUTHERN PACIFIC COMPANY EMPLOYEE STOCK OWNERSHIP PLAN**

#### **IMPORTANT NOTICE REGARDING THE SPECIAL DIVIDEND DECLARED BY THE SFSP BOARD OF DIRECTORS**

On January 26, 1988 the Santa Fe Southern Pacific Corporation Board of Directors declared a dividend distribution of \$25 in cash plus \$5 principal amount of new senior subordinated debentures for each outstanding share. The plan, subject to change, is to pay this dividend to holders of record on February 5, 1988 with the cash portion to be paid February 16 and the debenture portion March 1.

As Trustee of the Southern Pacific Employee Stock Ownership Plan, Bankers Trust Company will credit to individual accounts the full value of the special dividend, based on the individual account balances as of the payment date(s). Based on the above payment dates, those participants who retired or terminated during 1987 will also have their accounts credited with the special dividend.

Although the Plan provides that distributions must be reinvested in SFSP common stock, the Company is presently exploring the options available to the Trustee of the Employee Stock Ownership Plan to retain the cash dividend in an interest-bearing account and the debentures in a separate fund.

B. G. McPhee, Chairman  
Employee Stock Ownership  
Plan Committee

2 20 02



Southern Pacific

The following is a statement of your account as of: DEC 31 1986

**Employee Stock  
Ownership Plan**

	COMPANY CONTRIBUTIONS RECEIVED IN	TOTAL COMPANY CONTRIBUTIONS TO DATE	MARKET VALUE (1)	EQUIVALENT SHARES TO DATE
SANTA FE SOUTHERN PACIFIC COMMON STOCK	1986	2.07	2.07	.070
	1985	***THERE WERE NO CONTRIBUTIONS IN 1985***		
	1984	21.07	18.58	.627
	1983	391.80	492.54	16.626
	1982	***THERE WERE NO CONTRIBUTIONS IN 1982***		
	1981	***THERE WERE NO CONTRIBUTIONS IN 1981***		
	1980	***THERE WERE NO CONTRIBUTIONS IN 1980***		
	1979	23.60	74.21	2.505
	DEFERRED	138.50	615.89	20.790
	TOTALS	577.04	1,203.29	40.618 (2)

R S ALLEN  
223 DONNER AVE  
LIVERMORE CA

721 09 7865  
01  
443

94550

Any discrepancy should be reported promptly to:

Secretary  
Southern Pacific ESOP Committee  
SP Building - Room 860  
One Market Plaza  
San Francisco, CA 94105

- (1) INCLUDES REINVESTED DIVIDENDS AND INTEREST
- (2) REPRESENTS EQUIVALENT SHARES OF SANTA FE SOUTHERN PACIFIC COMMON STOCK  
AT \$ 29.625 PER SHARE

# **Southern Pacific**

## **Employee Stock Ownership Plan Committee**

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

February, 1987

Dear SP ESOP Member:

Since 1982 the Internal Revenue Code has permitted employees who participate in qualified retirement plans maintained by their employers, including the Employee Stock Ownership Plan ("ESOP") to establish and make tax-deductible contributions to Individual Retirement Accounts ("IRA"). Some states followed the Internal Revenue Code and permitted participation in both an IRA and a qualified plan such as the ESOP. Others, such as California, did not.

With the passage of the Tax Reform Act of 1986, the Internal Revenue Code has been amended, and, commencing in 1987, individuals with income in excess of a certain amount may no longer make tax-deductible contributions to an IRA if the individual or the individual's spouse is a participant in an ESOP (or any other type of qualified plan).

The applicable income limitation is (1) \$25,000 in the case of a single individual, (2) \$40,000 in the case of a married couple filing a joint return, and (3) \$0 in the case of a married couple filing separately. The IRA deduction limit is reduced on a pro rata basis to the extent that adjusted gross income exceeds these income limitations by up to \$10,000. If adjusted gross income exceeds the applicable income limitation by more than \$10,000, no IRA deduction is allowed if an individual or his spouse participates in an ESOP or another qualified plan.

These rules may be illustrated by the following examples. If a married couple has adjusted gross income of less than \$40,00 for 1987, each spouse who earns at least \$2,000 can make a tax-deductible contribution to an IRA of up to \$2,000, even if they both participate in qualified employer plans.

If their adjusted gross income is \$45,000 and either spouse participates in a qualified employer plan, the maximum tax-deductible amount that either spouse could contribute to an IRA would be reduced to \$1,000.

If their adjusted gross income is over \$50,000, neither spouse could make any tax-deductible contribution to an IRA if either spouse participates in a qualified employer plan.

Although the above rules do not prohibit any individuals from establishing IRA's or making contributions to IRA's, in many cases they severely limit or preclude individuals from taking tax deductions for IRA contributions if they participate in an ESOP or another qualified employer plan.

