

January 8, 2019

VIA EMAIL & U.S. MAIL

Blake T. Ostler
OSTLER MOSS & THOMPSON
57 West 200 South #350
American Plaza II
Salt Lake City, UT 84101
supes00@gmail.com

Re: Cedar High Mascot Advisory Committee, Utah Open and Public Meetings Act

Dear Mr. Ostler:

This firm represents journalist Tracie Sullivan with respect to the matters that follow. We understand that the Iron County School Board and its designated agents or representatives (together, “the School Board”) have been advised by your office that the meetings of a certain advisory body relating to the potential re-naming of the mascot of Cedar High School (the “Cedar High Mascot Advisory Committee”) are not subject to the requirements of Utah’s Open and Public Meetings Act (the “Act”), Utah Code § 52-4-101, *et seq.* We write to explain our disagreement with this position and explain why meetings of the Cedar High Mascot Advisory Committee are subject to the Act. We request that you reconsider your position and that you advise your client to take steps to immediately comply with the Act with respect to such meetings.

We note from the outset the time-sensitive nature of the issues involved. We understand that some meetings of the Cedar High Mascot Advisory Committee have already taken place, and that additional meetings are scheduled to take place, the first of which may take place on or around January 21, 2019. We also understand it is the intent of that committee to meet in a closed meeting. We request that you ensure that the Cedar High Mascot Advisory Committee and its organizers, including the School Board, take steps to comply with their respective obligations under the Act.

We understand that the Iron County School Board has delegated to its Director of Secondary Education, Rich Nielsen, authority to organize and oversee the creation of a committee to advise the School Board on whether to re-name the mascot of Cedar High School. We understand that Mr. Nielsen, in consultation with Cedar High Principal John Dodds, and acting under the auspices of the School Board, has created a body that this letter refers to as the Cedar High Mascot Advisory Committee.

Blake T. Ostler
OSTLER MOSS & THOMPSON
January 8, 2019
Page 2

Our client, Tracie Sullivan, is a journalist who has sought, and been denied, access to meetings of the Cedar High Mascot Advisory Committee. We understand that this denial is in part based on reliance on advice you have provided as legal counsel. We are in receipt of a communication that we understand was prepared by your office, stating:

[The Cedar High Mascot Advisory Committee] does not have any legislative or operational authority. It does not expend funds. It only makes recommendations and so there is no 'meeting' under the Act.

The conclusion that the Cedar High Mascot Advisory Committee is not subject to the Act is incorrect. Under the Act, a "meeting" is defined as "the convening of a public body . . . including a workshop or executive session . . . for the purpose of discussing, receiving comments from the public about, or acting upon a matter over which the public body . . . has jurisdiction or advisory power." Utah Code § 52-4-103(6). Further, "[a] meeting is open to the public unless closed under Sections 52-4-204, 52-4-205, and 52-4-206." Utah Code § 52-4-201. The Utah legislature has made it abundantly clear that "[i]t is the intent of the Legislature that the state, its agencies, and its political subdivisions . . . take their actions openly" and "conduct their deliberations openly." *Id.*, § 52-4-102.

The Cedar High Mascot Advisory Committee is a "public body," as that term is defined under the Act. The Act defines "Public body" as "**any** administrative, **advisory**, executive, or legislative body of the state or its political subdivisions that: (A) is created by the Utah Constitution, statute, rule, ordinance, or resolution; (B) consists of two or more persons; (C) expends, disburses, or is supported in whole or in part by tax revenue; and (D) is vested with the authority to make decisions regarding the public's business." *Id.* § 52-4-103 (emphases added).

By its plain terms, the Act is not limited to bodies that "expend funds," as your communication claims. Rather, **any** body that has advisory authority and that derives its authority from an entity that is created by state law is subject to the Act.

The Cedar High Mascot Advisory Committee was created by a delegation of authority from the School Board to perform an advisory function, and the School Board itself derives its authority from the State of Utah. It is indisputable that meetings of the School Board itself must comply with the requirements of the Act. The School Board cannot evade its transparency requirements by creating a sub-body, like the Cedar High Mascot Advisory Committee, to meet in private. To the contrary, whenever that body convenes to discuss, receive comments from the public about, or act upon a matter over which it has advisory authority, it must comply with the Act. Here, that means holding open meetings unless such meetings are properly closed under the limited circumstances specified in the Act.

Blake T. Ostler
OSTLER MOSS & THOMPSON
January 8, 2019
Page 3

The Act embodies the strong public policy interest in having an advisory body like the Cedar High Mascot Advisory Committee conduct its meetings with openness and transparency, as set forth in the Act. Taking “actions openly” and conducting “deliberations openly” fosters public trust and confidence in both the School Board and any advisory committee it creates by allowing the community to observe and understand the workings of that body and its sub-bodies, and to hold their members accountable. Holding meetings in secret keeps the public in the dark and invites suspicion and distrust. As United States District Judge David K. Winder wrote, “[o]penness safeguards our democratic institutions. Secrecy breeds mistrust and abuse.” *Soc’y of Prof’l Journalists v. Sec’y of Labor*, 616 F. Supp. 569, 576 (D. Utah 1985).

We hope that this letter sufficiently explains why the Cedar High Mascot Advisory Committee has been violating the Act in its prior meetings and should not repeat that mistake going forward.

Please feel free to call if you have any questions or would like to discuss our analysis or conclusions. We look forward to your response.

Sincerely,

PARR BROWN GEE & LOVELESS

/s/ *Jeremy M. Brodis*