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September 11, 2017

Ron Guiles, President
Escondido Public Library Board of Trustees
Escondido Public Library
239 S. Kalmia Street
Escondido, California 92025

**Re: *Library Board of Trustees September 12, 2017 Meeting Agenda Item No. 3:
Discuss Trustees' Role Related to the Municipal Libraries Act***

Dear Chairman Guiles and Members of the Library Board of Trustees:

I understand that the Library Board of Trustees has placed on its agenda for its September 2017 monthly meeting Item No. 3, Current Business, "Discuss Trustees role related to California Education Code § 18910." I am also in receipt of a package of materials provided to the Board by Roy Garrett dated August 29, 2017, and distributed to the Board members last week.

The gist of Mr. Garrett's position, as first announced at the City Council meeting on August 23, 2017, is that the Municipal Libraries Act, found at California Education Code § 18910 *et. seq.* ("Act"), prohibits certain city actions because "the public library shall be *managed* by a board of library trustees..." (Emphasis added.) I have had the pleasure of speaking in person with Mr. Garrett and exchanging several e-mails regarding his position and its legal basis. He and this office have arrived at different legal conclusions as to correctness of this argument.

Although the Board has not specifically requested the City Attorney's Office to weigh in on the matter to be discussed, this office believes it necessary to give the Board more background on these issues to allow for an informed discussion of the topic. Given the general description of this item on the agenda, this Board may do nothing further at this meeting than discuss the general issue described on the agenda. See, Government Code §54954.2(a)(1) (must describe each item of business to be transacted or discussed at the meeting); Government Code §54954.2(a)(3) (forbids action on item not on agenda); *San Joaquin Raptor Rescue v. County of Merced* (2013) 216 Cal.App.4th 1167, 1176-77.

Because several different sources of information help inform this discussion, please allow this letter to address the Act, the Escondido Municipal Code (EMC), the Board's own By-laws, and the case identified by Mr. Garrett.

September 11, 2017

Page 2

The Municipal Libraries Act.

The first general public library legislation in California was the 1878 Municipal Libraries Act to establish and maintain free public libraries and reading-rooms. Enacted at a time corresponding to the growth of compulsory public education, the law authorized the City and County of San Francisco, and “the municipal authorities of the several incorporated cities and towns of this State” to levy and collect an annual tax for the purpose of establishing free public libraries and reading rooms. The 1878 Act provided for the appointment of trustees by the municipal authorities to “make, such rules and regulations, and by-laws, as may be necessary for the government and protection of such libraries and reading rooms, and all property belonging thereto, or that may be loaned, devised, bequeathed, or donated to the same.”

The 1878 Act was repealed and substantially reenacted in 1880 to establish free public libraries and reading rooms. The 1880 Act retained provisions authorizing the levy of a special tax for the purpose of establishing and maintaining public libraries, and providing for management of such libraries by trustees. Trustees were either appointed or elected, however, depending upon whether the population of the city was more or less than 100,000.

In 1901 the Act was further amended to include provisions authorizing the levy of a special tax for the purpose of maintaining municipal libraries. In other respects, the 1901 Act differed substantially from its predecessors. For example, the 1901 Act provided that the governing body of any incorporated city or town “may, and upon being requested to do so by one fourth of the electors of such municipal corporation ... *must*, by ordinance, establish in and for said municipality a public library; *provided* there be none already established therein.”

Like the current Municipal Libraries Act, the 1901 Act contained provisions relating to the governance of the library by a board of library trustees whose members held office for three-year terms. Trustees were appointed by the “mayor, president of the board of trustees or other executive head of the municipality, with the consent of the legislative body of said municipality” regardless of city population. The 1901 Act declared: “Every library established under this act shall be forever free to the inhabitants and non-resident taxpayers of the municipality, subject always to such rules, regulations and by-laws as may be made by boards of library trustees; and provided, that for violations of the same a person may be fined or excluded from the privileges of the library.”

In 1943, comprehensive legislation was enacted creating the Education Code. The 1901 Municipal Libraries Act was incorporated into the Education Code, substantially unchanged. Additional, nonsubstantive amendments to provisions of the Municipal

September 11, 2017

Page 3

Libraries Act were made in 1971 and 1976. The current numbering of the Act is a product of 1976 legislation reorganizing the Education Code.

Relevant to issues of management or governance of the library by the Board, Section 18910 states that, “[t]he public library shall be managed by a board of trustees, consisting of five members, to be appointed by the mayor, president of the board of trustees, or other executive head of the municipality, with the consent of the legislative body.” The term and timing of the appointments of, as well as compensation for, Board members are identified in Section 18911. Thereafter, the Act includes various provisions relating to the making of rules and bylaws and subjecting the operation of the library to those rules (Sections 18919, 18960); administering trusts, receiving gifts and establishing designated funds to administer and account for such monies (Sections 18920, 18951, 18952, 18953); assigning responsibilities to various employees of the library (Section 18921); purchasing books and real property (Sections 18922 and 18923); and a permissive ability to do other acts to carry out the provisions of the Act (Section 18926).

