



Metropolitan  
Transportation  
Authority

April 14, 1998

One Gateway Plaza  
Los Angeles, CA  
90012-2932

(213) 922-2000

TO: MTA BORD OF DIRECTORS

FROM: Julian Burke *Julian*

SUBJECT: DELEGATION OF AUTHORITY TO THE CEO

Attached is an opinion from County Counsel which I asked for with the thought that some permitted delegation of authority from the Board to the CEO might be a sensible solution to the developing number of issues which the Board cannot act upon because of the statutory conflict rules.

Attachment



COUNTY OF LOS ANGELES  
OFFICE OF THE COUNTY COUNSEL  
648 KENNETH HARN HALL OF ADMINISTRATION  
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DE WITT W. CLINTON, COUNTY COUNSEL

April 13, 1998

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Julian Burke  
Chief Executive Officer  
Metropolitan Transportation Authority  
One Gateway Plaza  
Los Angeles, California 90012

Re: Delegation of Authority

Dear Mr. Burke:

You have asked whether it is legally permissible for the Metropolitan Transportation Authority's Board to delegate to you the authority to take action in situations where the Board is unable to convene a quorum due to the statutory disqualification requirements which limit the Board members' ability to participate in certain Authority decisions.

The Authority's enabling statutes allow for broad delegation to you by the Board. However, as set forth in detail herein, these statutes require that certain enumerated actions be reserved by the Board. Providing the delegation adheres to these statutory limits, it would be permissible under the Authority's enabling statutes. Moreover, the conflict of interest laws would not preclude the Board from exercising such a delegation.

Facts

There are several statutes which limit the ability of Los Angeles County Metropolitan Transit Authority ("Authority") Board members to participate in certain Authority decisions.

Pursuant to the Political Reform Act, specifically Government Code section 87100, an Authority Board member may not participate in or attempt to influence an Authority decision in which he or she has a financial interest. A Board member has an interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect on the member or a member of his or her immediate family, on any source of income to the member aggregating \$250 or more, on any

business entity in which the member has an investment of \$1,000 or more or is a partner, principal, director or employee, on real property in which the member has an investment of \$1,000 or more, or on the donor of a gift(s) to the member valued at \$290 or more.

Additionally, Government Code section 84308, also found in the Political Reform Act, precludes a Board member from participating in or attempting to influence a decision involving a license, permit or other entitlement for use if he has knowingly received a campaign contribution in excess of \$250 within the preceding 12 months from a party, or his agent, or from a participant, or his agent. (Government Code section 84308)

Further, Public Utilities Code ("PUC") section 130051.20 provides that no Authority Board member shall make, participate in, or use his official position to influence a contract decision if the member has knowingly accepted a contribution of more than ten dollars in the past four years from a participant, or its agent, involved in the contract decision.

Given these disqualification requirements, it is not uncommon that the Board is unable to establish a quorum to consider certain matters. As such, you have inquired whether it would be legally permissible for the Board to delegate authority to you to act on such matters.

#### Analysis

The Authority's enabling legislation provides for the delegation of broad authority by the Authority's Board to the Authority's Chief Executive Officer. Specifically, PUC section 130051.11(f) provides that the Authority "may administratively delegate to an organizational unit or to its chief executive officer any powers and duties it deems appropriate."

PUC section 130051.12 limits that delegation to some extent by specifying certain powers and responsibilities which must be reserved by the Board. For example, the Board may not delegate the adoption of the aggregate budget for all organizational units of the Authority, approval of final rail corridor selections, final approval of labor contracts covering Authority employees, approval of transportation zones, or approval of benefit assessment districts and assessment rates. Further, the Board may not delegate the approval of contracts for transit equipment acquisition that exceed \$5 million or the making of findings required by PUC section 130235 concerning the procurement of certain rail transit,

Julian Burke

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computer and electronic equipment. (A copy of PUC section 130051.12 is enclosed for your reference.)

Thus, providing that the delegation does not exceed the limits set forth in PUC section 130051.12, it would be permissible under the Authority's enabling statutes.

Further, the disqualification requirements of the Political Reform Act and section 130051.20 would not preclude the Board from approving such a delegation of authority providing that approval was not directed at or made in connection with a specific contract or transaction before the Board. Rather, the delegation should be discussed and approved as a separate agenda item with the stated purpose of establishing a process to allow for the Authority to expeditiously act upon matters which would otherwise be hampered by the disqualification requirements.

Framed as a policy decision, such approval would not be governed by section 84308 or section 130051.20 as it would not relate to a specific contract. Moreover, as none of the Board members would have a "financial interest" in such a decision, their participation would not be precluded by section 87100.

Very truly yours,

DE WITT W. CLINTON  
County Counsel

By *Leela Kapur*  
LEELA A. KAPUR  
Principal Deputy County Counsel  
Public Services Division

APPROVED AND RELEASED:

*De Witt W. Clinton*  
DE WITT W. CLINTON  
County Counsel

LAK:ig

Enclosure

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