
AC TRANSIT DISTRICT
Board of Directors
Executive Summary

GC Memo No. 09-020a

Meeting Date: April 22, 2009

Committees:

Planning Committee ☐
External Affairs Committee ☐
Rider Complaint Committee ☐

Finance and Audit Committee ☐
Operations Committee ☐
Paratransit Committee ☐

Board of Directors ☒

Financing Corporation ☐

SUBJECT: Consider Receipt of a Report and Recommendations from the General Counsel Regarding Board Policies 113 (Code of Ethics and Decorum) and 135 (Gifts and Gratuities for Directors and Board Officers)

RECOMMENDED ACTION:

☐ Information Only ☐ Briefing Item ☒ Recommended Motion

Receive the General Counsel's report.

Fiscal Impact:

None

Background/Discussion:

Recommendation of the Finance and Audit Committee

The Finance and Audit Committee on February 25, 2009 received and approved the General Counsel's report with the following amendment to Policy 135 conflict of interest provision: "Substantial financial interest" is defined as a gift, gratuity or favor which would require reporting under the Political Reform Act of 1974 and any amendments to it.

Content of GC Memo No. 09-020 Considered by the Finance and Audit Committee

Director Ortiz has raised a question whether the provision in Board Policy No. 113 dealing with Gifts/Gratuities/Favors is consistent with state law on conflicts of interest, and if not, to bring the policy into conformance with state law. This question provides an opportunity to

BOARD ACTION: **Approved as Recommended** [] **Other** []
 Approved with Modification(s) []

The above order was passed on:

Linda A. Nemeroff, District Secretary

By _____

review the provisions of Board Policies 113 and 135 and obtain direction from the Committee on changes to them that could be recommended to the Board of Directors.¹

As a California public entity, the District is subject to both common law and statutory law, as well as its own adopted policies in dealing with conflict of interests, provided they do not conflict with state law.

Under the Common Law doctrine "[p]ublic officers are obligated . . . [by virtue of their office], to discharge their responsibilities with integrity and fidelity." Terry v. Bender (1956) 143 Cal. App.2d 198, 206 and 300 P2d 119. If the public official cannot meet this test, then he/she must disclose the conflict on the record and abstain from participating in or attempting to influence the decision in which the conflict exists.² The doctrine affects both financial and non-financial personal interests.³ It would disqualify the official with the conflict from "taking any part in the discussion and vote regarding" the particular matter. 26 Ops. Cal. Atty. Gen. 5, 7 (1955).

There are two state statutes that govern the issue of conflicts of interest. Government Code Section 1090, et seq. governs contractual conflicts of interest and is a strict liability statute. If violated the contract is void *ab initio* (void from the beginning) and nothing can be done to save the contract. Violation of the statute is a felony. The Political Reform Act of 1974 (Government Code Section 81000, et seq.) regulates noncontractual conflicts of interest. While it prohibits an official subject to it from attempting to influence a decision or from voting on an item in which he/she has a financial interest, the public agency can still consider and act on the item subject to disclosure and nonparticipation by the official with the conflict. The Fair Political Practices Commission is responsible for the promulgation of regulations implementing the Act and for ensuring compliance with its provisions.

The Department of Transportation (DOT), Federal Transit Administration (FTA) Third Party Contracting Guidance Circular 4220.1F (November 1, 2008) also addresses the issue of conflicts of interest for recipients of federal transit funds. (See attachment A) Section III.1. requires, under the rules of the DOT (the Common Grant Rules) that each recipient maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts in three areas: (a) personal conflicts of interest; (b) gifts; and (c) violations. Under (a) any real or apparent conflict of interest is to be avoided. Subsection (b) provides that "the grantee's officers, employees, agents, or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements," but allows the grantee to set the minimum rules regarding what constitutes an insubstantial financial interest or an

¹ The memo contains a general discussion of conflict of interest provisions as a refresher for the Board and edification of Director Young.

² This is the most difficult of the conflict of interest provisions to apply because the standard enunciated by the court provides room for individual interpretation and variation.

³ This is a major difference between this conflict of interest provision and the statutory contractual and noncontractual conflicts of interest provisions discussed further in this memo. The statutory conflicts of interest provisions only affect financial interests, not non-financial interests.

unsolicited gift of nominal value. Finally, under subsection (c), to the extent allowed by state or local laws, the standards of conduct are supposed to provide for penalties, sanctions, or other disciplinary action for violation of the standards.

