



**BOARD OF SUPERVISORS
COUNTY OF VENTURA**
GOVERNMENT CENTER, HALL OF ADMINISTRATION
800 SOUTH VICTORIA AVENUE, VENTURA, CALIFORNIA 93009

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June 2, 2015

Commissioner Jane McClenahan, Chair
Area Housing Authority of the County of Ventura
1400 W Hillcrest Drive
Newbury Park, CA 91320

Dear Chairperson McClenahan and AHA Commission Board Members,

As you know, the County of Ventura is a participating member of the Area Housing Authority of the County of Ventura ("AHA") formed pursuant to Health and Safety Code sections 34240.1 and 34241. The formation agreement, as well as generally applicable law, provides that AHA shall be governed in the exercise of its powers by the provisions of the Housing Authority Law set forth in the Health and Safety Code, at section 34200 et seq.

While the County, as well as the participating cities, have appointed commissioners on the AHA Board of Commissioners, the County has the duty and responsibility to monitor the effectiveness and efficiency of the AHA to ensure that the purposes motivating the County's desire to partner with cities in operating area housing programs are being achieved to the fullest extent possible. To facilitate that public goal, the Health and Safety Code provides that "[a]n authority shall supply to the governing body of its respective city or county, on request, such information relating to its activities as are public records." (Health & Safety Code, sec. 34283.)

As a result of recent interactions between your agency and the county, our Board believes it is prudent for the county to exercise a due diligence review now. The Board's concerns are in two major areas. One, the degree that the agency is following the Brown Act and two, were there other, unstated motivations, for the extreme measures taken in opposing a recent appointment of a new Commissioner to AHA.

Attached is an opinion written by our County Counsel in response to questions concerning potential Board Act violations. Also attached is a copy of a recent email sent by your Executive Director.

The above actions raise concerns on our Board about either the legal advice provided to this agency or your staff's interpretation of it. As we move forward, we want to be sure we are

exercising proper due diligence and neither the county's representatives or the county are placed in compromised positions.

Specific request

1. A written explanation of how a unanimous position of the Commissioners was arrived at concerning opposition to the appointment of Ms. McCarty when the Board did not have this item as a scheduled agenda item.
2. All memoranda, letters, e-mails, texts and other documents (including electronically stored information), dating after January 1, 2012, to or from any Commissioner, officer or employee of AHA that contains any reference to the appointment of any person to serve as a member of the Board of Commissioners.
3. All employment contracts for the Executive Director of the AHA since January 1, 2000.
4. All contracts for services related to legal advice entered into by AHA since January 1, 2010.
5. Records showing the amounts paid to or on behalf of the Executive Director and legal consultants since January 1, 2000.
6. Any records this agency has concerning funds provided by any non-profit to the Executive Director since 2000.

Thank you for your anticipated cooperation with this request. Please feel free to call me if you have any questions.

Sincerely,


Kathy Long, Chair
Supervisor, Third District

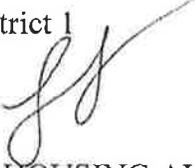
Attachments:

- 1) Ventura County Area Housing Authority and Brown Act Issues Memo from County Counsel.
- 2) May 18, 2015 Douglas Tapking Email

**MEMORANDUM
COUNTY OF VENTURA
COUNTY COUNSEL'S OFFICE**

May 26, 2015

TO: Steve Bennett, Supervisor, District 1

FROM: Leroy Smith, County Counsel 

RE: VENTURA COUNTY AREA HOUSING AUTHORITY AND BROWN ACT ISSUES

Public presentations made at the Ventura County Board of Supervisors' May 19, 2015, meeting raised concerns whether the Area Housing Authority of Ventura County ("AHA") has violated the Ralph M. Brown Act, i.e., the "Brown Act." (Gov. Code, § 54950 et. seq.) The Brown Act is the state law that requires the meetings and actions of local public agency bodies be open to the public, except for certain narrowly drawn exceptions that may take place in closed session.

The AHA is a public agency covered by the Brown Act and the meetings and actions of its Board of Commissioners are subject to Brown Act requirements. (See Gov. Code, §§ 54951, 54952; *Morrison v. Housing Authority of the City of Los Angeles Bd. of Comrs.* (2003) 107 Cal.App.4th 860.)

Two concerns have been raised:

1. Whether a majority of the AHA Board of Commissioners agreed to oppose the appointment of Loretta McCarty outside of an agendized, public meeting of the AHA; and
2. Whether the AHA Board of Commissioners has discussed, considered or developed strategies for obtaining housing funds outside of agendized, public meetings in violation of the Brown Act.

