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COMMISSION  
ON ETHICS

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**STATE OF NEVADA  
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion  
Concerning the Conduct of DAVID HUMKE,  
DAVE ALAZZI, ROBERT LARKIN, DWIGHT  
DORTCH, and JOHN MAYER, Members,  
Regional Transportation Commission,  
State of Nevada,**

**Request for Opinion No. 09-01C**

**Subjects.**

**RESPONSE TO THE NEVADA COMMISSION ON ETHICS COMPLAINT**

This Response and the attachments hereto constitute the response of RTC and, in particular, the named subjects, to the Complaint filed January 5, 2009 by Kimberly L. Rhodemyre. The "Notice" provided to the subjects by the Ethics Commission staff, asserts that Ms. Rhodemyre's conversation with Commissioner David Humke and the "mailers" she provided subsequent to the Complaint to the Commission and/or directly to your investigator purportedly portend a violation by the RTC Commissioners of the provisions of NRS 281A. 520

1.(a). The salient provisions of NRS 281 A. 520 provide in pertinent part:

"... a public officer or employee shall not request or otherwise cause a governmental entity to incur an expense or make an expenditure to support or oppose:

- (a) A ballot question.
- (b) A candidate." (Emphasis added.)

While fourteen definitions were established at the beginning of chapter 281A to assist the reader in understanding the provisions of the chapter, three more are set out in subsection 6 of NRS 281.520, and even an explanation as to what may constitute an expenditure in “support” of a candidate (see NRS 581A.520 2.), there is nothing in that chapter or the Nevada Administrative Code to provide clarity as to what constitutes “support” of a ballot question. In short, public officers and employees are left to use reasonable judgment as to what is or isn’t permissible. Under general rules of statutory construction, the mention of what constitutes “support” for a candidate, but the exclusion of that same application to “ballot questions” warrants the conclusion that the Legislature did not intend that the same restrictions apply. The premise was probably best stated in the case of *League to Save Lake Tahoe, Inc. v Trounday*, 598 F. 2<sup>nd</sup> 1164, back in 1968. There, the Nevada Supreme Court stated: “As a matter of statutory construction, the authorities appear uniform in holding that an explicit exclusion appearing in and specifically limited to one provision of a statute and not included in another provision of the same statute logically implies that the exclusion is inapplicable to the latter provision.” See *League to Save Lake Tahoe, supra*, at page 1171. This principle was reaffirmed in the Nevada case of *In re Estate of Prestie*, 122 Nev. 807 (2006). There, the Nevada Supreme Court stated “It is a fundamental rule of statutory construction that the mention of one thing implies the exclusion of another.” As noted above, the principle is widely followed and in the *Barnhart v. Sigmon Coal Company, Inc.*, 534 U.S. 438 at 452 (2002) case, that Court stated as part of the interpretation of a federal statute: “When Congress includes particular language in one section of a statute, but omits it in another section of the Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.” Later in the opinion, the same Court said, “...Courts must presume that a legislature says in a statute what it means and means in a statute

what it says there.” See *Barnhart, supra*, at 461 and 462. Based on the foregoing, it seems clear that if the Nevada Legislature had intended that the activities set out in NRS 281A.520 2. that would constitute “support” for a “candidate” had been intended to apply to “support” for a ballot question, the Legislature could have easily said so. The Legislature did not state that those same activities constituted “support” for a ballot question and, by that omission, the RTC submits that it was reasonable for its counsel to conclude that the expenditure of public funds in the distribution of an educational mailer that did not ask for a vote in support of or opposition to the ballot question was not prohibited under the express language of the subject statute and accepted rules of statutory construction.

In considering the issue in this case, it should be noted from the affidavits of the subjects, that the Regional Transportation Commission of Washoe County is a regional body that is responsible under chapters 373 and 377A of Nevada Revised Statutes for providing adequate streets and highways and a public transit system, respectively. In addition, the RTC is the designated Metropolitan Planning Organization for the urbanized area and, as such, is responsible for developing the Regional Transportation Plan (RTP) for Washoe County. The RTP identifies, among public transportation matters, the community standards for congestion on the street and highway system and the available funding and estimated costs to build and maintain the streets and highways at the adopted community standard. Due to a myriad of economic and social factors, the shortfall in funding to meet community standards was projected by RTC staff to be \$5.9 billion through 2040. To assist in assessing the situation and developing methods to address the shortfall, a “Blue Ribbon Committee” of community leaders was assembled and charged with finding solutions to the shortfall problem. After meeting bi-weekly from February 7, 2008 to May 15, 2008, the Committee recommended that two ballot questions

be placed on the ballot for the November election that would provide sources of revenue to assist in the shortfall for both public transportation and streets and highways. The ballot questions became RTC-2 and RTC-5. The Blue Ribbon Committee recommended public “education” to explain the costs and benefits so that voters could make an informed choice. See Report of Blue Ribbon Committee dated May 1, 2008 attached hereto as Exhibit 1 and incorporated by reference. In furtherance of the educational recommendation, the RTC did prepare the mailer which is the subject of the Complaint. A copy of that mailer is attached as Exhibit 2 and is incorporated by reference. The information that is contained in upper right hand portion of the mailer was developed by the RTC from the underlying data that was used to develop the federally required 2040 Regional Transportation Plan. Current and future hours of traffic delay came from the RTC’s travel demand model that has been calibrated and validated to industry standards. The dollar values relating to delays are based on Federal Highway Administration guidance for developing such valuations. Fuel consumption projection information is based on historical data obtained from the Nevada Department of Motor Vehicles, Federal and industry sources. In short, the information contained in Exhibit 2 is as factual as it can be and was intended to be responsive to the recommendations of the Blue Ribbon Committee to inform the general public as to the impacts of the issues, to include the costs and benefits. Again, it **did not** solicit a favorable vote, i.e. “vote “yes” on RTC-2.”

Next, from the standpoint of my clients, the subjects of the Complaint, it seems clear that while they authorized the dissemination of educational material, there does not appear to be any record that the content of the subject mailer was ever approved. The lack of a formal approval, however, is not exceptional as any agency brochures, advertisements, publications and the like and are typically not formally reviewed and approved by the RTC Board. As reflected in the

affidavits attached hereto as Exhibits 3-7, inclusive, and incorporated by reference, each of the subject Commissioners state that they assumed that the content was approved by legal counsel. My affidavit, attached hereto as Exhibit 8 and incorporated by reference, confirms that I did, in fact, review the content of the mailer and, for the reasons set out above, concluded that the content was educational, balanced and, by not requesting a favorable vote, did not violate the provisions of 281A.520 1.(a). Again, I feel this conclusion is justified and supported by the lack of any provision in chapter 281A or Nevada Administrative Code defining “support” and by the failure of the Legislature to apply the same “support” language to ballot matters as it saw fit to do with respect to a “candidate.” See NRS 281A.520 2. and the cases relating to statutory construction set out above.

CONCLUSION

The statute which is the basis for this alleged ethical violation is not as clear as it should be. The lack of any general definition of “support” in chapter 281A and the failure of the Legislature to make the “support” explanation contained in NRS 281A.520 2. that is applicable to the support of a “candidate” applicable to the support of a “ballot question,” do, per general rules of statutory construction, support the staff conclusion that the subject mailer or any of the other type of media identified in NRS 281A.520.2 would not be prohibited if done as part of the support of a ballot question.

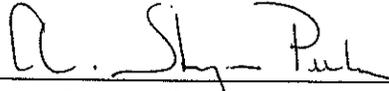
Given the foregoing, the undersigned, on behalf of the RTC Commissioners named in the subject Complaint, respectfully requests that the Ethics Commission panel find that no just and sufficient cause exists to find that a violation of NRS 281A.520 1.(a) has occurred and that the

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Complaint be dismissed.

Respectively submitted this 26<sup>th</sup> day of January, 2009.



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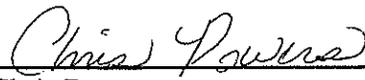
**CERTIFICATE OF SERVICE**

I certify that I am an employee of the Regional Transportation Commission of Washoe County, and on this date I caused envelopes containing true and correct copies of the foregoing "RESPONSE TO THE NEVADA COMMISSION ON ETHICS COMPLAINT" to be hand delivered to the following:

Patricia D. Cafferata, Esq.  
Executive Director  
Nevada Commission on Ethics  
3476 Executive Pointe Way, Ste. 10  
Carson City, NV 89706

Adriana Fralick, Esq.  
General Counsel  
Nevada Commission on Ethics  
3476 Executive Pointe Way, Suite 10  
Carson City, Nevada 89706

Dated this 26<sup>th</sup> day of January, 2009.