The relationship between the provisions of the Political Reform Act (the Act) and Circular 4220.1 (then D, now F) was the subject of a series of GC Memos from March 15 to June 21, 2001 when Board Policy No. 135 on Gifts and Gratuities for Directors and Board Officers was adopted.⁴ Attached are the GC Memos from March 15 (included in GC 01-102b of May 3, 2001), the May 31, 2001 GC Memo and the June 21, 2001 memo. The import of these memos was a desire to include a Board Policy that would address the requirements of FTA Circular 4220.1 regarding gifts and gratuities for directors and board officers.⁵ By referencing the Political Reform Act's provisions, the policy provided for consistency between the requirements of the Act and the Circular.

In reviewing the provisions of Board Policies 113 and 135 regarding Gifts/Gratuities/Favors, there are modifications that could be made to update their provisions. These are identified below for the Committee's consideration.

Changes to Policy 113

- Remove citations to specific sections of the Act because they are no longer applicable. The gift provisions are now located in Sections 18940 to 18961 of the regulations.
- Change the reference to Board Policy No. 136 to Board Policy No. 135.

Open Question: Does the Committee wish to change the prohibition in 113 regarding the acceptance of gifts or favors covered by the provisions of the Political Reform Act of 1974 "which might reasonably be interpreted as an attempt to influence actions with respect to District business"?⁶

Under the Act, gifts of \$50 or more in a calendar year must be reported on the annual Form 700 Statement of Economic Interests. If the amount of gifts from a single source totaled more than \$420 in a calendar year then the gift is a source of income to the recipient. The question is what conduct falls within the scope of the quoted language? For example: If a director or officer attended an after hours function at a conference, open to all attendees, the reasonable value of any food or beverages consumed is a gift under the Act, which may or

⁴ One of the great mysteries of life is how something that was once number x somehow gets labeled as y. This is what happened to what is now Board Policy 136 instead of 135 as approved by the Board. To get back to basics, the number of the policy will be corrected to 135 henceforth, and hope it stays that way.

⁵ An issue raised in the memos was whether the FTA limit of \$50 per year and \$20 per occasion would change since they were under consideration at the time of the reports. A recent review of these limits verifies that they have not changed over the years.

⁶ The Act does not use the term "favors," they would be considered under the "gift" provisions.

may not be reportable. However, can attendance at the function and consummation of food and beverages “reasonably be interpreted as an attempt to influence actions with respect to District business” so that attendance at the function to begin with is prohibited? Would it make a difference if the host of the function was or wasn’t presently doing business with the District? Would it make a difference if the function included transportation, beverages and dinner only for select individuals or for attendees only from the District? (The fair market value of all of the expenses incurred by the host for transportation, food and beverages are prorated gifts to the recipients and would have to be disclosed, unless one of the exceptions to disclosure under the Act would apply, e.g. reimbursement of the fair market value of the gift within thirty days of its receipt.)

The present interpretation of Policy 113 is to leave to the discretion of the director or board officer the issue of “reasonableness” and require disclosure when it is required under the Act.

Changes to Policy 135

- Change of policy number
- Add Personal Conflict of Interest provision
- Add Violation provision

By adding the first and third bullets to the Policy, the District would cover all aspects of Circular 4220.1F.

Prior Relevant Board Actions/Policies:

May 3, 2001
June 21, 2001

Attachments:

A – Conflict of Interest Provisions
B – May 3, 2001 GC Memo containing March 15, 2001 information
C – May 31, 2001 GC Memo
D – June 21, 2001 GC Memo
E – Revised Policy 113
F – Revised Policy 135

Approved by: Kenneth C. Scheidig, General Counsel
Prepared by: Kenneth C. Scheidig, General Counsel
Date Prepared: April 16, 2009

