

COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

CONFIDENTIAL

June 12, 2008

To: Lisa Stanton
Sacramento County Airport System

From: Megan W. Fera
Deputy County Counsel

Subject: Contributions by SCAS to County General Fund

ISSUE

You have asked whether the Sacramento County Airport System (SCAS) may make contributions to the County General Fund in order to offset the loss of Transient Occupancy Taxes resulting from termination of the Host Airport Hotel lease. An additional inquiry has been made regarding the ability of SCAS to include a contribution to the County's General Fund for these purposes in bond issues designed for capital improvements at Sacramento International Airport.

In either case, it is our opinion that federal law prohibits the SCAS from making contributions to the County General Fund in order to offset this loss.

INTRODUCTION

In preparation for construction of the TMP at Sacramento International Airport, the airport hotel lease previously held by Host Hotels has been terminated. Although a new hotel is planned, the cessation of operation of the Host Airport Hotel has resulted in a loss of Transient Occupancy Tax revenue to the County of Sacramento. The question has arisen as to whether the Sacramento County Airport System (SCAS) may contribute directly to the County general fund as compensation for the loss of Transient Occupancy Tax revenue resulting from the TMP construction.

ANALYSIS

Federal law prohibits the expenditure of revenues generated by a public airport for purposes other than the capital or operating costs of the airport, its local airport system, or other local facilities directly and substantially related to air transportation. 49 U.S.C. §§ 47107(b)(1); 47133. Unlawful expenditures include, but are not limited to, those for general economic development, marketing and promotional activities unrelated to airports or airport systems and payments in lieu of taxes or other assessments that exceed the value of services provided. 49 U.S.C. §§ 47107(l)(2); 47133. The sanctions for unlawful revenue diversion include withholding of future FAA grants, discontinuance of payment under existing FAA grants, denial of application to impose a passenger facility charge, automatic civil penalties of up to \$50,000, and

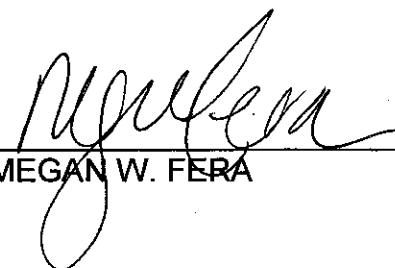
imposition of damages totaling three times the amount of unlawfully diverted revenues after an action in the United States District Court. 49 U.S.C. §§ 47106; 47111; 40117; 46301. It appears Host's annual transient occupancy taxes totaled approximately \$460,000. Thus, treble damages on unlawful diversions in that amount could total \$1,380,000 per year of contribution.

Transient Occupancy Taxes received by the County of Sacramento from operation of the Host Airport Hotel did not constitute "airport revenues" because those taxes were paid by Host Hotels directly to the County pursuant to County-wide tax policies. However, all payments directly from the Sacramento County Airport System to the County general fund would constitute diversion of airport revenues because the SCAS's funding is generated from operation of the airport.

SCAS currently plans to fund the TMP with an anticipated \$120 million in federal grants and reliance on Passenger Facility Charges, pending approval by the FAA. Sanctions for unlawful diversion of revenue would jeopardize those funding sources. These revenues, together with others, are pledged to repay bonded indebtedness incurred and to be incurred to fund capital improvements, including the TMP. Inclusion of the "loss" of Transient Occupancy Taxes in this bonded indebtedness would require the use of airport revenue for repayment of the borrowed amount. Such an arrangement would amount to nothing more than revenue diversion.¹

CONCLUSION

Based on the foregoing analysis, it is our opinion that federal law prohibits the SCAS from making contributions to the County General Fund in order to offset the loss of Transient Occupancy Taxes resulting from termination of the Host Airport Hotel lease. This is true whether those contributions are made directly or as repayment of indebtedness issued for the benefit of the General Fund.



MEGAN W. FERA

cc: Board of Supervisors
Mr. Nav Gill
Ms. Linda Foster-Hall
Mr. Robert A. Ryan

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¹ Additionally, the bonded indebtedness, as structured, may be expended only for capital facilities. This Office is unaware of any feasible financing vehicle which would permit enterprise revenues to be used for long term borrowing for the benefit of the County's General Fund.