

March 24, 2019

Board of Directors of the Truckee Tahoe Airport District
c/o Lauren C. Tapia, H.R. Manager and District Clerk
10356 Truckee Airport Road
Truckee, CA 96161
sent via email

Re: March 27, 2019 meeting of the Truckee Tahoe Airport District (TTAD) Board, Action Item 15 (tab 13), Campaign Contribution Disclosures

Dear Board Directors:

I am writing to propose an ethical rule that will help ensure public trust in this Board's decisions. A copy of the proposed rule is attached in two forms. One form shows the wording changes made to the state statute on which the proposed rule is modeled. The second form of the rule is a clean version of the proposed rule. Below, I summarize the purpose, nature, source, validity, and benefit of the rule. Finally, I contrast the rule with proposed PI 119 and describe a simple means of obtaining advice from the California Fair Political Practices Commission in evaluating this and related proposals.

Purpose of the Rule. The rule is directed at the conflict of interest that arises when a Director of this Board, or a candidate for a position on the Board, receives a campaign contribution from someone who has a financial stake in a decision that will be, or has recently been, made by this Board. The object of this rule is to re-assure members of your district that you make decisions based on the public interest and not on the electoral interests of Board Directors and or candidates for Board positions. The rule is preventative. Just as a vaccine serves to prevent a particular disease, this rule protects the Directors against a particular kind of conflict.

What the rule would do. The rule would require incumbents running for re-election, as well as new candidates for this Board, to make a choice when they receive a campaign contribution from someone who has a financial stake in a pending Board decision. The candidate would either have to return that portion of the contribution greater than \$250 or refrain from any involvement in the Board's decision. If the contribution is made within three months *after* the Board decision, the candidate would need to return the amount exceeding \$250.

Source of the Rule. The proposed rule is modeled on California Government Code section 84308, with four wording changes. The only substantive change is the substitution of TTAD for the definition of agencies subject to section 84308. The other three changes are essentially clerical or clarifying. For example, section 84308 describes the meaning of a "financial interest" by reference to another statute. The proposed rule deletes this reference and, instead, incorporates the wording from the relevant statute. Next, section 84308 includes "land use" approvals as an example of a decision governed by the section. The proposed rule instead refers to "leases" as an example of a contract subject to the rule. Finally, the rule explicitly applies to contributions from parties, as well as participants, in a Board proceeding.

Reason for Basing Rule on Section 84308. This proposal is modeled on section 84308 because the statute's language was reviewed for its validity, clarity and effect in the process of becoming state law. In addition, section 84308 has withstood the test of time, having been

adopted by the California Legislature in 1982. Finally, because the FPPC enforces section 84308, it can provide the District guidance on how the rule should be interpreted and applied.

Validity of the Rule. No concern about the constitutional validity of the proposed rule is warranted. The rule is directed at a specific type of campaign abuse generally known as "pay to play" or "*quid pro quo*" corruption. First Amendment attacks have been judicially resolved in favor of the constitutionality of laws aimed at this type of abuse. For example, in 2015, in the case of *Wagner v. FEC* (793 F3d 1), the United States Court of Appeals for the District of Columbia Circuit rejected a First Amendment attack on a federal law that bars "individuals and firms from making federal campaign contributions while they negotiate or perform federal contracts." Sixteen states have comparable laws limiting campaign contributions at the state level and in California, the FPPC has identified more than 170 local jurisdictions that have enacted their own campaign ethics laws.

PI 119 Only Requires Disclosure. This proposed rule is variation on proposed Policy Instruction 119, which only requires local disclosure of a campaign contribution conflict. While Policy Instruction 119 moves the District in the right direction, greater disclosure does not eliminate the conflict of interest. In contrast, the proposed rule not only requires disclosure, but also prevents the conflict from arising. It does so by requiring the recipient of the contribution to choose between keeping the money and voting on the contributor's project.

The risk of conflict is apparent from the types of business that come before the Board. According to the District's 2019 budget, the District will expend more than \$21 million this year, \$7.7 million of which is capital expenditures. The District leases about 14 hangars and 21 warehouses, and has 17 to 18 other business leases. There is a waiting list for people wanting to enter leases with the District. All of the business proposals requiring Board approval present potential conflicts when it comes to campaign contributions. It is better to eliminate these potential conflicts before they arise. Stated another way, an ounce of prevention is worth a pound of cure.

