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1:30 O'clock

JUL 26 1990

ETHEL BOUTON, Clerk
By *[Signature]* Deputy

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L. Richard Mabery, Esq.
L. RICHARD MABERY, P.C.
101 E. Gurley, Suite 203
Prescott, Arizona 86301
(602) 778-1116
State Bar I.D. No. 005188

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF YAVAPAI

GEORGE W. HANCE, et al.,)	
)	No. 4772
Plaintiffs,)	
)	Division 1
vs.)	
)	PETITION FORWARDING
WALES ARNOLD, et ux., et al.,)	REQUEST FOR DOCUMENTS
)	
Defendants.)	

The Verde Ditch Commissioners, through undersigned counsel, respectfully petitions this court, as master of the Verde Ditch, to direct the Verde Ditch Commissioners as to whether or not to honor a request made by Lane D. Oden, Esq., as counsel for the First Amendment Coalition of Arizona, Inc., the Journal and its owner, Manny Maniaci, for a copy of the minutes, tape recordings and/or other records of an executive session of the Verde Ditch Commissioners held June 14, 1990.

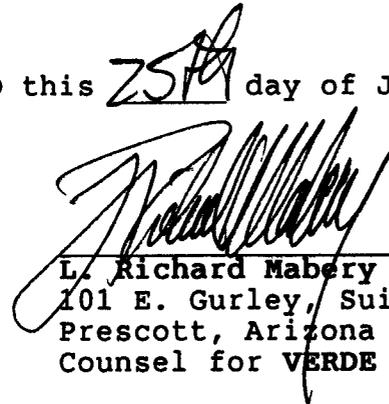
The request has been made pursuant to a letter dated July 12, 1990, a copy of which is attached hereto as Exhibit "A" and by this reference made a part hereof. The Verde Ditch Commissioners respectfully request that the court enter its order either to grant or decline to grant the request or grant such other relief as the court may deem just and appropriate under the circumstances, as to the request made by the First Amendment Coalition of Arizona, Inc., the Journal and its owner, Manny Maniaci.

LAW OFFICES OF
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RESPECTFULLY SUBMITTED this 25th day of July, 1990.



L. Richard Mabery
101 E. Gurley, Suite 203
Prescott, Arizona 86301
Counsel for VERDE DITCH COMPANY

COPY of the foregoing Petition
Forwarding Request for Documents
mailed this 26th day of July,
1990, to:

Lane D. Oden, Esq.
BROWN & BAIN
2901 N. Central Avenue
Phoenix, Arizona 85012-2788

Melissa Oden
MJO/3.5

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BROWN & BAIN

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July 12, 1990

First Amendment Coalition of Arizona, Inc., and
The Journal: Protest of Open Meetings Law
Violations and Request for Minutes

Dear Richard:

This firm represents the First Amendment Coalition of Arizona, Inc., the Journal and its owner, Manny Maniaci. On behalf of our clients, I am writing to alert you to the Verde Ditch Company's (the "Company"'s) violations of the Arizona Open Meetings Law, A.R.S. § 38-431, et seq., and to secure Mr. Maniaci's right to inspect the minutes or any recordings of the Company's illegally held executive session.

Factual Background

In a purported executive session on June 14, 1990, the Company met with Bob Dinegar, a representative of a citizens' committee appointed by Yavapai County Superior Court Judge Richard Anderson, to discuss shareholders' rights and the committee's grievances against the Company. Mr. Maniaci was present at the beginning of the meeting, but the Company told him he would have to leave so the executive session could proceed.

We understand that although the Company posted notice of the meeting sometime on June 13, 1990, the notice lacked both a description of the matters to be considered and a statement of the specific statutory provision authorizing the session, violations of both A.R.S. § 38-431.02(I) and § 38-431.02(B). I contacted the Company while the session was in progress and lodged a formal protest on Mr. Maniaci's behalf, explaining to Marty Cathcart, a Company board member, that the meeting was being held in violation of the Arizona Open Meetings Law. Ms. Cathcart suggested I contact you. Although some time has passed since the meeting, violations of the Open Meetings Law should not go undetected nor be left unaddressed.

EXHIBIT A

Legal Authority

The Arizona Open Meetings Law commands that "[a]ll meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." A.R.S. § 38-431.01(A). The law mandates specific notice procedures for informing the public of the time and place of meetings and the subjects to be considered at those sessions. A.R.S. § 38-431.02. Moreover, it is "the public policy of this state . . . that meetings of public bodies be conducted openly and that notices and agendas be provided for such meetings which contain such information as is reasonably necessary to inform the public of the matters to be discussed or decided." A.R.S. § 38-431.09.

