

Empire Sanitary District

Civil Grand Jury Case Nos. 10-12C, 10-14C, 10-15C and 10-16C

2009/2010

SUMMARY

The 2009-2010 Stanislaus County Civil Grand Jury received several complaints involving two members of the Board of Directors of the Empire Sanitary District as well as the Office Manager for the District. Taken together, the complaints generally alleged: 1) that two Board members - the Board President at the time of the complaints and her daughter, who was also a Board Member at the time of the complaints, did not, at least for a period of the time during which they were on the Board, reside within the District as required by law, 2) that the Board and the Office Manager were not handling the District's finances in a prudent manner, and 3) that the Board used poor judgment in hiring family members.

Based on the allegations in the complaints, the Civil Grand Jury began an investigation. Subsequently, the Board President, the Board Member, and the Office Manager named in the complaints resigned. The Stanislaus County Board of Supervisors approved the resignation of the Board President and the Board Member.

After conducting a review of documents and several interviews, the Civil Grand Jury confirmed: 1) that for a period of time during which they were serving on the Board, the two Board members in question did not reside in the District, 2) that the Board and the Office Manager named in the complaints did not manage the District's business affairs in a prudent manner, and 3) that the Board did not use good judgment in hiring personnel and appointing persons to fill Board vacancies.

BACKGROUND

The Empire Sanitary District (hereafter the "District") was established on June 18, 1948, under the legal authority of the Sanitary District Act of 1923, California Health and Safety Code Section 6400 et seq. The District is an independent "special district" under California's laws governing special districts. The District is responsible for waste water collection, treatment and disposal for the town of Empire. Presently the District serves approximately 1,000 customers.

The District is governed by a Board of Directors (hereafter "Board") consisting of five members who are elected by the residents of the District to four-year terms. Pursuant to California Government Code Section 1780, vacancies on the Board can be filled by a quorum of remaining directors within 60 days; by the Stanislaus County Board of Supervisors between 60 and 90 days; and by election after 90 days. Appointees to the Board hold office until the next District election. The Board has experienced several

mid-term vacancies during the past few years, most of which have been filled by appointment. However, at least one of these vacancies has gone unfilled for much longer than 90 days.

Initially the District maintained its own waste water treatment facilities. However, it eventually became too costly for the District to meet the newer waste water standards and the District now relies on the City of Modesto to treat its waste water. The City of Modesto bills the District's customers, but customers can either send their payments to the City of Modesto or pay locally at the District's office in Empire.

While the Board is responsible for overall management of the District, the District's employees are responsible for day to day operations. For many years, the District employed just one maintenance person and an office manager/secretary. Within the past few years, in addition to this staff the Board hired an office assistant, and an "as-needed" part-time person to assist the maintenance person. This part-time position was eventually extended to a full-time maintenance person position.

The Stanislaus County Civil Grand Jury of 2000-2001 previously investigated allegations of wrongdoing at the Empire Sanitary District and issued a report as to its findings. In late 2009, the 2009-2010 Stanislaus County Civil Grand Jury received several complaints indicating concerns about District management, and determined that another investigation was warranted.

Summary of Complaints

Complaint No. 1 6 10-12C

- Improper Board meeting procedures.
- Possession of District vehicle for personal use.
- Hiring relatives of Board members.
- Failure to provide requested documents.

Complaint No. 2 6 10-14C

- Wrongful use of public funds.
- President and Vice President of Board do not reside within District.

Complaint No. 3 6 10-15C

- Unethical employment of family as employees and Board appointees.
- Failure to/unable to provide requested budget information.
- No financial audit.

Complaint No. 4 6 10-16C

- Two Board members are related to each other and do not reside in District.
- Board member receiving hourly wages for office work.
- Hiring of Board President's husband as full time maintenance person.
- Misuse of District money.

