

Issue of Incompatible Offices (Conflict of Interest)

Background:

In a letter dated April 23rd, 2010, Legislative Counsel Diane Boyer-Vine (state legislature’s lawyer) issued an opinion to Secretary of the Senate Gregory Schmidt, implying that there are two current members of the board of the California High Speed Rail Authority (CHSRA) that are holding incompatible offices. The six page letter states that in her legal opinion, “an individual who is Mayor of the City of Anaheim or a voting member of the Los Angeles County Metropolitan Transportation Authority may not simultaneously serve as a member of the High-Speed Rail Authority under the common law doctrine of incompatibility of public offices that is now codified in Section 1099 of the Government Code.”

CHSRA Chair Curt Pringle is also the Mayor of Anaheim and an Orange County Transportation Authority (“OCTA”) board member. CHSRA board member Richard Katz is also a board member of the Los Angeles County Metropolitan Transportation Authority (“LA Metro”) and a board member of Metrolink.

Section 1099 of the Government Code states: “When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second.”

Frequently Asked Questions:

What does this opinion mean?

This opinion, issued by the State Legislature’s lawyers, concludes that two of the current California High Speed Rail Authority (“CHSRA”) board members are holding Incompatible Offices. CHSRA board member Curt Pringle is also the Mayor of Anaheim and an Orange County Transportation Authority (“OCTA”) board member. CHSRA board member Richard Katz is also a board member of the Los Angeles County Metropolitan Transportation Authority (“LA Metro”) and a board member of Metrolink.

What is the Doctrine of Incompatible Offices?

The Doctrine of Incompatible Offices forbids someone from holding two public offices that have even a potential conflict in the duties, unless there is a specific exemption in the law. The Doctrine has been a part of English common law for hundreds of years and began appearing in California judicial opinions over 70 years ago. This was made an explicit part of California law in 2005 ([SB 274](#))

What is the point?

No one can serve two masters. Someone’s loyalty to one office may mean a compromise of their responsibilities to another. More importantly, the public’s confidence in the integrity of the process may be compromised.

In this case, there are both potential and actual conflicts. The opinion gives some specific examples such as the CHSRA “might prefer the City of Anaheim to partially or fully fund the station to be used by high-

speed trains in Anaheim, while the City of Anaheim might view the high-speed rail project as a potential source of funding for the station” and that LA Metro might prefer that the CHSRA pay for certain upgrades of their right of way and the CHSRA might prefer that LA Metro pay for these.

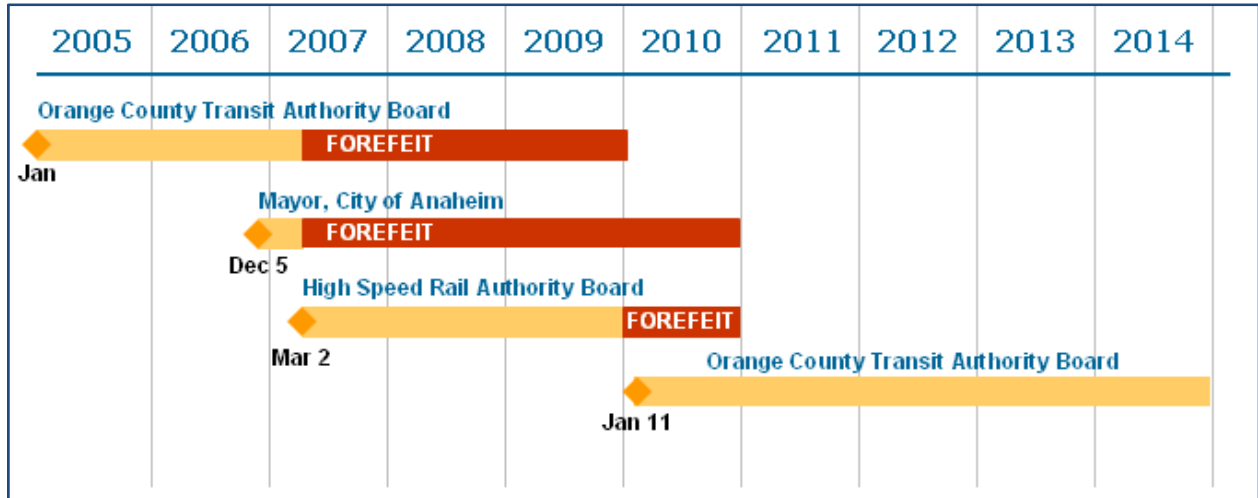
The CHSRA will likely choose one corridor as the recipient of the \$1.85 billion in Federal stimulus construction funds it has been awarded. The Los Angeles-Anaheim segment is in contention for the money. The public could be concerned that CHSRA board member who also holds office in a particular segment might favor that segment over others.

