

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**INFORMAL SESSION
July 10, 2006**

The Board of Supervisors of Maricopa County Arizona convened in Informal Session at 10:00 a.m., July 10, 2006, in the Tom Sullivan Conference Room, 301 W. Jefferson, Phoenix, Arizona, with the following members present: Don Stapley, Chairman, District 2; Fulton Brock, Vice Chairman, District 1, Andrew Kunasek, District 3, Max W. Wilson, District 4 and Mary Rose Wilcox, District 5. Also present: Fran McCarroll, Clerk of the Board; Shirley Million, Administrative Coordinator; Sandi Wilson, Deputy County Manager; Chris Keller, Chief Counsel, Civil Division. Votes of the Members will be recorded as follows: aye-nay-absent-abstain.

REGIONAL SCHOOL DISTRICT #509; VOUCHERS/UPDATES

Item: The Board of Supervisors, pursuant to its authority granted in A.R.S. §15-1001, will consider for approval vouchers presented by the County School Superintendent of Maricopa County to draw warrants on the County Treasurer against Maricopa County Regional School District #509 School District funds for necessary expenses against the school district and obligations incurred for value received in services as shown in the Vouchers. (ADM3814-003)

The Board of Supervisors may consider ratifying any Maricopa County Regional School District #509 vouchers and/or warrants approved in accordance with the procedures of A.R.S. §15-321 since the last meeting of the Board of Supervisors. The Board of Supervisors may hear staff reports on the vouchers and warrants being considered. The Vouchers are on file in the Maricopa County's Clerk of the Board's office and are retained in accordance with ASLAPR approved retention schedule. (ADM3814-003)

Staff may update the Board of Supervisors on regional schools operations and finances. No update was given at this meeting. (ADM3814-005)

Motion was made by Supervisor Brock, seconded by Supervisor Kunasek, and unanimously carried (5-0) regarding action on the following:

Ratify the following vouchers:

No. 127	\$372,985.57
No. 128	\$195,525.07
No. 129	\$63,830.88
No. 130	\$44,112.19
No. 5167	\$51,888.49

EXECUTIVE SESSION CALLED

Motion was made by Supervisor Wilson, seconded by Supervisor Wilcox, and unanimously carried (5-0) to recess and reconvene in Executive Session to consider items listed on the Executive Agenda dated July 10, 2006, pursuant to listed statutory authority, as follows.

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(3) and (A)(4)

- E-1. Compromise Cases** – Barbara Caldwell, Outside Counsel
Geyer, Bridgett
Messina, Jessica
Palmer, Trisha
Pizzi, John

INFORMAL SESSION
July 10, 2006

PENDING OR CONTEMPLATED LITIGATION: SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(4)

**E-2. Mayer Unified School District v. Winkleman, CV2004-020078
(This item is scheduled to be heard by the Flood Control District Board of Directors, Item Number FCD-2.)**

John Paulsen, Deputy County Attorney
Julie Lemmon, General Counsel
Tim Phillips, Chief Engineer
Joy Rich, Assistant County Manager
Mike Frizzel, Flood Control District
Russ Miracle, Flood Control District

**E-3. Citizens Telecommunications Co., et al. v. Arizona Department of Revenue, et al.,
NO. TX98-00716 (Consolidated)**

Jean Rice, Deputy County Attorney
Jerry Fries, Outside Counsel

**E-4. Electric Lightwave, Inc. v. ADOR and Maricopa County, No. TX2002-000570
Broadwing Communication v. ADOR and Maricopa County, No. TX2003-000005**

Jean Rice, Deputy County Attorney
Jerry Fries, Outside Counsel

Legal Advice; PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(3) AND (A)(4)

E-5. Arizona Motorsports Park v. Maricopa County

Joy Rich, Assistant County Manager
Richard Hood, Outside Counsel, **did not attend**
Craig McCarthy, Outside Counsel, Gust Rosenfeld
Terry Eckhardt, Deputy County Attorney
Peter Crowley, Risk Manager

SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(4)

E-6. Claim of Charles and Eleanor Herndon

Richard Stewart, Deputy County Attorney
Peter Crowley, Risk Manager
Ted Howard, Claims Manager
Mike Sullivan, Deputy County Attorney

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(3) and (A)(4)

E-7. Gail Goddard Property Damage Claim against the County.

