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July 30, 2010

Roelof Van Ark, Chief Executive Officer
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

Re: Potential Incompatibility of Offices

Dear Mr. Van Ark:

We have learned that one or more members of the High Speed Rail Authority may be holding more than one public position. While we do not yet know whether the positions held by any member are, in fact, incompatible, we are writing to call to your attention the general law governing incompatibility of offices and the Attorney General's role in enforcing that law. We ask that you share this letter with all members of the board.

The doctrine of incompatible offices concerns the potential clash of loyalties that arises when one person holds two public offices. (*People ex rel. Chapman v. Rapsey*, 16 Cal. 2d 636 (1940).) In essence, the doctrine holds that when one person holds two different public offices, and there is any possibility of a significant clash of duties or loyalties between them, then the person is deemed automatically to have vacated the first office when he or she accepts the second office.

In 2005, the Legislature codified the doctrine, by adopting Government Code section 1099. Members who may be affected should consult that statute. The incompatible offices doctrine involves a number of variables, and application of the statute often requires an office-by-office comparison of responsibilities and jurisdictions. A careful comparison is critical because the consequence of a finding of incompatibility—automatic forfeiture of the first office—is high. Potentially affected members might want to seek advice of counsel.

The Attorney General's Office has expertise in these matters: It analyzes and issues relevant opinions every year, it keeps an up-to-date summary of offices that have been found incompatible, and it publishes a handbook on conflicts of interest. We would be happy to make any of these resources available to you and to any members of the board who would like more information on the subject.

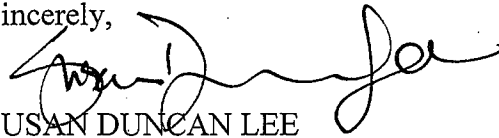
The Attorney General's Office also plays a crucial role in enforcing section 1099. The law purports to be self-executing, providing that "a public officer shall be deemed to have forfeited the first office upon acceding to the second." But when a public officer fails to voluntarily vacate his or her first office, section 1099 is enforceable through a little-known legal procedure known as the quo warranto process. ("*Quo warranto*" is Latin for "by what authority.") This process allows for the removal of a disqualified government official from office. Although a quo warranto petition is ultimately decided by a trial court, no petition may be filed without the authorization of the Attorney General, and all such proceedings are pursued under the supervision of the Attorney General's Office. This unusual procedure ensures that public officials are not subjected to frivolous proceedings to remove them from office.

Ordinarily, quo warranto proceedings are initiated and prosecuted by individual citizens or by interested local agencies; this office is not generally in the business of seeking out potentially conflicted officeholders and removing them from their offices. Still, the Attorney General has authority to bring a quo warranto action on his own initiative. At this point, we have not received a properly supported request from anyone for leave to file quo warranto proceedings against any HSRA member.

We urge your potentially affected members to review the relevant law for themselves, in light of any public offices they may hold in addition to their HSRA memberships, and to take appropriate steps to clear up any lingering issues. They are, of course, free to seek their own legal advice, and, as mentioned, this office has a variety of published resources available for consultation. In addition, should the Authority choose to seek our advice about any particular member's status in respect to the incompatible-offices laws, we would certainly consider such a request.

Thank you for your attention to these important matters of public concern.

Sincerely,



SUSAN DUNCAN LEE
Supervising Deputy Attorney General
Opinions Unit

cc: DAG George Spanos
Quentin Kopp