

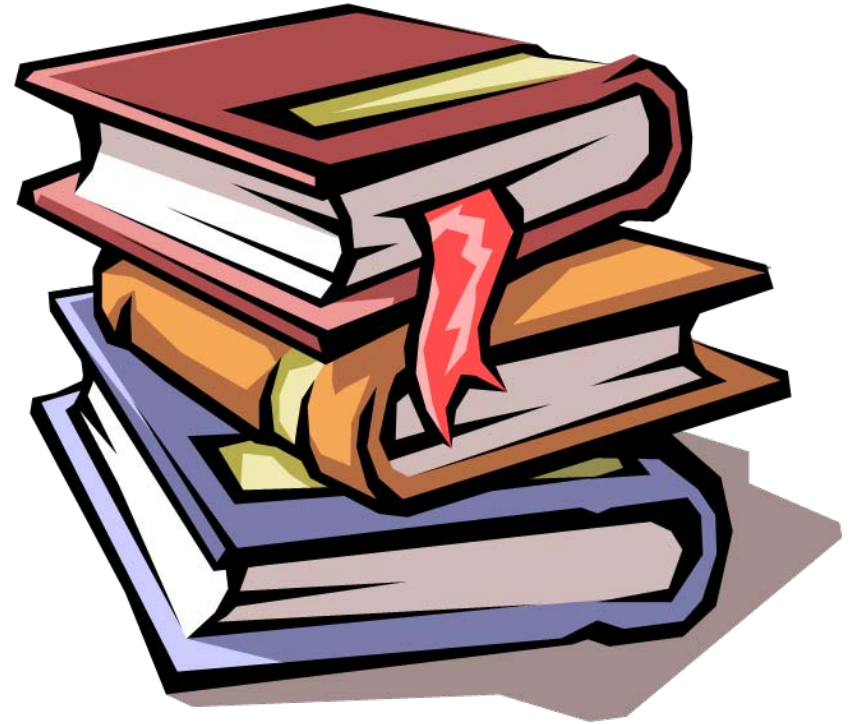
CASBO Beyond Boot Camp:
Breaking Legal Issues for CBOs

Basic Contract Provisions

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1. Elements of a Contract

- Offer/counter offer
- Acceptance/rejection
- Consideration



2. Contract: A Bridge of Understanding

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- When I use a word," Humpty Dumpty said, in rather a scornful tone, "it means just what I choose it to mean - neither more nor less."
- From the California Supreme Court: The English language is imprecise - "a rule that would limit the determination of the meaning of a written instrument to its four-corners merely because it seems to the court to be clear and unambiguous, would either deny the relevance of the intention of the parties or presuppose a degree of verbal precision and stability our language has not attained"

3. Delegation of Authority to CBOs

- Ed Code 17604 - Board may delegate by majority vote to District Superintendent (or to “any persons that he or she may designate”). However, no contract made pursuant to this delegation is valid unless “the same shall have been approved or ratified” by the Board by a motion duly passed and adopted.



3. Delegation of Authority to CBOs (cont.)

- Ed Code 17605 delegation for supplies, equipment and services – governing board may delegate authority to purchase supplies, material and services not in excess of amounts under section 20111 of Public Contract Code (\$15,000 public works projects; \$72,400 for equipment, materials, supplies and services 20111(d))



4. Void Contracts

- No Board Approval
- Super Majority Approval
- Conflict of Interest
 - Gov Code 1090
 - Political Reform Act (FPPC)
 - Common Law



4. Void Contracts (cont.)

- Ultra Vires
 - Contrary to law – Round Valley case and CBA agreements
 - Administrator contracts in excess of statutory year maximum or buy out maximum
 - Improper bid award



5. Public Policy/Constitutional Issues

- Contract cannot bind future Board's legislative decision-making
- Contract cannot bind future budgets (exceptions)
- Duration for work, services or equipment not to exceed 5 years; for materials or supplies not to exceed 3 years (Ed Code 17596)
- Soft drink contracts and advertising (public hearing)

6. A Word on Piggybacking

- Pub. Contract Code § 20118
 - For purchase of materials, not services
 - Contract terms must be the same
 - Review the contract!

