

BOWIE, ARNESON, WILES & GIANNONE

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
ATTORNEYS AT LAW

ALEXANDER BOWIE*
JOAN C. ARNESON
WENDY H. WILES*
PATRICIA B. GIANNONE
ROBERT E. ANSLOW
BRIAN W. SMITH
JEFFREY A. HOSKINSON
MEGAN V. WATT
DANIELE D. LE
LAWRENCE K. CHAN
TYLER B. DOCKINS

4920 CAMPUS DRIVE
NEWPORT BEACH, CALIFORNIA 92660
(949) 851-1300

(800) 649-0997
FAX (949) 851-2014

REF. OUR FILE
15032 D 3.4.1

*A PROFESSIONAL CORPORATION

June 17, 2011

VIA E-MAIL [CREINES@PUHSD.ORG]
& U. S. MAIL

Ms. Candace Reines
Assistant Superintendent, Business Services
Perris Union High School District
155 East 4th Street
Perris, California 92570

Re: Matters Relating to Citizens' Oversight Committee of the Perris Union High School District (Measure Z)

Dear Candace:

You have requested that we provide a letter to the Perris Union High School District ("District") regarding certain matters relating to the Citizens' Oversight Committee ("Committee") of the District, which was formed by the District following the approval of District's Measure Z General Obligation Bond Election conducted in November of 2004.

I. Issues Presented:

1. Was the Committee properly organized and formed pursuant to State law?
2. Did the Committee validly reduce the quorum requirements for meetings of the Committee from four (4) members present to three (3) members present?
3. Can the Committee validly undertake to conduct Committee business with a quorum of three (3) members?

II. Summary Responses:

In response to the issues presented, and our review of current law on this matter, the following are our views on such issues:

BOWIE, ARNESON, WILES & GIANNONE

Ms Candace Reines
Perris Union High School District
June 17, 2011
Page 2

1. The Committee was validly formed and organized by the District following the certification of the District's successful Measure Z General Obligation Bond Election conducted on November 2, 2004 and the District validly appointed initial members to the Committee within the required time period set out by State law.
2. Under current State law and the policies of the District and the Committee, the Committee had authority to reduce the number of members needed to be present to constitute a quorum of the Committee from four (4) members to three (3) members. Further, the Committee undertook such action at a meeting of the Committee held on November 30, 2005, as confirmed by the minutes of such meeting (which have been approved by the Committee).
3. Given the current interpretations of California law relative to the operations of Proposition 39 Citizens' Oversight Committees, the Committee may hold meetings in compliance with the provisions of Ralph M. Brown Act ("Brown Act"), State law and the Committee's determinations given a quorum of three (3) members of the Committee.

III. Background and Discussion:

On July 21, 2004, the Board of Trustees of the District ("District Board") adopted Resolution No. 04:04-05 ("Election Resolution") ordering a school bond election, establishing specifications for an election order and taking other related actions relative to calling and conducting a general obligation bond election to occur on November 2, 2004 ("Election Resolution"). Within the Election Resolution, the District Board stated that, pursuant to the applicable provisions of the California Education Code, and the provisions of Article XIII A, Section (b) of the California Constitution, if such bond measure was successful, the District would form a Citizens' Oversight Committee and appoint initial members to its Citizens' Oversight Committee. This commitment was also reflected in the actual wording of the bond measure language included as part of the Election Resolution (and as submitted to the voters as part of the bond measure election. The District's bond measure was designated by the Riverside County ("County") Registrar of Voters' office as "Measure Z."

Measure Z was subsequently approved by greater than the requisite 55% of voters voting on Measure Z at the November 2, 2004, election date. Pursuant to the provisions of California Education Code Sections 15124 and 15274, the District Board subsequently adopted Resolution No. 18:04-05 on December 8, 2004, to certify the election results of the Measure Z election ("Resolution No. 18:04-05").

On November 17, 2004, the District Board adopted Resolution No. 17:04-05 adopting policies and regulations relative to the Committee. The District's Citizens' Oversight Committee Policy and Regulations ("COC Policy") was attached to Resolution No. 17:0405 and is currently

BOWIE, ARNESON, WILES & GIANNONE

Ms Candace Reines
Perris Union High School District
June 17, 2011
Page 3

posted at the District's internet website for the Committee, which is maintained by the District pursuant to the requirements of the California Education Code. It should be noted that the COC Policy adopted by the District Board is exactly that, a statement of policy relative to compliance with the applicable law, and where the law does not provide specific process or procedures, the COC Policy serves as an outline for action to guide the District, District Board and the Committee in terms of future actions and processes. Section 4.0 of the COC Policy provides as follows:

"The Board shall establish the Oversight Committee and initially appoint seven (7) members to the Oversight Committee, not more than sixty (60) days after the Board's certification of the election results in accordance with the purpose, parameters, policies and regulations set forth in California law and herein."