What are the consequences for holding incompatible offices?

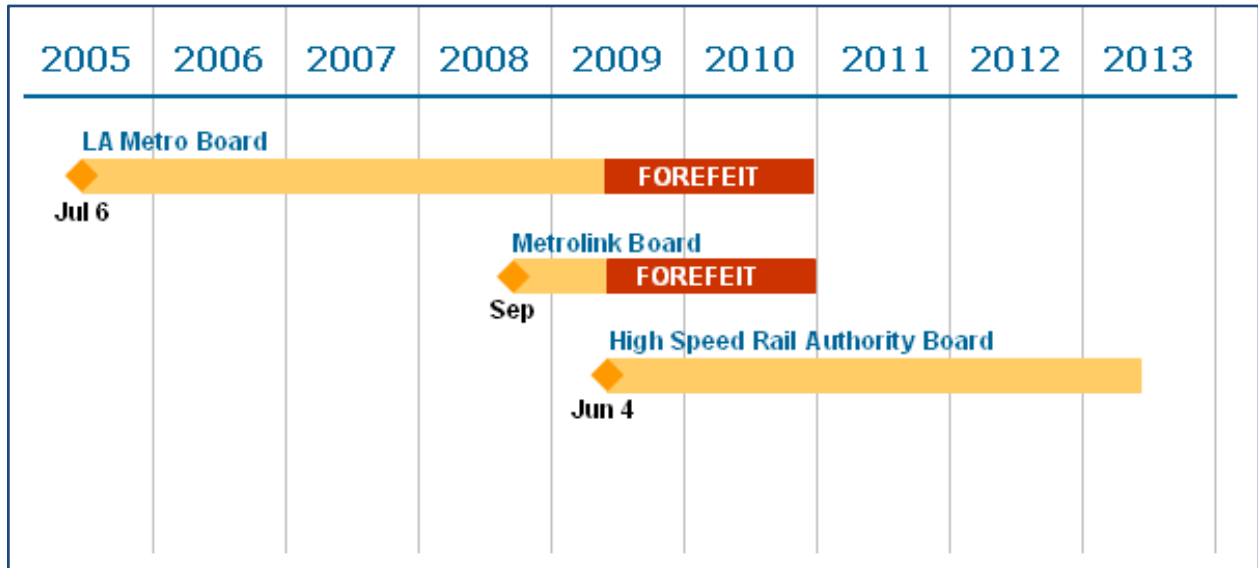
For some types of conflict of interest, an individual can just recuse himself from certain items. In the case of incompatible offices, this is not sufficient. The law is crystal clear on this point. Upon actually taking the second office (e.g. the date of the oath), the individual is deemed to have resigned their first office.

The following graphics show the offices held by Mr. Pringle and Mr. Katz and the forfeiture of the positions as a result of their incompatibility.

Curt Pringle



Richard Katz



What if someone won't leave office?

There have been certain cases (mostly involving water districts) where individuals have clung to both offices. Under the law, if the Attorney General's office knows of such a situation, they have an obligation to go to court to try and force the person from office. An individual can also pursue this type of action which is called "quo warranto".

Are there exceptions for exceptional individuals?

The Doctrine is not personal. As one court explained, "Public policy demands that an office holder discharge his duties with undivided loyalty. The doctrine of incompatibility is intended to assure performance of that quality. Its applicability does not turn upon the integrity of the person concerned or his individual capacity to achieve impartiality, for inquiring of that kind would be too subtle to be rewarding. The doctrine applies inexorably, if the offices come within it, no matter how worthy the officer's purpose or extraordinary his talent..."¹.

But doesn't the project benefit from the involvement of regional stakeholders?

