

Date: March 10, 2011

Item No. 2
File No. 10027

SUNSHINE ORDINANCE TASK FORCE

Education, Outreach and Training Committee

AGENDA PACKET CONTENTS LIST*

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Completed by: Chris Rustom

Date: March 7, 2011

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

August 6, 2010

DATE THE DECISION ISSUED

July 27, 2010

BARRY TARANTO V MUNICIPAL TRANSPORTATION AGENCY BOARD (CASE NO. 10027)

FACTS OF THE CASE

Complainant Barry Taranto ("Complainant") alleges that the Municipal Transportation Agency Board of Directors ("MTA") violated the Ralph M. Brown Act and the Sunshine Ordinance at its June 1, 2010, meeting. Specifically, the Complainant alleges that Director Malcolm Heinicke asked Deputy Director Chris Hayashi to approach the podium to answer questions regarding the timeline for the taxi hearing notification, a topic Complainant alleges was not on the meeting agenda, and that this discussion lasted for more than five minutes.

COMPLAINT FILED

On June 1, 2010, Complainant filed a complaint against the MTA for the alleged violation of public meetings laws, and, in particular, the Ralph M. Brown Act and the Sunshine Ordinance.

HEARING ON THE COMPLAINT

On July 27, 2010, the Complainant presented his claim before the Task Force. The Respondent Agency was represented by MTA Board Secretary Roberta Boomer.

The Complainant told the Task Force that during the June 1, 2010, MTA Board meeting, members of the public had commented on the importance of abiding by the 72-hour notice posting rule because a recent meeting on taxi medallions had to be canceled because the deadline was not met. The Complainant said Mr. Heinicke questioned Ms. Hayashi, who oversees the taxi administration, on the issue at the end of the Public Comment portion of the meeting. After Ms. Hayashi had responded to his question, Mr. Heinicke asked her about other aspects of the medallion issue, the Complainant said. That violated the Brown Act because the verbal exchange was extensive and the item was not on the agenda, the Complainant said.

Ms. Boomer said Mr. Heinicke was addressing an issue that had been raised during the Public Comment session and that his line of questioning was directed at making sure that the public was getting its concerns resolved expeditiously. Ms. Boomer said the issue was not discussed by any other board member and that Ms. Hayashi's responses were lengthy compared to Mr. Heinicke's short and brief questions.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented, the Task Force finds that the agency violated the Ordinance.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the MTA Board violated Section 67.7(d) of the Sunshine Ordinance. The Board shall send a representative knowledgeable in this matter to appear before the Education, Outreach and Training Committee on August 12, 2010.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 27, 2010, by the following vote: (Johnson / Williams)

Ayes: Snyder, Cauthen, Washburn, Chan, Johnson, Williams, Knee



Richard A. Knee, Chair
Sunshine Ordinance Task Force

c: Jana Clark, Deputy City Attorney
Barry Taranto, Complainant
Roberta Boomer, Respondent



"Boomer, Roberta"
<Roberta.Boomer@sfmta.com>

02/10/2011 01:40 PM

To "SOTF" <sotf@sfgov.org>

cc

bcc

Subject FW:

Chris:

Pursuant to your request, attached is the powerpoint presentation that the City Attorney provided to the SFMTA Board of Directors on September 21, 2010. Please see page 27 for reference. If there are additional concerns, a tape of the meeting is available should anyone wish to hear it.

Thanks,

Roberta

-----Original Message-----

From: null@sfmta.com [mailto:null@sfmta.com]

Sent: Thursday, February 10, 2011 10:22 AM

To: Boomer, Roberta

Subject:

This E-mail was sent from "RNPF5250" (Aficio MP C4000).

Scan Date: 02.10.2011 13:21:49 (-0500)

Queries to: null@sfmta.com



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MTA Board Training

City Attorney's Office

September 21, 2010

Three Basic Rules

- Policy bodies operate in public meetings
- Public notice of meetings required
- Public comment accepted at meetings

What is a Meeting?

- A meeting occurs whenever a majority of the members of a policy body come together at the same time or place

Meetings may be:

- Formal or informal
- Planned or unplanned; but an unplanned meeting is an illegal meeting

Examples of Meetings

- Retreat or Workshop
- Site tour
- Meal gathering before, during, or after a formal meeting.

Examples of Non-meetings

- Attendance of majority at
 - Regional/state/national conference
 - Local meeting open to the public, including press conference/ribbon cutting
 - Social, recreational, ceremonial event not sponsored by or for the body

PROVIDED no discussion of MTA business

Unlawful Meetings

- Pre- or Post-meetings
- Seriatim meetings:

Director A calls Director B, Director C and
Director D

Director A calls Director B, Director B speaks to
Director C, Director C emails Director D

- Simultaneous meetings: Director A, B, C, and D
have a joint phone conversation

Seriatim Meetings Can Occur Via:

- Technology
 - Phone
 - Fax
 - E-mail
 - Text messaging
- Human intermediaries

THE MTA BOARD
CANNOT DISCUSS OR ACT
ON ITEMS NOT ON THE
AGENDA.

