San Joaquin County Grand Jury

District Board Ignores the Peoples' Right to be Informed
2012-2013 Case No. 1112

Summary

In 1953 the California State Legislature recognized the public's right to know what actions legislative bodies were voting on before the actual vote took place. The Legislature enacted the Ralph M. Brown Act (Government Code Section 54950 *et seq.*) which, among other provisions, required legislative bodies to post agendas not less than 72 hours before a meeting with descriptions of all proposed actions in sufficient detail so that the public could understand what was being voted on. This requirement applies to all local governments in the State, including all special districts.

When a legislative body circumvents the requirements of the Brown Act, when actions are taken that are not clearly explained to the public, and when legislative members themselves do not understand what they are voting on, the public's trust of honest governance begins to collapse. By observation, review of documents and sworn testimony the actions of the San Joaquin County Mosquito and Vector Control District (District) and its Board of Trustees (District Board) bring into question its commitment to transparency and compliance with this State law. The 2012-2013 San Joaquin County Grand Jury (Grand Jury) suggests that the San Joaquin County Board of Supervisors (Board of Supervisors) exercise all pertinent authority to impose requirements upon the District to permit the public greater access to the District's meeting agendas and reports. In addition, the appropriate authorizing bodies should consider adopting term limits to ensure that fresh ideas are brought before the District Board. The Grand Jury also has concerns about whether having a separate district with a separate board as the legislative body is the most effective structure for the present and future needs of the County.

Glossary

Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 *et seq*.) regulating the conduct of public meetings and related public information.
***et seq*.**	To include sections that immediately follow the identified section and pertaining to the same topic.
Serial Meeting	A series of communications, each of which involves less than a quorum of the legislative body, but which taken as a whole, involve a majority of the body's members, for the purpose of developing a concurrence as to action to be taken. Prohibited under the Brown Act.

Background

All California public entities are required to conduct their business in a transparent manner at meetings open to the general public. These requirements under the Ralph M. Brown Act (Brown Act) have been in existence since 1953. The San Joaquin County Mosquito and Vector Control District (the District) is a public entity subject to the Brown Act. Among the mandates under the Brown Act, governing bodies are required to publish their agenda at least 72 hours before a meeting along with their proposed agenda actions containing sufficient information for the public to understand the topic being considered and the proposed action. It also requires the public to be permitted to speak on any agenda item before action is taken. Such advance notice and clarity were not provided to the District's constituents regarding health insurance benefits for the District Trustees.

The District offers health insurance benefits to its employees, which include medical, dental and vision coverage for the employee, the employee plus one or the employee and family. The District pays for the costs of the monthly insurance premium up to a maximum fixed amount. For 2013, the maximum benefit District payments are:

Medical - $1,599.36
Dental - $108.32
Vision - $21.92

Any cost for health insurance benefits above that dollar amount is paid for by the employee.

On March 19, 2009, the District adopted a policy to permit members of the District's Board of Trustees (Trustees) to participate in the District's health care benefit plans in the same manner as other employees of the District. Currently, six of the 11 Trustees participate in the health insurance plans. Two Trustees participate in only dental and vision coverage at a Trustee plus one rate. The

monthly District cost for each is $82.13 with the Trustee paying $32.56 out-of-pocket. One Trustee is enrolled in medical, dental and vision coverage for only the Trustee option. The District's monthly cost is $731.00, with no Trustee out-of-pocket cost. One Trustee participates in medical, dental and vision coverage for the Trustee plus one, with a monthly District cost of $1,312.41 and $136.34 paid out-of-pocket. One Trustee has full family coverage for medical, dental and vision with a monthly District cost of $1,729.60, and out-of-pocket expenses of $499.52. The sixth Trustee participates in a family medical program with a District cost of $1,599.36 and no out-of-pocket cost. The total District contribution for all Trustee health insurance benefits is $5,536.63 a month, or $66,439.56 per year.

After the public disclosure (in July 2012) regarding the details of the March 2009 action, the Trustees placed an agenda item before them on November 20, 2012, to reaffirm the previous action to permit Trustees to participate in the health benefit plan. The matter was continued at that time to permit a three-member committee composed of a Trustee, the District's general manager and the District's legal counsel to review the proposal and provide options for a future Trustee action. No action was taken at the regular December 18, 2012 meeting due to discussion about the District's budget. On January 15, 2013, the matter appeared on the District's agenda as Item No. 6, "*Review of Current Trustee Health Insurance Plan*" and was adopted by a unanimous vote of the Trustees.