The FPPC Can Provide Guidance. To the extent the Board wants further guidance on the rule, the FPPC's External Affairs and Education Division offers training and outreach services on conflicts of interest laws through in-person workshops. For example, the FPPC can explain how a proposed TTAD ethics rule comports with state ethics laws. The District can easily arrange for an onsite workshop, with the only potential cost being reimbursement for FPPC travel expenses from Sacramento. A one-page request form is attached and the FPPC can also be contacted by email (<mailto:seminars@fppc.ca.gov>) or telephone (916-322-5660). More information is available at <http://www.fppc.ca.gov/learn/training-and-outreach.html>.

Thank you for giving this proposal your consideration.

Sincerely,

/s/ Jan Zabriskie

Jan Zabriskie
10295 Snowshoe Circle
Truckee, CA 96161

Draft Campaign Contribution Cap for officers of the Truckee Tahoe Airport District
Derived from California Government Code sections 84308 and 87103 [revised 3/27/2019]
Submitted for TTAD Board meeting, March 27, 2019, Item 15, RE PI 119

~~84308.~~(a) The definitions set forth in this ~~subdivision section~~ shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding before the TTAD involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding before TTAD involving a license, permit, or other entitlement for use and who has a financial interest in the decision, ~~as described in Article 1 (commencing with Section 87100) of Chapter 7.~~ A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of ~~the agency TTAD~~, testifies in person before ~~the agency TTAD~~, or otherwise acts to influence officers of ~~the agency TTAD~~.

(3) "~~Agency TTAD~~" means ~~an agency as defined in Section 82003 except that it does not include the courts or any agency in the judicial branch of government, local governmental agencies whose members are directly elected by the voters, the Legislature, the Board of Equalization, or constitutional officers. However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency~~ the Truckee Tahoe Airport District.

(4) "Officer" means any elected or appointed officer of ~~an agency TTAD~~, any alternate to an elected or appointed officer of ~~an agency TTAD~~, and any candidate for elective office in ~~an agency TTAD~~.

(5) "License, permit, or other entitlement for use" means all business, professional, and trade and land use licenses and permits and all other entitlements for use, including all ~~entitlements for land use, all leases and other~~ contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer ~~an agency~~ shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before ~~the agency TTAD~~ and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant or party has a financial interest, ~~as that term is used in Article 1 (commencing with Section 87100) of Chapter 7~~ in the outcome of the proceeding. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself for herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before ~~an agency TTAD~~, each officer ~~the agency~~ who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer ~~an agency~~ shall make,

participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before ~~the agency~~TTAD if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant ~~or party~~ has a financial interest in the decision, ~~as that term is described with respect to public officials in Article 1 (commencing with Section 87100) of Chapter 7.~~

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before ~~an agency~~TTAD involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer ~~of the agency~~. No party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before ~~any agency~~TTAD and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer ~~of that agency~~ during the proceeding and for three months following the date a final decision is rendered by ~~the agency~~TTAD in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before ~~an agency~~TTAD, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

~~(f) [derived from Government Code section 87103] A public official~~person who is a party or participant has a financial interest in a decision ~~within the meaning of Section 87100~~ if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the ~~official~~person, a member of his or her immediate family, or on any of the following:

~~(a1)~~ Any business entity in which the ~~public official~~person has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

~~(b2)~~ Any real property in which the ~~person~~public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

~~(c3)~~ Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the ~~person~~public official within 12 months prior to the time when the decision is made.

~~(d4)~~ Any business entity in which the ~~person~~public official is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a ~~person~~public official, by an agent on behalf of a ~~person~~public official, or by a business entity or trust in which the ~~official~~person, the ~~official~~person's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.

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(a) The definitions set forth in this section shall govern the interpretation of this section.

(1) "Party" means any person who files an application for, or is the subject of, a proceeding before the TTAD involving a license, permit, or other entitlement for use.

