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**Memorandum**

**To:** Kevin Smith  
**From:** Brent P. Collinson  
**Date:** March 20, 2019  
**Re:** Community Sponsorships and Agency Partnerships

**QUESTIONS PRESENTED**

Propriety of Community Sponsorships and Agency Partnerships in Light of the Prohibition Against Gifts of Public Funds

Propriety of Having Truckee Tahoe Community Foundation Process District Funds

**ANALYSIS**

Kevin—you have asked for a legal opinion on the two related matters, described above.

The law is clear that a public agency cannot make a gift of public funds (California Constitution, Article XVI section 6). However, this prohibition does not preclude expenditures or disbursements for public purposes, even if a private citizen or organization is benefitted. The courts will defer to the sound discretion of the legislative body unless that decision is “totally arbitrary” The courts try to avoid analyzing the economic or wisdom of a board’s decision, only analyzing the legal propriety.

In determining whether an expenditure is a prohibited gift, two questions are considered:

- Are the funds being used for a public or private purpose; and
- If for a public purpose, is it a purpose of the agency making the expenditure.

Accordingly, just by making an expenditure to another public agency does not satisfy the requirement; the expenditure must serve the purpose of the agency making the expenditure. It was for that reason, that I have counseled against some of the requests of the district for financial support as there was no clear benefit to the District or any indication that the expenditure would serve the purpose of the District.

As mentioned in prior memos, the Airport District Act provides an Airport District “may exercise the powers expressly granted or necessarily implied” in the enabling act (Public Utilities Code section 22004) The act again provides that a District “may exercise the



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powers expressly granted or necessarily implied” in its enabling act. (Public Utilities Code section 22554). These powers were recognized and approved in a case against the Santa Maria Public Airport District (*Lucas v. Santa Maria Public Airport District* (1995) 39 Cal.App.4th 1017).

The District has adopted a comprehensive policy regarding the use of its funds for community sponsorships and agency partnerships (PI 311). Included in the considerations is a determination of the benefit to the District. As you know, the District receives tax dollars from its constituents, regardless of whether they are aviators or even utilize any of the aviation services of the airport. There are also perceived adverse impacts on many of the citizens from perceived noise and annoyance of aircraft. In order to maintain and gain public support or at least neutrality towards the airport, it is necessary for the District to gain the support of its constituents by showing other benefits of the airport that they can enjoy.

Therefore, one of the requirements of any community sponsorship or agency partnership is that the recipient provide public recognition of the District. This is merely one form of outreach and publicity in lieu of or in addition to newspaper or radio advertising. Additionally, with agency partnerships, there must be a connection to and benefit flowing to the District. This has been in the form of assisting in the acquisition of a snow cat for Tahoe Nordic Search and Rescue as they are required to provide both transport to District employees so we can access our remote communication sites as well as assist in the search and rescue of downed planes and their passengers. Other past expenditures have been used to assist in promoting and educating regarding careers in aviation, connecting to our trails plan and the like.

In each of those cases, the Board determined that the expenditure not only helped promote the District, but also furthered the projects of the District. It is best for the Board to include in their determination approving an expenditure the benefit flowing to the District.

Interestingly, the most recent issue of *California Special Districts* (Volume 14, Issue 1) discussed the benefits of partnering with community-based organizations. Additional benefits noted in that article include:

- Expand education and outreach capacities so more residents are aware and informed;
- Balance the voices of the most involved advocates with perspectives representing a larger subset of the community;
- Reduce misperceptions, mistrust and contention;
- Identify broader community-based resources and recommendations;
- Develop communication channels that keep people informed over time; and



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- Enhance the cultural competency of engagement plans, and increase the ability of special districts to ensure their content is both relevant and accessible to community stakeholders.”

Inquiry has also been made regarding the propriety of transferring funds to the one or more outside community based philanthropic organizations to make the determination and disbursement of our sponsorship and/or partnership funds on behalf of the District.

Two related concerns exist regarding this proposal.

First, the District would lose its ability to confirm that any such payment to a recipient complies with our Policy Instruction and that the payment is for a public purpose of the Airport District.

Additionally, it is the Board that needs to make these decisions. Although the Board may delegate some of its authority, this delegation could be challenged in court as an improper delegation to an outside entity.

This does not mean that the District could not contract with outside community based philanthropic organizations to vet the various applications and make recommendations to the Board, but the final decision on the more significant Agency Partnerships should be made by the Board.

**CONCLUSION**

With the above in mind, the District is not making a gift of public funds as long as the expenditure furthers the public purpose of the District (including favorable outreach and publicity and assisting in carrying out the District’s goals and projects). The Board should identify the benefit to the District in approving an expenditure.

However, delegating the decision making authority to an outside community based philanthropic organization could be challenged as an improper delegation of the Board’s and District’s authority.

As always, let me know of any questions or comments.

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