Three key people were named in the complaints received by the Civil Grand Jury. All three have since resigned from their positions with the District and are no longer involved in the District's operation. The first person of interest was the Board President in 2009, who will hereafter be referred to as "Board President A." The second person of interest was a member of the Board in 2009, and will hereafter be referred to as "Board Member." The third person was the office manager for the District in 2009, and will hereafter be referred to as "Office Manager."

Board President A was appointed by the remaining directors to fill a vacancy on the Board in 2005. Her appointment was approved by the Stanislaus County Board of Supervisors. She became President of the Board at a regular board meeting held on April 12, 2006, after the then-President (hereafter "Board President B") resigned. At the same April 12th meeting, the newly comprised Board approved a change in the office manager's position from hourly to salaried and former Board President B was hired as a part-time assistant to Office Manager in the District office.

At its March 20, 2007 meeting the Board appointed Board President A's daughter (Board Member) to fill a vacancy as a Director on the Board. At its November 14, 2007 meeting the Board agreed to hire a part-time person on an "as needed" basis to help the maintenance person when he needed to clear a sewer line. At its April 12, 2008 meeting the Board hired the step-sister of Office Manager as a part-time office employee.

In or about March 2009 it appears the Board approved the remodeling of the District office, inside and out. However, it is difficult to ascertain the scope of this construction project and the process used to approve this expenditure. There is no record in the Board's meeting minutes indicating that the Board accepted bids for this construction job. Also, the Board's meeting minutes only reflect authorization of a "stucco repair" on the exterior of the District's building - not any remodeling of the interior of the building. Furthermore, the building in which the District conducts business is not owned by the District, it is merely leased. There is, however, a record that the Board paid for the construction work in March 2009. The meeting minutes also reflect that the construction work was completed by Office Manager's husband, who was an unlicensed contractor at that time.

At its July 25, 2009 meeting the Board adopted a resolution hiring Board President A's husband as a full-time employee to assist the maintenance person. As the reason for making this addition to staff, the Board cited an Occupational Safety and Health Administration (OSHA) regulation requiring that a second person be on hand during the infrequent occasions when the maintenance person needed to clear a sewer line obstruction. The new maintenance employee's salary was commensurate with the existing maintenance person's salary, and included benefits.

Based on a review of the Board's inadequate meeting minutes, it appears the Board operated without an attorney from its April 2007 meeting to its June 2008 meeting when a new attorney is noted in the minutes as attending. The new attorney appears to have attended two out of the first three meetings thereafter, and was then absent. At the

October 14, 2009 meeting another attorney appears to be in attendance. In reviewing the minutes of Board meetings, the Civil Grand Jury could find no record of any attorney having resigned or been dismissed, nor is there any record of the Board hiring an attorney.

Based on the Board's meeting minutes and other documents the Civil Grand Jury reviewed, the Board appears to have mishandled the notices and meeting schedules related to a proposed increase in sewer rates during the second half of 2009. The Board did not approve the proposed rate increase, due to vehement opposition on the part of District customers.

Pursuant to California Government Code Section 26909, all special districts are required to undergo an annual, independent audit.¹ There is no record of any independent audit of District finances during the tenure of the past Board. Additionally, it appears from the records the Civil Grand Jury reviewed that the past Board continually tapped into the District's reserve funds to pay for normal operating expenses. The District is in such a poor financial position that, as of January 14, 2010, the new Board voted to suspend compensation of Board members until the District's financial circumstances are resolved.

APPROACH

Much of the information gathered by the Civil Grand Jury during the course of its investigation deals with matters outside the scope of the Civil Grand Jury's jurisdiction. Other agencies will be investigating those matters. This report, as required by law, deals only with deficiencies in the policies and procedures under which the Empire Sanitary District operates.

The Civil Grand Jury reviewed the minutes of the Empire Sanitary District's Board meetings back to January 1, 2006 and monthly financial statements going back to January 1, 2007. The Civil Grand Jury's investigation took place over the course of several months. During this time, the Civil Grand Jury attempted to secure interviews with all of the persons named in the complaints. The Civil Grand Jury succeeded in interviewing the complainants, a present Board member, Board President A, and two additional parties of interest. However, the Civil Grand Jury attempted to interview a second member of the present Board, as well as Office Manager, and Board Member but was unable to do so.

