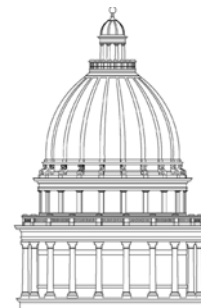


Office of the
LEGISLATIVE AUDITOR GENERAL
State of Utah

REPORT NUMBER 2010-17
December 2010



**A Limited Review of
Conflict of Interest Allegations
at the Utah Transit Authority Board**

We conducted a limited review of allegations concerning a conflict of interest of a member of the Utah Transit Authority (UTA) Board of Trustees. We found that although a conflict of interest did exist at UTA, disclosures of that conflict were made as required by *Utah Code*. We also found no evidence to support concerns that the trustee interfered in the site selection of a FrontRunner stop in Draper. However, based on the facts we were provided and an interpretation of *Utah Code* 17B-2a-814(5) by attorneys from the Office of Legislative Research and General Counsel, it does appear that the trustee may have violated a specific provision of the Public Transit District Act concerning the misuse of official information. We believe that the Legislature should consider reviewing sections of the Public Transit District Act and that the Audit Subcommittee should consider referring this matter to the Attorney General for additional review. We also recommend that the UTA board enhance the transparency of its operations by providing additional policy clarification.

**Trustee disclosed
conflict of interest as
required.**

**Trustee may have
violated statute
concerning misuse of
official information.**

Scope and Objectives

The Legislative Audit Subcommittee directed us to review materials provided by the audit requestor to determine if an in-depth

audit was needed. The documents we were provided focused primarily on the events leading up to the site location for the proposed Draper/Bluffdale FrontRunner stop. Our preliminary assessment of this material led us to expand our inquiry to review additional documents and interview other parties to construct a more complete picture of the events that took place. We proceeded to do so with approval of the subcommittee.

Our work was complicated by an independence impairment resulting from the service of a legislator and a legislative staff member on the UTA Board of Trustees executive committee. We informed the members of the Audit Subcommittee (and the audit requestor) of the impairment before proceeding and they directed us to complete the assignment. However, we mitigated the impairment by excluding those board members with legislative ties from any discussions of our work. Instead, we discussed our work with UTA's general counsel as a representative of the board.

The specific objectives of our limited review included the following:

- Determine whether a member of the UTA Board of Trustees had a conflict of interest.
- Determine whether a member of the UTA Board of Trustees misused official information.
- Determine whether the trustee interfered with the site selection process for a proposed FrontRunner stop.
- Evaluate UTA's conflict of interest policies and compliance with *Utah Code* 17B-2a-814.

To accomplish these objectives, we reviewed information provided by the requestor, UTA, state agencies, and other relevant parties. We also conducted interviews with UTA board members and staff as well as other stakeholders and city officials. Finally, we reviewed UTA board policies and *Utah Code*, as well as consulted with the Office of Legislative Research and General Counsel. Legislative attorneys provided us with a letter, included as Appendix A in this report that interpreted some statutory requirements of *Utah Code*.

We also received a separate allegation concerning a UTA trustee's real estate development near Big Cottonwood Canyon in Salt Lake

County that has been widely reported in the media. We did not review that allegation for several reasons. The audit requestor indicated that first priority should be on the issues addressed in this report rather than the issue dealing with the development near Big Cottonwood Canyon. Also, time did not allow us to expand the audit into two different areas. Finally, we felt the Big Cottonwood Canyon development had no direct connection to UTA because no transit-related developments exist or are planned for the area.

Board Conflict Existed, but Enhanced Policy Should Reduce Future Problems

Although a conflict of interest did take place on the UTA board, proper disclosures of that conflict were made by the trustee involved in the allegations. However, the same action today would be prohibited under UTA's recently strengthened conflict-of-interest policy that mirrors legislative action taken in the 2010 General Session.

A Conflict of Interest Did Occur at UTA

We found that the allegation of a conflict existing on the UTA Board of Trustees was valid. In fact, the trustee and his attorney explained that their recognition of the conflict led to the trustee taking appropriate actions to disclose the issue and abstain from board actions related to it.

According to Black's Law Dictionary, a conflict of interest "refers to a clash between public interest and the private pecuniary interest of the individual concerned. . . . A conflict of interest arises when a government employee's personal or financial interest conflicts or appears to conflict with his official responsibility." UTA board policy states:

Members of the Board of Trustees of the Utah Transit Authority have a duty to avoid any actual or potential conflicts of interest which would compromise the relationship between the individual Board member and the Authority on matters coming before the Board. (UTA Board Process Policy 4.4.1)

A conflict of Interest did exist at UTA, concerning the chair of the UTA Planning and Development Committee.

The UTA Trustee consulted for, and later became an owner in, the company attempting to develop the property adjacent to a proposed FrontRunner stop.