After a review of State laws, the Grand Jury found no evidence that the District Board's action to make health insurance benefits available to Trustees violated any law. However, while investigating the two complaints received, it found other significant issues related to the District Board's legislative actions which warranted further investigation.

Issues

The 2012-2013 Grand Jury received two complaints from a citizen related to the San Joaquin County Mosquito and Vector Control District Board of Trustees. One related to a discrepancy in the Trustee's compensation listed on the District's Fact Sheet provided to the San Joaquin County Board of Supervisors (and made available to the public). The Fact Sheet did not list the health insurance benefits available to the Trustees.

The second complaint alleged there was a possibility that illegal serial meetings took place between Trustees and District management prior to the January 15, 2013 District Board meeting, which would be a violation of the Brown Act. This complaint was based on an allegation, as stated by the complainant, that the Trustee Board Chairman began the discussion on the health insurance agenda item by stating "*he was certain of the Board's consensus on this issue.*"
The Grand Jury investigated the first complaint and found that no violation of the California Government Code occurred. The District amended its Fact Sheet to include the Trustees' participation in the employee health insurance plan.

The Grand Jury investigated the second compliant; after reviewing numerous sworn testimony, District documents and e-mails, it found no evidence to substantiate the claim of Trustees or

District employees engaging in serial meetings. This complaint was determined by the Grand Jury to be unsubstantiated.

However, the Grand Jury found three general areas of concern. First, there were examples of violations of the Brown Act regarding the manner in which the District Board conducted its public business. Second, while not a violation of any State law or regulation, the Grand Jury found that Trustees lacked a basic understanding of the District's finances or the specifics of what they were voting on. The third area of concern raised during the investigation was the appointment of Trustees and the sense of entitlement to the position by some of the Trustees.

This Grand Jury investigation was structured to focus on five specific issues:

1. Lack of transparency and compliance with the Brown Act at District Board meetings

2. Lack of understanding about action related to health insurance benefits

3. Trustees' knowledge of District finances

4. Appointment of Trustees to the District Board

5. The best governance structure of the District Board to serve the public

Method of Investigation

The Grand Jury investigated the complaints and the subsequent expansion of scope through the following:

Materials Reviewed

Citizen complaints and accompanying documentation

Applicable California Government Code

San Joaquin County Mosquito and Vector Control District website

San Joaquin County Mosquito and Vector Control District Fact Sheet

San Joaquin County Mosquito and Vector Control District Board of Trustee meeting agendas and informational packets

Financial information provided by the San Joaquin County Mosquito and Vector Control District Board

Various e-mails and letters by and between District Trustees, management and legal counsel

State Controller's website related to mosquito and vector control districts' financial reporting

Interviews Conducted

Complainant

Nine of 11 Trustees of the San Joaquin County Mosquito and Vector Control District

Senior management of the San Joaquin County Mosquito and Vector Control District

Sites Visited

Meetings of the San Joaquin County Mosquito and Vector Control District Board of Trustees

Discussion, Findings and Recommendations

1.0 Lack of Transparency and Compliance with the Brown Act at District Board Meetings

District Trustees are charged with oversight of the San Joaquin County Mosquito and Vector Control District's operations in the interest of the public good. They hold monthly District Board meetings to conduct business related to the District's operations in protecting the public from harm caused by mosquitos and other vermin, in a manner that is comprehensive in nature and without consideration of city boundaries. The Grand Jury recognizes the good work performed by District employees in fulfillment of this obligation, its role in educating the public about insects and vector dangers and its programs to protect the public's health. However, based on sworn testimony, review of documentations, and attendance at Board meetings, the Grand Jury is concerned about the Trustees' procedures that limit the public's ability to know about District-related issues being considered and acted upon.

The Brown Act contains very specific requirements for all public legislative bodies, such as this Board of Trustees, relating to how their meetings are to be publicly noticed, how agendas are to be prepared and how the public is to be accommodated during the meeting. Government Code Section 54954.2(a) (1) states in part *"…the local agency or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed…."* The purpose of this requirement is to allow the public to have advance notice of what business is before the Board with enough information for the public to understand what the Board will be discussing and what the proposed action will be.

