

September 10, 1996
ILR 96-E

Representative Raymond W. Short
Utah House of Representatives
318 State Capitol Building
Salt Lake City, UT 84114

Subject: Utah Transit Authority Land Purchases

Dear Representative Short:

As you may recall, in 1994 you requested an audit of issues concerning UTA land purchases. Review work on that report was completed in 1994 but release of the letter report was delayed because of an ongoing investigation by the United States Department of Transportation (USDOT) Inspector General's Office in Denver, Colorado. We were told the USDOT was conducting a more extensive examination of many of the same areas that we included in our audit. We have recently been informed that the investigation is closed and consequently we are releasing this letter report. We regret that this is not a more timely response to your concerns and hope you realize it is because of circumstances beyond our control. Among those items you requested information on were UTA's legal counsel's involvement in purchasing UTA land, UTA land purchasing practices and whether UTA could continue to buy land for light-rail. In our opinion, UTA's land purchasing practices generally appeared to be appropriate and reasonable. However, this audit did identify several unrelated concerns which are discussed in the body of this report.

In 1990 our office released a report entitled a **Performance Audit of Utah Transit Authority** (Report 90-06) which included an extensive review of UTA land purchasing practices up to 1989. That report reviewed eleven land purchases and concluded that UTA had appropriate approval on each of the land purchases. Consequently, this current letter report will primarily address the land purchases made from 1989-1994 (of which there have been two) plus we have done some limited examination of the 1978 purchase of the UTA property at 700 West and 3546 South. In 1992 UTA purchased a railway right-of-way from the Union Pacific Railroad company at a cost of approximately \$18,500,000. This land purchase is to be used for the first

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segment of the light-rail system. In the same year, UTA purchased a parcel of land in the city of Sandy to be used as a railway terminal station when light-rail eventually is built, or for a park-and-ride lot if light-rail is not built. The cost of this land was approximately \$1,600,000.

The following are our findings in the each of your three areas of concern.

Involvement of UTA's Legal Counsel in Land Purchases

There were two concerns regarding UTA's practice of using their legal counsel to purchase land. One concern was that UTA may be paying Mr. William Oswald twice for the same service, both a real estate commission (for sale of land) and contract fees (as UTA's attorney). A final concern related to the ownership of two parcels of property (the Union Pacific right-of-way property and the 100th South State property) and if Mr. Oswald ever held title to either property under his name. Our review found no real estate commissions were paid to Mr. Oswald nor did he hold title to either of the above properties. However, in 1986 under the direction of the UTA officers, he held title (in his name) to a UTA property in the Provo/ Orem area. Finally, we were concerned about the appropriateness of one land purchase made years previously and the total amount of legal fees paid by UTA for attorney services.

Real Estate Commissions Not Received

Our review of UTA's legal counsel's involvement in the two land purchases indicated that Mr. Oswald did not receive any commission for the purchase of land but was paid a contract fee for the amount of his time charged. A review of UTA's W2 forms and other financial information indicates that UTA did not pay Mr. Oswald any money beyond his contract fee as an attorney. In addition, a review of the detailed billings submitted by Mr. Oswald indicates that he never attempted to bill UTA for real estate agent fees. In addition, UTA records indicate that the real estate agent representing the seller of the 100th South State Street property received the entire 6%, or both halves, of the real estate commission on the sale of the land. In our opinion, this indicates that no one else involved in the sale of the property received a real estate commission.

Some Property Ownership Concerns Exist

The second concern was whether Mr. Oswald had purchased property in his own name and then sold it to UTA at a profit. We verified that Mr. Oswald was not the past land owner of either the railway property nor the 100th South State Street property. We were aware of one occasion, in 1986, when Mr. Oswald under UTA's direction purchased land in the Provo/ Orem area under his name, for UTA. This purchase arrangement was made because UTA officers did

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not want the seller to know UTA was the purchaser. This practice may be necessary because UTA does not have the power of eminent domain used by other government organizations to obtain land. Mr. Oswald purchased the property for approximately \$129,000 using UTA money. Mr. Oswald gave UTA a trust deed to his home in order to provide UTA with security for the property. Once the title to the Provo/Orem property was in UTA's name, Mr. Oswald received back the trust deed to his home. Our review of these records indicate that Mr. Oswald did not profit from this sale except for his hourly contract fee for services rendered. We did not find any other instances where Mr. Oswald held UTA property in his name.