The conflict of interest we were asked to examine involved one trustee's personal financial interest in a company seeking to develop property adjacent to a proposed FrontRunner station site. Later, the trustee became the sole owner of that company while serving as a member of the UTA Board of Trustees. In addition, this trustee served as chair of the UTA Planning and Development Committee. This committee is responsible for overseeing the authority's planning efforts, including values, vision, mission statements, budget, budget amendments, and transit development. A summary of the time line of events follows:

- July 2008: A company, later called Whitewater Seven, entered into a real estate purchase agreement with the intent to acquire and develop property where a future FrontRunner stop might be built.
- September 2008: The UTA trustee began working as a consultant for Whitewater Seven.
- November 3, 2008: The trustee formally disclosed a conflict of interest to the UTA board in writing. The letter noted that the trustee had made earlier verbal disclosures and might seek to become a principal and a member of Whitewater Seven.
- November 20, 2008: UTA, Whitewater Seven, and Draper City entered into a development agreement on property that bordered the Union Pacific Railroad spanning between approximately 12800 South and 13500 South.
- December 10, 2008: The UTA trustee became the owner of Whitewater Seven.
- August 2009: State officials signed a conservation easement on the state-owned Galena property in Draper, eliminating the site at 13500 South from consideration by UTA for a FrontRunner stop.
- November 4, 2009: UTA officially selected 12800 South in Draper as the planned site for the future FrontRunner station.

- December 2009: The UTA trustee sold the development rights for the property to a company called Draper Holdings for an undisclosed amount.

The trustee sold the development rights for the property for another developer.

Throughout our review of this issue, both UTA and the trustee acknowledged that a conflict of interest did exist but asserted that it was properly disclosed to the board. Our review of UTA board minutes also found that after the disclosure, the trustee abstained from voting on related matters in later meetings. Furthermore, the trustee eventually sold the development rights to the property. The trustee informed us, and it was also reported in the media, that he no longer had any interest in nor did he own any property on or near any transit-related development.

Although a Conflict of Interest Existed, Proper Disclosures Were Made

We determined that the UTA trustee who was involved with developing the property where the Draper/Bluffdale station would be constructed properly disclosed the conflict of interest in accordance with *Utah Code* and UTA internal policies. *Utah Code* 17B-2a-814(4) states that:

(a)(i) A trustee, officer, or employee of a public transit district who has, or whose relative has, a substantial interest in a contract with, sale to, purchase from, or service to the district shall disclose that interest to the board of trustees of the district in a public meeting of the board.

UTA internal policy goes further and specifies the conditions for full disclosure. At the time the conflict took place, UTA's policy stated that:

Board members shall disclose any actual or potential conflict to the Board in a public meeting of the Board. The disclosure shall be reflected in the minutes of such meeting. Following the disclosure, Board members are encouraged to inform the full Board of information he or she may have on the conflicting matter. (Board Process Policy 4.4.1)

***Utah Code* and UTA Policy require disclosure of board member conflicts of interest.**

We were told that the trustee became involved with Whitewater Seven in September of 2008. The trustee formally declared a possible

conflict in a November 3, 2008 letter to UTA officials stating the following:

As I have verbally informed each of you previously, I currently am a consultant to Whitewater Seven, LLC. Whitewater Seven LLC has property under contract with Danville Investments LLC located at approximately 12600 South 400 West in Draper, Utah. My position as a consultant with Whitewater Seven, LLC could possibly result in a conflict of interest concerning any decisions by UTA to locate a commuter rail station in Draper. Because of this possible conflict of interest, I will abstain from any discussions or voting on any issue that pertains to locating a possible commuter rail station in Draper. Further, I would like to advise you that it is likely in the near future I will become a principal and a member of Whitewater Seven, LLC

One remaining concern with the disclosure of the conflict of interest is the time that passed between the trustee working as a consultant for Whitewater Seven in September 2008 and the date of the letter on November 3, 2008. There were UTA board meetings on September 24, 2008 and again on October 22, 2008 when the trustee had an opportunity to disclose the conflict. It is unclear why the trustee delayed in formally reporting the conflict. According to the trustee's attorney, at the time he understood that verbal disclosure was sufficient.

During UTA's October 2008 board meeting, the board made amendments to its conflict of interest policy. Among those changes were clarifications that the disclosure be made in writing, and the addition of the word promptly to the charge that:

Board members shall promptly disclose any actual or potential conflict of interest in writing to the President of the Board of Trustees, the Secretary and General Counsel. In the event a Board member becomes aware of a conflict of interest during or just prior to a board meeting, he or she may verbally disclose such potential conflict to the quorum of the Board during the meeting. (Board Process Policy No. 4.4.1)

UTA board policy regarding conflicts of interest was amended and the trustee complied with the new rules.

We interviewed the three individuals who were verbally informed of the conflict prior to the written disclosure. All three stated that the issue was discussed prior to the release of the letter, but were unsure of the date the discussion took place. In compliance with the policy amended on October 22, 2008, the trustee issued the letter eight working days later. Our review of *Utah Code* and UTA's policies led us to conclude that the appropriate steps were taken by the trustee to ensure that the conflict was properly disclosed.

