



ALAMEDA-CONTRA COSTA TRANSIT DISTRICT

Master Minute Order

File Number: 20-069

Report ID: 20-069

Type: Regular - Board
Administrative Matters

Status: Adopted

Agenda
Section:

Meeting Body: Board of Directors -
Regular Meeting

Report Created: 01/10/2020

Final Action: 02/12/2020

ded Action: Consider adopting Resolution No. 20-015 imposing a penalty on Director Greg Harper for violating the California Brown Act and Board Policies 101 and 702.

Sponsors:

Enactment Date:

Attachments: STAFF REPORT, Att.1. Resolution 20-015, Att.2.
Closed Session Memo, RED FOLDER Gregs Version
2

Enactment Number:

Hearing Date:

Effective Date:

History of Legislative File

Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
Board of Directors - Regular Meeting	02/12/2020	Adopted				Pass
Action Text:	MOTION: YOUNG/WILLIAMS to adopt Resolution No. 20-015 censuring Director Greg Harper for violating the California Brown Act and Board Policies 101 and 702. The motion carried by the following vote:					
Notes:	<i>[A PowerPoint presentation given by Director Harper was presented at the meeting and is incorporated into the file by reference.]</i>					

General Counsel Jill Sprague presented the staff report, saying that the resolution arose from Director Harper's admitted disclosure of documents from closed session, which was a violation of the Brown Act and Board Policies.

Director Harper admitted that he knew what he was doing and, in his estimation, believed that what he disclosed was not part of a back-and-forth negotiation, but instead were the answers to a couple of serious operational questions concerning unscheduled operator absenteeism and missed trips. Director Harper argued that he has repeatedly asked if absenteeism was a systemic "bad apple" problem involving a few operators that were absent a lot or whether it was something more generic. He added that he had also requested information on missed trips which

had not been supplied. He further disclosed that information about these two issued came out during closed session. Director Harper went on further to argue that the legal opinion the District received made a lot of assumptions about receiving the information during a bargaining session, which he believed was not the case.

Director Harper then gave a PowerPoint presentation, saying that Government Code section 54957.6 did not allow the Board of Directors to discuss, in sessions that are closed to the public, the service problems related to fast growing unauthorized driver absenteeism and management's difficulty in controlling it. He went on further to say that section 54957.6 limited discussion in closed session to salaries, salary schedules, or compensation paid in the form of fringe benefits for represented and unrepresented employees and, for represented employees, any other matter that was within the statutory scope of representation. He added that closed sessions under this section shall be for the limited purpose of reviewing its position and instructing the local agency's designated representative. He believed that the closed session was not for this purpose. He further argued that information he obtained from the California League of Cities and an Attorney General Opinion from 1978 supported his position and that service problems should be discussed in open session. He closed by saying that he felt justified in taking the documents from closed session because it was not part of negotiations, but was information that he had been asking for in open session. He added that he would like the Board secretary or staff to take minutes during closed session so this problem would not come up again.

Outside counsel Robin Johansen confirmed that she was not at the closed session and her opinion relied on the recollection of the other members of the Board that were there as to what the discussion was about and why the labor negotiator was raising these issues with them. She went on further to say that the concept behind a closed session involving negotiations is to know what the most important thing (issue) is to the other side and how to best leverage the knowledge about the issue with the other side. She added that labor negotiations are held in closed session because an agreement would never be reached if they were done in public. She closed by saying that if staff/negotiators don't feel that they can bring information to the Board in closed session and have it remain confidential, the Board won't get the information it needs. The Board needs to maintain the confidentiality of closed session discussions.

Director Peeples commented that Director Harper is a proponent of radical openness and the airing of any disputes with the union in a public setting, which is not the opinion of the Board and staff. As to Director Harper's legal arguments, Director Peeples believed that there were open session public documents that discussed the attendance problems and some of the reasons for them, adding that the data that was presented in closed session, when it was presented and how it was presented was why it deserved confidential treatment. He also believed that the Attorney General opinion that Director Harper relied on had been superseded and was now

more reflective of current closed session practices. He closed his comments by saying that he would vote to censure Director Harper, but it wasn't personal.

Ms. Sprague advised that the 1978 Attorney General opinion was amended in 1994 to take into account statutory bargaining.

Vice President Ortiz commented that the issue before the Board concerned a Brown Act violation and if Director wanted transparency he could have asked for the information via a Public Records Act request. She further commented on the constant reminders the Board receives during closed session as to the confidentiality of information.

Director Williams asked if notes were taken during closed session, to which the District Secretary responded that a minute order was produced for all items heard during closed session, which sometimes included brief summary minutes.

Public Comment:

Yvonne Williams, ATU Local 192, thanked the Board for its consideration of the censure saying that Director Harper knew he was violating the law and board policy. She hoped that Director Harper would have more respect for the union and the workforce. She also hoped that Director Harper was not aligning himself with someone that had purportedly been removed from the bargaining table for showing animus toward ATU, intimating that said person should be fired. [Director Harper rejected the notion that someone be fired because of what he did, arguing that the public has a right to know the root cause of service problems.]

Jane Kramer commented to Director Peeples that she was not an inarticulate, naive, oblivious observer of social political process.

Ayes: 6 Vice President Ortiz, President Wallace, Director Williams, Director
Peeples, Director Young, Director Shaw
Nays: 1 Director Harper
