

Memorandum

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TO: Board of Directors
FROM: David J. Miller, Attorney for the District
DATE: December 4, 2007
RE: **Legal Considerations Concerning the District's Authority to Impose a Congestion Pricing Toll on All Users of Doyle Drive**

QUESTION PRESENTED

Does the Golden Gate Bridge, Highway and Transportation District (District) have the legal authority to impose a variable congestion management toll on all users of Doyle Drive?

SHORT ANSWER

Under its enabling legislation, the District does not have the authority to impose a toll on all users of Doyle Drive because the District does not currently own Doyle Drive, and will not own, construct, operate, or maintain the reconstructed Doyle Drive.

BACKGROUND

At the Board workshop held on November 9, 2007, to consider its Strategic Plan to Achieve Long-Term Financial Stability, the Executive Director of the San Francisco Transportation Authority (SFTA) requested that the District Board of Directors consider action to implement a toll for the users of Doyle Drive as a stop gap measure until SFTA obtains its own legislative authority to do so. This request stems from the provisions of the Urban Partnership Agreement dated August 6, 2007, between the U.S. Department of Transportation on the one hand, and the California Department of Transportation, Metropolitan Transportation Commission, and various local public agencies including SFTA and the District, on the other.

The Urban Partnership Agreement identifies the terms and conditions for federal financial assistance for specified Bay Area transportation projects whose purposes are to reduce urban congestion. Reconstruction of Doyle Drive is one of the designated projects. The Urban Partnership Agreement specifies that as a prerequisite to receipt of federal funds, "all legal authority necessary to implement each of the Federal Projects (including, without limitation, legal authority to implement congestion pricing)" must be adopted and be in effect as of March 31, 2008. SFTA has advised that it must obtain legal authority to implement a toll on Doyle Drive by March 31, 2008. To cover the contingency that SFTA may not be able to obtain

the requisite toll setting power by that date, the District was asked to consider invoking its existing toll setting authority on an interim basis.

The SFTA's Executive Director's request, as articulated at the Board workshop, has been subsequently clarified by a letter dated November 13, 2007, from the SFTA Board President. That letter states that SFTA does "not anticipate that it will be necessary to engage the GGBHTD in the actual collection effort. In discussions with the DOT, we understand that a resolution by the GGBHTD supporting toll collection on or for Doyle Drive would meet the UPA/LOI [Urban Partnership Program/Letter of Intent] requirements." Thus, it appears that SFTA's request as most recently articulated is not that the Bridge District enact an ordinance to impose a toll on users of Doyle Drive, but that the Bridge District support SFTA's efforts to obtain legislation to authorize SFTA to impose such a toll.

Nevertheless, in order to provide the Board with a legal context in which to consider the SFTA request as presented during the November 7th Workshop, by this opinion we analyze the extent of the District's toll setting authority. As a key purpose of the mandated toll is to reduce congestion on Doyle Drive, and as according to District Staff congestion on Doyle Drive is not caused solely by vehicles that cross the Golden Gate Bridge, we assume in this memorandum that the proposed toll will be imposed on all users of Doyle Drive.

DISCUSSION

The District is a creature of statute and has only those powers expressly granted by statute, or those implied powers necessary for the exercise of its express powers. (Streets and Highways Code §§ 27160, 27172¹) It is a fundamental principle that a local agency's powers are to be narrowly construed. (*Trimont Land Co. v. Truckee Sanitary Dist.* (1983) 145 Cal. App. 3d 330, 350, holding that "the rule is well established that language purporting to define the powers of a municipal corporation is to be strictly construed, and . . . the power is denied where there is any fair, reasonable doubt concerning the existence of the power.")

The District's enabling legislation explicitly grants authority to the District to establish tolls under certain circumstances. Specifically, and most germane, is Section 27171, which provides:

The district may establish all necessary rules, regulation or conditions under which **the property of the district** may be used by the public and **fix and collect all tolls for the use thereof**, and

¹ Streets and Highway Code Section 27160 provides that "The district shall have the powers prescribed in this chapter in addition to any others expressly conferred on it by this chapter." Section 27172 provides that "The district may do all things necessary for the complete exercise of the powers described in this chapter." All subsequent statutory references in this memorandum are to the Streets and Highways Code.

enter into contracts with any persons or public officers or public or private corporations, **whereby the facilities constructed by the district** may be made use of, by such persons, officers, or corporations, and at the tolls or for the consideration fixed by such contracts.

The grant of tolling authority to the District expressed in Section 27171 is subject to a key limiting condition: the District may set tolls only for the use of **its** property. With the exception of the area totaling 1,100 feet immediately south of the toll plaza, the District does not own Doyle Drive. Rather, the roadway is owned by the State of California. A toll on the use of Doyle Drive would not be a toll on use of District property, and therefore would exceed the authority granted by Section 27171.

Other statutory provisions governing District toll setting are the following:

- Section 27280. **“The board shall fix all tolls for the use of the facilities of travel constructed by the district, and shall collect such tolls through the general manager.”**
- Section 27174.1(a). **“The district may adopt rules and regulations not inconsistent with the Vehicle Code for the control of traffic on any facility of travel constructed by the district.”**
- Section 27282. **“The board may fix tolls for travel in one direction only on a facility of travel constructed by the district with no tolls collected for travel in the other direction.”**
- Section 27004. **“ ‘tolls includes tolls rates, traffic charges... for the use ... and operation of ... facilities for travel that are constructed, owned, operated or maintained by the district.**

These provisions place additional constraints on the extent to which the District may enact tolls by their explicit reference to “facilities constructed by the district,” and “facilities constructed, owned, operated or maintained by the district.” They thus act as further limitations on the District’s authority to impose a toll on users on Doyle Drive, as the District does not own, operate or maintain Doyle Drive. Nor will the District reconstruct the roadway, as the lead agency for planning, design, and construction of the Doyle Drive project is SFTA. The District also will not bear any responsibility for operating or maintaining a reconstructed Doyle Drive. Its current obligations, derived from contract and not from ownership, only involve adjusting lane direction in conjunction with similar activities on the Bridge.

CONCLUSION

The statutory framework that governs the District casts serious doubts as to the Board’s authority to serve as a surrogate to SFTA or any other agency. For the reasons stated above, it is

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highly questionable that the District possesses authority under existing law to implement a toll structure as required by the Urban Partnership Agreement governing use of Doyle Drive. In my considered judgment, explicit authority would need to be sought from the California Legislature as a prerequisite to the imposition of a Doyle Drive toll.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David J. Miller". The signature is fluid and cursive, with a long horizontal stroke at the end.

David J. Miller