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October 26, 2016

The Honorable Mark Herring
Office of the Attorney General
Commonwealth of Virginia
202 North Ninth Street
Richmond, VA 23219

Dear Attorney General Herring:

I am writing you today to request an opinion on the legality of Virginia Beach Connex operating as a 501(c)(4) and effectively, an extension of Light Rail Now.

The enclosed article from the Princess Anne Independent News reveals serious conflicts of interest, as Virginia Beach Connex advocates in support of a referendum item on the November 8th ballot. Virginia Beach Connex appears to operate as a PAC, which would require a full disclosure of contributions.

In contrast, No Light Rail, a group that advocates against this referendum item, is organized as a PAC and provides financial disclosures for public scrutiny.

According to the article, the State Board of Elections website indicates that any group, including a 501 (c)(4), that spends more than \$1,000 toward passing or defeating a referendum must disclose financial activity.

Thank you in advance for your swift attention. This issue is time sensitive, with only 13 days until the Election. We appreciate any insight you may be able to provide.

Warmest regards,

A handwritten signature in blue ink that reads "Bill".

Bill DeSteph

THE PRINCESS ANNE INDEPENDENT NEWS

SERVING SOUTHERN VIRGINIA BEACH COMMUNITIES AND KNOTTS ISLAND, N.C.

Nonprofit light rail advocacy group named 2012 donors, but takes a different approach in 2016

Posted on September 5, 2016 by The Independent News

<http://princessanneindy.com/2016/09/05/rail-3/>

A light rail train arrives at Newtown Station in this file image. Virginia Beach Connex, a campaign run by the nonprofit Light Rail Now, is advocating for expansion of rail. [John-Henry Doucette/The Princess Anne Independent News]

BY JOHN-HENRY DOUCETTE

COURTHOUSE – Virginia Beach Connex, a campaign seeking “yes” votes in the November light rail referendum, is part of the nonprofit Light Rail Now, Inc., which was also active during the 2012 referendum about the Tide’s future here.

Virginia Beach Connex representatives this year have gathered for a city hall rally, produced videos, passed out literature, run at least one social media campaign and spoken during the recent constituent meeting hosted by City Councilmember Barbara Henley, who represents the Princess Anne District. There, a piece of material handed to a reporter said: “Vote Yes Nov. 8.”

Virginia Beach Connex is said to be a communication campaign, but, effectively, this is the name Light Rail Now is using with the public this year. The organization is operating differently than it did in 2012 because the nonprofit is not disclosing who funds advocacy as a referendum committee might do. Such disclosures let voters see donor names and understand how money is spent to influence them.

Martha McClees, executive director of Light Rail Now, said on Wednesday, Aug. 31, that the group checked with the state and got an opinion in April that said their nonprofit was exempt from filing campaign disclosure reports. McClees

provided a copy of an email from a state official to *The Independent News* this past week after it asked about the absence of disclosures.

The opinion is at odds with information provided by another state elections official after *The Independent News* asked about Virginia Beach Connex. Martin Mash, a state elections spokesperson, on Thursday, Sept. 1, said there appears to be a conflict in the code. He said any questions by members of the public about Virginia Beach Connex would have to be handled by local officials.

“A court would have to determine which section would be applicable,” he said.

A Light Rail Now referendum committee operated in 2012, according to state election records. Carolyn McPherson, the former executive director of Light Rail Now, said the 2012 referendum committee was organized to support the communication campaign that year. She left the group after that referendum vote.

No Light Rail, the group that gathered signatures to force this year’s referendum, is organized as a political action committee and files financial disclosures that are available online for public inspection.

“It was to be in the interest of transparency and legality,” said Steven Miyares, a lawyer representing No Light Rail.

“We have to report where our money comes from,” City Treasurer John Atkinson, who started No Light Rail, said this past week. “I don’t know why they don’t.”

McClees said the group is advocating while operating as a 501(c)(4) organization. The 501(c)(4) designation is for a nonprofit group that promotes social welfare, meaning “the common good and general welfare of the people of a community,” according to the Internal Revenue Service.

Nonprofits that are designated under 501(c)(4) are allowed to engage in some political activities, and they can engage in “substantial lobbying activities,” according to information at the IRS website.