With regards to the Union Pacific Right-of-Way, there were allegations that UTA did not purchase the property from the Union Pacific Railroad Company but rather had purchased it from Mr. Oswald. Records obtained from the Union Pacific Railroad Company clearly show that UTA did purchase the property directly from them at a cost of \$18.5 million and not through a third party.

On one occasion Mr. Oswald and Mr. John Pingree (UTA General Manager) made a private purchase of land next to UTA property. In 1978 the LDS church owned three parcels of property on 700 West and 3546 South. In June 1978 UTA had acquired an option to buy the parcels of property and had two appraisals done on one of the three parcels. In an earlier meeting the board voted to purchase parcel "Z" the larger of the three parcels of property (93.3 acres). However, in the July 26, 1978, board meeting the UTA staff recommended that the board also purchase the second parcel of land (parcel "Y", 20.6 acres) for future expansion because it was contiguous to the parcel "Z". In this meeting Mr. Pingree indicated that the third parcel of property (15 acres) was a very good property but the decision was up to the board as to whether to acquire it or not. At this meeting the board voted to also purchase the 20.6 acres but voted not to buy the remaining 15 acres of property.

On September 9, 1978, Mr Pingree notified the chairman of the board of his intent to privately purchase a 25 percent share of the 15 acres of property the board refused to purchase at the previous board meeting. In this letter Mr. Pingree asked the chairman to discuss the matter with the board and make certain the board had no objections. However, our review of the board minutes for the next five months show no record of this matter being discussed or approval given in any of those board meetings. Approximately five months after UTA purchased the two parcels, Mr. Oswald and several family members purchased a one-half share of the third parcel (15 acres). Sometime later, Mr. Pingree also purchased a share of the third parcel. Records indicate they paid slightly more money per acre for their property than UTA did. However, in our opinion, the third parcel of property is more accessible and would have a higher market value.

We found nothing to indicate that the purchases of the land by Mr. Oswald and Mr. Pingree was illegal. However, such a transaction by the UTA General Manager and legal counsel may give the appearance of impropriety. Such a transaction can give the appearance that they had

inside information, by virtue of their positions, that the general public did not have. Also, because they have influence it is possible they could privately persuade board members not to buy property they are interested in. We recommend that the UTA Board discourage future transactions of this nature in order to avoid any appearance of wrongdoing by UTA officials.

Attorney Contract Fees Should be Examined

Our review of the UTA legal costs indicates that a substantial amount of money is being spent by UTA for legal services. In 1993, UTA spent over \$340,000 on legal services. The total number of hours billed for this year by their legal counsel is far more than the annual average of 1,864 average work hours (2,080 hours minus the average of 11 holidays, 6 sick days and 10 vacation days) for a full-time employee. The amount of attorney fees reported by UTA in 1993 are larger than normal because of unusual litigation during that year. However, in 1992 and 1994, UTA spent about \$268,000 and \$205,000 respectively. We believe these fees are still significant and UTA should consider hiring an in-house attorney which could be far less costly. A portion of Mr. Oswald's services could still be retained in selected areas of expertise. Based on Department of Human Resource Management information, attorneys working for the state of Utah typically make between \$41,000 and \$113,000 per year (includes compensation and benefits). Information provided by the Utah Attorney General's Office indicates that the average cost of an attorney in that office is \$133,000 per year, this includes salary, benefits, and overhead (i.e. rent, supplies, books, travel, and training). The amount spent by UTA could pay for more than two full-time in-house attorneys. We recommend that UTA consider bringing all or a portion of their legal services in-house.

UTA Land Purchasing Practices Appear to be Reasonable

As part of our audit, we reviewed how UTA purchases land. There have been some questions raised as to whether it is appropriate for UTA to buy land through a third party and make a profit on the sale of land.

Use of a Third Party Agent For Land Purchasing is Not Unusual

In the past UTA has utilized their legal counsel to purchase land for them. This is done so that Mr. Oswald can buy the land without divulging the identity of the real purchasers. The use of third parties to purchase land for government organizations is not prohibited by law and has been used by other agencies in the state. The rationale for doing this is to prevent the seller from artificially inflating the price of the land just because the purchaser is a government organization that could afford to pay a higher price than an individual. We could identify nothing in either the **Utah Code** or the **Utah Procurement Code** which prohibits government organizations from using a third party for the purchase of land. In the case of UTA, their third party agent is acting as a real estate agent but is not collecting a commission.