The March 19, 2009 District Board agenda contained the following item "*District-sponsored Health and Welfare Plan; Resolution 08/09-XX, authorizing eligible trustees to participate in District sponsored health and welfare plans.*" For the January 15, 2013 Board meeting, the agenda item was listed as "*Review of Current Trustee Health Insurance Plan.*" While the 2009 meeting agenda description could loosely be interpreted as meeting the Brown Act requirement for a description,

the January 2013 meeting description failed to meet the legal requirements. The action of the Trustees during the meeting was to discuss not the Plan itself, but rather the Trustees' participation in the plan. If the agenda item was described as only for the purpose to review the health insurance plan, the District Board would be prohibited from taking any action on the plan since the description gave no indication that an approval action would occur.

The Brown Act very clearly promotes opportunities for the public to engage in public meetings with the ability to comment on any item on the agenda, and on any other issue within the jurisdiction of the governing body. That opportunity must be free from the perception of fear or intimidation and without restriction. Any requirement for a member of the public to identify themselves must be voluntary. Government Code Section 54953.3 states in part "…*If an attendance list, register, questionnaire, or other similar document is posted at or near the entrance to the room where the meeting is to be held…it shall state clearly that the signing, registering, or completion of the document is voluntary.*" At meetings attended by members of the Grand Jury, members were required to sign in on a form presented by a District employee. There was no indication on the sign-in sheet or on any other printed material or website that providing one's name and affiliation was voluntary.

In order for the public to be informed about the activity of the District and its Board, it must have access to accurate and relevant information. Related agenda material must be available in a timely manner such that the public can form an informed opinion to support meaningful discussion on matters listed on the agenda. Government Code Section 54957.5 states in part "*… agenda of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion of consideration at a public meeting of the body, are disclosable public records under the California Public Records Act.*" No copies of the materials provided to Trustees for their meetings are available for the public's review prior to or at the time of the meeting. At the February 19, 2013 meeting of the District Board, a member of the Grand Jury requested a copy of the agenda materials provided to the Trustees. The member was advised by a District employee that approval had to be obtained from the President of the Board prior to it being available to the member of the public. Access was denied to the public member until after the Board meeting had concluded.

Findings

F1.1 The Board of Trustees failed to comply with the Government Code Section 54954.2(a) (1) by providing an inadequate description of agenda items proposed for discussion and action at a public meeting. Specifically, it violated the Brown Act at its January 15, 2013 District Board meeting by having an inadequate description of Item No. 6 *Review of Current Trustee Health Insurance Plan,* under consideration and the proposed action to be taken by the Board.

F1.2 The District Board violated the requirements of California Government Code Section 54953.3 by failing to have clearly indicated on its sign-in sheet that such a requirement was a voluntary action for the public and that no adverse impact would result from failing to sign.

F1.3 The District Board violated Government Code Section 54957.5 by failing to have the agenda materials provided to Trustees available to the public at the same time as delivered to the Trustees. It also placed restrictions on the public's access to the materials before and during Trustee meetings.

F1.4 At the time this investigation started, the only information on the District's website was the current meeting agenda. Information about prior meeting agendas, agenda background materials and meeting minutes was not accessible on the website. This information has subsequently been added to the District's website.

Recommendations

R1.1.1 As a result of its violation of the Government Code 54954.2(a) (1), the Board of Trustee immediately rescind its action on Item No. 6, *Review of Current Trustee Health Insurance Plan* of the January 15, 2013 Board meeting.

R1.1.2 The District immediately expand the description of all items placed on the District Board's meeting agenda to fully comply with the requirements and intent of the Brown Act.

R1.2 The District revise its District Board meeting sign-in sheet to clearly indicate that adding one's name is a strictly voluntary action.

R1.3 The District immediately make available to the public a copy of all agenda materials as soon as it is provided to the Trustees, and that a copy be readily available for the public at the Board's meeting location.

R1.4 No later than November 1, 2013, the District place on its website all agenda materials provided to the Trustees prior to the Board meeting.

2.0 Lack of Understanding About Action Related to Health Insurance Benefits

On March 19, 2009, the District Board adopted a resolution to permit Trustees to participate in the same health insurance program that was offered to the District's employees beginning August 1, 2009. Under the District plan, an employee may choose from different medical plans and select coverage for: (1) the employee, (2) for the employee plus one dependent, or (3) a family plan. Vision and dental insurance coverage is also available with the same three options.