UTA Conflict of Interest Policy Has Been Strengthened but Needs Additional Clarification

UTA has made efforts to strengthen the policy regarding trustee conflicts of interest so that the actions we reviewed would not be acceptable under today's standard.

UTA Policy Has Been Strengthened. UTA took steps to bolster its existing conflict-of-interest policy by elevating the standard to which trustees are held. Previously, the policy required that trustees disclose conflicts of interest as they arise and then abstain from voting on the issue. The strengthened policy requires that if a trustee owns property on or near a site being developed by UTA for transit purposes, the trustee either must resign from the board or sell the property. The revised policy requires that trustees certify they have read and understand:

Utah's Public District Transit Act, Utah Code Ann. §17B-2a-814, *et. seq.*, prohibiting conflicts of interest and 17B-2a-804(2)(c) prohibiting a current board member of a public transit district from having any interest in the transactions engaged in by the public transit district, including transit oriented development and/or transit supportive development, except as may be required by the board member's fiduciary duty as a board member. (Board Process Policy 4.1.10)

In addition to the strengthened conflict-of-interest policy, UTA requires completion of annual disclosures by board members. The form is used as a mechanism for trustees to annually disclose any actual or perceived, existing or potential conflicts of interest that could interfere with their duties as trustees for the coming year. In the case of the allegations we reviewed, the trustee made no disclosure in January 2008. After taking an interest in the land development near a

UTA has enhanced its conflict of interest policy for board members.

potential FrontRunner stop in September 2008, the trustee disclosed a conflict on the 2009 form. Thus, the trustee made appropriate disclosures on the annual forms.

Previous Legislative Action Set Direction for Improved UTA Policy. Senate Bill 272 from the 2010 Legislative Session (codified as *Utah Code* Annotated 17B-2a-804) outlined the standards for a transit board member's interest in property near a transit-oriented development (TOD). This bill permits UTA to enter into limited partnerships with private businesses to develop property along rail corridors on no more than five TODs. With regard to trustees, *Utah Code* 17B-2a-804 (2)(c) states, "A current board member of a public transit district to which the board member is appointed may not have any interest in the transactions engaged in by the public transit district . . ."

Legislature raised the standard for conflicts of interest regarding transit-oriented development.

Senate Bill 272 prohibited UTA trustees from owning property near these developments. The UTA general counsel told us that he has interpreted this prohibition to extend to all UTA projects. Thus, UTA has defined that prohibition in policy as applying to both transit-oriented development and transit-supportive development. However, there still remains some ambiguity as to the distinction between these developments.

The goal is that this more restrictive policy will provide additional transparency and prevent further allegations of conflicts of interest from arising. It is important to note that although we found that UTA properly managed the conflict of interest issue under the policy as it existed when the conflict occurred, the same activity today would be prohibited under the strengthened policy.

According to the UTA general counsel, UTA now does the following to ensure compliance with statute and internal policy:

- Requires trustees to sign an affidavit that they have no interest in any transit-oriented development or transit-supportive development
- Requires trustees to complete annual disclosure forms listing any potential conflicts

- Requires any developer with which UTA contracts for a transit-oriented development to represent and warrant to UTA that no UTA trustee has any interest in the development
- Prohibits, by law and policy, any trustee from using for their own benefit or otherwise disclosing any confidential, proprietary or non-public information

Additional Policy Clarification Will Enhance Transparency.

UTA should take additional steps to clarify its policy regarding trustee conflicts of interest as it relates to transit development properties. The UTA board should set the parameters for compliance with the newly adopted policy and clearly define for trustees specifically what is prohibited. As the policy is currently written, it is unclear at what point a trustee's interest would be considered a conflict. For example, if a trustee owned a property one-half mile from a TRAX station or two miles from that station, UTA has not specified under what conditions owning that property would be prohibited. In addition, definition of transit-supportive development is unclear. Eliminating these ambiguities in the policy will help to reduce the potential for future allegations of trustee conflicts of interest and increase the transparency of UTA's operations.

Other Allegations of Inappropriate Activity Were Found to Be Unsubstantiated

Allegations that one trustee had used his influence to steer the site selection of the Draper/Bluffdale FrontRunner stop proved to be unsupported. In addition we were unable to identify any information that the same Trustee improperly used non-public information.

We reviewed the January 2008 *FrontRunner Decision Document* that evaluated two sites in the Draper/Bluffdale area and the October 2009 *Environmental Re-Evaluation for the Draper/Bluffdale Station Site Location Project* that included two additional sites. We were satisfied with the explanation regarding the current plan to place a FrontRunner station at 12800 South in Draper. The criteria used to evaluate these sites included the following:

- Ridership
- Land use
- Social and economic conditions

UTA used many criteria to determine the location for the Draper/Bluffdale FrontRunner stop.

- Air quality
- Noise and vibration
- Natural resources
- Hazardous materials
- Historic resources
- Safety and security
- Visual quality and aesthetics
- Traffic and transportation systems

In addition, UTA held two public meetings to present the four station alternatives and met with the State Historic Preservation Office, the Army Corp of Engineers, and the Department of Natural Resources to discuss potential impacts from station site alternatives. More importantly, interviews with UTA staff who were responsible for guiding this process stated that they were never pressured by any member of the UTA board to propose one particular site over another.

