

October 6, 2015

Mayor Bob Lingl
Lompoc City Council
100 Civic Center Plaza
Lompoc, CA 93436

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CITY ADMINISTRATOR'S OFFICE

Dear Mayor Lingl,

I am concerned about actions that the Lompoc City Council has taken regarding its Exclusive Negotiating Agreement (ENA) with the California Space Center LLC (CSC). I have several questions, mainly focused on the larger issue of whether or not the City is actually negotiating in good faith, as the ENA requires. Further, I have been frustrated and discouraged by the secrecy which has lately surrounded the project.

In particular, I was surprised at the council's decision of September 15 to send the CSC a letter of default. I'd like more information about this decision, but because it was made during a closed session of the council, such information has not been made available.

In order to justify meeting about the CSC project in a closed session, the city council has employed the "real property exception" that is allowed by the Brown Act. (According to Section 54956.8: *Notwithstanding any other provision of this chapter, a legislative body of a local agency may hold a closed session with its negotiator prior to the purchase, sale, exchange, or lease of real property by or for the local agency to grant authority to its negotiator regarding the price and terms of payment for the purchase, sale, exchange, or lease.*)

However, I believe that the city has used the real property exception improperly. Thus, it is my contention that the City has violated the Ralph M. Brown Act, by discussing and taking action regarding the ENA during a closed session. By this letter I request that you cease and desist from the use of closed sessions to discuss the California Space Center Project or the ENA, except in very narrow and specific instances when the council's purpose is "to grant authority to its negotiator regarding the price and terms of payment" (as is allowed by law).

In Opinion No. 07-2012, the California Attorney General quotes several State Supreme Court rulings to explain how the Brown Act should be interpreted:

As the Supreme Court has observed, the Brown Act was "adopted to ensure the public's right to attend the meetings of public agencies." To effectuate this purpose, the Brown Act "requires that the legislative bodies of local agencies . . . hold their meetings open to the public except as expressly authorized by the Act." And, although the Brown Act contains express statutory exceptions that authorize closed sessions to be held with regard to certain matters, these exceptions are construed narrowly, while the Brown Act's general command "in favor of openness in conducting public business" is construed liberally. This is so because statutory language "must be construed in the context of the statutory framework as a whole, keeping in mind the policies and purposes of the statute, and where possible the language should be read so as to conform to the spirit of the enactment." These rules of interpretation also implement and further the state constitution's directive that a statute or other legal authority "shall be

broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access." (The opinion quoted above can be found at <http://oag.ca.gov/system/files/opinions/pdfs/07-1202.pdf>)

The Attorney General has emphasized that the real property exception is "narrowly crafted" and intended for use only when the purpose of the session is "to inform or develop a negotiating strategy" prior to a real estate transaction (from 93 Ops.Cal.Atty.Gen. 51, ---, 2010 WL 2150433 as quoted in a letter by the League of California Cities, found at <https://www.cacities.org/Resources/Open-Government/LCC-Letter-re-AG-Request-10-206.aspx>).

As noted,

The need for executive [closed] sessions in this circumstance is obvious. No purchase would ever be made for less than the maximum amount the public body would pay if the public (including the seller) could attend the session at which that maximum was set, and the same is true for minimum sale prices and lease terms and the like. (Schwing, Open Meeting Laws § 7.76, 416-418, 1994, quoted at <http://oag.ca.gov/system/files/opinions/pdfs/07-1202.pdf>)

Clearly, the Lompoc City Council's discussions and decisions regarding the ENA with the CSC do not meet the narrow criteria for the real property exception. The negotiating terms in this case are already public and available to both sides of the negotiation, and during the entire year of the ENA, there is no chance that the property in question will be sold, leased, or otherwise conveyed.

As provided by Section 54960.2, you have 60 days from the receipt of this letter to respond with "an unconditional commitment to cease, desist from, and not repeat the past action." If you fail to cease and desist, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.2, in which case I would also ask the court to order you to pay my seek court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

Respectfully yours,



Jane Behr
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