CHAPTER III

THE RECIPIENT'S RESPONSIBILITIES

1. WRITTEN STANDARDS OF CONDUCT. The Common Grant Rules require each recipient to maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts.
 - a. Personal Conflicts of Interest. As provided in the Common Grant Rules and the Federal Transit Administration (FTA) Master Agreement, no employee, officer, agent, or board member, or his or her immediate family member, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when any of those previously listed has a financial or other interest in the firm selected for award.
 - b. Gifts. The recipient's officers, employees, agents or board members may neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. The recipient may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
 - c. Violations. To the extent permitted by State or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the recipient's officers, employees, agents, board members, or by contractors or subrecipients or their agents.
2. SELF-CERTIFICATION. FTA expects each recipient to self-certify that its procurement system complies with Federal requirements for any FTA assisted third party contract the recipient undertakes and administers.
3. THIRD PARTY CONTRACTING CAPACITY. As part of an FTA recipient's obligation to maintain adequate technical capacity to carry out its project and comply with the Common Grant Rules, the recipient's third party contracting capability must be adequate to undertake its procurements effectively and efficiently in compliance with applicable Federal, State, and local requirements. The Common Grant Rules require the recipient to maintain a contract administration system to ensure that it and its third party contractors comply with the terms, conditions, and specifications of their contracts or purchase orders and applicable Federal, State and local requirements. Many FTA recipients assign contracting duties to technical, financial or management personnel. If the recipient lacks qualified personnel within its organization to undertake the various procurement tasks, such as drafting specifications, evaluating contracts, or performing internal audits for the recipient, FTA expects the recipient to acquire the necessary services from sources outside the recipient's organization. When using outside sources, the recipient should take appropriate steps to prevent or mitigate organizational conflicts of interest that would result

in conflicting roles that might bias a contractor's judgment or would result in unfair competitive advantage.

- a. Written Procurement Procedures. The Common Grant Rule for non-governmental recipients requires the recipient to have written procurement procedures, and by implication, the Common Grant Rule for governmental recipients requires written procurement procedures as a condition of self-certification. The recipient's procurement procedures are expected to address:

(1) Solicitations. The following standards apply to solicitations:

- (a) Clear Descriptions. A clear and accurate description of the technical requirements for the material, product, or service to be procured is required (discussed further in Chapter VI of this circular).
- (b) Nonrestrictive Specifications. In competitive procurements, the description may not contain features that unduly restrict competition. Notably, FTA may not finance procurements that use exclusionary or discriminatory specifications (discussed further in Chapter VI of this circular).
- (c) Quality Requirements. A description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, describe minimum essential characteristics and standards to which the property or services must conform if it is to satisfy its intended use (discussed further in Chapter VI of this circular).
- (d) Preference for Performance Specifications. The Common Grant Rule for governmental recipients advises the recipient that "[d]etailed product specifications should be avoided if at all possible." The Common Grant Rule for non-governmental recipients advises the recipient to describe technical requirements in terms of "functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards" (discussed further in Chapter VI of this circular).
- (e) Brand Name or Equal. When it is impractical or uneconomical to write a clear and accurate description of the technical requirements of the property or services to be acquired, a "brand name or equal" description may be used to define the performance or other salient characteristics of the property or services sought. The specific features or salient characteristics of the named brand which must be met by offerors of "an equal" proposal must be clearly stated (discussed further in Chapter VI of this circular).

The Common Grant Rule for non-governmental recipients further requires (and governmental recipients should have) written procurement procedures that address:

**AC TRANSIT DISTRICT
BOARD OF DIRECTORS
EXECUTIVE SUMMARY**

Memo No. : GC 01-102b

Meeting Date: May 3, 2001

Committees

Executive Committee ☐
External Affairs Committee ☐

Operations Committee ☐
Planning Committee ☐

Board of Directors ☒

SUBJECT: CONSIDERATION OF ADOPTION OF BOARD POLICY NO. 135 - GIFTS AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS

FISCAL IMPACT: N/A

REQUESTED ACTION:

☐ Information Only
☒ Recommended Motion

Adopt Board Policy No. 135.

RATIONALE:

There is no specific Board Policy regarding gifts and gratuities for Directors and Board Officers.

PRIOR RELEVANT BOARD ACTIONS/POLICIES:

Board Policy No. 116 adopting the AC Transit Conflict of Interest Code

BACKGROUND/DISCUSSION:

Action Taken by the Executive Committee on April 19, 2001

A majority of the Executive Committee recommended adoption of Policy No. 135 with an amendment to add a reference to FTA Circular No. 4220.1D. This change has been made to the copy of the Policy attached to this memo.

Information Relative to Direction from March 15 Executive Committee Meeting

At the March 15, 2001 meeting of the Committee, the General Counsel was directed to draft a policy along the lines of the FTA rule. In addition, interest was expressed in developing a procedure for a post event reimbursement to the donor.

Information Supplied at March 15 Executive Committee Meeting

GC Memo No. 01-102b

Subject: Consideration of Adoption of Board Policy No. 135 — Gifts and Gratuities for Directors and Board Officers

Meeting Date: May 3, 2001

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The Executive Committee requested the General Counsel to look into a Board Policy, similar to Administrative Regulation No. 136, prohibiting gifts and gratuities for management employees, but with some nominal leeway.

Presently, there are a number of regulations and statutes which govern gifts and gratuities.

