

December 8, 2014

Andre Boutros
Executive Director
California Transportation Commission
1120 N Street, MS-52
Sacramento, CA 95814
P O. Box 942873
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Re: Your Request for Advice
Our File No. A-14-196

Dear Mr. Boutros:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code Section 1090.

Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Must members of the Road Usage Charge Technical Advisory Committee (the “RUC Committee”) report economic interests pursuant to the Act’s conflict-of-interest provisions?

CONCLUSION

No. Members of the RUC Committee are not considered public officials subject to the Act’s conflict-of-interest provisions and are not required to report economic interests.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

Senate Bill 1077, approved by the Governor on September 29, 2014, establishes the RUC Committee and requires the Chairperson of the California Transportation Commission (the “CTC”) to appoint fifteen members to committee. The CTC Chairperson intends to make appointments to the RUC Committee by the time of the CTC’s December 10, 2014 meeting.

Pursuant to Senate Bill 1077, the purpose of the RUC Committee “is to guide the development and evaluation of a pilot program to assess the potential for mileage-based revenue collection for California’s roads and highways as an alternative to the gas tax system.” (Veh. Code, § 3090(b).) To complete this purpose the RUC Committee has been empowered to “study [Road Usage Charge] alternatives to the gas tax,” “gather public comment on issues and concerns related to the pilot program,” and “make recommendations to the Secretary of the Transportation Agency on the design of a pilot program to test alternative RUC approaches.” (*Id.*, § 3090(e).) The RUC Committee “may also make recommendations on the criteria to be used to evaluate the pilot program. (*Ibid.*)

Based on the recommendations of the RUC Committee, the Transportation Agency must “implement a pilot program to identify and evaluate issues related to the potential implementation of an RUC program in California by January 1, 2017.” (Veh. Code, § 3091(a).)

ANALYSIS

The Act’s conflict-of-interest provisions ensure that public officials will “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Additionally, Sections 87300 and 87302 require every agency to adopt a conflict-of-interest code enumerating the positions within the agency, “which involve the making or participating in the making of decisions which may foreseeably have a material effect on any financial interest.” Pursuant to an agency’s adopted code, designated positions must disclose certain economic interests including investments, business positions, real property, and income. (Section 87302(b).)

The threshold question in determining if the members of the RUC Committee are subject to the Act’s conflict-of-interest provisions and must report economic interests is whether or not the members are “public officials.” For purposes of the Act, Section 82048 defines “public official” as every member, officer, employee or consultant of a state or local government agency. The term is further defined by Regulation 18701(a)(1), which states:

“(a) For purposes of Government Code section 82048, which defines ‘public official,’ and Government Code section 82019, which defines ‘designated employee,’ the following definitions apply:

“(1) ‘Member’ shall include, but not be limited to, salaried or unsalaried members of committees, boards or commissions with decisionmaking authority.

“(A) A committee, board or commission possesses decisionmaking authority whenever:

“(i) It may make a final governmental decision;

“(ii) It may compel a governmental decision; or it may prevent a governmental decision either by reason of an exclusive power to initiate the decision or by reason of a veto that may not be overridden; or

“(iii) It makes substantive recommendations that are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

“(B) A committee, board, or commission does not possess decisionmaking authority under subsection (a)(1)(A)(i) of this regulation if it is formed for the sole purpose of researching a topic and preparing a report or recommendation for submission to another governmental body that has final decisionmaking authority.”

Under Regulation 18701(a)(1), a member of a committee, board, or commission without decisionmaking authority is not considered a “public official” for purposes of the Act.

As authorized by Senate Bill 1077, the RUC Committee has been established solely to research a road usage charge pilot program and to make a recommendation to the Secretary of the Transportation Agency regarding the development of the program and the criteria to evaluate the program. Moreover, the Transportation Agency must implement the pilot program and is the final decision making authority. Because the RUC Committee does not have decisionmaking authority as expressly provided in Regulation 18701(a)(1)(B), members of the committee are not considered public officials under the Act. Accordingly, the members are not subject to the Act’s conflict-of-interest provisions and not required to report economic interests.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini
General Counsel

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl