



BEAR VALLEY COMMUNITY SERVICES DISTRICT

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REGULAR BOARD MEETING MINUTES

DATE OF MEETING: March 9, 2017
PLACE OPEN & CLOSED SESSION MEETINGS: 28999 South Lower Valley Road
TIME OF CLOSED SESSION MEETING: 5:00 pm
TIME OF OPEN SESSION MEETING: 6:00 pm

1. **Call to Order**

The meeting was called to order at 5:04 pm.

2. **Attendance**

All Directors were present. Also in attendance was General Manager David Edmonds and General Counsel Don Davis. Arriving at 6:00 pm was Police Chief Jeff Kermode and Secretary of the Board Kristy McEwen.

3. **Closed Session**

A. Conference with Legal Counsel:

Anticipated Litigation (1) case
Government Code Section 54956.9

- No Reportable Action

B. Public Employment – Administrative Services Director

Government Code Section 54957

- No Reportable Action

C. Public Employment – Public Works Director

Government Code Section 54957

- No Reportable Action

D. Public Employment – Chief of Police

Government Code Section 54957

- No Reportable Action

4. **Convene Open Session**

Open Session was convened at 6:04 pm.

5. **Summary of Actions Taken During Closed Session**

President Carlyn reported as above.

March 9, 2017 Regular Board Meeting

6. Approval of Agenda

Item #9D was removed from the Agenda. The Agenda, as amended, was approved unanimously by the Board.

7. Pledge of Allegiance

Director Grace led the Pledge of Allegiance.

8. Public Comments on Non-Agenda Items

Members of the public may address the Board on matters not listed on this Agenda. The Board cannot take action on any item that is not on the Agenda. The Board or staff may briefly respond to statements made or questions posed, or may ask questions for clarification. These items may also be referred to staff or scheduled on a future Agenda. There will be a separate opportunity for public comment for each item on the Agenda.

- Rick Zanutto asked about the lack of Bear Tracks articles from the District
- Linda LeLievre spoke on Bear Tracks articles and the audit

9. Consent Calendar

Consent items are considered routine and are intended to be acted upon in one motion, without discussion. During this portion of the meeting, the Consent Calendar will be read aloud. Prior to approval, the President will give the Board, staff, and public the opportunity to pull any item for discussion. The remaining Calendar will be acted upon. Any pulled items will then be heard and acted upon individually.

- A. APPROVE Minutes of the February 9, 2017 Regular Board Meeting
- B. APPROVE Minutes of the February 23, 2017 Regular Board Meeting
- C. APPROVE Register of Warrants for February 2017.
- D. APPROVE “Message from the Board of Directors” Article for April 2017 Bear Tracks.
 - Item 9D was removed from the Agenda

Motion: APPROVE Consent Calendar Items A – C: Grace. Second: Baron.

Roll Call Vote:

AYE:	Baron, Carlyn, Grace, Muell, Ritchie
NO:	None
ABSTAIN:	None
ABSENT:	None

10. Disclosures by the Board of Directors

Board Members are asked to disclose any outside communications with individuals and organizations that have an action item on this agenda that pertains directly to them or their specific personal or private interests and which communication is not included or disclosed in the agenda package, so that all interested persons have an equal opportunity to express and represent their interests.

- Director Carlyn disclosed conversations with Bear Valley Police Officer Brad Ritchie and Bear Valley Dispatcher Amanda Carroll pursuant to Action Item 11A.
- Director Ritchie failed to disclose prior acknowledged conversations, including those with Kern County Supervisor Scrivner, related to Action Item 11A.

11. Action Items:

- A. Consideration of Agreement for Dispatch Services with Kern County (Mr. Davis)
- Before hearing this item, Mr. Davis asked if any Director wished to recuse themselves. Upon Director Ritchie's refusal to recuse himself, Mr. Davis asked that two items be entered into the record. The first, an August 25, 2016 memo prepared by Mr. Davis, advising the Board of Directors on common law conflicts of interest. The second being an opinion of Kern County Supervising District Attorney Gregory A. Pulskamp addressing Director Ritchie's common law conflict of interest. The two documents are included as part of the record and attached to these Minutes. Mr. Davis then asked the Board if any Directors objected to Director Ritchie's participation in the discussion and voting of this item. Directors Baron, Grace and Carlyn stated objections. Director Muell had no objection. Director Ritchie spoke at length on his refusal and stated he would resign from the Board and leave the meeting following the vote.
 - A staff report was presented; Mr. Davis provided an overview of the contract, Mr. Edmonds provided an overview of the budgetary issues leading to the decision and Chief Kermode provided an overview of services. Representatives from Kern County Sheriff's Office were also present to answer questions from the Board and public.
 - Public and additional Board comments followed

Motion: The Board of Directors APPROVE the Agreement for Dispatch Services with Kern County and AUTHORIZE the General Manager to Execute Related Documents: Baron. Second: Grace

Prior to the Roll Call, Director Ritchie was asked if he wished to vote. He answered in the affirmative.

