



Legal Affairs Seminar

FEBRUARY 21-23, 2016

ELDORADO HOTEL

SANTA FE, NM





AMERICAN PUBLIC TRANSPORTATION ASSOCIATION

2016 LEGAL AFFAIRS SEMINAR

February 21-23, 2016

Eldorado Hotel

Santa Fe, NM

Welcome to the 2016 APTA Legal Affairs Seminar. This professional development seminar will help you gain up-to-date information on legislative, regulatory litigation, and other legal issues affecting the transit industry.

Topics for this conference will highlight the most recent developments in civil rights, public works, First Amendment and transit advertising, passenger rail, transit safety, environmental litigation and labor issues, as well as evolving legislative and regulatory initiatives that will impact transit lawyers. Continuing legal education credits will be available

As part of APTA's sustainability commitment, conference materials are posted and available to registered attendees approximately one week prior to the seminar and continuously available for reference or downloading thereafter at <http://www.apta.com/mc/legal/synopsis/Pages/default.aspx>. To view the conference materials during the conference, please be sure to download the 2016 Synopsis of the Law and either bring a laptop with the files to the conference or print the portions you wish to use in hard copy and bring those copies to the conference. The 2016 Synopsis of the Law will be made available upon request in CD or printed form at additional cost. Additionally, the conference materials will be available for downloading on-site throughout the conference.

APTA's Vision Statement

Be the leading force in advancing public transportation.

APTA's Mission Statement

To strengthen and improve public transportation, APTA serves and leads its diverse membership through advocacy, innovation, and information sharing.

APTA's Policy on Diversity

APTA recognizes the importance of diversity for conference topics and speakers and is committed to increasing the awareness of its membership on diversity issues. APTA welcomes ideas and suggestions on how to strengthen its efforts to meet these important diversity objectives.

We would like to thank our sponsors for their generous contributions to the 2016 Legal Affairs Seminar



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2016 Legal Affairs Seminar Program-at-a-Glance

Sunday, Feb. 21	Monday, Feb. 22	Tuesday, Feb. 23
<p>9 a.m. – 3 p.m. Registration</p> <p>10 – 10:15 a.m. Welcome & Seminar Overview</p> <p>10:15 – 11 a.m. Legislative Update</p> <p>11 a.m. – 12 p.m. A Conversation with the FTA Chief Counsel</p> <p>12:15 p.m. – 1:15 p.m. Lunch</p> <p>1:15 p.m. – 2:30 p.m. Round-Table Discussion <i>(The round-table discussion is intended as a forum for transit agency attorneys and their outside counsel to exchange information in a non-attribution, confidential setting.)</i></p> <p>2:30 – 3:30 p.m. Legal Counsel’s Role in Hiring the General Manager/CEO</p> <p>6 – 7 p.m. Opening Reception <i>Sponsored by Kaplan Kirsch & Rockwell</i></p>	<p>7:30 – 8:30 a.m. Breakfast <i>Sponsored by Manatt, Phelps & Phillips, LLP</i></p> <p>8:30 a.m. – 4 p.m. Registration</p> <p>8:30 – 10 a.m. Lessons Learned in Large Construction Projects – Overhead and CM/GC</p> <p>10 – 10:15 a.m. Break</p> <p>10:15 – 11:15 a.m. First Amendment and Transit Advertising</p> <p>11:15 a.m. – 12:15 p.m. Labor Update</p> <p>12:30 – 1:30 p.m. Working Lunch: New Directions in Public Transit in New Mexico Loren Hatch, Deputy Secretary, New Mexico Department of Transportation <i>Sponsored by Hanson Bridgett LLP</i></p> <p>1:30 – 3 p.m. Rail: It’s not All About that Bass After All, It’s All About Safety</p> <p>3 – 3:15 p.m. Break</p> <p>3:15 – 5 p.m. NEPA for Transit Agencies – How Environmental Process can Sink or Save a Transit Project</p> <p>6 – 8 p.m. Special Event: Georgia O’Keeffe Museum <i>Sponsored by Thompson Coburn LLP</i></p>	<p>7:30 – 8:15 a.m. Breakfast</p> <p>7:45 – 8:15 a.m. Legal Affairs Committee Meeting</p> <p>8:15 – 11 a.m. Registration</p> <p>8:15 – 9:15 a.m. Fare Setting: Income-based, Reduced and Other Fare Programs</p> <p>9:15 – 10:30 a.m. ADA Issues: 25 Years and Counting</p> <p>10:30 – 10:45 a.m. Break <i>Sponsored by Beveridge & Diamond, P.C.</i></p> <p>10:45 a.m. – 12 p.m. Safety Management Systems: Compliance in a New Regulatory Environment</p> <p>12 – 1 p.m. Ethics & Professional Responsibility</p> <p>1 p.m. Closing</p> <p><i>Additional Sponsorship provided by: Apperson Crump PLC</i></p>



General Information

Attire: Business Casual

As courtesy to other attendees, please MUTE your electronic devices during the sessions.

