

MINUTES OF DIRECTORS MEETING

LANE TRANSIT DISTRICT SPECIAL MEETING/WORK SESSION ON LEGAL RESPONSIBILITIES OF THE BOARD OF DIRECTORS

Wednesday, January 19, 1994

Pursuant to notice given to *The Register-Guard* for publication on January 17, 1994, and distributed to persons on the mailing list of the District, a special work session of the Board of Directors of the Lane Transit District was held on Wednesday, January 19, 1994, at 5:30 p.m. in the LTD Board Room at 3500 E. 17th Avenue, Eugene.

Present: Kirk Bailey
Rob Bennett
Steven Engel
Tammy Fitch, Vice President, presiding
Patricia Hocken
Dave Kleger
Thomas Montgomery, Secretary
Phyllis Loobey, General Manager
Jo Sullivan, Recording Secretary

CALL TO ORDER: The meeting was called to order at 5:45 p.m. by 1992-93 Vice President Tammy Fitch, since new officers had not been elected for the 1994-95 term and the former President was no longer on the Board. Ms. Fitch introduced District Counsel Robert Fraser, of Luvaas, Cobb, Richards and Fraser, P.C.

WORK SESSION ON LEGAL RESPONSIBILITIES OF THE BOARD OF DIRECTORS:
Mr. Fraser provided some background about himself and about the formation of Lane Transit District. He explained that Oregon Revised Statutes (ORS) 267.085 was the statute under which LTD was formed as a mass transit district. LTD is a municipal corporation; as a public entity, it is allowed to tax and condemn property and pass ordinances, and has a limited tort liability under Oregon law. Responsibilities of the Board and the District are statutorily defined, and can only be changed through legislative action.

Mr. Engel said he was surprised at how little the ORS said about the responsibilities of the Board. Mr. Fraser said that the Board had certain powers, and the ORS could be reviewed to determine what the Board could do, or what the Board could not do. The statute required LTD to operate a mass transit district, not just a bus system, and gave LTD the authority to enact its own legislation by ordinance.

Mr. Fraser explained that LTD Ordinance No. 1 provided rules for meetings and filled in some of the blanks not covered by statute. He thought that one of the good things about Ordinance No. 1 was that it talked about Robert's Rules of Order, which he thought provided excellent motion procedures. If legal counsel had to defend a motion of the Board, if the

minutes showed a germane debate, a meeting of the minds, and a vote, it was easier to know what had transpired and what the intent had been.

Mr. Fraser stated that Luvaas, Cobb, Richards and Fraser would represent LTD as a District, not the individual Board members. His firm believed that the appropriate way to render legal advice was through the General Manager, so Counsel would take direction from and give advice to the General Manager at the Board's behest. If the Board directed them through the General Manager to do something, they would do that, but if individual Board members directed them to do something, they would not do that.

Mr. Fraser said he looked at the Board agendas, and if anything needed to be done during the meeting, he was only a telephone call away, or he would have someone standing by. If he needed to present something at a meeting, he would attend; otherwise, he was not sure it would foster the business of the District to have counsel present during most meetings. Additionally, he would be available to provide legal advice during executive sessions or in confidential legal opinions, where appropriate. Mr. Fraser said that his firm wanted to be of assistance to the Board, but sometimes it was more of an impediment to have counsel attend meetings for no special reason. He added that in the table of organization, his firm saw itself as staff, and did not believe that it belonged in the executive function of the District.

Mr. Bennett said he agreed. It was his experience at City Council meetings that during public hearings or when major decisions were made, it sometimes was helpful to have a lawyer there to interpret something or answer questions, and there were some issues where the attorney's advice might be needed in public session, but otherwise he would agree with Mr. Fraser's approach.