In July 2012, after the San Joaquin Taxpayers Association raised the issue, local newspapers began to report on the District Board's action of March 2009 authorizing Trustees access to health insurance benefits.
In November 2012 the District Board proposed to revisit the March 2009 action which concluded in a vote in January 2013 to continue the program. The Grand Jury wanted to clarify whether the Trustees understood the program/s being proposed for approval.

Following sworn testimony from 9 of the 11 Trustees and review of documents provided by the District, the Grand Jury came to the conclusion that almost all of the Trustees did not understand the structure of the health insurance benefit available to them, or who was covered pursuant to their action. Many of the Trustees testified it was their understanding that they were approving coverage only for the Trustee themselves and not for any family coverage. Some said they were not sure what or who the benefit covered but because the District's legal counsel and others said they had a letter saying it was legal, they voted in favor of the continuation.

Other Trustees indicated they voted *yes* because the District had enough money. While some Trustees said they voted for the benefit because other similar districts offered them, none of the Trustees interviewed could tell how many other mosquito districts in the State of California offered health benefits for its trustees. Based on information from the State Controller's files, the Grand Jury discovered that only three of the 68 other mosquito districts in the State offered health insurance benefits for its trustees. Sacramento-Yolo County Mosquito and Vector Control District provides medical, dental and vision insurance for its trustees, while the East Side Mosquito abatement District in Modesto provided dental and vision insurance benefits to its trustees.

Findings

F2.1.1 A majority of the District's Trustees, under sworn testimony, did not know the details of the health insurance program they were voting to grant themselves.

F2.1.2 A number of Trustees, under sworn testimony, indicated that they thought they were voting for health insurance coverage for the Trustee only, and not for family members.

Recommendation

R2.1.1 The District Board immediately rescind its action of January 15, 2013, pertaining to providing health insurance benefits to Trustees. If the topic is reconsidered, a resolution is to be prepared clearly indicating details of the health insurance coverage being provided, for whom coverage is available and the total cost to the District.

3.0 Trustees' Knowledge of District Finance

As the legislative body for the District, the Trustees must have a working knowledge of the District's finances to fulfill their fiduciary responsibilities to the public they serve. The District currently has an operating budget of $7.7 million and reserve funds in excess of $9 million. None of the Trustees interviewed could provide the Grand Jury (with any certainty), an explanation regarding the intended use/s of the reserve funds. Only one Trustee interviewed could provide even an approximate estimate of the amount of the District's budget.
Some testified that knowledge of the District budget and finance was left to the Board's budget committee and they only looked at fiscal issues when the budget was being adopted.

The public cannot easily become informed about the District's finances because its website does not provide information on the District budget or its annual independent audit.

Findings

F3.1 A majority of the Trustees lack a working knowledge of District finances.

F3.2 The District website does not include basic financial documents for public review.

Recommendations

R3.1.1 Beginning September 30, 2013, and quarterly thereafter, the District General Manager include an item on the District Board's agenda to provide information on the District's budget, expenditures and reserves.

R3.1.2 Beginning with the Fiscal Year 2014-2015 Budget, an explanation of the District's reserve funds and their intended purpose/s be included as part of the budget document.

R3.2 Prior to October 1, 2013, the District include the adopted annual operating budget and the most current audited financial statements on its website, with access from the website's home page.

4.0 Appointment of Trustees to the District Board

The District Board is comprised of 11 members, each serving a four-year term. There are no statutory qualifications to serve on the District Board. Four District Trustees are appointed by the San Joaquin County Board of Supervisors and each of the seven incorporated cities in the County appoints one Trustee. Currently there are no limits to the number of times an individual can be appointed to the Board. In fact, some Trustees and/or a member of their family, have served on the Board for decades. One Trustee interviewed indicated there was a expectation that the position on the Board was a family right and obligation. Another Trustee indicated that appointment to the Board was a good way to stay in a public forum to support future political aspirations.

Through its investigations and interviews, the Grand Jury found no reason to question the Trustees' commitment to fulfilling the District's Mission Statement to protect the public from mosquito- and vector-carried diseases. The Grand Jury is concerned that the amount of time some members serve on the District Board limits fresh perspectives on how best to serve the public and how to be better guardians of the District's resources. Also, long terms may lead to complacency in accepting proposals from District management without fruitful discussion and independent evaluation.