The SP ESOP contains provisions which allow employees to elect not to participate in the Plan. You may wish to make such an election if you expect your income to be in excess of the limitations described above, if the SP ESOP is the only qualified employer plan in which you or your spouse participate, and if you and/or your spouse wish to be able to make tax-deductible contributions to an IRA. Prior to making your decision as to whether or not you wish to continue your participation in the SP ESOP, you should be aware that the SP ESOP has been closed to new members and that the last Company contribution to the Plan was made in 1983. Any amounts allocated to members' accounts since that time have resulted from forfeitures of accounts of members who have terminated and cannot be located. These forfeiture allocations have averaged approximately \$5.00 per account per year.

If you decide that you do not wish to participate in future forfeiture allocations in the SP ESOP, please complete the attached form and return it to this office. If you return the form, your account balance will be maintained in the Plan and paid to you in accordance with the provisions of the Plan. Dividends earned on the shares in your account will continue to be credited to your account, but no forfeiture allocations will be credited to your account.

IF WE DO NOT RECEIVE A FORM FROM YOU, IT WILL BE PRESUMED THAT YOU WISH TO CONTINUE YOUR PARTICIPATION IN THE SP ESOP, AND FORFEITURES WILL CONTINUE TO BE ALLOCATED TO YOUR ACCOUNT. You may, however, be precluded from making tax-deductible contributions to an IRA, or your tax-deductible contributions may be limited pursuant to the rules described above.

If you return this form and later wish to resume your participation in the allocation of forfeitures under the SP ESOP, you should contact this office in order to obtain instructions for reapplying for membership in the Plan.

In order that our ESOP records may be updated and to insure proper reporting to the Internal Revenue Service, please send your completed form to this office as soon as possible.

SOUTHERN PACIFIC  
EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE

Enclosure

SOUTHERN PACIFIC EMPLOYEE STOCK OWNERSHIP PLAN

(Please Print or Type)

Name \_\_\_\_\_  
(Last) (FULL First) (Middle Initial)

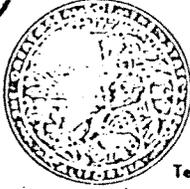
Company \_\_\_\_\_ Social Security No. \_\_\_\_\_

I hereby notify SP's ESOP Committee that I do not wish to participate in the Southern Pacific Employee Stock Ownership Plan with respect to any forfeitures that may be made in 1987 or thereafter.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Return this form to: SP ESOP COMMITTEE  
ROOM 860  
SOUTHERN PACIFIC BUILDING  
ONE MARKET PLAZA  
SAN FRANCISCO, CA 94105

# 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 • • Statements of Economic Interests  
(916) 322-5662 • • 322-5660 • • 322-5901 • • 322-6441 • • 322-6444

March 18, 1982

Robert S. Allen, Director  
Bay Area Rapid Transit District  
800 Madison Street  
Oakland, CA 94607

Re: Advice Request  
No. 82-1-004

Dear Mr. Allen:

Thank you for your letter requesting advice from this office. The following advice is provided pursuant to Government Code Section 83114(b).<sup>1/</sup>

From your letter and our phone conversation, my understanding of the situation is as follows. You are the elected Director for Election District 5 of the Bay Area Rapid Transit District ("BART").

You are also employed by Southern Pacific Transportation Company ("SPT") as a clerk in Oakland and own 50 shares of SPT stock worth approximately \$1,500. SPT operates a commuter service between San Francisco and San Jose.

Next year you may\* be President of the BART Board of Directors. You asked whether you would have a conflict of interest by calling hearings, initiating studies and correspondence and otherwise beginning the process toward a unified Bay Area transit system. What is contemplated is an "Around the Bay" loop. To complete the loop, you envision adding San Mateo and Santa Clara counties to the BART operation and purchasing the SPT commuter facilities and operation. <sup>possibly\*</sup>

You also explained to me that BART will not be able to consider spending for extensions outside the present district until all extensions are completed within the district. It is estimated that these extensions will not be

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<sup>1/</sup>All statutory references are to the Government Code.

\* Corrections made per phone conversation with Diane Maura Fishburn 3-24-82

Robert S. Allen, Director  
March 18, 1982  
Page Two

completed for at least 10 to 15 years. You estimate that the overall plan, which you intend to advocate, could not be realized for 20 to 40 years.

Section 87100 of the Political Reform Act contains the basic prohibition against conflicts of interest:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

...

(c) Any source of income, 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.

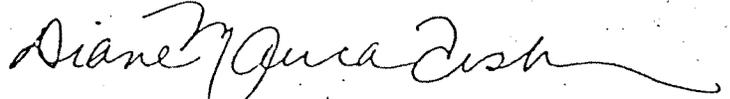
Under the facts presented, the governmental decisions which you are now asking about -- decisions to undertake studies or hold hearings -- will not foreseeably have a financial effect on SPT. The governmental decisions which could materially affect SPT, such as the decision to purchase the commuter line, will be made, if ever, in the distant future. In addition, a decision to purchase the commuter line is contingent on many other governmental decisions and events. Accordingly, there is not a substantial likelihood or probability that SPT will be affected by the decisions to call for hearings, request studies and otherwise work toward a unified transit system

Robert S. Allen, Director  
March 18, 1982  
Page Three

in the Bay Area. See Opinion requested by Tom Thorner,  
1 FPPC Opinions 198 (No. 75-089, December 4, 1975).  
Therefore, you are not required to disqualify yourself from  
any of these activities.