Mr. Engel asked if Mr. Fraser reviewed the minutes of the meetings. Mr. Fraser said he did, for informational purposes only. He had not charged for that; he was doing so to try to get up to speed with the District and its procedures. He stated that he felt confident about the operational end and how LTD was run because of his previous involvement with liability matters. Mr. Engel asked if Mr. Fraser would be reviewing the minutes in the future for legal conflicts. Mr. Fraser said that he and staff had not discussed his doing that. His philosophy was that he could give the District all the legal help it wanted, but how much did it really need? He said there was a presumption that what LTD was doing was valid; it was a well-run organization and people paid attention to what was going on. He said he would review the minutes in that way if asked to do so, but the Board needed to decide if the District should pay him for this kind of service. There would be some things coming up that LTD would need to be careful about, and that was where Mr. Fraser would like to spend his energy. He stated that his acquaintance with the staff was that they were well enough trained that they would know where it was appropriate to ask for the help of Counsel.

Mr. Fraser said it would be more important for the Board members to read the meeting minutes than for the attorney to do so, because they were at the meetings. If Board members thought the minutes were not properly kept or did not reflect what happened at the meeting, it would be their responsibility to change the minutes.

Mr. Fraser said that some Board members would have questions about specific issues. He suggested that they ask the General Manager or the two department directors, who could then call Mr. Fraser for an opinion. Depending on the situation, he might provide a public opinion, a formalized opinion, a confidential opinion, or sometimes a "horseback" opinion, saying that, "based on these things, this is what I think." He said he had asked to have this kind of meeting because of the new Board members, and that he thought the Board was providing a good service for an exciting, well-run agency. He asked that the firm be told if they were not doing something the way the District wanted it to be done. He stated that his goal was to put before LTD its legal alternatives without making his personal agenda known.

Public Records Law: Mr. Fraser next discussed the public records law. He handed out a copy of the related statutes and a cross-reference index, which he hoped would help the Board and staff determine whether or not certain records would need to be disclosed or were confidential. Basically, aside from specific exclusions, when doing the public's business, that business is open to public record.

Ms. Fitch asked if personal notes at meetings were a matter of public record. Mr. Fraser explained that to be exempt from the public record, certain criteria would have to be met, and the notes would have to be made in a certain way. He would argue, as the Board's attorney, that personal notes were for the Board members' own personal use, but an argument also could be made that the notes were taken in the Board member's official role, so the public was entitled to see them. The burden would be on the person taking the notes to prove that they were not a matter of public record. From his perspective, the burden wasn't worth it, and he suggested that the Board members not write down anything they didn't want someone to read. Mr. Fraser stated that the basic philosophy in Oregon was that the public's business was done in an open forum, and minutes were required of Board meetings. A number of papers might start out confidential but become public after certain procedures were accomplished. If a Board member's handwritten notes conflicted with the official record, it would be a difficult situation for the attorney.

Ms. Hocken asked if consultants' papers were public record, such as for the Draft Environmental Impact Statement for the Eugene Station. Mr. Fraser replied that the statutes said they were not disclosable when advisory, before reaching a decision. As long as the consultants' papers remained in their possession, they were not public record. However, once a public body began to act on those papers, the papers became part of the public record. Also, what a consultant might say to the District in an advisory session was not public record.

The State Attorney General represented all state agencies in litigation, but Mr. Fraser, not the Attorney General, made decisions about disclosure and represented LTD. In 1993, the legislature said there were times when it was appropriate to withhold written documents, such as for undercover police officers. There would have to be a specific showing of why the documents were needed, and the District probably would have to do a specific exemption by ordinance ahead of time.

Mr. Fraser asked the Board to let him know if they were interested in having counsel refine the desk manual on the statutes, to make it something that could be used by any staff or Board member on a daily basis, without having to read the statutes.

Public Meeting Law: Mr. Fraser stated that the key word in determining a public meeting was "decision," and it was not good enough to pretend that a decision was not being made. He said that the Board would create a new committee that evening that would be authorized to do certain things. Because particular responsibilities would be delegated to the committee, and the committee would make recommendations to the full Board, those committee meetings would be open to the public. In executive sessions, which were not open to the public, the Board could not make decisions, or the executive session would become a public meeting. The critical point in determining whether a meeting would be public was whether there was capacity to make a decision.