Roll Call Vote:

AYE:	Baron, Carlyn, Grace, Muell
NO:	Ritchie
ABSTAIN:	None
ABSENT:	None

Following the vote, Director Ritchie did not leave the meeting as previously stated.

- B. AUTHORIZE General Manager to Execute a Professional Services Agreement with Willdan for the Mailbox Project (Mr. Edmonds)
- Mr. Edmonds provided a status update on the proposal, which was currently being refined. No action was taken.
- C. NOMINATE a Candidate for California Special Districts Association (CSDA) Board of Directors, Seat C (Ms. McEwen)
- A staff report was presented. No action was taken.

12. Information and Discussion Items:

- A. Nomination for Special District Risk Management Authority (SDRMA) Board of Directors 2017 Election (Ms. McEwen)
- No Directors expressed interest in participating.
- B. Bear Valley & Cumberland Road Rehabilitation Project (Mr. Edmonds)
- Mr. Edmonds provided a status update on the project.

C. February 2017 Committee Reports

- i. Administration Committee – No February Meeting
- ii. Communications Committee – Director Baron reported on the February 7, 2017 meeting
- iii. Finance Committee – No report provided as all topics of the February 9, 2017 meeting were discussed throughout the meeting
- iv. Infrastructure Committee – No February Meeting
- v. Liaison Committee – Director Grace reported on the February 28, 2017 meeting. Residents Melody Wong and Karen Duvall addressed the Board on equestrian easement and encroachment issues
- vi. Public Safety Committee – No February Meeting

D. Board Comments

- i. Director Baron: None
- ii. Director Grace: None
- iii. Director Muell requested and received Project Updates for Mailboxes; Upper Elevation Road Striping; BV & Cumberland Road Project; Entry Gate Project; and Guardrail Replacement
- iv. Vice-President Ritchie: None
- v. President Carlyn: None

E. Staff Reports

- i. Department Head Reports
 1. Finance Report – Mr. Edmonds reviewed Period 6 financial reports as submitted in the Board Package.
 2. Public Works Report – Mr. Edmonds reviewed the Public Works report as submitted in the Board Package.
 3. Public Safety Report – Chief Kermode presented the Public Safety report as submitted in the Board Package.
- i. General Counsel Report – Mr. Davis reported on the recent California Supreme Court decision on the use of private devices and recommended the District adopt a retention policy for electronic records.
- ii. General Manager Report – Mr. Edmonds updated the Board on upper elevation road and storm damage, the shooting range, slash pile burning and a letter sent to a resident regarding drainage complaints.

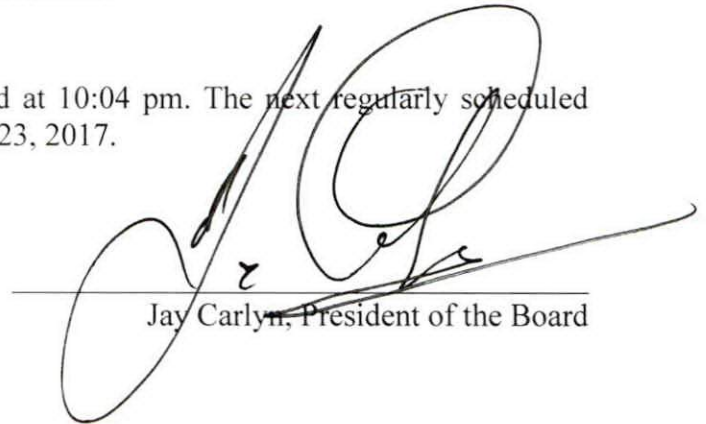
F. Media / Public Outreach / Communications / Correspondence (Ms. McEwen)

- A staff report was presented, along with corrections and clarifications.

13. Future Agenda Items:

- A. ADOPT Amendment to District Code 7-4, Water Conservation (Tentative: March 23, 2017)
- B. APPOINT Citizen Volunteers to Committees (Tentative: After Each Committee Meets & Makes Recommendations)
- C. Solar Project – Update from Sol Systems and Heliopower (Tentative: March 23, 2017)
- D. Presentation and Acceptance of Annual Financial Report (External Audit) as Prepared and Presented by Fedak & Brown, LLP (Tentative: April 13, 2017)
- E. Staff Introductions (Tentative: April 13, 2017)
Mr. Edmonds reviewed the above and added:
- F. Mailbox Project agreement

14. Adjournment: The meeting was adjourned at 10:04 pm. The next regularly scheduled meeting of the Board of Directors is March 23, 2017.