Findings

F4.1 Membership on the District Board is seen as a family right and obligation passed through generations, or as a pathway for political advancement.

F4.2 Long terms on the District Board may lead to complacency in reviewing District financial conditions and a clear understanding of issues brought before the Board for consideration.

Recommendation

R4.1 No later than November 1, 2013, the County Board of Supervisors and the City Council of each city in the County petition the appropriate agencies and/or the State legislature to establish term limits of two consecutive four-year terms for District Board Trustees.

5.0 The Best Governance Structure of the District Board to Serve the Public

Mosquito abatement districts have been in existence in California since the late 1880s when it became known that mosquitos carried disease. The early districts were created when the State was more rural and had fewer incorporated cities. In San Joaquin County, the first mosquito abatement district was formed in 1945 and was comprised of the City of Lodi and the northern portion of the County. In 1955, the County and the City of Stockton created a mosquito abatement district encompassing the southern part of the County. In 1980, the two districts consolidated to form the current District. In every case, the district was an independent special district.

In light of its investigation and those of prior grand juries, the 2012-2013 Grand Jury questioned whether the currently constituted District is the most effective means of providing vector control services to the citizens of the County. The Grand Jury reiterates that it has the respect for the employees of the District in keeping the County safe from mosquito and vector-carried diseases. It does have concerns about whether having a separate district with a separate board as the legislative body is the most effective structure for the present and future needs of the County.

Finding

F5.1 Issues regarding non-transparent functioning and actions of the District Trustees bring into question the need for the District Board as presently appointed by the Cities and the County Board of Supervisors.

Conclusion

When enacting the Ralph M. Brown Act, the State Legislature clearly articulated its intent by stating "*In enacting this chapter, the Legislature finds and declares that the public commissions, boards, and councils and the other public agencies in this State exist to aid in the conduct of the people's business.*" It further stated "*The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created*."

It is through this Grand Jury's review of the San Joaquin County Mosquito and Vector Control District Board of Trustees actions, that it determined the current Board of Trustees and their senior management lack the proper awareness of this legislative intent and the associated legal requirements. The lack of awareness by the District Board indicates they have not properly implemented the intent of the legislature by ensuring all of their business activities are open to public review and debate. The Grand Jury believes that through adoption and implementation of the recommendations contained within this report that the public's right to be informed of the activities of their public servants will be better fulfilled. Further, a new look at the Board's composition or even a new organizational structure may better serve the San Joaquin County community.

Disclaimer

Grand Jury reports are based on documentary evidence and the testimony of sworn or admonished witnesses, not on conjecture or opinion. However, the Grand Jury is precluded by law from disclosing such evidence except upon specific approval of the Presiding Judge of the Superior Court, or another judge appointed by the Presiding Judge (Penal Code Sections 911, 924.1(a) and 929). Similarly, the Grand Jury is precluded by law from disclosing the identity of witnesses except upon an order of the court for narrowly defined purposes (Penal Code Sections 924.2 and 929).

Response Requirements

California Penal Code sections 933 and 933.05 require that specific responses to all findings and recommendations contained in this report be submitted to the Presiding Judge of San Joaquin County Superior Court within 90 days.

The San Joaquin County Mosquito and Vector Control Board of Trustees is to respond to the following findings and recommendations:

Findings: F1.1, F1.2, F1.3, F1.4, F2.1.1, F2.1.2, F3.1, F3.2, and F5.1.

Recommendations: R1.1.1, R1.1.2, R1.2, R1.3, R1.4, R2.1.1, R3.1.1, R3.1.2, and R3.2.

The San Joaquin County Board of Supervisors is to respond to the following findings and recommendations:

Findings: F4.1, F4.2, and F5.1

Recommendations: R4.1

The Cities of Escalon, Lathrop, Lodi, Manteca, Ripon, Stockton, and Tracy are to respond to the following findings and recommendations:

Findings: F4.1, F4.2, and F5.1

Recommendations: R4.1

Mail or hand-deliver a hard copy of the response to:

Honorable David P. Warner, Presiding Judge
San Joaquin County Superior Court
P. O. Box 201022
Stockton, CA 95201

Also, please email the response to Trisa Martinez, Staff Secretary to the Grand Jury at

grandjury@sjcourts.org.