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2013-2014 GRAND JURY RELEASES REPORT ON AGENCY APPROVAL OF RESPONSES TO GRAND JURY REPORTS

Today, the San Joaquin County 2013-2014 Civil Grand Jury released its report investigating agency approval of responses to Grand Jury reports. During interviews conducted as part of the 2013-2014 Grand Jury follow-up, it was learned that some of the members of the Stockton City Council did not agree with some of the Council's approved responses to the 2012-2013 reports. The Grand Jury decided to investigate the extent of this disagreement in Stockton. In addition, it decided to determine how the County and each City approve their responses to grand jury reports.

Agencies cited in Grand Jury reports are required to respond to the findings and recommendations outlined in the reports. California Penal Code Section 933(c) states that the governing body of each agency that is the subject of findings and recommendations in a Grand Jury report must respond within 90 days to the Presiding Judge of the Superior Court. Although staff at the agency may prepare the responses, the members of the board or council are responsible for responding.

As a part of its investigation, the Grand Jury interviewed the Mayor of Stockton and all other Stockton Council Members. In addition, a video of the August 13, 2013 Council Meeting was viewed when the City's responses to the 2012-2013 Grand Jury reports were approved. In order to determine how the County and each City approve their responses to grand jury reports, a survey was sent to each of the eight agencies. Survey responses were received from all eight agencies.

The Grand Jury found that there were significant differences between the personal opinions of members of the Stockton Council and their official responses that they approved. It was also found that the County and the Cities typically approve their responses as written by staff with very limited discussion. The issues found as a result of this investigation indicate that some officials rely too much on the work of staff. All members of a governing body, whether elected or appointed, must consider their own beliefs and then ask questions and, when appropriate, state disagreement with the work of their staff. These officials are in their positions to oversee the work of staff, not to accept whatever their staffs propose. The Grand Jury recommended that all legislative bodies shall publicly explain the reasons for its response to Grand Jury findings and recommendations prior to voting to submit the responses.

The City Council Members of Stockton, Escalon, Lathrop, Lodi, Manteca, Ripon and Tracy and the County of San Joaquin Board of Supervisors are required to submit a response to the Presiding Judge of San Joaquin County Superior Court within 90 days as to each finding and recommendation contained in the Grand Jury's report.

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(Copy of report attached)

San Joaquin County Grand Jury

AGENCY APPROVAL OF RESPONSES TO GRAND JURY REPORTS: *Do They Know What They Approve?*

2013 – 2014 Case No. 1613

Summary

Civil grand juries were established by the Constitution of the State of California. They serve as watchdogs of county government as well as the cities and all other governmental agencies within the county. Grand juries conduct investigations and publish reports. Agencies cited in the reports are required to respond to the findings and recommendations of the reports.

California Penal Code Section 933(c) states that the governing body of each agency that is the subject of findings and recommendations in a grand jury report must respond within 90 days to the Presiding Judge of the Superior Court. Although staff at the agency may prepare the responses, the members of the board or council are responsible for responding.

The 2013-2014 Grand Jury (Grand Jury) determined that some members of the Stockton City Council did not personally agree with the official responses they approved. It was decided to interview all Council Members about their responses. It was also decided to survey the County and each City within the County to determine who writes responses to grand jury reports, when the responses were approved, whether there was any discussion prior to approval and what the final vote was.

The Grand Jury found that there were significant differences between the personal opinions of members of the Stockton Council and their official responses that they approved. It was also found that the County and the Cities typically approve their responses as written by staff with very limited discussion.

Glossary

Brown Act	The Ralph M. Brown Act (Government Code Sections 54950 *et seq.*) regulating the conduct of public meetings, closed session meetings and related public information requirements
Council Members	includes the Mayor and all other elected members of a City Council
Fact	confirmed information learned by a grand jury
Finding	an assertion, conclusion or judgment based on facts as determined by a grand jury
Recommendation	suggested course of action to solve a problem identified in a finding by a grand jury

Background

The grand jury system was established by the Constitution of the State of California as a judicial body. California Penal Code Sections 888 to 940 describe the requirement for and general matters of grand juries. Criminal grand juries are well known and often mentioned in the news and the media. Civil grand juries are not as well-known but serve a function that is just as critical. The purpose of the civil grand jury (grand jury) is to serve as a group of citizens that reviews the workings of county and municipal governments, school districts, special districts, and other local governmental agencies within the county. The grand jury's mission is:

- To confirm that local government officers and employees are administering their agencies honestly, efficiently and in compliance with the law
- To identify instances of dishonest, inefficient or illegal actions and when such actions are found
- To recommend the development of policies and procedures that will correct those shortcomings

The San Joaquin County Grand Jury is comprised of 19 citizens who serve for one full year. Many of these individuals apply to serve on the grand jury while some members are selected from a regular jury pool. The members share a common desire to make a difference in the County.