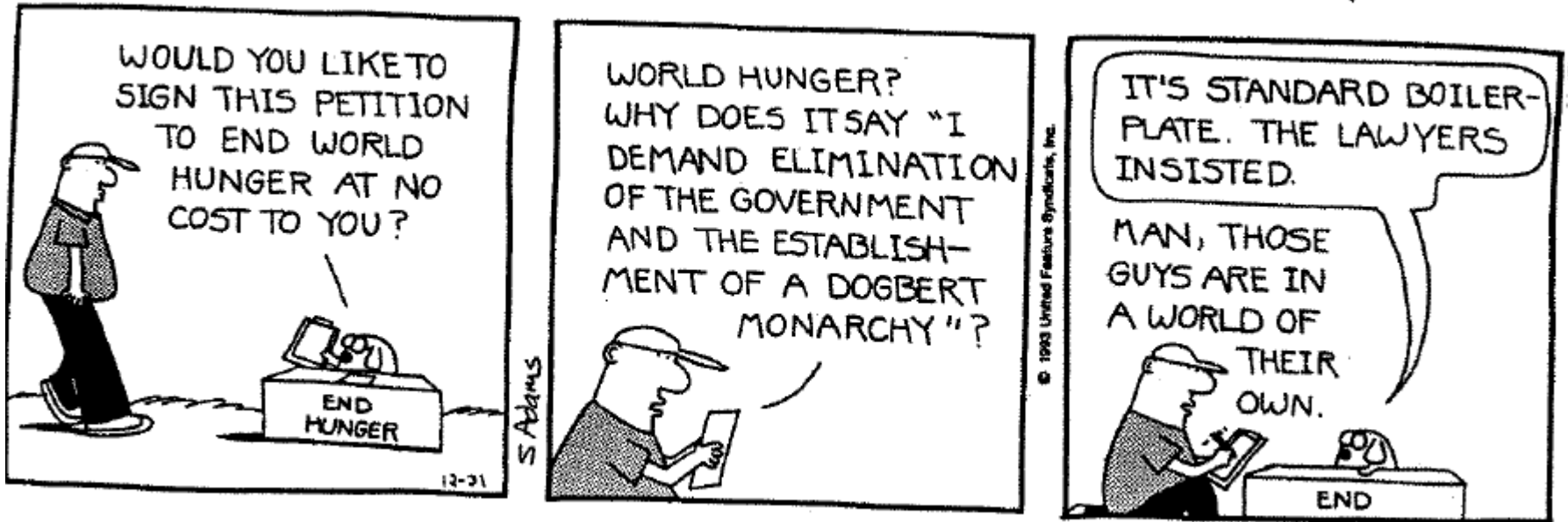


7. Remedies for Default/Breach

- Time to cure
- Termination for non-performance
- Specific performance
- Proof of breach
- Selection of forum



8. Standard Contract Clauses



8. Standard Contract Clauses (cont.)

- Indemnity/Hold harmless/Defense
- Integration clause
- Binding effect – successors and assignees
- Written modification



8. Standard Contract Clauses (cont.)

- Non-delegation of rights, duties, and obligations
- Attorneys fee clauses – to use or not to use
- Governing Law/Venue
- Alternative Dispute Resolution (ADR)
- Interpretation

8. Standard Contract Clauses (cont.)

- Execution by Facsimile or Counterpart
- Severability
- Authority to Sign
- Board Approval/Ratification

9. Contract Arrangements

Binding and Not Binding

- Letter of Intent
- Memorandum of Understanding
- Compromise, Settlement and Release Agreement
 - Scope of release – Civil Code 1542
 - ADEA – over 40, federal enforcement and right of rescission

10. Contract Review by CBOs

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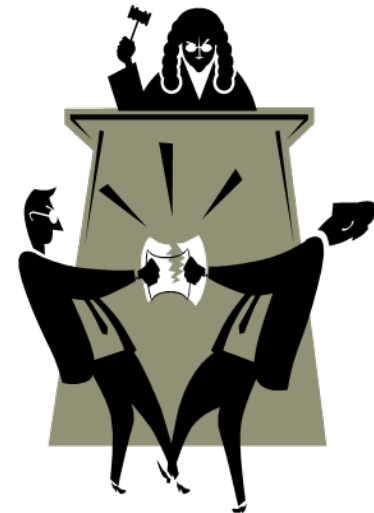
10. Contract Review by CBOs (cont.)

- Understanding the contract
 - Read the fine print
- Scope of agreement
- Clarity of issues
- Clarity of definitions
- Is this the agreement as you understood it?



11. Avoiding Litigation

- STP commercial: “Pay me now or pay me later.”
- Simplify when possible
 - Plain English is allowed!
- Eliminate ambiguity
- Review contract – trust but verify
- Vendor’s contract will favor vendor



11. Avoiding Litigation (cont.)

- Assessing risk (e.g., software contracts and warranties – bargaining position)
- Purchase order (P.O.) contracts
- Don't assume attorney got it right
 - The business decision is yours.