  
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Chris Powers

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**REGIONAL TRANSPORTATION COMMISSION  
BLUE RIBBON COMMITTEE (BRC)**

**Meeting Minutes  
Thursday, May 1, 2008**

**Members Present**

Chris Bosse	Joe Mayer
Steve Brown	Steve Muchicko
Jeff Codega	Tina Nappe
Paul Curtis	Terry Oliver
Skip Daly	Chad Osorno
Norm Dianda	Jonnie Pullman
Perry DiLoreto	Grant Sims
David Humke	Jeff Siri
Keith Lee	Mike Smart
Anne Macfarlane	G. Blake Smith

**Members Absent**

Michonne Ascuaga	Milton Glick
Bill Brainard	Cliff Heller
Bob Cashell	Steven Sepulveda
Rod Cooper	Ron Smith

**RTC Staff**

Greg Krause	Derek Morse
Tom Taelour	Angela White
Debra Goodwin	Sharon Britt
Michael Moreno	Diana Croyle

The Committee met at the Regional Transportation Center, Boardroom, 2050 Villanova Drive, Reno. Chair Steve Brown called the meeting to order at 2:03 pm upon verification of a quorum.

**ITEM 1. APPROVAL OF AGENDA**

The agenda was approved as submitted.

**ITEM 2. PUBLIC COMMENTS**

There was no response to the call for public comment.

### **ITEM 3. APPROVAL OF APRIL 3 AND APRIL 17, 2008, MEETING MINUTES**

The minutes for the April 3, 2008, meeting were approved as submitted. The minutes for the April 17, 2008, meeting were deferred until a future meeting.

### **ITEM 4. DISCUSSION OF THE PROJECTED TRANSPORTATION NEEDS, REVENUES, REVENUE ENHANCEMENTS AND SCOPE OF BALLOT QUESTION**

Derek Morse began the presentation with response to questions raised at previous meetings, including taxable sales associates with automotive-related sales (distributed handouts). Information was also presented on the 2002 Clark County Fair Share Transportation Funding Program advisory question (PowerPoint presentation).

Derek Morse continued the presentation answering questions about information presented at previous meetings on the projected transportation needs, revenues, revenue enhancements and scope of a ballot question.

Blake Smith asked if the yield for proposed gas tax indexing was based upon current day sales volumes of gasoline and diesel.

Derek Morse responded that it based upon projected sales volumes of gasoline and diesel, taking into account several different factors, i.e., projected growth in the area, anticipated rates of inflation, declining per capita transit, to get the best projected revenues. The revenues were stated in 2008 dollars (constant year dollars).

Skip Daly asked if one of the assumptions was that fleet economy would have less gasoline sold per mile of travel.

Derek Morse responded that it included declining consumption. These trends might change; the trends might accelerate or slower. If it got to a point where it was transferred to another type of revenue collection scheme may be somewhat easier because it was not transferring to vehicle miles traveled (VMT) and collecting more. It was collecting the same amount but in a different way. It was anticipated that in the next ten years there would be the first introduction, somewhere in the country at a state level, of VMT fees being introduced because everyone would have to transition to account for the long-term trends.

Blake Smith stated that in 2040 cars and transportation methods would be based in a different way with the current state of oil. Maybe VMT fees should be in place and then transfer to a different method of collecting the revenue.

Joe Mayer commented that the Committee was not looking at just a recommendation on new revenue but also looking at recommendations using future technology to base revenue collection on mileage rather than on consumption of gasoline, i.e., approved, not built, to present to the RTC Board. The Committee should also come up with some priority recommendation on projects, not only recommending an increase in revenues but that there were projects the Committee recommended be prioritized. Wasn't this where the Committee was going?

Greg Krause responded that the RTC as well as local, state, and federal agencies needed to move to a new system of revenue collection. One thing the Committee could recommend was a legislative action to do a pilot project for VMT. It was not a matter of if it would happen, but when VMT-based revenue would happen. Staff wanted the Committee to prioritize what it believed were the most critical projects as the RTC Board had indicated an interest in this. Staff needed the Committee's direction on what it thought was appropriate and acceptable in terms of the funding measures. When staff understood the Committee's preference, it could present scenarios of recommended projects with the specific revenue streams.

Norm Dianda stated the one thing that needed to be done was to show the RTC Board and community what projects could be done with what amount of money, i.e., increased traffic flow and US 395 and I-80 by taking XX amount of cars off these roadways. What would be the value of building on a fast-track the Tahoe-Pyramid Link (Southeast Corridor) on westbound I-80 AM traffic and southbound US 395 AM and the reverse in the PM? It would remove an estimated 20-25% of the traffic off US 395/I-80, which provided additional capacity. It might possibly delay rebuilding the Spaghetti Bowl. The most important project for the northeast area (Spanish Springs area) was the McCarran Boulevard/Pyramid Way intersection. People needed to know what they would get for their money. If the public did not know this, everything proposed would fail.

Tina Nappe was concerned about the Tahoe-Pyramid Link and all the issues were not yet resolved, i.e., flood project, wetlands. There would need to be an explanation of the mitigations and how it would affect the flood project. Whatever was selected needed to have issues resolved.

Joe Mayer stated that if projects were prioritized correctly, it might not require as much revenue as estimated. The Committee could probably come to a consensus on the type of increase, but not the amount of the increase. Was the proposal to index state and federal gas taxes to construction costs the best way to go? It was probably the best way, but it would be higher than the Consumer Price Index (CPI). It might be as attractive to the public.

Perry DiLoreto supported the idea of having something with which the public could identify. Planners and engineers probably needed to focus on the 2040 Plan, but the Committee needed to focus on next year. As for the Tahoe-Pyramid Link, the alignment was decided. With the slow down in the economy and construction industry and the recognition of cost savings that were taking place in significant amounts in projects being built now, there was a chance to reap some benefit for the public. Work was getting done cheaper. If the RTC was going to move ahead, it needed to get specific and narrow down what needed to get done and when it would be done.

Blake Smith expressed his support for Mr. DiLoreto's statements. It appeared that RTC was \$5 billion short; however, \$1 billion in funding could take care of a specific list of roads in a specific time frame. It appeared another Blue Ribbon Committee would have to address the other \$4 billion, but specific issues would be solved today.

Steve Brown stated that the first issue that should be addressed was the inflation protection and what the Committee would do. Recommend implementation of the inflation index, prioritize the projects and let the public know RTC would be back in 2010 looking for additional funding.

*June 20, 2008 Minutes*

In discussion, Chairman Humke said that he is reluctantly voting for this measure but doesn't recommend making multiple changes during this difficult time. Instead, go straight to the 24 hour pass and discontinue the transfers.

Roger said that staff is trying to work out what the best distribution process would be prior to changing over to the 24 hour pass and no longer using transfers.

**Item 7(a) FY 2009 UNIFIED PLANNING WORK PROGRAM**

On motion of Commissioner Larkin, seconded by Commissioner Mayer, which motion unanimously carried, Chairman Humke ordered that the FY 2009 Unified Planning Work Program be approved.

**Item 7(b) TRANSPORTATION QUESTIONS FOR THE NOVEMBER 2008 BALLOT**

Commissioner Larkin stated that at the Board of County Commissioners, Commissioner Gallaway expressed some concern over the wording of the first ballot question regarding the fuel tax.

Chairman Humke stated that at that meeting it was determined that the writing was "text book" and that it is a complicated question which is why the yeas and nays are provided.

Derek Morse, Deputy Executive Director, said that it is good to have some breadth in the writing of the ballot question because the final legislation will need to be negotiated. Provided is the question itself, a brief explanation of the question, the yea and nay arguments and the statement of financial affect, so Derek believes that there is a clear picture presented of what the intent of the question is.

Derek provided copies of the transmittal letter and said staff was required to submit the final documents by the 18<sup>th</sup> of June to make the meeting of the July 8, 2008, meeting of the Commission.

Chairman Humke told Commissioner Mayer that he and Commissioner Larkin had see this at the County Commission meeting and added that the District Attorney weighed in and stated that they had the final responsibility for the legal aspects of the wording. He went on to say that he feels that RTC staff is presenting a good work product.

On motion of Commissioner Larkin, seconded by Commissioner Mayer, which motion unanimously carried, Chairman Humke ordered that receipt of the transportation questions be acknowledged and authorize staff to transmit the letter.

Greg Krause, Executive Director, asked to recognize the roles of both Chairman Humke and Commissioner Larkin in this process, the questions they asked, and putting into context why these questions came forward.

