



City College of San Francisco

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SAN FRANCISCO COMMUNITY COLLEGE DISTRICT CITIZENS' BOND OVERSIGHT COMMITTEE PROP A 2001 / PROP A 2005

MINUTES

WEDNESDAY, May 20, 2020

Via Zoom Video Conference

1. **Call to Order and Roll Call:** A.J. Thomas, Chair, called to order the meeting of the Citizens' Bond Oversight Committee at 10:05 AM on May 20, 2020. In response to the COVID-19 shelter-in-place order, the meeting was held via video conference. Roll call was conducted. All members were present: A.J. Thomas (Chair), Dennis Kelly (Vice-Chair), Peter Gallegos, Christine Hanson, Shanon Lampkins-Jones, Rafael Musni, Linda Fadeke Richardson, Steven Tang.
2. **Approval of May 20, 2020 Agenda** – Approved as amended. Item 7 edited to: Timeline and Tasking CBOC Reports for Fiscal Years: 2016-2017, 2017-2018, 2018-2019 *and Discussion of Draft 2016-2017 Report.* (Hanson/Tang)
3. **Review and Approval of Minutes**
 - a. May 9, 2019 meeting – Tabled. (Tang/Musni)
 - b. January 30, 2020 meeting – Approved. (Richardson/Hanson)
 - c. May 6, 2020 meeting – Approved as amended. Addition to Item 5: *Committee Member Hanson stated that the packet emailed did not include the entirety of the documents that were posted with the agenda.* (Tang/Musni)
4. **Chair's Report**

Committee Chair Thomas thanked the members of the committee for contributing questions for Bond Counsel to address today. He informed the committee that he was asked to appear at an event to support a political cause in his capacity as Chair of the Citizens' Bond Oversight Committee. He declined to appear as he would be speaking on behalf of the committee as a whole and the committee had not discussed any of those issues. He stated that his intent when speaking in his capacity as Chair is to reflect the majority of the committee. This clarification is included in the questions to Bond Counsel today. He expressed appreciation to Mr. David Casnocha, Bond Counsel, for graciously agreeing to join the committee this morning to answer questions formed by the committee members. He continued that the committee will look at a timeline today for a plan to stay on task for producing reports. He noted that with the passage of the Prop A Bond in March, a new bond oversight committee will be formed and it will incorporate oversight for the 2001 and 2005 Bonds. His opinion is that the best course of action is to wait to reform that committee until the reports are issued by the current body and has requested through the administration to delay reforming the committee until either in July or August.

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5. Bond Counsel's Response to Committee Questions

Mr. David Casnocha provided responses to the submitted list of questions from the committee.

Question 1: Please describe Bond Counsel's professional/fiduciary relationship to the CCSF District, School administration, and the CBOC.

- Response from Bond Counsel: Bond counsel's historical role professionally is that we have the highest fiduciary responsibility to bondholders. Bondholders expect bond counsel to do their due diligence to form an opinion that bonds that are issued are valid, binding, and enforceable and to the degree that they are sold as tax exempt bonds are in fact tax exempt. The day to day client is the community college district who oftentimes is represented by the Board of Trustees and sometimes is represented by employees of the school district. In our capacity as bond counsel to the district, we are made available to bond oversight committees to answer questions with respect to the bond financing activities of the community college district. In that context, I answer questions for bond oversight committees, conduct training as to their roles and responsibilities, and guidance as to what legal advice we have provided to the community college districts on topics that are of mutual interest both to the oversight committee and the district. We are not the attorney for the bond oversight committee and I respond to requests to questions that the committee may have if you present those questions to the district and the district asks me to respond to those questions.

Question 2: Please describe any potential conflict of interests that may arise in these relationships and how Bond Counsel intends to ethically navigate the resulting challenges.

- Response: Because of the narrowness of our role, I haven't observed conflicts of interest that arise between providing guidance and information to bond oversight committees and acting as bond counsel to community college districts, so I don't know that there's an ethical line that needs to be navigated as a consequence of our services to the district.

Question 3: Given your knowledge of bond expenditure, would you be able to issue a legal opinion that the use of bond funds would be considered lawful expenditures?

- Response from Bond Counsel: Yes, I do that all the time but those opinions are delivered to the district, not to the oversight committee. So if the committee had a question about getting an opinion from bond counsel as to whether or not the expenditure of money on a particular project was authorized by Proposition A, you'd have to ask the staff person at the district who's servicing the oversight committee if I would be willing to provide an opinion to the committee on that topic. I don't respond directly to request from the oversight committee because the oversight committee is not our client. So if you ask the district for me to give an opinion to you, I'd be happy to provide either copies of the opinions that we've given on that question or to draft a new opinion on the topic that you're particularly interested in.

