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VIA ELECTRONIC & FIRST CLASS MAIL

Martha S. Doty, Esq.
ALSTON & BIRD, LLP
333 South Hope Street, 16th Floor
Los Angeles, CA 90071-1410
Email: Martha.Doty@alston.com

Re: Stadium Lights Steering Committee Issues

Dear Ms. Doty:

This message is a follow-up to the various traded voicemails since just prior to the Christmas Break. There were three components to the message that we should discuss when you have the opportunity. They are a brief response to your inquiry concerning the November 15, 2011, Board meeting comments, express concerns over the proper handling of raised funds, and a follow-up on the disposition of DSA returned fees.

On the first issue, the Board had expressed their views that a collaborative process between the anti-lights group and the Committee should have occurred and the hope that those involved could see the benefits of working with the opponents to the Project. Certainly, the Board comments shouldn't have been interpreted as an invitation to engage Board members or an attempt to open a collaboration directly with the Committee. Frankly, our understanding is the Board followed Board Policy 3290.1 so the Committee is not authorized to continue fundraising on behalf of the District. We have also been informed that the Committee is representing that they are actively in settlement discussions and that temporary lights will be an alternative to the installation of permanent lights. The District is not in discussions with the Committee and the District is not considering the possibility of installing temporary lights. This fact was addressed directly during the Board meeting on November 15, 2011 and is no longer an issue or a discussion item. I should note that there has been no subsequent discussion concerning installation of temporary lights.

On the second issue, the District is receiving inquiries concerning disposition of donated funds. As you are probably aware some of the people who donated will be declaring charitable tax donations for the year 2011. However, the Committee's website states "[a]ll donations will be returned (minus administrative costs) if this project does not receive final approval by the PVPUSD School Board." The continued fundraising for lights at Palos Verdes Peninsula High

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School was terminated at the November 15, 2011 Board meeting pursuant to Board Policy 3290.1. Thus, we would expect the Committee to govern themselves based on representations made in the website.

The website includes a link to a fundraising flyer which discusses the Project. The flyer also states that donations are "completely tax deductible."

The IRS has the following examples in Publication 526, *Charitable Contributions*, under the topic "When to Deduct:"

Conditional Gift. If your contribution is a conditional gift that depends on a future act or event that may not take place, you cannot take a deduction. But if there is only a negligible chance that the act or event will not take place, you can take a deduction.

If your contribution would be undone by a later act or event, you cannot take a deduction. But if there is only a negligible chance the act or event will take place, you can take a deduction.

Example 1. You donate cash to a local school board, which is a political subdivision of a state, to help build a school gym. The school board will refund the money to you if it does not collect enough to build the gym. You cannot deduct your gift as a charitable contribution until there is no chance of a refund.

Example 2. You donate land to a city for as long as the city uses it for a public park. The city does plan to use the land for a park, and there is no chance (or only a negligible chance) of the land being used for any different purpose. You can deduct your charitable contribution."

Since a gift which is conditional on a future event is not generally a completed gift, the donation may be returned to the donor if the future event does not occur. The exception to this rule is if there is only a negligible chance that the condition will not occur.

In addition to the IRS guidance, there is case law¹ supporting the proposition that charitable contributions must be used only for the purposes for which they were received in trust and the practice of returning a donation to the donor where the limited purpose for which the donation was made has been abandoned.

¹ See *Holt v. Nonprofit of Osteopathic Physicians and Surgeons*, 61 Cal.2d 750 (1964); *Massachusetts Eye and Ear Infirmary v. Eugene B. Casey Foundation*, 417 F.Supp.2d 192 (Mass. 2006); *Stock v. Augsburg Nonprofit*, unpublished (Minn.App. 2002); *Dunaway v First Presbyterian Church of Wickenburg*, 103 Ariz. 349 (1968).

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We are concerned that there will be a tax problem for those who donated expecting a tax deduction when the donation was a mere conditional gift. While we are not advising the Committee, we are very concerned that there will be tax consequences both to the Committee and to those who donated. Certainly, the tax consequences and some of the problems that may arise from improperly addressing donated funds will have long term effects on those who donated and on future capital campaigns and donations. We would hope the Committee could address how this issue is being handled and ask that the Committee reconcile its position with the representations made at the Committee's website.

On the final issue, we sent correspondence to you dated November 14, 2011 asking for direction on disposition of returned DSA funds. A copy of this correspondence is attached. We have not heard any response on how to handle the DSA check. We are further concerned that the delay will result in the check becoming stale.

We hope that you can address the concerns raised in this correspondence in the very near future. Your prompt attention to this matter is appreciated

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Terry T. Tao

TTT/sgt

cc: Walker Williams
Lydia Cano
Board of Education