- Federal Transit Administration (FTA) Circular 4220.1D contains requirements concerning real or apparent conflicts of interest on the part of employees who participate in the selection, award or administration of contracts supported by Federal funds and concerning solicitation or acceptance of gratuities, favors or anything of monetary value from contractors, potential contractors or parties to subagreements. The FTA permits the receipt of no more than \$20 per occasion, to a maximum of \$50 per calendar year from the same source. The FTA presently is considering adopting new guidelines on conflicts of interest.
- The Political Reform Act of 1974, Government Code section 87100, et seq., identifies the conflict of interest rules in California for public officials. Gifts up to \$50 in a calendar year need not be reported and any gifts from the same source totaling more than \$300 in a twelve month period constitute a source of income, requiring the official to refrain from participating in the decision affecting the donor. A "gift" is defined in Government Code section 82028 to mean "any payment that confers a personal benefit on the recipient" and includes rebates or discounts not provided to the general public in the regular course of business. The definition does not include consideration for which equal or greater value is provided in return.
- Board Policy No. 116 sets forth the District's Conflict of Interest Code for the Board of Directors, Board Officers and designated District employees. The Policy was adopted to comply with the Political Reform Act which requires every local agency to adopt a conflict of interest code. The rules cited above, regarding gifts, would apply under this Policy.

This office has reviewed the conflict policies from Golden Gate Transit, San Mateo Transit and San Francisco Municipal Railway on the issue of gifts and gratuities. These policies are similar to the federal standard cited above. For example, SamTrans' language reads:

No Director, Officer, employee or agent of the District knowingly shall solicit, accept, or agree to accept gratuities, favors or anything of more than a nominal monetary value in connection with actual or potential procurement and contracting activities. Under this policy, the term "nominal value" shall be defined as a value of Fifty Dollars (\$50.00) or less.

Based on the above, the following are the options available for consideration:

GC Memo No. 01-102b

Subject: Consideration of Adoption of Board Policy No. 135 — Gifts and Gratuities for Directors and Board Officers

Meeting Date: May 3, 2001

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1. Do nothing, because the provisions of the Political Reform Act and its regulations already have plowed the ground on this issue and the Board and its Officers are bound by this Act and its regulations.
2. Adopt language similar to the SamTrans' policy. This would certainly comport with existing FTA regulations on this subject, but does not provide the "flexibility" of the Political Reform Act, i.e., value for value equals no gift/gratuity.
3. Adopt language similar to SamTrans', but incorporate the Political Reform Act rules, by reference, as the guide for what does or doesn't constitute a gift/gratuity.

ATTACHMENTS

Proposed Policy No. 135, as amended

Approved by: Kenneth C. Scheidig, General Counsel

Prepared by: Kenneth C. Scheidig, General Counsel

Date Prepared: April 26, 2001

C:\Temp\GC Memo 01-102b re Policy 135.wpd

AC Transit

Policy No. 135

BOARD POLICY

Category: Administration

GIFTS AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS

PURPOSE

Consistent with Federal Transit Administration Circular No. 4220.1D, the Alameda-Contra Costa Transit District Board of Directors is establishing these guidelines to govern the acceptance by Directors and Board Officers of gifts and gratuities which may reasonably be interpreted as an attempt to influence their actions with respect to how District business is conducted.

DEFINITIONS

"Gift" means any payment that confers a personal benefit to the recipient as defined in Government Code section 82028 and as it may be amended from time to time.

"Gratuity" means a material favor or gift, usually money, given in return for service.

"Favor" means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.

REGULATION

No Director or Officer knowingly shall solicit, accept, or agree to accept, either directly or indirectly, for his/her personal benefit any gifts, gratuities or favors from customers, visitors, vendors or any other person doing (or seeking to do) business with the District when the cumulative value of the gifts, gratuities or favors in any calendar year exceeds \$50. In addition, no gift, gratuity or favor which may be provided consistent with this Policy shall exceed \$20.

Adopted: 5/03/01

**AC TRANSIT DISTRICT
BOARD OF DIRECTORS
EXECUTIVE SUMMARY**

Memo No. : GC 01-102b

Meeting Date: May 31, 2001

Committees

Executive Committee ☒ [X]

External Affairs Committee ☐ []

Operations Committee ☐ []

Planning Committee ☐ []

Board of Directors ☒ [X]

**SUBJECT: CONSIDERATION OF THE ADOPTION OF BOARD POLICY NO. 135 - GIFTS
AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS**

FISCAL IMPACT: N/A

REQUESTED ACTION:

☐ [] Information Only

☒ [x] Recommended Motion

Recommend the adoption of Board Policy No. 135 as revised.

