

## Transportation Authority

### Summary

The ordinance authorizing the San Francisco County Transportation Authority (SFCTA) in 1989 stated that: "the Authority shall be created and shall be composed of the eleven members of the San Francisco Board of Supervisors (Board) as specified in the Transportation Expenditure Plan." Although it can be assumed that it was the will of the voters to create a body administered by the legislative governing body of the City and County of San Francisco, it may not be the most desirable model of governance in actual implementation. The Transportation Expenditure Plan (the Plan) was authorized by the Board itself. Thus, the Board created an organization to collect and expend what is now approximately \$47,000,000 in sales tax receipts per year, and established the Board members themselves as the implementing body of that organization. While there is no evidence of impropriety, this model concerns the 1995-1996 Civil Grand Jury.

### Legality

#### Background

The California State Legislature amended the Revenue and Taxation Code to permit counties to assess a 0.5% sales tax to be used for transportation projects. The San Francisco Board of Supervisors wrote and adopted the Plan in July 1989. It was incorporated into a ballot measure, Proposition B, written by the Board and placed on the November 1989 ballot by a vote of 9 Supervisors. The proposition received an affirmative vote of 65.6% of the citizens who voted -- less than two-thirds.

The Plan authorized the following:

- Collection of a one-half percent sales tax for a period of 20 years.

- Formation of the SFCTA with a spending limit of \$160 million per year.

- Issuance of up to \$742 million in bonds exempted from the general obligation bond ceiling of the City and County of San Francisco.

- Allocation of the funds (estimated at approximately \$45,000,000 per year) would be 60% to transit, 30% to street and traffic safety, 8% to paratransit, and 2% to transportation system management.

The San Francisco Board of Supervisors members would serve as the commissioners of the SFCTA.

The SFCTA is governed by a separate administrative code from that of the City, and operates as a special purpose government. The borrowing capacity of the SFCTA is distinct from that of the City. Such detail is inevitably lost in the actual campaign for approval of such a proposition, thus it can be assumed that this model of governance was not adequately debated in the public forum for the education of the voters.

Additionally, the expenditure of funds for specific tasks is usually an executive function in the City, and it concerns us that the Board has chosen to assume such responsibilities as a legislative function.

Twenty out of the 58 California counties have taken advantage of this source of revenue. The San Francisco measure passed by less than the two-thirds supermajority required for the passage of new taxes under Proposition 13. The Civil Grand Jury was concerned about the legality of the initiation of the SFCTA. Inquiries were made to the City Attorney and to the California Attorney General (see Appendix A).

The City Attorney concluded that Proposition B was not subject to a two-thirds vote requirement. The Supreme Court's interpretation of the applicable law has evolved since Proposition B was approved. A similar measure today would likely require a supermajority approval; however, a court would be unlikely to impose this requirement retroactively. Additionally, the City Attorney concluded that the applicable statute of limitations for a challenge to Proposition B is six months and a challenge to its validity would not be acceptable. To further summarize these legal opinions, it appears to the City Attorney that, "provisions of Proposition 62, which require special taxes be approved by a two-thirds vote, do not apply to chartered entities such as San Francisco."

The Attorney General notes that, "by its express terms, Proposition 62 declared its application to chartered cities or counties. However, the ballot materials analyzing the measure declared that it would not apply to charter cities because it did not change the constitutional provisions which authorize charter cities to impose municipal taxes by majority vote of their governing bodies." (See Appendix A.)

#### Finding

There appears to be no movement to repeal or to find illegal this .5% sales tax. However, it may be difficult to gain the now needed two-thirds vote to extend it beyond its 20-year life (ending in 2009).

#### Recommendations

1. No automatic extension should be granted to the SFCTA. This issue should be put to the voters in a general election ballot measure and should attain a two-thirds affirmative vote of the citizens in order to be extended beyond 2009.
2. The SFCTA should not issue any bonds whatsoever. Its bonded indebtedness is now limited to a maturity of 14 years (the time remaining for the life of the SFCTA). Some projects now being considered as long-range projects, such as the Four Corners Plan, might extend well beyond 2009.

#### Management Performance Audits

##### Background

In June 1995, a resolution was introduced to the Board calling for periodic performance audits of all City departments by the Budget Analyst to insure prudent and efficient use of City resources. The Board approved a plan to require systematic audits of all City departments on an 8-year interval. The SFCTA was not originally included in the list of City departments covered. In September 1995, a motion was introduced (see Board file 165-95-6) requesting the Budget Analyst to include the SFCTA in the scheduling of management audits required by the Board. This motion was tabled on September 9, 1995, and has remained dormant ever since.

##### Findings

The SFCTA was established as an entity under state law. The Board of Supervisors also serves as the members of the SFCTA. Their authority as members of each of these two bodies is separate and distinct. The SFCTA is not subject to the policies set by the Supervisors, even though the selfsame eleven people are members of each entity.

