

HESPERIA RESORTER

Judge Sets Camara-MWA Trial For October 18

By William F. Couey

JOSHUA TREE – A Superior Court judge has set Oct. 18-19 for trial on whether Cal Camara should represent greater Apple Valley on the Mojave Water Agency, replacing Art Bishop.

Just Bert L. Swift said it's important to quickly clarify a board action as legal or illegal – otherwise “we have anarchy within the district. This can't be tolerated.”

Bishop is an Apple Valley fire official and Camara is general manager of Hesperia Recreation and Park District. Both are Apple Valley residents.

The board of directors picked Camara for the vacant seat in October 2004, but two days later changed its mind and named Bishop instead. Camara eventually sued after obtaining permission from the state attorney general, who found merit in his case.

The law doesn't allow the board to appoint someone and then back out later. But the board argued it never actually appointed Camara, just “selected him for appointment and didn't even swear him in.

But in his decision allowing Camara to sue, the attorney general noted case law establishes that “selection by vote is the same as appointment.”

According to a court transcript, Judge Swift said he considered an MWA request that “just delays the trial for an undue amount of time...the interest of justice requires that this trial be expedited (because) ...Mr. Camara and Mr. Bishop both have a right to know who legally holds or should hold the office of Division 5.

“Similarly, the people have a need to know whether the Board of Directors has acted within the law in this action to appoint Mr. Camara and then reappoint Mr. Bishop to hold that particular office.

“It is also important to those who are affected by the decisions in the votes of the Mojave Water Agency's directors to know that those decisions and voters were within the law that govern it.

Elected representatives of agencies which service the public are expected to be beyond reproach in their dealing that have an effect on the public, otherwise we have anarchy within the district. This can't be tolerated.”

Judge Swift set the trial, expected to last two days, for Wednesday and Thursday Oct. 18-19. His decision came in a 15 minute hearing on Sept. 19.

On Saturday, Camara attorney Hannah Bentley said “I think the judge recognizes the urgency of

this matter and he will do everything he can to expedite the decision. I think the court's ruling will come fairly quickly and it's our position that that ruling is going to have to be followed.”

The court denied an MWA request for more time to take depositions. “The agency has had ample time to complete its discovery. They've had at least four months to conduct discovery and, at least to my knowledge, nothing has been done as far as discovery or depositions at this point.”

MWA directors called a special board meeting for Friday Sept. 22 and quickly went into a one hour closed session to discuss the case. No action was reported taken afterwards.

John Bascom, a candidate for the Div. 6 seat held by longtime director Beverly J. Lowry of Barstow, read a prepared statement into the record during the meeting: “Judge Swift indicated that the public interest deserves a quick resolution of this matter.

Governments cannot break the law and do what they want...MWA vetoes board appointments until they get a board member who will vote their way.”

The statement charged that the board spent “tens of thousands of dollars” on this case and also “hired a public relations firm to present their case to the public.

“MWA rate payers and taxpayers are financing this with money that should be spent on water” or related matters, the statement said.

The agency's bills for payment presented in a July 2006 board packet listed “O'Reilly Public Relations-PR Services April 2—6-Cal Camara Action-6161/1001AD \$1102.50.”

On its website, O'Reilly Public Relations of Riverside bills itself as the Inland Empire's largest public relations firm.

“The MWA has attempted to stall the trial beyond the November election because they are fearful that the public would not support the incumbents if they knew the truth about how (the board) violates the law on a routine basis with the support and assistance of their attorney...their actions are unbecoming for any elected officials,” the statement concluded. The MWA didn't immediately respond.

Camara attorney Bentley said, “There will be a trial and the trial will include presentation of witnesses and there will be direct and cross examination.”

Afterwards, a decision should come soon, she said. “I don't think the judge is going to decide until he decides, but I think he's fair.”

Camara received the most points of six applicants vying for the board seat in October 2004. The board chose Camara after a facilitator privately totaled the scores. The board unanimously voted him in, later saying it had “selected” him, as a public notice was worded, but had stopped short of appointing him.

Two days later the board rescinded the vote and chose Bishop – the third highest scorer – instead. The essence of (the MWA's argument) is that the process was noticed as a ‘selection’ of a candidate rather than the ‘appointment’ of a candidate,” Swift wrote in an Aug. 30 decision denying Camara a preliminary injunction.

But “as the record and the Attorney General's opinion make clear, the (majority of the six) directors believed they were making a final decision” when they approved Camara.

“...Moreover, the transcript leaves the strong impression that the directors and their legal experts believed the issue to be complete upon completion of the vote, which supports Camara,” Swift wrote. Therefore “it appears that Camara has a good chance of prevailing” at trial.

Camara won permission from the California Attorney General to sue last May, saying Bishop was illegally holding his seat by virtue of an illegal board action.

Swift noted the AG granted permission because “there is a substantial question requiring judicial review.”

An action of this nature lies against any person who unlawfully holds a public office, Swift noted.

It may be brought by the state Attorney General acting on his own or on a complaint “against any person who usurps, intrudes into, or unlawfully holds or exercises any public office...”It is the exclusive remedy where available, and the AG has said directors of “special act” water districts like MWA – a state water contractor covering 4,900 square miles – are covered, Swift noted.

Meanwhile Terry Francke, California's noted First Amendment and sunshine law advocate, said Aug. 31 that the case sounded unusual and almost unique.

“Sometimes people will be removed for not living within a mandated territory or such-like, but I don't recall any case in the last 30 years where someone is first appointed and then unappointed.” Francke said.