RATIONALE:

This item was referred back to the Committee on May 17, 2001, for consideration of further revisions.

PRIOR RELEVANT BOARD ACTIONS/POLICIES:

Board Policy No. 116 adopting the AC Transit Conflict of Interest Code

BACKGROUND/DISCUSSION:

When this item was considered by the Board of Directors on May 17, 2001, there was some confusion over the Federal Transit Administration (FTA) requirements versus the requirements of the Political Reform Act of 1974. The policy was referred back to the Committee for clarification.

While FTA Circular 4220.1D (Third Party Contracting Guidelines) provides that "the grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements," grantees may set the minimum rules regarding what constitutes an insubstantial financial interest or an unsolicited gift of nominal value. The FTA has adopted for its employees a rule of \$50.00 in a calendar year and \$20.00 per occasion. This policy is being reviewed and may be revised for federal employees in the future.

The Board of Directors and Board Officers are subject to the provisions of the Political Reform Act of 1974 (PRA) and the District's Conflict of Interest Code (Board Policy No. 116). The PRA requires the disclosure of any gift of \$50.00 in a calendar year on Form 700. If the value of gifts

Executive Committee

Date: 5/31/01

Item No: 7

GC Memo No. 01-102b

Subject: Consideration of the Adoption of Board Policy No. 135 — Gifts and Gratuities for Directors and Board Officers

Meeting Date: May 31, 2001

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received from the same source exceeds \$320.00 in a twelve month period, then that donor is considered a source of income to the recipient and he/she would have to refrain from attempting to use his/her position to influence a decision affecting the donor, as well as disclosure of the relationship.

Thus, in the absence of any limitation adopted in proposed Board Policy No. 135, the Board of Directors and the Board Officers would be subject to the limitations in the PRA.

Attached is a draft of Board Policy No. 135 which would conform the Policy to the provisions of the PRA.

ATTACHMENTS:

Draft Board Policy No. 135

Approved by: Kenneth C. Scheidig, General Counsel

Prepared by: Kenneth C. Scheidig, General Counsel

Date Prepared: May 24, 2001

AC Transit

Policy No. 135

BOARD POLICY

Category: Administration

GIFTS AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS

PURPOSE

Consistent with Federal Transit Administration Circular No. 4220.1D, the Alameda-Contra Costa Transit District Board of Directors is establishing these guidelines to govern the acceptance by Directors and Board Officers of gifts and gratuities which may reasonably be interpreted as an attempt to influence their actions with respect to how District business is conducted.

DEFINITIONS

"Gift" means any payment that confers a personal benefit to the recipient as defined in Government Code section 82028 and as it may be amended from time to time.

"Gratuity" means a material favor or gift, usually money, given in return for service.

"Favor" means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.

REGULATION

No Director or Officer knowingly shall solicit, accept, or agree to accept, either directly or indirectly, for his/her personal benefit any gifts, gratuities or favors from customers, visitors, vendors or any other person doing (or seeking to do) business with the District. Reporting of the receipt of any gifts, gratuities or favors shall be subject to the limitations and reporting requirements contained in the Political Reform Act of 1974 and any amendments to it.

Adopted: 5/03/01

**AC TRANSIT DISTRICT
BOARD OF DIRECTORS
EXECUTIVE SUMMARY**

Memo No. : GC 01-102c

Meeting Date: June 21, 2001

Committees

Executive Committee []
External Affairs Committee []

Operations Committee []
Planning Committee []

Board of Directors [X]

**SUBJECT: CONSIDERATION OF THE ADOPTION OF BOARD POLICY NO. 135 - GIFTS
AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS**

FISCAL IMPACT: N/A

REQUESTED ACTION:

[] Information Only
[x] Recommended Motion

Adopt Board Policy No. 135 as revised.

RATIONALE:

This Policy was requested by Director Peebles and has been reviewed by the Executive Committee and referred to the Board of Directors for decision.

PRIOR RELEVANT BOARD ACTIONS/POLICIES:

Board Policy No. 116 adopting the AC Transit Conflict of Interest Code

BACKGROUND/DISCUSSION:

Recommendation of the Executive Committee from May 31, 2001

The Executive Committee at its meeting on May 31, 2001, reviewed the content of the General Counsel's report set forth below and voted to recommend that the Board of Directors approve Board Policy No. 135 as revised. The Committee also recommended that the General Manager and General Counsel work on a revision to Administrative Regulation No. 136, which would provide the same dollar limits contained in Board Policy No. 135, assuming it passes, for District employees covered by that regulation.

