

2008-2009

Interim Reports

Merced County

Civil Grand Jury

Postscript to FY2007/2008 Grand Jury's Report On The City of Livingston

Summary

On its own initiative, this Grand Jury voted to revisit the findings of the previous year's Grand Jury as relates to the City of Livingston. This decision was prompted by the City of Livingston's response to those findings that primarily consisted of denials of all the findings without elaboration. This year's Grand Jury felt that response did not comply with either the letter or the spirit of the law governing such responses. Therefore, and in accordance with the provisions of California Penal Code Section 939.9 that requires each Grand Jury to only make a report "on the basis of its own investigation of the matter", the County Administration/County Services Committee was tasked with conducting a new and independent investigation.

Introduction

Briefly, the findings of the FY2007/2009 Grand Jury can be summarized thusly:

- Some members of the City Council went directly to City staff to demand favorable treatment for themselves or family and friends.
- A needed position of Code Enforcement Officer, which had been authorized in the City's budgets for both Fiscal Years 2006/2007 and 2007/2008, had yet to be officially authorized by the City Council.
- Published minutes of the City County meetings were incomplete or inaccurate. However, the City does record those meetings and they can be made available to the public at a nominal cost.
- Allegations of violation of the Brown Act while suspected could not be substantiated.
- City Council members allow personal differences and conflicts to interfere with voting and decision making.
- Council Member Espinoza's purchase of property within the Redevelopment area while he was a Director of that Agency did not technically constitute a violation of California Health & Safety Code Section 3130(a).
- There was no clear evidence on the recorded City Council Meetings that Council Members voted on non-agenda items.

Method of Investigation

The County Administration/County Services Committee interviewed City of Livingston staff and private citizens, some of whom were the original complainants. The Committee declined to request interviews with Mayor Samra, as his was the only signature on the City's Response, or Council Member Espinoza since last year he availed himself on three separate occasions of his 5th Amendment rights although that Grand Jury had posed no questions to him concerning any alleged criminal conduct.

Findings

City Staff members once again testified to micro management and intimidation by some members of the City Council. However, they do agree that last year's Grand Jury report has caused these Members to be more circumspect in their demands for special treatment. Rather than directly approaching staff, these Members work through "at will" Supervisors to achieve those ends. In most instances, revealing specific details of these demands would cause the City employees involved to feel even more threatened and fearful for their jobs than they do already. The exception concerns pressure applied by Mayor Samra and Council Member Espinosa upon Police Chief William Eldridge to tow more automobiles. Chief Eldridge agreed that his name and the circumstances of this questionable behavior could be cited in this Report. He stated that on several occasions, the Mayor and the Council Member met with him and insisted that he direct his officers to cause more automobiles to be towed. The fact that Council Member Espinosa owns a towing company did not seem to register as an obvious conflict of interest to the two gentlemen. Finally, Chief Eldridge had to send a memo to the City Manager indicating the legal guidelines he and his officers must follow as regards the towing of automobiles.

All public employees have a right and a need to believe that if they follow the rules of their agency and treat all members of the public they serve with equal fairness they will not get in trouble with their governing board. When this belief is shaken, the employees get frustrated, fearful and, sometimes, indecisive. This new culture permeates their agency and creates a work environment detrimental to what is best in public service. Moreover, when members of a governing board serve the public only half as well as they serve themselves and insist on micromanaging the City, it is left to the City Manager, who is the Council's "at will" employee, to tidy up after them. His position then becomes akin to that of the circus worker who dutifully trails after the elephant parade with a wheeled bucket and shovel.

Testimony was given by several witnesses that at a 2007 City Council Meeting, without public discussion, three Council Members voted to scale down a previously voted on capital improvement project to pave the City's alleyways. This decision came as a complete surprise to the other two Council Members. While no violation of the Brown Act was observed or proven, unless the three Council Members shared a common cognitive flash of inspiration at the same moment in time, the appearance of a violation certainly exists.