In January 1995, the Finance Committee of the SFCTA received a memorandum from their Executive Director suggesting a periodic performance audit. The key components would be reviewing the goals and objectives of the SFCTA; determining if they are consistent with the provisions and intent of the Expenditure Plan; and assessing whether the staff was adhering to those policies and procedures by carrying out their assigned functions in an efficient and cost-effective manner. The Civil Grand Jury believes that our recent investigation of the SFCTA has caused them to consider this policy.

#### Recommendation

3. The SFCTA should be subject to the same type of performance reviews by the Budget Analyst as is required of other City departments. Such reviews should be no less frequent than every five years due to the limited (14 years) remaining tenure of the SFCTA. There should not be a cap placed on the amount to be spent on such audits. The complexity and completeness of the audit should not be compromised.

#### Citizen Participation

##### Background

The model of governance in San Francisco has always included citizen participation. This can be traced back to the Citizen's Vigilante Committee formed in 1851. The 1931 City Charter was established after a time of corruption in San Francisco and was written to prevent the centralization of power. It created clear lines of authority and specific functions. A significant component was the establishment of citizen commissions with clear and direct oversight of administrative functions. Administrative departments have such a commission made up of citizens with certain expertise applicable to the oversight of that individual department. Members are usually appointed by the Mayor, sometimes with participation of the Board. This oversight role of direct citizen participation is critical to effective operation of our government. We are concerned that the Supervisors in 1989 chose to ignore this tradition and establish themselves as the governing body of an entity essentially similar to a department, but with no citizen oversight. There is an eleven-member Citizens Advisory committee appointed by the SFCTA, but it has no actual authority.

##### Finding

All things considered, we fall back on the old political adage that "the appearance of impropriety is often more troublesome than any actual impropriety." Although we do not suggest that actual impropriety exists in the administration of the SFCTA, we find that the appearance, due to its composition and organization, is significant.

#### Recommendation

4. A citizens commission, appointed by the Mayor, with the full authority and power of such a commission, should be established as soon as possible. The City Attorney should be asked for an opinion as to the simplest and most direct way of accomplishing this in conjunction with the current changes in the City Charter.

#### Paratransit Program

## Background

The Proposition B plan included in its funding allocation a provision that 8% of receipts be devoted to paratransit. These funds, as well as additional money from the City's General Fund, go to the Cerenio Management Group, which is the paratransit broker for the City. These funds (\$10,600,000 in the current year) are used to provide five types of transportation services to citizens who are over the age of sixty and to the disabled of any age. Included is service to seniors who use senior center vans. In addition, the broker contracts with both profit and non-profit transportation companies to provide 69 lift vans, 25 group vans without lifts, 609 taxicabs, and 8 ramped taxicabs on a daily basis.

## Findings

The Cerenio Management Group disbursement is as follows:

taxi scrip \$4,600,000 lift and ramp vans \$ 1,560,000  
group vans 2,300,000 intercity services 100,000  
Commission on the Aging 575,000 administration 1,450,000

After January 1997, when the Americans with Disabilities Act (ADA) goes into effect, the cost of taxi scrip will be ten cents on the dollar. There will be no means test, and anyone can apply regardless of age. The only requirement for service is the inability to use public transportation for a variety of reasons. Ms. Cerenio thinks that the Paratransit Group will be able to finance the possible increases in requests when ADA goes into effect. Last year she was able to return \$800,000 in unused funds to the SFCTA.

## Recommendation

5. SFCTA, as mandated by Proposition B, should continue to fund the Paratransit Program at the present 8% rate. The ADA requirements will put a strain on the present budget. Therefore, constant vigilance should be maintained to prevent abuse. We recommend that the periodic audit of the SFCTA specifically include the expenditure of funds allocated to the paratransit program.

## Outside Vendor Bidding Process

### Background and Finding

Currently all outside vendor contracts are negotiated through a Request for Proposal (RFP). It appears that a proper bidding process is being followed. The continuance of this process should be verified by the periodic audits.

### Paid Lobbyist

### Finding

The SFCTA has hired a legislative lobbyist in Sacramento from Capital Representation, Inc., who is paid \$50,000 per year. The Mayor's office has a state lobbyist who is paid \$100,000 per year to serve the City.

### Recommendation

6. The SFCTA should investigate utilizing the Mayor's California lobbyist, who is already in Sacramento, thus saving \$50,000 a year that could be used for other projects.

Ethics -- Conflict of Interest

Background

The SFCTA contracts with L. Andrew Jean Pierre, CPA, to perform its annual audit/fiscal review. Mr. Jean Pierre has also served as President of the San Francisco Airport Commission.

Finding

This was an apparent conflict of interest. Mayor Brown states that no Board members or Commissioners may do business with the City. On or about March 30, 1996, Mr. Jean Pierre resigned from the Airport Commission.