The Virginia elections department’s webpage about referendum committees says any group — it specifically includes a 501(c)(4) — that spends more than \$1,000 toward passing or defeating a referendum in a city must file a statement of organization with elections officials and disclose financial activity.

“If this group has met this threshold, then they are subject to the disclosure and filing requirements,” wrote Paul E. Stenbjorn, the state director of election administration, in an email to *The Independent News*.

The email sent to Virginia Beach Connex by the state’s Rise Miller said an organization “which in providing information to voters, does not advocate or endorse the election or defeat of a particular candidate, group of candidates, or the candidates of a particular political party” is exempt from disclosure.

VB CONNEX @VBConnex · Jul 1

CONNEX

We said yes to [#lightrail](#) in 2012; let's do it again in 2016!
[#getonboardvb](#) [#voteyes](#)

GO TO THE POLLS



A "NO" gets us nowhere!

A Virginia Beach Connex tweet seeks "yes" votes for the upcoming referendum. It is not readily apparent at Facebook or the Virginia Beach Connex site that Light Rail Now is the group behind the messages seeking yes votes in the upcoming referendum. Printed materials also do not mention Light Rail Now.

"We can't support a candidate, but we can advocate for a position," Timothy McCarthy, a volunteer board member of Virginia Beach Connex and the former president of Light Rail Now, said this past week.

He said contributors to Virginia Beach Connex are a mix of citizens and businesspeople.

"I'm a contributor," McCarthy said. "Most members are contributors to the cause."

McClees later said donors and spending did not need to be disclosed, citing the state opinion, so they would not be made public. There are people in the community who support causes who want to be anonymous, she said.

State records still list Light Rail Now as a referendum committee, though it has been dormant since late 2012. That year, the nonprofit contributed \$20,242 to its own referendum committee, its records show.

McClees said Virginia Beach Connex is operating under the "umbrella" of Light Rail Now. The group's former website redirects to the Virginia Beach Connex page. McClees said Virginia Beach Connex has a broader mission than the referendum, calling it "a grassroots organization that believes we need to be part of a connected community."

Donors to the 2012 Light Rail Now, referendum committee included the Hampton Roads Association for Commercial Real Estate and businesses connected to real estate and development, but the group also reported a number of small donations. The committee spent \$52,888, including the money the nonprofit provided to it.

In comparison, No Light Rail this year has raised about \$40,400 and spent \$29,700, according to its most recent financial disclosures to the state. Again, it's uncertain what the Virginia Beach Connex effort is spending or where the money comes from.

In 2010, the Virginia Beach business community started and provided funding to Light Rail Now, according to a report in *The Virginian-Pilot*. Virginia Beach Vision, long a supporter of light rail, was the group leading that effort, *The Pilot's* Aaron Applegate wrote.

In a filing to the IRS, Light Rail Now in 2011 gave its mission as "building excitement and support for light rail as part of Virginia Beach's transportation solutions."

Between 2013 and 2015, McCarthy was listed as the principal officer for the group in federal filings. During that period, the organization's address changed to the Cleveland Street location of Virginia Beach Vision.

Virginia Beach Vision, founded by business and civic leaders, deals with issues such as city management, resort development and transportation. Online, expansion of light rail is still among its priorities. The group includes 120

executives among its directors and is involved with a number of regional and city issues. McClees spoke last year on behalf of the Virginia Beach Vision board, urging the city council to stay the course on rail extension.

McClees is the executive director for Virginia Beach Vision. She said her other service as executive director of Virginia Beach Connex is why Light Rail Now shares its address and phone number with Virginia Beach Vision.

She also confirmed this past week that Mission Transport VB, a social media campaign posting artwork and videos to Facebook, is an element of Light Rail Now, though there is no information online to make this connection clear to potential voters.

Someone from that page reached out to *The Independent News*, seeking shares of its products, but they did not respond to questions from the newspaper about how it is funded or its affiliation. People posting at the page also have asked about this and been ignored.

Asked whether the public should know who was behind the marketing effort, which might be seen as the work of some other group, McClees said she was “not sure it’s relevant.” She said she understood how it might be confusing telling Light Rail Now from Virginia Beach Vision from Mission Transport VB.

