

2011-2012 Stanislaus County Civil Grand Jury Responsibilities of Local Government

The 2011-2012 Stanislaus County Civil Grand Jury (SCCGJ) noted several recurring themes during its review of numerous past and current reports affecting the public's perceived or actual perception of our local government entities. The SCCGJ also discovered innovative ideas and functions that local agencies are effectively utilizing to provide a more informative government by the people and for the people they serve. This SCCGJ is issuing this summary report to all Stanislaus government agencies as an invitation to review and improve its knowledge base and thus its communication with the public they have sworn to serve. It is our intent that the time spent in review, implementation and adherence of these core topics will allow the body to focus on the pressing matters of governance.

The knowledge, policies, procedures, and dedication of the members of any elected or appointed members and the employees of every entity – special district, city or county is wholly and individually responsible for the adherence to the laws and conduct of the body they serve.

Summary:

The 2011-2012 Stanislaus County Civil Grand Jury (SCCGJ) investigated several complaints involving the following topics:

- Elected and appointed legislative officials whose residency requirements came in to question.
- The completion of AB1234 (Ethics Training) by all elected and appointed officials.
- The Ralph M. Brown Act (Public and Open Meeting Laws)
- Fiscal Responsibilities and Finance Committees
- Failure to disclose all business connections
- Board/Council governance responsibilities
- Sexual harassment awareness and prevention training

During the course of the year, the SCCGJ collected vast amounts of paper documentation. Documents requested by the SCCGJ may be e-faxed, emailed or sent on CD-Rom. The law allows for the use of technology to provide information in the most efficient manner possible.

Glossary:

California Government Codes

§1090. *Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. As used in this article, "district" means any agency of the state*

formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

§ 18700. Basic Rule; Guide to Conflict of Interest Regulations.

(a) 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, unless the public official can establish either: (1) that the effect is indistinguishable from the effect on the public generally, or (2) a public official's participation is legally required.

§ 34904.

*A person is not eligible to hold office as **mayor** unless he or she is at the time of assuming that 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.*

§ 34882.

A person is not eligible to hold office as a member of a municipal legislative body unless he or she is otherwise qualified, resides in the district and both resided in the geographical area making up the district from which he or she is elected 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.

§ 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.

AB 1234:

On October 7, 2005, the Governor signed Assembly Bill No. 1234. AB 1234 (Public Service Ethics Education) requires that if a local agency provides any type of compensation, salary, or stipend to, or reimburses the expenses of a member of its 'legislative body' (as that term is defined in California Government Code § 54952), that local agency's officials must receive training in ethics. AB 1234 certification must be completed within 12 months of taking office and every two years thereafter.

Ralph M. Brown Act

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.

fiduciary - a person (or a business like a bank or stock brokerage) who has the power and obligation to act for another (often called the beneficiary) under circumstances which require total trust, good faith and honesty.

fiduciary relationship - where one person places complete confidence in another in regard to a particular transaction or one's general affairs or business.

Recommendations:

Residency Requirements

The 2011-2012 SCCGJ found no laws allowing an elected or appointed member of any municipality to run for, hold office and continue to hold office if they do not remain a resident of the geographical unit of governance. The 2011-2012 SCCGJ understands that there may be extenuating temporary circumstances beyond an elected official's control. The 2011-2012 SCCGJ recommends that all public boards and agencies review their policies and procedures to ensure that they are in compliance with and/or have actionable written policies and procedures regarding member qualifications to include the residency requirements of its members. These residency policies and procedures shall be the responsibility of the elected board/council as a whole to uphold.

- Each elected official declare once per year in an open and public meeting that they indeed continue to meet all requirements for the office they serve, including residency.
- Each elected or appointed member is made aware in writing of the responsibilities and qualifications necessary to continue to serve.

AB1234 (Public Service Ethics Training)

All public boards and agencies within Stanislaus County should post their AB 1234 Ethics Training certification, by member, on their website to ensure compliance. An administrator or clerk should monitor this requirement and place upcoming AB 1234 expiration dates on the public agenda. Members who fail to remain in compliance of AB 1234 should be mentioned at open meetings until they complete the certification.