The project not only benefits from the involvement of regional stakeholders; its success depends on it. CARRD has been a strong advocate of a collaborative stakeholder process called Context Sensitive Solutions ("CSS").

¹ 3 McQuillin, Municipal Corporations (3rd ed.), § 12.67, pp. 294-295.

Unfortunately, despite a commitment from the CHSRA to implement CSS, it has not been successful. In order to succeed, serious structural changes in the 4-tiered layer of consultants currently planning the project must occur.

Trying to fix these deficiencies by appointing a regional transportation official to the CHSRA board does not solve any of the fundamental problems with the project and creates other problems, such as a concern that all regions are not being treated fairly.

Appointing transportation officials from all the regions sets up additional conflicts, given the CHSRA's unusual mandate to get a specific project built. For example, Caltrain is working closely with the CHSRA under a joint venture called the Peninsula Rail Program. As local public opinion has soured on the project, Caltrain officials are being accused of not representing the local communities' interests.

Public officials can only serve one master.

Timeline

1940 - Attorney General Earl Warren brings a successful case that charges Rudolf Ramsey with violation of the Doctrine of Incompatible Offices by being both a city judge and the city attorney for San Bruno (People v. Ramsey)

September 22, 2005 - The Doctrine of Incompatible Offices is codified in Code section 1099 when Governor Arnold Schwarzenegger signs into law SB 274. According to bill sponsor State Senator Gloria Romero, "Voters deserve the undivided loyalties of their representatives at any level of government. When you sit on two boards simultaneously, there is a clash of loyalties and a conflict of interest. It makes it impossible to fully perform your duties. With this common-sense bill, we will increase officeholder and candidate awareness..."

February 14, 2007 - Governor Arnold Schwarzenegger announces appointment of Curt Pringle to the CHSRA board. Pringle is already Mayor of Anaheim and an OCTA board member.

February 23, 2007 - AB 1228 was introduced. The bill would change the terminus of the proposed high speed rail system from Los Angeles to Anaheim and is co-sponsored by the City of Anaheim and OCTA who contend that the incremental cost would be \$1.2 billion.

May 23, 2007 - The CHSRA by a 5-2 vote approves a phasing plan that would exclude San Diego and Sacramento from Phase 1, but include Anaheim. Curt Pringle supports the measure.

Phasing plan memo:

http://www.cahighspeedrail.ca.gov/images/chsr/20080121165954_052307_plan.pdf

Minutes from that meeting:

http://www.cahighspeedrail.ca.gov/images/chsr/20080121164421_052307_min.pdf

May 26, 2009 - A Parsons Brinkerhoff/HOK team is chosen as the engineers/architects for Anaheim's ARTIC Station, a long planned multi-modal transportation hub. The \$180 million project will include platforms for Metrolink/Amtrak trains, a bus concourse, 66,000 total square feet of public space and other improvements.

<http://www.anaheim.net/administration/PIO/news.asp?id=1156>

May 28, 2009 - Governor Schwarzenegger appoints Richard Katz to the CHSRA board. Katz is already serving on the LA Metro and Metrolink boards.

<http://gov.ca.gov/press-release/12392/>

December 14, 2009 - New business plan released. Estimated cost for the Los Angeles – Anaheim section exceeds \$5 billion.

April 23, 2010 - The Legislative Counsel issues an opinion that Mayor of Anaheim and Board Member of LA Metro are incompatible offices for CHSRA board members to hold.

May 5, 2010 - An agreement with OCTA and the City of Anaheim to share costs for the Phase 1 ARTIC Station is on the CHSRA agenda. Even though the Phase 1 ARTIC station will not include any tracks or platforms for potential High Speed Rail service, Parsons Brinkerhoff has determined that the size must be increased by 29,000 feet to allow for future High Speed Rail ticketing space and that the costs of the iconic station have risen to \$380 million from the original cost estimates of \$180 million in May 2009. It is proposed that CHSRA's share be \$200 million, the amount of the cost escalation.

http://www.cahighspeedrail.ca.gov/images/chsr/20100423163753_Agenda%20-%20Operations%20Cmte%2005%2005%2010%20-%20FINAL.pdf

June 25, 2010 - A Los Angeles Time article reports that State Senator Alan Lowenthal, chair of the Senate Transportation Committee, believes that it is a conflict of interest for Pringle and Katz to be holding local office and be on the CHSRA board, especially with regard to the ARTIC station issues. Katz's response was that the issue has been overblown.

