



OFFICE OF THE DISTRICT ATTORNEY
COUNTY OF TULARE

Phillip J. Cline
DISTRICT ATTORNEY

November 17, 2010

Cheryl Schmidt
Director Stand Up for California
P.O. Box 355
Penryn, CA 95663

Julia M. Lew
McCormick, Kabot, Jenner & Lew
1220 West Main Street
Visalia, CA 93291

Porterville City Council
291 North Main Street
Porterville, CA 93257

Dear Ms. Schmidt, Ms. Lew, and Porterville City Council:

I have reviewed all of the material that has been submitted concerning a possible Brown Act violation by the City Council of Porterville and their approval of the MOU between the City and the Tule River Indian Tribe. I have also reviewed all the articles written in the Porterville Recorder and the documents provided by each of your offices. I have reviewed the agenda items of the Porterville City Council and the agreements reached between the Council and the Tulare Indian River Indian Tribe. I have met with Julia M. Lew, the city attorney for the City of Porterville. I have met with representatives from Stand Up for California. I have reviewed the Brown Act as to how it would apply to this situation.

On March 16, 2010, the Porterville City Council met in closed session to confer with their attorney, Julia M. Lew of McCormick, Kabot, Jenner & Lew. Ms. Lew indicates that the purpose of the closed session was to discuss possible litigation between the City of Porterville and the Tule River Indian Tribe. She indicates that the agreement was to get the Tribe to agree to comply with the zoning requirements on any pending fee-to-trust application on property within the City of Porterville. The closed session was noticed on the March 16, 2010 Porterville City Council agenda.

Government Code Section 54956.9 provides that "a public board may meet in closed session to consult with or receive advice from legal counsel concerning pending litigation when a public discussion of such matters would prejudice the position of the local agency in the litigation." "Existing facts and circumstances for purposes of determining whether there is a significant exposure to litigation, must consist of one of the following situations:

- (1) facts and circumstances that might result in litigation but which the agency believes are not yet known to a potential plaintiff and which need not be disclosed."

On April 1, 2010, the Tule Indian Tribal Council passed a Cooperation agreement between themselves and the City of Porterville.

On April 20, 2010, the agreement was brought before the City Council in open session. The item was listed as number 10 on the Agenda "Report - Cooperation Agreement between the City of Porterville and the Tule River Indian Tribe."

The position of the City Attorney is that there has not been a violation of the Brown Act. She states that the City Council had a right to meet with their legal representative in closed session on March 16, 2010. We cannot go into the substance of that communication without violating the Attorney-Client Privilege that exists between the City Council and their attorney. The Board then brought the agreement to open session on April 20, 2010, after the Tulare Indian Council passed it.

The position of the representatives of Stand Up For America is that there was an agreement reached between the City of Porterville and the Tule Indian Tribe that was conducted behind closed doors and they were denied the opportunity of comment prior to the agreement being reached. They contend that the Cooperation Agreement states that "...the Cooperation Agreement approved by the City Council during its Closed Session on March 16, 2010, and approved by the Tule River Indian Council at its meeting on April 1, 2010" shows that an agreement was reached in closed session in violation of the Brown Act. Additionally, the April 20, 2010 agenda item states that the item was put on only as an informational report of an agreement that had been previously reached and they were not given the opportunity for public comment on that date.

After careful review of all the documents provided, it is my opinion that both sides are correct in their allegations. It appears that people of Porterville were not given an opportunity to voice their support or opposition to the Cooperation Agreement prior to it being acted on by the Porterville Council and the Tule Indian Council. It is unfortunate that the City of Porterville has chosen not to set aside their decision and open the issue up for discussion prior to voting on the Cooperation Agreement. However, it is my responsibility to determine only whether there has been an intentional violation of the Brown Act. Based upon the material that has been provided, I agree with the City Attorney that there was not a violation.

Based upon the material that has been provided to us, we find no violation of the Brown Act and we are closing this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Don H. Gallian".

Don H. Gallian
Assistant District Attorney

DHG:ss