



County of San Bernardino
Office of the District Attorney

MICHAEL A. RAMOS, District Attorney
PUBLIC INTEGRITY UNIT

Over the past year, the District Attorney's Public Integrity Unit has received numerous complaints regarding the actions of the Board of Directors of the Bighorn-Desert View Water Agency. These complaints concern three (3) separate areas, which, for clarity, will be discussed separately below.

I - Board of Directors member Sharon Edwards, Conflict of Interest allegations, (Violation of section 1090 of the Government Code).

Director Sharon Edwards owns a water hauling company, L & S Water Delivery. She and her husband have owned the company since 1995 or 1996. It is based out of their home in Johnson Valley. The business delivers water to property owners in Johnson Valley and Landers. The water was purchased from wells that are regulated by Bighorn-Desert View Water Agency.

On September 26, 2006, the Board of Directors voted to reduce the water rate to water users. On December 26, 2006, the Board voted to increase the rate. Director Edwards, as a Board member voted for the rate decrease at the September meeting, and against the rate increase at the December meeting.

Because of the votes listed above, the District Attorney's office has filed two (2) separate felony counts for violation of section 1090 of the Government Code. This section prohibits identified individuals from voting on matters in which they have a financial interest.

The complaint was filed in the Joshua Tree Division of the San Bernardino Superior Court where Ms. Edwards will be arraigned. A Preliminary Hearing date will be set at the time of her arraignment.

II - Various alleged violations of the Brown Act

- A. Alleged violations at the July 17, 2006 meeting of the Public Relations Committee and the District Attorney's findings.
1. Inadequate description of agenda item - Pubic relations "newsletter."
 2. Members of the board discussing the letter, without public discussion, thereby attempting an illegal "serial" meeting.
 3. Items not on the agenda being discussed in the session.
 4. Failing to disclose in a timely manner a letter that three board members had discussed (prior to the meeting) when a public records request was made.

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Findings:

1. True allegation – The description of the agenda item was misleading, in that the discussion was not related to the entire area served by the Water Agency. Instead, it was related to the limited area of Johnson Valley, ostensibly for the purpose of refuting some recent negative comments from members of the District, which is served by the Agency. Anyone reading the agenda description would not have known the true intent of the “newsletter.” This is a violation of the Brown Act (Section 54954.2, of the Government Code).
2. True allegation – It is clear from listening to a recording of the meeting of July 17, 2006, that at least two (2) Board members were aware of the above newsletter and, in fact, had discussed it and tried to get a consensus by way of a serial meeting. Directors Maline and Barkley had discussed the wording of the letter, and modifications had been suggested and made. In addition, Director Phil Johnson indicated at the meeting of the 17th, that he had been given the letter and that he did not appreciate getting the information without there being a public discussion. Although no agreement was reached between the three board members, Directors Barkley and Maline did discuss it prior to the public meeting and were trying to get Director Johnson’s agreement. This constituted an improper concurrence on the matter. This is a violation of the Brown Act (Section 54954.3 of the Government Code).
3. True allegation – Numerous items not on the agenda for that evening were, in fact, discussed. This is a violation of the Brown Act. (Section 54954.2 of the Government Code).
4. True allegation – Eventually the above letter was disclosed, but it should have been made available immediately upon request. This is a violation of the Brown Act (Section 54957.5 of the Government Code).

B. Alleged violation at the July 25, 2006 “Special” meeting of the Board.

1. Under Closed Session – “Board to review General Manager’s contract pursuant to Government code 54957(b)(1).” In that meeting, Mr. Shollenberger addressed the changes he wanted in his new contract in terms of benefits for his wife specifically.

Findings:

1. True allegation – This allegation is substantiated in that the Board is NOT authorized to discuss compensation or benefits in closed session. This is a violation of the Brown Act (Section 54957.6 of the Government Code).

C. Alleged violation at the August 22, 2006 meeting of the Water Board. Under Closed Session-
"Board to review General Manager's Contract Pursuant to 54957(b)(1)"

Finding: True Allegation

1. This allegation is also substantiated in that the Board is NOT authorized to discuss compensation or benefits in closed session. This is a violation of the Brown Act (Section 54957.5 of the Government Code).