If I can be of further assistance, please feel free to  
contact me.

Very truly yours,



Diane Maura Fishburn  
Counsel  
Legal Division

DMF:plh

800 Madison Street  
Oakland, California 94607  
Telephone (415) 465-4100 ext 521

January 4, 1982

Legal Division, FPPC  
PO Box 807  
Sacramento, CA 95804

EUGENE GARFINKLE  
PRESIDENT  
ARTHUR J. SHARTSIS  
VICE PRESIDENT  
KEITH BERNARD  
GENERAL MANAGER

Friends:

I seek your advice on a potential conflict of interest problem I face as a public official.

As an elected BART director, I represent over ¼ million people in BART Election District 5. BART serves three counties: San Francisco, Alameda, and Contra Costa.

DIRECTORS

BARCLAY SIMPSON  
1ST DISTRICT  
NELLO BIANCO  
2ND DISTRICT  
ARTHUR J. SHARTSIS  
3RD DISTRICT  
MARGARET K. PRYOR  
4TH DISTRICT  
ROBERT S. ALLEN  
5TH DISTRICT  
JOHN GLENN  
6TH DISTRICT  
WILFRED T. USSERY  
7TH DISTRICT  
EUGENE GARFINKLE  
8TH DISTRICT  
JOHN H. KIRKWOOD  
9TH DISTRICT

I am employed by Southern Pacific Transportation Company (SPT) and own under 100 shares of SP stock bought through payroll deduction. Furloughed October 1 in an SPT Engineering Department RIF, I now work as an SPT clerk in Oakland. I have no effective say in any of SP's corporate decisions.

SPT operates commute service between San Francisco and San Jose under contract with Caltrans and local agencies. This commute service is a minuscule part of the total SP operation.

Adding San Mateo and Santa Clara counties to the BART operation could greatly benefit public transportation in the Bay Area, enabling a regionally rational "San Jose - Around the Bay" loop. Presumably such a loop would use all or part of the SPT commute facilities and operation, which SPT offered a few years back to sell to any qualified transit agency.

Do you see any conflict of interest problem if I:

- 1) Aggressively seek to add the two counties to BART operations? This might be by annexation or other service arrangement. By implication SPT's commute line would be involved.
- 2) Seek to influence specific BART routings which might include all or part of the present SPT commute line.

In good conscience I could do both, but I do not wish to violate the law even in so good a cause. Hence my request that you advise me, based on the facts as stated above.

Very truly yours,

*Robert S. Allen*  
Robert S. Allen



BAY AREA RAPID TRANSIT DISTRICT  
 800 Madison Street  
 P.O. Box 12688  
 Oakland, CA 94604-2688  
 Telephone (415) 464-~~4000~~ 6095

88-094

F P P C

MAR 2 2 18 PM '88

March 1, 1988

California Fair Political Practices Commission  
 428 J Street, Suite 800  
 Sacramento, CA 95814

- JOHN GLENN  
PRESIDENT
- WILFRED T. USSERY  
VICE-PRESIDENT
- KEITH BERNARD  
GENERAL MANAGER
  
- DIRECTORS
- BARCLAY SIMPSON  
1ST DISTRICT
- NELLO BIANCO  
2ND DISTRICT
- ARTHUR J. SHARTSIS  
3RD DISTRICT
- MARGARET K. PRYOR  
4TH DISTRICT
- ROBERT S. ALLEN  
5TH DISTRICT
- JOHN GLENN  
6TH DISTRICT
- WILFRED T. USSERY  
7TH DISTRICT
- ARLO HALE SMITH  
8TH DISTRICT
- JOHN H. KIRKWOOD  
9TH DISTRICT

Friends:

As a BART director and a "bought-out" employee of the Southern Pacific Transportation Company with a small ESOP holding of Santa Fe Southern Pacific Company stock, I request clarification of whether I may participate in negotiations with San Mateo County Transit District directors on the proposed BART SF Airport station. The station could include a joint use with Caltrans (California Department of Transportation) and Southern Pacific Transportation Company, which operates the peninsula commute service for Caltrans.

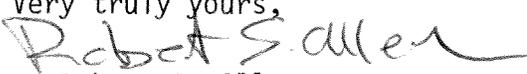
Attached is a copy of my "Dismissal Release and Resignation" from SPT, which runs until April 1989, when I am eligible for a 30-year retirement under the Railroad Retirement Act. I do maintain an employment relationship during that period so far as the Railroad Retirement Board is concerned (see my letter of June 26, 1987 and RRB letter of Sept 9, 1987). The monthly rate of my compensation for the 19 months is set in the release.

I own a small amount of Santa Fe Southern Pacific stock under their Employee Stock Option Plan (ESOP). Attached is the latest annual statement. I understand that I may not redeem it before my retirement, which would be April, 1989. Earlier this year I sold all of my other SFeSP stock, so that all I have left is the ESOP shares.

