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September 23, 2011

The Honorable Ricardo Cordova
Presiding Judge
Stanislaus County Superior Court
Post Office Box 3488
Modesto, CA 95353

Re: In Re: Dominic Farinha & Response to Stanislaus County Civil Grand Jury Findings

Your Honor:

Pursuant to California Penal Code Section 933 (c), attached, please find a response on behalf of Patterson City Council member Dominic Farinha to the findings and recommendations of the 2010-2011 Stanislaus County Civil Grand Jury ("SCCGJ"). We respectfully reject each finding made by the SCCGJ regarding Council member Farinha. We note that the City of Patterson's response to the SCCGJ findings is in accord with our position. In this reply, we will expand the record to include facts which form the basis for this collective opinion. While we appreciate that the SCCGJ did not recommend any action be taken regarding our client, we nevertheless disagree with their findings. Thank you in advance for your consideration.

Finding number 1 – Attorneys Fees Properly Awarded

Finding number 1 (F-1), concludes that Farinha, in his capacity as a Patterson City Council member, voted to pay attorneys fees to a Stanislaus county developer in violation of municipal county rules. In its findings, the SCCGJ states, in relevant part, "...the council cannot give public money without a properly filed lawsuit, *verification of funds*, court order, contract or statutory authority." (emphasis added).

We agree that verification is a prerequisite to the award of City funds. And, as the City of Patterson points out in its response, see City of Patterson Response Pg. 1, ¶2, and, we underscore here, the minutes from the City Council meeting which resulted in these funds being awarded states "[t]he City Council voted 3-2 to reimburse John Ramos $27,101.74 for legal fees incurred in his appeal of the Health Care District zoning issue, *subject to verification of cost...*" (emphasis added).

The rules require that funds be disbursed subject to verification of funds. The minutes from the City council meeting show that the members, including Council member Farinha, were aware of that rule and complied with it. The SCCGJ's finding otherwise is in error.

Finding number 2 – No Chain of Command Violation was Committed

Finding number 2 (F-2) appears to blend two complaints. First, that Council member Farinha voted to terminate the employment of a city employee after that same employee refused to comply with the wishes of Council member Farinha and two colleagues. Further, F-2 references that Council member Farinha used his position to assist him "...in getting his/her tenants to pay their delinquent rent."

We adopt the findings of the City of Patterson with respect to F-2 specifically, no such violations as alleged by the SCCGJ occurred with respect to the chain of command of City business. See City of Patterson Response Pg. 1, ¶4. There are no facts in the SCCGJ summary or details of investigation which support a contrary conclusion. The allegation regarding collection of rent is particularly difficult to understand since Council member Farinha has one tenant from whom he regularly receives timely rental payments. That tenant has never been delinquent. Accordingly, the conclusion that Council member Farinha attempted to use his position to collect delinquent rent, when the facts do not indicate that rent was or has ever been delinquent, defies logic and is, in any case, unsupported by the evidence. The SCCGJ's finding otherwise is incorrect.

Finding number 3 – No Improper Use of Office

In what is perhaps the most troublesome and erroneous finding, the SCCGJ report states that Council member Farinha contacted a city building official to request specific times for an impending inspection on property he owns. The SCCGJ goes on to state that the staffer contacted by Council member Farinha "felt intimidated" and that Council member Farinha "was using his position to expedite an inspection on his property." No such intimidation occurred nor did Council member Farinha request any special consideration because of his position.

Council member Farinha did have a roofing contractor at his property. The contractor and Council member Farinha were waiting on the city building inspector for an inspection. The city official was late. After a certain amount of time had passed, Council member Farinha contacted the City and inquired as to the inspector's status. Council member Farinha did this in the presence of the roofing contractor. At no time, according to the roofing contractor, did Council member Farinha identify himself as a public official—to either the city inspector or, even the roofing contractor. The roofing contractor also stated that at no time during the Council member's call to the City did Council member Farinha raise his voice, act in a bellicose or intimidating manner and certainly, he did not request any special consideration because of his status as a public official.

Unfortunately, the SCCGJ did not call the roofing contractor as a witness during their proceedings. If they had, certainly they would have understood the true circumstances of this particular situation. Indeed, Council member Farinha behaved as any citizen is entitled to – making a routine inquiry regarding a matter related to an inspection on his property.

Conclusion

While this reply addresses only the actual findings of the SCCGJ regarding Council member Farinha, we will take the opportunity here to briefly address and correct the record regarding two additional areas covered by the SCCGJ in its report. Specifically, the allegation that Council member Farinha participated in a meeting to terminate a City employee and, his seeking counsel before the SCCGJ. See Details of Investigation section.

No Meeting Discussing Termination of City Employee

First, the SCCGJ references testimony by the Interim Past City Manager ("IPCM") regarding a meeting between Council members Smith, Farinha and the Immediate Past Mayor ("IPM"), in which termination of a city employee was discussed. This meeting never occurred. Testimony otherwise is false. The SCCGJ's position on this point is wrong.

Right to Counsel at SCCGJ Proceedings

Second, the SCCGJ chastises Council member Farinha because he asked then City Attorney Logan to accompany him to the Civil Grand Jury proceeding. Council member Farinha committed no ethical impropriety by requesting legal representation before the SCCGJ. Until the instant matter, Council member Farinha had no familiarity with the Civil Grand jury or process. Like any citizen, Council member Farinha had and maintains the right to counsel. As such, he requested that City Attorney Logan accompany him to the SCCGJ. This is acceptable conduct. The SCCGJ's insinuations otherwise are specious.

The instant SCCGJ investigation occurred in a politically-charged environment. The events leading up to the investigation and findings are well documented in various articles published in the local press regarding the relocation of a health care facility in the Keystone Pacific Business Park. Regardless of Council member Farinha's position on that issue, he, like any citizen, is entitled to a fair and reasonable hearing on the matters at issue before the SCCGJ. It is our position, and we are joined by the City of Patterson, that Council member Farinha did not receive a fair hearing with the SCCGJ. This is borne out by the facts outlined in this Response letter.

In sum, we reject each allegation and finding by the SCCGJ. And, while we respect the function of the Civil Grand Jury, we respectfully submit that this Civil Grand Jury erred in their findings regarding Council member Farinha's conduct. We thank you for your consideration.

Sincerely,

Thomas P. Mazzucco, Esq.
Susan R. Jerich, Esq.