D. Finally, there are allegations of repeated incidents of failure of the Board to allow members of the community to address the Board at the meetings regarding specific Agenda items.

Findings:

In a number of instances the Board President, Mr. Maline, closed the meeting when individual attendees asked to be heard on such items as "Correspondence" to the Agency. Additionally, it should be pointed out that Mr. Richard McKee contacted the Board, via letter, on at least five (5) separate occasions regarding various violations of the Brown Act. McKee informed board members of the various violations and had demanded corrective action. In addition, Mr. McKee's organization, Cal Aware, had offered to provide training to the Board through its legal counsel, Mr. Terry Francke. The Board ignored the advice and apparently rejected the counsel of this organization.

The purpose of the Brown Act is for the community to be heard, even if the members of the Board don't want to hear what the public has to say. Government Code Section, 54954.3 (c), requires the Board to listen, even to its critics. The attendees should be allowed to address the Board on any issue that is on the Agenda.

Conclusion of Brown Act Violations

Virtually all of the allegations made against the Board of the Bighorn-Desert View Water Agency, regarding Brown Act violations, have been found to be true. Additionally, the Board has shown little interest in obtaining comprehensive Brown Act training. Based on an analysis of the actual events that have occurred, however, no criminal prosecution will be pursued.

To have a successful criminal prosecution, it would be necessary to prove that a member, or members of the Board..."intends to deprive the public of information to which the member knows or has reason to know the public is entitled" (Section 54959 of the Government Code). No such events took place. Once the closed sessions were concluded, all relevant information was then discussed and disclosed in subsequent public meetings at which public discussions and votes were taken. Another potential remedy for the Brown Act violations mentioned in this report is to file for the appropriate Injunctive or Declaratory relief based on the violations discussed. This can include, for example, asking the court to order the Board to record its closed sessions.

If the Board fails to get the necessary training, fails to remedy these violations of the rules regarding closed sessions, fails to allow the public to comment, or attempts to form illegal consensus outside of public meetings, this office will file the necessary and appropriate legal actions to assure future compliance with the requirements of the Brown Act (Section 54960.1 of the Government Code).

III - Contracts and benefits paid to Mr. Shollenberger (General Manager) and for his spouse.

At the August 22, 2006 meeting of the Water Board, a contract was approved for Mr. Shollenberger that spelled out details of benefits he was to receive. This was one of the most curious incidents that caused a spotlight to be focused on the Water Agency.

Mr. Shollenberger died the morning of August 22, yet his signature appeared on the employment contract approved by the Board in the evening of the same day. The benefits to be provided by the Agency, spelled out in this contract, were health, dental, vision and life insurance, retroactive to April 1, 2006. Our investigation disclosed that these benefits had been continuously provided by the Agency since 2004, but had not been specified in Shollenberger's previous contracts. Since he had been getting these benefits since 2004, it's unclear why it was felt necessary to make them retroactive to April 1, 2006.

The full terms of Shollenberger's 2006 contract with the Board are set out below.

His employment contracts provided as follows:

2003 - 64 hours per month, (2 days per week) "On Site" at the rate of \$2,500 per month. Plus 35 cents per mile travel costs. Also, reimbursement to Mr. Shollenberger for expenses, receipts to be provided as justification.

2004 - Two days per week (On Site), plus 24-hour telephone availability, at the rate of \$3,500 per month. Reimbursement for mileage at 37 cents per mile. Work related expenses reimbursed when accompanied by a receipt. NEW TERM - General Manager...*with all employee rights and privileges excluding such privileges as vacation, sick leave and administrative leave.*

On February 27, 2004, Mr. Shollenberger and his wife first applied for and were provided health, vision and dental care. Mr. Shollenberger also applied for and was provided life insurance with his wife as the beneficiary. The Water Agency through their carrier, the Association of California Water Agencies, (A.C.W.A.), provided the above coverage. The coverage first shows up on the statement from A.C.W.A for the period 3/1/2004 - 5/1/2004. The cost for coverage he was provided by the Water Agency was between \$680 and \$735 a month. It does appear Mr. Shollenberger was contributing about \$74 per month towards the cost of the various benefits described above. These benefits continued until his death.

