Stanislaus County Civil Grand Jury
City of Patterson
Case numbers 11-01C, 11-02C, 11-03C, 11-04C, 11-05C, 11-06C, 11-08C, & 11-18C
Part Four: Council member B

SUMMARY

The 2010/2011 Stanislaus County Civil Grand Jury (SCCGJ) received eight (8) specific complaints requesting the SCCGJ investigate Council member B for willful misconduct, violations of the Brown Act, and the Patterson Municipal Code.

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

1. The Immediate Past Mayor (IPM) initiated a closed session vote after an earlier denial by the full City Council on an appeal filed by a landlord/developer. Council member B voted in the affirmative to give back non-verified funds of attorney fees (which were unknown at the time of the closed session vote) to a commercial developer without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.

2. Council member B participated in the termination/registration of the Immediate Past City Manager (IPCM) and the Immediate Past Community Development Director (CDD). Council member B discussed his/her opinions about the IPCM during a telephone call to another Council member from a nearby city while the IPCM was in the process of applying for a position as a city manager.

3. Council member B circumvented the IPCM in an attempt to have city staffers help with problems associated to his/her operations of private business ventures.

4. Council member B, along with the IPCA, breached an ethical conflict of interest when the IPCA escorted Council member B to appear before the SCCGJ as a witness. Members of the SCCGJ found this to be a very unethical conflict of interest/ethics since the IPCA was/is a participant of focus and previous witness within this specific investigation.

GLOSSARY

§: A special character used to indicate the section of a statutory code.

Brown Act: Meetings of public bodies must be "open and public," actions may not be secret, and action taken in violation of open meetings laws may be voided. (California Government Code §§ 54953(a), 54953 (c), 54960.1(d)). Closed meetings are the exception and permitted only if they meet for defined purposes of the Government Code and follow special requirements.

CDD: City of Patterson Community Development Director.

Government Code § 87100 - Conflict of Interest: No public official at any level of state or local government shall make, participate in making or in any way attempt to use their official position to influence a governmental decision in which he/she knows or has reason to know he/she has a financial interest.

IPCA: Immediate Past City Attorney.

IPCM: Immediate Past City Manager.

IPM: Immediate Past Mayor.

Preponderance of Evidence: Preponderance of evidence means proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not.

Public Records Act: The Public Records Act is designed to give the public access to information in possession of public agencies: "public records are open to inspection at all times." The Public Records Act is located within California Government Code § 6250 et seq.

Recusal: To remove oneself from participation to avoid a potential or perceived conflict of interest.

SCCGJ: Stanislaus County Civil Grand Jury.

Sustain: To support by adequate proof.

Willful Misconduct: Willful misconduct generally means a knowing violation of a reasonable and uniformly enforced rule or policy. It means intentionally doing that which should not be done or intentionally failing to do that which should be done.

BACKGROUND

The SCCGJ received eight (8) complaints specifically naming Council member B. Council member B was appointed to the Patterson City Council in 2007 and was elected to the City Council in 2008. The current term is due to expire in 2012. Council member B chose to bring the IPCA to the SCCGJ appointment. The IPCA was not allowed inside the room where testimony was given (California Penal Code § 939).

California Penal Code § 939

> *No person other than those specified in Article 3 (commencing with Section 934), and in Sections 939.1, 939.11, and 939.21, and the officer having custody of a prisoner witness while the prisoner is testifying, is permitted to be present during the criminal sessions of the grand jury except the members and witnesses actually under examination. Members of the grand jury who have been excused pursuant to Section 939,5 shall not be present during any part of these proceedings. No persons other than grand jurors shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes, on any criminal or* ***civil matter before them.*** (emphasis added).

When invited into the SCCGJ room, the IPCA informed two members of the jury that Council member B was not going to testify without the physical presence of the IPCA. The IPCA was provided with a copy of Penal Code § 939 for review. The IPCA insisted that Council member B would not talk to the SCCGJ.

After careful consideration, the SCCGJ requested the court for a subpoena to be issued for Council member B. The IPCA accompanied Council member B and remained outside the room. The IPCA told Council member B about his/her prior appearance before the SCCGJ concerning this investigation.

Case Law supporting attorneys be excluded from Civil Grand Jury testimony under § 939 of the California Penal Code

Farnow v. Superior Court (San Mateo County Grand Jury)(1990) 226 Cal.App.3d 481; 276 Cal.Rptr. 275

Opinion of court in summary:

> *Despite the apparent import of the addition of the word "criminal" to § 939, however, the effect of a literal interpretation of this statute-to make civil sessions of the grand jury open to the public-would work so profound a change in the nature of grand jury proceedings that we must hesitate to adopt it. As our Supreme Court stated in considering an issue regarding disclosure of evidence reviewed by a grand jury, the secrecy of all grand jury proceedings is "deeply rooted in our traditions."*

DETAILS OF INVESTIGATION

All eight of the complaints were related to alleged Brown Act violations, willful misconduct, and initiating termination proceedings of the IPCM and CDD. During the course of this investigation, additional complaints were shared by both witness testimony and documents obtained through the Public Records Act. Those matters were investigated as well.

During the week of April 12-16, 2010, the IPM, Council member A and Council member B had a meeting with the IPCM. Testimony indicates that the IPCM would be terminated unless he/she terminated the CDD. The IPCM refused to terminate the CDD without cause. On April 20th, the same three Council members voted to terminate the IPCM during a closed session of a City Council meeting after his/her refusal to resign.