Mr. Garrett contends in his August 29, 2017 letter that the relevant education codes “are clearly a legislative effort to take the public library out of the political arena.” Of course, this position fails to acknowledge that Board members are not elected by the public directly (like school board members) but appointed by the city council in their jurisdiction. Further, the Education Code does not allow libraries in general law cities to impose their own taxes or fees on their residents to achieve genuine independence from the city council. Instead, libraries and their respective boards rely heavily on the city council for budget allocations to operate and capital funds for their facilities.

Statutory Use of “Shall” vs. “May” in the Act.

A central theme to Mr. Garrett’s argument is that Section 18910 includes the word “shall” as it relates to the Board’s management of the library under the Act suggesting that it has the both the exclusive right and mandatory obligation to “manage” the library operation in all respects and that the city can play no role in the selection of personnel assigned to assist in the provision of library functions. Mr. Garrett over-reads the import of this phrase in this provision.

The term “manage” as it relates to the Board’s role is never defined in the Act. The term “manage” as ordinarily understood and used can include all forms of conduct related to running an organization. That is, although it must manage the library, the means of accomplishing that duty are left to the discretion of this Board. Certainly, if the legislature intended the word “manage” to have the very specific meaning as suggested by Mr. Garrett, it would have included a definition or provided additional language to make this matter clear. It is reasonable to conclude, however, that the legislature’s use of a vague and an undefined term was intentional giving library boards the ability to craft the

September 11, 2017

Page 4

management practices that best suited their individual circumstances in the jurisdictions where they operate.

Further, a legislature's use of both "shall" and "may" in close proximity in a statutory scheme, permits the inference that the Legislature intended mandatory and discretionary meanings, respectively. See, *In re Richard E.* (1978) 21 Cal.3d 349, 353-354. Numerous other provisions of the Act employ the word "may" to describe the discretionary powers accorded the board of library trustees. For example, the Act is permissive as to the Board's role in prescribing duties of the librarian, secretary and other officers and employees of the library and determining their number and fixing their compensation. (Section 18921) Notably, the catch-all provision giving trustees a general set of powers under the Act to do and perform any other acts necessary or proper to carry out their powers is stated in the permissive ("may") indicating that the Board indeed has not a statutory *obligation* to do everything but the *discretion* to decide how it wishes to conduct its overall business. See, Education Code §18926.

In light of the foregoing, Mr. Garrett's contention that this Board is not fulfilling its statutory obligation by advising the city on certain matters, as opposed to taking a more adversarial position including legal action, reflects a fundamental misunderstanding of how a board may choose to manage the library's affairs. Part of the considerations that a reasonable board may take into account is whether it wishes to take an adversarial position against the body that determines the library's budget and related administrative resources. Mr. Garrett is arguing this issue as a matter of principal driven by a specific issue but it is untethered to the realities of how the city and library must work cooperatively on numerous issues (e.g. hiring library employees, budget, payroll, negotiating compensation and benefits with bargaining units and unrepresented employees, information systems access, CIP projects).

Board's By-Laws and Mission Statement

This Board's governing charter, its by-laws, at Article II, specifically provide that, "[t]he primary mission of the Escondido Public Library Board of Trustees is to be vocal and energetic advocates for the essential services that the Escondido Public Library provides to the community and to give sound and timely advice and counsel to the Escondido City Council and the Director of Library and Community Services on the development of plans, policies and programs that are responsive to community needs and desires." (Emphasis added.) Board member Elmer Cameron properly noted the Board's role as an advisory body and not a final decision maker at its most recent Board meeting. (See, Board Meeting Minutes, August 8, 2017 Meeting, page 2) The Board's letter to the City dated August 15, 2017 mirrors this position. ("The Library Board of Trustees bylaws state the primary mission is to... providing timely advice to the Escondido City Council.")

September 11, 2017

Page 5

Mr. Garrett complains to you in his August 29, 2017 letter that you are not fulfilling your "obligation to manage the library..." This unfounded position ignores the properly enacted by-laws (updated as recently as January 2016), the language of the Act, the language of the EMC, and is an unfair characterization of the advisory service you perform.

The Board's charter is consistent with EMC §18-45 which provides in relevant part that, "[t]he community services director shall operate and coordinate the ... library services programs..." EMC §18-45 also provides that the director will assist with other activities related to city property and facilities, including "library facilities in accordance with the advice and guidance of the ... library board of trustees..." This ordinance also requires that the director prepare an annual community services budget (which includes the library) for approval by the city manager and council.