Report to the Executive Committee on May 31, 2001

When this item was considered by the Board of Directors on May 17, 2001, there was some confusion over the Federal Transit Administration (FTA) requirements versus the requirements of the Political Reform Act of 1974. The policy was referred back to the Committee for clarification.

GC Memo No. 01-102C

Subject: Consideration of the Adoption of Board Policy No. 135 - Gifts and Gratuities for Directors and Board Officers

Meeting Date: June 21, 2001

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While FTA Circular 4220.1D (Third Party Contracting Guidelines) provides that "the grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements," grantees may set the minimum rules regarding what constitutes an insubstantial financial interest or an unsolicited gift of nominal value. The FTA has adopted for its employees a rule of \$50.00 in a calendar year and \$20.00 per occasion. This policy is being reviewed and may be revised for federal employees in the future.

The Board of Directors and Board Officers are subject to the provisions of the Political Reform Act of 1974 (PRA) and the District's Conflict of Interest Code (Board Policy No. 116). The PRA requires the disclosure of any gift of \$50.00 in a calendar year on Form 700. If the value of gifts received from the same source exceeds \$320.00 in a twelve month period, then that donor is considered a source of income to the recipient and he/she would have to refrain from attempting to use his/her position to influence a decision affecting the donor, as well as disclosure of the relationship.

Thus, in the absence of any limitation adopted in proposed Board Policy No. 135, the Board of Directors and the Board Officers would be subject to the limitations in the PRA.

Attached is a draft of Board Policy No. 135 which would conform the Policy to the provisions of the PRA.

ATTACHMENTS:

Draft Board Policy No. 135

Approved by: Kenneth C. Scheidig, General Counsel

Prepared by: Kenneth C. Scheidig, General Counsel

Date Prepared: June 13, 2001

AC Transit

Policy No. 135

BOARD POLICY

Category: Administration

GIFTS AND GRATUITIES FOR DIRECTORS AND BOARD OFFICERS

PURPOSE

Consistent with Federal Transit Administration Circular No. 4220.1D, the Alameda-Contra Costa Transit District Board of Directors is establishing these guidelines to govern the acceptance by Directors and Board Officers of gifts and gratuities which may reasonably be interpreted as an attempt to influence their actions with respect to how District business is conducted.

DEFINITIONS

"Gift" means any payment that confers a personal benefit to the recipient as defined in Government Code section 82028 and as it may be amended from time to time.

"Gratuity" means a material favor or gift, usually money, given in return for service.

"Favor" means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.

REGULATION

No Director or Officer knowingly shall solicit, accept, or agree to accept, either directly or indirectly, for his/her personal benefit any gifts, gratuities or favors from customers, visitors, vendors or any other person doing (or seeking to do) business with the District. Reporting of the receipt of any gifts, gratuities or favors shall be subject to the limitations and reporting requirements contained in the Political Reform Act of 1974 and any amendments to it.

Adopted: 5/03/01

AC Transit

Policy No. 113

BOARD POLICY

Category: Administration

CODE OF ETHICS AND DECORUM

PURPOSE

The Board of Directors of the Alameda-Contra Costa Transit District determined that a Code of Ethics and Decorum (the Code), establishing rules of conduct for Board Members, Board Officers, members of the Accessibility Advisory Committee, the Riders Advisory Committee, members of any other committees the Board may create and members of the public will foster public confidence in the integrity of the District. This Code will establish standards which, if complied with, will accomplish this goal by:

1. Insuring that public officials are acting independently and impartially in exercising their judgment and taking action on issues which come before the District;
2. Maintaining the confidentiality of issues considered in closed sessions except when the disclosure of those decisions is required by law;
3. Insuring that the rights of all participants in a meeting are free from personal animosity and hostility.

This Code is in addition to and does not supersede any other rules, regulations or policies of the District governing any of the issues contained within this Code.

DUTY AND CARE

As agents of the public and conservators of the public trust, the Board of Directors, Board Officers and committee and commission members are bound to observe the highest standards of integrity and to discharge faithfully the duties of their offices.

CONFLICTS OF INTEREST

Public officials and employees, whether appointed or elected, full time or part time, paid or unpaid, should conduct their official and private affairs so as not to give a reasonable basis for the impression that any such official or employee can be improperly influenced in the performance of his/her public duties. Such officials or employees should conduct themselves appropriately to maintain public confidence in their performance of the public trust.

