

LAW OFFICES
OF
RONALD J. COZAD

MCCLELLAN-PALOMAR AIRPORT
2006 PALOMAR AIRPORT ROAD, SUITE 207
CARLSBAD, CA 92011

TELEPHONE: (760) 431-8200
FAX: (760) 431-1244
EMAIL: COZADLAW@SBCGLOBAL.NET

August 8, 2007

Mr. Jack M. Sleeth Jr
STUTZ ARTIANO SHINOFF & HOLTZ APC
401 W A St #1500
San Diego, CA 92101-7901

By Facsimile Only: (619) 232-3264

Re: Leon J. Page vs MiraCosta Community College District

Dear Mr. Sleeth:

Thank you for calling me after yesterday's board meeting. During our conversation, you advised that the Board voted to re-notice for a future closed session the matter of the settlement with Dr. Richart. You cautioned that *the Board does not acknowledge any Brown Act violation and will not voluntarily concede that the approval of the Richart settlement agreement is null and void.* There also appears to be some concern that the "undoing" of the settlement agreement at this time would lead to a breach of contract lawsuit by Dr. Richart. Accordingly, the Board seems to be operating on the questionable assumption that it may cure and correct the "alleged" Brown Act violations by merely holding another closed session to ratify the prior action.

Because the questioned Settlement Agreement has already been executed, and because the District has already provided Dr. Richart with substantial monetary sums pursuant to it, simply re-noticing the matter as either a public or closed agenda item will not cure the underlying Brown Act violations and will only serve to compound the Board's previous errors.

To truly cure and correct, the Board must *voluntarily or by court order* start over from its original negotiating position - before any violations of the Brown Act took place. In other words, either the Board or a court must declare the Settlement Agreement null and void, and the District and Dr. Richart must renegotiate in its entirety, the terms of Dr. Richart's separation from the District. Thus, if the Board is unable or unwilling to make the necessary acknowledgments, we will be compelled to file the lawsuit and seek the appropriate court order.

In our view, a nullification order, will not only correct the error, but will also render the Settlement Agreement unenforceable and un-usable in any breach of contract action Dr. Richart may consider bringing. Thus, after careful consideration, we anticipate thoughtful Board members will support and advocate for the nullification order Mr. Page will seek.

In addition to the three causes of action under the Brown Act, Mr. Page also alleges that the June 20, 2007 Settlement Agreement constitutes an illegal expenditure and waste of public funds. Under the terms of her July 18, 2006, Employment Agreement, Dr. Richart was only entitled to 18 month's salary and health insurance in the event the Employment Agreement was terminated. Any additional consideration constitutes a gift of public funds, prohibited under the state Constitution.

Your claim that the \$650,000 represents "damages" is simply not supported by the evidence. The District took no adverse action against Dr. Richart. Public comments by a minority of the Board do not constitute "state action" sufficient to trigger liability under 42 USC Section 1983 because of a purported violation of Dr. Richart's liberty interest. Moreover, two of the District's Trustees have already testified at deposition that they have no idea what "damages" were even being claimed or why Dr. Richart was *given* the \$650,000.

Other aspects of the Settlement Agreement are equally unsupportable. For example, the Board awarded Dr. Richart a blanket guarantee of indemnification without first making the required findings under Government Code Section 825. Also, the Settlement Agreement simply *gives* Dr. Richart \$3,150 each month for "expenses" even though she is no longer acting as President/Superintendent and is no longer in a position to incur any expenses conducting District business.

Although Mr. Page will be filing his petition today, we look forward to working with you toward achieving a workable resolution consistent with policies of open and transparent governance of this important institution.

Sincerely,



Ronald J. Cozad

cc: L. Page