Very Limited Exceptions

- Public health/safety emergency
- Immediate need to avoid serious injury to public interest
- Item on previous agenda, and continued to next meeting no more than 5 days later

Other Exceptions

- Commendations
- Announcements
- Request to agendaize future items
- Direction to staff
- Limited follow-up to general public comment by:
 - Asking a question for clarification
 - Providing a reference to staff or other resources for factual information
 - Asking staff to report back at a subsequent meeting

Two Types of Public Comment

1. Specific Public Comment

- Any agenda item – discussion or action
- Timing
 - before conclusion of consideration of item (discussion item)
 - before action taken (action item)

2. General Public Comment

- May schedule for any time in meeting
- May limit to matters not on the agenda

MTAB Powers/Duties

30

Rights of the Speaker

- Equal time
- Anonymity
- Freedom to criticize policy body, its members, and its staff

Limits on Public Comment

- “Up to” three minutes on an item
- No right to speak off-topic
- No right to disrupt
- No right to a response from MTA Board or staff members
- No right to discriminate against or harass city employees

Closed Sessions

- Personnel matters
- Pending or anticipated litigation
 - Instruct labor negotiator
 - Instruct real estate negotiator

Closed Session Requirements

- Public comment before motion to go into closed session
 - Whether to go into closed session
 - Subject matter of closed session
- Stay on topic
- Limit attendance

Requirements After Closed Session

- Notice of certain final actions
- Vote in public whether to disclose any discussions

Confidential Information

- If Board votes not to disclose its discussions, Board members violate state law by disclosing confidential information from closed session

Attorney Client Privilege

- Unauthorized disclosure of confidential advice from the City Attorney, whether or not given in closed session, is unlawful.

Brown Act Enforcement

- Willful violation: A crime
- Unauthorized disclosure of closed session discussion can result in removal from office
- Voiding of action taken in violation of Act
- Lawsuit seeking injunction or declaratory relief to stop or prevent violations of Act
- Prevailing plaintiff may get attorneys' fees and costs

Sunshine Ordinance

- Willful failure to follow the Ordinance is “official misconduct”
- Can lead to:
 - Removal from office
 - Finding of violation after hearing before Sunshine Ordinance Task Force
 - Referral to Ethics Commission

Competitive Process for Public Contracts

- With limited exceptions, a competitive process is required by federal, state and/or local law
- Depending on procurement, there may be flexibility in designing a selection process, but once a process is established, the MTA must follow it

Kinds of Competitive Process

- Invitation for Bids (IFB)
- Request for Proposals (RFP)
- Negotiated Procurement
- “Piggyback” on competitive process from another public agency

Key Steps in Competitive Process

- Solicitation/advertisement
- Submission of proposals/bids
- Evaluation of proposals
- Negotiation of final contract and scope of work
- Award of contract or rejection of all bids/proposals

SFMTA Blackout Policy

- Blackout policy:
MTA policy prohibits communications, other than during a public meeting, between bidders or proposers and MTA Board members and staff, other than staff designated as the contact person, after a competitive solicitation is issued and before MTA Board approval of a contract

Approving Contracts

- Civil Service Commission
- MTA's Office of Contract Compliance
- Controller certification of funds
- City Attorney approves as to form
- Board of Supervisors where value or time exceeds certain limits

MTAB Powers/Duties

44

What is MTAB Looking For?

- Fair competitive process with appropriate selection criteria
- Scope of work
- Good deal for taxpayers
- Risk management elements
- No illegal motivations
- Social policy considerations (DBE, etc.)

Fair Process / Selection Criteria

- Any evidence of favoritism or discrimination?
- Were the selection criteria appropriate for the goods or services covered by the contract?

Scope of Work

- Is this a product or service that the MTA needs and that is consistent with MTA goals and Strategic Plan?
- Is the scope of work clear about tasks, deliverables and deadlines?

Good Deal for Taxpayers?

- Benefit of the Bargain:
 - Is the price appropriate for the goods or services?
 - Does the contract generate adequate revenue?
 - Does the payment structure ensure that the MTA will get the benefit of the bargain?

Risks to Manage

- Is the MTA well protected against:
 - Contractor's delays
 - Contractor's failure to perform
 - Third party injuries caused by Contractor's activities
 - Contractor's financial failure
 - Poor quality products

Risk Management Tools

- **Payment Schedule**
- **Bonds /Insurance**
- **Indemnification**
- **Acceptance Criteria & Testing**
- **Warranty**
- **Liquidated damages**
- **Termination-cause or convenience**

Illegal Motivations

- Discrimination
- Conflict of Interest

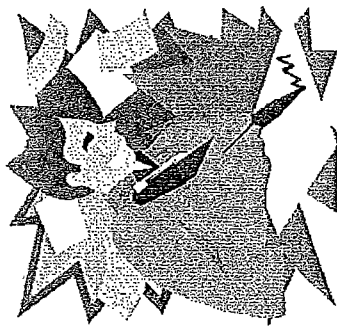
Conflicts Regarding Approval of Contracts

The MTAB cannot make a contract in which any Board member has a financial interest.

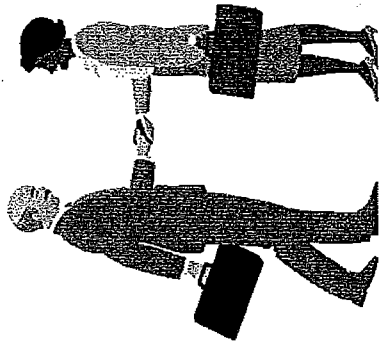
What Is A Financial Interest?

- **Not clearly defined, but courts construe the term broadly**
- **Remote interests are defined**

What Is “Making A Contract”?



PLANNING



AGREEMENT

PRELIMINARY DISCUSSIONS



NEGOTIATIONS

MTAB Powers/Duties

54

City Attorney Players: MTA Board Meeting

City Attorney Players: Contract Approval

Questions?

- Call us
- City Attorney's Good Government Guide
 - <http://www.sfcityattorney.org/index.aspx?page=7>
- City Attorney's Sunshine Ordinance Training
- City Attorney's State Ethics Training

MTAB Powers/Duties

The End

Thank You!