Jay Carlyn, President of the Board

ATTEST



Kristy McEwen, Secretary of the Board



TO: President Zanutto and Members of the Board of Directors
FROM: Donald M. Davis, General Counsel
DATE: August 25, 2016
RE: **Common Law Conflicts of Interest**

QUESTIONS PRESENTED

Was it appropriate for Director Ritchie to recuse himself from participation in Board's pending decision to contract out for dispatch services with Kern County in light of the fact that his daughter-in-law is employed by the District as a dispatcher?

To what extent should Director Ritchie recuse himself from participation in potential Board decisions regarding the Bear Valley Police Department where his adult son is employed as a senior officer?

SHORT ANSWERS

Director Ritchie appropriately chose to abstain from participation in the Board's recent discussions regarding contracting out for dispatch services, which action would directly affect the employment of his daughter-in-law, under what is referred to as the "common law doctrine" against conflicts of interest. The common law doctrine prohibits public officials from placing themselves in a position where their private, personal interests may conflict with their official duties. Here, because it is difficult to imagine Director Ritchie having *no* private or personal interest in his daughter-in-law's career and employment with the District, Director Ritchie made an appropriate decision and should continue to recuse himself from all Board discussions and actions related to the pending outsourcing of dispatch services so long as his daughter-in-law remains a District dispatch employee.

Similarly, if there is any proposed action to eliminate the position of senior officer held by his adult son or to contract out for services with the Kern County Sheriff's Department or another agency, which action would result in the termination of his son's employment with the District, it would also be appropriate for Director Ritchie to abstain from all participation in such decisions. To the extent Director Ritchie can demonstrate that he can perform his duties with disinterested skill, zeal, and diligence with respect to more generalized decisions regarding the operations of the Police Department, but which do not directly involve his son, Director Ritchie may be able to participate in such matters without violating the common law doctrine. Examples of such generalized matters include the selection of a new Police Chief and the approval of the Police Department budget (to the extent the budget does not have individualized impacts on his son).

BACKGROUND

Director's Ritchie's adult son holds the position of senior officer in the Bear Valley Police Department. He held this position prior to Director Ritchie's election to the Board in November 2014. Director Ritchie's daughter-in-law, who is married to Senior Officer Ritchie, is also employed by the District as a dispatcher, and also was hired prior to Director Ritchie assuming office. Based on statements made by Director Ritchie and his Form 700 disclosures, neither his adult son serving in the Police Department nor his daughter-in-law working in dispatch are dependent on Director Ritchie, nor are they sources of income to Director Ritchie or his wife.

DISCUSSION

A. Political Reform Act

The Board may recall from its recent ethics training that there are statutory laws regarding conflicts of interest as well as the separate common law doctrine. The Political Reform Act is the primary statutory prohibition on public officials from participating in governmental decisions in which they have a financial interest.¹ As noted above, however, neither of the subject District employees related to Director Ritchie are a source of income. The Political Reform Act does require officials to abstain from participating in a decision when it will have a material financial effect on a member of his or her "immediate family," but the term "immediate family" includes only the official's "spouse and dependent children."² Since the two employees are also not dependents, the Political Reform Act has no application here.

B. Common Law Doctrine against Conflicts of Interest

Over the years a body of case law and other legal authority has developed on public official conflicts of interest that is separate from statutory laws such as the Political Reform Act (hence the name "common law"). These common law authorities have long that a public official must remain impartial and act primarily to benefit the general public.³ Generally, a public official may have a conflict of interest where there is: (1) a personal (non-financial) interest in the decision's outcome; (2) a personal bias; or (3) a factual bias that affects the official's ability to consider information presented before the official.⁴ Whether there is such a conflict is not

¹ The Political Reform Act is found in Government Code section 87100 and following, and the corresponding regulations adopted by the Fair Political Practices Commission.

² See Govt. Code §§ 87103 and 82029.

³ See Noble v. City of Palo Alto (1928) 89 Cal.App. 47, 51 ("A public officer is impliedly bound to exercise the powers conferred on him with disinterested skill, zeal, and diligence and primarily for the benefit of the public.").

