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**M E M O R A N D U M**

**TO:** Jane Goodwin, Chair  
Shirley Brown, Vice-Chair  
Frank H. Kovach  
Carol L. Todd  
Caroline Zucker  
Lori White, Superintendent

**FROM:** Art Hardy

**RE:** Resolution authorizing millage referendum

**DATE:** October 18, 2013

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The purpose of this memorandum is to inform the Board of a complaint that has been raised with respect to the enactment of the Resolution authorizing the March 2014 millage referendum and to recommend a course of action to be undertaken by the Board to address the complaint raised.

Factual Background

The following are the facts as I understand them:

At its workshop on Tuesday, September 17, 2013, the Board discussed the millage referendum and a consensus was reached that the date for the election would be March 4, 2014. The Board's workshop was the subject of a Sarasota Herald-Tribune article that was posed on-line on September 17<sup>th</sup> at 5:08 p.m. The article's headline and story indicated that the Board "set" the election for March 4<sup>th</sup>. Of course, no official Board action was taken at the workshop, so the verb "set" was not technically accurate although clearly that date was the date which the Board achieved consensus on pending enactment of a resolution.

On the next day, Wednesday, September 18, 2013, the Superintendent was at a meeting at which Town of Longboat

Key Town Manager Dave Bullock approached her and asked if the referendum could be scheduled on a later date in March. Shortly thereafter that same day, the Superintendent spoke individually with each Board member to inform him/her of Mr. Bullock's request and the Superintendent's decision to present the Board with a referendum resolution with the March 25<sup>th</sup> date. No Board member expressed concern. In speaking with each Board member individually, the Superintendent did not discuss one Board member's comments/reaction with any other Board member. Later that afternoon, at 5:34 p.m., the Sarasota Herald-Tribune posted a story stating that the referendum was rescheduled to March 25<sup>th</sup>. The article indicated the Superintendent "had notified school board members about the change and 'everybody is OK with that.'"

At its regular meeting on October 1, 2013, the Board took formal action by adopting the resolution requesting the Board of County Commissioners to set the election for March 25, 2014. That resolution, with the March 25<sup>th</sup> date had been noticed on the Board's agenda. At the time of approval, most of the Board discussion centered on the fact that the election was taking place in March, rather than at a general election in November. In her comments, Mrs. Zucker also referenced the fact that the March 25<sup>th</sup> date was selected so that the election would coincide with the Town of Longboat Key's election.

Earlier this week, one of my partners received a call from Michael Barfield indicating that, based upon the Sarasota Herald-Tribune's September 18 article, he believed a Sunshine law violation may have occurred in setting the election on March 25<sup>th</sup> after the date of March 4<sup>th</sup> had been discussed during the Board's workshop.

### Analysis

If an action is taken that is in violation of the Sunshine law, that action is void. Even if a Sunshine violation has occurred, the Sunshine violation may be "cured" if, at a later meeting, independent final action is taken in the Sunshine.

Based upon my review of the facts, I do not believe any Sunshine law violation has occurred. The Superintendent separately communicated Mr. Bullock's request to Board members and informed each of them of her

decision to comply with Mr. Bullock's request in presenting a referendum resolution to the Board for its consideration. The Superintendent did not "poll" the Board nor did she communicate one Board member's comments to the other.

Moreover, even had a technical violation occurred, I believe it was "cured" by the Board's consideration of the resolution at its subsequent October 1<sup>st</sup> meeting. During that meeting, there was discussion about the date of the election, specifically including a reference to the request of Mr. Bullock to have the election at a later date in March.

These points have been communicated to Mr. Barfield who did not necessarily agree with this analysis. Mr. Barfield was not in a position to commit definitively as to whether he or another entity would file suit alleging a Sunshine violation occurred.

#### Recommendation

As stated above, I do not believe a Sunshine violation occurred and, if it did, I believe it was "cured" in the Board's subsequent October 1, 2013 Board meeting. Having said that, I cannot guarantee that my analysis would be accepted by a reviewing Court were suit to be filed. Given that the potential outcome of an adverse ruling would be an invalidation of the resolution requesting the referendum election be set, an argument could be made that every act that follows from that resolution - the Board of County Commissioners calling the election and the election itself - could be set aside. This, of course, would have a devastating impact and, given the speed at which litigation and appeals could progress, would likely happen too late to schedule another vote prior to June 30, 2014. Thus, even if there is only a very small chance that a challenge could succeed, the potentially grave impact of a challenge's success leads me to recommend the Board erase all doubt by "curing" any alleged violation by enacting another resolution at its November 5, 2013 Board meeting directing the Board of County Commissioners to call a millage referendum on March 25, 2013.

With the Superintendent's concurrence, such a resolution will be placed on your November 5, 2013 agenda under new business with this memorandum attached to the agenda as explanation.

If you have any questions, please do not hesitate to call me.