(2) "Participant" means any person who is not a party but who actively supports or opposes a particular decision in a proceeding before TTAD involving a license, permit, or other entitlement for use and who has a financial interest in the decision. A person actively supports or opposes a particular decision in a proceeding if he or she lobbies in person the officers or employees of TTAD, testifies in person before TTAD, or otherwise acts to influence officers of TTAD.

(3) "TTAD" means the Truckee Tahoe Airport District.

(4) "Officer" means any elected or appointed officer of TTAD, any alternate to an elected or appointed officer of TTAD, and any candidate for elective office in TTAD.

(5) "License, permit, or other entitlement for use" means all business, professional, and trade licenses and permits and all other entitlements for use, including all leases and other contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

(6) "Contribution" includes contributions to candidates and committees in federal, state, or local elections.

(b) No officer shall accept, solicit, or direct a contribution of more than two hundred fifty dollars (\$250) from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before TTAD and for three months following the date a final decision is rendered in the proceeding if the officer knows or has reason to know that the participant or party has a financial interest in the outcome of the proceeding. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself for herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before TTAD, each officer who received a contribution within the preceding 12 months in an amount of more than two hundred fifty dollars (\$250) from a party or from any participant shall disclose that fact on the record of the proceeding. No officer shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before TTAD if the officer has willfully or knowingly received a contribution in an amount of more than two hundred fifty dollars (\$250) within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent if the officer knows or has reason to know that the participant or party has a financial interest in the decision.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about

the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

(d) A party to a proceeding before TTAD involving a license, permit, or other entitlement for use shall disclose on the record of the proceeding any contribution in an amount of more than two hundred fifty dollars (\$250) made within the preceding 12 months by the party, or his or her agent, to any officer, party, or his or her agent, to a proceeding involving a license, permit, or other entitlement for use pending before TTAD and no participant, or his or her agent, in the proceeding shall make a contribution of more than two hundred fifty dollars (\$250) to any officer during the proceeding and for three months following the date a final decision is rendered by TTAD in the proceeding. When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before TTAD, the majority shareholder is subject to the disclosure and prohibition requirements specified in subdivisions (b), (c), and this subdivision.

(e) Nothing in this section shall be construed to imply that any contribution subject to being reported under this title shall not be so reported.

(f) [derived from Government Code section 87103] A person who is a party or participant has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the person, a member of his or her immediate family, or on any of the following:

(a1) Any business entity in which the person has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(2) Any real property in which the person has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(3) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the person within 12 months prior to the time when the decision is made.

(4) Any business entity in which the person is a director, officer, partner, trustee, employee, or holds any position of management.

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a person, by an agent on behalf of a person, or by a business entity or trust in which the person, the person's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.



Workshop Request

External Affairs & Education Division

866-275-3772 seminars@fppc.ca.gov

Please complete the form below, save it in PDF format, and e-mail it to: seminars@fppc.ca.gov. Note that we attempt to accommodate all requests, however, completion of this form does not guarantee that we will be able to schedule the workshop requested. Please contact us at the e-mail address above if you have further questions. Thank you for your interest in FPPC Training!

Contact Information:

Name: _____ Agency: _____

Address: _____

Phone: _____ Cell Phone: _____ E-Mail: _____

If contact person at workshop is different than noted above, please provide:

On-Site Contact: _____ Contact Cell: _____

Topic:

- SEI filing officers
- SEI filers
- Campaign filing officers
- Candidate/treasurer (election date: ____/____/____)
- Other _____

Workshop Date/Time:

- 1st choice (date) _____
- 2nd choice (date) _____
- 10 a.m. – noon
- 1 - 3 p.m.
- 7 - 9 p.m.
- other _____

Workshop Location:

Venue: _____

Address: _____

Location/Room: _____ How many does the room hold: _____

of expected attendees?* _____

**Fewer than 25 attendees could result in cancellation of a scheduled workshop.*

Workshop Equipment:

- Can you provide: Laptop Yes No
 Microphone Yes No
 Projector Yes No *(must be provided if FPPC staff travel by air to location)*

Can you receive an e-mailed PowerPoint presentation and make presentation copies for attendees?
 Yes No

Will technical staff be available at workshop to ensure that equipment is working properly?
 Yes No

Travel:

Can agency pay for travel and related expenses to bring FPPC staff to workshop? Yes No