John Paulsen, Deputy County Attorney
Peter Crowley, Risk Manager
Ted Howard, Claims Manager
Mike Sullivan, Deputy County Attorney

INFORMAL SESSION
July 10, 2006

SETTLEMENT DISCUSSIONS CONDUCTED IN ORDER TO AVOID OR RESOLVE LITIGATION – ARS §38-431.03(A)(4)

**E-8. Gene Carroll Davis v. Allstate Rent-A-Fence, Inc.
Maricopa County Superior Court Cause No. CV2004-022049**
Gary Fadell, Outside Counsel
Maria Brandon, Deputy County Attorney
Peter Crowley, Risk Manager

**E-9. Renisha Williams v. Maricopa County et al.
Maricopa County Superior Court Cause No. CV2005-006874**
Maria Brandon, Deputy County Attorney
Peter Crowley, Risk Manager
Mike Sullivan, Deputy County Attorney

E-10. Estate of James Hamilton v. Maricopa County
Peter Crowley, Risk Manager
Michael Sullivan, Deputy County Attorney
Ted Howard, Risk Management

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION – ARS §38-431.03(A)(3) and (A)(4)

E-11. Andrew Thomas v. Maricopa County Board of Supervisors, et al. CV2006-008971
Tim Casey, Outside Counsel
Leo Beus, Outside Counsel

LEGAL ADVICE – ARS §38-431.03(A)(3)

E-12. Procurement issues relating to the Amendment to the Restated Declaration of Trust Document ~~Outside Counsel (Board Counsel issue)~~
Tim Casey, Outside Counsel

~Chris Keller left the meeting at this time~

LEGAL ADVICE; PENDING OR CONTEMPLATED LITIGATION; CONTRACTS SUBJECT TO NEGOTIATION – ARS §38-431.03(A)(3) AND (A)(4)

E-13. Dr. Dowling v. Maricopa County Board of Supervisors, et al, LC-2006-000370-001-DT, and legal advice and options concerning County Regional School District #509 funding and contracts.
Sandi Wilson, Deputy County Manager
Brian Hushek, Deputy Budget Director
Tom Manos, Chief Financial Officer
Tom Irvine, Outside Counsel
Fred Rosenfeld, Outside Counsel
Dean Wolcott, Outside Counsel for the Board
LeeAnn Bohn, Budget Manager
Shawn Nau, Director, Healthcare Mandates
Shelby Scharbach, Finance

**INFORMAL SESSION
July 10, 2006**

Chiefs of Staff Latto, Candland, Bloom, Isham, Leija

RECESS EXECUTIVE SESSION AND RECONVENE IN OPEN SESSION

Chairman Stapley reconvened the Board in open session with all members remaining in session, as given above.

CONSIDERATION AND POSSIBLE ACTION REGARDING REGIONAL SCHOOL DISTRICT #509

Item; Consideration and possible action concerning the Maricopa County Regional School District #509, including adoption of additional resolutions or amendments to prior resolutions of the Board of Supervisors concerning:

- o A.R.S. §§15-1000, 1001 and 1002;
- o Matters relating to the offering of A.R.S. §15-308(B) services;
- o Enforcement of the Assistance Package Agreement;
- o All matters raised in prior resolutions of the Board concerning the District;
- o Appeal of the trial court decision in LC2006-000370;
- o The debt of the District, how and when it must be paid;
- o Negotiations with the District concerning all matters raised in prior resolutions of the Board;

- o The terms of any potential agreement with the District and related matters.

Tom Irvine said Resolution #6 is the latest in a series of resolutions that began on February 1, 2006, when the County took emergency measures to remove the District voucher authority from the District Superintendent of Schools, Sandra Dowling. The voucher authority was simultaneously assumed by the Board of Supervisors.

He explained that Resolution #6 has four priorities:

- Re-delegates voucher authorization to the School Superintendent as of July 10, 2006, until further action of the Board of Supervisors.

