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Great Park board reviews hiring process

Board members address legal action, search for CEO.

By ELYSSE JAMES
THE ORANGE COUNTY REGISTER

The Great Park board members bickered Thursday about the hiring process for a new CEO a day after a [complaint was filed](#) against the Great Park Corporation contending two members had not been allowed to see hiring documents.

Board members Christina Shea and Steven Choi filed the complaint, saying they have a right to view resumes and other documents pertaining to job candidates.

In a nine-minute remark, board member Bill Kogerman said he was outraged Shea and Choi had chosen to disrupt the proper conduct of the board and insult the search committee with corruption allegations. He requested a public apology from the two for what he called their intemperate language and accusations, and said their actions amounted to obstructive political campaigning.

Choi said he and Shea feel it is their right and privilege to view resumes and that had Choi been able to view the documents in November the board would have avoided the personal attacks that were launched Thursday.

He also said he and Shea filed the complaint to seek transparency and justice in the process. The two are questioning whether a nationwide search was conducted.

Shea said the process was difficult and troubling, and that she was disappointed that they had to file the lawsuit.

The complaint filed in Santa Ana Superior Court alleges that the nine-member Great Park board, not just the search committee created to assist in hiring a CEO, should be allowed to see resumes, e-mails and other documents pertaining to the search for a new CEO.

The Great Park board consists of Kogerman, Michael Pinto, Miguel Pulido and Walkie Ray, as well as Mayor Beth Krom and city council members Choi, Shea, Larry Agran and Sukhee Kang.

The search committee is comprised of Agran, Kang, Kogerman, Pulido, City Manager Sean Joyce and interim CEO Sharon Landers. The committee was formed July 12.

Also at Thursday's meeting, Lisa Mills of The Mills Group reviewed the recruiting strategy used in the nationwide search. Mills said the group received 150 applications from 13 states and five countries.

Mills said she asked each board member for qualities they wanted in a CEO and asked if they had anyone to recommend. From the 150 applications, five had interviews with the Mills Group and the search committee. Two top candidates declined the position.

The next meeting is at 1 p.m. Jan. 31.

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CORPORATIONS CODE

SECTION 6330-6338

6330. (a) Subject to Sections 6331 and 6332, and unless the corporation provides a reasonable alternative pursuant to subdivision (c), a member may do either or both of the following as permitted by subdivision (b):

(1) Inspect and copy the record of all the members' names, addresses and voting rights, at reasonable times, upon five business days' prior written demand upon the corporation which demand shall state the purpose for which the inspection rights are requested; or

(2) Obtain from the secretary of the corporation, upon written demand and tender of a reasonable charge, an alphabetized list of the names, addresses, and voting rights of those members entitled to vote for the election of directors, as of the most recent record date for which it has been compiled or as of a date specified by the member subsequent to the date of demand. The demand shall state the purpose for which the list is requested. The membership list shall be made available on or before the later of 10 business days after the demand is received or after the date specified therein as the date as of which the list is to be compiled.

(b) The rights set forth in subdivision (a) may be exercised by:

(1) Any member, for a purpose reasonably related to the person's interest as a member. Where the corporation reasonably believes that the information will be used for another purpose, or where it provides a reasonable alternative pursuant to subdivision (c), it may deny the member access to the list. In any subsequent action brought by the member under Section 6336, the court shall enforce the rights set forth in subdivision (a) unless the corporation proves that the member will allow use of the information for purposes unrelated to the person's interest as a member or that the alternative method offered reasonably achieves the proper purpose set forth in the demand.

(2) The authorized number of members for a purpose reasonably related to the members' interest as members.

(c) The corporation may, within 10 business days after receiving a demand under subdivision (a), deliver to the person or persons making the demand a written offer of an alternative method of achieving the purpose identified in the demand without providing access to or a copy of the membership list. An alternative method which reasonably and in a timely manner accomplishes the proper purpose set forth in a demand made under subdivision (a) shall be deemed a reasonable alternative, unless within a reasonable time after acceptance of the offer the corporation fails to do those things which it offered to do. Any rejection of the offer shall be in writing and shall indicate the reasons the alternative proposed by the corporation does not meet the proper purpose of the demand made pursuant to subdivision (a).