A grand jury conducts investigations of different government agencies. These investigations are selected from jury member concerns, citizen complaints and suggestions from prior grand juries. Committees spend months researching documents and conducting interviews to determine how well the agencies perform. Since a group of concerned citizens with various backgrounds conducts these investigations, the grand jury is able to view the subject agencies from a perspective that may be very different from the perspective within the agency.

When an investigation is complete, a report is written which describes what has been determined from the investigation. This report provides background on the subject agency, discussion of the issues and, where appropriate, findings and recommendations for each issue. The grand jury is trained to verify all their facts, to use these facts to support findings and to be sure the findings support the recommendations. Because the reports are written from the perspective of a concerned group of citizens, the reports often lead to improved efficiency within the subject agencies.

Over the years, San Joaquin County Grand Juries have published reports that have resulted in agencies making significant improvements.

- 2004 - 2005 Case #0703, *San Joaquin County Public Guardian Conservator's Office*: San Joaquin grand juries had conducted investigations of this County office in 2000 - 2001 and 2001 - 2002. Ongoing issues prompted a new investigation in 2003 - 2004. This report led to updating of a policy and procedures manual, the addition of staff, additional training for staff members as well as other changes.

- 2007 - 2008 Case #0707, *San Joaquin Regional Transit District*: Responding to a complaint, the Grand Jury conducted a major investigation of this special district. Many improper management practices were found. In response to one recommendation, management conducted an analysis of consultant use that resulted in a savings of over $400,000 in one fiscal year.

- 2010 - 2011 Case #1110, *Woodbridge Sanitary District*: Numerous complaints were filed with the grand jury that resulted in a major investigation of this special district. The final report included 19 recommendations regarding new policies and procedures, credit card controls, creation of job descriptions, development of a training manual and development of a complaint procedure. The district implemented changes to address all 19 recommendations.

- 2012 - 2013 Case #0412, *Fractured Oversight Fails to Serve At-Risk Youth*: The subject of this investigation was group homes in the County. The grand jury found that the State agency responsible for monitoring group homes for compliance with State regulations was not conducting the site inspections as required. This report and other concerns supported the State's January 2014, budget proposal to include more than 70 new staff members to conduct the monitoring. It should be noted that this impact occurred even though the grand jury has no jurisdiction over State agencies.

All Grand Jury reports can be reviewed at
http://www.stocktoncourt.org/grandjury/2012-2013_roster%20and%20reports.html.

While reports are written to inform the public, each report is also given to the agency that is the subject of the investigation. California law requires the agency subject to the report to respond to each finding and recommendation. California Penal Code Section 933(c) states:

"No later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendation pertaining to matters under the control of the governing body…"

Furthermore, Penal Code Section 933.05 states in part:

"(a) For purposes of subdivision (b) of Section 933, as to each grand jury finding, the responding person or entity shall indicate one of the following:

"(1) The respondent agrees with the finding.
"(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.

"(b) For purposes of subdivision (b) of Section 933, as to each grand jury recommendation, the responding person or entity shall report one of the following actions:

"(1) The recommendation has been implemented, with a summary regarding the implemented action.
"(2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
"(3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
"(4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor."

It is a common practice of San Joaquin County Grand Juries to follow up on the prior year's recommendations and the responses provided by the agency(s). The requirement for responses and the monitoring of the responses is intended to effect change. It is the expectation of the grand jurors that the agency reviews the report and seriously considers and implements the recommendations.

Reason for Investigation

During interviews conducted as part of the 2013-2014 Grand Jury follow-up, it was learned that some of the members of the Stockton City Council did not agree with some of their approved responses to the 2012-2013 reports.

The Grand Jury decided to investigate the extent of this disagreement in Stockton. In addition, it was decided to determine how the County and each City approve their responses to grand jury reports.