- Directs County Manager to take control of all County owned assets no longer needed by the District. Directs County Manager to appeal the trial court ruling concerning Resolution #3.

- Paragraph 3 reflects Revenue Control Limit – the maximum amount a school district can spend pursuant to state law. During the past 5-6 years the County has consistently funded the District in the amount of money they requested. The District could have asked for more money, but never did. The difference between the amount provided and the RCL over that period of time would total \$651,000. The Board might have given an extra \$100,000 a year if it had been asked for. The \$651,000 constitutes the alleged “under funding” by the County. Paragraph 3 would settle this amount, but only if the District agrees it is payment in full and provides full satisfaction. The County is not required to do this and it would only be done to avoid a lawsuit.

- Paragraph 4 reiterates many earlier offers of help by offering to enter into another agreement with the District that would provide appropriate services pursuant to the McKinney Vento Act and other laws. This offer expires 10-days after adoption of Resolution 6 by the Board of Supervisors.

INFORMAL SESSION
July 10, 2006

Mr. Irvine explained that when the financial situation with the Accommodation School District was first discovered in late 2005, it had taken staff a period of time to understand the full extent of the problem. He enumerated the number of actions that had been taken by the Board to try to correct the varied problems and try to find a solution. He felt that Resolution #6 is a summation of what has been learned and the actions taken to date, and it is expected to provide the desired solution. He stated that this resolution provides protection for taxpayer assets and also provides for the education and wellbeing, both individually and collectively, of homeless and special needs school age children that is so relevant to their current needs and beneficial for their future success. (ADM3814-002)

Motion was made by Supervisor Brock, seconded by Supervisor Wilcox, and unanimously carried (5-0) to approve Resolution #6, dated July 10, 2006, as reviewed by counsel.

**RESOLUTION # 6 OF THE BOARD OF SUPERVISORS
OF MARICOPA COUNTY
CONCERNING THE MARICOPA COUNTY
REGIONAL SCHOOL DISTRICT NO. 509**

WHEREAS, the Maricopa County School Superintendent ("CSS") established an accommodation school district called the Maricopa County Regional School District No. 509 ("District") which has been in operation for many years; and

WHEREAS, Maricopa County, through the Board of Supervisors ("Board"), has offered services pursuant to A.R.S. § 15-308.B which have been provided by the District (homeless children or alternative education programs), and

WHEREAS, the District's current fiscal deficit has caused this Board to review the wisdom and necessity for offering A.R.S. § 15-308.B services, and

WHEREAS, the Board has adopted a comprehensive fiscal resolution on February 1, 2006 (Resolution # 1) which was a first step in dealing with the fiscal crisis of the District, and

WHEREAS, the Board has adopted an Assistance Package Agreement for the District on March 2, 2006 (Resolution # 2), and

WHEREAS, the Governing Board of the District adopted Resolution # 2 on March 3, 2006, and

WHEREAS, Resolution # 2 called for a budget for the District to be agreed to by April 3, 2006, and no structurally balanced budget was presented, what was presented exceeded the State law Revenue Control Limit, it required a significant subsidy from Maricopa County, provided no supplemental documentation justifying or supporting the subsidy request and it was not approved by action of the District Governing Board, and

WHEREAS, this Board has determined that the Governing Board of the District has not been properly managing the District, and

WHEREAS, the Board adopted a Resolution to no longer offer A.R.S. § 15-308.B services on April 7, 2006 (Resolution # 3) after earlier entering into Resolution # 2 which states that in the absence of an agreement no such services will be offered after June 30, 2006, and

INFORMAL SESSION
July 10, 2006

WHEREAS, the Board is unable to agree to the terms of an Inter-governmental Agreement ("IGA") with Sandra Dowling, County School Superintendent ("CSS") and member of the District's governing board, and

WHEREAS, the Maricopa County Treasurer has taken certain actions pursuant to his statutory powers to assure that the District repay its debt to the Treasurer's Pool, and

WHEREAS, in Resolution # 1 the Board revoked the delegation of authority to the District's Governing Board to approve warrants, and