BART and San Mateo County Transit District (Samtrans) are negotiating a possible extension to SFO - a joint BART-Caltrans station adjacent to the San Francisco Airport. Negotiations could include acquisition of part of SPT's former branch line right of way in San Mateo County as well.

Any decisions made would have virtually no effect on the value of my ESOP shares and no effect that I can imagine on my monthly dismissal allowance. They will be key to our ultimately achieving a rational transit system for the entire SF Bay area.

I would appreciate your clearing my participation with the BART Board in negotiations with Samtrans if you can do so.

Very truly yours,  
  
 Robert S. Allen

Position abolished 735 TCF Clerk Oakland

Plan B1

DISMISSAL RELEASE AND RESIGNATION

The Southern Pacific Transportation Company (Railroad) has offered, and I hereby accept, a monthly dismissal allowance of \$ 2040.63 for a period of 19 months. During this time I understand that I shall not exercise any seniority rights under Rules 39 and 40, but understand that I am subject to recall in accordance with Rule 41(f) of the current B.R.A.C./Railroad Rules Agreement. I understand that I shall not be entitled to any other protective benefits. The Railroad shall withhold and make payments to the Railroad Retirement Board, tax authorities, and union dues in the same manner as employees in active service, including employer payments, to the full extent required or permitted by law. I UNDERSTAND THAT IT IS FOR THE RAILROAD RETIREMENT BOARD ALONE TO DETERMINE WHETHER I WILL RECEIVE CREDITED SERVICE FOR THIS PERIOD AND RAILROAD HAS MADE NO REPRESENTATIONS OR PROMISES TO ME ON THE QUESTION OF WHETHER OR NOT THE RAILROAD RETIREMENT BOARD WILL RULE THAT THIS PERIOD IS CREDITED SERVICE.

I UNDERSTAND THAT UNDER THE METHOD OF RESIGNATION I HAVE SELECTED, THE RAILROAD WILL NOT CONTINUE MY PRESENT HEALTH AND WELFARE COVERAGE FOR THE DURATION OF THE MONTHLY PAYMENTS SPECIFIED HEREIN. I FURTHER UNDERSTAND THAT AS A RESULT OF THIS ELECTION THAT I WILL NOT BE ELIGIBLE FOR TRAVELERS GA-46000 COVERAGE AT THE CONCLUSION OF THE MONTHLY PAYMENTS.

Upon expiration of these monthly payments, I hereby agree that my resignation from service of the Railroad and forfeiture of all seniority employment rights shall become effective. In addition to the monthly allowance, it is understood I shall receive payment for wages earned but not yet paid and for any vacation and/or accrued sick leave earned and not taken. It has been fully and completely explained to me that this action need not be taken by me, and no coercion or undue influence has been exerted to obtain this voluntary resignation. No promises or inducements other than those set forth in this release have been made to me to secure my signature on this document.

I further agree and represent that I have had ample time to consider whether or not to resign before signing this Dismissal Release and Resignation.

I further understand and agree, in consideration of the above monthly payments, that this Agreement constitutes a complete surrender of any rights and benefits under any merger or other protective agreement or arrangement, and that it further constitutes full settlement and release of any and all claims and benefits of any kind which I have or might have against the Railroad, its officers, employees, agents, successors and predecessors, including any claim which I may assert under federal, state or municipal laws pertaining to employee rights or employment discrimination.

I hereby acknowledge receipt of a copy of this Dismissal Release and Resignation. I HAVE CAREFULLY READ THIS DISMISSAL RELEASE AND RESIGNATION. This Dismissal Release and Resignation is to be read as consistent with applicable law.

Executed at Oakland, Ca on Sept 25, 1987.  
(City & State) (Date)

[Signature]  
(Witness)

[Signature]  
(Witness)

R S Allen  
Print Name

223 Donner Av  
Address

Livermore, Ca 94550  
City, State, Zip

Sept 25, 1987  
(Date)

[Signature]  
(Signature)

721-09-7865  
(Social Security Number)

0089  
(Employee Account Number)

RULE 41

POSITIONS ABOLISHED, DISPLACEMENTS  
AND REDUCTION IN FORCE

(f) An employe laid off on account of reduction in force, or through displacement, who is unable to displace a junior employe, shall have his name carried on the seniority roster and shall be given preference in the order of seniority over other employes when force is increased or vacancies occur, provided the employing officer is currently advised of his address, and in the event no service has been performed for a period of one (1) year, the employe passes satisfactory physical examination. An employe failing to return to service within fifteen (15) days after being notified by certified mail, registered mail or telegram sent to the last address given, or furnishing good and sufficient reason for not doing so, shall forfeit his accumulated seniority and likewise his employe relationship and shall not be entitled to an investigation under Rule 46 in connection with such termination of employe relationship.

(g) The following will govern in connection with displacement privileges for Guaranteed Extra Board employes:

1. Release from One-Day Vacancy

Generates displacement right against junior employe on hold-down under Rule 34 (c).