⁴ For a general discussion on fair processes and personal conflicts of interest, see "Fair Process Laws and Merit-Based Decision-Making," Institute for Local Government, available at http://www.ca-ilg.org/sites/main/files/file-attachments/ethics_basics_chapter_5.pdf.

always clear, with one court remarking how “the test ... is whether in light of the particular facts ‘experience teaches that the probability of actual bias on the part of the ... decisionmaker is too high to be constitutionally tolerable.’”⁵ A key consideration, however, is whether the situation is one that “may” tempt the public official to place their own personal interests before that of the public.⁶

A recent Attorney General Opinion provides a useful summary of the common law doctrine and its application in the context of an agency decision involving a board member’s adult, non-dependent son and a proposed loan from the agency to improve a commercial property owned by the son.⁷ I have attached the Opinion for your review and include some of the most relevant passages below:

“Here, even if the agency board member cannot be said to have a statutory financial interest in her son’s contract with the agency within the meaning of section 1090 or the Political Reform Act, it is difficult to imagine that the agency member has no private or personal interest in whether her son’s business transactions are successful or not. At the least, an appearance of impropriety or conflict would arise by the member’s participation in the negotiations and voting upon an agreement that, if executed, would presumably redound to her son’s financial benefit. ...

In our view, the agency board member’s status as the private contracting party’s parent and co-tenant places her in a position where there may be at least a temptation to act for personal or private reasons rather than with “disinterested skill, zeal, and diligence” in the public interest, thereby presenting a potential conflict. In an earlier opinion, we advised that a common law conflict of interest may “usually be avoided by [the official’s] complete abstention from any official action” with respect to the transaction or any attempt to influence it. Under these circumstances, we believe that the only way to be sure of avoiding the common law prohibition is for the board member to abstain from any official action with regard to the proposed loan agreement and make no attempt to influence the discussions, negotiations, or vote concerning that agreement.”⁸

Here, Director Ritchie, by recusing himself from the Board’s recent discussion and preliminary decision to contract with the county for dispatch services, has properly removed himself from any “personal temptation to act for personal reasons” with respect to his daughter-in-law and his son. In order to avoid an actual conflict or, at minimum, the appearance of

⁵ Mennig v. City Council (1978) 86 Cal.App.3d 341, 350-51.

⁶ Noble, 89 Cal.App. at 51-52.

⁷ 92 Ops. Cal. Atty. Gen. 19 (2009).

⁸ Id.

impropriety, Director Ritchie should continue to abstain from all District action related to the proposed contract with the county for dispatch services.

With respect to future Board actions involving the Police Department during these challenging financial times for the District, the extent to which Director Ritchie may need to recuse himself will depend on the specifics of the action, the potential impacts on his son, and his ability to demonstrate to the Board and the community that he can make decisions in the best interests of the District without regard to the personal or private interests arising from his relationship with his son. This can be a high hurdle to clear, and will need to be reviewed on a case by case basis.

CONCLUSION

The rules concerning common law conflicts of interest are not always clear, and there are many potential scenarios that may trigger a common law conflict of interest based on an official's personal interests. If such a conflict is found, then the Board's decision on that matter may be invalidated if the official with the conflict is determined to have improperly affected the outcome. Moreover, regardless of the ultimate decision, the finding of improper participation in such decision may result in the removal of the official from office.⁹ Therefore, any Board Member with a potential conflict of interest under the common law doctrine, should act with extreme caution and would be wise to follow the example of Director Ritchie who elected to recuse himself with respect to a decision that will significantly impact his daughter-in-law and thereby put an end to any speculation regarding a potential conflict of interest.

⁹ See Nussbaum v. Weeks (1989) 214 Cal.App.3d 1589, 1598.

From: Greg Pulskamp [REDACTED]
Sent: Wednesday, March 08, 2017 10:27 AM
To: Davis, Donald M.
Subject: Bear Valley Community Services District

Dear Mr. Davis:

I am writing in response to our recent communication regarding the Bear Valley Community Services District. I have reviewed the materials you provided and the applicable law. As you are aware, our office has not conducted any independent investigation into this matter and we have not had the opportunity to conduct an exhaustive analysis of this case. Nevertheless, we are willing to provide a brief statement reflecting our impression of this situation because of the recurring problems with ethics and conflicts we have encountered with several districts and commissions within the County.

With the foregoing caveats in mind, our opinion is that you have provided very good advice to Mr. Ritchie and the Bear Valley Community Services District. We agree that, although Mr. Ritchie may not have a statutory conflict pursuant to Government Code sections 1090 et seq. or 87100 et seq., he clearly appears to have a conflict under the common law which should result in his recusal from those decisions directly impacting his son or daughter-in-law. We also note that if Mr. Ritchie does not recuse himself, he may be considered as "unlawfully hold[ing] or exercis[ing]" his public authority, subjecting himself to a "quo warranto" action within the meaning of Code of Civil Procedure section 803.

Thank you for bringing this matter to our attention.

Best Regards,

Gregory A. Pulskamp
Kern County District Attorney's Office
Supervising Deputy District Attorney
Civil Enforcement & White Collar Crime Section
Phone: 661-868-1659
Fax: 661-322-3765