In reply, Chairman Humke said that the Washoe County staff will continue to work with the RTC in matters such as this by playing their rightful and legal roles.

*End of item 7*

Norm Dianda stated that RTC and community had been at this too long, putting it off. The time is now for the Committee to move with a mission that would get RTC some funding and get the projects done that were needed in the next 5-10 years. The Committee should look at the balance of registration fees (of which the school board took half), a share of the real estate transfer tax and showing the public that developers were contributing their fair share.

Norm Dianda continued by proposing that RRIF fees be raised by \$1,500 the first year and take the balance over the second and third years of \$605, raising it up to just more than \$2,700. The Committee should look at a gas tax increase starting in 2010 of \$0.01 every 6 months for 5 years. It would probably be palatable to every driver. The general public was asking if developers paid their fair share. If the RRIF fees were increased as stated, it would change what the community thinks.

Norm Dianda commented that part of the traffic being generated to cause the I-80 project from the Spaghetti Bowl to USA Parkway was triggered by development in another county, with Storey County paying nothing to help change or increase the traffic. One thing that should be addressed on this project would be going to Storey County and asking them if they were paying their fair share for all the development causing an increase in traffic. The RTC Board would need to step up and make a difficult decision. The RTC Board was charged with the mission to keep this community a viable place to live.

Anne Macfarlane asked if RTC had a value for the ideas presented by Mr. Dianda.

Blake Smith asked if RTC had money to build the projects or did the BRC need to make a recommendation on how to get the \$1 billion to build the projects now.

Derek Morse responded that getting Storey County to pay their fair share was a long-term solution. It would not give the RTC any money within the next year or two. If the Committee was concentrating on trying to do things that could get in the ground quickly and move forward to do specific projects, it needed to be a revenue stream that was implementable, which the inflation indexing package could do. During the first five years, RTC could probably bond for \$200 million. The Committee could recommend going after a very concise list of projects in the immediate term and, after that time, the revenue streams would be strong enough to do a good pay-as-you-go program without causing huge peaks in the requirements with the corresponding valleys afterwards, which was better for the economy. The motor vehicle registration fee and real estate transfer tax just did not raise the type of revenues needed.

Blake Smith stated that some of the taxes were indexed to protect the future maintenance programs. The inflation index really had to be done. If the Committee went with the theory of solving the 3 or 4 biggest road issues and it would cost \$1 billion over the next 5 years, what would have to be done to raise \$1 billion to built these 4 top roads in the next 5 years.

Derek Morse responded that RTC could not do \$1 billion of work in 5 years. There was not the industrial capacity to perform the work. RTC could easily do \$200 in the first 5 years. This was \$200 million over and above our existing programs. After this, with a very good steady pay-as-you-go, it could be done with the inflation revenue stream. However, this stream alone was not enough in the long-term to take care of all the needs. The inflation revenue stream was

a good first step to accomplish precisely what the Committee had discussed, which was how to get some of the significant projects done early. RTC had discussion with bond advisors and there was a way to do. With \$200 million in the first 5 years, it would be a great accomplishment to get these projects. It did not solve the entire problem and would require a second step at some point.

Blake Smith asked what was in the program for the next 5 years that would cost \$200 million. Would it accomplish the Southeast Connector?

Greg Krause responded that the Southeast Connector was approximately \$150 million. If this was the top priority of the Committee and the RTC Board agreed with this recommendation and pursued this, it could cover this major. The alignment was currently being finalized and right-of-way would need to be acquired. Design would take approximately 1 to 1½ years because of the size and expense of the project. RTC was working with the Corps of Engineers on both minimizing and possibly eliminating any impacts to wetlands. RTC was also working with the flood control project. RTC Engineering staff believed that the road may augment and help the creation of flood structures.

Blake Smith stated that maybe part of the recommendation was setting up the milestones with specific dates.

Greg Krause responded that RTC needed to set projects and when the projects would be done and ask the community to support the revenue increases needed.

Skip Daly stated that the Southeast Connector (Tahoe-Pyramid Link) should be the top priority and expressed support for inflation indexing. If the different revenue streams were not indexed, they would continue to decline with no ability to catch up. Indexing was slower in the beginning of implementation and there needed to be other revenue streams with more immediate results. The inflation hedges needed to be done and set priorities with the Tahoe-Pyramid Link as the top priority.

Paul Curtis stated there appeared to be a consensus forming with the Committee. The federal government needed to increase the amount of spending coming to communities and support the infrastructure within the United States. It was possible the federal government would come around to this point of view.

Paul Curtis continued that the steps the RTC needed to take with a ballot question campaign were accountability, education and action. With accountability, RTC needed to identify the projects that would get built, when the projects would begin and when the projects would be finished. Staff should present the Committee with a list of options and priorities that would be spread across the community and provide service to the overall community. With regard to education, the builders have to pay their fair share; however, the builders were currently on the ropes and cannot crush the industry. It was important to educate the public as to where the RTC was. Tell the public the roads would be built, that it would be accomplished in a certain time frame, the builders were onboard and paying their fair share and now the public had to step in. With the inflation indexing revenue stream starting slowly and increasing over time allowed for bonding at a lower level today, coming back to reset the bond in the future and resetting the bond over time to generate more income. The initial bond of \$200 million was based upon a relatively low cash flow.

Paul Curtis made a motion that the Blue Ribbon Committee recommend to the RTC Board that the RTC adopt the indexing of the fuel taxes and recommend that the RTC Board do whatever it needed to do to cause this to happen, coupled with an educational program to the community, coupled with a strong message to the federal government in whatever capacity this could be done to suggest that the federal government begin to fund infrastructure on a national basis.

Tina Nappe seconded the motion.

Perry DiLoreto agreed with Mr. Curtis but added that another step needed to be taken. Every voter would look at this in just a little bit of a different way: what they should be paying for and what they shouldn't be paying for; what was fair on their back and what wasn't. It had to do with what portion of this money had to be spent just to maintain at a certain level the infrastructure that was already here. If the community did not grow by another person or one more house was not built, there was a certain amount of infrastructure that was in place that would take a certain amount of money to maintain it and keep it serviceable. The Committee needed to identify what this was. There needed to be some logical connection between money that supported the existing infrastructure and the next step was that which would be used for growth and additional capacity and who was responsible for that. People wanted to see new growth pay for itself; Mr. DiLoreto believed growth did pay for itself. Developers had never received any subsidy for what they built. Developers paid for everything and turned around and dedicated the systems back to the governmental entities. It then became the tax base that was generated off of the people living here, spending their money here and paying their taxes here to support these roads. There needed to be a division between existing infrastructure support money and new growth money, then draw correlations.

Perry DiLoreto continued that although indexing sounded good, it was an automatic pay increase. It was the automatic cost of living that was added whether the RTC was doing an okay job, a great job or a lousy job; RTC received the money anyway. People want to keep a tighter rein on the money they give the government. The success of indexing depended upon inflation. Inflation was an eroding factor, not a building block and was a logic that needed to be considered. Possibly it could be modified by achieving milestones. What if the money was not necessary? What if load limits were reduced? What if trucks went to 40,000 lbs. instead of 80,000 lbs.? Just think what this could do to the highway system. The most damage done to roads was by weight and the Committee had not discussed weight and mileage charges. Who put the most wear and tear on the roads? It was not the passenger vehicle.

Greg Krause responded that if there was no additional growth, the amount of money that would need to be raised over and above the current revenue streams was \$1.1 billion. This was the shortfall due to inflation if the revenue streams were not protected and building nothing additional. It could only be hoped that there was no inflation; however, current construction inflation had affected both private and public sectors. If the inflation did not occur, the increase on the taxes did not occur. RTC spent \$0.95 of every tax dollar it received on projects. RTC maintained a minimal staff and privatized all its construction projects. It was awarded to the lowest bidder including the design and engineering during construction. More work was getting done without more government. RTC was just enough government to get the job done and everything else was privatized.

Perry DiLoreto asked what would be the most palatable tax to a voter in supporting a \$1.1 billion in shortfalls just to maintain the existing infrastructure, which had nothing to do with growth.

Greg Krause responded that staff was recommending and hoping soon to have agreement to have the full impact fees implemented over some time frame. The recommendation to the RTC Board would probably be the five-year implementation and this would be considered at their May 2008 meeting. The public has not paid its share either. The federal and state gas taxes had not increased since 1993. This must be part of the education message. The builders would be paying their fair share and have committed to it, but the public also needed to recognize that the flat cents per gallon system used for so many years was not working anymore and it had to be adjusted.

