

**PALO VERDE COMMUNITY COLLEGE DISTRICT**  
**STUDY SESSION/SPECIAL MEETING**  
**BOARD OF TRUSTEES**  
**Tuesday, March 24, 2015**  
**4:30 p.m.**  
**One College Drive, Blythe, CA – CL 101**  
*(ITV held at Palo Verde College Needles Center – 725 W. Broadway, Needles, CA)*

**Meeting 15-05**

**MINUTES**

**I. OPENING OF MEETING**

1. Call to Order

The Study Session/Special Meeting of the Board of Trustees was called to order by Ned Hyduke, Vice President of the Board, at 4:33 p.m.

2. Flag Salute

The Salute to the American Flag was led by Dr. Wallace, Superintendent/President.

3. Roll Call

Trustees Present:

Ned Hyduke, Vice President of the Board  
Ermila Rodriguez, Clerk of the Board  
Ted Arneson, Trustee  
Ed Gonzales, Trustee *(by ITV from Needles Center)*  
Jerry Lewis, Trustee *(by ITV from Needles Center)*  
Suzanne Woods, Trustee  
Alex Munoz, Student Trustee

Administrators Present:

Donald G. Wallace, Superintendent/President  
Russi Egan, Chief Business Officer

Absent:

Cecy Garcia, Chief Human Resources Officer  
Sean Hancock, V.P. of Instruction and Student Services  
George Thomas, President of the Board

Recorder:

Carrie Mullion, Administrative Assistant to Superintendent/President and Board of Trustees

Visitors:

Warren Kinsler, AALRR

4. Approval of the Agenda for this meeting.

It was moved by Ms. Rodriguez, seconded by Mr. Arneson, and unanimously carried, that the Agenda be approved.

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(These minutes are a concise summary of reports, discussion and actions taken at this meeting. For detailed comments and discussion, a tape is available to the public for 30 days after the date of this meeting.)

## II. HEARING OF CITIZENS (AGENDA ITEMS)

*Members of the public have this opportunity to directly address the Board on agenda items, subject to a five (5) minute time limitation per individual. Pursuant to the Brown Act Government Code Section 54954.2(a): "No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3."*

None.

## III. ANNOUNCEMENT OF RECUSAL FROM AGENDA ITEMS

*The Superintendent/President respectfully asks if any of the Governing Board members need to recuse themselves from any item where there might be a potential conflict of interest.*

None.

## IV. STUDY SESSION

1. Conflicts of Interest and Gifts *(handouts were provided by Mr. Kinsler)*  
Presenter: Warren Kinsler; AALRR

Mr. Warren Kinsler, Attorney with AALRR, provided handouts and a powerpoint presentation titled "Ethics Training" and "Conflict of Interest Statements-It's a Whole New Ballgame". Topics discussed included:

- Duty of public officials and employees general ethics principles:
  - ❖ Encompass the values surrounding trustworthiness, respect, fairness and responsibility.
  - ❖ The public should know of the responsible conduct, actions and practices of their local officials.
  - ❖ Public officials need to avoid even the appearance of impropriety.
  - ❖ Transparency is key to the public's ability to ensure that its elected and local officials are ethical in their public dealings.
- Bribery
  - ❖ Anything of value/advantage, present or prospective, or any promise to give anything.
  - ❖ 'Asked, given or accepted.
  - ❖ Corrupt intent to influence, unlawfully, the person to whom it is given in his or her action, vote, or opinion, in any public or official capacity.
- Government Code Section 1090 conflicts general rule:
  - ❖ The best way to think about 1090 compliance is that a person may not be on both sides of the transaction. A person may not award a contract and also receive any awards for a contract.
  - ❖ Public officials shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.
  - ❖ Is a person an officer or employee?
    - ✓ A public officer or employee are all state and local officers.
    - ✓ Board members are conclusively presumed to be involved in the making of all contracts under their board's jurisdiction.
    - ✓ For everyone else, it is a question of fact.
    - ✓ Consultants may be included in the prohibition.
  - ❖ Is there a contract?
    - ✓ Written contracts, oral contracts and purchases made outside of the formal contracting process are included.

