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Wednesday, June 9, 2010

Via Email & U.S. Mail

Mark Andersen
President, Board of Directors
Steamboat Springs Education Fund
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**Re: Status of Steamboat Springs Education Fund pursuant to the
Colorado Open Meetings Law**

Dear Mr. Andersen:

This law firm is legal counsel to WorldWest, LLC and its various newspapers, including the *Steamboat Pilot* and *Steamboat Today*, through the auspices of the Colorado Press Association.

The newspaper has asked us to contact you regarding what we understand is the position of the Board of Directors of the Steamboat Springs Education Fund that this entity is not subject to the Colorado Open Meetings Law ("COML"), and that as a result, the Fund's board need not comply with the requirements of that statute when it conducts its meetings or, more importantly, when it seeks to close its discussions to the public.

Please be advised that there is no legal basis for what appears to be the board's position.

The COML applies its obligations for public notice and public access to the meetings of any "local public body." See § 24-6-402(2)(b) & -(2)(c). The statute explicitly defines that term as encompassing "any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function." See § 24-6-402(1)(a), C.R.S. In this regard, there can be no serious dispute that the City of Steamboat Springs has delegated to the Education Fund the quintessential "governmental" decision-making function of determining how to allocate sales tax revenues collected by the City. Indeed, the various inter-governmental agreements that have been entered over the years between the City of Steamboat Springs, the Steamboat Springs RE-2 School District, and the Education Fund, including the most recent one effective December 15, 2009, all make clear that the Education Fund exercises vast discretion in

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its spending decisions. The scope of that discretion, which appears not to be reviewable by either the City or the School District, demonstrates conclusively that the Education Fund's board engages in precisely the kinds of functions that the General Assembly intended to bring within the ambit of the Sunshine Law.

Beyond the plain text of the statute, various judicial decision have confirmed that non-profit entities created by local governments to implement local policies are indeed subject to the COML, principally because they function as the practical equivalent to the local government, acting as an instrumentality of the local government. *See, e.g., Zubeck v. El Paso County Retirement Plan*, 961 P.2d 597, 600 (Colo. App. 1998) (holding that the board of a county retirement system created by a county commission as a separate, non-profit entity was subject to the COML because it "operates as an agency or instrumentality of the County"); *cf. Denver Post Corp. v. Stapleton Dev. Corp.*, 19 P.3d 36, 41 (Colo. App. 2000) (holding that a private, non-profit corporation created by the City of Denver to redevelop the City's property at the former Stapleton International Airport was subject to the related Colorado Open Records Act).

In light of the plain text of the statute and the clear case law on this issue, it is astounding that the Education Fund would even attempt to assert that its board meetings fall outside the requirements of the COML. Moreover, that assertion is pernicious in that it apparently has been invoked to justify flagrant violations of the COML's requirements for closing a public meeting to conduct an executive session discussion during the last meeting of the Education Fund's board.

Because of the fundamental policy of the COML that "the formation of public policy is public business and may not be conducted in secret," *see* § 24-6-402(1), C.R.S., the statute imposes rigorous restrictions on any closed meeting. *See* § 24-6-402(4), C.R.S. Those restrictions, however, were not satisfied when the board's closed its discussion of its various accounting procedure failures and noncompliance with the Internal Revenue Code during the meeting on June 2, 2010. In particular, the board violated the COML by failing to publicly announce "the particular matter to be discussed in as much detail as possible" before closing the discussion, *see* § 24-6-402(4), C.R.S., and also by relying upon the closure exemption for negotiations – "[d]etermining positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators," *see* § 24-6-402(4)(e), C.R.S. – when in fact there was no discussion of any such matters. These violations apparently were explained by the board with the assertion that no law was broken because the board purportedly is not subject to the Sunshine Law.

That position is flatly illegal. And, the position demonstrably harms the public's rights to know and to observe the formation of important public policy. Because of these concerns, we

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ask on behalf of WorldWest, LLC that the Education Fund reconsider its position with respect to its status under the COML. In addition, to the extent the Education Fund continues to maintain that it is not subject to the COML, we ask that you provide us with whatever legal basis the board has to justify that position.

We believe this issue is of significant importance to the people of Routt County, and we ask that you promptly address this matter.

If you would like to discuss any of these issues, please do not hesitate to have your legal counsel contact me so that we may make arrangements for a conference.

Thank you in advance for your diligent consideration.

Very truly yours,

LEVINE SULLIVAN KOCH & SCHULZ, L.L.P.



By

Christopher P. Beall

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