Derek Morse added that if there was no inflation, no more money was generated. The revenue stream did not evaporate. This was only recovering what was being lost through inflation. If there was no inflation, the money would still be there to do the \$2.6 billion in projects. The corrections went on continuously. If the Committee recommended a partial package, there was the ability in 2-4 years to review new data and see what was the remaining gap. If there was no inflation, RTC was not getting any more money than already slated through the existing revenue streams. It was just recovering what was lost through inflationary losses.

Joe Mayer commented that he could support the motions with some caveats. The Committee must prioritize and show the public what projects were really important, which was not included in the motion. RTC should continue to investigate other revenue sources, e.g., government services tax. People were more inclined to vote for something if it were spread out and was not just indexing, government services tax or sales tax. The Committee's input on other issues should be presented to the RTC Board with prioritizing as one critical item. There also needed to be benchmarks and show people something so that in five years, another Committee could determine if the process worked and accomplish what it said it would. There should be a commitment or recommendation from the Committee to do this.

Steve Brown stated it should be explained that RTC would do projects X, Y and Z. Then start Project X and when finished, tell the public and go to Project Y, do the same thing and move onto Project Z. One other thing that should be included with the indexing for inflation protection was a statement ensuring all the money was going to Washoe County only and the state or federal governments would not have access to any of the revenue.

Blake Smith requested a clarification on the motion. Was the motion just for the indexing or was it a motion to try to solve everything?

Steve Brown suggested since it was a several part question that the question be divided, taking one piece at a time.

Perry DiLoreto asked what happened if the federal government raised the federal fuel tax. If RTC indexed for inflation, it was possible that the spread could be different from what it was today. If the federal fuel tax was increased, did the index also move up?

Derek Morse responded that it depended upon how the legislation was written. The legislation could be based upon the current federal rate and this was indexed each year or it could be based

upon whatever the current federal tax rate was. It would legally be a local fuel tax tied to the base rate of the federal tax with inflationary adjustments. All 100% of the proceeds from indexing the federal tax rate came back to Washoe County.

Perry DiLoreto asked how much per gallon would the federal fuel tax indexing amount to.

Derek Morse responded that in 2010, if RTC indexed the local fuel taxes to a construction index rather than the current CPI, it would add \$0.003. If the federal and state indexing were also done in 2010, RTC estimated it would add \$0.008. Together, the consumer would be paying approximately \$0.02 per gallon more in 2010. Diesel would be slightly different as it was collected in a different way.

Skip Daly asked how much would the Committee give to the RTC Board in general parameters, e.g., favor of indexing, make sure it was here in Washoe County. Which one of these and at what level, whether it was at the current rate or the increased rate? How much would the Committee get into, e.g., this is what the Committee wanted, this is what the Committee was trying to get, and let the RTC Board work on the details in what went forward in the question?

Perry DiLoreto asked what was currently indexed and how did it affect the price of gasoline.

Derek Morse responded that RTC had been indexing local fuel taxes, which was the \$0.1535—with \$0.09 going to RTC and the other \$0.0635 went to local government—since October 2003. The index was based upon the West CPI. The reason RTC went to the CPI in the legislation because of the political atmosphere of using the construction inflation. RTC found the CPI was inadequate. Every year, the RTC reviewed the previous calendar year's worth of data from the CPI (a rolling five-year average) and report the needed adjustment to the RTC Board. For 2008, the adjustment was 2.82%, which was sent to the Department of Motor Vehicles to adjust the collected fuel tax rates in Washoe County. Since 2003, RTC has added \$0.022 a gallon to the price of fuel through the indexing. This indexing was too slow because it was based upon CPI instead of construction inflation. Federal and state fuel taxes have lost 30% of their purchasing power in the last 5 years; local, 20% had been lost. The proposed rates were based upon indexing to a construction index. The index chosen was the federal index (Producer Price Index for Street and Highway Construction), which appeared to track the best based upon what had happened historically in the community in terms of inflation and construction costs.

Steve Muchicko stated that there was no sunset on the inflation indexing to be reevaluated. If the people were told gas taxes would be raised \$0.02 permanently and there was not the understanding that this could be \$0.40 over the next 20 years, they would see no end in sight. Something needed to be included to reevaluate at some point in time. If indexing was the only solution the Committee was considering, it was a short-term fix. Fuel conservation would be coming in the future and would be a declining in value. Something else had to be put together with this, even if it did not take effect right away. As fuel consumption declined, there had to be another revenue stream to make up for this loss.

Blake Smith asked why the Committee was limiting itself to \$200 million over the next 5 years.

Steve Brown stated that the public might be more willing to support a question that had a sunset clause, such as the one in the 2002 Clark County question.

Derek Morse responded that the current law required every year that a local indexing report was submitted to the RTC Board and the Washoe County Board of Commissioners. Any comments made by the public about the indexing were submitted with the report.

Joe Mayer stated that if RTC was going to try to sell inflation indexing, the public needed to know that RTC would go above the reporting requirement and there should be language in the ballot question specifically stating this.

Paul Curtis asked to reiterate his motion and amend it slightly for consideration. The motion recommended adopting the indexing and adding the provider price index as the index to consider. Also in the motion was to establish an educational program that would include educating the public as to what the builders were doing, what they have been doing and what they intend to continue doing. The reason RTC was where it was at with the fuel tax was because of inflationary adjustments, the marketplace and federal and state withdrawal. Accountability as to what projects specifically would be built and when they would be built with the monies being established. Ask the federal government and for RTC to do what it could to suggest a stimulus package with regard to federal infrastructure spending. Mr. Curtis amended the motion to include a sunset provision in 10 or 15 years; there needed to be some type of sunset. It was also suggested that the Committee require a 3-year or 5-year review of the projects to make sure that the accountability for this was occurring on an ongoing basis. Also to be added was a review by a blue ribbon task force, an independent council or some type of review.

Steve Brown asked for clarification because if RTC would be bonding for \$200 million, care should be taken with the language so as not to prevent the ability to bond.

Paul Curtis commented that Mr. Brown's point was well taken and should be considered.

Mike Smart noted that there was discussion about too long of a horizon, too far ahead and not knowing too much way out. Why not shorten it up to 10 years with \$200 million a year for a total of \$2 billion and look at the projects on a prioritized basis that could fit into the \$2 billion?

Paul Curtis responded that the problem was if the program was adopted and the fuel tax was indexed, the initial cash flow would allow for bonding for approximately \$200 million. However, this would eat up the cash flow for 30 years.

Steve Brown added that the cash flow for bonding would be for about 20 years.

Paul Curtis continued that the 20 years would remain on the table. The cash flow would start out slow and increase over time. For the first phase, it would allow for \$200 million in bonding, assuming that this amount of money would continue for 20 years. When the cash flow began to increase in 5 years, it provided another opportunity to bond.

Derek Morse added that RTC had anticipated 5 series of bonds spaced 2 years apart precisely for the reason discussed. If RTC were to take the entire revenue stream and try to bond it, there

would be money to do many projects with money but would spend quite a bit of money to finance the projects, which means not getting as many projects done, and being bonded to the maximum with years in which there would be no money to do any projects. In the first 5 years, RTC would bond to get the program started and, after that, the revenue streams indicated RTC could do a healthy program and continuing to do major projects with a pay-as-you-go basis, even after paying the debt service on several series of bonds. If the Committee wanted to put a sunset on the indexing, it should go out through 2028 or 2030. If you issue bonds in series, there must be at least 20 years beyond the last bond with the revenue streams. It was not necessary to get to this level of detail beyond setting a sunset.

Jeff Codega stated there needed to be 20-25 years probably to get the projects done. A shorter time frame would sell better. There needed to be a clear acknowledgment by the Committee that new sources would need to be developed to finance projects, e.g., VMT, and the technology would probably be there in the 10 to 20-year time frame and the revenue streams would be switching.

Tina Nappe asked if any of the inflation indexing money would help the mass transit systems. There was discussion about projects but what about the maintenance of the transit system and its ability to link into the transit-oriented development (TOD) corridors.

Greg Krause responded that by state constitution, the fuel taxes were limited to highway investments. To address public transportation, the Committee would need to consider another revenue source. By state law, sales taxes could be enabled for transit.

Tina Nappe stated that she was unwilling to vote on the inflation index process unless the Committee was also dealing with the mass transit system. This Committee should not support just street and highway projects and not the transit system.