WHEREAS, due to the actions of the Maricopa County Treasurer to protect the investors in the Treasurer's Pool, the provisions of Section 6.1 of Resolution # 2 prohibiting the District from offering A.R.S. § 15-308(B) services after June 30, 2006 and the fact that the District has failed to provide the detailed information needed by the Board for it to have confidence that warrants it is being asked to approve are lawful, the Board determines that it should delegate voucher and warrant approval to the District in order for the District Governing Board to be accountable for complying with all laws re the expenditure of public funds, and

WHEREAS, the above efforts and investigations set forth in Resolutions # 1, 2, 3, 4 and 5 demonstrate that the District does not need any financial assistance from Maricopa County if it was properly managed, and

WHEREAS, the Board has offered to enter into an agreement with the District that is consistent with the McKinney Vento portion of the No Child Left Behind Act and the information learned from the Audit and other investigations, the Board again wishes to offer the District such an agreement.

NOW THEREFORE, BE IT RESOLVED THAT:

1. Pursuant to A.R.S. § 15-1001(A), the Board hereby delegates voucher and warrant authority to the CSS as of July 10, 2006, until further action of the Board. The Board revoked this delegation in Resolution # 1 because the Board had to be able to ascertain whether an expense was necessary pursuant to the District's budget and procurement code. As a result of the finding that no funding is necessary for Fiscal Year 2006 – 2007 and Section 6.1 of Resolution # 2, sole responsibility for such determinations will be placed on the CSS in order to have accountability if any expenditure is found to be improper.
2. As a result of Section 6.1 of Resolution # 2, the County Manager and all other officers and officials of the County are directed to take all necessary actions to secure any County assets currently being used by the District and recommend whether or not the District should be allowed to continue to use those assets. The County Manager is also directed to take all actions necessary, including making demands and/or commencing any necessary legal proceedings to enforce Section 6.1 of Resolution # 2 and all terms and conditions of Resolutions 1, 2 and 4 concerning the District. The County Manager is also directed to appeal the trial court ruling concerning Resolution # 3.
3. Resolution # 1 provided for the Board to make certain payments into an account of the District. Investigation has shown that over the course of many fiscal years the Board provided the District with all the funding it requested from the Board, therefore, the amount the District requested and the Board approved was the necessary funding.

MARICOPA COUNTY BOARD OF SUPERVISORS MINUTE BOOK

**INFORMAL SESSION
July 10, 2006**

Further investigation has revealed that based on certain statutory formulas, the District could have asked the Board, but did not, for slightly more money per fiscal year, to wit, a total of \$651,782. Pursuant to Resolution # 1, A.R.S. § 42-17106(b) and the condition set forth below, the Office of Management and Budget is authorized to transfer \$651,782 from General Government (470) General Fund (100) Contingencies (4711) to General Government (470) General Fund (100) Accommodation Schools (4775) for funding the variance between the Transportation Revenue Control Limit (TRCL) and the Transportation Support Level (TSL) (\$439,117), and costs for excess utilities (\$212,665) for the prior seven fiscal years. This transfer is not legally required but is made in good faith for the sole purpose of avoiding a claim and attendant controversy and expense. Acceptance of this transfer by the District shall be a full accord and satisfaction concerning any issue related to funding necessary expenses of the District, which agreement of acceptance by the District shall be approved by its Governing Board prior to any transfer of the funds. No transfer of the funds shall occur prior to the Board of Supervisors ratification of the Governing Board's approval.

4. The Board has offered to enter into an agreement with the District in the form attached. The agreement will provide for appropriate services pursuant to the McKinney Vento Act and other laws. The Board again offers to enter into the attached agreement with the District. This offer shall expire ten days from the adoption of this Resolution.

ADOPTED this 10th day of July 2006.

/s/ Don Stapley, Chairman of the Board

ATTEST:

/s/ Fran McCarroll, Clerk of the Board

MEETING ADJOURNED

After discussion on the above items and there being no further business to come before the Board, the meeting was adjourned.

Don Stapley, Chairman of the Board

ATTEST:

Fran McCarroll, Clerk of the Board