

**2011 – 2012 Stanislaus County Civil Grand Jury
City of Oakdale
Case 12-09C**

SUMMARY

The Stanislaus County Civil Grand Jury (SCCGJ) received a citizen complaint dated September 13, 2011. It alleges that a confidential personnel file was removed from City Hall by a Council Member without permission and that the Council Member shared the file with a City employee. It also alleges that the Council Member violated City policy by interfering with staff functions relating to personnel issues affecting a City employee. In addition, this Council Member is alleged to have violated the Brown Act by remaining in the council chambers and participating in discussions on an issue in which the Council Member had declared a conflict of interest.

GLOSSARY

CM - City Manager

Person B – Council Member

Person D – City Employee

Person F – Council Member

Person G – Mayor

SCCGJ – Stanislaus County Civil Grand Jury

California Election Code Sections 87100 thru 87200 pertain to conflict of interest rules for office holders

BACKGROUND

On or about December 7, 2010, B requested a copy of an investigative report that the City of Oakdale had completed in the Fall of 2009. B was told by the CM that the original document was available for review at City Hall and that a copy would not be provided. On arrival at City Hall, B was lead to an office by the CM where the document was to be reviewed but not removed from City Hall. The CM then left for lunch.

On returning from lunch, the CM noted that B was not in the office and the document was gone. The CM then contacted B by telephone. The CM was informed that B had the document, was reviewing it at home, and that the document would be returned shortly. When the document was not immediately returned, the CM again telephoned B. The CM recalled B saying that the document was still being reviewed and questioned why it was needed to be brought back so soon. The CM informed B that the City legal counsel considered this report to include confidential and sensitive personnel information. B returned the document later that day.

In March 2011, B had a meeting with F and D regarding a personnel issue without the knowledge of the CM or the Personnel Department. Only after the meeting had been going on for a while was the CM notified and asked to attend. A few days later, B met with D to further discuss personnel issues related to the City of Oakdale without the knowledge of the CM, legal counsel, or the Personnel Department.

On July 18, 2011, in a City Council meeting, B recused him/herself from consideration of Resolution 2011-99 regarding an engineering report on a lighting district. However, B remained

in the room and took part in the discussions. At the same meeting, G also recused him/herself on the item but remained in the room and participated in the discussion.

B stated in an interview with the SCCGJ that he/she has been living and working in Grass Valley and only comes back to Oakdale on weekends and days when the City Council meets. The Council Member continues to serve on the City Council but has expressed the intent to step down on June 1, 2012.

METHODOLOGY OF INVESTIGATION

The SCCGJ investigation of this complaint took place between September 13, 2011 and March 31, 2012. During the investigation by the Government Administration Committee, the following actions were taken:

1. Reviewed correspondence and emails relating to the allegations.
2. Interviewed witnesses to verify accuracy of information provided to the SCCGJ.
3. Reviewed City Council minutes.

FINDINGS

F1. B removed confidential files from City Hall after being specifically instructed not to by the CM and thereby, acted with poor judgment. This is a violation of the Oakdale Handbook of Rules and Procedures for the Oakdale City Council, Chapter 1 (B) Ethical Behavior.¹

¹ “Ethical behavior is what Councilmember ought to do, not just what they have to do. The law only sets minimum standards regarding ethical conduct. It is important to recognize that just because an action is legal, it doesn’t always mean it is ethical or reflects the values of Councilmember or the public. Councilmembers must strive to always put the good of Oakdale and its citizens first with the utmost in ethical and civil behavior.”

F2. B and F interfered in a personnel issue by meeting with D without the prior notice or knowledge of the CM or Personnel Department. This is a violation of the Oakdale Handbook of Rules and Procedures for the Oakdale City Council, Chapter 1(I) Interference in Staff Functions.²

² “The City Council shall deal with the administrative services of the City only through the City Manager, except for the purpose of inquiry, and neither the City Council nor any member thereof, shall give orders to subordinates of the City Manager. No member of the City Council shall publicly criticize or censure an staff member of the City, and shall instead relay any criticism of a staff member privately through the City Manager.”

F3. Normal procedures for abstaining on an issue were violated in the July 18, 2011 Council meeting when B and G both abstained but remained in the room and participated in the discussion on adopting Resolution 2011-102. This was a violation of both the City of Oakdale Handbook of Rules and Procedures for the Oakdale City Council Chapter IV (B) (6) Abstention/Recuse: Conflict of Interest³ and Section 87105 (a)(3) of the California Government Elections Code.⁴

³ "Councilmembers shall disqualify themselves and abstain from voting if they have a financial conflict of interest or any other disqualification prescribed by law in a matter before the City Council. In such event, they may not participate in the discussion or the vote. Councilmembers shall state the specific reason for such disqualification. Unless the matter is on the consent calendar, the abstaining Councilmember shall leave the Council dais until the conclusion of the agenda item. The matter will then proceed as though the member is not present, and the member shall not be counted toward making up a quorum. Further requirement on abstention and absence from the Chambers may be imposed by State law."

⁴ "87105 (a). A public official who holds an office specified in Section 87200 who has a financial interest in a decision within the meaning of Section 87100 shall, upon identifying a conflict of interest or a potential conflict of interest and immediately prior to the consideration of the matter, do all of the following: ... (3) Leave the room until after the discussion, vote, and any other disposition of the matter is concluded, unless the matter has been placed on the portion of the agenda reserved for uncontested matters."

- F4. B moved to Grass Valley at the start of 2012 and is no longer living in the City; however B is still participating in the City Council meetings. By State election law (California Government Codes – Residency Requirements § 36502 (a))⁵, no council member is allowed to serve on Councils/Boards when they do not live within the establish limits of the jurisdiction they are representing.

⁵ "36502 (a). A person is not eligible to hold office as council member, city clerk, or city treasurer unless he or she is at the time of assuming the office an elector of the city, and was a registered voter of the city at the time nomination papers are issued to the candidate as provided for in Section 10227 of the Elections Code. If, during his or her term of office, he or she moves his or her place of residence outside of the city limits or ceases to be an elector of the city, his or her office shall immediately become vacant."

RECOMMENDATIONS

- R1. Removal of confidential files by Councilmembers has been addressed by the City of Oakdale in their Handbook of Rules and Procedures. A new section was added in September 2011 to Chapter 1 to clarify the requirements for Councilmembers to view personnel files and other documents and reports. The SCCGJ recommends that the Councilmembers review the handbook annually and update as needed.
- R2. Councilmembers should not become involved with personnel issues or be an advocate for or against employees. To become involved in these issues not only violates the City of Oakdale rules for Councilmembers but it could increase the liability of the City.

- R3. The SCCGJ recommends the Council of Oakdale review procedures for Abstention/Recusal as outlined in their Council handbook and insure that the proper procedure is followed at all meetings.
- R4. The SCCGJ recommends that the City of Oakdale implement California Government Code 36502 for the immediate removal of Councilmembers who no longer reside within the City limits.

REQUEST FOR RESPONSE

Oakdale City Council

This report of case 12-09C is issued by the 2011-2012 Stanislaus Civil Grand Jury with the following exception: one member of the grand jury voluntarily recused due to a perceived conflict of interest. This person 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 in this report was obtained from the excluded grand juror as a means of mitigating a potential bias to the integrity of this report.