Blake Smith asked what the motion on the table would be solving. Was it solving the big picture or solving only inflation with the motion? It appeared some things were being solved. Maintenance took care of itself through 2040. The system preservation had a \$1.1 billion shortfall over the 2040 time frame. The congestion and other items were \$4 billion. The motion on the table solved certain things, but what was the goal.

Skip Daly commented that rather than having a sunset, there would be \$0.20 gas tax in 10 years. If it were to end, RTC would never get it back. The taxpayers would never vote to reinstitute the \$0.20 tax. Sunsetting was probably not the best idea. Capping it with periodic reviews to determine if indexing would continue after 10 years or amounts collected was sufficient would be a better process. If it were to end, RTC would never be able to collect it again and it would go back to where it originally started. The Committee should give a broad recommendation to the RTC Board. The inflation indexing was not the only solution. There needed to be another step with another tax to vote on. It had to be a package with the projects to sell it to the public.

Steve Muchicko clarified that when he spoke about a sunset, it was used to sell the ballot question to the public because the public did not always believe government. By having a sunset, there would be a point that if there was more money than what was needed, then the revenue source ended. It was an evaluation point and would continue as long as there was the need.

Perry DiLoreto stated that although it was a good motion, it should not be done in a vacuum. Inflation indexing was not the only tax that would be needed. Would there be support to amend the motion to include more than one possible funding source? Was it the Committee's intention to consider other taxes in addition to indexing?

Derek Morse responded that staff was hearing two views: it needed to be a package or it needed to be much smaller. The information presented by staff to the Committee was just a starting point. If the Committee believed that a total package was too large to present to the public, something smaller could be recommended.

Perry DiLoreto asked if the impact fee increase was a foregone conclusion and was not part of the discussion. Wasn't there some value to having the inflation indexing and impact fees together? Would impact fees be part of a ballot question?

David Humke responded that RTC had a separate committee made up of two different builders' organizations. The RTC Board directed a separate set of meetings to consider developer impact fees. The decision on impact fees very well will be completed at the May 16, 2008, RTC Board meeting. The impact fee increased would probably be phased in over a 3 to 5-year basis. Impact fees would not be part of the ballot question. When the RTC goes to the voters, questions about what developers were paying would have to be part of the discussion.

Paul Curtis stated that whatever the Committee decided would not be the final solution. The Committee should make a recommendation that was feasible, reasonable and what the people had already agreed to relative to participating in the gas tax except for the inflation issue. The inflation indexing was possible, doable, it created a revenue stream and, combined with the accountability and educational program, was a reasonable package to recommend. Asking the federal government to increasing spending on infrastructure was not an impossible task.

Blake Smith asked if the RTC impact fees were increased and inflation indexing implemented, did it build the 4 biggest road projects in the next 5 years. Did it solve the goal?

Derek Morse responded it was realistic to expect 4 to 5 major projects to be completed or started in the first 5 years with a combined package of impact fees and inflation indexing of the fuel taxes. There were other projects beyond this time period completed on a pay-as-you-go basis that would show, year by year, some very substantial benefits to the community.

Blake Smith stated that if it was the Committee's goal to pick the top 5 projects to build, did the Committee want to limit it to \$200 million or go to \$300 million and get ahead of the problem. If the Committee agreed it would not solve 30 years but would solve the next 5 years and would identify certain projects or transit, what was the goal to solve in the next 5 years and then put the motion on the table to raise certain taxes to solve the problems. However, the Committee needed to define the goal.

Chris Bosse commented that the goal was hard to define because the estimates presented by staff were for 2040, not the next 5 years. How did the indexing revenue streams and the impact fee revenue streams come together so the Committee would know how close it was to solving the short-term need.

Derek Morse responded that if the Committee only wanted to solve 5 years of projects, there would need to be a large amount of revenue raised very quickly, this was what it would be and then it was done. Once inflation indexing was in place, these revenue streams had a life beyond the next 5 years. Staff and the Committee could put together a 5-year package of specific projects, but it did not end there. There were projects that could be done beyond the 5-year period.

Blake Smith stated the Committee and RTC had a 30-year goal to solve. The public would be told it was \$5 billion, but this would not solve the entire \$5 billion. If it was \$5 billion, RTC needed to create some credibility for the short-term and try to develop the 5 major projects in the interim. The Committee would recommend raising specific taxes to accomplish these 5 projects within the short-term. The taxes would be ongoing to solve the \$5 billion shortfall. There needed to be the credibility 5-year trigger points or milestones and how much to raise over the next 5 years to gain credibility so RTC could go back to the public in 5 years and replace the gas tax with GPS to raise the funding. The long-term goal was a large amount of money and inflation indexing needed to be implemented. What was the goal the Committee wanted to present to the RTC Board that said in the short-term, to build the credibility, \$1 billion in taxes needed to be raise? If the Committee was going to setup a short-term goal, how much money needed to be raised for this?

Tina Nappe asked if the Committee wanted to know what was in the total package, e.g., what the builders would be providing, how much funding for the bus system. The Committee was not dealing with the total package.

Terry Oliver asked if RTC did not include transit and transit went backwards and more traffic was on the road because the transit funding issues were not addressed, all the things RTC wanted to accomplish would not occur unless transit was addressed at the same time.

Greg Krause responded that transit was particularly relevant in certain corridors where assumptions were made about major transit investments that would carry large volumes of people. There would be either more congestion or more planning for highway capacity in these corridors.

Terry Oliver stated that the problem would be exacerbated if transit was not addressed at the same time as the street and highway shortfall.

Jeff Codega commented that although the plan looked out 30 years, addressing the shortfall could not be taken in one big steps. As a practical matter, it would be broken down into smaller steps. It was suggested to take the original motion and look at sales taxes with transit and what it would accomplish over 5-year periods of time. Start showing some assumptions of vehicle miles traveled (VMT) GPS types of things that technologically would be feasible in 10 years. Have steps for what would happen during the first 5 years and what would be done during the second 5 years should the program continue.

Greg Krause stated that if the Committee recommended indexing all the fuel taxes, diesel and gas at all levels (federal, state, local), it would generate \$3.1 billion of the \$5.2 billion shortfall. Staff could provide a list of other taxes, what funding could be generated and what projects might be built with these other revenue streams. Staff would ask that the Committee consider any recommendations at the May 15, 2008, meeting so that it could be presented to the RTC Board

at their May 16, 2008, meeting. The Committee should also have a discussion about transit as part of the deliberations on a possible recommendation.

Grant Sims stated that one goal of the Committee was education of the public. The RTC Board would probably want direction from the Committee, both short and long-term. The motion addressed the short-term quite well. It addressed the currently flawed system in terms of equitability: users pay for the roads. This was a message RTC needed to know: what was the equitable way of funding this huge problem. The other issue the RTC Board would like to know was addressing the adequacy or lack of adequacy of the current funding scheme. There were many variables that would change in time, e.g., conservation, price of gas, price of construction. In the educational part of the motion, it should include educating the RTC in terms of what the Committee thinks the RTC should do to educate the public: 1) There had to be an equitable stream of funding and 2) Vehicle miles traveled (VMT) had to be considered in lieu of gas consumed and purchased as a way of addressing the adequacy or lack of adequacy of funding the highway needs. These would go a long way in addressing the goals of the RTC, both short and long-term.

Paul Curtis responded that under education in the motion was recognizing why RTC was where it was at and the variable included in the analysis that RTC would be faced with over time; educate the public that the builders were paying their fair share; and accountability was through identification of projects that would be constructed over the near term as a result of implementing this program needed to be presented to the RTC Board and part of the educational package to the public.

Grant Sims stated it was critical that the Committee give direction to the RTC Board on adequate funding and how the funding streams had to change in the future, away from gallons consumed to vehicle miles traveled (VMT), which was a much more accurate way of addressing needs as they changed.

Tina Nappe seconded the amended motion.

Paul Curtis clarified the amended motion by saying it included a reevaluation/sunset in the program and a periodic review to make certain that the money coming in was being spent in an accountable fashion.

Perry DiLoreto asked if a reasonable sunset would be if RTC switched to a different form of taxing, e.g., from the gas tax to the VMT tax, with one tax sunseting another tax.

Paul Curtis responded the sunset could be timing or a cap in the amount. It needed to include a sunset, whatever was recommended by the Committee.

Terry Oliver asked if the motion was general enough that RTC staff could recommend bonding and the strategy implemented.

Paul Curtis stated that the motion recommended indexing the fuel to the producer price index, which was considered a bondable revenue stream.

Blake Smith stated that the majority of growth in employment would happen in Storey County, making all the heavy trucks come across Washoe County. Could staff show the equity of all the growth and possibly adding to the recommendation at a future meeting?