As defined by the Open Meetings Law, "public bodies" include "all boards and commissions of the state or political subdivisions . . . and [all] instrumentalities of the state or political subdivisions" A.R.S. § 38-431(5). As a subdivision of the state appointed by the Court, the Company falls squarely within the law's definition of a "public body." Consequently, Arizona law requires that the Company open its meetings to the public and give proper notice of the time, place and subject matter of each meeting.

Although the Open Meetings Law allows executive sessions for a narrow range of matters, the Company has failed to comply with the specific statutory requirements authorizing an exception to the general policy of public access. The Company's June 13, 1990, notice of the meeting lacked both an adequate description of the matters to be discussed and a statement of the statutory provision authorizing an executive session. The session therefore violated the Open Meetings Law. Notice of executive sessions requires "a general description of the matters to be considered." A.R.S. § 38-431.02(I). The Company's bare assertion that the meeting was an "executive session" will not suffice. 1979-80 Ariz. Att'y Gen. Op. No. I79-4 at 2 (whether a meeting qualifies as an executive session "depends upon the substance of the matters discussed and not the label given to the meeting"). Instead of containing a general description of matters to be discussed at the meeting, the notice stated only that an "executive session" was to be held; however, "a public body shall not discuss any matter in an executive session which is not described in the notice of the executive session." A.R.S. § 38-431.03(E).

Similarly, the notice failed to specify which statutory provision authorized the Company's executive session, a violation of A.R.S. § 38.431.02(B). The Open Meetings Law allows executive sessions only for discussion or consideration of a narrow category of matters, set forth in A.R.S. § 38-431.03, and the notice must state the relevant provision in order to exempt the proceeding from

July 12, 1990

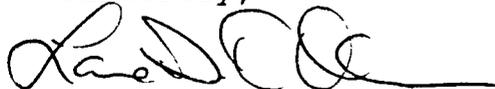
the broad requirement of public access. 1979-80 Ariz. Att'y Gen. Op. No. I80-118 at 1 ("The notice shall include the specific provision of the statute authorizing the executive session"). Because it failed to describe the subject of the session and state the provision authorizing the meeting, the Company's notice was inadequate and the June 14, 1990, meeting was held in violation of the Open Meetings Law. All business transacted at that meeting is null and void. A.R.S. § 38-431.05(A).

Where notice of an "executive session" fails to comply with even the minimal statutory requirements authorizing such a meeting, the meeting cannot be considered an "executive session." Therefore, the minutes or any recordings of such a meeting are not confidential and must be "open to public inspection three working days after the meeting." A.R.S. § 38-431.01(D). In addition, these minutes or recordings must also be made available to the public under the Arizona Public Records Law, A.R.S. § 39-121, et seq., because they are records "reasonably necessary or appropriate" for the Company "to maintain an accurate knowledge of [its] official activities." A.R.S. § 39-121.01(B). Accordingly, I request that you instruct your clients to make such minutes or recordings available to Mr. Maniaci immediately. If such minutes or recordings do not exist, I request, pursuant to Arizona Public Records Law, that you produce any other records made in connection with, or regarding, the June 14, 1990, meeting.

The Company's failure to provide records of the meeting will be deemed a refusal to comply with the Open Meetings Law. In such event, we will take whatever action necessary to protect our clients' rights under Arizona law, including filing a special action lawsuit in Superior Court. If this course becomes appropriate, we shall have no alternative but to seek the attorneys' fees incurred in our endeavor, as authorized by the Open Meetings Law. A.R.S. § 18.431.07(A). In addition, you might want to convey to your client that penalties for Open Meetings Law violations are severe, including maximum civil fines of \$500.00, removal of intentional violators from office and personal assessment of attorneys' fees. Id.

I look forward to your anticipated cooperation in this matter and hope you will advise your client about its obligations under the Open Meetings Law. Should you have any questions concerning the foregoing, I will be happy to discuss them with you.

Sincerely,



Lane D. Oden

Mr. Richard Mabery

-4-

July 12, 1990

Mr. Richard Mabery
101 East Gurley, Suite 203
Prescott, Arizona 86301

LDO:leb

Copy to:

Mr. Manny Maniaci
Post Office Box 2048
Camp Verde, Arizona 86322