Conduct which should be avoided includes:

Adopted: 4/96

Amendments: 6/02, 3/04

1. Accepting gifts, favors or promises of future benefits which might compromise or tend to impair independent judgment or action.
2. Activities which create contractual (GC §1090), noncontractual (GC §81000) or common law conflicts of interest or activities which may impair the ability to exercise independent judgment in the discharge of his/her official duties. If a situation arises where a conflict or the appearance of a conflict may occur, consider:
 - a. Discussing the matter with and obtaining the opinion of the General Counsel;
 - b. Where feasible, obtain an opinion or advice letter from the Fair Political Practices Commission;
 - c. Where feasible, obtain an opinion from outside legal counsel at the requestor's own expense, unless the payment of the expense is approved by the Board of Directors.
3. Disclose any conflicts or impediments to participating in a decision on the record before the item is considered and, whenever possible, leave the meeting during the consideration of the item.
4. Disclose the receipt of gifts of \$50.00 or more from any person, firm or entity appearing before any person or bodies covered by this Code of Ethics on a matter in which the person, firms or entity will receive something of value (e.g., contract, employment or decision) from any person or body covered by this Code of Ethics.

DISCLOSURE OF INTERESTS IN LEGISLATION

Any financial or other private interest in any legislation shall be disclosed on the record, including the nature and extent of such interest.

ACCEPTANCE OF GIFTS/GRATUITIES/FAVORS

No gifts, gratuities or favors covered by the provisions of the Political Reform Act of 1974 (Govt. Code §§ 81000, et seq., or its implementing regulations) shall be accepted which might reasonably be interpreted as an attempt to influence actions with respect to District business. (See Govt. Code § 87103; Title 2, Division 6 of Calif. Code of Regulations §§~~18726, 18726.1, 18726.2, 18726.3, 18726.4, 18726.5, 18726.6, 18726.7, 18726.8 and 18728~~18940-18961, and Board Policy No. 1356)

CONFIDENTIAL INFORMATION

Information received in a closed session meeting, or confidential information received, acquired by or made available to anyone covered by this Code of Ethics or any employee or agent of the District, shall not be disclosed, except as required or authorized by law. No one shall use any confidential information for speculation or personal gain for himself/herself or another. Information received in closed session shall be returned to the General Counsel. The General Counsel shall maintain a file on information provided in closed session which may be reviewed by Board Members during normal business hours.

Adopted: 4/24/96

USE OF DISTRICT RESOURCES & FACILITIES FOR PRIVATE GAIN

District personnel, facilities, equipment, materials or supplies shall not be used for private gain or advantage. No one covered by this Code of Ethics shall use or attempt to use his/her position to secure unwarranted privileges or exemptions for themselves or others. (See Board Policies Nos. 168 [Use of District Resources] and 178 [Telephone Usage])

USE OF OFFICIAL POSITION

Board Members, committee members and Board Officers should not use their official position to negotiate on behalf of the District outside of any process established for that purpose or become involved in personnel matters except for any discussion by the Board regarding one or more of the Board Officers.

REPORTING BREACH OF PUBLIC TRUST

Any knowledge of improper governmental activities shall be disclosed to the appropriate authority(ies) within the District for investigation and appropriate action. No one shall directly or indirectly use or attempt to use the authority or influence of his/her office or position for the purpose of intimidating, threatening, coercing, commanding, or influencing any person with the intent of interfering with that person's duty to disclose such improper activity.

FAIR AND EQUAL TREATMENT

The individuals covered by this Code shall:

1. Provide fair and equal treatment for all persons and matters coming before the Board of Directors, the AAC, the RAC or any other committee or commission created by the Board of Directors.
2. Attend all meetings unless unable to do so because of a compelling reason.
3. Not receive special consideration, treatment or advantage beyond that which is available to every other individual.
4. Faithfully perform all duties of his/her/their office.
5. Refrain from abusive or disruptive conduct, personal charges or verbal attacks upon the character, motives, ethics, or morals of others, or other personal comments not germane to the issue(s) under consideration.
6. Listen courteously and attentively to all discussions at meetings and avoid interrupting other speakers, including other Board Members, staff or committee members, except as may be permitted by established Rules of Order.

CONDUCT TOWARD STAFF

1. Board Members and committee members shall not publicly or privately engage in personal attacks on Board Officers or employees or attempt to discipline any Board Officer or employee, except to the extent the Board is permitted to discipline Board Officers. Any concerns regarding a District employee's performance or conduct, other than a Board Officer, shall be communicated to the General Manager. Any concerns regarding a Board Officer's performance or conduct shall be communicated to the affected Board Officer. Nothing in this section shall affect the right of the Board to evaluate the Board Officers.