The statements and documents presented to the Board of Supervisors on May 19, 2015, if true, justify a reasonable inference that AHA Commissioners violated the Brown Act by authorizing the Chair to send a letter to the Board of Supervisors opposing the appointment of Ms. McCarty. Statements made by the Executive Director to the Board of Supervisors indicate that the AHA Board of Commissioners may have

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violated the Brown Act by discussing and developing funding strategies outside of agendized, open public meetings.

1. Opposition to Ms. McCarty's Appointment

The subject of Ms. McCarty's proposed appointment to the AHA is an issue within the general subject matter jurisdiction of the AHA, as opposed to an unrelated social or other extraneous issue. This is shown most clearly by the fact the issue is addressed by the Chair of the AHA Board of Commissioners in a letter signed by her. As a matter within the jurisdiction of the AHA, the Brown Act dictates that a majority of Commissioners may not "hear, discuss, deliberate, or take action" on that subject except at an agendized, public meeting. (Gov. Code, § 54952.2, subd. (a).) None of the statutory exceptions allowing for closed sessions with respect to specified confidential matters apply. Further, the Brown Act prohibition is violated even where a majority of members are not physically present at the time of discussion or action. The Brown Act specifically forbids serial meetings or the use of intermediaries to circumvent the Brown Act's requirements. Specifically, the Brown Act provides that:

"A majority of members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body." (Gov. Code, § 54952.2, subd. (b)(1).)

A reasonable inference can be drawn from the following documents and statements, if true, that AHA Commissioners have violated the Brown Act:

a. A May 15, 2015, letter from the Chair of the AHA Board of Commissioners to the Chair of the Board of Supervisors stating that "The Board of Commissioners of the Area Housing Authority is requesting that you withhold approval of Item 13 'Approval to Appoint Loretta McCarty as a County Representative to the Area Housing Authority. . . .'"

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b. An e-mail from the Executive Director of AHA to an official with the City of Ventura Housing Authority dated May 18, 2015, stating that “The Commission is unanimously adamant in its opposition to this appointment. The chair will sign a strong letter of opposition today and deliver it to the Board of Supervisors”;

c. A public statement by the Executive Director of AHA at the Board of Supervisors’ May 19, 2015, meeting that “the Board of Commissioners of those jurisdictions [i.e., the cities and county participating in the AHA] authorized the chair to write this letter, those – 6 of those 7, and frankly the representative from unincorporated Ventura County, have indicated quite clearly that we believe this [i.e., the appointment of Ms. McCarty] is an issue”; and

d. A public statement by the Executive Director of AHA at the Board of Supervisors’ May 19, 2015, meeting that the issue of Ms. McCarty’s appointment had not been placed on an AHA agenda in the past.

I caution that I have no personal knowledge whether any of the “facts” set forth in the statements and documents referred to above are actually true. However, if true, it appears that a Brown Act violation occurred.

2. Discussion of Funding Strategies

At the May 19, 2015, Board of Supervisors’ meeting, AHA’s Executive Director stated that “When . . . your agency . . . is developing strategies for funding, those many times are shared, and as we compete for limited public funding at that the state, the local and the national level, those strategies become critical to the development of those projects. We don’t work together [with other housing authorities] when we do that.”

The Executive Director did not explicitly state that such funding strategies were discussed or developed in closed session meetings, but the clear implication was that they had. The apparent purpose for the Executive Director’s statement was to explain that if Ms. McCarty is appointed to the AHA Board of Commissioners she might share AHA’s funding strategies with the City of Ventura Housing Authority. Obviously, there would be no basis for such concern if AHA’s funding strategies were discussed and developed in public. Thus, the implication is that the AHA Board of Commissioners has discussed and developed funding strategies either in closed session or outside of agendized meetings altogether.

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None of the statutory exceptions allowing for closed sessions under the Brown Act would permit a closed session for the purpose of discussing or developing funding strategies. While funding strategies might be briefly discussed incidental to a properly held closed session for another reason, such as for litigation or performance evaluation, a closed session held for the purpose of discussing or developing funding strategies would violate the Brown Act.

I note that I have no personal knowledge of the matters discussed in closed sessions with AHA Board of Commissioners, or outside of agenda meetings.

Please feel free to contact me if you have any questions concerning this matter.

LS:cn

On May 18, 2015, at 10:53 AM, Douglas Tapking <dtapking@ahacv.org> wrote:

Hi Denise,

I hate politics!

Lisa tells me you are on the plane and I am reluctant to bother you, but....

The Commission is unanimously adamant in its opposition to this appointment. The chair will sign a strong letter of opposition today and deliver it to the Board of Supervisors. We will be there in the morning.

Does Loretta really want to step in this? If she accepts the appointment the Commission will not welcome her and will undoubtedly seek additional redress.

Will you please speak to her, I just do not understand why she would accept this knowing tht the Commission will have a problem with her the day she walks in the door. This is not good for any of us.

What a pain.

Doug

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Douglas Tapking
Executive Director
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