

California Tahoe Conservancy
Agenda Item 6.a
January 13, 2017

UPDATE ON POTENTIAL CONSERVANCY BOARD CONFLICTS OF INTEREST

At the September 15, 2016 Board meeting, California Tahoe Conservancy (Conservancy) Board member Sue Novasel abstained from voting on a staff recommendation to award a grant to El Dorado County, and expressed concern to the Conservancy's representative from the Office of the Attorney General (AG) over a potential conflict of interest related to voting on matters within the jurisdiction of both the Conservancy and El Dorado County. Conservancy legal staff subsequently consulted with the AG's Office over potential conflict of interest issues with Board member Tom Davis pertaining to threatened litigation by the City of South Lake Tahoe. Based on these inquiries, attorneys with the AG's Office reviewed relevant potential conflict of interest rules, including the doctrine of incompatible offices.

As explained in the Conflict of Interest guide published by the Attorney General's Government Law Section, "[t]he prohibition against holding incompatible offices concerns a potential clash of two public offices held by a single official." An explanation of this common law and statutory conflict doctrine was subsequently conveyed to affected Board members by Conservancy staff and attorneys from the Office of the Attorney General.

Government Code section 1099 (Attachment 1) prohibits public officers from simultaneously holding two public offices if "there is a possibility of a significant clash of duties or loyalties between the offices," or public policy dictates that the public officer should not hold both offices. Pursuant to Government Code section 1099(a), the proscription does not apply where the "simultaneous holding of the particular offices is compelled or expressly authorized by law." The Conservancy Board's governing legislation does not provide an express authorization for holding two incompatible offices simultaneously.

The Conservancy Board was established through Government Code section 66906.1 (Attachment 2), providing for seven voting members, including three members appointed by local California jurisdictions in the Lake Tahoe Basin. Unlike several other State agencies, however, the Conservancy's statute does not expressly provide for elected officials, city council members, or members of county boards of supervisors to serve on the Conservancy Board. For example, pursuant to Public Resources Code section 33321(a)(1)(F) (Attachment 3), the governing board of the Sierra Nevada

Conservancy shall consist of members of the county boards of supervisors located within the jurisdiction of the Sierra Nevada Conservancy.

While the Conservancy is not seeking resignation or recusal from any Board member, Conservancy staff is reviewing legislative options to remedy the potential incompatible offices issue. One potential legislative remedy may involve amending Government Code section 66906.1 to similarly expressly authorize elected members of the South Lake Tahoe City Council, as well as elected members of the board of supervisors for El Dorado County and Placer County, to concurrently serve as members of the Conservancy Board.

Given the importance of maintaining local elected officials on the Conservancy's Board, staff is seeking guidance from the Board and public input on the need for a legislative remedy to these issues.

List of Attachments:

- Attachment 1 – Government Code section 1099
- Attachment 2 – Government Code section 66906.1
- Attachment 3 – Public Resources Code section 33321

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