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October 30, 2009

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Dear Mr. Schons:

This letter is to request that you examine the July 29, 2009 action of the Orange County Fair Board outlined in the attached minutes. It appears that this action may violate Government Code section 1090 and the Bagley-Keene Open Meeting Act.

Government Code section 1090

I have been informed that the contracts referenced in Agenda Item 7 of the minutes were (1) with the law firm of Nossaman, Guthner, Knox and Eliot [hereinafter "Nossaman"] and (2) with former State Senator Dick Ackerman. I am informed that the contracts were designed to lobby the Governor's office in formulating the terms and conditions of the RFP to be issued by the State pursuant to AB 4X 22, which authorizes the sale of the Orange County Fairgrounds.

I am further informed that the Nossaman firm assisted a number of members of the Fair Board in forming a foundation (the "OC Fair and Event Center Foundation"), a non-profit entity, whose Board members were anticipated to include a number of members of the current Fair Board. The Foundation was incorporated on July 21, 2009—eight days before the consulting contract was approved by the Fair Board. I am further informed that the law firm Jones Day prepared the articles of incorporation and other documents for the non-profit.

I question whether the Fair Board's decision to use Fair Board funds for a lobbying or similar contract in connection with the formation of the contract or influencing the RFP process represents personal influence by Board members who are prospective foundation members, and who thus would have a direct personal interest in the outcome of the RFP process.

An official's interest need not be direct. *People v. Darby*, 114 Cal. App. 2d 412, 250 P2d 743 (1952). This interest is indirect, in that the contract would facilitate the acquisition, as opposed to this being a contract of acquisition.

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Here, it appears that the Fair Board utilized public funds to engage a firm to influence the design of the RFP so it would best suit the anticipated Foundation bid. Since several members of the Fair Board were also going to be on the Foundation Board, and the Foundation was incorporated as a private, non-profit entity (and not a government entity), this expenditure of public funds for a contract with the Nossaman firm was a contract that would aid the personal interests of those members. Indeed, if the Foundation were to succeed in its bid, it would both own the fairgrounds and operate the Fair and other events at the fairgrounds. If past practice holds, members of the Foundation Board would enjoy some (even if minimal) perquisites, such as free tickets to the Fair, parking passes, etc. Those are financial interests. Thus, the contract is one in which the members have an indirect financial interest, which might violate Government Code Section 1090. If this contract is illegal, it is void—it is null and of no effect, not merely voidable. Public funds cannot be used to pay this contract.

Bagley-Keene Open Meeting Act

In addition, it appears that the Fair Board may have violated the Bagley-Keene Open Meeting Act. The July 29, 2009 agenda for Item 7 states as follows:

“7. GOVERNANCE PROCESS:

- A. Governors Initiative to Sell Orange County Fair & Event Center
Action Item”

I do not believe this description gave fair notice to the public pursuant to Government Code section 11125(b). The minutes also fail to properly describe the actions taken by the Fair Board, in that there was no notice given that the Fair Board was considering authorizing the consulting agreements discussed above.

I request that you examine these issues.

Additionally, please advise me whether it is acceptable for members of the Orange County Board of Supervisors and/or County employees to meet with members of the Fair non-profit for the purpose of possibly joining it in preparing a bid for the fairgrounds. There is concern that meeting with those members might itself be a violation of Government Code section 1090.

Thank you very much for your consideration of this request.

Very truly yours,



Nicholas S. Chrisos
County Counsel

NSC:nr:eb
Enclosures

ACTION: Director Dykema motioned and Director Hayakawa seconded to approve the Consent Calendar. **CARRIED**

7. GOVERNANCE PROCESS:

A. Governors Initiative to Sell OC Fair & Event Center

Action Item

Director Ellis presented the item. The state budget process was difficult and the legislature in AB-22X included the sale of OCFEC as underutilized or surplus property.

Ellis stated that as a result of this legislation, the OCFEC Board of Directors cannot enter into any long term contracts that encumber the property. However, this does not include the Sheriff's contract that is only for the next calendar year and was already negotiated and approved in June but ratified by the board at this meeting as part of the Consent Calendar.

In the next 30 days, there will be a series of communications between the Department of General Services and OCFEC staff that will outline the RFP process that will describe the terms and conditions of the sale. There will be an approximate 60-90 day bidding process.

Ellis expressed a desire to maintain the property as a fairgrounds. Ellis suspects that this will be a 6 month process but there is no guarantee that the property will be sold.

Chair Vandermost stated that the Board has had to react very quickly and the Board's desire is to see local control of the property to eliminate the dark cloud of state budget issues. It is the desire of the Board to remove the fair from state control to eliminate such issues as the recent furlough.

Vice Chair Dodge stated that she completely agrees with Ellis' desire that the property continues to operate as a fairgrounds.

Director Young stated that the Board respects the employees and thinks that the employees are the main ingredients to the success of the Fair.