#### IV. STUDY SESSION (continued)

- ✓ The term “contract” is interpreted broadly under section 1090 and includes “the negotiations, discussions, reasoning, planning, and give and take [that] go beforehand in the making of a decision.”
- ❖ Did the person “make” the contract?
  - ✓ The contract making process begins at the time the idea for the contract is conceived and continues through the execution of the contract. This means participation in the contract making process, and the process of establishing financial interest.
  - ✓ In the making of the contract, the work “made” in section 1090 implies that the contract must be finalized before there is a violation.
  - ✓ Where an employee, rather than an officer is financially interested in a contract, the public entity is only prohibited from making the contract if the employee was involved in the process of making the contract.
- ❖ Do they have a financial interest?
  - ✓ A violation of section 1090 will be found, if a direct or indirect connection between the financial interests of the official and the contract can be made.
  - ✓ Financial interest: employee of a contracting party; attorney, agent or broker of a contracting party; supplier of services or goods to a contracting party; landlord or tenant of a contracting party; officer or employee of a nonprofit corporation which is a contracting party.
  - ✓ An official has financial interest in a contract if he might profit from it. If a financial interest connection can be made, then the contract is void.
- ❖ What to do if there is a financial interest.
  - ✓ The contract cannot be made even if the member has disqualified himself from actually participating in the contract.
  - ✓ Any payments made to the contracting party must be returned and no claim for future payments.
  - ✓ The public entity is entitled to retain any benefits.
  - ✓ Abstention does not help.
- ❖ When a member of a board has a 1090 conflict the entire board is prohibited from entering into the contract unless there is an exception or statutory remote interest. Government Code section 1091 allows an agency to enter into a contract where a public official has a remote interest if the official: (1) discloses the official’s interest; (2) has the interest noted in the official records; and (3) disqualifies him or herself from voting on the contract and does not influence or attempt to influence a colleague’s vote on the matter. This applies only to officials.
- ❖ Remote interests include:
  - ✓ That of an employee or agent of a party contracting with the agency, if the contracting party has ten or more other employees and if the officer was an employee or agent of that contracting party for at least three years prior to the officer initially accepting his or her office.
  - ✓ That of a parent in the earnings of his or her minor child for personal services.

#### IV. STUDY SESSION (continued)

- ✓ That of a landlord or tenant of the contracting party.
- ✓ That of attorneys, stockbrokers, insurance agents, insurance brokers, real estate agents, or real estate brokers of the contracting party wherein the individuals will not receive any remuneration as a result of the contract and where these individuals have an ownership interest of ten percent or more of the law firm, brokerage firm, etc.
- ✓ That of a supplier of goods and services where those goods or services have been supplied to the contracting party by the officer for at least five years prior to his or her election or appointment to office.
- ✓ A person receiving salary, per diem, or reimbursement for expenses from a government entity.
- ❖ Non-interests: Government Code section 1091.5; where a public official has what is called a “non-interest,” he or she is not even required to disclose their interest (except in certain limited situations) or abstain.
- ❖ Non-interests include:
  - ✓ The ownership of less than 3% of the shares of a corporation for profit, provided that the total annual income to the official from dividends, including the value of stock dividends, from the corporation does not exceed 5% of his or her total annual income, and any other payments made to him or her by the corporation do not exceed 5% of the official’s total annual income.
  - ✓ That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duty.
  - ✓ That of a recipient of public services generally provided by the public body or board of which he or she is a member, on the same terms and conditions as if he or she were not a member of the board.
  - ✓ That of a spouse of an officer or employee of a public agency in the spouse’s employment or officeholding, if the spouse’s employment or officeholding has existed for at least one year prior to his or her election or appointment.
- ❖ Is there a statutory “non-interest”?
  - ✓ Non-interest does not require abstention or disclosure.
  - ✓ That of an officer in being reimbursed for his or her actual and necessary expenses incurred in the performance of official duties.
  - ✓ That of a spouse of an officer or employee in his or her spouse’s employment or officeholding if the employment or officeholding has existed for at least one year prior to election or appointment.
- ❖ Does the “rule of necessity” apply?
  - ✓ The rule of necessity applies when a public official has a financial interest under section 1090 and/or section 87100, but there is no other alternative to accomplish the needed action.
  - ✓ If the rule of necessity applies, the board member must abstain from any participation in the decision.

#### IV. STUDY SESSION (continued)

- Conflicts of Interest with spouse employees.
  - ❖ Collective Bargaining Agreements. An example would be a spouse board member and a spouse employee who is part of the CBA.
  - ❖ Spouse board member elected first – spouse cannot be hired.
  - ❖ Spouse hired less than one year before board member elected – spouse cannot remain employed with the District.
  - ❖ Spouse hired more than one year before board member elected – spouse must remain in current position, no promotions.
  - ❖ Penalties for violations:
    - ✓ Up to \$1,000 fine or one year imprisonment.
    - ✓ Permanent disqualification from holding office.
    - ✓ Contracts are void and voidable.
    - ✓ Loss of any consideration received for services rendered or property conveyed.
    - ✓ Four year statute of limitations from date of discovery to determine a contract void in a civil case; three year statute of limitation on criminal actions.
  
- Political Reform Act – Government Code section 87100.
  - ❖ General Rule – No public official may make, participate in making or in any way use or attempt to use his or her official position to influence a governmental decision in which he or she knows or has reason to know he or she has a disqualifying financial conflict of interest.
    - ✓ “Public official” means every member, officer, employee or consultant of a state or local government agency (Gov. Code §82048(a)).
  - ❖ Basic Rule:
    - ✓ A public official at any level of government has a prohibited conflict of interest and may not make, participate in making, or in any way use or attempt to use his or her official position to influence a governmental decision when he or she knows or has reason to know he or she has a disqualifying financial interest. Public officials are obligated (when acting in their official capacity), to discharge their responsibilities with integrity and fidelity.
    - ✓ A public official has a disqualifying financial interest if the decision will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, directly on the official, or his or her immediate family.
  - ❖ Six types of financial interest:
    - 1) Any business entity, e.g., partnership, firm, or corporation etc., in which the public official has a direct or indirect investment worth at least \$2,000 (Gov. Code §87103(a); 2 CCR §18700(c)(6)(B).)
    - 2) Real property in or near jurisdiction worth at least \$2,000 (Gov. Code §87103(b); 2 CCR §18700(c)(6)(b).)
    - 3) Any source of income, amounting to a total of at least \$500, provided or promised to, and received by the public official within 12 months before the decision is made (Gov. Code §87100(c); 2 CCR §18700(c)(6)(C).)

#### IV. STUDY SESSION (continued)

- 4) Any business entity, as defined in Section 82005, in which the public official is a director, officer, partner, trustee, employee, or holds any position of management (Gov. Code §87103(d); 2 CCR §18700(c)(6)(D).)
  - 5) Any donor of, or any intermediary or agent for a donor of a gift or gifts amounting to a total of at least \$460 provided to, received by, or promised to the public official within 12 months before the decision is made (Gov. Code §87103(e); 2 CCR §18700(c)(6)(E) and §18941.)
  - 6) Financial interest also includes an interest in the official's own personal finances or those of this immediate family.
- ❖ Test for determining if conflict of interest exists under PRA:
    - 1) Will the reasonably foreseeable financial effect be material?
    - 2) Can the public official demonstrate that the material financial effect on the public official's financial interest is indistinguishable from its effect on the public generally?
    - 3) If after applying the three step analysis and determining the public official has a conflict of interest, absent an exception, he or she may not make, participate in making, or in any way attempt to use his or her official position to influence the governmental decision. If the answer to any of 1-3 is "no", then there is no financial interest creating a conflict. 2 CCR §18700(d).
    - 4) Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?
  - ❖ Enforcement:
    - ✓ The Attorney General, the FPPC and district attorneys are authorized to enforce the PRA through criminal sanctions, civil liability and civil penalties.
    - ✓ A fine of up to the greater of \$10,000 or three times the amount the person failed to report, or unlawfully contributed, expended or gave or received, may be imposed upon conviction.
    - ✓ Only a formal written opinion of the FPPC will confer immunity from liability under the PRA. (Gov. Code §83114, 2 CCR§18328.)
  - ❖ Mass Mailings:
    - ✓ Mass mailing means over 200 substantially similar pieces of mail sent in one calendar month.
    - ✓ Items prepared or mailed at public expense generally may not feature an elected officer affiliated with the agency which produces or sends the mailing; or include the name, office, photograph, or other reference to an elected officer if the item is prepared in coordination with the elected officer.

Discussion took place regarding questions on the presentation and Mr. Kinsler provided answers.

The Governing Board thanked Mr. Kinsler for his presentation.

**V. HEARING OF CITIZENS (NON-AGENDA ITEMS)**

*Members of the public have this opportunity to directly address the Board on items of interest to the public, subject to a five (5) minute time limitation per individual.*

Dr. Wallace announced that Ms. Cecy Garcia is out at a conference, and Dr. Sean Hancock has been excused from this meeting.

The Admissions and Records Office has informed Dr. Wallace that the college will certify 1804 FTES, and it is possible that it could go as high as 1825-1830. The number does not include FTES for summer 2015. 1804 FTES would be above our cap, however, this would help the college if there is growth money available later. This represents a lot of hard work by everyone at the college.

The Community Economic Outlook Conference will take place April 2, 2015 at the Colorado River Fairgrounds. Dignitaries will be treated to a short presentation and tour of Palo Verde College. Dr. Wallace will give a "State of the College" update at the conference.

Alex Munoz, Student Trustee, announced that Palo Verde College will host Career Day for Palo Verde Valley High School students tomorrow beginning at 10:00 a.m. Everyone is invited to attend.

Mr. Gonzales, Trustee, announced that he and Mr. Lewis are working with the Charles Schulz family, "Peanuts" creator, to bring a summer program to the Needles Center. More information will be forthcoming.

**VI. CLOSED SESSION**

**The following Closed Session was cancelled.**

1. Conference with Labor Negotiator; pursuant to Gov't Code 54957.6  
Agency Representative: Board of Trustees  
Unrepresented Employee: Superintendent/President

**VII. ADJOURN**

This meeting was adjourned at 6:11 p.m.

**Minutes approved at the April 14, 2015  
Regular Board Meeting.**

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**Donald G. Wallace, Secretary of the Board**