2016 Legal Affairs Seminar

Sunday, February 21

9 a.m. – 3 p.m.

Registration

10 – 10:15 a.m.

Welcome & Seminar Overview

Speaker:

Madeline Chun, Esq., Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Hanson Bridgett LLP, San Francisco, CA

Rosemary Romero, Rosemary Romero Consulting, former City of Santa Fe Councilor and Chair of the North Central Regional Transit District, Santa Fe, NM

10:15 – 11 a.m.

Legislative Update

A review of the recently enacted Fixing America's Surface Transportation (FAST) Act, the federal legislative calendar for the year ahead, and potential legislative policy issues affecting the U.S. public transportation industry in the near future.

Speaker:

Robert L. Healy, Jr., Vice President-Government Affairs, APTA, Washington, D.C.

11 a.m. – 12 p.m.

A Conversation with the FTA Chief Counsel: A Look at the Year Ahead

FTA Chief Counsel Ellen Partridge will provide insights on FTA's priorities and initiatives in the year ahead, and introduce members of the FTA legal team. A brief overview of FAST Act implementation and recent Buy America developments will be given.

Speakers:

Ellen Partridge, Chief Counsel, Federal Transit Administration, Washington, D.C.

Sunday, continued

Dana Nifosi, Deputy Chief Counsel, Federal Transit Administration, Washington, D.C.

Cecelia Comito, Assistant Chief Counsel, Federal Transit Administration, Washington, D.C.

12:15 – 1:15 p.m.

Lunch

1:15 – 2:30 p.m.

Round-Table Discussion

This is an informal session for public transit agency attorneys to introduce themselves and share information and strategies for handling legal issues facing their agencies. Come with questions, ideas, and news about the legal challenges your agencies have asked you to solve.

(The round-table discussion is intended as a forum for transit agency attorneys and their outside counsel to exchange information in a non-attribution, confidential setting.)

Moderator:

Madeline Chun, Esq., Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Hanson Bridgett LLP, San Francisco, CA

2:30 – 3:30 p.m.

Legal Counsel's Role in Hiring the General Manager/CEO

Attorneys for transit agencies face a number of issues regarding the selection and hiring of a general manager/CEO. Those include potential conflicts arising from the reporting structure between the attorney, the CEO and the board; compensation, and benefits; confidentiality and open records issues during the hiring process; and negotiating the employment contract. Panelists will discuss these issues and provide tips on how to navigate the process while meeting the public agency mandate of transparency and the applicant's desire for confidentiality until a decision is made.

Moderator:

Marla L. Lien, Vice Chair, APTA Legal Affairs Committee, and General Counsel, Regional Transportation District, Denver, CO

Sunday, continued

Speakers:

Daniel Lacomis, Shareholder, Berenbaum Weinshienk PC,
Denver, CO

Roger Sherman, Chief Operating Officer, CRL Associates Inc.,
Denver, CO

Joan L. Cassman, Partner, Hanson Bridgett LLP, San Francisco, CA

6 – 7 p.m.

Opening Reception

Sponsored by:
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Monday, February 22

7:30 – 8:30 a.m.

Breakfast

Sponsored by:
Manatt, Phelps & Phillips, LLP

The logo for Manatt, Phelps & Phillips, LLP, featuring the word "manatt" in lowercase white letters on a solid orange rectangular background.

8:30 a.m. – 4 p.m.

Registration

8:30 – 10 a.m.

Lessons Learned in Large Construction Projects -- Overhead and CM/GC

So you don't think "overhead" is interesting? How about a 20+-year case that recently resulted in a judgment of over \$90 million in favor of the transit agency? An attorney working on that case (LACMTA v. Parsons-Dillingham) will explain the tortured history of the case, how the defendant consultants over-billed the transit agency, how they were found out, and what transit agencies can do to protect against such practices.

Is Construction Manager/General Contractor (CM/GC) the right project delivery method for you? Using rail and BRT projects as examples, the speakers will discuss why their agencies chose CM/GC, legal and other issues that arose in the process, and lessons learned. The FTA will also offer its perspective on CM/GC, comparing the World Trade Center project with the MBTA's Green Line Extension project.

