

# EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

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## *AGENDA OF JULY 22, 2020*

### *REGULAR MEETING*

**TO:** Shiva Frentzen, Chair, and  
Members of the El Dorado County Local Agency Formation  
Commission

**FROM:** José C. Henríquez, Executive Officer

**AGENDA ITEM #9: CONSIDER CHANGES TO LAFCO'S TRAINING  
REIMBURSEMENT POLICIES**

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#### **RECOMMENDATION**

Staff recommends that the Commission consider a request by Commissioner Powell to adopt a moratorium on non-training related activities by Commissioners and staff, revisit your travel/education reimbursement policies and provide direction to staff.

#### **REASON FOR RECOMMENDED ACTION**

Commissioner Powell requested this item for discussion and it was approved by Chair Frentzen for inclusion on the Agenda. Commissioner Powell posits that as long as the Commission is looking to outsource MSRs, it should pursue as many budgetary savings as possible, including its reimbursement policies and limit the amount of time spent by staff and Commissioners on non-El Dorado LAFCO activities.

#### **BACKGROUND**

On Tuesday, July 7, 2020, Commissioner Powell sent an email to your Executive Officer advocating for the Commission to revise its policies regarding reimbursement. Specifically, Commissioner Powell believes that "several thousands of dollars" will be saved in the budget to hire consultants to prepare municipal service reviews and sphere of influence studies if the extent of LAFCO support is, "only to pay for admission fees to any pre-approved conferences or courses, e.g., the CALAFCo University." His proposal is for, "anyone, either Commissioners or Employees, who desire to attend any CALAFCo sponsored affair, pay their own travel and entertainment expenses." In a follow up conversation with your Executive Officer, Commissioner Powell expanded this moratorium to include all non-training activities. He requested this item be included in the July Agenda and your Chair agreed to add it for discussion.

Commissioner Powell can further elaborate on his proposal at the July meeting. However, based on the specifics he provided in his proposal and the follow up conversation on July 9, should the Commission be agreeable to some or all of his requested changes that do not conflict with the California Labor Code, such changes may require the Commission to revise or temporarily suspend some sections in your Policies & Guidelines (P&G). The pertinent sections are found in Attachments A and B, specifically P&G sections 1.3.2 and 1.3.4 (Attachment A) and Section 2.4 in its entirety (Attachment B).

### *El Dorado LAFCO's Philosophy Regarding Training*

In the past, El Dorado LAFCO has encouraged Commissioner training and participation in CALAFCO. Staff will highlight two excerpts found in your Policies & Guidelines that highlights the importance of training, or at least the weight this Commission has put on it:

“Alternate Commissioners are encouraged to take an active role in El Dorado LAFCO business including discussions and deliberations on project proposals, CALAFCO legislative activities and training workshops, interagency coordination and communication, and participation in policy development and other working groups.” (P&G 1.3.2)

“New Commissioners are encouraged to attend courses or programs about the functions and responsibilities of LAFCO, particularly CALAFCO sessions, within their first year of service to LAFCO.” (P&G 1.3.4)

As the Commission is aware, LAFCO Law is detailed and its application is very specialized. The Cortese-Knox-Hertzberg Act (CKH) is not something that is picked up very easily. Training sessions – both internal and external and for staff as well as Commissioners – are integral for the Commission to do its job. This is why CALAFCO is structured as a 5013(c)3 [and not a 50(c)4, which is a lobbying entity], because it sees training and education as its core mission. Past Commissions have recognized that networking, the free exchange of ideas with members of other LAFCOs and the learning of new concepts (which is imperative given how often the Legislature tinkers with CKH) should be encouraged if new members of the Commission are to succeed (1.3.4) or to prepare Alternates when they must step into the role of voting member (1.3.2).

This philosophy, in turn, governs how the Commission has budgeted for conferences in the past. Every year, the budget ad hoc committee asks how many Commissioners are interested in attending the CALAFCO Conference and ensures there are sufficient funds to cover the training opportunities that may be available in the following fiscal year. Not all training funds are used every year, but never have more funds been expended than budgeted in any fiscal year.

