

September 11, 2007

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

James V. Lacy
Wewer & Lacy
30011 Ivy Glenn Dr., Ste. 223
Laguna Niguel, CA 92677

Re: Response to Letter Dated September 7, 2007, re: Alleged Brown Act Violations

Dear Mr. Lacy:

As you know, this office represents the City of Dana Point as its City Attorney. This letter constitutes the City of Dana Point's response to your letter to Mayor Diane Harkey, dated September 7, 2007, wherein you allege violations of the Ralph M. Brown Act (Gov't. Code, § 54950, *et seq.*) by members of the Dana Point City Council, and demand that the City Council admit to, and apologize for violating the Brown Act. Your legal arguments and demands are simply wrong.

The Brown Act's open meeting requirements apply to meetings by a legislative body where issues within the subject matter jurisdiction of the legislative body are discussed. (Gov't Code, § 54952.2, subd. (a).) When a City Council does not have subject matter jurisdiction over an issue, any action on, or a discussion of that issue is the functional equivalent of an action by any other group of private citizens, and there is no Brown Act violation. While your letter correctly analyzes several elements of the Brown Act, it fails to discuss the threshold issue of subject matter jurisdiction.

Turning to the alleged Brown Act violations, the apparent grounds for your purported challenge are that the document "appears to be a resolution of the Dana Point City Council," mentions the "important work of the City Council," and is "signed by a majority of the Council." With nothing more, these facts do not show that the document represents an official City action, and certainly do not suffice to show the City or City Council has subject matter jurisdiction over this issue.

The issue addressed in the challenged document is the political stance of individual members of the City Council regarding the effort to recall Mayor Harkey. It is well established that neither a City nor a City Council has authority to engage in partisan politics. Such partisan political actions are quintessentially outside the subject matter jurisdiction of the City or City

James V. Lacy
September 11, 2007
Page 2

Council. Thus, the document at issue is not evidence of a Brown Act violation and the City simply had nothing to do with the creation of the alleged document.

Not only are the individual City Council members' partisan opinions of the recall effort completely beyond the City Council's subject matter jurisdiction, there is simply no indication that the challenged document is anything but a private political statement. Nowhere on the document is there any indication that it is, or purports to be, an official City document. Indeed, the only support for your position is that the document was signed by members of the City Council and is dubbed a "resolution."

Taken to its logical conclusion, your position would preclude City Council members from signing any document regarding any issue, so long as a majority of the Council members were to sign. Your position would also have the unfortunate effect of precluding City Council members from meeting, discussing, or opining on any issue, regardless of its relation to the Council's subject matter jurisdiction. For instance, your position would have made it impermissible for you, when you were on the City Council, to seek other council members' support for non-City matters such as Measure D. It is well established that the Brown Act does not prohibit such meetings and or actions. Furthermore, it goes without saying that simply because a document is entitled "resolution" does not make it an official City resolution.

Please be assured that the City of Dana Point takes its responsibility to act in the best interest of its citizens, and according to the mandates of established law, very seriously. If your allegations were valid the City Council would be willing to correct and cure any Brown Act violations. However, the actions you purport to challenge were not those of the City or the City Council, and concerned matters beyond the subject matter jurisdiction of the City and City Council. As such, they did not, and could not have violated the Brown Act.

Please do not hesitate to contact me should you wish to discuss this matter, or any related issues in more detail.

Sincerely,

RUTAN & TUCKER, LLP



John A. Ramirez

APM

cc: City Attorney
City Manager
City Council