Dodge stated that while the Board was appointed as stewards, they are proud and supportive of staff and could not run the Fair in such a manner as the current staff.

Director Hayakawa stated that in the time he has been on the Board he has gotten to know many of the employees and wants to keep the organization intact as much as possible.

Mike Davis, Fair vendor since 1981, asked whether part of the property can be sold off to pay off the debt incurred in the purchase instead of passing on the costs to vendors.

Robert Fremont, Fair vendor since 1999, feels that it may be a prudent decision to slow down the process.

Charlie Boghosian (Chicken Charlie), who has worked at the Fair since 1984, is worried about the sale of the property. How is selling the property going to have any impact the state budget? And turning the property over to a non-profit is a risky proposition. He stressed the importance of the Fair to the community by providing jobs and other opportunities.

Bob Jackson, Fair vendor for 39 years, said that the problem is that no one knows what the right decision is. The Fair vendors contribute to the community at large and until they know what is at risk he doesn't want to proceed with the sale.

Steve Crutchfield, stated that he feels like he is preaching to the choir. Fairs are more than the sum of their parts, tangible and intangible. He stated that we sometimes lose track of the fact that the Fair is a community service. Crutchfield asked whether the Board is considering buying the Fair?

Jeff Thornberry, Fair vendor since 1982, is impressed by the buy-in from stakeholders that allows the OC Fair to be great. The community owns that Fair since they are responsible for its success. He suggested that we go to Sacramento and let them know that too much is at stake and the cost is too high.

Director Ellis responded that Assemblyman Van Tran has stated that if the sale results in the property not being a fairground, he will introduce legislation voiding the sale. Ellis doesn't believe the Governor wants to do anything that will upset the community and all the fine work that has gone into making this the best Fair in California.

Ellis also stated that the Board cannot emphasize enough the relationship with the City of Costa Mesa and how they are supportive of OCFEC's mission.

Chair Vandermost stated that putting the Fair under local control will eliminate being subject to the whims of the state budget process.

Robert Hutchins, Fair vendor for 25 years, is concerned about what will become of the staff, concerned about debt services, why do we want to throw self sufficiency out the window, does the Board want to buy the property?

Director Ellis stated that the State of California makes the decision of who the buyer is and the Board has no say in who purchases the property.

Dave Lindsey, vendor for 30 years, asked whether the Board wants to form a non-profit to run the Fair? What if high bidder comes in and doesn't want to keep it status quo? Is the City of Costa Mesa really committed to keeping it zoned as a fairgrounds?

Mayor Mansoor stated that the City is dedicated to keeping the property zoned as institutional and recreational.

Mike Coffey, major concern is where the public stands on this issue. Is there a survey question about the sale of the property? This is the public's heritage and they have the most to lose? Has OCFEC asked the public?

Steve Beazley stated that the Daily Pilot has done two online polls regarding the sale of property. Mesa Del Mar in June asked staff what they could do to help.

Director Dykema stated that in 2003 during public hearings, everyone came out in support of the Fairgrounds.

Vandermost stated that the point is to keep local control of the Fair.

Coffey asked whether anyone had approached the state about donating the property to the local community.

Memory Rose, representing year round events, isn't sure they can make a living if the property is sold, concerned about their May event and whether they can start planning their May event, and how soon will they know and how will it affect year round events.

Director Ellis mentioned that the state provision prevents OCFEC from entering into any long term agreements and suggested that staff and counsel work with Sacramento to figure out how to conduct long term planning and business.

Steve Beazley, President & CEO, stated that lose of year round business will harm the viability for the organization.

Sandra Genis, former Mayor Costa Mesa, voiced concern about the lose of open meeting laws, contrasted our situation with Del Mar who fought to preserve their status, and suggested a partnership between the fairgrounds and the City of Costa Mesa.

Don Tucker, stated that the equestrian center needs to stay part of the fairgrounds.

David Stiller, resident of Costa Mesa, stated that the Board needs to keep the process as transparent has possible. He stressed that the Board does not act hastily. Explain the options. Do the voters have the right to refuse the sale? He suggested that the Board sit on the dais and invite the Costa Mesa TV to broadcast the meeting if they hold it at City Hall again.

ACTION: Vice Chair Dodge motioned and Director Dykema seconded to authorize staff to retain necessary consultants to assist in carrying out the Governor's and Legislature's intent, and also that the Board direct Director Ellis and Vice Chair Dodge as members of the Governance Subcommittee to coordinate these efforts with the CEO. **CARRIED**

7. CEO'S OPERATIONAL UPDATE

Beazley stated that OC Fair is starting their third Wednesday and look forward to a strong ending to the Fair. Good shows, good exhibit and a really strong ending to the Fair.

8. EXECUTIVE SESSION (CLOSED TO PUBLIC)

None.

9. BOARD OF DIRECTORS MATTERS OF INFORMATION

None.

10. NEXT BOARD MEETING: AUGUST 27, 2009