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November 24, 2014

Mr. Doug Lofstrom  
Orange County Fair and Events Center  
88 Fair Drive  
Costa Mesa, CA 92626

Re: Investigation into the Activities of Former Members of the Orange County Fair Board in Connection with the State's Proposed Sale of the Fairgrounds

Dear Mr. Lofstrom:

The Orange County District Attorney's Office has completed its investigation into the activities of the former members of the Orange County Fair Board in connection with their activities relative to the proposed sale of the Orange County Fairgrounds by the State of California. This letter details the scope of the investigation, historical background, factual findings and legal conclusions regarding whether there was any criminal culpability on the part of any of the former members of the board in connection with the State's proposed sale of the fairgrounds.

## INTRODUCTION

The Office of the District Attorney (OCDA) re-opened its investigation into the activities of former board members of the Orange County Fair and Event Center (hereafter "OC Fair Board" or "Board"). This was based upon additional documentation received from current members of the Board. This additional review centered around the activities of the former OC Fair Board members in connection with the proposed sale of the OC Fairgrounds by the State of California. The OCDA previously issued a report involving the same matter and concluded that no criminal laws were violated by any of the former members of the Board. The following details the further investigation conducted by OCDA to determine if this additional information warranted criminal charges.

The new investigation focused primarily on additional documents and interviews of witnesses that had not been made available to the OCDA during the initial investigation. The records included hundreds of pages of records provided by the current OC Fair Board, and thousands of pages of documents produced by the law firm which had been retained by members of the former board. The new board waived their attorney-client privilege as to those records, allowing the OCDA to obtain and review them. In addition, the OCDA was able to conduct

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additional interviews of the attorneys from the State Attorney General's Office who had acted as legal counsel to the former board. The interviews of these attorneys were made possible when the current board waived their attorney-client privilege with respect to their activities surrounding the State's proposed sale of the OC Fairgrounds.

The purpose of the additional investigation has been to determine whether any criminal laws were violated in connection with the OC Fair Board's activities pertaining to the proposed sale of the OC Fairgrounds. The OCDA has no authority to investigate, and does not take a position on, whether or not any internal policies of the OC Fair Board or the State's Agricultural Districts were complied with. Furthermore, it is not the function of the OCDA to provide legal advice to independent governmental agencies or commissions, so the OCDA will not comment on the recommendations made by the OC Fair Sale Review Committee.

The results of this additional investigation support the findings reached at the conclusion of the initial investigation: there is no evidence that any members of the OC Fair Board violated any criminal laws with respect to their activities surrounding the State's proposed sale of the OC Fairgrounds.

## BACKGROUND

In 2009, in response to the State's budget crisis, then-Gov. Arnold Schwarzenegger proposed selling off certain under-utilized property owned by the State of California. His proposal included the sale of the Orange County Fairgrounds.

After the proposed sale of the Fairgrounds was made public, former State Sen. Richard Ackerman, was retained by the Board's consultants, LSA Associates, as part of their existing contract with the California Construction Authority (CCA) to implement the OC Fair's Master Plan Project. Mr. Ackerman, who had joined a private law firm, the Nossaman Firm, after retiring from politics, was subcontracted by LSA, to provide information to the Board regarding the proposed legislation to permit, and establish the process for, the sale of the Fairgrounds.

Amid overwhelming support from members of the community and other local governmental entities for maintaining local control of the Fairgrounds, and to insure the continuing use of the facilities for the annual staging of the Orange County Fair, some of the members of the OC Fair Board privately retained Mr. Ackerman to create a non-profit foundation for the purpose of attempting to purchase the OC Fairgrounds from the State.

Ironically, the newly-formed foundation never submitted a bid to the State's Department of General Services (DGS) to purchase the Fairgrounds. Other parties did submit bids, however, and the State, through the DGS, attempted to sell the Fairgrounds to the highest bidder. But a lawsuit was filed to block the sale, and after a protracted legal battle ending in the California Court of Appeal, the actual sale of the OC Fairgrounds never materialized. The Fairgrounds remain the property of the State's 32<sup>nd</sup> District Agricultural Association and are managed by the current members of its board.



## CURRENT ALLEGATIONS OF CRIMINAL MISCONDUCT

### Illegal lobbying activity, on behalf of the OC Fair Board, by former Sen. Richard Ackerman:

The question at issue is whether Mr. Ackerman's activities on behalf of the OC Fair Board, within 12 months of his leaving office, amounted to illegal lobbying as defined in the Government Code. In essence, section 87406, subsection (b), prohibits former members of the Legislature from contacting any present member of the Legislature, for a period of one year after leaving office, *for the purpose of influencing legislative action*. Clearly, Mr. Ackerman contacted various members of the Legislature during the time period in question, so the question then becomes whether there is evidence that he did so *for the purpose of influencing legislative action*. Mr. Ackerman has already been cleared of those allegations by both the OCDA and the Fair Political Practices Commission earlier this year.

