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July 30, 2009

Daniel J. Powell, Esq.
California Department of Justice
455 Golden Gate Ave., Suite 11000
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Re: Shaw v. Chiang, Court of Appeal, Third District No. C058479

Dear Mr. Powell:

The decision rendered by the Court of Appeal for the Third District in *Shaw v. Chiang* is now final as to that Court. Until the California Supreme Court, pursuant to a petition for review, determines whether to grant review, the Controller and Director of Finance are under an obligation to abide by the Court's decision. The purpose of this letter is to request their assurance that, pending action by the Supreme Court on any petition for review filed by them, they will abide by the Court of Appeal's decision, and specifically as follows:

1. Diversion of Spillover Revenues to the Mass Transportation Fund.

The Court of Appeal held that the diversion of spillover revenues to the Mass Transportation Fund was not consistent with the trust purposes of the Public Transportation Account. Statutes 2009, chapter 14, section 6 (SBx3 7) adds subparagraph (l) to paragraph (1) of subdivision (a) of section 7102 of the Revenue and Taxation Code. Subparagraph (l) requires that all spillover revenues for fiscal year 2009-10 to 2012-13 be transferred to the Mass Transportation Fund. That transfer would be just as illegal as the prior transfers of spillover revenues to the Mass Transportation Fund in 2007-08 and 2008-09.

With respect to 2008-09, Statutes 2009, chapter 10, section 6 (ABx4 10) amends subparagraph (H) of paragraph (1) of subdivision (a) of section 7102 to increase the 2008-09 transfer of spillover revenues to the Mass Transportation Fund by \$101,826,000 (from \$939,408,000 to \$1,041,234,000). The transfer of this incremental amount would be illegal.

2. Diversion of Revenues out of the Public Transportation Account.

(a) Home-to-School Program - 2009-10 - \$404,333,000.

The Court of Appeal held that use of spillover revenues for the Home-to-School and Small School District Transportation Program was not a transportation planning or mass transportation purpose and therefore could not be funded from spillover revenues. Items 6110-111-0046 and 6110-11103116, respectively, of Statutes 2009, chapter 1 (SBx3 1), appropriate to the Department of Education for 2009-10, \$313,886,000 out of the Public Transportation Account and \$90,447,000 from the Mass Transportation Fund for this purpose. These appropriations are illegal and payment of any claims of the Department of Education from those appropriations would be illegal.

(b) Regional Center Transportation 2009-10 - \$ 138,275,000.

The Court of Appeal held that use of spillover revenues for the transportation of the disabled to regional centers for their programs was not a transportation planning or mass transportation purpose. Item 4300-01-0001(5) of Statutes 2009, chapter 1 (SBx3 1) appropriates to the Department of Developmental Services for 2009-10 \$138,275,000 for the transportation of disabled individuals to regional rehabilitation centers. That appropriation is illegal and payment of any claims of the Department of Developmental Services from those appropriations would be illegal.

3. Payment of Debt Service.

The Court of Appeal held that spillover revenues, whether in the PTA or diverted from the PTA, may not be used to reimburse the General Fund for payment of prior debt service on Proposition 108 bonds. The basis for the Court's conclusion is that reimbursement of the General Fund is not a transportation planning or mass transportation purpose. Thus, the prohibition would apply to the reimbursement of the General Fund for payment of past debt service on any bonds, not just Proposition 108 bonds. Statutes 2009, chapter 10, section 7 (ABx4 10), would add subdivision (d) to Revenue and Taxation Code section 7103. Subdivision (d) would authorize the Director of Finance to transfer to the spillover revenues in the Transportation Debt Service Fund to the General Fund in order to offset the cost of debt service payments made from the General Fund for "transportation related bonds," in any fiscal year. Transfer of spillover revenues for this purpose would be illegal.

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The Court of Appeal held that use of spillover revenues to pay current debt service on Proposition 116 bonds was precluded by the terms of Proposition 116. The Court of Appeal also held that use of spillover revenues to pay current debt service on Proposition 192 bonds was not for a transportation planning or mass transportation purpose. Use of spillover revenues to pay current debt service on those bonds or any other bonds that are not for transportation planning or mass transportation purposes would be illegal.

4. Reimbursement of General Fund for its Debt to the Transportation Investment Fund.

The Court of Appeal held that use of spillover revenues to reimburse the General Fund for its obligation to the Transportation Investment Fund for prior suspensions of fuel tax revenues owed to that fund was not for transportation planning or mass transportation purposes. Statutes 2008, chapter 756, section 12 (AB 268) authorized \$82,678,000 of spillover revenues diverted to the Mass Transportation Fund in fiscal year 2008-09 to be used for this purpose. It is unclear whether any 2009 legislation authorizes the use of spillover revenues for this purpose for 2009-10, but if legislation exists that does so, such use would be illegal.

Cordially,


Richard D. Martland

RDM/mc

cc: Hon. John Chiang, State Controller
Michael Genest, Director of Finance
Andrea Hoch, Esq., Governor's Legal Affairs Secretary