Question 4: What is the role of a Bond Program Consultant? In terms of Bond Oversight specifically, what is the benefit of hiring such a consultant?

- Response from Bond Counsel: There are a number of colleges in California who engage the services of a third party vendor to assist in the servicing of the body of the oversight committee. Community college districts have an obligation under the law to assist in the administration of the activities of the oversight committee such as maintaining a website, providing notices for meetings, and providing materials. A number of districts farm that responsibility out or ask a third party vendor to join district staff in the provision of some or all of those services and oftentimes, the person who does that is called a bond program consultant. Their responsibilities include more than just coordinating reports and accounting records for the oversight committee so their roles

and responsibilities can differ dramatically from college to college. Ann Kennedy can describe what she's been asked to do for the district in terms of acting as an assistant to the committee.

Question 5: Why was no Bond Program Consultant ever hired previous to the 2020 Prop A Bond?

- Response from Bond Counsel: I don't have an opinion as to why no bond program consultant was hired on previous measures.

Question 6: Does failure to build a Performing Arts Center under the 2001 Bond require a "non-compliant" rating for any of the three years in question?

- Response from Bond Counsel: The answer is no. The bond project list that are included in Proposition 39 elections simply constitute the scope of legal authority, pursuant to which bond funds can be spent. They're not a contractual obligation or representation that they will be spent for all or any of those projects. It is absolutely positively unequivocally not any sort of a violation or non-compliant act by the district. The oversight committee as a committee can say in a report to the Board of Trustees recognizing the lack of legal obligation and informing the district that the committee as a whole believes that money should be spent for something like the Performing Arts Center. The bond oversight committee doesn't have a role in deciding how bond funds get spent but to the degree that you have opinions about projects that have been approved by the voters that haven't yet been funded, you can always feel free to express those opinions to the governing board members of the community college district.

Question 7: Please describe a Facility Master Plan (FMP) and whether these sorts expenditures are normally appropriate use of Bond funds?

- Response from Bond Counsel: Lawyers differ on this topic. I happen to be of the view that it's quite skeptical of the ability to use bond funds to finance facility master plans. The reason I'm skeptical about that is that to the degree that a community college district sells tax exempt bonds, 100% of the bond proceeds need to be spent for capital expenditures. The preparation of a planning document is a little bit of a stretch in my mind to consider these capital expenditures for a couple of reasons. There might be that there's not enough specificity with respect to any one particular project. Sometimes master facility plans describe the facility needs of \$100 and there's only \$50 of bond authorization. So consequently, we know that half of the scope of the master plan is not going to be funded with bond funds. So the attorneys or the districts who have funded master facility plans reached the conclusion that it's a capital expenditure because it's the preliminary base cost of planning for and executing a project that's going to be funded with bond. You have to say it's a capital expenditure, because it's step one of the projects that are described therein and all the projects described therein are going to be paid for with bonds. If the district feels comfortable saying that, then those types of expenditures for many districts have been funded with bond proceeds. I'm not in that camp in concluding that is such an easy decision to reach, but many, many districts have nonetheless reached that decision. San Francisco has never asked me the question as to whether or not their master facility plan could or could not be funded from bond proceeds.
- Follow up question from Committee Member Tang: Do you have any understanding of how common within the Bay Area other community college districts are including facility master plans under their bond spending?
- Response from Bond Counsel: I don't maintain statistics on that topic, but my sense is that probably 25% of community college districts around the state fund all or a portion of their facility master plans from bond proceeds particularly in cases where the plan was developed in conjunction with placing a measure on the ballot.
- Follow up question from Committee Member Hanson: Does that mean that you haven't issued an opinion to the district on the spending of the 2005 bond money on the facility master plan?

- Response from Bond Counsel: But for these questions, I have not been asked or have considered the appropriateness of that expenditure nor have I opined or given any oral advice on that topic to anyone at the district.

Question 8: In your opinion, was the use of Bond funds for FMP spending appropriate in this case?