As of the date of this report, no Code Enforcement Officer has been hired and no current recruitment is being conducted for that position.

As regards Council Member's Espinoza's refusal to give testimony before last year's Grand Jury, while silence is not assent in this case it does speak volumes about the Council Member's unwillingness to be candid about his actions as a public official.

Recommendations

In the most recent election, the Mayor and two City Council Members were voted out of office. Council Member Espinoza was not up for election. The Grand Jury strongly believes that this report as well as last year's report should be taken as a cautionary note to the new members of the Council. They can profit from a bad example. We also strongly urge the City Manager and City Attorney to brief the new City Council Members on their legal roles and responsibilities as well as give the carry over City Council Members a refresher course on these issues. We also recommend for the 2nd time, the recruitment and hiring of a Code Enforcement Officer.

Last year's report was only responded to by the Mayor. While the Mayor may comment on the report, California Penal Code Section 933 clearly states that the governing board of the agency must respond. Testimony was given that the City of Livingston's response to last year's Grand Jury Report was not agreed upon by all Members of the City Council. If dissention again exists this year, we can find nothing in the law that would prohibit a minority response.

Complaint # 08-09-5

Merced City School Teachers Association

SUMMARY

The Grand Jury received a complaint regarding the Merced City School District's lack of clarity and comprehensiveness in accounting for and reporting of revenue and expenditures in the Employee Benefits Insurance Program for the last two years. The complaint was accepted and assigned to the Health, Education and Welfare Committee. In its investigation the committee found that prior to 10/01/03, the Merced City School District (MCSD) had serviced its health care benefits for certificated employees by using SISK (Self Insure Schools of Kern), a statewide consortium of school districts that pooled their funds to minimize risk. From 10/01/03 until 06/31/07, the MCSD was self funded for health care benefits. On July 1, 2008, the MCSD returned to SISK. In its investigation, the committee also found that administrative staff changes within the Business Office during the above timeframe were pertinent to the complaint.

INTRODUCTION

The Grand Jury received a complaint that mismanagement of health care funding had caused an increase in employee contributions toward health care insurance premiums and that, for the last two years, requests for an accounting of health care costs have been met with varied, inconsistent and inaccurate figures.

METHOD OF INVESTIGATION

Individuals from the District Teachers Association and the Business Office were interviewed. Documents presented by these individuals were reviewed. Among the documents reviewed were revenue and expenditure reports pertinent to the Employee Benefits Insurance Program and the MCSD Annual Financial Reports for fiscal year 03-04 through 06-07, the latter being provided by the independent auditing firm of Vavrinek, Trine, Day & Co. , LLP.

FINDINGS

During the last two fiscal years, the Merced City School District has undergone dramatic staff changes within the Business Office, not the least of which was the departure of its Chief Financial Officer. These changes alone have contributed to the breakdown of communications between the MCSD and the District Teachers Association (DTA). Additionally, in 2004-05, an exceptionally bad year in terms of insurance claims (a period in which the MCSD was self funding its health insurance) there was a significantly large deficit in the fund that eventually resulted in an audit adjustment and the completion of an additional actuarial study.

It is clear from the Annual Financial Reports that there has been no effort on the part of the MCSD to be deceptive in its accounting of revenue and expenditures in the Benefits Insurance Program. However, the committee finds that it is exceedingly difficult to follow and fully understand the internal documents used by administrative staff to report transactions within this program to the DTA.

RECOMMENDATIONS

1. The MCSD should carefully monitor the revenue and expenditures of its Benefits Insurance Program and provide timely reports to the DTA that clearly reflect the status of the Program.

Since the MCSD and the MTA meet on a monthly basis,
2. The MCSD should augment its efforts to communicate financial transactions within the Benefits Insurance Program in a manner that can be easily understood by ^{the} certificated employees.

3. The MCSD should give serious consideration to the DTA's request for the establishment of a Trust Fund for specific purpose of compartmentalizing all financial transactions related to the Employee Benefits Insurance Program.