### Violations of the Bagley-Keene Open Meeting laws:

Concerns have been raised regarding whether the previous members of the OC Fair Board violated the Bagley-Keene Open Meeting laws relative to their actions in connection with the proposed sale of the OC Fairgrounds.

### Misappropriation of public funds on the part of several of the previous members of the OC Fair Board:

It has been suggested that several former members of the OC Fair Board misappropriated public funds for the purpose of forming a private non-profit corporation in order to purchase the OC Fairgrounds from the State of California. The key issue is whether public funds were utilized to form the private non-profit foundation. It has also been suggested that the funds were inappropriately paid through a contract for the renovation of a Fairgrounds parking lot.

### Conflict of Interest on the part of the previous Board members:

It has also been suggested that the same previous board members violated the State's conflict of interest laws regarding the sale of the Fairgrounds because they were involved with the formation of a private non-profit foundation, for the purpose of attempting to purchase the OC Fairgrounds, while they were sitting members of the OC Fair Board.

Government Code section 1090 prohibits public officials from having a financial interest in any contract made by them in their official capacity. And Government Code section 87100 provides that "No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."

The primary focus of the investigation into the conflict of interest allegations is whether the activities of the previous board members, in attempting to form a private non-profit foundation for the purpose of attempting to purchase the OC Fairgrounds from the State, created an illegal conflict of interest for them as sitting members of the OC Fair Board. In other words, whether any former members of the Board had a financial interest in the sale of the OC Fairgrounds to a private non-profit foundation on which they intended to serve as board members.

## THE INVESTIGATION

As previously noted, the OCDA has already completed an investigation in this matter and concluded that no provable criminal law violations occurred. But, at the request of several current members of OC Fair Board, the OCDA re-opened its investigation into the matter to review additional records, and interview additional witnesses, which had not been previously made available during the initial investigation. The OC Fair Board and its staff provided several hundred pages of additional records related to the former Board's activities relative to the proposed sale of the Fairgrounds. In addition, thousands of pages of documents were provided by the Nossaman law firm where Mr. Ackerman went to work after leaving the State Legislature. Also, the OCDA conducted additional interviews of OC Fair staff, as well as two attorneys from the State Attorney General's Office who advised the Board and were present at many of the meetings where the matter of the proposed sale of the Fairgrounds had been discussed.

## THE LAW

### Illegal Lobbying:

Government Code Section 87406, subsection (b), prohibits former members of the Legislature from contacting any present member of the Legislature, for a period of one year after leaving office, for the purpose of influencing legislative action.

### Bagley-Keene Open Meeting Laws:

The criminal aspect of the law makes it a misdemeanor for any member of a state body to attend a meeting in violation of any provision of the Open Meeting law, with the intent to deprive the public of any information to which the member knows, or has reason to know, that the public is entitled. (Gov't Code §11130.7.) The applicable statute of limitations for misdemeanors in California is one year (Penal Code §802). It should also be noted that the civil enforcement provisions of the Bagley-Keene laws require that any civil action to cure and correct an alleged violation would need to have been brought within *90 days* of the alleged violation. (Gov't Code §11130.3; *North Pacifica LLC v. California Coastal Com'n* (2008) 166 Cal.App.4th 1416, review denied.) Consequently, there is no legal action currently available to enforce the civil provisions of the law.

### Misappropriation of Public Funds:

Subsection (a) of Penal Code section 424 states:

(a) Each officer of this state, or of any county, city, town, or district of this state, and every other person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who either:

1. Without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another; or,
2. Loans the same or any portion thereof; makes any profit out of, or uses the same for any purpose not authorized by law; or,
3. Knowingly keeps any false account, or makes any false entry or erasure in any account of or relating to the same; or,
4. Fraudulently alters, falsifies, conceals, destroys, or obliterates any account; or,
5. Willfully refuses or omits to pay over, on demand, any public moneys in his or her hands, upon the presentation of a draft, order, or warrant drawn upon these moneys by competent authority; or,

6. Willfully omits to transfer the same, when transfer is required by law; or,
  7. Willfully omits or refuses to pay over to any officer or person authorized by law to receive the same, any money received by him or her under any duty imposed by law so to pay over the same;--
- Is punishable by imprisonment in the state prison for two, three, or four years, and is disqualified from holding any office in this state.