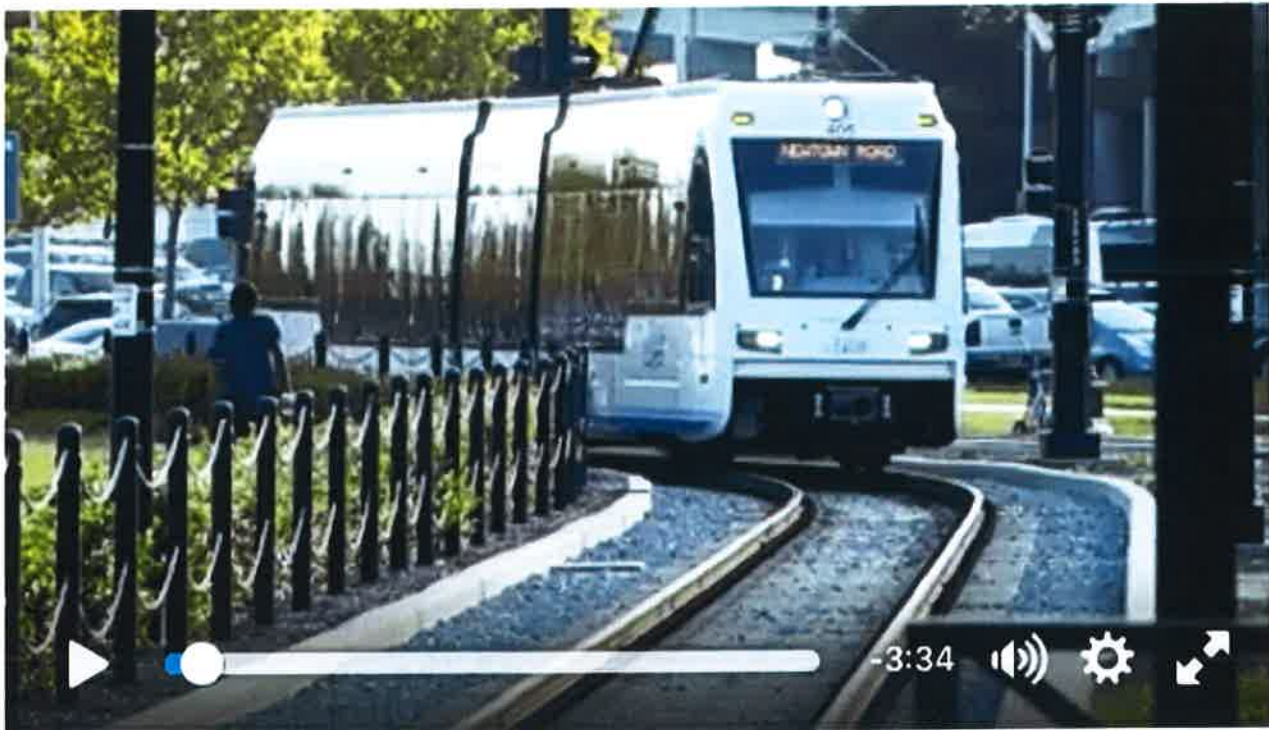


Mission Transport VB

Yesterday at 8:18am · 🌐

Light Rail is back in the conversation. Join Nikki Starr as she rides The Tide with Councilman Ben Davenport and a few new friends.

#missiontransportvb #voteyes #getonboardvb #lightrail



10K Views

This is a Facebook post by Mission Transport VB, which recently released a video about light rail. Mission Transport VB is part of the communication efforts of Light Rail Now, though this is not clear to the public viewing its work.

A video at the [Mission Transport VB Facebook page](#) recently was filmed on the Tide. It features an actor speaking with people, including City Councilmember Ben Davenport. The video does not mention any connection to Virginia Beach Connex or Light Rail Now.

Tom Holden, a [Hampton Roads Transit](#) spokesperson, said the crew filmed on the Tide after filing an application. HRT provided a copy to *The Independent News* in response to a public records request.

The Mission Transport VB video was made by a company that, when contacted, declined to name who it represented. The application was more forthcoming. It said Virginia Beach Connex. McClees, in an interview, said they should have said Light Rail Now.



Advocates for light rail, with a dog keeping them company, hold a Virginia Beach Connex sign during a rally at City Hall in April. [John-Henry Doucette/The Princess Anne Independent News]

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