<http://articles.latimes.com/2010/jun/25/local/la-me-highspeed-rail-20100625>

July 30, 2010 - The Attorney General's office sends a letter to the CHSRA CEO explaining the issue about Incompatible Offices.

August 4, 2010 - CHSRA board member Quentin Kopp proposes several amendments to the board policies and procedures related to board members who hold incompatible offices.

September 1, 2010 - Quentin Kopp's amendments are brought before the Executive/Administrative Committee of the CHSRA. The other members of the committee, Pringle and Fran Florez (who was

previously simultaneously a Shafter City Council member and a CHSRA board member), refuse to second a motion to support the amendments.

http://www.cahighspeedrail.ca.gov/images/chsr/20100827064257_Agenda%20Item%205%20-%20Proposed%20Amendment%20No%202.pdf

http://www.cahighspeedrail.ca.gov/images/chsr/20100827064322_Agenda%20Item%205%20-%20Proposed%20Amendment%20No%203.pdf

September 2, 2010 - The amendments, which would require any board member holding incompatible offices to recuse themselves from certain discussions and allow any board member to initiate the process that would result in the removal from office of anyone holding incompatible offices, are debated by the entire board. Board members Lynn Schenk and David Crane express concern about potential conflicts of interest and agree to work with Quentin Kopp on an alternative version of the amendments. Quentin Kopp explains the reason for his amendments is to minimize legal exposure the CHSRA might face if board members who hold incompatible offices participate in certain votes.

You can watch the meeting http://stateofcalifornia.granicus.com/MediaPlayer.php?clip_id=61, discussion starts about 1:31.40

September 13, 2010 - At a Mountain View City Council study session, city council members are told by a CHSRA consultant that the Rail Authority will pay for the basic station, the city would have to pay for features such as fountains. http://www.mv-voice.com/story.php?story_id=6335

September 14, 2010 - San Jose City Council member Sam Liccardo expresses concerns about a lack of funding for the downtown San Jose alignment, considering the prospects of getting state money for the San Jose-San Francisco segment to be low “when we know the mayor of Anaheim is the chair of the High Speed Rail Authority Board.”

You can watch http://sanjose.granicus.com/MediaPlayer.php?view_id=2&clip_id=4524 Council member Liccardo’s comments are at approximately 3:27

About Us:

Californians Advocating Responsible Rail Design (CARRD) is a grassroots, volunteer group that has been following the California High Speed Rail project. We value transparency, accountability and oversight and believe local communities should be partners in designing transportation projects. We encourage civic engagement on this project, provide in-depth and relevant information to the public, and demand an open process that allows for

California Government Code Section 1099

(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law:

(1) Either of the offices may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over the other office or body.

(2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.

(3) Public policy considerations make it improper for one person to hold both offices.

(b) When two public offices are incompatible, a public officer shall be deemed to have forfeited the first office upon acceding to the second. This provision is enforceable pursuant to Section 803 of the Code of Civil Procedure.

(c) This section does not apply to a position of employment, including a civil service position.

(d) This section shall not apply to a governmental body that has only advisory powers.

(e) For purposes of paragraph (1) of subdivision (a), a member of a multimember body holds an office that may audit, overrule, remove members of, dismiss employees of, or exercise supervisory powers over another office when the body has any of these powers over the other office or over a multimember body that includes that other office.

(f) This section codifies the common law rule prohibiting an individual from holding incompatible public offices.

California Code of Civil Procedure Section 803 (Enforcement of GC 1099)

An action may be brought by the attorney-general, in the name of the people of this state, upon his own information, or upon a complaint of a private party, against any person who usurps, intrudes into, or unlawfully holds or exercises any public office, civil or military, or any franchise, or against any corporation, either de jure or de facto, which usurps, intrudes into, or unlawfully holds or exercises any franchise, within this state. **And the attorney-general must bring the action, whenever he has reason to believe that any such office or franchise has been usurped, intruded into, or unlawfully held or exercised by any person,** or when he is directed to do so by the governor. (emphasis added)