Method of Investigation

The Grand Jury interviewed the Mayor and all other Stockton Council Members. In addition, the video of the August 13, 2013, Council Meeting was viewed when the City's responses to the 2012-2013 Grand Jury reports were approved.

In order to determine how the County and each City approve their responses to grand jury reports, a survey was sent to each of the eight agencies. Survey responses were received from all eight agencies.

Discussion, Findings and Recommendations

1.0 Stockton City Council Members Do Not Agree With Their Own Responses

The 2012-2013 Grand Jury issued 24 reports. Of these, the Stockton City Council was required to respond to five. A complete copy of the original reports and the responses may be found on the San Joaquin County Grand Jury website at

http://www.stocktoncourt.org/grandjury/2012-2013_roster%20and%20reports.html.

On August 13, 2013, the Stockton City Council considered the responses to the 2012-2013 Grand Jury reports. During the discussion on this agenda item, many comments were made thanking the staff and praising their efforts in drafting the responses. Not one member of the City Council asked any questions about the responses or stated any disagreement with any of the responses. The City Council approved the responses by a single unanimous vote. A link to the video of this meeting is found on the City's web page at

http://stocktongov.com/government/oMeetings/councilMeetings.html.

Although the responses were approved by a unanimous vote and despite the fact that there were no questions asked or dissenting opinions expressed during the public meeting, the Grand Jury found significant differences between many of the approved responses versus the personal opinions of the members of the City Council. While the Grand Jury did not ask the Council Members whether they agreed with all of the responses, the level of disagreement was significant.

Some members of the City Council made comments that appeared to explain why the opinions expressed to the Grand Jury were not the same as their approved responses. Statements were

made such as: the approved response was different because of political reasons; or that was just my own belief.

However, the problem is that each individual member of the City Council is not able to know the opinions of all other members prior to the public meeting. The Brown Act is a State law that governs how governing bodies of public agencies must act. One of the provisions of the Brown Act is that an individual is not allowed to discuss a matter with all the other members except in a meeting of the governing body. Therefore, the only way a member of the Stockton City Council would know whether others on the Council shared the same opinion would be to discuss it at a public meeting. And, as stated above, no such discussion of any possible disagreement was ever held in a public meeting.

Findings

F 1.1 A majority of Stockton City Council Members stated that they disagreed with official responses they had previously approved on August 13, 2013, which raises concerns of whether members read the report and responses.

F 1.2 A majority of Stockton City Council Members stated that they disagreed with official responses they had previously approved on August 13, 2013, which raises concerns about why they did not question the responses at the public Council Meeting when their responses were approved.

2.0 How Responses to Grand Jury Reports are Approved

As the Grand Jury determined discrepancies between Stockton's approved responses to the 2012-2013 Grand Jury Report versus the opinions of the individual Council Members, it was decided to survey San Joaquin County and all seven Cities. The survey asked each agency to provide the following information regarding their responses to grand jury reports that were released over the last four years:

- Identify who prepared the responses
- Provide the date the responses were approved and a copy of the minutes of the meeting
- State where on the agenda the approval was placed
- State the final vote when the responses were approved

A summary of the responses from all eight agencies is found in Appendix A.

Regarding the matter of who wrote the responses, staff members typically provided draft responses to the governing board for approval at a public meeting. Of the eight agencies, only the City of Tracy's responses were prepared by an elected official. Members of the Stockton City Council were not able to identify who had drafted the responses that they approved in 2013.

Regarding the matter of when the responses are received, California Penal Code Section 933(c) states that responses from governing bodies must be received no later than 90 days after a report is submitted. The grand jury reports are submitted no later than June 30 of each year. The

agencies responded within the 90-day requirement of the Penal Code on 19 of the 23 instances surveyed (83%).

The Penal Code does not specify whether the approval of agency responses must be discussed or may be placed on the consent agenda. A review of the 23 responses revealed the following:

- 18 times the approval was on the consent agenda where non-controversial, administrative matters are typically approved en mass
- Of the 18 times approval was on the consent agenda, nine times (50%) the item was removed from the consent agenda which allowed for discussion
- Five times the approval was on the agenda for discussion or new business
- The minutes of the meetings where the responses were approved show very little discussion by the members of the governing agency
- The minutes of the meetings where the responses were approved show very little public comment regarding the responses

Regarding the matter of how the governing boards voted when approving their responses, 21 of the 23 votes (91%) were unanimous. Of the two instances when it was not unanimous, only one vote was cast each time in opposition to approving the responses.

