

STATE OF UTAH

OFFICE OF THE ATTORNEY GENERAL



MARK L. SHURTLEFF
ATTORNEY GENERAL

RAYMOND A. HINTZE
Chief Deputy

KIRK TORGENSEN
Chief Deputy

August 1, 2003

Betty J. Smedley
3481 Lake Creek Road
Heber City, Utah 84032

Dear Ms. Smedley:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

We have also been looking at the minutes of meetings of the School District and are puzzled by the fact that the first clear approval of the arrangement with Architectural Design West appears to have been given in December of 2000.

We decided to write to some of the people involved and ask them to try to recall the circumstances surrounding the decision to remodel the North School, the selection of Architectural Design West, the entering into of contracts with that firm, and Board awareness and approval of the process and the amounts that the project would cost. We would appreciate your help in sending us your recollection of these events.

Thanks, in advance, for your assistance.

Sincerely yours,

Philip C. Pugsley
Assistant Attorney General

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Chief Deputy

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August 1, 2003

Richard G. Bonner
560 Willow Circle
Heber City, UT 84032

Dear Mr. Bonner:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

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August 1, 2003

Kevin DiStefano
3050 Southfield Road
Heber City, Utah 84032

Dear Mr. DiStefano:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

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KIRK TORGENSEN
Chief Deputy

August 1, 2003

Ron L. Davis
425 South 250 West
Midway, Utah 84049

Dear Mr. Davis:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

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MARK L. SHURTLEFF
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RAYMOND A. HINTZE
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KIRK TORGENSEN
Chief Deputy

August 1, 2003

Claudia Bradshaw
P.O. Box 9
Heber City, Utah 84032

Dear Ms. Bradshaw:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

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RAYMOND A. HINTZE
Chief Deputy

KIRK TORGENSEN
Chief Deputy

August 1, 2003

Danny L. Talbot
3745 East 1200 South
Heber City, Utah 84032

Dear Mr. Talbot:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

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Chief Deputy

KIRK TORGENSEN
Chief Deputy

August 1, 2003

Keith Johansen
Wasatch County School District
301 South Main
Heber City, Utah, 84032

Dear Mr. Johansen:

We were asked by a group of citizens to look into the process followed in connection with the renovation of the North School in Heber City.

We have gathered a bunch of documents and note that the firm of Architectural Design West, Inc. was selected to both design and manage the construction of the project. Contracts appear to have been entered into between the School District and that firm in June of 2000.

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Philip C. Pugsley
Assistant Attorney General

ROBINSON, SEILER & GLAZIER, LC

Attorneys and Counselors at Law

Mark F. Robinson

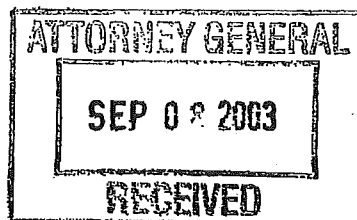
Thomas W. Seiler

David L. Glazier

Jared L. Anderson

Nathan S. Dorius

Ryan T. Peel



September 5, 2003

Philip C. Pugsley
Asst. Attorney General
State of Utah
P.O. Box 140857
Salt Lake City, UT 84114

via Facsimile No. 801-366-0352 and First Class Mail

RE: Wasatch County School District/North School renovation

Dear Mr. Pugsley:

You have requested additional information from some of the people involved with the North School renovation process asking them to try to recall the circumstances surrounding the decision to remodel the North School, the selection of Architectural Design West, the entering into a contract with that firm, and Board awareness and approval of the process and the amounts that the project would cost. You have asked for the recollection of these individuals of these events.