6331. (a) Where the corporation, in good faith, and with a substantial basis, believes that the membership list, demanded under Section 6330 by the authorized number (Section 5036), will be used for a purpose not reasonably related to the interests as members of the person or persons making the demand (hereinafter called the requesting parties) as members or provides a reasonable alternative pursuant to subdivision (c) of Section 6330, it may petition the superior court of the proper county for an order setting aside the demand.

(b) Except as provided in subdivision (c), a petition for an order to show cause why a protective order pursuant to subdivision (d) should not issue shall be filed within 10 business days after the demand by the authorized number under Section 6330 or receipt of a written rejection by the authorized number of an offer made pursuant to subdivision (c) of Section 6330, whichever is later. The petition shall be accompanied by an application for a hearing on the petition. Upon the filing of the petition, the court shall issue a protective order staying production of the list demanded until the hearing on the order to show cause. The court shall set the hearing on the order to show cause not more than 20 days from the date of the filing of the petition. The order to show cause shall be granted unless the court finds that there is no reasonable probability that the corporation will make the showing required under subdivision (f).

(c) A corporation may file a petition under this section more than 10 business days after the demand or rejection under Section 6330, but only upon a showing the delay was caused by excusable neglect. In no event, however, may any petition under this section be considered if filed more than 30 days after the requesting parties' demand or rejection, whichever is later.

(d) Upon the return day of the order to show cause, the court may issue a protective order staying production of the list demanded until final adjudication of the petition filed pursuant to this section. No protective order shall issue under this subdivision unless the court finds that the rights of the requesting parties can reasonably be preserved and that the corporation is likely to make the showing required by subdivision (f) or the court is likely to issue a protective order pursuant to subdivision (g).

(e) If the corporation fails to file a petition within the time allowed by subdivision (b) or (c), whichever is applicable, or fails to obtain a protective order under subdivision (d), then the corporation shall comply with the demand, and no further action may be brought by the corporation under this section.

(f) The court shall issue the final order setting aside the demand only if the corporation proves:

(1) That there is a reasonable probability that the requesting parties will permit use of the membership list for a purpose unrelated to their interests as members; or

(2) That the method offered by the corporation is a reasonable alternative in that it reasonably achieves the proper purpose set forth in the requesting parties' demand and that the corporation intends and is able to effectuate the reasonable alternative.

(g) In the final order, the court may, in its discretion, order an alternative mechanism for achieving the proper purposes of the requesting parties, or impose just and proper conditions upon the use of the membership list which reasonably assures compliance with Sections 6330 and 6338.

(h) The court shall award reasonable costs and expenses, including reasonable attorneys' fees, to requesting parties who successfully oppose any petition or application filed pursuant to this section.

(i) Where the corporation has neither, within the time allowed, complied with a demand by the authorized number (Section 5036) under Section 6330, nor obtained a protective order staying production of the list, or a final order setting aside the demand, which is then in effect, the requesting parties may petition the superior court of the proper county for a writ of mandamus pursuant to Section 1085 of the Code of Civil Procedure compelling the corporation to comply with the demand. At the hearing, the court shall hear the parties summarily, by affidavit or otherwise, and shall issue a peremptory writ of mandamus unless it appears that the demand was not made by an authorized number (Section 5036), that the demand has been complied with, that the corporation, pursuant to subdivision (c) of Section 6330, made an offer which was not rejected in writing within a reasonable time, or that a protective or final order properly issued under subdivision (d), (f) or (g) is then in effect. No inquiry may be made in such proceeding into the use for which the authorized number seek the list. The court shall award reasonable costs and expenses, including reasonable attorneys' fees, to persons granted an order under this subdivision.

(j) Nothing in this section shall be construed to limit the right of the corporation to obtain damages for any misuse of a membership list obtained under Section 6330, or otherwise, or to obtain injunctive relief necessary to restrain misuse of a member list. A corporation shall be entitled to recover reasonable costs and expenses, including reasonable attorneys' fees, incurred in successfully bringing any such action.