Problems with Three of the Four Station Site Alternatives Made Selection of the 12800 Stop Reasonable. We also discussed with UTA why three of the four possible stops were not chosen. A brief description of each evaluated site is detailed below:

Other possible FrontRunner stop locations posed specific challenges.

14000 South in Draper was the preliminary choice for the station site in January 2008, but even then there were concerns that its location on the east side of the tracks required constructing a pedestrian overpass. UTA's previous experience with FrontRunner North at the Farmington stop led planners to conclude that a pedestrian overpass was undesirable.

14600 South in Bluffdale was the second alternative site that UTA evaluated, as part of the January 2008 analysis. However, in February 2008 the Bluffdale City Council voted not to rezone the site to allow UTA to build the station. The Legislature later granted UTA power to override the city council's decision, but UTA chose not to use it and moved to other possible locations.

13500 South in Draper was the third potential FrontRunner stop. UTA's analysis showed it had the best potential for ridership, but it was ruled out in August 2009 when the area was placed under a

conservation easement protecting cultural resources that were found at the site.

12800 South in Draper is currently the site selected as the FrontRunner stop for the area, according to the October 2009 UTA environmental re-evaluation. The city of Draper has been supportive of the development. However, this location is still considered a future potential site because UTA will need to mitigate environmental and cultural resource concerns before the final stop can be constructed.

Given the challenges with three of the four site alternatives, we believe the site selection for the Draper/Bluffdale stop at 12800 south was reasonable. We have no evidence that any UTA board members intruded in the decision-making process.

Possible Misdemeanor Violation Depends on *Utah Code* Interpretation

Actions taken by one UTA board member, when viewed in light of an interpretation of *Utah Code* 17B-2a-814 by the Office of Legislative Research and General Counsel (OLRGC), lead us to conclude that the trustee may have violated the misuse of official information provision of the Public Transit District Act. However, UTA's general counsel interprets the statute differently. Depending on the interpretation of the law, the trustee's actions, as we understand them, may constitute a class B misdemeanor. We believe that the Legislature should consider reviewing this statute to determine if the law, and the public policy it was intended to promote, still meets Legislative intent. We also recommend that the Audit Subcommittee consider forwarding the possible violation to the Attorney General for further investigation.

Trustee's Actions May Violate Misuse of Information Provisions

Utah Code 17B-2a-814 specifically addresses conflict of interests at transit districts. Because the statute is complex, we asked Legislative Research and General Counsel (OLRGC) for an interpretation of its requirements. OLRGC's written response, attached as Appendix A, states that the relevant section has three parts: (1) conflict of interest

**OLRGC provided
guidance on
interpretation of *Utah
Code*.**

prohibitions and exceptions, (2) misuse of official information, and (3) penalties for violations. The first two parts are discussed below.

We do not believe there is a violation of the conflict of interest part of the law. As stated at the beginning of this report, the UTA trustee had a conflict of interest by seeking to develop land adjacent to a proposed FrontRunner stop. Despite this conflict, the trustee's actions do not violate the conflict of interest provisions of *Utah Code*, because he satisfied the exception clause by disclosing the conflict to the UTA Board of Trustees. Therefore, based on OLRGC's interpretation and our understanding of the facts, no violation of the statute occurred regarding part 1 of their interpretation.

Conversely, we believe there may be a violation of the misuse of official information part of the law. According to OLRGC's interpretation, the exception clause does not apply to this part of the law, so disclosure does not matter. OLRGC separates part 2 of that section of the statute into two different situations. Under situation 2, there is not a concern. However under situation 1, *Utah Code* 17B-2a-814 subsection (5) states:

A trustee . . . of a public transit district, in contemplation of official action by the trustee, officer, or employee or by the district . . . commits misuse of official information if the trustee:

- (a) Acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the information or official action.

OLRGC believes the most likely interpretation is that a trustee is prohibited from acquiring an interest in any property when UTA is contemplating an action that may affect that property. Throughout 2008 and 2009, UTA was in the process of deciding where to place a FrontRunner station that would affect the use and value of the surrounding property. Thus, under this analysis the trustee was prohibited from acquiring a pecuniary interest in the property.

UTA's general counsel interprets the statute differently and believes that a violation of Subsection (5) of the statute requires the use of non-public information. Throughout 2008 and 2009, it was public information that UTA was in the process of selecting a site for a

OLRGC believes that *Utah Code* prohibits Trustees from acquiring property that could be potentially affected by UTA actions.

UTA's general counsel interprets the statute differently than OLRGC attorneys.

FrontRunner station in the Draper/Bluffdale area and we have no evidence that non-public information influenced the trustee's decision to acquire a property interest. Thus, under this analysis, the trustee was not prohibited from acquiring a pecuniary interest in the property, so long as non-public information was not used and the conflict was disclosed. UTA's general counsel has advised board members based on this understanding of the statute.