We understand that this practice is more common in the private sector where the location of the land being purchased is critical because it is often used for retail operations. If the identity of the purchaser is known either the price of the land could increase significantly or the owner may chose not to sell because of concerns over the intended use of the land. Similar to the private sector, it is possible the UTA may also have reason to protect their identity because some owners may not sell their land if they knew the intended use was for a park and ride lot.

UTA Does Not Buy or Sell Land For Purpose of Making a Profit

We reviewed the land that UTA has sold recently and determined that they made a profit from the sale of this land. It is important to know that UTA does not buy or sell land for investment purposes but both the purchase and sale of land are associated with the overall mission of the agency. Again, we could find nothing in the **Utah Code** which prohibits a government organization from purchasing property and then selling the land for a profit at a later date. Sale of land is routinely done by government organizations which find they no longer need a specific piece of land. One state agency in particular said they feel a responsibility to sell their land at market value. Since land values generally appreciate each year, then land held for several years would sell at a significant profit.

It is also important to understand that UTA has not attempted to set themselves up as a real estate business. The minutes of board meetings indicate that the purchase of property is made with a transportation purpose in mind. These minutes contain lengthy discussions between UTA management and board members as to why the land must be purchased. The sale of land is also discussed, at length, in board meetings. These minutes also detail why the land is being sold. In our opinion, there is no indication that UTA is buying or selling land for the sole purpose of making a profit.

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In the recent purchase by UTA of the 100th South State Street property, there appears to have been some misunderstanding between UTA and Sandy City. UTA claims that they were satisfied with their original purchase in Sandy at 106th South 300 East. However, they say that Sandy wanted to relocate the light-rail station to a different area which they (Sandy City) chose to be 100th South. UTA claims that their intent was and still is to sell the 106th South 300 East property since they will no longer need it.

Board Supports Land Purchases For Light-rail

There was concern that UTA was buying land for light-rail without board approval and there is a perception that in the November 1992 referendum the public voted against light-rail. The board minutes show that although some individual members have been strongly against such purchases, the board approved the action. Further, we believe, the language of the 1992 public referendum relates to a planned tax increase for light-rail but does not specifically relate to future expenditures for a light-rail system. The referendum called for a tax increase to support expanded bus service, freeway improvements, as well as light-rail.

With regards to board approval for light-rail, there has been much discussion between UTA management and the UTA board. It is clear from board meeting minutes that the board is not only aware of UTA's light-rail plans but that the majority of the board supports those plans. There have been some board members that have been vocal about their opposition to light-rail, but they appear to be in the minority. In fact, the UTA board released an official position on light-rail in January 1993 stating that they support the purchase of land for the light-rail system. We can only conclude that the board in general supported the light-rail expenditures to date.

There has also been much concern about UTA continuing to plan for light-rail in spite of the fact that the vote on a public referendum was against it. In November 1992, the public defeated a referendum to increase sales tax to provide for light-rail. The referendum read as follows:

Shall Salt Lake County impose a sales and use tax of one-quarter of one percent to be effective January 1, 1993, to fund specific transportation improvements in Salt Lake County, for construction and operation of a light-rail or other fixed guide way system running north/south along the Union Pacific Railroad right of way parallel to Interstate Highway 15 between 100th South in Sandy and downtown Salt Lake City?

As stated, the referendum referred to an increase in sales tax to provide for light-rail. The voters did not consider whether light-rail should exist, nor did they limit future spending for such a rail system. UTA continues to purchase land for and moves forward with a plan to construct a light-rail system under the authority of **Utah Code** 17A-2-1016 which authorizes UTA to do the following:

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To acquire, contract for, lease, construct, own , operate, control, or use rights of way, rail lines, monorails, bus lines, stations, platforms, switches, yards, terminals, parking lots, and any and all other facilities necessary or convenient for public transit service within or partly within the district.

This statute gives UTA the authority to plan for light-rail. In addition, this same statute gives UTA the authority to purchase property for "establishment and operation of a public transit district." In our opinion, we see nothing to indicate UTA is purchasing land without approval.

Recommendations:

1. We recommend that the Utah Transit Authority develop policies and procedures that restrict officials within the organization from privately purchasing land or being involved in other dealings where UTA has recently conducted business.
2. We recommend that the Utah Transit Authority consider the cost benefit of hiring an in-house attorney and using a contract attorney only for the assignments requiring special expertise.

We hope this letter provides you with the information you need. If there is any additional information you want or any points on which you would like further clarification, please feel free to contact our office.

Sincerely,

Wayne L. Welsh
Auditor General

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