

Public Authorities Law §§ 1204-e, 1204-e(1), 1204-e(2), 1204-e(3), 1204-e(4), 1204(3-b), 1266-d, 1266-d(1), 1266-d(2), 1266-d(3), 1266-d(4), 1266-e, 1266-e(1), 1266-e(2), 1266-e(3), 1266-e(4), 1266-i, 1266(6), 1279-c(1); Internal Revenue Code § 501(c)(3); Economic Development Law § 241(7); Executive Law § 580(3); Not-For-Profit Corporation Law § 1507-a(e)

The Permanent Citizens Advisory Committee to the MTA may not seek federal designation as a tax-exempt organization, solicit donations directly from the public, or apply to state agencies for direct funding.

September 9, 2014

William Henderson
Executive Director
Permanent Citizens Advisory
Committee to the MTA
347 Madison Avenue
New York, New York 10017

Formal Opinion
No. 2014-F2

Dear Mr. Henderson:

You have asked several questions relating to the authority of the Permanent Citizens Advisory Committee to the MTA (Committee) and its component councils to raise money to fund their work. As explained below, we are of the opinion that the Committee and its councils are not authorized to pursue any of the proposed funding strategies.

The Committee initially was established by the Metropolitan Transportation Authority (MTA) board in the late 1970s, in response to a recommendation by the MTA Management Study's Citizens Advisory Committee, to enhance responsiveness to and participation by the public. The Committee was originally composed of 29 members appointed by local officials: 15 from New York City and 14 from the seven suburban New York counties in the MTA region. In the early 1980s, to distinguish the interests of the commuters of each transit system, the Legislature created a series of Advisory Councils relating to different component parts of the MTA, namely the Long Island Rail Road, Metro-North, and the New York City Transit Authority. See Public Authorities Law §§ 1204-e, 1266-d, 1266-e. In 2009 the Legislature reconstituted the Committee as an umbrella organization composed of those councils: the Long Island Rail Road Commuter's Council, the Metro-North Commuter Council, and the New York City Transit Authority Advisory Council (Councils). Public Authorities Law § 1266-i. As such, the Committee serves as the coordinating body and the funding mechanism for the Councils. The Committee has no independent statutory charge but is a

mechanism through which the MTA communicates with its riders. Public Authorities Law § 1279-c(1).

The composition and responsibilities of the component Councils were established by statute. Each Council is composed entirely of commuters who use the particular transportation system within its jurisdiction. Public Authorities Law §§ 1204-e(2), 1266-d(2), 1266-e(2). Each Council is to "study, investigate, monitor and make recommendations with respect to the maintenance and operation" of the transit system within its jurisdiction. Public Authorities Law §§ 1204-e(1), 1266-d(1), 1266-e(1). And each Council "shall study and investigate all aspects of the day to day operations [of the relevant transit system], monitor its performance and recommend changes to improve the efficiency of the operation thereof." *Id.* Finally, each Council "may request and shall receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities" and effectuate its purposes. *Id.* §§ 1204-e(4), 1266-d(4), 1266-e(4). The members of the Councils are unpaid but can be reimbursed by the Committee for expenses actually and necessarily incurred by them in the performance of their duties. Public Authorities Law §§ 1204-e(3), 1266-d(3), 1266-e(3); Permanent Citizens Advisory Comm., *PCAC History*, at <http://www.pcac.org/pcac/history/> (PCAC is funding mechanism for three Councils).

You have explained that the MTA currently provides the resources for the Committee's operations, which include a five-member staff of transportation planning professionals who support the work of the component Councils and address MTA-wide issues that extend beyond the scope of a single council. The staff is paid as members of the administrative staff at MTA Headquarters. *See Metro. Transp. Auth., MTA 2014 Adopted Budget: February Financial Plan 2014-2017*, 235, 243 at [http://web.mta.info/mta/budget/pdf/Adopted Budget February Financial Plan 2014-2017.pdf](http://web.mta.info/mta/budget/pdf/Adopted_Budget_February_Financial_Plan_2014-2017.pdf). The members of the component Councils are interested in pursuing other sources of funding to provide additional resources to support their work and the work of the Committee.

Your first question is whether the Committee or its component Councils are authorized under New York law to seek and receive federal designation as a tax-exempt organization pursuant to section 501(c)(3) of the Internal Revenue Code. We believe that they are not. The Committee and the Councils are creatures of statute, and as such, they have only powers granted by express or necessarily implied legislative delegation. *See Matter of Flynn v. State Ethics Com'n*, 87 N.Y.2d 199, 202 (1995). The Councils were created by statute to allow users of the MTA's transit systems to communicate problems and make recommendations with respect to riders' experiences with the systems. Their duties are to study, investigate, monitor, and make recommendations with respect to the component transit systems. The Councils' only express power is to request and receive assistance and information from state

agencies and local governments that will allow the Councils to carry out their activities. Neither that express authority nor the Councils' statutory duties necessitate designation as a tax-exempt organization under federal law. We therefore conclude that the Committee and the Councils are not permitted to seek federal tax-exempt status.

Likewise, in response to your second question, we conclude that the Committee and its component Councils are not expressly authorized to solicit donations directly from the public, nor does the fulfillment of their duties implicitly necessitate solicitation of donations from the public. Their funding is provided by the MTA, and performance of their statutory responsibilities – studying, investigating, monitoring, and recommending with respect to transit systems operations – does not necessarily require funding beyond that which the MTA provides. Accordingly, we believe the Committee and Councils may not directly solicit public donations. Under the current legislative scheme, performance of the Committee's and Councils' duties must be harmonized with the resources MTA provides. *See* Permanent Citizens Advisory Comm., *PCAC Goals*, at <http://www.pcac.org/pcac/goals/> (“Sponsor and publicize at least one major research project annually”).

Your third question is whether the Committee or its component Councils are authorized to apply for and receive direct funding from state departments or agencies. Arguably, the Councils' enabling statutes provide authority for this when they allow each Council to "request and . . . receive from any department, division, board, bureau, commission, agency, public authority of the state or any political subdivision thereof such assistance and data as will enable it properly to carry out its activities hereunder and effectuate the purposes set forth herein." Public Authorities Law §§ 1204-e(4), 1266-d(4), 1266-e(4). Nonetheless, we believe this language does not authorize the proposed action. This or similar broad language is found in many statutes for governmental entities, including other advisory bodies. *See, e.g.,* Economic Development Law § 241(7) (Advisory Council on Economic Information and Research); Executive Law § 580(3) (Emergency Services Council); Not-for-Profit Corporation Law § 1507-a(e) (State Cemetery Board Citizens Advisory Council). Indeed, such statutory language has been described as "commonplace." *Matter of N.Y. State Dep't of Taxation & Finance v. N.Y. State Dep't of Law, Statewide Organized Crime Task Force [OCTF]*, 44 N.Y.2d 575, 581 (1978). In contrast, the Legislature has granted some entities, including the public authorities within which the Councils are established, the express authority to accept grants of funds from state and local public bodies. *See, e.g.,* Public Authorities Law § 1266(6) (MTA and New York City Transit Authority (NYCTA)); *id.* § 1204(3-b) (NYCTA). The Legislature thus provides separately for monetary “assistance” and in kind assistance. In light of the extensive number of public entities granted the broad authority to request and receive "assistance" from other public entities, in combination with the specificity with which the Legislature has allowed certain public entities to seek and accept money from other governmental entities, we

conclude that the Committee and the Councils are not authorized under the current statutory scheme to seek funding from state entities other than the MTA.

Very truly yours,

ERIC T. SCHNEIDERMAN
Attorney General