Misuse of Information Provision Was Created to Avoid Appearance of Impropriety

The misuse of information restriction was added to the Public District Act in 1997 soon after the release of a legislative audit report addressing UTA land purchases. One part of the 1996 audit discussed an instance where UTA's general manager and attorney privately purchased land next to property UTA had recently purchased. This land had previously been considered for purchase by UTA. The report found nothing illegal, but expressed concern about the appearance of impropriety. It stated:

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.

The audit report recommended that the UTA board discourage future transactions of this nature to avoid the appearance of wrongdoing by UTA officials.

Since the misuse of information provision was added to statute immediately after the 1996 audit, it is our opinion that the Legislature may indeed have intended a broad prohibition on UTA officials to prevent any appearance of impropriety. However, a review of the statute would be helpful, especially considering the growth of UTA into fixed rail systems. We recommend that the Legislature consider re-examining this statute to determine if the construction of the law effectively prohibits today, the actions that the Legislature intended it to guard against.

Legislative concerns over land purchases made by UTA prompted an audit of UTA in 1996.

Legislature could review statute to ensure it meets legislative intent.

Legislature Should Consider Additional Action

In conclusion, based on the strength of evidence available to us, we do not believe that additional audit work into the conflict of interest allegation is needed at this time. However, as a matter of practice, the Office of the Legislative Auditor General has a responsibility to report any apparent violation of penal statute to the Legislative Management Committee. Because the interpretation of *Utah Code* 17B-2a-814 by OLRGC leads us to conclude that a criminal violation may have occurred, the Audit Subcommittee may wish to forward this information to the State Attorney General for further investigation. In addition, the Legislature should consider reviewing *Utah Code* 17B-2a-814 and determine if the construction of the statute meets legislative intent.

Finally, if directed by the Audit Subcommittee, we could complete additional work to review the allegation concerning a UTA trustee's real estate development near Big Cottonwood Canyon in Salt Lake County. However, we do not believe it is directly related to UTA.

Recommendations

1. We recommend that the UTA Board of Trustees define the parameters of what is prohibited in the new conflicts of interest policy as it relates to transit-related development.
2. We recommend the Legislature consider reviewing the Public Transit District Act to ensure that the statute still meets legislative intent.
3. We recommend the Audit Subcommittee consider whether to refer the possible misdemeanor violation to the Attorney General.
4. We recommend the Audit Subcommittee consider whether to authorize additional audit work into the allegation concerning a UTA trustee's real estate development near Big Cottonwood Canyon in Salt Lake County.

Appendix A

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October 25, 2010

Mr. John Schaff
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Dear John,

Introduction

This letter responds to your request that we provide you with an interpretation of the requirements of Utah Code Section 17B-2a-814. That code section establishes requirements governing conflicts of interest and misuse of official information for trustees, officers, and employees of public transit districts.

Section 17B-2a-814 contains three parts. The first part, found in Subsections (1) through (4), establishes conflict of interest prohibitions and exceptions to those prohibitions. The second part, found in subsection (5), establishes the situations under which a public transit district trustee, officer, or employee commits misuse of official information. Finally, the third part of the section, found in Subsection (6), provides penalties for violation of the section.

Part 1. Conflict of interest prohibitions and exceptions (Subsections (1)-(4)).

Following Subsection (1), which simply defines the term "relative"¹, Subsection (2) establishes the general conflict of interest rule for public transit district trustees, officers, and employees. It states:

(2) Except as provided in this section, a trustee, officer, or employee of a public transit district may not be interested in any manner, directly or indirectly, in a contract or in the profits derived from a contract:

- (a) awarded by the board of trustees; or*
- (b) made by an officer or employee pursuant to discretionary authority vested in the officer or employee.*

This subsection prohibits a transit district trustee, officer, or employee from having any direct or indirect interest in a contract awarded by the board of trustees or made by an officer or employee of the district who is acting within the scope of that officer's or employee's authority. That direct prohibition is softened by the opening clause -- "except as otherwise provided in this section," -- which signals that other subsections may allow a trustee, officer, or employee to have an interest in a transit district contract under certain circumstances.

¹"(1) As used in this section, "relative" means a parent, spouse, child, grandparent, grandchild, great grandparent, great grandchild, or sibling of a trustee, officer, or employee."

Subsection (3) creates the first exception to the general prohibition of conflicts of interest -- it addresses the situation where the transit district is contracting with a corporation and a public transit district trustee, officer, or employee is a stockholder, bondholder, director, or other officer or employee of that corporation. Under that circumstance, the transit district may contract with the corporation unless the transit district trustee, officer, or employee controls, directly or indirectly, more than 5% of the corporation's outstanding stock or bonds.