### *What Is a Training-Related Activity?*

Commissioner Powell's proposal seeks to separate training, which he supports, from non-training activity, with the Commission adopting a limit to its engagement on those latter activities. If training can be defined as, “The process of increasing the knowledge and skills of the workforce to enable them to perform their jobs effectively,” then “training” is a process whereby an individual acquires job-related skills and knowledge.

Commissioner Powell's proposal would continue to encourage training but limit non-training activities unless there is a direct (or immediate) benefit to El Dorado LAFCO. Consequently, there would not be any LAFCO-funded activity that does not lead to the acquisition of new skills and knowledge through training.

Unfortunately, the "benefit" (direct or otherwise) of any specific CALAFCO activity is not immediately known. An argument can be made that participating on the CALAFCO Board of Directors has a benefit to El Dorado LAFCO even if it is not immediate or direct. Nevertheless, it is a policy decision that the Commission would have to deliberate and reconcile with its stated policy of supporting training and engagement. Specifically, whether any of these activities, which staff and the Commission have engaged in the past, constitute non-training and therefore fall within the parameters of Commissioner Powell's proposal:

- Staff attending the CALAFCO Workshop
- Staff attending CALAFCO University classes
- Staff attending the CALAFCO Conference
- Staff participating in the CALAFCO Legislative Committee
- Staff participating in planning committees for the CALAFCO Conference, CALAFCO Workshop or CALAFCO University
- Staff participating in legislative-related CALAFCO ad hoc committees, such as the Little Hoover Commission Response Team or the Protest Provisions Re-Write Committee
- Commissioners serving on the CALAFCO Board of Directors
- Commissioners attending the CALAFCO Conference
- Commissioners attending CALAFCO University classes
- Commissioners participating in the CALAFCO Legislative Committee
- Commissioners participating in planning committees for the CALAFCO Conference, CALAFCO Workshop or CALAFCO University

#### *Reimbursements and Costs*

A second component to Commissioner Powell's proposal is that staff and the Commissioners individually and personally absorb the cost (all or partial) if they engage in any CALAFCO-related activity. On this part of his proposal, your policies and the California Labor Code are clear: you cannot impose a cost on an employee for expenses that were a required work-related activity (Attachments B and C). Your policy spells out that no "undue loss" may be incurred:

"LAFCO employees and Commissioners should not suffer any undue loss when required to travel on official LAFCO business, nor should said individuals gain any undue benefit from such travel." (P&G 2.4.1)

And State Law specifies that all expenses that employees (but not Commissioners) are required to incur in connection with their employment must be shouldered by the employer. California Labor Code 2802 (Attachment C) provides:

“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. (California Labor Code Section 2802)

Over time, this obligation on LAFCO’s part to reimburse Commissioners and employees for their necessary expenditures has been extended to mileage and transportation, hotel expenses, cost of conferences, costs of required training, workshops and conferences. For the sake of clarity, the term “expenses” for the remainder of this memo includes these costs: mileage, hotel expenses, registration fees, parking, tuition fees, meals not covered under the program and transportation to and from the event not covered by private vehicle mileage. Costs that the Commission does not reimburse include purchase of incidentals while traveling, alcoholic beverages, and entertainment.

While Labor Code section 2802 does not apply to Commissioners, Commission Policies & Guidelines 2.4.1 does cover these issues, and Commissioners have been reimbursed for their expenses incurred while traveling for LAFCO business.

Alternatives to Commissioner Powell’s proposal would be that:

1. You can invite or encourage – but not require – Commissioners to pay for these expenses. That way, you are not subjecting Commissioners of modest means to foot a bill they cannot afford.
2. Require any Commissioner to reimburse LAFCO if he/she does not attend an event which LAFCO has paid all or part of, except in the event an absence was caused by a medically related, documented emergency.

Finally, neither your policies nor State Law allow for the reimbursement of “entertainment expenses,” and these have never been allowed to be reimbursable by administrative practice anyway. Because it is unknown by staff what Commissioner Powell meant by having employees and Commissioners “pay their own travel and entertainment expenses,” he would have to clarify what he meant by the latter category of expense.