Skip Daly made a motion to divide the question. The motion died for lack of a second.

Paul Curtis made a motion to withdraw his amended motion.

Perry DiLoreto seconded the motion to withdraw the amended motion.

There was a call for the question. On a vote of the Committee, the motion passed, with Anne Macfarlane abstaining.

Perry DiLoreto asked what was the recap of the RTC projections on developers' fees.

Derek Morse responded that from the total \$14 billion in needs for highways, developers were expected to pay \$2.7 billion through impact fees. It did not change with current or future revenue because the full impact fees would be phased in over 5 years.

Perry DiLoreto asked if this could be correlated to developers paying their fair share.

Derek Morse responded that within the confines of the law, developers were paying their full legal share under the impact fee system when the fees were at the full level.

Joe Mayer stated that there should be a motion at this meeting or the next meeting on the issues that were not yet resolved including equity and adequacy of revenue streams, adjoining counties and mass transit.

Jonnie Pullman commented that it would be helpful if staff provided ideas or alternatives on understanding different ways of sunseting, reevaluation or capping.

Skip Daly added that 1/8% sales tax for transit, government services tax and real estate transfer tax as well as the other issues could be additional recommendations that the Committee could make and should be considered at the May 15 meeting.

#### **ITEM 5. MEMBER ITEMS**

Blake Smith asked if the motion passed would be as far as the Committee would go. What would the Committee add at the next meeting that addressed the taxes other than mass transit?

Greg Krause responded that the Committee would review the measures already discussed and package this with the needs the Committee wanted to address above and beyond what indexing would allow. There would also be the opportunity to take action on public transportation if the Committee wished.

**ITEM 6. AGENDA ITEMS FOR THE MAY 15, 2008, MEETING**

Items suggested for the May 15, 2008, BRC agenda included, but were not limited to:

- List of priority projects, estimated costs, revenue streams available, time frame
- Additional options to fund list of priority projects
- Develop an approach to address the future need to switch away from fuel taxes to VMT or other system of transportation finance
- Needs and impacts, both having the funding to implement mass transit or not
- Potential needs for reevaluating and what this might mean in terms of ensuring public confidence and timely review as well as protecting ability to bond any revenue stream
- Storey County impacts on Washoe County

**ITEM 7. RTC STAFF ITEMS**

No items were presented by RTC staff.

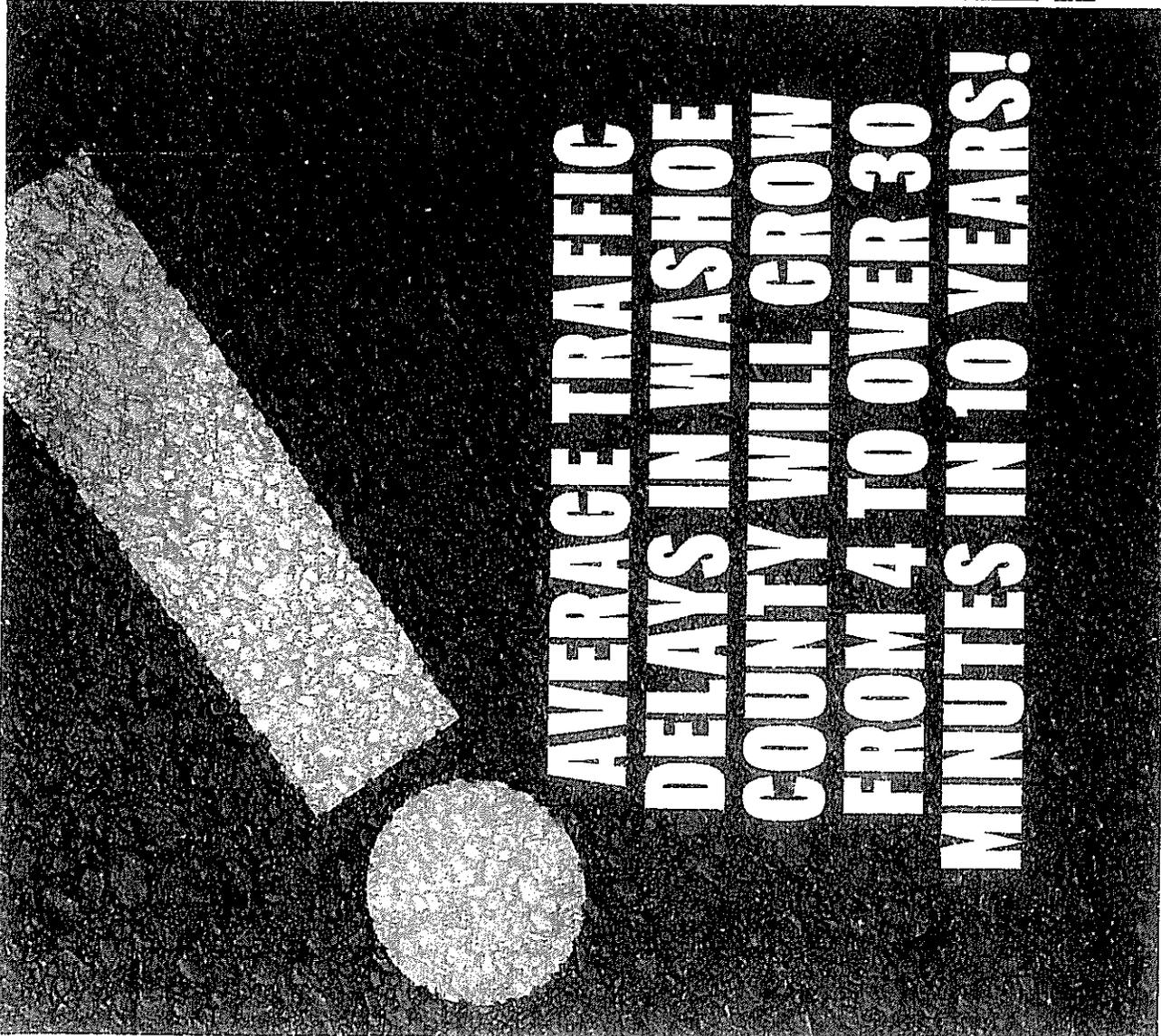
**ITEM 8. ADJOURNMENT**

There being no further business, the meeting adjourned at 3:50 pm.

Respectfully submitted,

Diana S. Croyle, CPS





**AVERAGE TRAFFIC  
DELAYS IN WASHOE  
COUNTY WILL GROW  
FROM 4 TO OVER 30  
MINUTES IN 10 YEARS!**

## **BETTER ROADS & TRANSIT SAVE TIME AND MONEY!**

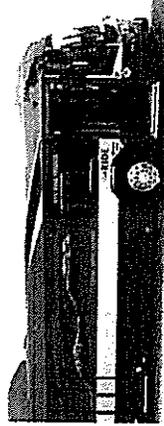
- By 2018, the average resident of the Truckee Meadows will spend 65 hours a year stuck in gridlock.
- The annual impact of traffic delays and wasted fuel to our local economy is more than \$80 million-or \$650 per traveler, and growing each year.
- Traffic congestion now wastes almost 4 million gallons of fuel annually costing Washoe County taxpayers \$13 million and could increase more than five fold in just the next ten years.
- Public Transit takes thousands of cars off our roads each day saving you time and money.

### **THE BLUE RIBBON COMMITTEE RECOMMENDS:**

**RTC-2** would activate a one-eighth of one percent increase in the transportation sales tax already authorized by NRS 377A. This would cost the average person \$1.94 per month and would avoid transit service cuts of about 25%.

**RTC-5** adjusts fuel tax rates to construction inflation. This would cost the average driver about \$1.10 per month beginning in 2010 and would recover \$2.6 billion in lost purchasing power over the next 30 years; reducing road congestion, stimulating our local economy, and saving us all time and money.  
*All revenues generated will be used only in Washoe County.*

**Transportation: It's THAT Important!**



**RTC**

rtcwashoe.com  
**Vote Nov. 4th!**

# EXHIBIT 3



A. Stanyan Peck, Esq.  
Nevada State Bar No. 0990  
Chief Legal Counsel  
Regional Transportation Commission  
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2050 Villanova Drive  
Reno, NV 89502  
Telephone (775) 348-0400  
Attorney for RTC Commissioners

**STATE OF NEVADA  
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion  
Concerning the Conduct of DAVID HUMKE,  
DAVE AIAZZI, ROBERT LARKIN, DWIGHT  
DORTCH, and JOHN MAYER, Members,  
Regional Transportation Commission,  
State of Nevada,**

**Request for Opinion No. 09-01C**

**Subjects.**

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**AFFIDAVIT OF DAVID AIAZZI**

STATE OF NEVADA        )  
                                  )  
COUNTY OF WASHOE    )

I do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. That I am a Councilman for the City of Reno and I am one of that local government's designated representatives to the Regional Transportation Commission of Washoe County ("RTC").
2. That an office is maintained for me at the City of Reno, but I have no office at the Regional Transportation facility at 2050 Villanova Drive, Reno, Nevada; that I rarely visit the RTC facility except once each month for the regularly scheduled RTC meetings.
3. That in addition to its responsibilities for the construction of public roadways and

the operation of a public transportation system, the RTC has, pursuant to statute, been designated by the Governor and local governments as the Metropolitan Planning Organization for Washoe County ("MPO").