6332. (a) Upon petition of the corporation or any member, the superior court of the proper county may limit or restrict the rights set forth in Section 6330 where, and only where such limitation or restriction is necessary to protect the rights of any member under the Constitution of the United States or the Constitution of the State of California. An order issued pursuant to this subdivision shall provide, insofar as possible, for alternative mechanisms by which the persons seeking to exercise rights under Section 6330 may communicate with members for purposes reasonably related to their interests as members.

(b) Upon the filing of a petition under subdivision (a), the court may, if requested by the person making the petition, issue a temporary order suspending the running of any time limit specified in Section 6330 for compliance with that section. Such an order may be extended, after notice and hearing, until final adjudication of the petition, wherever it appears that the petitioner may prevail on the merits, and it is otherwise equitable to do so.

6333. The accounting books and records and minutes of proceedings of the members and the board and committees of the board shall be open to inspection upon the written demand on the corporation of any member at any reasonable time, for a purpose reasonably related to such person's interests as a member.

6334. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records and documents of every kind and to inspect the physical properties of the corporation of which such person is a director.

6335. Where the proper purpose of the person or persons making a demand pursuant to Section 6330 is frustrated by (1) any delay by the corporation in complying with a demand under Section 6330 beyond the time limits specified therein, or (2) any delay caused by the filing of a petition under Section 6331 or Section 6332, or (3) any delay caused by the alternative proposed under subdivision (c) of Section 6330, the person or persons properly making the demand shall have, in the discretion of the court, a right to obtain from the superior court an order postponing any members' meeting previously noticed for a period equal to the period of such delay. The members may obtain such an order in a proceeding brought pursuant to Section 6331 upon the filing of a verified complaint in the proper county and after a hearing, notice of which shall be given to such persons and in such manner as the court may direct. Such right shall be in addition to any other legal or equitable remedies to which the member may be entitled.

6336. (a) Upon refusal of a lawful demand for inspection under this chapter, or a lawful demand pursuant to Section 6330 or Section 6333, the superior court of the proper county, or the county where the books or records in question are kept, may enforce the demand or right of inspection with just and proper conditions or may, for good cause shown, appoint one or more competent inspectors or independent accountants to audit the financial statements kept in this state and investigate the property, funds and affairs of any corporation and of any subsidiary corporation thereof, domestic or foreign, keeping records in this state and to report thereon in such manner as the court may direct.

(b) All officers and agents of the corporation shall produce to the inspectors or accountants so appointed all books and documents in their custody or power, under penalty of punishment for contempt of court.

(c) All expenses of the investigation or audit shall be defrayed by the applicant unless the court orders them to be paid or shared by the corporation.

6337. In any action or proceeding under this article, and except as required by Section 6331, if the court finds the failure of the corporation to comply with a proper demand thereunder was without justification, the court may award the member reasonable costs and expenses, including reasonable attorneys' fees, in connection with such action or proceeding.

6338. (a) A membership list is a corporate asset. Without consent of the board a membership list or any part thereof may not be obtained or used by any person for any purpose not reasonably related to a member's interest as a member. Without limiting the generality of the foregoing, without the consent of the board a membership list or any part thereof may not be:

(1) Used to solicit money or property unless such money or property will be used solely to solicit the vote of the members in an election to be held by their corporation.

(2) Used for any purpose which the user does not reasonably and in good faith believe will benefit the corporation.

(3) Used for any commercial purpose or purpose in competition with the corporation.

(4) Sold to or purchased by any person.

(b) Any person who violates the provisions of subdivision (a) shall be liable for any damage such violation causes the corporation and shall account for and pay to the corporation any profit derived as a result of such violation. In addition, a court in its discretion may award exemplary damages for a fraudulent or malicious violation of subdivision (a).

(c) Nothing in this article shall be construed to limit the right of a corporation to obtain injunctive relief necessary to restrain misuse of a membership list or any part thereof.

(d) In any action or proceeding under this section, a court may award the corporation reasonable costs and expenses, including reasonable attorneys' fees, in connection with such action or proceeding.

(e) As used in this section, the term "membership list" means the record of the members' names and addresses.