Section 18919 provides that the Board "may make and enforce all rules, regulations, and bylaws necessary for the administration, government, and protection of the libraries under its management, and all property belonging thereto." Therefore, the Board's own by-laws identifying its properly chosen role are explicitly provided for by the Act.

Friends of the Library of Monterey Park.

Mr. Garrett would likely concede that despite the length of time these statutes have been on the books, there is very little case law providing guidance to how a court may interpret the relevant provisions Act. No case has been identified by him which speaks directly to the issue of whether Section 18910 controls the specific issue which gives rise to the debate about the Board's statutory obligations. Indeed, in the absence of any specific contract to consider, the argument as to transference of management authority is wholly speculative.

In the absence of pertinent case law, Mr. Garrett directs your attention to the case of *Friends of the Library of Monterey Park v. City of Monterey Park* (1989) 211 Cal.App.3d 358 ("*Monterey Park*"). Unfortunately, all that Mr. Garrett has provided the Board on this case is a one-page sheet including five paragraphs of what is actually a 24-page published opinion. At the outset, it should be made clear that a published judicial opinion must be understood in the context of the specific matter brought to the court's attention to be decided and actually decided.

In *Monterey Park*, the Monterey Park City Council adopted an ordinance disbanding the incumbent board of library trustees and transferring control of the library to the city council. A nonprofit corporation (Friends of the Library), and three incumbent members of the board of library trustees whose offices were eliminated by the ordinance,

September 11, 2017

Page 6

filed a suit (petition for writ of mandate) challenging the legality of the city council's action. The trial court made certain unremarkable findings including that the Act governed the establishment and management of public libraries in California general law cities; that Section 18910 required that the library be managed by a board of library trustees; and that the city ordinance was in conflict with the Municipal Libraries Act. The trial court issued the writ ordering (1) the city to rescind the challenged ordinance and reinstate the incumbent board of library trustees and (2) that the terms of incumbent board members be extended to compensate for the period of time during which such terms were interrupted by the ordinance. The city appealed.

The Court of Appeal in *Monterey Park* examined only two specific issues: (1) whether Government Code § 39732(a), which allows a city to “acquire, own, construct, maintain, and operate ... public libraries,” furnishes independent statutory authority, apart from the Act, for the establishment and operation of public libraries by general law cities; and (2) whether the trial court erred by extending the terms of incumbent trustees for a period equal to the amount of time such trustees were deprived of their offices by appellants' actions.

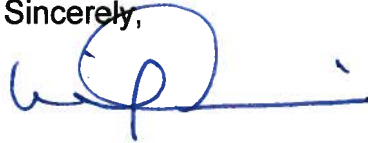
To be clear, there is no dispute between Mr. Garrett and this office as to the actual decision and findings of the court of appeal in *Monterey Park*. Instead, the dispute lies with its *applicability* to specific circumstances. In *Monterey Park*, the court correctly found that the city council did not have the authority to unilaterally abolish a city library of trustees organized under the Act and “replace” it with one ostensibly operated under authority of another general provision of California law (Government Code §39732). Of course that is not what is at stake in any proposal related to the Escondido Public Library or this Board. The City has never taken the position that it wants or intends to abolish and replace the current Board. No proposal has ever been contemplated where the Board members would be removed before the end of their appointed terms. Further, there is no proposal or effort to change in the Board's adopted by-laws, mission statement or established guiding principles.

Moreover, the City of Monterey Park claimed it could abolish the Board pursuant to Government Code §39732 which allows a city to build and operate public libraries. The City is not taking the position that it has the right to remove this Board or undertake its current budgetary efforts under that statute. Instead, the City is fulfilling its longstanding practice - one accepted by and benefitting the Board - of providing a stream of labor to implement *the Board's mission*. Indeed, the Escondido Municipal Code specifically empowers the city to hire the services of professionals to provide city services. See, EMC 2-63 (city manager controls appointive power over all officers and employees). The same is true with general state law. See, Government Code § § 37103, 53060 (city may contract with specially trained and experienced firm for special services).

September 11, 2017
Page 7

It is this office's opinion that this duly appointed Board violates no state statute by its historically successful and efficient management of the Library by providing advice and counsel to the City Council. Given that the City has plenary and unqualified discretion over the library budget, a fact not disputed by Mr. Garrett, this relationship fully satisfies all statutory obligations of the Board.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael McGuinness', with a horizontal line extending to the right.

Michael McGuinness
City Attorney

September 11, 2017

Page 8

cc: Board Trustee Elmer Cameron
Board Trustee Mirek Gorney
Board Trustee Gary Knight
Board Trustee Mayra Salazar
Mayor Sam Abed
Deputy Mayor John Masson
Councilmember Olga Diaz
Councilmember Ed Gallo
Councilmember Michael Morasco
City Manager Jeffrey Epp
Deputy City Librarian Joanna Axelrod