On a seven-person board, four people made a quorum, but not at a social gathering or a training seminar. He asked the Board to be careful, because when four Board members met and decided to do something, that would violate the public meetings law, unless it had been advertised as a public meeting. Three members on a committee that was duly designated also could constitute a public meeting, but three members meeting on the street did not constitute a public meeting. Advisory meetings or meetings to hear preliminary information, such as meeting with the City Council, were allowed by statute as exemptions to the public meetings law. The Board could compile information and meet with other governmental agencies for purposes of reaching advisory decisions without a public meeting.

Ms. Hocken asked about the Board's retreat. Mr. Fraser said that a retreat was not a public meeting as long as the Board was not going to arrive at a decision. The Board could learn about issues and receive some factual information, and unless there was some idea that the Board would reach some kind of decision, it would not be a public meeting. In an executive session, the Board could talk about things they couldn't talk about in public meetings, and then go back into public session to make a motion. The Board was entitled to as much information and advice as it wanted, and some of that advice was statutorily exempt unless it came out in public. Documents subject to attorney/client privilege lost that privilege if they were circulated in the public agenda materials.

News media were allowed to remain during executive sessions, other than labor negotiations. However, they needed to be instructed that they could not print anything they heard in the executive session. If they were not instructed, they were free to print what they heard.

Conflict of Interest and Ethics: Mr. Fraser stated that there were some conflict rules and ethics matters that the Board might want to talk about at another time. If Board members were uncomfortable about a particular situation, they might want to ask Counsel. He said he probably would tell them what he perceived to be the interpretation from his standpoint as the District's attorney, and if a conflict between a Board member and the District existed, he probably would tell the Board member to talk to his or her own attorney.

Mr. Fraser stated that, in essence, the ethics law did not say a person had to disqualify himself or herself due to a potential conflict of interest; the potential conflict would just need to be disclosed. There were apparent conflicts and actual conflicts, and Mr. Fraser's best rule was that if a Board member disclosed a potential conflict, there was nothing requiring that person to vote if he or she were uncomfortable about voting. Mr. Fraser said this was a

personal decision, but the important thing would be that no one later found out about a conflict that had not been disclosed.

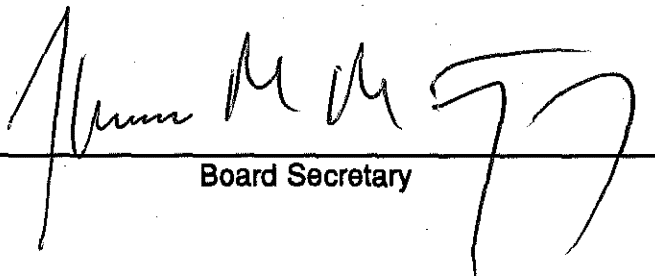
Mr. Bennett said the issue often was one of perceived conflict. In his experience, whether or not a person could legally escape the legal issue of exclusion, and whether or not someone could render an objective opinion, if the public or press thought there was a perceived conflict, it didn't work if that person voted. Mr. Fraser used the example of a formal vote on the Eugene Station and Mr. Bennett having property downtown. There was no actual conflict, because Mr. Bennett did not own the Station property, but he would need to disclose this and then decide if he wanted to vote or not.

Director of Administrative Services brought up the issue of ethics. He said that the LTD Board had not run into issues of accepting gifts of more than \$100. Staff would review the ethics law to be sure there was nothing that would affect the Board.

Ms. Loobey stated that the District had a very good long-term relationship with Bryson and Bryson as District counsel, and would expect that to happen again following the Board's decision to retain Luvaas, Cobb, Richards and Fraser, P.C.

Ms. Fitch thanked Mr. Fraser for this information. He said he would like the Board to figure out if they would like him to work with staff to develop a desk reference together. Ms. Fitch commented that it might be a nice reference to have.

ADJOURNMENT: There was no further discussion, and the meeting was adjourned.


Board Secretary