4. That as the MPO, the RTC is responsible for developing the Regional Transportation Plan ("RTP") for Washoe County which includes the adopted community standard for congestion on the street and highway system, the community standard for the amount of public transportation service and ridership for both the present and future, and the available funding and expected expenditures necessary to meet congestion, public transportation and other community standards.

5. That on or about February, 2008, as a result of the projected funding shortfall for needed investments in both street and highways and public transportation, the RTC created a Blue Ribbon Committee of community leaders who were charged with evaluating projected funding shortfalls and to make recommendations concerning the development of sources of additional revenue to meet those shortfalls.

6. That the RTC Blue Ribbon Committee met bi-weekly from approximately February 7, 2008 to May 15, 2008, inclusive, and, among other recommendations, recommended public transportation and street and highway funding questions, which came to be known as RTC-2 and RTC-5, to be placed on the November 4, 2008 Washoe County Ballot; the Committee further recommended that the RTC do public education regarding the importance of RTC-2 and RTC-5 and to explain the cost and benefits so that the public could make an informed choice.

7. That the RTC Board recognized the importance of a public education effort and authorized funding to conduct educational outreach on the two ballot measures.

8. That RTC staff was advised to ensure that the public education materials include both the benefits and detriments associated with the RTC-2 and RTC-5 questions and that there be no recommendation to vote "yes" or other similar advocacy in the mailers developed as part of the educational program.

9. That I understood the ballot mailers were approved by management and reviewed by RTC legal counsel for compliance with law.

10. That I had the opportunity to review the content of the mailers utilized in conjunction with the educational program for RTC-2 and RTC-5 prior to the release of same to the public; that I felt said mailers were informative, presented pros and cons, and did not request or advocate for an affirmative or negative vote on the ballot question.

Further Affiant Sayeth Naught.

Dated this \_\_\_\_ day of January, 2009.

\_\_\_\_\_  
David Aiazzi

Subscribed and sworn to before me  
this \_\_\_\_ day of January, 2009.

\_\_\_\_\_  
Notary Public



A. Stanyan Peck, Esq.  
Nevada State Bar No. 0990  
Chief Legal Counsel  
Regional Transportation Commission  
of Washoe County  
2050 Villanova Drive  
Reno, NV 89502  
Telephone (775) 348-0400  
Attorney for RTC Commissioners

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BEFORE THE NEVADA COMMISSION ON ETHICS**

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Concerning the Conduct of DAVID HUMKE,  
DAVE AIAZZI, ROBERT LARKIN, DWIGHT  
DORTCH, and JOHN MAYER, Members,  
Regional Transportation Commission,  
State of Nevada,**

**Request for Opinion No. 09-01C**

**Subjects.**

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**AFFIDAVIT OF DWIGHT DORTCH**

STATE OF NEVADA        )  
                                  )  
COUNTY OF WASHOE    )

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5. That on or about February, 2008, as a result of the projected funding shortfall for needed investments in both street and highways and public transportation, the RTC created a Blue Ribbon Committee of community leaders who were charged with evaluating projected funding shortfalls and to make recommendations concerning the development of sources of additional revenue to meet those shortfalls.

6. That the RTC Blue Ribbon Committee met bi-weekly from approximately February 7, 2008 to May 15, 2008, inclusive, and, among other recommendations, recommended public transportation and street and highway funding questions, which came to be known as RTC-2 and RTC-5, to be placed on the November 4, 2008 Washoe County Ballot; the Committee further recommended that the RTC do public education regarding the importance of RTC-2 and RTC-5 and to explain the cost and benefits so that the public could make an informed choice.

7. That the RTC Board recognized the importance of a public education effort and authorized funding to conduct educational outreach on the two ballot measures.

8. That RTC staff was advised to ensure that the public education materials include both the benefits and detriments associated with the RTC-2 and RTC-5 questions and that there be no recommendation to vote "yes" or other similar advocacy in the mailers developed as part of the educational program.

9. That I understood the ballot mailers were approved by management and reviewed by RTC legal counsel for compliance with law.

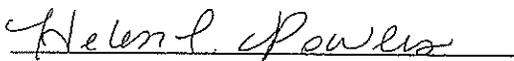
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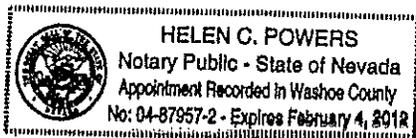
Further Affiant Sayeth Naught.

Dated this 23<sup>rd</sup> day of January, 2009.

  
Dwight Dortch

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of January, 2009.

  
Notary Public





A. Stanyan Peck, Esq.  
Nevada State Bar No. 0990  
Chief Legal Counsel  
Regional Transportation Commission  
of Washoe County  
2050 Villanova Drive  
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Telephone (775) 348-0400  
Attorney for RTC Commissioners

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**Request for Opinion No. 09-01C**

**Subjects.**

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**AFFIDAVIT OF ROBERT LARKIN**

STATE OF NEVADA        )  
                                  )  
COUNTY OF WASHOE    )

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8. That RTC staff was advised to ensure that the public education materials include both the benefits and detriments associated with the RTC-2 and RTC-5 questions and that there be no recommendation to vote "yes" or other similar advocacy in the mailers developed as part of the educational program.

9. That I understood the ballot mailers were approved by management and reviewed by RTC legal counsel for compliance with law.

10. That I had the opportunity to review the content of the mailers utilized in conjunction with the educational program for RTC-2 and RTC-5 prior to the release of same to the public; that I felt said mailers were informative, presented pros and cons, and did not request or advocate for an affirmative or negative vote on the ballot question.

Further Affiant Sayeth Naught.

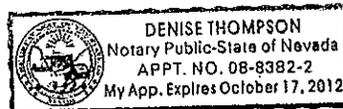
Dated this 23 day of January, 2009.

  
Robert Larkin

Subscribed and sworn to before me

this 23<sup>rd</sup> day of January, 2009.

  
Notary Public





A. Stanyan Peck, Esq.  
Nevada State Bar No. 0990  
Chief Legal Counsel  
Regional Transportation Commission  
of Washoe County  
2050 Villanova Drive  
Reno, NV 89502  
Telephone (775) 348-0400  
Attorney for RTC Commissioners

**STATE OF NEVADA  
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion  
Concerning the Conduct of DAVID HUMKE,  
DAVE AIAZZI, ROBERT LARKIN, DWIGHT  
DORTCH, and JOHN MAYER, Members,  
Regional Transportation Commission,  
State of Nevada,**

**Request for Opinion No. 09-01C**

**Subjects.**

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**AFFIDAVIT OF DAVID HUMKE**

STATE OF NEVADA        )  
                                  )  
COUNTY OF WASHOE    )

I do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. That I am a Commissioner for Washoe County and I am one of that local government's designated representatives to the Regional Transportation Commission of Washoe County ("RTC").
2. That an office is maintained for me at the Washoe County Complex, but I have no office at the Regional Transportation facility at 2050 Villanova Drive, Reno, Nevada; that I rarely visit the RTC facility except once each month for the regularly scheduled RTC meetings.
3. That in addition to its responsibilities for the construction of public roadways and

the operation of a public transportation system, the RTC has, pursuant to statute, been designated by the Governor and local governments as the Metropolitan Planning Organization for Washoe County ("MPO").

4. That as the MPO, the RTC is responsible for developing the Regional Transportation Plan ("RTP") for Washoe County which includes the adopted community standard for congestion on the street and highway system, the community standard for the amount of public transportation service and ridership for both the present and future, and the available funding and expected expenditures necessary to meet congestion, public transportation and other community standards.

5. That on or about February, 2008, as a result of the projected funding shortfall for needed investments in both street and highways and public transportation, the RTC created a Blue Ribbon Committee of community leaders who were charged with evaluating projected funding shortfalls and to make recommendations concerning the development of sources of additional revenue to meet those shortfalls.