It should be noted that, as part of State law, Education Code Section 15282, membership on a Proposition 39 Citizens' Oversight Committee is subject to certain limitations. These limitations include a requirement that a Citizens' Oversight Committee membership include the five representation "groups" as listed in Education Code Section 15282. Additionally, Education Code Section 15282(b) specifically prohibits employees or officials of a school district from serving on a Citizens' Oversight Committee. This Section also prohibits vendors, contractors or consultants of a school district from being appointed to such a Citizens' Oversight Committee. These Education Code statutory provisions have the effect of narrowing the eligible candidates who may be appointed to sit on an individual school district's Citizens' Oversight Committee. Additionally, we note that members of a Citizens' Oversight Committee are required to serve without compensation under Education Code Section 15282(a). This can also have the effect, especially in difficult economic times, of reducing incentive to serve on such a Citizens' Oversight Committee.

We also note that the COC Policy also provides provisions relative to subsequent appointments of COC members (after the initial appointments), filling of vacancies on the Committee, and the terms of Committee members, which comply with the applicable provisions of the California Education code.

As noted above, the District adopted Resolution No. 18:04-05 on December 8, 2004. This began the sixty (60) day time period for the District Board to make the initial appointments of the Committee members as required by the COC Policy and Education Code Section 15278. At its meeting of February 7, 2005 (which was within the sixty day time frame referenced), the District Board appointed the initial seven (7) members to the Committee. This was a public meeting of the District Board at which members of the public were allowed to attend and provide comments in compliance with the Brown Act. The initial members of the Committee are noted in the minutes of the District Board meeting of February 7, 2005, and are also noted in the minutes of the initial organizational meeting of the Committee conducted on Wednesday, March 9, 2005. The representation "groups" of the initial appointed members of the Committee, and subsequent appointees to the Committee, are on file at the District. Based upon the requirements

BOWIE, ARNESON, WILES & GIANNONE

Ms Candace Reines
Perris Union High School District
June 17, 2011
Page 4

of Education Code Section 15282, and the COC Policy, we are of the view that the seven (7) members initially appointed to the Committee satisfied both the membership requirements and representation groups for Citizens' Oversight Committees under applicable State law.

Subsequent to the initial appointment of members to the Committee, the Committee undertook various actions to receive information regarding the District's expenditure of bond proceeds generated from the sale of general obligation bonds as authorized by the District's Measure Z bond election. We have not undertaken to summarize or capsule the actions of the Committee subsequent to its initial organization.

Following the appointment of initial members to the Committee by the District Board, the Committee began to experience attendance issues by members of the Committee. It should be noted that no provision in the California Constitution, or the California Education code, requires attendance at each and every meeting of an elected or appointed body by each and every members of such body. In general, whether an individual is elected or appointed to a given governmental agency (including a committee, such as the Committee) they cannot be compelled against their will to attend a specific meeting or meetings, or meetings on a particular date and/or time. The federal and California State Constitution each prohibit involuntary servitude, except as punishment for a crime. (U.S.C. Const. Amend. 13, Section 1; California Constitution, Article I, Section 6; see also California Penal Code Section 181, criminalizing holding or attempting to hold a person in involuntary servitude). As such, neither the District nor the Committee have the authority to compel attendance by an appointed Committee member(s) at every meeting of the Committee.

We note that within our experience with Proposition 39 Citizens' Oversight Committees that attendance at meetings of such committees does vary considerably from school district to school district and is not necessarily under the given control of the school district itself. The school districts, and Citizens' Oversight Committees, rely, in considerable portion, on the dedication and commitment of members' appointment to citizens' oversight committees in order to assure attendance. As noted above, such attendance cannot be legally compelled.

The California Education Code does not provide any statement in regard to the quorum requirements for meetings of Citizens' Oversight Committees. Citizens' Oversight Committees function as independent committees following their organization and appointment by the school district which formed them. In Section 9.2 of the COC Policy, the policy provides:

"The Oversight Committee may establish rules for the conduct of the Oversight Committee's proceedings. These rules may be enacted by motion or resolution."