Moderator:

Robin M. Reitzes, Immediate Past Chair, APTA Legal Affairs Committee, and Deputy City Attorney, City & County of San Francisco, CA

Speakers:

Lance Erz, Director of Real Property/Deputy General Counsel, TriMet, Portland, OR

Wendy Lee, Regional Counsel, Region 1, Federal Transit Administration, Cambridge, MA

Jennifer L. Meeker, Senior Associate, Nossaman LLP, Washington, DC

Monday, continued

10 – 10:15 a.m.

Break

10:15 – 11:15 a.m.

First Amendment and Transit Advertising

“To Advertise or Not To Advertise, That is the Question”

This panel will explore policies, trends, controversies, and cases related to the use of transit facilities and vehicles as revenue generators from advertisements.

Moderator:

T. Byron Smith, Assistant Attorney General and Principal Counsel, Maryland Transit Administration, Baltimore, MD

Speakers:

John I. Kennedy, Deputy City Attorney, City & County of San Francisco, CA

Julie A. Sherman, Senior Counsel, Hanson Bridgett LLP, San Francisco, CA

Peter G. Ramels, Senior Deputy Prosecuting Attorney, Civil Division, King County Prosecuting Attorney's Office, Seattle, WA

11:15 a.m. – 12:15 p.m.

Labor Update

During this session speakers from around the country will discuss trends and issues in collective bargaining, provide an update on the 13(c) litigation involving California pension reform, and discuss a recently completed TRB report on a "tool box" to promote labor-management partnerships.

Moderator:

Jane Sutter Starke, Partner, Thompson Coburn LLP, Washington, DC

Speakers:

Thomas P. Hock, Esq., Vice President, Labor Relations, Transdev North America, Cincinnati, OH

Tim Spangler, Chief Counsel, Sacramento Regional Transit District, Sacramento, CA

Scott H. Baker, Senior Consulting Manager, Transportation Strategic Planning Services, AECOM, Arlington, VA

Monday, continued

12:30 – 1:30 p.m.

Working Lunch: New Directions in Public Transit in New Mexico

New Mexico Department of Transportation Deputy Secretary of Business Support and Modal Programs Loren Hatch will discuss the new direction in public transit undertaken by the New Mexico Department of Transportation over the past 10 years and the challenges and opportunities that the future will bring for the state's public transit systems.

Speaker:

Loren Hatch, Deputy Secretary, New Mexico Department of Transportation, Santa Fe, New Mexico

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1:30 – 3 p.m.

Rail: It's not All About that Bass After All, It's All About Safety

For the rail industry, safety has been and continues to be Job 1. Recent legislative developments and regulatory actions have sharpened the focus on development and implementation of new tools for improving the safety culture and safety performance of commuter railroads, as well as on enhancing the focus of public agencies on the safety of their systems' operations. The panelists will discuss these recent developments, which to a large extent have a bearing not just on the rail-related activities of the agency but also on the operations of other modes, for those agencies that sponsor more than one transit mode.

Moderator:

Charles A. Spitulnik, Partner, Kaplan Kirsch Rockwell LLP, Washington, DC

Speakers:

Allison I. Fultz, Partner, Kaplan Kirsch Rockwell LLP, Washington, DC

Justin Marks, Attorney, Nossaman LLP, Washington, DC

Lawrence J. Horan, General Counsel, Mid-Region Council of Governments, Albuquerque, NM

Monday, continued

3 – 3:15 a.m.

Break

3:15 – 5 p.m.

NEPA for Transit Agencies – How Environmental Process can Sink or Save a Transit Project

Even if we agree that the development of public transit improves the environment, project proponents need to carefully document and assess potential environmental and socio-economic impacts of their proposed actions. What challenges do transit agencies face in NEPA compliance? Panelists will provide an intermediate-level introduction to NEPA, focusing on transit-specific requirements and issues. A survey of NEPA-related litigation filed against transit projects, key issues raised in those cases, and operator approaches or project-specific responses to NEPA compliance will be reviewed.

Moderator:

Michael N. Conneran, Partner, Hanson Bridgett LLP, San Francisco, CA

Speakers:

Nancy-Ellen Zusman, Assistant Chief Counsel for Litigation and Regional Operations, Federal Transit Administration, Chicago, IL

Ann K. Bloodhart, Associate General Counsel, Twin Cities Metropolitan Council, St. Paul, MN

Minming Wu, Assistant Regional Counsel, Region 9, Federal Transit Administration, San Francisco, CA

Fred Wagner, Principal, Beveridge & Diamond P.C., Washington D.C.

6 – 8 p.m.