6. That the RTC Blue Ribbon Committee met bi-weekly from approximately February 7, 2008 to May 15, 2008, inclusive, and, among other recommendations, recommended public transportation and street and highway funding questions, which came to be known as RTC-2 and RTC-5, to be placed on the November 4, 2008 Washoe County Ballot; the Committee further recommended that the RTC do public education regarding the importance of RTC-2 and RTC-5 and to explain the cost and benefits so that the public could make an informed choice.

7. That the RTC Board recognized the importance of a public education effort and authorized funding to conduct educational outreach on the two ballot measures.

8. That RTC staff was advised to ensure that the public education materials include both the benefits and detriments associated with the RTC-2 and RTC-5 questions and that there be no recommendation to vote "yes" or other similar advocacy in the mailers developed as part of the educational program.

9. That I understood the ballot mailers were approved by management and reviewed by RTC legal counsel for compliance with law.

10. That I had the opportunity to review the content of the mailers utilized in conjunction with the educational program for RTC-2 and RTC-5 prior to the release of same to the public; that I felt said mailers were informative, presented pros and cons, and did not request or advocate for an affirmative or negative vote on the ballot question.

11. That shortly prior to the general election in November 2008, I received one or two calls from constituents that complained of the RTC and Washoe County School District literature in relation to RTC-5 and the Washoe County School District ballot questions.

12. That I felt it would be appropriate to revisit the issue regarding the expenditure of public funds for educational efforts before any future election.

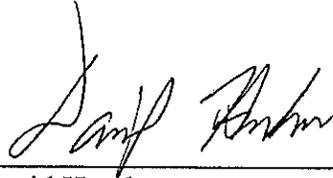
13. That I do recall having a conversation with Kimberly Rhodemeyer on or about October 27, 2008 regarding the mailers for RTC-2 and RTC-5; that I recall advising her that the cost for mailing the materials produced by the RTC was paid for by RTC; that as noted above, I indicated that it was my intent to revisit the practice before any further election.

14. That I never said that I felt the RTC's paying for the mailing of those mailers "was not quite the right thing to do" or otherwise stated or implied that the actions of the RTC

in paying for the cost of the mailers were improper.

Further Affiant Sayeth Naught.

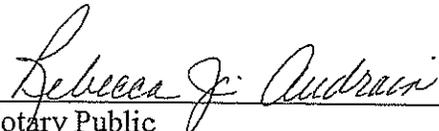
Dated this 24<sup>th</sup> day of January, 2009.

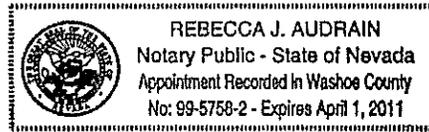


David Humke

Subscribed and sworn to before me

this 24<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Notary Public





A. Stanyan Peck, Esq.  
Nevada State Bar No. 0990  
Chief Legal Counsel  
Regional Transportation Commission  
of Washoe County  
2050 Villanova Drive  
Reno, NV 89502  
Telephone (775) 348-0400  
Attorney for RTC Commissioners

**STATE OF NEVADA  
BEFORE THE NEVADA COMMISSION ON ETHICS**

**In the Matter of the Request for Opinion  
Concerning the Conduct of DAVID HUMKE,  
DAVE AIAZZI, ROBERT LARKIN, DWIGHT  
DORTCH, and JOHN MAYER, Members,  
Regional Transportation Commission,  
State of Nevada,**

**Request for Opinion No. 09-01C**

Subjects.

\_\_\_\_\_ /

**AFFIDAVIT OF JOHN MAYER**

STATE OF NEVADA        )  
  )  
COUNTY OF WASHOE    )

I do hereby swear under penalty of perjury that the following assertions are true to the best of my knowledge and belief:

1. That I was a Councilman for the City of Sparks and was one of that local government's designated representatives to the Regional Transportation Commission of Washoe County ("RTC"). I have since retired that position.
2. That an office was maintained for me at the City of Sparks, but I had no office at the Regional Transportation facility at 2050 Villanova Drive, Reno, Nevada; that I rarely visited the RTC facility except once each month for the regularly scheduled RTC meetings.
3. That in addition to its responsibilities for the construction of public roadways and

the operation of a public transportation system, the RTC has, pursuant to statute, been designated by the Governor and local governments as the Metropolitan Planning Organization for Washoe County ("MPO").

4. That as the MPO, the RTC is responsible for developing the Regional Transportation Plan ("RTP") for Washoe County which includes the adopted community standard for congestion on the street and highway system, the community standard for the amount of public transportation service and ridership for both the present and future, and the available funding and expected expenditures necessary to meet congestion, public transportation and other community standards.

5. That on or about February, 2008, as a result of the projected funding shortfall for needed investments in both street and highways and public transportation, the RTC created a Blue Ribbon Committee of community leaders who were charged with evaluating projected funding shortfalls and to make recommendations concerning the development of sources of additional revenue to meet those shortfalls.

6. That the RTC Blue Ribbon Committee met bi-weekly from approximately February 7, 2008 to May 15, 2008, inclusive, and, among other recommendations, recommended public transportation and street and highway funding questions, which came to be known as RTC-2 and RTC-5, to be placed on the November 4, 2008 Washoe County Ballot; the Committee further recommended that the RTC do public education regarding the importance of RTC-2 and RTC-5 and to explain the cost and benefits so that the public could make an informed choice.

7. That the RTC Board recognized the importance of a public education effort and authorized funding to conduct educational outreach on the two ballot measures.

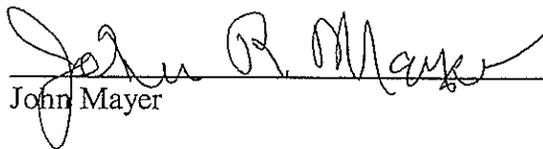
8. That RTC staff was advised to ensure that the public education materials include both the benefits and detriments associated with the RTC-2 and RTC-5 questions and that there be no recommendation to vote "yes" or other similar advocacy in the mailers developed as part of the educational program.

9. That I understood the ballot mailers were approved by management and reviewed by RTC legal counsel for compliance with law.

10. That I had the opportunity to review the content of the mailers utilized in conjunction with the educational program for RTC-2 and RTC-5 prior to the release of same to the public; that I felt said mailers were informative, presented pros and cons, and did not request or advocate for an affirmative or negative vote on the ballot question.

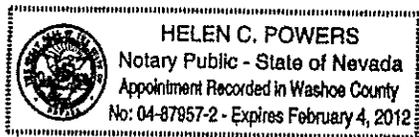
Further Affiant Sayeth Naught.

Dated this 23 day of January, 2009.

  
John Mayer

Subscribed and sworn to before me  
this 23<sup>rd</sup> day of January, 2009.

  
Notary Public







3. That in December 2002, I was employed by the RTC as its Chief Legal Counsel and have served in that capacity since December 2002.

4. That in early 2008, the RTC assembled a "Blue Ribbon Committee" of community leaders to assist in assessing the growing problem of shortfalls in revenues for street and highway and public transportation services and to help provide solutions to those problems.

5. That approximately May or June, 2008, I became aware that the Blue Ribbon Committee had recommended that two ballot questions which would potentially address projected substantial shortfalls in revenues needed to address standards for streets and highways and public transportation be placed on the ballot for the general election in November 2008; that the Blue Ribbon Committee further recommended that the RTC attempt to educate the public on the degree of funding shortfall for streets and highways and public transportation and the benefits and detriments of the passage of the two ballot questions.

6. That based on the Blue Ribbon Committee recommendations and the approval of funding for an educational program, the staff of the RTC prepared an educational mailer that attempted to set forth factual information relating to RTC-2 and RTC-5; a copy of that mailer is attached as Exhibit 2 to the "Response to the Complaint" filed by the undersigned on behalf of the RTC Commissioners.

7. That in connection with my responsibilities as legal counsel for the RTC I was asked to review and approve the subject mailer to ensure it was in compliance with law; that I communicated my approval of same to the RTC Executive Director and other management staff.

8. That upon information and belief, my approval of the subject mailer was communicated to the RTC Commissioners prior to the distribution of the mailer to the citizens of

///

Washoe County.

Further Affiant Sayeth Naught.

Dated this 26<sup>th</sup> day of January, 2009.

A. Starryan Peck  
A. Starryan Peck

Subscribed and sworn to before me

this 26<sup>th</sup> day of January, 2009.

Helen C. Powers  
Notary Public

