

STATE OF UTAH  
OFFICE OF THE ATTORNEY GENERAL



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February 12, 2004

TO WHOM IT MAY CONCERN:

Subsequent to my writing of the letter dated October 8, 2003, a copy of which is attached hereto for ease of reference, additional information was delivered to me by the citizens' group concerned about the North School Renovation Project. Based upon both the new and old information gathered with respect to this project I was asked to identify statutory violations which occurred. A list follows - much of this was alluded to in my earlier letter but without reference to specific statutes:

1. Utah Code Ann. (UCA) § 53A-3-405 - limits the authority of officers or employees of a school district to make purchases or incur indebtedness without the approval and order of the board.
2. UCA § 53A-3-303(3) limits the authority of a business administrator to sign legal documents to those that have been approved by the board and, even then, he is only authorized to countersign them with the president of the board.
3. UCA § 53A-20-101(3)(b) - authorizes the school board to award construction contracts following a bidding process conducted in the prescribed manner.
4. In the case of the selection of a construction manager UCA § 53A-20-101(8) refers to the statutes dealing with state construction projects (§§ 63-56-20 through 63-56-36). § 63-56-36 concerns the choosing of a construction manager and requires the solicitation of competitive bids/proposals pursuant to § 63-56-20 or § 63-56-21.
5. UCA § 63-56-43 controls the selection of architects - engineers and requires the public announcement of the need for such services, the submission of proposals and the selection from at least three firms by a committee using published criteria.

Discussion - These statutes were all violated in connection with the North School Project. Keith Johansen, the District Business Administrator, signed contracts for both architectural and construction management services in June of 2000 without

approval of the board and prior to the advertisement for and the submission of bids. He did so on his own and without the countersignature of the president of the board. Later the District advertised for proposals for both architectural and construction management services and a committee, which included Mr. Johansen as a member, selected Architectural Design West, the firm that had already been under contract to provide the services. It is hard to view this process as anything other than a sham intended to validate the earlier noncompetitive selection of Architectural Design West. Substantial payments were made to Architectural Design West prior to the approval of its contracts by the board in December of 2000. From start to finish this process was handled incorrectly and in violation of the law.

6. UCA § 63-56-29 precludes the use of "cost-plus-a-percentage-of-cost" type contracts in state procurement and § 63-56-2(3)(a) makes this limitation applicable to "local public procurement units." § 63-56-5(14) makes it clear that school districts are included as "local public improvement units."

Discussion - The Construction Management contract signed with Architectural Design West calls for it to be compensated on a percentage of the cost basis and the earlier payments to the firm included architectural fees, reimbursement for costs incurred plus a percentage added for construction management services. The citizens' group obtained from the School District copies of checks written to Design West in connection with this project. Some of the checks have supporting invoices attached but many of them do not and it is impossible to tell from the records obtained how the amounts that were paid were calculated, whether they were supported by appropriate invoices and whether an improper cost-plus component was included in the payments. Because of the substantial amounts involved and the difficulty of reconstructing what occurred, I am recommending that the State Auditor examine the records of the School District related to this project for the purpose of "clearing the air" on the propriety of the expenditures. A copy of this letter is being sent to the Office of the State Auditor.

### Conclusion

Even though the focus of this letter is on failings of Mr. Johansen in connection with this project, it seems important to point out that the District Business Administrator operated under the direction (UCA § 53A-3-303) of the Superintendent of Schools, Danny Talbot, and that the School District Board had a general responsibility to oversee construction within the District (UCA § 53A-3-402(3)(a)). It is hard to imagine that the start of work on the North School escaped the attention of these other officials and to excuse their failure to inquire how such a project could be commenced without having been approved in the prescribed way.

An audit of the records relating to the project will help to determine whether any

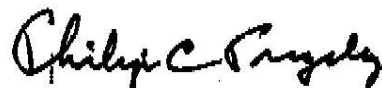
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STATE AGENCY COUNSEL

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financial improprieties occurred.

Sincerely yours,



PHILIP C. PUGSLEY  
Assistant Attorney General

PCP/as

Enclosure

# The Salt Lake Tribune

SATURDAY February 14, 2004

## School job bid called a 'sham': Attorney General's Office wants audit of Wasatch District records

By Christopher Smart  
The Salt Lake Tribune

HEBER CITY -- Wasatch School District set up a "sham" process to select a contractor for the \$4.6 million renovation of the old North School, say state investigators, in an apparent effort to skirt laws that require competitive bidding for public projects.

Citing at least five breaches of procurement statutes surrounding the project that went over budget by at least \$1.8 million, the Utah Attorney General's Office wants the state auditor to review the district's records.

"The district advertised for proposals for both architectural and construction management services and selected Architectural Design West, the firm that already had been under contract to provide the services," wrote Deputy Attorney General Philip Pugsley in a letter Thursday.

In June 2000, Keith Johansen, Wasatch's business administrator, signed a contract with Architectural Design West to renovate the 100-year-old school for district headquarters. The school board ratified the deal in December of that year.

"It is hard to view this process as anything but a sham intended to validate the earlier noncompetitive selection of Architectural Design West," Pugsley stated. "From start to finish, this process was handled incorrectly and in violation of the law."

Records obtained from the school district by a Heber Valley grass-roots group reveal that at least \$103,000 was paid to Architectural Design West before the school board approved the contract. The district paid another \$1.8 million to the Salt Lake City-based firm on invoices that lack detail.

"It is impossible to tell from the records obtained how the amounts that were paid were calculated, whether they were supported by appropriate invoices and whether an improper cost-plus component was included in the payments," Pugsley said.

The district's actions strain credulity, said Midway resident Dan Stephens, who, along with Deb Anderson and Tracy Taylor, obtained the financial records. "You have to wonder whether something nefarious didn't go on," he said.

Reached Friday, Johansen said he had no comment. Former Superintendent Danny Talbot did not return calls for this story.

But Terry Shoemaker, the present superintendent who took over after Architectural Design West left the project, said the school district will cooperate with the state auditor.

"Nobody is trying to keep the AG from what he wants," Shoemaker said. "We'll be happy when this matter is resolved."

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