Special Event: Georgia O’Keeffe Museum

Sponsored by:
Thompson Coburn LLP



Tuesday, February 23

7:30 – 8:15 a.m.

Breakfast

7:45 – 8:15 a.m.

Legal Affairs Committee Meeting

Presiding Officer:

Madeline Chun, Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Hanson Bridgett LLP, San Francisco, CA

8:30 – 11 a.m.

Registration

8:15 – 9:15 a.m.

Fare Setting: Income-based, Reduced, and Other Fare Programs

Panelists will discuss recent campaigns to provide discounted or free transit passes, including the policy in place and/or the policy change that was implemented, the advocacy efforts that led to the policy change, any policy or legal concerns that came up during the change, and any post-implementation issues or concerns.

Moderator:

Karen Landers, General Counsel, San Diego Metropolitan Transit System, San Diego, CA

Speakers:

Desmond Brown, General Counsel, Sound Transit, Seattle, WA

Marla L. Lien, Vice Chair, APTA Legal Affairs Committee, and General Counsel, Denver Regional Transportation District, Denver, CO

Tuesday, continued

9:15 – 10:15 a.m.

ADA Issues: 25 Years and Counting

After 25 years since the enactment of the Americans with Disabilities Act, transit agencies appear to remain focused on achieving compliance using practical approaches to accessibility within operational and financial constraints. The challenges of accessibility facing transit agencies continue. For its part, FTA has promulgated Circular 4710.1, effective November 4, 2015, to assist the transit community with guidance on ADA compliance. The panelists will discuss the new Circular, implementation of the regulatory provisions to address requests for reasonable modifications of policies and procedures, and the challenges of providing access to mobility device securement areas on buses and light rail vehicles.

Moderator:

Anthony A. Anderson, Partner, Thompson Coburn LLP, Washington, DC

Speakers:

Linda Ford, Associate Administrator for Civil Rights, Federal Transit Administration, Washington, DC

Samantha Leslie, Staff Attorney – Regulatory Compliance, San Diego Metropolitan Transit System, San Diego, CA

Jenifer M. Ross-Amato, Associate General Counsel, Regional Transportation District, Denver, CO

10:30 – 10:45 a.m.

Break

Sponsored by:
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10:45 a.m. – 12 p.m.

Safety Management Systems: Compliance in a New Regulatory Environment

Safety Management Systems (SMS) are formal, top-down, organization-wide, data-driven, proactive procedures to manage safety risk and ensure the effectiveness of safety risk mitigation. SMS have been implemented successfully in other transportation modes and are a key component of the Federal Transit Administration's proposed safety rules. (See Proposed Appendix A to 49 C.F.R. Part 674.) This session will review FTA's proposed rule and will highlight the role of counsel in helping transit agencies incorporate SMS into a successful safety culture, and will draw comparisons from the general principles of corporate compliance. Using SMS properly can foster excellent communication, transparency, prevention, and most importantly, safety improvement. This panel will also serve as a lead-in to the conference's concluding ethics session, which will further explore legal counsel's professional responsibilities as a partner in a client's safety program.

Moderator:

Fred Wagner, Principal, Beveridge & Diamond P.C.,
Washington D.C.

Speakers:

Peter Anderson, Shareholder, Principal, Beveridge & Diamond
P.C., Washington D.C.

Candace Key, Attorney Advisor, Office of the Chief Counsel,
Federal Transit Administration, Washington, DC

Tuesday, continued

12 – 1 p.m.

Ethics & Professional Responsibility

Transit counsel – both in-house and outside counsel – face many complex and sometimes conflicting issues under the ABA Model Rules of Professional Conduct. This year’s ethics discussion uses the preceding Safety Management Systems (SMS) panel as a model to explain and clarify the transit lawyer’s ethical obligations when implementing a new program and/or conducting an investigation. This interactive session will introduce practical and real-world scenarios involving safety compliance and a lawyer’s ethical responsibilities. Among other topics, the panel will address confidentiality/privilege, the zealous representation of clients, clarity in defining the attorney-client relationship, and the role of counsel in a monitoring/auditing/investigating/reporting regulatory environment. You will also hear a cautionary tale from an actual decision reminding us of the line between advocacy and ethical conduct.

Speakers:

Bruce M. Smith, Attorney at Law, Apperson Crump PLC, Memphis TN

Fred Wagner, Principal, Beveridge & Diamond, P.C., Washington D.C.

1 p.m.

Closing

Speaker:

Madeline Chun, Esq., Member, APTA Board of Directors; Chair, APTA Legal Affairs Committee; and Partner, Hanson Bridgett LLP, San Francisco, CA

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