According to other witness statements, Council member B, asked specific city staffers if they could assist in getting his/her tenants to pay their delinquent rent.

In 2010, Council member B called a building official with the city to request specific times for an impending inspection on a property he/she owned. The city staffer felt intimidated and thought Council member B was using his/her position as a City Council member to expedite an inspection on his/her property. The CDD called back and explained to Council member B that all members using the city permit process must be treated the same in order to avoid the appearance of preferential treatment.

Council member B (nor any other council member) never reviewed a verification of legal expenses prior to voting to pay attorney fees, which is, in the SCCGJ's opinion, a gift of public funds. Factual and procedural statutes outlining gifts of public funds are located within the **California Constitution, Article XVI, Section 6.** Besides the lack of knowing/viewing any verified funds, the council cannot give public money without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.

Municipal Code Violations / Brown Act Violations

§ 2.16.040 Relations with city council.

> *The city council and its members shall deal with the administrative services of the city only through the city manager. The city manager shall take his/her orders and instructions from the city council as a body, and no individual councilman shall give any orders or instructions to the city manager or his/her subordinates. When a decision has been made by the city council as a body, it shall be final and conclusive. Further reference to any such decision to the council shall not be made by the city manager except to the council as a whole.*

City of Patterson / City Council Handbook

Council/Manager Relationship

> *The employment relationship between the City Council and City Manager honors the fact that the City Manager is the chief executive officer of the City. The City Council should avoid situations that can result in City staff being directed, intentionally or unintentionally, by one or more members of the City Council. Regular communication between the City Manager is important in maintaining open communications (page 16*).

Council Roles

> *Individual members of the City Council should not make attempts to pressure or influence staff decisions, recommendations, workloads, schedules, and department priorities without the prior knowledge and approval of the Council as a whole. If a Council member wishes to influence the actions, decisions, recommendations, workloads, work schedule, and priorities of staff, that member must prevail upon the Council to do so as a matter of Council policy (page 18).*

INVESTIGATION METHODOLOGY

This investigation began in July of 2010, and concluded in May of 2011. The complaints were investigated by the SCCGJ Government/Administration committee with results and reports provided to the full panel for review, editing, and deliberation. Methods of investigation are as follows:

- Reviewed submitted complaints.
- Requested documents (emails and correspondence) and received them through the Public Records Act.
- Reviewed voluntarily submitted memorandums and correspondence by interested witnesses.
- Reviewed thousands of emails - some of which were not included in our Public Records Act request but brought forward by witnesses.
- Attendance at City of Patterson Council meetings.
- Direct testimony was received by witnesses. The testimony was under oath and recorded with their knowledge.

FINDINGS

F-1: On 10/26/2009, Council member B (nor any other council member) never reviewed a verification of legal expenses prior to voting to pay attorney fees which is, in the SCCGJ's opinion, a gift of public funds. Factual and procedural statutes outlining gifts of public funds are located within the **California Constitution, Article XVI, Section 6.** Besides the lack of knowing/viewing any verified funds, the council cannot give public money without a properly filed lawsuit, verification of funds, court order, contract or statutory authority.

F-2: Violation of Patterson Municipal code and City Council handbook.

- Failure to follow the proper chain of command as it relates to city business.

F-3: Council member B attempted to use his/her position of authority in an attempt to influence decisions in his/her favor.

RECOMMENDATIONS

R-1: Brown Act requirements, city policies, and City of Patterson - City Council Handbook (2007 edition) shall be reviewed by City Council members to ensure they are in accordance with open meeting laws and proper protocol during closed session hearings.

- All Patterson City Council members shall have established criteria and authenticated documentation for the return of public funds on any litigation, or payments prior to voting on issues of this nature.

R-2: Any City Council business correspondence or actions by individual members of the City Council must be approved in advance by the City Manager. (Patterson Municipal Code § 2.16.040).

R-3: City Council member B shall refrain from using his/her positional power to circumvent city policy, or use his/her position to influence others for special favors or consideration.

REQUEST FOR RESPONSES

Patterson City Council.

REFERENCES

- California Fair Political Practices Commission http://www.fppc.ca.gov/.
- California Penal Code (§ 939).
- *Farnow v. Superior Court (San Mateo County Grand Jury)(1990) 226 Cal.App.3d 481; 276 Cal.Rptr. 275.*

- California Constitution , Article XVI, Section 6.
- City of Patterson. (2007). City of Patterson - *City Council Handbook.* Approved February 20, 2007 by City Council Members of Patterson.
- City of Patterson, California. http://ci.patterson.ca.us/.
- City of Patterson, Municipal Code (§ 2.16.040).
- Correspondence voluntarily submitted by witnesses.
- Correspondence acquired from certified letter to commercial developers.
- Documents obtained via the Public Records Act.

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code § 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 § 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.

RECUSAL ADVISEMENT

This report of cases 11-01C through 11-08C, and 11-18C are issued by the 2010/2011 Stanislaus County Civil Grand Jury with the following exception: One (1) member of the grand jury volunteered to recuse his/her self due to a perceived conflict of interest. This grand juror was excluded from all phases of the investigation, including interviews, deliberations, voting, and in the writing and approval of this report. None of the information included in this report was obtained from the excluded grand juror as a means of mitigating a potential bias to the integrity of this report.