Subsection (4) creates the second exception to the conflict of interest prohibition established in Subsection (2). It addresses the situation where the public transit district trustee, officer, or employee has, or their relative has, "a substantial interest in a contract with, sale to, purchase from, or service to the district." In that situation the transit district trustee, officer, or employee must:

- (1) disclose that interest to the board of trustees in a public meeting of the board; and
- (2) refrain from voting upon or otherwise participating as a trustee, officer, or employee in the contract, sale, purchase, or service.

Also, the public transit district board must disclose the interest of the trustee, officer, or employee in the minutes of the meeting where the interest was disclosed.

Part 2. Misuse of Official Information (Subsection (5)).

Subsection (5) establishes two situations under which a public transit district trustee, officer, or employee commits misuse of official information.

Situation 1:

A transit district trustee, officer, or employee commits misuse of official information if the transit district trustee, officer, or employee:

- (1) in contemplation of official action by the trustee, officer, or employee, or by the district,
- (2) does one or more of the following:
 - (a) acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the official action;
 - (b) speculates or wagers on the basis of the official action; or
 - (c) aids, advises, or encourages another to do so with intent to confer upon any person a special pecuniary benefit.

Situation 2:

A public transit district trustee, officer, or employee commits misuse of official information if the public transit district trustee, officer, or employee:

- (1) in reliance on information:
 - (a) which has not been made public; and
 - (b) to which the trustee, officer, or employee has access in an official capacity;
- (2) does one or more of the following:
 - (a) acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the information;
 - (b) speculates or wagers on the basis of the information; or
 - (c) aids, advises, or encourages another to do so with intent to confer upon any person a special pecuniary benefit.

Part 3. Penalties (Subsection (6)).

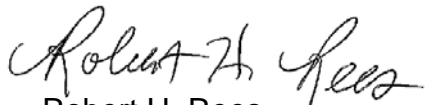
Subsection (6) provides two penalties for violation of either the conflict of interest provisions or the misuse of official information provisions. First, a public transit district trustee, officer, or employee who violates either provision is guilty of a crime -- a class B misdemeanor. Second, if a public transit district trustee is convicted, the trustee's appointment to the public transit district's board of trustees must be terminated. If a public transit district officer or employee is convicted, the officer or employee must be terminated from district employment.

Conclusion

In interpreting the plain language of the statute, we have applied traditional rules of statutory construction and principles of grammar and punctuation. We hope that this information assists you in completing your review. As your legal counsel, we are happy to answer any additional questions that you may have and to assist you further.