2. Release from Training

When placed in training, employe shall be informed of approximate duration of training and shall be informed prior to end of shift on last day on which it is intended he will train that he is released from training effective close of shift. Upon such release from training, GEB employe generates displacement rights against junior employe on hold-down under Rule 34 (b) or (c) except when vacancy on position for which trained will exist within three days, such employe may be held for that vacancy unless a senior qualified GEB employe is available. If senior employe is available for vacancy involved then employe released from training may exercise displacement right.

3. Return from Vacation or Leave of Absence

(a) Generates displacement right against junior employe who has been assigned to or who has displaced on a regular position advertised during his absence, or

(b) May displace junior employe on hold-down under Rule 34 (b) or (c) which arose during returning GEB employe's absence.

NOTE: Provisions cited under (b) will not apply if employe was on hold-down prior to absence and such hold-down still exists upon his return. If still existing, employe must return to prior hold-down unless he has been displaced on such prior hold-down by a senior GEB employe.

UNITED STATES OF AMERICA  
RAILROAD RETIREMENT BOARD  
844 RUSH STREET  
CHICAGO, ILLINOIS 60611

SEP 1 1987

BUREAU OF COMPENSATION AND CERTIFICATION

Mr. Robert S. Allen  
223 Donner Avenue  
Livermore, CA 94550

In reply refer to  
S.S.A. No. 721-09-7865  
9720

Dear Mr. Allen:

This is in reply to your June 26, 1987 letter. Payments made pursuant to option 3(b) of the Agreement between the Southern Pacific Transportation Company and BRAC, which are payable on a periodic basis to employees who retain their employment relationship with the railroad, are considered dismissal allowance payments by the Railroad Retirement Board. These are considered compensation for service and compensation credit in the month of payment, except that no payments made for periods after death or any other severance of employment relationship are considered creditable compensation.

Yours very truly,

*George F. Traynere*

George F. Traynere  
Director of Compensation  
and Certification

223 Donner Avenue  
Livermore, CA 94550

June 26, 1987

SS# 721-09-7865

US Railroad Retirement Board  
844 Rush Street  
Chicago, IL 60611

Attn: Director of Compensation and Certification

Dear sir:

Attached are copies of my latest BA6, a buyout solicitation from SPT Co., and my application for the buyout. I am still in active railroad service with pay of slightly over \$100/day.

When I asked the Oakland Railroad Retirement Board office whether I would receive Railroad Retirement credits during the proposed 24-month buyout period, they suggested that I write you.

My computation of service months:

Total thru December, 1986 (from BA6)	332 months
1987, January thru June	6 months
Credits if allowed over 24-month period	<u>24 months</u>
Total	362 months

This does not include coverage until they offer a buyout and I accept it.

Please advise if Railroad Retirement credits will accrue over the 24-month buyout period, as suggested in the underlined wording in the third paragraph of SPT's solicitation letter. Because my birthdate was 3-26-26, I would be age 63 at the end of the 24-month period.

Very truly yours,

Robert S. Allen

PS: I would appreciate a prompt response, as I do not know when I must execute the irrevocable release and resignation, or even when or if I will be offered the buyout.

JUN 23 1987

Labor Relations Department  
Attn: Ray Winkenbach  
Southern Pacific Transportation Company  
One Market Plaza, Room 304  
San Francisco, California 94105

In conjunction with the agreement dated June 9, 1987 between SPTCo. (Western Lines) and BRAC, I hereby apply for the following separation allowance option (check the appropriate box):

Option (a)

360 day gross lump sum separation allowance\* less the equivalent of one year's union dues.

Option (b) (Only applicable to employees 59 years of age and over.)

360 day gross dismissal allowance\* distributed equally for a period of 24 months (not to exceed 24 months). Normal deductions for taxes, railroad retirement and union dues will be taken in each monthly period.

I  do  do not wish to continue present health and welfare coverage for a period of time equal to the duration of the monthly payments. I understand the Company's cost of providing such coverage (currently \$284.35 per month) will be deducted from the monthly payments.

\* 360 day allowances to be based on the actual rate of position held at time of resignation.

The undersigned hereby authorizes SPTCo. (Western Lines) to deduct from this separation payment the union dues as specified above and remit same to his/her collective bargaining representative.

I understand that this application must be received in Labor Relations in San Francisco not later than June 23, 1987. I also understand that turning in this form is not a firm commitment to accept the buyout. (I have not yet had an opportunity to check with Railroad Retirement).

June 23, 1987  
Date

Robert S. Allen  
Signature

721-09-7865-1  
Social Security No. (incl. Check Digit)

3-26-26      443/0089  
Date of Birth      Employee Acct. No.

7      11-6-81  
Master Roster      Seniority Date

Robert See Allen  
Print Name  
223 Donner Avenue  
Address  
Livermore, CA 94550  
City, State, Zip Code

Oakland - Operating  
Location and Department  
103- Crew Dispatcher  
Position No. and Title

# Southern Pacific Transportation Company

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

June 11, 1987

Dear Clerical Employee:

An agreement was signed on June 9, 1987 which will afford all Western Lines clerical employees, including those who might be affected by the Company's reorganization plans, the opportunity to apply for scheduled severance payments as provided in the TOPS agreement.