If a public board or agency does not have a website, their AB1234 Ethics and Training certification, by member, should be an annual agenda item for public and open review. An administrator or clerk should monitor this requirement and place upcoming AB 1234 expiration dates on the public agenda. Members who fail to remain in compliance of AB 1234 should be mentioned at open meetings until they complete the certification.

AB1234 Training is available online and at no cost.

Ralph M. Brown Act

All public boards and agencies should review their policies and procedures to ensure that they distribute, to each member, the Ralph M. Brown Act.

The Ralph M. Brown Act is available online and at no cost.

Fiscal Responsibilities

The expected results of any Financial Audit and resulting Financial Reports Goals is an Unqualified Opinion. Though the term may seem counter-intuitive for some, an Unqualified Opinion means that the Certified Public Accounting opinion of a financial statement is given without any reservations. Such an opinion basically states that the auditor feels the company followed all accounting rules appropriately and that the financial reports are an accurate representation of the entity's financial condition. An Unqualified Opinion assures the public that their revenue contribution and the expenses incurred have been appropriately accounted for and that the entity has at least the financial data to make sound operational decisions.

Finance Committees

All local agencies have been impacted by our current financial downturn. Our government entities will continue to face tough financial times for several years after the private sector has recovered.

During the course of conducting investigations, the 2011-2012 SCCGJ identified two (and there may be many more within Stanislaus County) entities utilizing a Finance Committee to provide budget and financial recommendations to their board or council. We offer the following, knowing that each entity type within Stanislaus County has its own laws and codes that they must consider.

- City of Riverbank - utilizes a 10 member citizen volunteer committee, to review the financial status, budget(s) and various assigned projects requested by the City Council. This Finance/Budget Committee was created by the city council as an advisory group and works with the City Finance Director along with other city directors as needed. A member of the city council attends these Finance Committee meetings, but is a non-voting member.
- Oak Valley Hospital District (OVHD) – operates with a Finance Committee for the same purpose, to review the financial status, budget(s) and various assigned projects. The committee’s specified duties are outlined in their by-laws. OVHD’s committee includes the Board Treasurer, members of Senior staff, the CEO, the CFO and a member of the public, all with voting privileges. All Finance Committee meetings are open to the public.

Both entities filled their public positions through a general public application and interview process and the Finance Committees report directly to the Council or Board they serve.

Council/ Board Governance Responsibilities

Understand the responsibilities as a board or council. Powers granted are also responsibilities and are outlined in government code. Never defer your powers and/or responsibilities to a paid employee of the entity for which you serve.

Form 700 – Statement of Economic Interest

All council members and other members of public boards and commissions who are required to file a Form 700 should clearly recognize that *any* business connection they have may result in a conflict of interest.

These officials must identify orally the economic interest that creates a conflict of interest and leave the room before a discussion or vote takes place at a public meeting.

Sexual Harassment

Investigations by the SCCGJ indicate that local districts and boards may not be taking the issue of sexual harassment seriously. Unwanted sexual advances can create not only harassment but can lead to a hostile work environment. All employees, male and female, deserve to work in a respectful and decent work environment. The lack of these elements can lead to loss of productivity, poor working conditions and legal action. Even though they have fewer than 50 employees, the SCCGJ recommends that all boards and districts, implement all of the provisions of Government Code 12950.1, which states in part, “...an employer having 50 or more employees shall provide at least two hours of classroom or other effective interactive training and education regarding sexual harassment to all supervisory employees...”.

No responses are requested

This report is issued by the 2011-2012 Stanislaus County Civil Grand Jury. No members of the grand jury volunteered to recuse themselves due to a perceived conflict of interest.

The primary function of the SCCGJ is to provide unbiased oversight and to investigate complaints from citizens about the operations of county and city government, school districts and special districts, as required by law. The grand jury is one means to inform citizens that government is operating efficiently and in an ethical, honest manner. The grand jury investigates policies and procedures and makes recommendations to improve local governmental operations. It has no power to enforce its recommendations. It only informs citizens about some of the legislative and administrative work of their local governments. All grand jury investigations and reports are approved by at least a 60% supermajority vote of the entire grand jury panel.