On August 6, I was asked to meet with some of the individuals who had received the August 1 request and sit with them as they collectively probed their recollections. That group included former Superintendent Danny Talbot, Richard Bonner, Claudia Bradshaw, Ron Davis and Kevin Distefano. It was expected that Keith Johansen would attend, but he was on vacation at the time. It was the first time I had met former Superintendent Danny Talbot. He brought with him a short letter dated August 5 responding to the request. The idea was that upon Keith Johansen's return from vacation, he would pen a responsive letter and I would assist the group to collate and deliver their responses to you. By the time Mr. Johansen returned from his vacation, I had left on vacation, returning September 2. On that day, I contacted Mr. Johansen and he forwarded me his written response. This is the first opportunity I have had to forward these responses.

Attached please find the Danny Talbot response (unsigned) dated August 5, 2003 and the Keith Johansen response dated September 2, 2003.

As the group discussed the North School process, several recollections consistently made became very clear. They are:

The historic North School was old, had been remodeled and added to many times, and was an asset highly valued by the community as an historic building. The Wasatch County School District (District) had need for a new District office and alternative school and housing for other school and community programs.

Philip C. Pugsley
September 5, 2003
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The District had previously bonded for its capital construction needs including a new middle school called Rocky Mountain Middle School (RMMS). That school had just been completed on time, and under budget with Architectural Design West (ADW) as the architect and Herm Hughes Construction Company (Hughes) as the contractor. The District was extremely pleased with the results of that project, and ADW had hired into its organization Hughes' on-site construction foreman from the RMMS project, a person with whom the District had a good relationship.

A relationship of trust had been established between Gary Acord, the principal at ADW and the District. ADW had completed several major remodel projects of historic buildings and had developed a reputation for successfully completing that type of work. As the District began to focus its attention on the North School and its building needs, Mr. Acord approached the District as an architect, and it was determined that ADW could assist the District with some preliminary drawings and architectural concepts to determine the feasibility, cost and scope of a potential remodel of the North School. Because the RMMS had come in under budget, the District had found funds available for the North School remodel. The citizens committee that had assisted the District to review building and planning needs had suggested in its advisory role that the North School be preserved and that no "school funds" be used in the process. The parties understood that "school funds" meant operational funds of the District designated for "operations" in the District budget and was never understood as a suggested restriction on capital outlay funds budgeted for the District's building needs.

In response to District need, the Building Committee recommendations, the success with the RMMS and the trust relationship with ADW and Gary Acord, the Board turned its attention to the North School project.

It became immediately clear that, given the age and prior remodels of the North School building, it was necessary to do exploratory demolition, tearing into walls, viewing the foundation and so forth, in order to analyze the structure of that building so that plans could be drawn in support of a future bidding process for the remodel project. The Board approved ADW as its architect for the project and ADW, District employees, and other contractors began the exploratory demolition work. This process began in early 2000. The exploratory demolition was to open the building enough to allow ADW to make preliminary drawings and a proposal to the Board of the feasibility of the anticipated remodel and renovation of the North School. From approximately March, 2000, to June, 2000, ADW made reports and submitted information to the School District proposing phased construction and cost estimates well within the District capital outlay budget.

In either June or July, 2000, Mr. Gary Acord contacted Keith Johansen, the District's Business Administrator, asking if he could drop by some contracts for Mr. Johansen's signature. Mr. Acord told Mr. Johansen that the contracts were simply a formality. The Board had approved

Philip C. Pugsley
September 5, 2003
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ADW for architectural services, and when Mr. Acord arrived in Mr. Johansen's office, the form of agreements submitted, which bore a date of May, 2000, and showed an execution date by Mr. Acord of June 21, 2000, was entitled "Standard Form of Agreement for the Agreement Between Owner and Architect Where the Architect Provides Construction Management Services As an Advisor to the Owner" was presented to Mr. Johansen. Mr. Johansen informed Mr. Acord that he had no authority to sign construction or construction management contracts which would need to be approved by the Board, but Mr. Acord informed Mr. Johansen that the agreement was simply a formality consistent with ADW providing limited architectural services, and Mr. Johansen signed the agreement (undated) which Mr. Acord took with him. The District was not provided a copy of the executed agreement until much later. Mr. Johansen and the District believe that the architectural services contemplated with ADW were properly procured and, at that stage, were not to include any construction or construction management services until the exploratory work was complete and a proper request for proposals and bid was let by the District for those services.