If you have five or more years service, your TOPS severance allowance can be calculated by multiplying the daily rate of the position you occupy on the day you resign times 360 days. In addition, we have agreed to pay you for all vacation earned at 100% of your daily rate, and all sick leave earned at 50% of your daily rate.

If you are at least 59 years old, you can elect to receive a dismissal allowance totaling that of the severance allowance to which you are entitled, paid in up to 24 equal monthly payments. Judging by prior programs, you should receive Railroad Retirement credit during this period. You can verify this through the Railroad Retirement Board. Medical and dental coverage can be continued at your own expense. If you or your spouse have other medical coverage, you may not want to continue railroad medical; however, in order to convert to GA-46000 (early retirement medical coverage), you must be a participant in GA-23000, at least 61 years old, and with 30 or more years of service at the time of your retirement.

Union dues, railroad retirement, and federal and state taxes will be deducted from all payments.

If you are currently a clerk regularly assigned to permanent or guaranteed extra board position, you may submit the attached application. The application must be received in San Francisco by June 23, 1987, which means you should have it in the mail no later than Friday, June 19, 1987. We do not intend to have another application period. Applications will be awarded based on the requirements of service at each location.

At the conclusion of the application period, the successful applicants will be contacted and required to complete an irrevocable release and resignation. The Company will then make arrangements to send the lump sum separation allowance or the semimonthly dismissal allowances to the your address. In all cases, current earnings, as well as "payments in lieu" for vacation and sick leave, will be mailed to the your address following the close of the payroll period.

Any questions should be addressed to the Labor Relations Office in San Francisco, Extensions 2622, 2615 or 2627, or your BRAC representative.

Thank you for your cooperation.



R. B. Brackbill  
General Chairman  
BRAC



K. R. Peifer  
Assistant Vice President  
Labor Relations

# **Southern Pacific**

## **Employee Stock Ownership Plan Committee**

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

### **SOUTHERN PACIFIC COMPANY EMPLOYEE STOCK OWNERSHIP PLAN**

#### **IMPORTANT NOTICE REGARDING THE SPECIAL DIVIDEND DECLARED BY THE SFSP BOARD OF DIRECTORS**

On January 26, 1988 the Santa Fe Southern Pacific Corporation Board of Directors declared a dividend distribution of \$25 in cash plus \$5 principal amount of new senior subordinated debentures for each outstanding share. The plan, subject to change, is to pay this dividend to holders of record on February 5, 1988 with the cash portion to be paid February 16 and the debenture portion March 1.

As Trustee of the Southern Pacific Employee Stock Ownership Plan, Bankers Trust Company will credit to individual accounts the full value of the special dividend, based on the individual account balances as of the payment date(s). Based on the above payment dates, those participants who retired or terminated during 1987 will also have their accounts credited with the special dividend.

Although the Plan provides that distributions must be reinvested in SFSP common stock, the Company is presently exploring the options available to the Trustee of the Employee Stock Ownership Plan to retain the cash dividend in an interest-bearing account and the debentures in a separate fund.

B. G. McPhee, Chairman  
Employee Stock Ownership  
Plan Committee

2-17-88



Southern Pacific

The following is a statement of your account as of: DEC 31 1986

Employee Stock Ownership Plan

	COMPANY CONTRIBUTIONS RECEIVED IN	TOTAL COMPANY CONTRIBUTIONS TO DATE	MARKET VALUE (1)	EQUIVALENT SHARES TO DATE
SANTA FE SOUTHERN PACIFIC COMMON STOCK	1986	2.07	2.07	.070
	1985	***THERE WERE NO CONTRIBUTIONS IN 1985***		
	1984	21.07	18.58	.627
	1983	391.80	492.54	16.626
	1982	***THERE WERE NO CONTRIBUTIONS IN 1982***		
	1981	***THERE WERE NO CONTRIBUTIONS IN 1981***		
	1980	***THERE WERE NO CONTRIBUTIONS IN 1980***		
	1979	23.60	74.21	2.505
	DEFERRED	138.50	615.89	20.790
	TOTALS	577.04	1,203.29	40.618 (2)

R S ALLEN  
223 DONNER AVE  
LIVERMORE CA

721 09 7865  
01  
443

94550

Any discrepancy should be reported promptly to:

Secretary  
Southern Pacific ESOP Committee  
SP Building - Room 860  
One Market Plaza  
San Francisco, CA 94105

- (1) INCLUDES REINVESTED DIVIDENDS AND INTEREST
- (2) REPRESENTS EQUIVALENT SHARES OF SANTA FE SOUTHERN PACIFIC COMMON STOCK AT \$ 29.625 PER SHARE

# **Southern Pacific**

## **Employee Stock Ownership Plan Committee**

Southern Pacific Building • One Market Plaza • San Francisco, California 94105

February, 1987

**Dear SP ESOP Member:**

Since 1982 the Internal Revenue Code has permitted employees who participate in qualified retirement plans maintained by their employers, including the Employee Stock Ownership Plan ("ESOP") to establish and make tax-deductible contributions to Individual Retirement Accounts ("IRA"). Some states followed the Internal Revenue Code and permitted participation in both an IRA and a qualified plan such as the ESOP. Others, such as California, did not.

