

**City of Hughson
Civil Grand Jury Case No. 010-04
2009/2010**

SUMMARY

The 2009/2010 Stanislaus County Civil Grand Jury received a complaint requesting the examination of potential acts of willful misconduct in the city government of the City of Hughson.

The complaint requested that the Civil Grand Jury 1) investigate an allegation by a City Council member of willful misconduct by staff in the city administration and 2) investigate other willful misconduct uncovered by the City Manager of Hughson involving possible Brown Act violations, Fair Political Practices Commission (FPPC) violations and violations of the Hughson Municipal Code by one or more persons in Hughson city government.

After a review of documents and interviewing key personnel, it was determined:

- 1) that administrative staff did not commit any acts of willful misconduct before or at the time of the accusation,
- 2) that three City Council members--the Council member appointed in January to fill the position vacated by the Mayor (hereinafter referred to as Councilman A), the Council member elected in November of 2008 who is a former director of the Hughson Fire Protection District (hereinafter referred to as Councilman B), and the other Council member elected in November of 2008 who is a former member of the Hughson Planning Commission (hereinafter referred to as Councilman C) had violated the Brown Act through email communications sent to a majority of Council members,
- 3) that Councilman A released information about actions taken in a closed session,
- 4) that Councilman A violated FPPC regulations involving a conflict of interest on two occasions,
- 5) that Councilmen A, B, and C orchestrated the attempted firing of the City Manager, City Clerk and City Engineer,
- 6) that Councilmen A, B, and C disregarded their fiduciary responsibility to the citizens of Hughson.

BACKGROUND

The following information is relevant to the Grand Jury investigation since the Complainant asked the Grand Jury to investigate any violations of the Brown Act, FPPC regulations and Hughson Municipal Code by any person(s) associated with the City of Hughson.

Brown Act Violations:

All city and county government agencies, boards and councils are regulated by the Brown Act, which was passed by the California State Legislature in 1953. Its purpose was to guarantee the

public the right to participate in and attend meetings held by local legislative bodies. If a majority of a local legislative body were to communicate through "personal intermediaries or technological devices" and were to thereby "develop a collective concurrence as to an action to be taken on an item," such actions would be a violation of the Brown Act. Further, "Any discussion of "business" outside a public meeting by a majority of the Legislative Body members whenever and wherever, when during a recess of a public meeting, is prohibited under the Brown Act."

- Councilman A sent an email on April 22, 2009 to the City Manager and all Council members, requesting to personally conduct an investigation of the city administration: "I'd suggest you re-think your views and open up the doors, so as I can conduct an unbiased (sic) investigation and take my findings to the Council in closed session." Councilman A also requested a closed session item be placed on the next agenda to discuss "City Administration."
- Councilman A sent an email on June 19, 2009 to all Council members, expressing his opinion about the street improvement and streetscape plan. "I'd like each and everyone one (sic) of you to look at Charles street. Met calf between Charles and 7th. There are two of the most absurd example of which I speak. It is simply an outrage. At this point I believe with (sic) would be inappropriate to complete the street scape project. I'd like to see curb gutter and side walks along Bob's café and that's it."
- Councilman A sent an email, exposing a closed session decision, on July 2, 2009 to the City attorney in which he copied all of the Council members. In that email he described what action he wanted taken against the City Manager, Mayor and City attorney: "I will call an emergency meeting of the Council and call for action to be taken against the City Manager, as well as sanctions against the Mayor and possibly the City attorney for failure to perform and carry out the powers of the City Council."
- Councilman B emailed the Mayor and two other Council Members on June 19, 2009, expressing his opinion on the street improvement plan.
- Councilman C emailed all City Council members on November 16, 2009, expressing his opinion on making plans for hiring a new City Manager and on a complaint about the Mayor.

Violation of Fair Political Practices Regulations:

The Fair Political Practices Commission and the regulations applying to all state and local governments has also become an issue in this investigation. The FPPC regulation concerning conflict of interest (18700) states as follows: "No public official at any level of state or local government may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest. A public official has a conflict of interest if the decision will have a reasonably foreseeable material financial effect on one or more of his/her economic interests, í "

- Councilman A emailed a majority of the voting Council members on June 19, 2009 in an effort to persuade the members about the Streetscape Project. He said, "At this point I believe with (sic) would be inappropriate to complete the street scape (sic) project. I'd like to see curb gutter and side walks (sic) along Bob's café and that's it." He had earlier

recused himself from a Redevelopment meeting dealing with the Streetscape Project due to a conflict of interest, because he owns property within 500 feet of the project.

- Councilman A, who owns an ambulance company, emailed a competing ambulance company on October 6, 2009, requesting a position with them because of "my years of experience in Stanislaus County, business and political, í The Board of Supervisors will be looking for options, put to them the EMSC, and I have tremendous influence with the board of Supervisors, and could lend my name as an employee of your company.ö

Hughson Municipal Code Violations:

The Hughson Municipal Code, Title 2, Administration and Personnel, Section 2.08.140 states that it is the duty of the City Manager to investigate matters involving City administration, and Code 2.08.240 states that the City Manager is responsible for "the efficient administration of all the affairs of the city which are under his control.ö

- On January 12, 2009, Councilmen A and B were present at the first Council meeting of their terms and while waiting outside a closed session, having recused themselves from the closed session, discussed city staff. An open microphone recorded the two Council members, expressing criticism of the City Clerk and City Engineer. Then Councilman A stated a desire to rehire "the employees that, that I have confidence in, that I used to work with here, that know how the city operates, and how it used to operate.ö In the recording, both Council members referred to Councilman C in the context of having discussed plans for the City. Councilman A said, "You, me and (redacted nameö Councilman C), and I tell you what, man, heads í ö(remainder of sentence inaudible).

