

Pamela Jo Suckla, Chairman  
Colorado State Board of Education  
23845 County Road M  
Cortez, Colorado 81321

April 2, 2008

Bob Schaffer, Vice Chairman  
Colorado State Board of Education  
5027 Alder Ct.  
Fort Collins, Colorado 80525



Dear Mr. Schaffer;

This letter is in response to the letter I received, dated March 29, 2008, concerning actions taken by the State Board of Education on the case of Mesa County Board of Commissioners, et al., vs. Colorado Department of Education (Case #: 07CV12064).

I disagree with the statement in your March 29, 2008 letter that Sherman and Howard L.L.C. was retained for the limited purpose of filing the motion to dismiss. In fact, the State Board unanimously approved the retention of Sherman and Howard L.L.C. for the purpose of representing the Colorado Department of Education in the Mesa County law suit.

On January 10, 2008, at the Colorado State Board of Education regular board meeting, a motion made by you and seconded by Karen Middleton was as follows:

Approve Retention of Law Firm of Sherman and Howard, LLC for Mesa County Commissioners, et al., vs. CDE.

Motion made by: Bob Schaffer

Motion seconded by: Karen Middleton

Voting

Unanimously Approved

Separately, the Board instructed Sherman and Howard L.L.C. to take certain actions.

On February 21, 2008, Judge Habas rejected the motion to dismiss. The State Board has received the official documentation from legal counsel.

On March 5, 2008, the State Board of Education with a motion made by Elaine Gantz Berman, seconded by Evie Hudak to convened into executive session. We were briefed by Dee Wisor and John Mill, from the firm of Sherman & Howard L.L.C. of all actions taken by them and the court. They also briefed of some possible actions that we could take at this point. All seven State Board of Education members were present. From that

briefing in executive session the board agreed, while not unanimous, to proceed as follows: Give direction to the firm of Sherman & Howard L.L.C. to proceed with defending the lawsuit on the merits in order to gain clarity on this important constitutional issue of the mill levy freeze. I believe that our legal counsel has acted entirely consist with the scope of their retention and the Board's instructions. Secondly, the board agreed that we would have an agreed-upon statement read at the March 6, 2008 Board meeting explaining the board directive. The board also agreed that because this was litigation, that no statements from individual Board members would be allowed. The statement was given to each board member prior to its reading and agreed upon to proceed. I being the Chairman, read the statement, allowed no discussion, other than asking Board members if this was correct, which they nodded, and I moved on to the next Board item on the agenda.

While I am not the expert on law, I have served on many elected boards. I have also been involved with a few litigation cases. I have always been briefed by numerous legal counsel that a board may not only meet in executive session to discuss personnel or receive legal counsel, they may also give directives in that executive session pertaining to legal matters. This is a delicate issue as litigation requires a great deal of confidential information to be held confidential. It is also noteworthy to know that if a Board member or attendee of that executive session publicly discloses information received in executive session, they may have serious negative consequences. It is my opinion, as well as legal counsel, that when the board discussed and agreed on the procedures and action we would take, that it was done within the legal realm. The Board did not have to either vote or give a statement at their regular meeting to give counsel direction. This Board's choice, although not unanimous, was to give direction and read a statement disclosing their executive action with no public discussion. I followed that directive as the Chairman.

Like you, as well as our fellow board members, I took my oath of office to uphold the Constitution as my duty. While the same oath was taken our opinion on issues may differ. You have clearly stated your opinion on this case as have others, again opinions differ. We all want to be responsible to our constituents and I believe we are proceeding in that direction. While it might serve you to debate this case it is not in the best interest of this board to debate the issue and the case's merits in a public forum. That is not our job. No matter what the outcome, either way, this issue still needs to be decided by a court of law.

Bob, as the Chairman of the State Board, I follow the directives of the majority of the members. I also follow legal counsel's advice, our practices and procedures as well as Robert's Rules of Order. During the past 3 ½ years I have worked to set procedural, productive and informative agendas. I have added items to the agendas that board members have requested at appropriate times and had to make controversial decisions on issues and their appropriateness. I believe that I have both followed the directive that the majority of the board gave on this issue as well as our practices and procedures with legal issues. Therefore I will not be adding this to the April agenda or allowing discussion on this issue.

The Board's directive on this matter was clear and unambiguous. The Colorado State Board of Education's statement was a testament to the responsibility we feel both to the 178 school districts and the taxpaying citizens of Colorado. I like all of my fellow board members want this matter decided as fast as possible with a decision that will equitably guide the financial distributions to all 178 school districts.

Respectfully,

Pamela Jo Suckla, Chairman  
Colorado State Board of Education

The logo for 'FACE THE STATE' is displayed in white text on a dark blue rectangular background. The words 'FACE' and 'STATE' are positioned on the top line, with 'THE' centered below them. A thin white horizontal line runs beneath the 'FACE' and 'STATE' text.