Conflict of Interest:

Section 1090 of the Government Code prohibits public officials from having a financial interest in any contract made by them in their official capacity.

Government Code section 87100 provides that “No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest.”

Government Code Section 87103 defines “financial interest” as follows:

“A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on any of the following:

(a) Any business entity in which the public official has a direct or indirect investment worth two thousand dollars (\$2,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth two thousand dollars (\$2,000) or more.

(c) Any source of income, except gifts or loans by a commercial lending institution made in the regular course of business on terms available to the public without regard to official status, aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. ...

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official’s agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.” (Gov’t. C. §87103.)

THE FINDINGS

As to the illegal lobbying allegation:

After the Governor’s proposal to sell off certain public land owned by the State of California, including the OC Fairgrounds, was made public, former State Sen. Richard Ackerman’s law firm, the Nossaman firm, was retained by LSA Associates, a consulting firm already under contract with the California Construction Authority to assist the OC Fair Board in implementing its Master Plan Project. Mr. Ackerman’s retainer agreement includes: “(1) gathering information regarding the possible sale of the Orange County Fairgrounds;



(2) examining title and land use issues relative to the real property; (3) examining valuation issues of the property; (4) acting as liaison with the City of Costa Mesa, the County of Orange, and the State relative to the proposed sale; (5) acting as liaison with State elected officials relative to the proposed sale; and (6) coordinating community outreach.” In addition, Mr. Ackerman was also retained by some individual board members to assist with the formation of a private non-profit foundation, the Orange County Fair and Events Center Foundation, for the purpose of attempting to purchase the OC Fairgrounds from the State if the legislation authorizing the sale was passed by the Legislature.

Several members of the State Legislature who, billing records indicate, were contacted by Mr. Ackerman were interviewed by the OCDA and the Fair Political Practices Commission (FPPC) which conducted a parallel investigation. The interviews confirmed that Mr. Ackerman did contact several members of the State legislature within the year after he left office. There was also evidence that Mr. Ackerman discussed the legislation regarding the proposed sale of public lands, including the OC Fairgrounds. But there was no evidence that Mr. Ackerman did so for the purpose of influencing legislative action, or that he ever attempted to influence legislative action. The focus of the contact was to obtain information about the proposed legislation, and its implementation, and to provide that information to his client, LSA Associates, and to the OC Fair Board. Therefore, there is no evidence to support the allegation that Mr. Ackerman was ever in violation of the laws prohibiting illegal lobbying. As previously noted, both the OCDA and the FPPC reached this same conclusion after conducting parallel investigations, and cleared Mr. Ackerman of those allegations earlier this year.

As to the Bagley-Keene Open Meeting Laws:

As previously noted, the criminal aspects of the Bagley-Keene statute make a knowing and intentional violation of the statute a misdemeanor, and the statute of limitations for filing misdemeanors in California is one year. In addition, the civil enforcement provisions of the Bagley-Keene laws require that any civil action to cure and correct an alleged violation would need to have been brought within 90 days of the alleged violation. Consequently, there is no legal action currently available to enforce the civil provisions of the law.

Based on our review of the documents submitted by the current Board, as well as additional documents pertaining to the Board meetings, and the interviews conducted as part of the investigation, the OCDA found no evidence that any former members of the Board attended any meetings, in violation of the law, with the intent to deprive the public of any information to which the members knew, or had reason to know, the public was entitled.

It should also be noted that the OCDA found only one instance where the Deputy Attorney General, specifically assigned to advise the former Board at the time of the proposed sale of the Fairgrounds, documented a concern with respect to a potential violation of the Bagley-Keene Open Meeting Laws. And it appears that, as a direct result of that concern, the Board scheduled a Special Meeting at the end of July in 2009, to openly discuss the State’s proposed sale of the OC Fairgrounds. The minutes of that meeting reflect an open discussion regarding the State’s proposed sale of the Fairgrounds, and strong public support from the community, as well as local governmental entities, for maintaining local control of the Fairgrounds, and to insure the continuing use of the facilities for the annual staging of the Orange County Fair.