With the passage of the Tax Reform Act of 1986, the Internal Revenue Code has been amended, and, commencing in 1987, individuals with income in excess of a certain amount may no longer make tax-deductible contributions to an IRA if the individual or the individual's spouse is a participant in an ESOP (or any other type of qualified plan).

The applicable income limitation is (1) \$25,000 in the case of a single individual, (2) \$40,000 in the case of a married couple filing a joint return, and (3) \$0 in the case of a married couple filing separately. The IRA deduction limit is reduced on a pro rata basis to the extent that adjusted gross income exceeds these income limitations by up to \$10,000. If adjusted gross income exceeds the applicable income limitation by more than \$10,000, no IRA deduction is allowed if an individual or his spouse participates in an ESOP or another qualified plan.

These rules may be illustrated by the following examples. If a married couple has adjusted gross income of less than \$40,00 for 1987, each spouse who earns at least \$2,000 can make a tax-deductible contribution to an IRA of up to \$2,000, even if they both participate in qualified employer plans.

If their adjusted gross income is \$45,000 and either spouse participates in a qualified employer plan, the maximum tax-deductible amount that either spouse could contribute to an IRA would be reduced to \$1,000.

If their adjusted gross income is over \$50,000, neither spouse could make any tax-deductible contribution to an IRA if either spouse participates in a qualified employer plan.

Although the above rules do not prohibit any individuals from establishing IRA's or making contributions to IRA's, in many cases they severely limit or preclude individuals from taking tax deductions for IRA contributions if they participate in an ESOP or another qualified employer plan.

The SP ESOP contains provisions which allow employees to elect not to participate in the Plan. You may wish to make such an election if you expect your income to be in excess of the limitations described above, if the SP ESOP is the only qualified employer plan in which you or your spouse participate, and if you and/or your spouse wish to be able to make tax-deductible contributions to an IRA. Prior to making your decision as to whether or not you wish to continue your participation in the SP ESOP, you should be aware that the SP ESOP has been closed to new members and that the last Company contribution to the Plan was made in 1983. Any amounts allocated to members' accounts since that time have resulted from forfeitures of accounts of members who have terminated and cannot be located. These forfeiture allocations have averaged approximately \$5.00 per account per year.

If you decide that you do not wish to participate in future forfeiture allocations in the SP ESOP, please complete the attached form and return it to this office. If you return the form, your account balance will be maintained in the Plan and paid to you in accordance with the provisions of the Plan. Dividends earned on the shares in your account will continue to be credited to your account, but no forfeiture allocations will be credited to your account.

IF WE DO NOT RECEIVE A FORM FROM YOU, IT WILL BE PRESUMED THAT YOU WISH TO CONTINUE YOUR PARTICIPATION IN THE SP ESOP, AND FORFEITURES WILL CONTINUE TO BE ALLOCATED TO YOUR ACCOUNT. You may, however, be precluded from making tax-deductible contributions to an IRA, or your tax-deductible contributions may be limited pursuant to the rules described above.

If you return this form and later wish to resume your participation in the allocation of forfeitures under the SP ESOP, you should contact this office in order to obtain instructions for reapplying for membership in the Plan.

In order that our ESOP records may be updated and to insure proper reporting to the Internal Revenue Service, please send your completed form to this office as soon as possible.

SOUTHERN PACIFIC  
EMPLOYEE STOCK OWNERSHIP PLAN COMMITTEE

Enclosure

SOUTHERN PACIFIC EMPLOYEE STOCK OWNERSHIP PLAN

(Please Print or Type)

Name \_\_\_\_\_  
(Last) (FULL First) (Middle Initial)

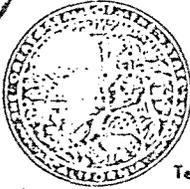
Company \_\_\_\_\_ Social Security No. \_\_\_\_\_

I hereby notify SP's ESOP Committee that I do not wish to participate in the Southern Pacific Employee Stock Ownership Plan with respect to any forfeitures that may be made in 1987 or thereafter.

Date \_\_\_\_\_ Signature \_\_\_\_\_

Return this form to: SP ESOP COMMITTEE  
ROOM 860  
SOUTHERN PACIFIC BUILDING  
ONE MARKET PLAZA  
SAN FRANCISCO, CA 94105

# 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 •• Statements of Economic Interest  
(916) 322-5662 •• 322-5660 •• 322-5901 •• 322-6441 •• 322-6444

March 18, 1982

Robert S. Allen, Director  
Bay Area Rapid Transit District  
800 Madison Street  
Oakland, CA 94607

Re: Advice Request  
No. 82-1-004

Dear Mr. Allen:

Thank you for your letter requesting advice from this office. The following advice is provided pursuant to Government Code Section 83114(b).<sup>1/</sup>

From your letter and our phone conversation, my understanding of the situation is as follows. You are the elected Director for Election District 5 of the Bay Area Rapid Transit District ("BART").

You are also employed by Southern Pacific Transportation Company ("SPT") as a clerk in Oakland and own 50 shares of SPT stock worth approximately \$1,500. SPT operates a commuter service between San Francisco and San Jose.