- Comment from Committee Member Richardson: This matter is a gray area for me. Let me state that I really value the facility master plan and the educational master plan. There is a correlation between the facility master plan and listed projects as it identifies the status of every project outlined and you can actually look at those suggestions in rating the expenditures. In the entire 2001 and 2005, we're talking about \$250K, a threshold that does not justify out of compliance. Based on statements and having spent a considerable amount of time reading this document, it does not seem to me that the college is out of compliance.
- Response from Bond Counsel: Bond funds are for capital expenditures for the improvement of school facilities. There are many good things that should be done but might be paid from other sources. I think that I agree that it's a gray area. I agree that bond attorneys of reasonable reputation take a much more positive and aggressive attitude towards the legitimacy of funding the master facility plan. In 2005 and 2001, I was not the bond counsel to the district. I became the bond counsel to the district in 2014. It is quite possible that in 2005, whoever the then attorney was provided advice to the district that resulted in their use of bond funds to pay for all or a portion of the cost of their particular facility master plan. I don't know the nuance of when it was done and how much was spent and it's not uncommon for these costs to be paid for with bond funds.
- Follow up question from Committee Chair Thomas: If requested by the administration would you be willing to provide an opinion on the appropriateness of the use of bond funds for facilities master plans during the years in question 2016 through 2019?
- Response from Bond Counsel: If the district wanted me to do that for the purposes of giving them advice on whether or not that was an appropriate expenditure, I'd be happy to do it but I'd have to be asked to do that by the district.
- Follow up question from Committee Chair Thomas: How common is it for bond oversight committees in your experience to have their own independent counsel in conducting their review?
- Response from Bond Counsel: No, I don't know any bond oversight committee that has independent counsel.
- Comment from Committee Member Hanson: The West Contra Costa Union School District has its own independent bond counsel.

Question 9: Should the changes to Prop 39 be recorded in the CBOC report? (Especially as they relate to compliance)

- Question clarification provided by Committee Vice-Chair Kelly: What I understood was that there have been changes to prop 39 that meant that the entire list that was identified in a bond proposal need not be considered contractual but simply examples of the kind of work that could be done. I had understood from the previous presentation by bond counsel that that was not true originally in Prop 39 but it did become true subsequently. The question is should that be noted in the CBOC report.
- Response from Bond Counsel: So when we say Prop 39 what we really mean is Article 13A of the California Constitution that says that with a 55% voter approval, bonds could be issued to fund the acquisition, construction, renovation, repair, furnishing, and equipping of school facilities and that no bond monies can be used for teacher or administrator salaries or other operating expenses. There haven't been any changes to Article 13A of the Constitution. I think I described the seminal case which is Foothill De Anza vs Emerich which was decided in 2007 and the court recognized that the bond project list need to retain flexibility to allow the colleges to

respond to changes in priorities and changes in project scope. So to the degree that a project is of the type described in the bond project list that would be an authorized project for bond funding under the holding of the Foothill De Anza case and to the degree that you recall my conversations about that, then that's a judicial interpretation. I think it would not be appropriate to reflect that case or other cases like it in any CBOC report relating to compliance.

Question 10: Would it be permissible for the CBOC to issue a cumulative report for the years 2016-2017; 2017-2018; 2018-2019?

- Response from Bond Counsel: It is permissible to aggregate reports into one omnibus submission to the Board of Trustees.
- Follow up question from Committee Chair Thomas: Most of the members of this committee were not members of the committee during the years in question. Is there any sort of observation or statement that should be made in our report to address this?
- Response from Bond Counsel: I can tell you what other districts have done when facing similar problems if you did a cumulative report. There would be a listing of the membership of the oversight committee for each of the years of which the report covers. The report ought to indicate that it was the cumulative report for those years that were approved by or were not approved by the members who were currently seated as of some date so that the record would show who was on the committee but not on the committee today and that person did not express any opinion with respect to supporting or dissenting from the conclusions over the report for the applicable period.
- Follow up question from Committee Member Hanson: Doesn't Prop 39 language command us to produce a yearly report on bond spending not cumulative reports?
- Comment from Committee Chair Thomas: It is better described as an omnibus where we're basically publishing three separate reports but at the same time so they would have separate opinion letters from the auditors and from the bond oversight committee for each one. When I say cumulative, I don't mean lumping them all together and having one homogenous report.
- Response from Bond Counsel: The committee has a responsibility to prepare annual report each year and report has to include a conclusion. The annual report for 16-17, 17-18, and 18-19 has to include a conclusion as to whether or not the committee believes that in that year monies have been spent in accordance with the mandates of Article 13A of the Constitution. You can have an omnibus report but you have to be able to segregate each of these three years and show the Board of Trustees that you've reached conclusions about bond expenditures for each of the three years. The committee has failed to file mandated reports and there's probably some blame that could be shared for that event but the committee has not fulfilled its legal responsibilities in a timely fashion as mandated by the Education Code.
- Comment from Committee Member Richardson: It appears that the bond oversight committee has been out of compliance so the burden is on this present committee to ensure that those three annual reports are created to inform the next 2020 bond oversight committee and report to the trustees on issues to be mindful of.

Question 11: Would it be permissible for the reformation of the CBOC in order to take on oversight of the 2020 Prop A Bond to be delayed until August 2020 to permit the completion of the previous reports first?