In its role as architect, ADW continued to provide the District with estimates and proposals upon which the District concluded it was feasible to move forward with an RFP and bid process for remodel of the North School. With the assistance of ADW, an RFP was issued which produced a number of qualified responses. Because of the nature and scope of the project, the Board felt a design build type of construction would best serve the District's need. The RFP was published in local and Salt Lake area papers and the Intermountain Contractor Service publication, which included four criteria upon which the responses would be graded. Responses to the RFP were due to the District by Tuesday, November 14, 2000, and the District received twelve qualified responses to the RFP. A committee including Superintendent Talbot, Business Administrator Keith Johansen, and Maintenance Supervisor Francis Harrison met and reviewed the responses to the RFP grading them independently. The unanimous choice of the committee was to award the contract to ADW. Copies of the RFP, its tabulation sheet and summary of the ADW proposal has been previously provided.

On November 17, 2000, the Superintendent and Business Administrator met with Ron Davis, Vice President of the Board, to review the selection process and the Committee's recommendation. Mr. Davis had been assigned by the Board to oversee the selection process. Mr. Davis approved the Committee recommendation and the matter was submitted to the Board of Education at its regular December 7, 2000 Board meeting, whereby a motion to approve the contract award to ADW was unanimously carried.

The District was informed at that time by Mr. Acord that the form of agreement previously signed under date of June 21, 2000, the scope of which was intended to cover preliminary architectural services, would, with the Board approval of December 7, 2000, automatically expand to a construction management agreement consistent with ADW's response to the RFP as

Philip C. Pugsley
September 5, 2003
Page 4

accepted and approved by the Board of Education. Hence, no additional contract was executed with ADW and the project proceeded as the Board believed it had approved in its December 7 open meeting.

The problems flowing from ADW's defaults and failures under the contract are obvious and well documented and are the subject of on-going litigation.

The District has since hired a new Superintendent, Terry Shoemaker, who replaced Danny Talbot on July 1, 2001, and the Board has also undergone a substantial change in membership.

The contract with ADW was terminated by Superintendent Shoemaker for breach by ADW, a new RFP for both consulting and construction services was let and awarded to Layton Construction, financing from the capital outlay budget and not "school funds" from the District operational budget is being used to finance the construction, and the remodel of the North School should be completed by the end of the year. At that time, the District Offices, the alternative school, and the other community programs will relocate to the North School, the community will have met its goal to preserve a beautiful and historic building which will serve District and Community needs for many years to come and, hopefully, this most difficult process will come to an end for all concerned.

I hope this is helpful. Thanks for the opportunity to provide additional information on behalf of the individuals named at the beginning of this letter. The District looks forward to concluding this matter as soon as possible.

Very truly yours,

ROBINSON, SEILER & GLAZIER, LC



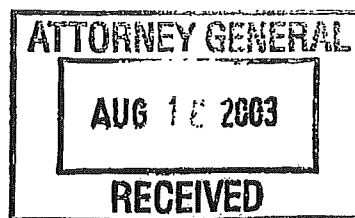
Mark F. Robinson
Attorneys for Wasatch County School District

Enclosures

cc: Danny Talbot
Richard Bonner
Claudia Bradshaw
Ron Davis
Kevin Distefano
Terry Shoemaker
Keith Johansen

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keith.johansen@m.wasatch.k12.ut.us



August 5, 2003

Philip C. Pugsley
Assistant Attorney General
State of Utah
PO Box 140857
Salt Lake City, Utah 84114

Dear Mr. Pugsley,

I am responding to your request for my recollections regarding the circumstances surrounding the decision to remodel the North School.

As I recall, the Board had heard substantial interest from citizens to save the North School as part of the Valley's heritage. It seems like there was opposition to tearing the building down, and using the block for housing, commercial centers, etc.