Recommendation

7. All vendors and consultants to the SFCTA must adhere to ethical principles and avoid any conflict of interest, including the perception of conflict of interest.

Travel and Seminar Expenses

Findings

Travel and seminar expenditures are ordinary, necessary and reasonable in relation to any profession. The following travel/seminar expenses were incurred by the SFCTA management and Commissioners and paid by the SFCTA.

FYE 6/30/93 \$23,870.99

FYE 6/30/94 24,168.32

FYE 6/30/95 32,076.31

An analysis of the travel/seminar expenses discloses that for FYE 6/30/93, 13% was incurred by SFCTA Commissioners; for FYE 6/30/94, 38% was incurred by the Commissioners; and in FYE 6/30/95, 51% was incurred by the Commissioners. The locations of the seminar/conferences were in cities such as San Diego, Chicago, Washington, D.C., New Orleans, New York, and San Antonio. It is interesting to note that, while expense records for earlier years detail the destination cities, in FYE 6/30/95, 90% of the destination cities were listed only as "legislative conference sites".

Recommendation

8. What is considered ordinary, necessary and reasonable travel expenses needs to be defined. Expenses incurred by SFCTA directors do not appear to be unusual or excessive. It is recommended that closer scrutiny and oversight be implemented to control the area of growth in the total travel budget of SFCTA Commissioners -- from 13% to 51% in three years.

Salaries and Budget

Background

The SFCTA has an Executive Director, three other directors, one analyst, one planner, and two clerks. In FY 1995-1996, salaries for the eight totaled \$496,539. All employees have the option of selecting medical, dental, disability and life insurance benefits under a cafeteria plan in accordance with Section 125 of the Internal Revenue Code. They are also eligible to participate in a voluntary deferred compensation plan with no matching funds from SFCTA. Total fringe benefits for the eight employees totaled \$166,000 in FY 1995-1996. That is approximately 33% for fringe benefits in addition to salaries.

#### Finding

Some SFCTA employee compensation is high in comparison to pay for similar positions in other City departments. The approximate 33% fringe benefit costs appear excessive when compared with other City departments which average 22%.

#### Recommendation

9. Extreme care should be exercised by the SFCTA to keep their policies and costs in line with compensation policies and fringe benefits of the miscellaneous city employees whose positions are funded through the General Fund. SFCTA costs should be kept in line and, if possible, disparities corrected.

#### Funding Sources

#### Background

Revenues for 1995-1996 consist of a \$39,000,000 carryover from the previous year; \$47,000,000 from sales tax collection (the 0.5%); and \$4,000,000 from interest on the carryover. Additionally, the agency receives \$750,000 from AB434, Transportation Funds for Clean Air (Clean Air Act), and \$454,000 from the Congestion Management Agency (CMA).

In October 1995, the SFCTA adopted a resolution which established it as the central clearinghouse for the development of transportation programming decisions and funding strategies for San Francisco.

#### Finding

The SFCTA now collects the \$4.00 surcharge fee on motor vehicles registered within its jurisdiction under provisions of AB434. SFCTA also receives funds from the CMA. Additionally, they are seeking funds from every available regional, state, and federal transportation funding source.

#### Recommendation

10. Proposition B established the SFCTA as a 20-year entity, and there is concern regarding the sunseting of this entity. The SFCTA has accepted additional responsibilities and funding sources. While these complement the original role envisioned, the added funds from other sources do not have a similar time frame. It is recommended that the SFCTA clearly regulate itself consistent with its legislated 20-year life span and not take on projects and responsibilities which give it the appearance of growing toward self-induced immortality.

#### Responses Required

#### Mayor

Board of Supervisors

City Attorney

Commissioners, San Francisco County Transportation Authority

Executive Director, San Francisco County Transportation Authority

APPENDIX A

Note: Appendix A consists of the following items, which can be obtained by contacting the San Francisco Civil Grand Jury.

LETTER FROM PAUL A. O'LEARY, FOREPERSON, 1995- 1996 CIVIL GRAND JURY, TO LOUISE RENNE, CITY ATTORNEY, FEBRUARY 8, 1996

LETTER FROM LOUISE RENNE, CITY ATTORNEY, TO PAUL A. O'LEARY, FOREPERSON, 1995-1996 CIVIL GRAND JURY, FEBRUARY 23, 1996

LETTER FROM PAUL A. O'LEARY, FOREPERSON, 1995- 1996 CIVIL GRAND JURY, TO DANIEL E. LUNGREN, ATTORNEY GENERAL, STATE OF CALIFORNIA, FEBRUARY 28, 1996

LETTER FROM MARSHA A. BEDWELL, DEPUTY ATTORNEY GENERAL, STATE OF CALIFORNIA, TO PAUL A. O'LEARY, FOREPERSON