- Response from Bond Counsel: There has to be a committee established for Prop A 2020. I have prepared amended and restated bylaws of the oversight committee which would describe its responsibilities to extend over the 2001, 2005, and 2020 bond authorizations. The district has an affirmative obligation to advertise and solicit applications from individuals to serve on the oversight committee because they promised to do that in connection with the new bond election. As you know, the bond oversight committee has to include at least seven members and of those

seven at least five mandatory seats have to be represented among the members of the committee. That's not a detail that has been attended to closely in the past so the committee is going to have to have designated senior, taxpayer association membership, student representative, business representative, and whatever else is required. The reformation of the committee is going to start in August. If any of you want the opportunity to continue to serve you raise your hand and those applications will be deemed resubmitted. The Chancellor then takes the applications, reviews them, and makes recommendation to the Board for appointments to the oversight committee sometime after the bylaws are approved and after the application period has passed. We characterize the reformation of these oversight committee when a new bond authorization has been added as a new committee. If you have been serving on the existing committee for five years and normally you'd be then going off because you can't serve more than three consecutive two year terms, we deemed the new committee to be a new committee for purposes of service in part and recognition that it's very hard to get participation on bond oversight committees. We want to encourage those that are interested to serve and it's up to the Board of Trustees to appoint members to the new committee that would take place in the fall.

- Follow up question from Committee Member Hanson: The bond counsel for the district is writing the CBOC bylaws so how does that interface with the Prop 39 language?
- Response from Bond Counsel: The bond oversight committee is created by the district. They have the responsibility of forming the committee and empowering the committee with the responsibilities that are set forth in the Education Code. In that capacity, the Board of Trustees governs the content of the bylaws, they are not bylaws that are written by a bond oversight committee. A bond oversight committee doesn't have the authority to define what its role is, that role has been defined by the state legislature and reflected in the Education Code, and the Board of Trustees carries that out. So all the community colleges' boards' attorneys draft the bylaws. In most cases in which we're adding a second or third or fourth authorization, or if changes get made to the bylaws, a lot of colleges as a matter of courtesy would share those changes with the oversight committee members before they were advanced to the Board of Trustees. The amended and restated bylaws that I did for San Francisco a couple of years ago were designed to bring those bylaws current with the law. The only change that's going to be made in the bylaws this time around is adding 2020 Prop A to the scope of responsibilities. Nothing else is going to change except to the degree that I find something in the bylaws that no longer conforms with the requirements of the Education Code. The committee doesn't have input on the scope of its authority.

Question 12: Is a member of the CBOC permitted to run for election to the CCSF Board of Trustees while serving on the CBOC?

- Response from Bond Counsel: Yes.

Question 13: What are the appropriate circumstances for the chair to speak or appear in their capacity as chair of the CBOC?

- Response from Bond Counsel: The bylaws are pretty specific that the chair has the primary function of communicating the committee's activities to the public, but the chair should only speak to what the majority of the committee members have determined to be the committee's views.

Question from Committee Member Hanson: How are we able to know after initial bond offering when bonds are being resold?

- Response from Bond Counsel: The college went through a selection process for investment bankers and hired JP Morgan and Citibank as their underwriters. Bond flipping was addressed in each of the interviews for the underwriters. The underwriters who were interviewed made a

commitment to take internal steps to not sell bonds to known flipper accounts. There's no law against buying and selling bonds to the secondary marketplace so it's an impossible practice to prohibit. The initial underwriters might not know about it and so it's not likely that it would be the subject of a regular report.

6. 2020 Proposition A Responsibilities (Bond Counsel) – No discussion.

7. Timeline and Tasking CBOC Reports for Fiscal Years: 2016-2017, 2017-2018, 2018-2019 and Discussion of Draft 2016-2017 Report

Committee Chair Thomas presented a work plan for production of reports. The draft report for 2016-17 would be the framework for the 2017-18 and 2018-19 reports. Certain paragraphs of the 2016-17 draft report that were unfinished will be tasked for completion by Committee Member Hanson and Committee Member Musni. The timeline is for meetings to be scheduled in two week intervals. The completed draft 2016-17 report with language incorporated will be provided back to the committee by June 3 for review. By June 17, draft documents would be prepared for the three separate reports for a two-week review period for the committee to come up with amendments and changes to the language as they feel appropriate with a final report available on July 1 for the committee to vote on. The final report will be submitted to the Board of Trustees in time for the July or August Board meeting.

Committee Member Richardson suggested looking at adopting a set of performance review standards for reporting.

8. Tentative Meeting Structure: Committee Initial Draft Language Due 6/3/20; Review Draft Document and offer Amendments 6/17/20; Final Vote 7/1/20

Calendar meetings for June 3, 2020, June 17, 2020 and July 1, 2020 from 10:00AM to Noon, to be held via video conference.

9. Public Comment – No comments were sent ahead of time, there were no comments in the chat, and there were no hands raised in the call.

10. Adjournment – Meeting adjourned at 11:44 AM.