In light of questions relating to attendance problems, the members of the Committee agendized, considered and took action at the Committee meeting of November 30, 2005, to reduce the requirement for the number of members of the Committee to be present in order to constitute a quorum in order to conduct meetings pursuant to the Brown Act and otherwise take action(s)

BOWIE, ARNESON, WILES & GIANNONE

Ms Candace Reines
Perris Union High School District
June 17, 2011
Page 5

under the provisions of the COC Policy from four (4) members present to three (3) members. This is confirmed by copies of the minutes of the meeting of the Committee (at which a quorum of four (4) members of the Committee was in fact present to vote on such issue) conducted on November 30, 2005. The Committee has within its power to further change such quorum requirements in the future.

As previously noted, California law does not state a minimum number of members to be present in order to constitute a quorum for a Citizens' Oversight Committee. As such, it is our view, under current law (including the intention that Citizens' Oversight Committees be independent bodies, and under the COC Policy), that the Committee had, within its authority, the decision-making power(s) to reduce the quorum requirements for purposes of compliance with the Ralph M. Brown Act and to otherwise conduct business from four (4) Committee members to three (3) Committee members. We are not aware of any rulings under the applicable provisions of the Education Code which would impair the ability of the Committee to undertake this action. As such, from and after November 30, 2005, the Committee could call and conduct meetings pursuant to the requirements of the Brown Act provided that necessary agenda, public comment, public access and other requirements of the Brown Act were, in fact, complied with by having three (3) Committee members present as opposed to four (4) Committee members present.

Members of a Citizens' Oversight Committee appointed pursuant to Proposition 39 may leave service for a variety of reasons, including being "termed out" under the provisions of Education Code Section 15282(a), or due to a resignation prior to their term expiring. In the case of the Committee, this has occurred on several occasions. We understand from the District, that following such resignations and "term out" for various Committee members, the District has undertaken to solicit for replacement Committee members on numerous occasions and using a variety of methods. This is in line with the provisions of the COC Policy. These methods have included press releases, posting on the District's website, notices posted at school sites, written notices sent home with District students and individual searches undertaken by different District staff members. Despite these reasonable, on-going and diligent efforts, the District has not always been successful in maintaining a current membership on the Committee at seven (7) members. However, as noted above, it is not within the District's power to compel individual members of the community to serve on the Committee against their will. The District must rely upon the willingness of qualified members of the community to be willing to serve on the Committee. We have advised the District to undertake and to continue its diligent efforts to seek to restore membership on the Committee to seven (7) members with the five (5) represented groups (as further described above). However, to the extent that the District is unable to identify qualified members of the public to serve on the Committee and/or are otherwise qualified to serve on the Committee as described in the California Education code and COC Policy, we do not believe that the District would be subject to a successful legal challenge for failing to maintain a constant membership on the Committee, or that the Committee would necessarily have to suspend its actions and processes until a Committee membership of seven (7) members had actually been achieved. We believe that it is more in line with the intention of the Education Code provisions that the Committee continues to function in a "short handed" mode rather than

BOWIE, ARNESON, WILES & GIANNONE

Ms Candace Reines
Perris Union High School District
June 17, 2011
Page 6

to cease its activities until a larger number of Committee members can be identified and appointed.

The views expressed herein are based on the facts (as we know, believe, or have assumed them to be) and law in effect on the date of this letter and, as such, the views set forth herein shall be effective only as of the date of this letter. Please note that future acts or omissions may serve to modify, alter, or change the circumstances under which this letter was prepared and upon which the views herein were rendered. We have not undertaken to determine, or to inform any person or party, whether (or not) any such actions or events occur. Our views as expressed in this letter should not be considered a guarantee of result in the event of a legal challenge in regard to this matter. This letter is limited to the matters expressly set forth above, and no view or opinion of our firm is implied or may be inferred beyond the matters expressly so stated.

Please note that this letter does not constitute any form of (re)assertion, "carry-forward" or "bring down" of any prior opinions which may have been rendered by our Firm to any person or party relative to the validity of the District's General Obligation Bonds issued by the District under the authority of Measure Z, or related matters, rendered in connection with the delivery of such General Obligation Bonds.

If you have any questions with regard to the matters discussed within this letter, please do not hesitate to contact our offices.

Very truly yours,

BOWIE, ARNESON, WILES & GIANNONE



By:

Robert E. Anslow

REA:pks/imh