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Serving Arizona since 1950

September 12, 2019

Via Email and U.S. Mail

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**Re: Request for Quo Warranto Action per Attorney General Letter Dated May
24, 2019 - Inscription Canyon Ranch Sanitary District**

Mr. Daniels and Ms. Jessen,

The Law Offices of Boyle, Pecharich, Cline, Whittington & Stallings PLLC serve as general counsel for Inscription Canyon Ranch Sanitary District (the "District"). The purpose of this letter is to ask you to review the new information provided in this letter to determine whether the Arizona Attorney General's Office must now file a quo warranto action in regards to Bob Summers.

A.R.S. § 12-2041 specifies:

*The Attorney General **shall** bring [a quo warranto action] when he has reason to believe that any public office or franchise within this state is being usurped, intruded into or unlawfully held or exercised.*

Discussion

You found in your letter to the Board dated May 24, 2019 regarding Quo Warranto that Al Poskanzer served as a board member of the Inscription Canyon Ranch Sanitary District in 2018. In September 2018, Mr. Poskanzer sold his home within the District, entered into a purchase agreement to begin construction on a new home with the Talking Rock development (the “Talking Rock Home”), and rented a new home outside of the District. On September 19, 2018, Mr. Poskanzer updated his voter registration to reflect his rental address. Mr. Poskanzer asserts that he did so after Service Arizona rejected his attempt to register with the Talking Rock Home address. On November 2, 2018, the Yavapai County Recorder’s Office overrode the Service Arizona error and re-registered Mr. Poskanzer using the Talking Rock Home address. At the November 27, 2018 District Board meeting, the Board declared a vacancy for Mr. Poskanzer’s board seat. At the December 21, 2018, District Board meeting, the Board appointed Bob Summers to fill Mr. Poskanzer’s board seat.

You opined that Mr. Poskanzer did not vacate his seat as a matter of law, and that he continued to occupy the Office irrespective of any Board action purporting to create or fill a vacancy.

In the corresponding letter from your office to the Board dated May 24, 2019, regarding Al Poskanzer’s OML complaint, you found that the District violated open meeting law by refusing to provide to provide Mr. Poskanzer with executive session minutes because he remained a lawful Board member. You further wrote,

The Office [of the Arizona Attorney General] requires that the District acknowledge this Office’s conclusions about Mr. Poskanzer’s status as a lawful member of the District Governing Board at a duly noticed meeting.

The Board complied with the May 24th Attorney General’s Letter. At the June 7, 2019, District Board meeting, the Board acknowledged the conclusions of the Office of the Arizona Attorney General and that Al Poskanzer remained a lawful board member. Consequently, the Board found that the appointment of Bob Summers on November 27, 2018, was null and void.

Thereafter, Mr. Poskanzer tendered his resignation to the Board on July 2, 2019. The Board accepted Mr. Poskanzer’s resignation at the September 4, 2019, Board meeting. The Board has not yet appointed an individual to fill the vacancy created by Mr. Poskanzer’s resignation.

Because of the complications of Mr. Summers having been unlawfully appointed, the Board feels that you should have filed a Quo Warranto in regard to Mr. Summers. There is now considerable uncertainty with regard to prior board actions, especially in lieu of the action that Mr. Summers has taken with the Yavapai County Attorney’s Office. Filing a Quo Warranto will result in the least risk to the District and the least cost to taxpayers.

YCAO to sue for Quo Warranto. On or about August 6, 2019, Tom Stoxen, Esq., Chief Civil Deputy, Yavapai County Attorney's Office ("YCAO"), contacted the District and advised that YCAO would be filing a Quo Warranto action against the District, naming Bob Summers as the Real Party-in-Interest. Mr. Stoxen advised that the basis for the lawsuit was that (1) Mr. Summers contends that he was lawfully appointed on November 27, 2018, (2) the Board usurped his Board seat by recognizing that Mr. Poskanzer held the seat, and (3) that Mr. Stoxen disagrees with your decisions. Mr. Stoxen further contends that the appointment of Kirk Leopold to the Board on July 2, 2019, might be null and void because Mr. Poskanzer cast one of the two votes appointing Mr. Leopold.

Mr. Stoxen stated that he communicated with your office by phone about his above positions, but that you and he were unable to reach a consensus. Mr. Stoxen anticipates filing the Quo Warranto lawsuit against the Board on or before October 1, 2019.

WHEREFORE, the Board respectfully requests that you file a Quo Warranto action in regards to Bob Summers, as required of the Arizona Attorney General's Office by A.R.S. § 12-2041 and the information presented herein.

Please contact us at (928) 445-0122 or by email at wwhittington@bpcws.com and spolk@bpcws.com if you have any questions. We hope to receive a response from you prior to October 1st.

Sincerely,

BOYLE, PECHARICH, CLINE,
WHITTINGTON & STALLINGS, P.L.L.C.



William R. Whittington
Stephen W. Polk