As to the Misappropriation of Public Funds:

Records from the OC Fair Board and the Nossaman firm indicate that the firm was retained, on behalf of the OC Fair Board, by LSA Associates, a consulting firm specializing in land use planning. LSA already had a contract, dating back almost 10 years, with the now defunct California Construction Authority (CCA), a joint powers authority of the State of California, tasked with overseeing certain expenditures relating to the State's Agricultural Districts. The contract was to assist with the implementation of the OC Fair's "Master Plan Project." The contract was between LSA Associates and the CCA, but it was for the benefit of the OC Fairgrounds. As part of its contract with CCA, LSA Associates subcontracted with the Nossaman firm, the law firm that former Sen. Richard Ackerman joined after leaving the State Legislature. All of the fees for Mr. Ackerman's legal services on behalf of the OC Fair in connection with the proposed sale of the Fairgrounds were reviewed and approved by the OC Fair CEO and a CCA project manager, in accordance with both OC Fair Board policy and CCA policy and, accordingly, paid by the CCA. There was no evidence that there was ever any attempt by the Nossaman firm, LSA Associates, CCA, or the OC Fair Board members or staff to hide, or disguise, any of the invoices or the expenditures.

The records also indicate that, initially, the legal fees for the formation of the private non-profit foundation were billed to CCA with other legal work that was being appropriately invoiced by the Nossaman firm. When LSA Associates, Nossaman, and OC Fair staff caught the error, the legal fees related to the non-profit foundation were subsequently paid by the individual members of the Board involved in the foundation's formation. There is no indication that any public funds were ever utilized for the formation of the non-profit foundation.

Accordingly, there is no evidence that any public funds were misappropriated by any former members of the OC Fair Board for any improper purpose in connection with the State's proposed sale of the OC Fairgrounds.

As to the Conflict of Interest Allegation:

The conflict of interest allegation appears to have arisen after the Office of the State Attorney General declared a conflict and declined to provide any further legal services to the OC Fair Board in December of 2009. Records from the OC Fair Board and the Nossaman firm, as well as interviews with the two attorneys from the Attorney General's Office assigned to the OC Fair Board during this time, indicate that the deputy attorney general who was initially assigned to the OC Fair Board at the time, learned of the Board's intention to form a private non-profit foundation for the purpose of attempting to purchase the Fairgrounds from the State. This deputy then informed the Board that, *in her opinion*, their actions *would result in* a conflict of interest in violation of State law. Shortly after informing the Board of her opinion, she informed her superiors in Sacramento of the Board's intentions. Shortly after that, she was re-assigned to another position in the Attorney General's Office. Another deputy from the office was assigned, but while this attorney was an experienced attorney and had been with the office for many years, she was unfamiliar with the specific issues facing the OC Fair Board at the time.

In December of 2009, after the original complaint letter sent to County Counsel was leaked to the press, the Attorney General's Office declined to provide any further legal advice to the OC Fair Board. Their letter stated, understandably, that they could not represent the Board Members in their individual capacity or advise the private non-profit foundation, or its board. And further, that "[g]iven the intertwined and *potentially conflicting interests* of the District, the District Board members, and the non-profit" foundation, they were withdrawing from providing any further legal services to the OC Fair Board "until all issues relating to the

proposed sale of the District fairgrounds have been resolved.” (Letter to the OC Fair Board, dated December 1, 2009, signed by Chief Assistant Attorney General J. Matthew Rodriguez; *emphasis added*.) The letter does not indicate that the Office of the Attorney General had determined that any members of the OC Fair Board actually violated the State’s conflict of interest laws.

Likewise, the OCDA found no evidence that the actions of the former members of the OC Fair Board resulted in a conflict of interest for them. The members of the Board involved in the formation of the non-profit foundation had *no financial interest in the sale of OC Fairgrounds*. The Fair Board was not involved, even indirectly, in the State’s decision to sell the Fairgrounds or the State’s decision of who the Fairgrounds should be sold to. In other words, the OC Fairgrounds were not being sold by the OC Fair Board; they were being sold by the State. The idea of selling the Fairgrounds was initially proposed by the Governor, the decision to sell or not sell was made by the Legislature, and the determination of who to sell to was made by the State’s Department of General Services (DGS). None of the decisions involved in the process of selling the Fairgrounds were within the purview of the OC Fair Board.

Accordingly, there is no evidence that the individual members of the Board, who were involved in the formation of a private non-profit foundation for the purpose of attempting to purchase the OC Fairgrounds, violated the State’s conflict of interest laws with regard to any of their activities in connection with the proposed sale of the Fairgrounds.

#### CONCLUSION

The result of the OCDA’s additional investigation is that there is no evidence that any former members of the OC Fair Board violated any criminal laws with respect to their activities surrounding the State’s proposed sale of the OC Fairgrounds. Consequently, the OCDA is closing its inquiry into this matter, and no further action will be taken.

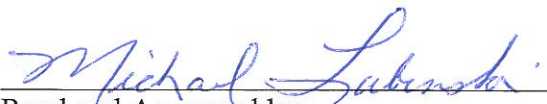
Respectfully submitted,



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