Adopted: 4/96

2. Board Members and committee members shall not individually direct the work of Board Officers or staff, unless authorized by the appropriate body, -or attempt to influence the content of reports from Board Officers or staff.
3. Board Members and committee members shall not have access to or use any departmental files without the consent of the department manager and shall not have access to the personnel files of employees, except the Board shall have access to the personnel files of the Board Officers.

CONDUCT TO AND FROM THE PUBLIC

1. Members of the public attending a meeting of the Board of Directors or any committee created by it shall be entitled to the same courtesies and treatment identified above under Fair and Equal Treatment.
2. Members of the public shall be encouraged to observe the same rules of order and decorum applicable to the Board of Directors. Any person who becomes boisterous while addressing or attending a meeting of the Board of Directors or any committee created by it, or behaves in such a way as to be disruptive of any such meeting(s), shall be removed from the room if the President or committee chair so directs and such people may be barred from further attending that meeting.

NOISE IN THE LOBBY

Noise emanating from the lobby outside of the Board Room which disrupts the meetings of the Board of Directors or any of its committees shall not be permitted.

CROWD CONTROL IN BOARD ROOM

If the General Manager, the District Secretary, or their designees anticipate, in advance, a crowd larger than the maximum number of attendees allowed in the Board Room, appropriate crowd control measures shall be taken.

NON-COMPLIANCE/SANCTIONS

In addition to any other penalty as provided by law or as otherwise specified in this Code, violations of this Code may be used as a basis for subjecting the offender to one or more of the following: removing the violator from the position of chair of a committee; removing the violator from membership on a committee; denying the violator any other assignments on behalf of the District; subjecting the offender to public censure; or restricting the ability of the violator to use his/her travel account for a specified period.

Adopted: 4/24/96

AC Transit

—Policy No.

1356

BOARD POLICY

Category: Administration

PERSONAL CONFLICTS OF INTEREST AND GIFTS AND GRATUITIES FOR

DIRECTORS AND BOARD OFFICERS

PURPOSE

Consistent with Federal Transit Administration Circular No. 4220.1FD, the Alameda-Contra Costa Transit District Board of Directors is establishing these guidelines to govern personal conflicts of interest ~~the acceptance and the acceptance by Directors and Board Officers~~ of gifts and gratuities by Directors and Board Officers which may reasonably be interpreted as an attempt to influence their actions with respect to how District business is conducted.

DEFINITIONS

“Common Grant Rules” shall have the meaning set forth in Federal Transit Administration Circular 4220.1F published at 73 FR 56896 on September 30, 2008, or any amendments or revisions to said circular that may occur in the future.

“Favor” means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.

“Financial Interest” shall have the meaning set forth in California’s Political Reform Act of 1974 (Government Code Section 8100, et seq.) and implementing regulations, as interpreted by the Fair Political Practices Commission.

“Gift” means any payment that confers a personal benefit to the recipient as defined in Government Code section 82028 and as it may be amended from time to time.

Adopted: 7/88

“Gratuity” means a material favor or gift, usually money, given in return for service.

~~“Favor” means to lend supportive approval to, to be favorably disposed to, and to show partiality towards.~~

REGULATION

Personal Conflict of Interest

No Director or Board Officer, or members of his or her immediate family, partner, or organization that employs or is about to employ any of the foregoing may participate in the selection, award, or administration of a contract supported with FTA assistance if a conflict of interest, real or apparent, would be involved. Such a conflict of interest would arise when any of the above has a financial or other interest in the firm selected for award.

Gifts

No Director or Board Officer shall knowingly ~~shall~~ solicit, accept, or agree to accept, either directly or indirectly, for his/her personal benefit any gifts, gratuities or favors from customers, visitors, vendors or any other person doing (or seeking to do) business with the District if such gifts would create a substantial financial interest—. “Substantial financial interest” is defined as a gift, gratuity or favor which would require reporting under the Political Reform Act of 1974 and any amendments to it. Reporting of the receipt of any gifts, gratuities or favors shall be subject to the limitations and reporting requirements contained in the Political Reform Act of 1974 and any amendments to it.

ENFORCEMENT

To the extent any violation of this policy is established and it also would be a violation of the Political Reform Act of 1974, the matter shall be referred to the Fair Political Practices Commission for action. For any violation not subject to the Political Reform Act of 1974, the Board of Directors shall impose such sanctions or disciplinary actions as it deems appropriate under the circumstances.

Adopted: 7/88