This conversation was followed by an email on January 13, 2009 in which Councilman A wrote to the City Manager, "í did you find the Hughson City Rats? I figured they'd be man or women enough to come forward. If not buckle up your seat belt, we'll be in for a bumpy ride.ö On February 3, 2009 he requested the City Manager provide him with the employment agreements for the City Manager, City Clerk, Assistant City Clerk and City Engineer. In April, 2009 Councilman A made an allegation of "willful misconductö by city staff. When the City Manager informed the Council of his request for a Grand Jury investigation into the allegation, Councilman A responded with an April 22, 2009 email which stated, "I'd suggest you re-think your views and open up the doors, so as I can conduct an un biased (sic) investigation and take my findings to the Council in closed session.ö and also requested a closed session item be placed on the next agenda to discuss "City Administration."

A June 23, 2009 email from Councilman B requested the City Manager call a special Council Meeting on behalf of Councilmen A, B, and C for them to perform a public employeesøevaluation of the City Manager, City Engineer and City Clerk. When the City Attorney advised that the Hughson Municipal Code did not allow council members to evaluate the Clerk and Engineer, Councilmen A, B, and C voted in closed session and directed the City Manager to fire the two employees. A July 2, 2009 email from Councilman A threatened consequences when the City Manager did not immediately remove the two employees from city property, "I will call an emergency meeting of the

Council and call for action to be taken against the City Manager, as well as, sanctions against the Mayor and possibly the City Attorney for failure to perform and carry out the powers of the City Council.ö In a subsequent closed session Councilmen A, B, and C voted to begin termination proceedings against the City Manager, even after he had offered to shorten his contract to save the city money.

METHODS OF INVESTIGATION

The investigation of this complaint took place between August and November 2009. During the investigation the following actions were taken by the investigating committee:

- Reviewed emails and documents provided by the City of Hughson and other sources.
- Reviewed public documents regarding the City of Hughson, e.g., minutes of public City Council meetings, newspaper articles and other information published on the Internet.
- Reviewed recorded conversations between City Council members and City employees.
- Interviewed under oath the complainant, City staff, the Mayor, City Council members and other persons of interest.

FINDINGS

- The Civil Grand Jury finds that none of the actions of the city staff rose to the level of öwillful misconductö at the time of the complaint. Interviews of the Council member making the accusations and other Council members, the Mayor, the City Manager and other persons of interest did not reveal any clear or provable allegations.

Brown Act Violations:

- The Civil Grand Jury finds that Councilman A violated the Brown Act by sending emails to all Council members on April 22, June 19, and July 2, 2009.
- The Civil Grand Jury finds Councilman B violated the Brown Act in an email to the Mayor and two other Council members on June 19, 2009.
- The Civil Grand Jury finds Councilman C violated the Brown Act in an email to all Council members on November 16, 2009.

FPPC Violations:

- The Civil Grand Jury finds that Councilman A violated the Fair Political Practices Commission regulation 18700, having to do with conflict of interest, when on June 19, 2009 he emailed the other Council members concerning the Streetscape Project in downtown Hughson.
- The Civil Grand Jury finds that Councilman A violated the FPPC regulation 18700 by offering to use his position as a City Council member to influence the Board of Supervisors in exchange for employment.

Hughson Municipal Code Violations:

- The Civil Grand Jury finds that Councilman A sought to overreach his power by demanding to investigate what he claimed to be “willful misconduct” at City Hall. According to the Hughson Municipal Code 2.08.140, it is the responsibility of the City Manager to investigate complaints about city administration.
- The Civil Grand Jury finds that the City Council’s decision, with a three-to-two vote, to direct the City Manager to fire the City Engineer and City Clerk and the subsequent attempt to fire the City Manager was likely the result of a prearranged plan by City Councilmen A, B, and C.
- The Civil Grand Jury finds that Councilmen A, B, and C disregarded their fiduciary responsibility to the citizens of Hughson by attempting to fire the City Manager instead of accepting his offer to shorten his contract.
- The Civil Grand Jury finds that the preponderance of evidence shows that Councilmen A, B, and C promoted their own agenda against the best interests of the citizens of Hughson.

RECOMMENDATIONS

- The Civil Grand Jury recommends Councilmen A, B, and C resign or be removed by the Attorney General of the State of California, the FPPC or a recall by the citizens of Hughson..
- The Civil Grand Jury recommends the City Council practice due diligence in initiating an outside search for any city manager hired in the future.
- The Civil Grand Jury recommends the City provide more detailed workshops for the City Council on the Brown Act, especially in relation to emails and serial meetings, as well as applicable FPPC regulations.
- The Civil Grand Jury recommends City Council members follow the practice of open and transparent decision-making in the spirit of the Brown Act.

RESPONSES REQUIRED FROM:

Hughson City Council
Attorney General of the State of California
California Fair Political Practices Commission

REFERENCES

Brown Act
FPPC Regulations
Hughson Municipal Code