XAVIER BECERRA
Attorney General

State of California
DEPARTMENT OF JUSTICE

300 SOUTH SPRING STREET
LOS ANGELS, CA 90013

Public: (213) 269-6000
Telephone: (213) 269-6392
Facsimile: (213) 897-2801
E-Mail: Marc.Nolan@doj.ca.gov

August 15, 2019

Via email and U.S. Mail[1]

ALL COUNSEL:

RE: Quo Warranto application in
San Diego Municipal Employees Assoc., et al, v. City of San Diego and its City Council
Indexed Letter Opinion No. 19-404 (LA2019102302)

Dear Counsel:

We have read and considered the application for Leave to Sue in Quo Warrranto submitted by the San Diego Municipal Employees Association, San Diego City Firefighters Local 145, IAFF, AFL-CIO, AFSCME Local 127, AFL-CIO, and Deputy City Attorneys Association of San Diego (collectively, the "Proposed Relators"), as well as the materials and arguments submitted in response, and the Opinions of the California Supreme Court in *Boling v. Public Employment Relations Board, et al.* (2018) 5 Cal.5th 898 (*Boling I*), and the Fourth District Court of Appeal in *Boling v. Public Employment Relations Board, et al.* (2019) 33 Cal.App.5th 376 (*Boling II*).

For the reasons that follow, we GRANT Proposed Relators' application for Leave to Sue in Quo Warranto.

BACKGROUND

The present application comes to us after the parties have engaged in protracted litigation over the placement of Proposition B on the June 2012 municipal election ballot. Proposition B was a voter initiative measure aimed at reducing pension costs for the City of San Diego (the City) by, most significantly, eliminating defined benefit pension plans for most newly-hired City employees.

Although Proposition B was approved by the voters, Proposed Relators have contended that the measure is invalid because the City refused to bargain the pension issue with its municipal employee unions before placing the measure on the ballot, in violation of the Meyers-Milias-Brown Act (MMBA).[2]

---

[1] Service list for counsel appears *post*.

[2] Gov. Code, § 3500 et seq.

Proposed Relators ultimately prevailed on this issue in the California Supreme Court, which found that the MMBA required the City to bargain in good faith with its municipal employee unions on the pension matters addressed in Proposition B, but that the City had failed to do so.[3] After reaching its substantive conclusion on the MMBA violation, the Supreme Court remanded the matter to the Court of Appeal and asked it to "address the appropriate judicial remedy."[4]

On remand, the Court of Appeal held that Proposed Relators must seek Proposition B's invalidation through a Quo Warranto action,[5] which is the established means for seeking to invalidate a local voter initiative measure due to a failure-to-bargain MMBA violation.[6]

Under Code of Civil Procedure section 803, Proposed Relators now seek our permission (or "leave") to initiate such an action. Although Proposed Defendants City of San Diego and the San Diego City Council join in Proposed Relators' request, the Proponents of Proposition B—who drafted and obtained signatures in support of the measure and worked with some City officials to have it placed on the ballot—have submitted their opposition to it.[7]

ANALYSIS

Our analysis is straightforward: A party seeking to pursue a Quo Warranto action in superior court must first obtain the Attorney General's consent to do so.[8] In determining whether to authorize such an action, we do not attempt to resolve the merits of the controversy; rather, we merely consider (1) whether Quo Warranto is the appropriate remedy under the circumstances; (2) whether the proposed relator has raised a substantial issue of law or fact that warrants judicial resolution, and (3) whether authorizing the Quo Warranto action will serve the public interest.[9] In this case, the clear answer to all three questions is "yes."

---

[3] *Boling I, supra*, 5 Cal.5th at pp. 913-920.

[4] *Id.* at p. 920.

[5] *Boling II, supra*, 33 Cal.App.5th at pp. 384-385.

[6] *Id*; see *People ex rel. Seal Beach Police Officers' Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 595 & fn. 3 (1984).

[7] We read Proponents' submission, although nominally framed as an opposition to the granting of Leave to Sue, as more of a substantive argument why Proposition B should be upheld. Because we merely conclude here that a Quo Warranto proceeding is appropriate *to determine the validity of Proposition B*, we believe that Proponents' substantive arguments are better directed to the court that will be resolving that ultimate issue in the Quo Warranto action.

[8] *International Association of Fire Fighters v. City of Oakland* (1985) 174 Cal.App.3d 687, 693-698.

[9] *Rando v. Harris* (2014) 228 Cal.App.4th 868, 879; 72 Ops.Cal.Atty.Gen. 15, 20 (1989).

First, Quo Warranto is the appropriate remedy here. As recognized by the Fourth District Court of Appeal in the underlying litigation, numerous appellate court and Attorney General opinions have found Quo Warranto to be the correct legal process for this type of challenge.[10]

Second, Proposed Relators have raised a substantial issue of law regarding the City's failure to bargain under the MMBA, as demonstrated by the California Supreme Court's acceptance of that issue for review and the Court's subsequent ruling in Proposed Relators' favor.

Third, given the MMBA violation pertaining to Proposition B that the Supreme Court has recognized, it is in the public interest to have the matter of Proposition B's validity or invalidity conclusively resolved through the prescribed legal process of Quo Warranto.

CONCLUSION

For these reasons, Proposed Relators' application for Leave to Sue is GRANTED.[11]

Sincerely,

Marc Nolan

MARC J. NOLAN
Deputy Attorney General
Quo Warranto Coordinator
Opinion Unit

For XAVIER BECERRA
Attorney General

MJN:arp
LA2019102302
Issued Opinion Index Letter 19-404.docx

---

[10] *Seal Beach, supra,* 36 Cal.3d at p. 595 & fn. 3; see *City of Fresno v. People ex rel. Fresno Firefighters* (1999) 71 Cal.App.4th 82, 89; *International Assn. of Fire Fighters v. City of Oakland, supra,* 174 Cal.App.3d at pp. 693-698; 96 Ops.Cal.Atty.Gen. 1, 2-3 (2013); 95 Ops.Cal.Atty.Gen. 50, 51 (2012); 95 Ops.Cal.Atty.Gen. 31, 32 (2012); 74 Ops.Cal.Atty.Gen. 77 (1991).

[11] The Attorney General maintains control over Quo Warranto actions that this Office authorizes. (See Cal. Code Regs., tit. 11, §§ 8-9.) Specific instructions for filing the Quo Warranto complaint will follow under separate cover.