The Board ultimately decided to use the land and building to provide the Valley with a park, an alternative high school, district offices, a community art center, and public meeting area.

To facilitate the bidding process for such a project, the Board authorized Design West to do some exploratory demolition on the North School. They, and other companies, were allowed to tear into walls, etc., so that fair estimates of work could be made.

At some point, and I don't have the dates at hand, several companies gave bids on the work in an open bidding process. The Board selected Design West to do the work.

I left the district for another position during the beginning several months of that work.

I hope this information is in someway helpful to you.

Sincerely,

Danny L. Talbot

Philip C. Pugsley
Assistant Attorney General
P.O. Box 140857
Salt Lake City, UT 84114

RE: response to request for information regarding remodel of North School

Dear Mr. Pugsley,

This letter is in response to your request for information regarding the decision to remodel North School and the selection of Design West as the construction manager on the project.

In 1995 or 1996, the Board of Education created a committee made up of citizens of Wasatch County to help form a long range plan to handle the growth the district was experiencing in its schools. This committee was asked by the Board to look at the properties then owned by the school district, gather input from the community, and make recommendations on how to put those properties to the best use. At that time, the North School was being used to house all the kindergarten students of the county, even though it was inadequate for that purpose because of the age and condition of the building. The district office was located in a renovated house located adjacent to the North School, with very limited office space. After going through an extensive process to gather public input, the committee recommended to the Board that the district should immediately bond and build a new elementary school, which would replace an older school located on main street in Heber. This would allow the kindergarten students to be housed in the neighborhood schools. The committee also strongly recommended that the North School be preserved and remodeled to house the district office, Alternative High School, and various community programs. The committee pointed out that the building was a historical landmark and that the public overwhelmingly supported the preservation of the building.

Following the recommendation of the Long Range Planning Committee, the Board passed bond elections in 1995 and again in 1998 to build the required schools, remodel some existing schools, and to preserve the North School. The architect on one of those projects was Design West and the Board was very pleased with their work on that project, which was Rocky Mountain Middle School (RMMS). Design West was not the construction manager on RMMS; that function was performed by Hughes Construction. As that project began to wind down and it became apparent that the project was well within its budget, the Board turned its attention to the remodel of the North School. Design West had completed several major remodel projects, most notably the Main Building on the Utah State University campus, and the Board elected to use Design West to provide the professional architectural services on the North School. In May 2000, the Board received from Design West a preliminary estimate of the cost to complete the remodel of North School, a function Design West had performed as the architect on the RMMS project. In June 2000, Gary Acord, a partner at Design West and the lead architect on the RMMS project, stopped by my office. He stated that in order to

satisfy some "paperwork" requirements, he needed a signature on the contract for the North School. I told him that I was not authorized to sign for the Board, and he stated that it was just a formality. The contract was an AIA document, and I thought it was just for architectural services, so I signed on behalf of the school district.

Design West began the process of tearing into some of the interior walls of North School. I assumed that they were trying to expose the foundation and exterior structure so that they could begin the process of drawing up the plans for bidding purposes on the remodel project. This process took several months, then in the fall of 2000, the architect who had been overseeing the demolition stated that he was ready to bid the windows and doors. That is when it first occurred to me that Design West thought it was also the construction manager on the project. At that point, all work on the project was terminated, and the district went through an extensive Request for Proposal process to select a team made up of an architect and a construction manager to complete the project. The district received bids from several highly qualified companies who had taken the time to continue some of the demolition of the interior of the North School. After reviewing all the bids, the project was formally awarded to Design West to provide both architectural and construction manager services in December 2000.

As you may know, Design West eventually was removed from this project and the case is in litigation. The project, after a short interruption, is now back on track with a new architect and a new construction manager and will be completed this fall.

I hope this information will be of assistance to you.

Sincerely,



Keith Johansen
Business Administrator
Wasatch County School District