

Citizens' Oversight Projects (COPs) Committee

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May 21, 2009

Ed Gould, Ed.D.
Superintendent/President
Imperial Valley College
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Dear Mr. Gould:

This letter is to document and hopefully put to rest our interaction at the IVC Academic Senate meeting and immediately following on May 20, 2009, 1:30pm.

As a bit of background, our COPS organization encourages the public to get involved in their local government to provide desperately needed oversight. As citizens in a democracy, it is our duty to oversee the entire government, top to bottom. And, indeed, that includes community college districts, such as yours.

I started covering the issue with WindZero after helping the community of Potrero in San Diego county successfully thwart an attempt by Blackwater Worldwide (now called "Xe") to build an 824-acre warfare training camp in their small town of 850 residents. They ended up recalling all of the planning group members in an unprecedented recall election by at least a 2:1 margin. During that effort, I also covered the situation with WindZero in Imperial County, and since then, have been asked by members of the community of Ocotillo/Nomirage (including the chair of the Community Council, who also attended yesterday's meeting) to help cover and make suggestions regarding their effort to stop what they see as a problematic project, particularly with regard to water.

I have asked the business partners in WindZero if they are associated with Blackwater, and they've said no. However, I have seen a number of strange phenomena with regard to their project that presents red flags. First, after I filmed their presentation on June 23, 2007, I received an anonymous review of the project directly from Washington DC. Then, I had two encounters with unknown people who said they were told the exit strategy for WindZero was to sell out to a firm like Blackwater. That is completely unsurprising to me as I would have the same strategy if I were them. However, the way I was receiving this information raised my eyebrows as somewhat unusual. Indeed, I am not sure if Blackwater or another firm is trying to undermine WindZero as a competitor in the same market, or if indeed the concerns are from groups or individuals who are actually concerned about the project.

You can review the information I have submitted to the website on this project here, including the film of the original presentation by WindZero and the Academic Senate meeting last month:

<http://www.copswiki.org/w/bin/view/Common/WindZero>

Perhaps easier is to go to

<http://www.copswiki.org> and then type in WindZero (no spaces) into the JUMP box.

The community of Ocotillo/Nomirage requested for your institution to request that WindZero remove the note of endorsement from their website until it is actually and formally produced. I am not trying to debate whether such an endorsement is warranted, only that it should be formally produced, not provided as a side remark or as a result of a \$10,000 donation to the IVC Foundation. During the meeting you said you already did that and so perhaps that is as much as can be expected. However, on their web site, I still see the following:

The following government agencies and organizations have formally endorsed and support the Wind Zero Project:

Imperial Valley College

...

That should explain my involvement in this issue regardless of my residence address. I have no ax to grind with the college and want to help you meet the needs of your students. Given the progress we have made at Southwestern College and getting Congressman Bob Filner in the loop means there is some hope that we can land stimulus package funds if we play our cards right. Therefore, I hope we can work together on this.

Now, moving to the interaction at the meeting and the information I promised.

I understand that the Academic Senate of the college operates under the rules of the Brown Act, and they implied this very heavily in the prior meeting when they discussed whether they were in compliance on another matter. If this is not the case, then I am certainly willing to be corrected on that point, and the rest of my conclusions would be moot.

However, if it is indeed the case, then according to the Brown Act, members of the public can attend the meeting and may speak. Although you may ask if a speaker is in your service area to clarify why they have an interest in the matter, any member of the public may be interested in any matter, and you, as an administrator of a public institution, ultimately report to the public, any and all of us. Trust me, we have been over this with many other bodies and organizations. I refer you to the following link which explains my research on the matter including the comments from the State Attorney General:

<http://www.copswiki.org/w/bin/view/Common/BrownAct>

or easier is to go to

<http://www.copswiki.org> and then type in BrownAct (no spaces) into the JUMP box.

There are a couple of humorous videos that make the point very clear on that web page, but for sake of convenience and completeness, I will include the comments on that page regarding your rights to ask for name and address of members of the public:

Can they ask your name and address?

This issue came up during the resistance of the town of Potrero against Blackwater. Some of the residents were not comfortable providing their name and address because of the threat of retaliation by Blackwater.

The Brown Act states that (1) the public may attend the meeting, and they are not required to sign any attendance roster or pay any fees:

Spectators' Right to Anonymity

54953.3. A member of the public shall not be required, as a condition to attendance at a meeting of a legislative body of a local agency, to register his or her name, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his or her attendance.

If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held, or is circulated to the persons present during the meeting, it shall state clearly that the signing, registering, or completion of the document is voluntary, and that all persons may attend the meeting regardless of whether a person signs, registers, or completes the document.

and (2) that the public may address the body regarding agenda items or during public comment:

Spectators' Opportunity to Address the Body

54954.3. (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

However, the Brown Act does not explicitly state that a citizen may address the body and also not sign in, although it does seem to be a logical extrapolation. I (Raymond Lutz) asked the State Attorney General's office about this question, and Mr. Ted Prim of that office stated that he informally advises that members of the public need not identify themselves or provide their address, but it is suggested that the body may ask them whether they live in the service area of the body in question.

However, that office declined to provide a written opinion unless requested by a governmental official.

I contacted Bob Filner's office (April 4, 2007) to see if I could make progress on getting a written opinion on this matter, and we are now waiting on the Attorney General's office for a response.

I hope that puts to rest my right to decline to provide my exact residence address.

In order to document what occurred after this meeting, I present the following description, much of which was recorded on my camera (which was still running). After the meeting, you exited the room quickly, and I went to the (inside) door and offered my business card and shook your hand. At that point, you said that I was not welcome on campus and that I had to leave immediately or risk arrest. I was talking briefly with the chair of the meeting regarding how the agenda item was processed and the purview of the body, and then through the outside door you said that I had no business at the college and that I had to leave immediately, and it was my second warning. Then, after I bundled up my video gear, I was standing in the lobby and I requested your business card so I could send you the information I promised regarding the Brown Act (above). At that point you said that if I uttered even one more word, you would have me arrested. At that point, I exited without saying anything further.

The idea that you can place someone under arrest for asking for your business card is patently absurd, (or saying "even one word") and although I was not able to spend the time yesterday to go through that entire process, looking back, it may have been to my benefit to take you up on your offer to do so. It would probably play out well in the media, particularly when I file a lawsuit for false arrest and file a complaint with the Accrediting Commission for Community and Junior Colleges describing the fact that the public is being harassed during public meetings. Honestly, I don't think I did anything to you that would warrant the rude treatment you dished out, as I was completely courteous (and I even provided my name and address that you requested despite the fact that you have no right to do so, under the Brown Act) during and after the meeting.

I regard my rights to be involved in my local government as a fundamental right in our democracy, and I will fight to maintain that right, regardless of threats of imprisonment by officials who are overstepping their authority.

I really don't want to process this issue any further and would like to put it behind us as a friendly misunderstanding. Instead, as I mentioned in the meeting, I am working toward organizing a "Regional Security Summit" to include San Diego, Imperial, and Riverside counties, and take a careful look at the training needs of law enforcement, the military, and couple that with available training facilities. There are several nearby organizations (Southwestern College District, and San Diego City College District, as well as the area in Riverside near Perris) who are in the same boat as your college and want to resolve their needs, but doing it on a case-by-case basis is, I believe, a prescription for future problems. And, as I mentioned, I think that if we play our cards right, we may be able to score some stimulus funds.

Therefore, let's work together on this and look for an outcome that will benefit the entire region.

Thank you for your kind cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray Lutz", with a long horizontal flourish extending to the right.

Raymond Lutz
Coordinator, Citizens' Oversight Projects Committee