Sincerely,

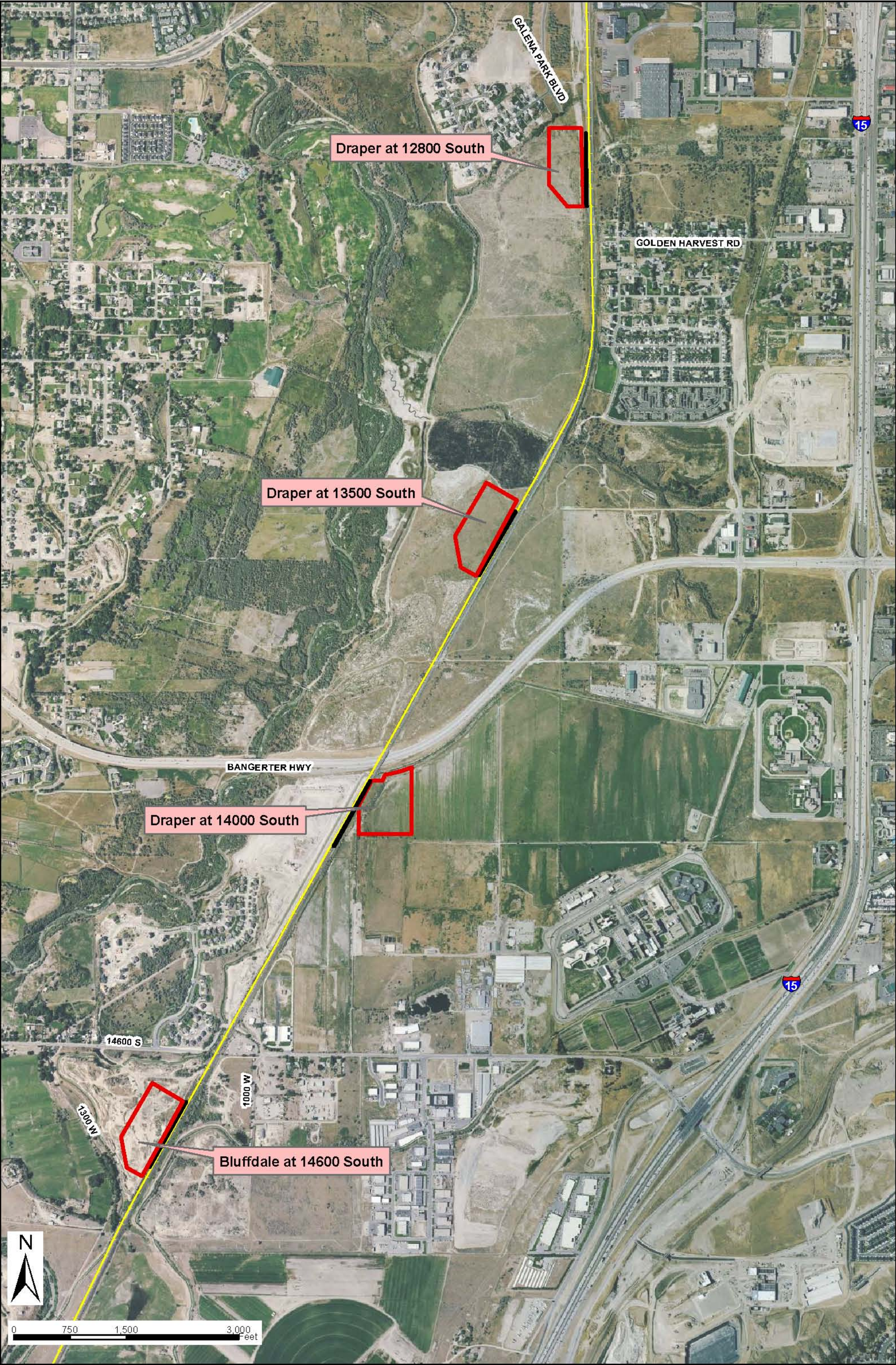

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Appendix B

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Draper-Bluffdale Station Alternative Sites

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Agency Response

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December 3, 2010

3600 South 700 West

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John M. Schaff, CIA
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Dear Mr. Schaff:

On behalf of the Utah Transit Authority ("UTA"), thank you for the opportunity to respond to the Limited Review of Conflict of Interest Allegations at the Utah Transit Authority Board, dated December 2010 (the "Limited Review"). Unfortunately, because I am not a board member, my role is limited to forwarding the information provided in the Limited Review to our board, rather than taking the recommended actions as a board member.¹ Having said that, I appreciate the extensive effort your team has dedicated over the last few months to the Limited Review. It is extremely helpful as an officer of UTA, to know that the efforts of the board are "on the right track," which the findings contained in the Limited Review demonstrate to me.

INTRODUCTION

During a recent meeting, the Audit Subcommittee authorized a limited review as to matters involving conflict of interest allegations on the part of board members. UTA welcomed the opportunity to address the allegations and hereby offers the following comments which are ordered in the same order in which the items appear in the Limited Review.

BOARD CONFLICT EXISTED, BUT ENHANCED POLICY SHOULD REDUCE FUTURE PROBLEMS

The Legislative Auditor determined that the UTA Board observed and complied with its Conflict of Interest Policy. All board members are encouraged by policy and by counsel to disclose potential conflicts of interest. Indeed, board members are encouraged to err on the side of disclosure, even if there is no actual conflict of interest. According to board policy, a potential conflict of interest is disclosed in writing. The disclosing board member must refrain from voting on the conflicting matter. As the Limited Review found, UTA board members observe the requirements of the Conflict of Interest policy and acted in accordance with Utah law and UTA policy.

The UTA Board of Trustees agrees with additional policy clarification recommendation.

The Limited Review recommends additional UTA policy clarifications regarding trustee conflicts of interest relating to transit development properties. The Limited Review highlighted, two instances wherein the UTA Board of Trustees took action to strengthen its Conflict of Interest policy. First, in October 2008, the Board acted to require that potential conflicts be disclosed in writing; and second, in July 2010, the Board acted to require Board members to certify annually that he or she does not have an interest in the transactions engaged in by UTA, including transit oriented development. The Limited Review recommends that the Board take additional steps to define the parameters for compliance with its new policy and clearly define the conduct specifically prohibited. The prior Board Conflict of Interest policy, required all board members to disclose potential conflicts of interest and provided for a process of curing any conflicts of interest with disclosure and recusal from voting. The Conflict of Interest policy was revised in early 2010 leaving intact the disclosure requirements of any potential conflicts but also added a requirement that a trustee sign an annual affidavit that they have no interest in any transit-oriented development or transit-supportive development.

¹ UTA management requested that the Limited Review be forwarded to members of UTA's Board of Trustees for response since UTA the UTA Board of Trustees create, modify and enforce Board policies. Moreover, as of the date of this letter, no member of the UTA Board of Trustees has had the opportunity to review the Limited Review.

The UTA Board has already begun work to define the parameters recommended in the Limited Review and hopes to adopt a revised policy within the coming months.

OTHER ALLEGATIONS OF INAPPROPRIATE ACTIVITY WERE FOUND TO BE UNSUBSTANTIATED

UTA followed its policies and procedures in selecting the Draper station. UTA's process for selecting a station involves the following steps: (1) identification of possible station alternatives; (2) analysis of criteria of each station alternative, including: optimization of ridership, proximity to major thoroughfares, availability of other transportation systems, availability of property for a station, local support for the location of the station at the proposed site, optimization of travel time through appropriate station spacing and environmental and other impacts (3) presentation of the station options to the public to gather additional input on the station alternatives; and (4) station selection decision. The Limited Review highlighted UTA's compliance with this process and detailed the analysis for the decision to locate the Draper station at 12800 South. The Limited Review determined that the selection of the 12800 Station as reasonable. The Limited Review further specified that interviews with UTA staff responsible for guiding the process, revealed that they had never been pressured by any member of the UTA board to select one particular site over another.

