



OFFICE OF THE DISTRICT ATTORNEY
MARIN COUNTY, CALIFORNIA

Prevention ★ Prosecution ★ Protection

Edward S. Berberian
District Attorney

Barry G. Borden
CHIEF DEPUTY DISTRICT
ATTORNEY

Kathryn D. Mitchell
CHIEF DEPUTY DISTRICT
ATTORNEY

Robert R. Guidi
CHIEF INSPECTOR

Peggy M. Toth
ADMINISTRATOR

PRESS RELEASE

**DISTRICT ATTORNEY FINDS NO BROWN ACT VIOLATION HAS
OCCURRED RELATING TO NOVATO SANITARY DISTRICT DIRECTOR
DENNIS WELSH**

Public agencies, such as the Novato Sanitary District, exist to aid in the conduct of the people's business. It is the intent of the law to ensure their actions are taken openly and their deliberations are open to public view. The Ralph M. Brown Act is designed to implement this overall policy. Within this statute there are narrow and limited exceptions that allow for "closed session" meetings, one of which is to discuss pending litigation involving the public body. The District Attorney has determined that no Brown Act violation occurred with respect to a reported "closed session" meeting on December 28, 2009.

The Brown Act does not determine what "public policy" decisions shall be reached. It addresses and requires that public policy decisions, enacted by the public body be open to public view and monitoring. The District Attorney's role is to enforce the provisions of the Brown Act that ensure that public business is done publicly. The District Attorney has no legal authority to make "public policy" decisions for the public agency. That is the responsibility and duty of the elected officials empowered by the voters to make those decisions.

It is further the opinion of the District Attorney that all elected directors of the Novato Sanitary District are entitled to be present at all meetings of the District, whether they are public or closed session meetings. There is no evidence, to date, that there has been any violation of this requirement.

Attached to this release is a copy of our findings delivered to Novato Sanitary District Director Dennis Welsh and copied to Bill Maher, attorney for Mr. Welsh and Novato Sanitary District legal counsel Kenton L. Alm.

EDWARD S. BERBERIAN
DISTRICT ATTORNEY

Dated: January 28, 2010

Contact Information: Telephone: [415] 499-6450 / Cell: [415] [REDACTED]



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January 28, 2010

Kathryn D. Mitchell
CHIEF DEPUTY
DISTRICT ATTORNEY

Dennis J. Welsh
1299 Leafwood Heights
Novato, CA 94947

Robert R. Guidi
CHIEF INSPECTOR

Re: YOUR LETTER OF JANUARY 6, 2010

Peggy M. Toth
ADMINISTRATOR

Dear Mr. Welsh:

Please be advised that the Marin County District Attorney's Office is in receipt of your letter dated January 6, 2010, wherein you expressed concerns about the Novato Sanitary District Board's attempt to prevent you from participating in the closed session portion of the Board's meeting on December 28, 2009. You also expressed concerns about the possibility that the Board may have violated the Brown Act by previously meeting in other private, unnoticed meetings without you or that the Board may do so in the future.

We are also in receipt of a legal memorandum dated January 25, 2010, prepared by your private counsel, Bill Maher, which sets forth your position that you, as a duly elected director of the Novato Sanitary District Board of Directors, have a right to attend all closed session portions of Board meetings.

Finally, we are in receipt of another legal memorandum dated January 22, 2010, prepared by Kenton L. Alm, General Counsel for the Novato Sanitary District Board of Directors, which addresses legal issues relating to your attendance at closed sessions of Board meetings for the purpose of discussing threatened litigation.

We have reviewed all of the above-referenced documents and have concluded our investigation. Our findings follow.

Attempted Closed Session Meeting of December 28, 2009

Based upon our investigation and review of all the information provided to us, it is our determination that there was no violation of the Brown Act on December 28, 2009. The facts are undisputed that, although you initially agreed to recuse yourself

from the closed session portion of the Board's meeting on December 28, 2009 (at the request of counsel Kenton Alm), you thereafter changed your mind and notified the Board that it was your intent to attend the closed session. Upon your notification to the Board that you would be attending the closed session on December 28th, the Board decided not to hold a closed session on that date, and no closed session was held. Consequently, because no closed session was held and, thus, no improper exclusion, there was no violation of the Brown Act. Similarly, the Board's request that you recuse yourself from the closed session meeting did not constitute a violation of the Brown Act, inasmuch as you clearly had the right to grant or deny that request.

**Your Participation in the
Board's Closed Session Meetings Regarding Pending Litigation**

As a duly elected member of the Novato Sanitary District Board of Directors, you are entitled to participate in all of the Board's closed session meetings involving pending litigation unless there is a clear showing that you have a personal, legal conflict of interest. Again, based upon our investigation and review of the information provided to us concerning the facts and circumstances of your involvement with the investigations being conducted by the United States Environmental Protection Agency (EPA) and the Department of Justice, as well as our review of the above-reference legal memoranda, it is our determination that you do not possess a personal, legal conflict of interest that would justify your exclusion from any of the future Novato Sanitary District Board's closed session meetings involving this pending litigation.

No Basis to Seek Injunctive or Mandatory Relief

Based upon our review of the information provided to us, there is no evidence at this time that the Novato Sanitary District Board of Directors intends to violate the provisions of the Brown Act by holding private, unnoticed meetings without you or that the Board may do so in the future. To the contrary, as set forth above, on December 28, 2009, when you demanded to be present at the closed session meeting, rather than excluding you from the closed session, the Board did not hold the closed session. Moreover, as set forth in General Counsel Alm's memorandum of January 22nd, he is recommending that the Board not hold any closed session meetings to discuss pending litigation involving the investigations being conducted

Dennis J. Welsh
January 28, 2010
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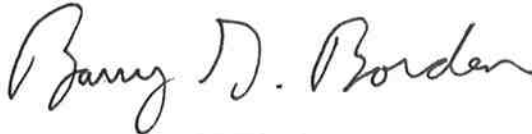
by the United States Environmental Protection Agency (EPA) and the Department of Justice until the Board obtains guidance from the Marin County Superior Court (by way of declaratory relief) to ensure that the Board is acting legally and ethically.

Consequently, because there is no evidence of past improper conduct by the Board or evidence of intent to act improperly in the future, there is no basis to support a writ by the District Attorney's Office for injunctive or mandatory relief against the Novato Sanitary District Board.

Please do not hesitate contacting me if you have any additional questions or require any additional information.

Very truly yours,

EDWARD S. BERBERIAN
DISTRICT ATTORNEY

A handwritten signature in black ink that reads "Barry G. Borden". The signature is written in a cursive, flowing style.

BARRY G. BORDEN
Chief Deputy District Attorney

BGB/pg

cc: Bill Maher, Esquire
Kenton L. Alm, Esquire