Next year you may\* be President of the BART Board of Directors. You asked whether you would have a conflict of interest by calling hearings, initiating studies and correspondence and otherwise beginning the process toward a unified Bay Area transit system. What is contemplated is an "Around the Bay" loop. To complete the loop, you envision adding San Mateo and Santa Clara counties to the BART operation and purchasing the SPT commuter facilities and operation. <sup>possibly\*</sup>

You also explained to me that BART will not be able to consider spending for extensions outside the present district until all extensions are completed within the district. It is estimated that these extensions will not be

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<sup>1/</sup>All statutory references are to the Government Code.

\* Corrections made per phone conversation with Diane Maura Fishburn 3-24-82

Robert S. Allen, Director  
March 18, 1982  
Page Two

completed for at least 10 to 15 years. You estimate that the overall plan, which you intend to advocate, could not be realized for 20 to 40 years.

Section 87100 of the Political Reform Act contains the basic prohibition against conflicts of interest:

No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.

An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on:

(a) Any business entity in which the public official has a direct or indirect investment worth more than one thousand dollars (\$1,000).

...

(c) Any source of income, 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.

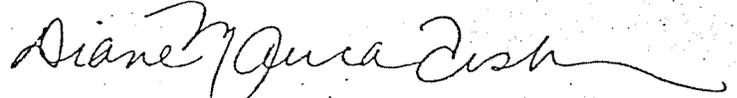
Under the facts presented, the governmental decisions which you are now asking about -- decisions to undertake studies or hold hearings -- will not foreseeably have a financial effect on SPT. The governmental decisions which could materially affect SPT, such as the decision to purchase the commuter line, will be made, if ever, in the distant future. In addition, a decision to purchase the commuter line is contingent on many other governmental decisions and events. Accordingly, there is not a substantial likelihood or probability that SPT will be affected by the decisions to call for hearings, request studies and otherwise work toward a unified transit system

Robert S. Allen, Director  
March 18, 1982  
Page Three

in the Bay Area. See Opinion requested by Tom Thorner,  
1 FPPC Opinions 198 (No. 75-089, December 4, 1975).  
Therefore, you are not required to disqualify yourself from  
any of these activities.

If I can be of further assistance, please feel free to  
contact me.

Very truly yours,



Diane Maura Fishburn  
Counsel  
Legal Division

DMF:plh



800 Madison Street  
 Oakland, California 94607  
 Telephone (415) 465-4100 ext 521

January 4, 1982

Legal Division, FPPC  
 PO Box 807  
 Sacramento, CA 95804

- EUGENE GARFINKLE  
PRESIDENT
- ARTHUR J. SHARTSIS  
VICE-PRESIDENT
- KEITH BERNARD  
GENERAL MANAGER
  
- DIRECTORS
- BARCLAY SIMPSON  
1ST DISTRICT
- NELLO BIANCO  
2ND DISTRICT
- ARTHUR J. SHARTSIS  
3RD DISTRICT
- MARGARET K. PRYOR  
4TH DISTRICT
- ROBERT S. ALLEN  
5TH DISTRICT
- JOHN GLENN  
6TH DISTRICT
- WILFRED T. USSFRY  
7TH DISTRICT
- EUGENE GARFINKLE  
8TH DISTRICT
- JOHN H. KIRKWOOD  
9TH DISTRICT

Friends:

I seek your advice on a potential conflict of interest problem I face as a public official.

As an elected BART director, I represent over 1/4 million people in BART Election District 5. BART serves three counties: San Francisco, Alameda, and Contra Costa.

I am employed by Southern Pacific Transportation Company (SPT) and own under 100 shares of SP stock bought through payroll deduction. Furloughed October 1 in an SPT Engineering Department RIF, I now work as an SPT clerk in Oakland. I have no effective say in any of SP's corporate decisions.

SPT operates commute service between San Francisco and San Jose under contract with Caltrans and local agencies. This commute service is a minuscule part of the total SP operation.

Adding San Mateo and Santa Clara counties to the BART operation could greatly benefit public transportation in the Bay Area, enabling a regionally rational "San Jose - Around the Bay" loop. Presumably such a loop would use all or part of the SPT commute facilities and operation, which SPT offered a few years back to sell to any qualified transit agency.

Do you see any conflict of interest problem if I:

- 1) Aggressively seek to add the two counties to BART operations? This might be by annexation or other service arrangement. By implication SPT's commute line would be involved.
- 2) Seek to influence specific BART routings which might include all or part of the present SPT commute line.

In good conscience I could do both, but I do not wish to violate the law even in so good a cause. Hence my request that you advise me, based on the facts as stated above.

Very truly yours,

*Robert S. Allen*  
 Robert S. Allen



# California Fair Political Practices Commission

March 3, 1988

Robert S. Allen  
Bay Area Rapid Transit District  
800 Madison Street  
P.O. Box 12688  
Oakland, CA 94604-2688

Re: 88-094

Dear Mr. Allen:

Your letter requesting advice under the Political Reform Act was received on March 2, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh