

From: Scott Barnett <scottbarnettsd@gmail.com>
Date: January 30, 2015 at 7:48:18 PM PST
To: Foster Marne <mfoster@sandi.net>, Evans John <johnleeevans@sandi.net>, Barrera Richard <rbarrera1@sandi.net>, Beiser Kevin <KevinBeiser@sandi.net>, McQuary Michael <mmcquary@sandi.net>, Cindy Marten <cmarten@sandi.net>
Cc: Donovan Andra <adonovan@sandi.net>, Richard Barrera <rbcoi@yahoo.com>, John Evans <johnleeevans@gmail.com>, Marne Foster <marnef2@yahoo.com>, Kevin Beiser <KevinBeiser@yahoo.com>, Michael McQuary <drmike4schools@gmail.com>
Subject: Request for Retraction and Apology from SDUSD General Counsel

Dear President Foster and Members of the Board

Cc. Andra Donavon

On January 15th, I received a phone call from Magnolia Charter School saying that they had received an email from Andra Donavon the result of which they are terminating my consulting contract.

The canceling of this contract, a direct result of Ms. Donavon's email has cost me \$42,000 in lost income this year. In addition, SDUSD's sharing her email with the Voice of San Diego and the resulting news story has harmed my reputation and has caused other potential clients to raise concerns about retaining me. Even a non profit organization with whom I agreed to assist pro-bono, has told me that the email and article has resulted in some of their board members to ask whether even my volunteer assistance could "harm them."

Ms. Donavon's email-which specifically used my name in context with criminal convictions in two Southbay schools-has hurt me personally, professionally and financially.

Retraction and Apology

I am writing to ask that you direct your General Counsel to send an email to Magnolia Charter school copying me, the Superintendent and the School Board, retracting the email of January 14, 2015, and include in it a personal apology to me. I ask that this email be sent by close of business on February 11, 2015.

I will happily stipulate when Ms Donavon sends this email, that I will not consider any financial claim against the District or Ms. Donavon as a result of her original email or the "retraction and apology" and the resulting loss of income. I just want to restore my good name.

While the current (and future) personal financial cost has been great and Magnolia has been sufficiently frightened that I do not foresee them re-retaining me, I am more interested in repairing my personal and professional reputation and remove the false impression that "Scott Barnett is at war with SDUSD."

I would request an email be sent including the following language:

To Magnolia/Scott Barnett:

On behalf of the SDUSD Board of Trustees, I would like to withdraw and retract the email of January 14, 2015. In fact based on the record, neither I nor the district is aware of any information that would lead us to conclude "...that Mr. Barnett's involvement with the proposed purchase of the Cleveland site could jeopardize the transaction..." Nor that retention of Mr. Barnett would lead one to conclude "...that the transaction is tainted..." by Magnolia's retention of Mr Barnett as a consultant. I wish to apologize to Mr. Barnett and Magnolia Charter schools for any inference of impropriety contained within this email.

Background:

Ms. Donavon's January 14, 2015 email to Magnolia was especially shocking to me considering the following:

January 7, 2015

1) Ms. Donavon contacted me and we had a phone conversation (and text messages) where she expressed her concern that if I had had any "discussions or negotiations" on the sale of the Cleveland Property to Magnolia while I was on the school board, my consulting for Magnolia could place the transaction at risk. I assured her that I had NOT engaged in any discussions with Magnolia nor did I attend any closed session or participate in any discussions regarding the sale of Cleveland to Magnolia while I was on the board. She expressed her satisfaction with this.

2) Ms. Donavon then went on to discuss with me various issues related to the potential sale to Magnolia, and I offered to get her additional information from Magnolia which she thanked me for.

(I assume she would not have "engaged me" in discussion as Magnolia's "representative" if she continued to have the slightest concern about my involvement impacting a sales contract).

3) At my request Ms. Donavon also agreed to inform the board that I in fact did NOT have a "conflict" so I COULD communicate with the SDUSD board and staff on this issue if I so chose.

4) Despite my belief (then and now) that I am not legally prohibited from working for Magnolia, I sent an email to Ms. Donavon (the same day) indicating that I would be doing more research into state law and until I did so I would REFRAIN from "discussing or communicating" with the Board or staff on Magnolia purchasing the Cleveland site. Ms. Donavon responded that she would pass my email onto the board and real estate staff. As the board and real estate staff knows I did not in fact communicate with any of after the 7th. In addition Magnolia resent their 1/6 offer without my name on it.

January 12, 2015

5) I sent Ms. Donavon a copy of an email with a legal analysis by lawyers working for Magnolia referencing an FPPC advice letter saying that charter schools are "local government agencies" and therefore there was no conflict with me working for Magnolia and I was "free to appear and communicate with," SDUSD as a consultant. She acknowledged receipt of this email.

6) Despite this legal advice, and my previous conversation with Ms. Donavon (Jan. 7th) resolving her "conflict concerns, I informed Magnolia that I felt it best to STILL refrain from representing them with SDUSD and would not contact real estate staff or board members.

January 13, 2015

7) As you know the revised offer from Magnolia to SDUSD did not originate from me or reference my name or involvement in any way nor did I attempt to contact the Board or real estate staff.

8) Since this revised offer was sent in prior the closed session, and Magnolia had not yet received acknowledgement of its receipt, they were conceded whether SDUSD would be able to discuss it in closed session. I texted Ms. Donavon just prior to the 2:30 meeting inquiring whether SDUSD had it for the closed session.

She responded that they "have it," and then went on to ask me to have Magnolia provide some financial assurances and send it to real estate staff.

(Once again, I assume she would not ask me about obtaining specific financial "assurances" from Magnolia, if she had any concerns about my involvement impacting a sales contract.)

Given all of the above:

That Ms. Donavon was assured I had NO involvement as a board member on the sale of Cleveland to magnolia, which she acknowledged.

That she was informed by me that I would refrain from contacting the board and real estate staff on the sale, which she acknowledged.

That she received a legal opinion that there was no legal prohibition to me being involved. (But I still in fact refrained from contacting the board of staff) She acknowledged receipt of this opinion.

That she engaged me in discussion (and text) on issues related to the sale asking me to procure relevant information-on two separate occasions (January 7 and 13).

Despite all of this, she still sent the false, damaging and threatening email to Magnolia.

9) January 14, 2015 email from Andra Donavon to Magnolia

From: Donovan Andra
Sent: Wednesday, January 14, 2015 2:43 PM
To: 'Andy Gokce'
Subject: RE: Local Official One-Year Ban

Mr. Gokce

Thank you for your email. As I conveyed to your consultant, Frank Gonzalez, last night, the Board of Education remains interested in pursuing a sale of the Cleveland site to Magnolia. However, the Board is very concerned that Mr. Barnett's involvement with the proposed purchase of the Cleveland site could jeopardize the transaction.

This arises not from the one year ban addressed below, but from the application of Government Code section 1090, which prohibits a public official from having a financial interest in a contract made by them in their official capacity, or any board of which they are members. Although Mr. Barnett is no longer a Trustee, the courts have construed the "making of a contract" broadly, to include not only board approval, but discussions and negotiations leading up to that approval.

I am in no way suggesting Mr. Barnett has done anything illegal. I have no information to indicate that is the case. However, if a court were to determine that Mr. Barnett was sufficiently

involved in discussions leading up to the sale of the site prior to leaving the board that he is considered to have participated in the making of the contract, the fact that he later received compensation from Magnolia to assist in closing the transaction could lead to the contract being deemed void by the court.

At the very least, an accusation that the transaction is tainted and would likely generate significant public criticism; particularly at this time, given recent scandals in the Sweetwater and San Ysidro Districts.

Obviously, you are free to work with whomever you choose. However, the Board asked me to convey their concerns. Please feel free to call me if you wish to discuss this particular matter further. Gene Fuller will be handling the real estate transaction, and you should continue to contact him regarding that transaction.

Sincerely,
Andra M. Donovan, Esq.
General Counsel
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San Diego, CA 92103
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Finally, beyond the financial losses and harm to my reputation, I am personally distressed that as a result of Ms. Donavon's email, the Voice has characterized me as being "at war" with SDUSD and Board. While we at times had differences, for the most part we were able to work together on many areas in a positive and successful collaboration. I felt very positive about our history and wish the Board and district great success in continuing to improve the educational experience for its students. I know what time consuming and challenging job you have and wish you all well.

For me, all I want is to earn a living and hopefully continue to do some good, including on occasion assisting individuals and organizations to achieve "win win" scenarios along with SDUSD.

I am hopeful that a "retraction and apology" as requested above will be sent and allow us to move forward in a positive way.