Finding

F 2.1 Over the last four years, almost all responses by the County and the Cities were approved by unanimous votes after little or no discussion by the elected officials or the public.

Recommendation

R 2.1 All legislative bodies publicly explain the reasons for its response to Grand Jury Findings and Recommendations prior to voting to approve their response.

Conclusion

Much of this report addresses the differences between the personal opinions of Stockton City Council Members versus the responses they approved. It is the opinion of the 2013-2014 Grand Jury that this type of discrepancy could be found in responses from the County, other cities, school districts and other special districts. In addition, it is the opinion of the 2013-2014 Grand Jury that this type of discrepancy could be found in decisions other than responses to grand jury reports.

The governing body of an agency determines policy for the agency. Staff accomplishes most of the work of the agency. The governing body must rely on its staff to provide timely, accurate and comprehensible materials to them so that they are able to make appropriate decisions.

The issues found in this report indicate that some officials rely too much on the work of staff. All members of a governing body, whether elected or appointed, must consider their own beliefs and then ask questions and, when appropriate, state disagreement with the work of their staff. These officials are in their positions to oversee the work of staff, not to accept whatever their staffs propose.

Members of governing bodies are elected or appointed to make appropriate decisions while considering the interests of their constituents as well as their personal beliefs. This balance between their own beliefs and what they hear from those whom they represent leads to the best decisions.

Appendix

Appendix A: *Chart of How Agencies Respond to Grand Jury Reports*

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 the 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 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 Stockton City Council shall respond to each Finding and Recommendation contained in this report. The County of San Joaquin Board of Supervisors and the City Council Members of Escalon, Lathrop, Lodi, Manteca, Ripon and Tracy shall respond to Finding F 2.1 and Recommendation R 2.1.

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

Hon. Lesley D. Holland, Presiding Judge
San Joaquin County Superior Court
P.O. Box 201022
Stockton, CA 95201

Also, please email a copy of the response to Trisa Martinez, Staff Secretary to the Grand Jury at: grandjury@sjcourts.org.

Appendix A

Approval of Responses to Grand Jury Reports

AGENCY	YEAR REPORT RELEASED	PREPARED BY	DATE OF APPROVAL	AGENDA PLACEMENT	IF CONSENT, WAS IT PULLED FOR DISCUSSION?	VOTE
Escalon	2010	Interim City Manager	August 16, 2010	Discussion	NA	5-0
	2011	City Manager	August 15, 2011	Discussion	NA	5-0
	2012	no response required				
	2013	Project Consultant	August 5, 2013	Consent	no	5-0
Lathrop	2010	City Attorney	February 7, 2011	Consent	yes	5-0
			March 21, 2011	Consent	yes	4-0
	2011	no response required				
	2012	no response required				
	2013	City Attorney	August 19, 2013	Consent	yes	4-1
Lodi	2010	City Manager	September 21, 2010	Consent	yes	5-0
	2011	City Manager	August 17, 2011	Consent	no	5-0
	2012	no response required				
	2013	City Manager	August 7, 2013	Consent	no	5-0
Manteca	2010	Assistant City Manager	December 21, 2010	Consent	yes	5-0
	2011	Assistant City Manager	August 16, 2011	Consent	yes	5-0
	2012	no response required				
	2013	City Manager	July 16, 2013	Discussion	NA	5-0
Ripon	2010	City Administrator	July 5, 2011	Consent	no	4-0
	2011	no response required				
	2012	no response required				
	2013	City Administrator	August 20, 2013	Consent	yes	4-1
San Joaquin County	2010	department head	August 31, 2010	Consent	yes	4-0
	2011	no response required				
	2012	department head	September 11, 2012	Consent	no	5-0
	2013	department head	August 13, 2013	Consent	yes	4-0
Stockton	2010	City Manager	September 28, 2010	Consent	no	7-0
	2011	City Manager	September 13, 2011	Consent	no	7-0
		City Manager	August 23, 2011	Consent	no	7-0
	2012	no response required				
	2013	City Manager	August 8, 2013	New Business	NA	7-0
Tracy	2010	Mayor	September 7, 2010	Consent	no	5-0
	2011	no response required				
	2012	no response required				
	2013	Mayor	July 16, 2013	Discussion	NA	5-0