2005 - On December 20, 2005, the Board approved another contract. It provided compensation in the following manner: \$500.00 per day, the number of days to be determined by Mr. Shollenberger. Basically all other terms would stay the same.

2006 - August 22, 2006, in the evening hours, the Board approved the final contract. The Board attempted to provide continuing coverage of the benefits for Mr. Shollenberger's wife until July 2008, even in the event of Mr. Shollenberger's death. It also provided that the benefits were retroactive from April 1, 2006. In addition, he would be paid \$500 per day for each day of "On Site" work. Off Site work would be at a rate of \$62.50 per day. Additional compensation for expenses would be paid, with receipts provided to the Agency. Mr. Shollenberger's signature also appeared on the contract, even though he had died that morning. According to a statement made by legal counsel for the agency, Shollenberger's signature had been affixed with a signature stamp, with Board approval, due to his illness.

Our investigator contacted A.C.W.A. and was informed that the Agency had applied for and received coverage for the Shollenbergers in 2004. It appears that office staff, at the direction of Mr. Shollenberger, applied for the coverage. He, as manager, informed them he was also an employee and therefore qualified for the same health benefits as any other employee. He directed that staff process the necessary paperwork to acquire the benefits he wanted, and staff followed his orders. Staff was not aware, apparently, that he did not qualify for the health benefits since he was a "Part-time" employee of the Agency. The fact of his not being eligible for the benefits was confirmed in a phone conversation our investigator had with representatives of the A.C.W.A. organization. Having outlined all of the above, the results of our investigation into this contract and the surrounding disputes and allegations are as follows.

1. All of the contracts between Mr. Shollenberger and the Board appear to have been initially drafted by Mr. Shollenberger. The exception seems to be the August 22, 2006 contract wherein the legal counsel at that time, Mr. Tim Gosney, acknowledged that he had made some minor modifications to the language in the contract. The language, approved by legal counsel, included the term for continued coverage for Mrs. Shollenberger, even in the event of her husband's death.
2. Despite the retroactive provisions put in place by way of the August 22, 2006 contract, the benefits for Mr. and Mrs. Shollenberger were continuously in place since 2004. These retroactive provisions did not have any effect on the benefits that either of the Shollenbergers would be entitled to, according to law.
3. The Life Insurance Benefit, paid to Mrs. Shollenberger was pursuant to the coverage provided by the Agency under the mistaken belief, by staff, that Mr. Shollenberger was authorized to receive insurance. Any loss is to the insurance company, and would not be criminal in nature as to the staff. None of the actions by staff were done with any intention to give illegal benefits to anyone

Conclusion

The benefits to the Shollenbergers, which were already in full force and effect, were unaffected by the vote on August 22, 2006. The vote was of little or no legal significance.

As to the issue of “retroactivity”: No one can explain why this provision was in the contract. It was totally unnecessary and provided no additional benefit to either of the Shollenbergers. The attempt to give Mrs. Shollenberger extended health benefits until 2008 would clearly appear to have been illegal, but the Board recognized that and cancelled any coverage after the date of Mr. Shollenbergers death; therefore, no illegal benefit was paid on her behalf by the Agency. The life insurance benefit, as we explained in an earlier portion of this report, was in place since 2004.

Our investigation was unable to establish that any Board member actually knew Mr. Shollenberger died the in the early morning hours of the August 22, 2006. Although, there have been allegations that the Board did know of the death prior to this vote, no such evidence could be established.

Concluding Comments

The Public Integrity Unit would like to acknowledge the cooperation provided by Mr. James Harvey, as well as other individuals who were able to provide pertinent information that enabled us to formulate our analysis and conclusions concerning the operation of the Bighorn-Desert View Water Agency. Our investigation verified information provided and developed additional information that led us to our conclusions. It is our hope that this report by the San Bernardino County District Attorney’s Office will serve to inform the Board of Directors of the Bighorn-Desert View Water Agency, so that they can bring their actions into full compliance with the Brown Act. Future violations may result in more serious enforcement actions.

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By _____
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Deputy District Attorney
Public Integrity Unit
(case # 371)