POSSIBLE MISDEMEANOR VIOLATION DEPENDS ON UTAH CODE INTERPRETATION

The relevant provisions of the Utah Code are vague and are subject to multiple interpretations, making compliance difficult. The Limited Review concluded that a trustee "may have violated the misuse of official information provision" [Subsection (5)] depending on the interpretation of the Public Transit District Act, however, the relevant provisions are vague at best, due to the multiple possible constructions of the statute and complicated by the fact that the term "official information" is not defined in any section of the Utah Code. The Limited Review identifies the various possible statutory construction and interpretations of Subsection (5).

No one (including the OLRGC) seems to know exactly how to interpret Utah Code § 17B-2a-814(5). The Limited Review purports to rely on an "interpretation" of the OLRGC that is not contained in the OLRGC's letter attached as Appendix A (the "OLRGC Opinion") to the Limited Review. The Limited Review states: "the OLRGC believes that the most likely [emphasis added] interpretation is that a trustee is prohibited from acquiring an interest in any property when UTA is contemplating an action that may affect that property." Upon review of the Opinion of OLRGC, the OLRGC provides no such interpretation of Subsection (5). The OLRGC Opinion contains a mere recitation of the two subsections of the statutory language contained in Subsection (5), not a legal interpretation.

The legislative history cited in the Limited Review supports the UTA General Counsel's interpretation. The section of the 1996 audit cited by the Limited Review provides in part: "[s]uch a transaction can give the appearance that [UTA executives] had inside information . . . that the general public did not have." As the Limited Review indicates, the UTA General Counsel constructs Subsection (5) as a violation when a trustee to engages in any of the activities identified in Subsection (a)-(c) (including acquiring a pecuniary interest in real property), in one of two ways: (1) in contemplation of official action, which has not been made public; or (2) in reliance on information to which the trustee has access in an official capacity that has not been made public. The clause "and which has not been made public" refers to both the contemplated future official action and the information to which the trustee has access in an official capacity.

Legislative history suggests that the Legislature did not intend to draft a higher fiduciary duty than any other governmental servant (state or local) in Utah. The interpretation of Subsection (5) contained in the Limited Review would be inconsistent with other legislative history that is contained in the record. At the time the Legislature adopted the Public Transit District Act, the applicability of the Utah Public Officer & Employee Ethics Act (the "Ethics Act"), which establishes similar conflicts of interest provisions for all public officers and employees of the state was not clear due to the unique characteristics associated with

UTA's organizational structure.² As such, the Utah Legislature included ethical obligations in the Public Transit District Act that are similar to those that appear under the Ethics Act. *See id.* The Ethics Act provides the following in the legislative purpose:

The purpose of this chapter is to set forth standards of conduct for officers and employees of the state of Utah and its political subdivision in areas where there are actual and potential conflicts of interest between their public duties and their private interests. . . . It does not intend to deny any public officer or employee the opportunities available to all other citizens of the state to acquire private economic or other interests so long as this does not interfere with his full and faithful discharge of his public duties.”

Utah Code Ann. §67-16-2. Construction of Subsection (5) in a manner that provides for a violation of the subsection by a trustee that without reference to non-public information would deprive a trustee the same opportunities available to all other citizens of the state of Utah is inconsistent with the stated legislative purpose of the Ethics Act. Moreover, the “Request for Legislation” form completed to direct the drafting of H.B. 82, states in the drafting instructions: “Tighten Public Officer & Employees Ethics Act. . . .” [emphasis added]. As such, construction of Subsection (5) in the manner suggested in the Limited Review would be inconsistent with the Legislative intent of a similar act that was used to form the basis of the ethical obligations provisions contained in the Public Transit District Act.

UTA supports Legislative action to clarify the standard by which board member conduct should be governed. The Limited Review recommends that the Legislature review Section 814 to determine the appropriate construction of the statute. In 2007, the Public Transit District Act was recodified, making it clear that UTA's board members are governed by the Ethics Act. As noted above herein, at the time Section 814 was adopted, the applicability of the Ethics Act to the UTA Board of Trustees wasn't clear. Rather than hold UTA board members to a higher and different standard than every other governmental servant (state or local) in Utah, UTA recommends that the Legislature strike Section 814 from the Public Transit District Act and simply allow the Ethics Act to govern the UTA board members' conduct.

CONCLUSION

On behalf of UTA, I appreciate the opportunity to respond to the Limited Review. I hope that UTA's comments and recommendations prove helpful.

Respectfully



Michael A. Allegra
General Manager

² Indeed, the “Request for Legislation” which triggered the drafting of H.B. 82 and included in the Legislative History states as part of the drafting instructions, “Tighten Public Officers & Employees Ethics Act” [emphasis added].