¹ California Government Code Section 26909 provides, in part, as follows: "(a) (1) The county auditor shall either make or contract with a certified public accountant or public accountant to make an annual audit of the accounts and records of every special district within the county for which an audit by a certified public accountant or public accountant is not otherwise provided. In each case, the minimum requirements of the audit shall be prescribed by the Controller and shall conform to generally accepted auditing standards."

Under certain circumstances, the annual audit can be changed to a bi-annual audit if approved unanimously by the Board of Directors of the special district and the County Board of Supervisors.

Although Board President A was interviewed, she refused to answer any of the Civil Grand Jury's questions. Additionally, the Civil Grand Jury could not complete service of a subpoena seeking an interview with Office Manager despite several attempts to serve her. Calls seeking an interview with Board Member were ignored. A second member of the past Board, who served with Board President A and Board Member, failed to appear at a scheduled interview due to a reported illness.

FINDINGS

The Civil Grand Jury found the following after studying the information available to it:

- F1. Two past members of the Board, Board President A and Board Member, did not reside within the District boundaries during at least a part of the time they served on the Board.
- F2. The minutes of District Board meetings were minimal. The minutes did not include sufficient detail or statements of matters discussed.
- F3. There is no indication in the meeting minutes that the District Board conducted the yearly independent audit of its financial standing mandated by California Government Code Section 26909 during the period studied by the Civil Grand Jury (2006 to present).
- F4. The Board's practice of appointing relatives of current Board members as new Board members, and hiring relatives of current District Board members and employees appears unethical.
- F5. The Board appeared to lack knowledge of the exact number and type of customers located within the District, and there appeared to be confusion as to the proper billing practices for the different types of customers.
- F6. It appeared that non-bonded employees were accepting bill payments in the District's office.
- F7. The previous Board did not prudently handle the District's business affairs, as Evidenced, at least partially, by the present Board's decision to forego compensation until the District's financial position improves.

RECOMMENDATIONS

Based on its review the Civil Grand Jury recommends that the Empire Sanitary District Board:

- R1. Confirm that its current and future Board members reside within the District.
- R2. Expand on the details of the minutes of Board meetings so that an average citizen can understand the issues raised and discussed during meetings.

R3. Commission an independent audit of the District's finances pursuant to the provisions of California Government Code Section 26909.

R4. Review its hiring policies and, if one does not already exist, include a policy regarding the hiring of relatives of Board members or other employees. The hiring policies should include employee job descriptions.

R5. Perform an inventory which classifies residential, commercial and educational customers; and set fees in accordance with standard practices for each classification.

R6. Investigate the possibility of customers paying their service fees at a local financial institution instead of at the District office. Alternatively, require that any District employee accepting service fee payments at the District Office is bonded.

R7. Conduct District business affairs in an ethical, professional manner including the following:

- Review the California State Statutes regulating special districts.
- Receive training and up-dated information regarding the Brown Act once a year. New Board members should, upon taking office, be provided with a copy of the Brown Act and training as to its requirements.
- Consistently retain legal counsel. While it may not be necessary to have an attorney attend each Board meeting, the Board should have one available for closed meetings or discussing matters of a legal nature, such as sewer rate increases.
- Explore associating with similar special districts for information regarding problem solving, billings and other matters common to such special districts.
- Pursue grant monies for system upgrades through Stanislaus County and the State and Federal Governments.
- Consistently maintain a Board of 5 members.

REQUEST FOR RESPONSES

Pursuant to Penal Code Sections 933(c) and 933.05, the Civil Grand Jury requests responses as follows:

- The Empire Sanitary District Board of Directors
- The Stanislaus County Board of Supervisors
- The Stanislaus County Auditor/Controller

The governing bodies indicated above should be aware that the comment or response of each governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.