

**2017-2018 Stanislaus County Civil Grand Jury
Burbank-Paradise Fire District Board of Directors
Dynasty or Democracy?
Case #18-06C**

SUMMARY

The Stanislaus County Civil Grand Jury (SCCGJ) initiated an investigation in response to a complaint of alleged mismanagement by the board of directors of the Burbank-Paradise Fire District (BPFDD). The allegations included violations of the Brown Act and poor financial decisions. The investigation was expanded to determine compliance with selected articles of state law and generally accepted governance practices.

The investigation disclosed a board of directors and an organization marked by careless review, monitoring, and supervision practices. The Burbank-Paradise Fire District Board of Directors (BPFDD-BOD) was unable to provide any policies or procedures to deal with potential conflict of interest. Based on the testimony of witnesses and SCCGJ observations of open public meetings, the BPFDD-BOD appears to make decisions that affect BPFDD board members' personal financial, family, or other individual interests. Typically, government agencies develop and implement policies and procedures to deal with potential conflict of interest in areas such as family relationships (nepotism), business relationships, gifts, and honoraria.

Board members lacked knowledge of parliamentary procedures and failed to produce evidence of required ethics training and financial disclosure forms. At the time of this investigation, information vital to board meeting agendas, public meeting minutes, and financial information was not on the BPFDD website. In addition, this required information was not addressed or available to citizens who physically attended a board meeting and/or requested it. The board meeting notices were difficult to find. The signage and direction to the BPFDD meeting room is poorly marked and the meeting times, dates, and location were not scheduled with regularity.

The BPFDD-BOD failed to provide many documents requested by the SCCGJ to complete its investigation. Refer to Methodology and Findings sections of this report for more detail.

GLOSSARY

BPFDD	Burbank-Paradise Fire District
BPFDD-BOD	Burbank-Paradise Fire District Board of Directors
LAFCO	Local Agency Formation Commission
SCCGJ	Stanislaus County Civil Grand Jury
SCSD	Stanislaus County Sheriff's Department

BACKGROUND

On July 13, 2017 the Modesto Bee reported that the chief of BPFDD was dismissed following a vote by the BPFDD-BOD with one recusal from the vote. The SCCGJ received a complaint on September 20, 2017 alleging Brown Act and financial violations by the BPFDD-BOD.

BPFDD, established in 1942, serves over 8,300 residents in a 2.6 square mile area and has an annual budget of \$320,000. The district has one fire station that was recently remodeled. The majority of its calls are for emergency medical services. BPFDD is served by twenty-six volunteer firefighters, two paid firefighters, and one part-time employee.

At the time of this investigation, BPFDD was served by five elected board members. Some board members have served as long as twenty years. A change in fire management took place in July 2017.

BPFDD-BOD is a political subdivision of the State of California; neither the County of Stanislaus nor the State of California has authority over special districts once they are formed. This independent district's voters elect a board of directors to conduct the people's business. The BPFDD-BOD is responsible for ensuring compliance with state laws and accepted governance practices.

METHODOLOGY

The SCCGJ interviewed the complainant regarding a potential violation of the Brown Act by the BPFDD-BOD.

Ten other interviews were conducted.

Several board meetings were attended.

Documentation was requested as follows:

- Budgets for the past five fiscal years.
- Annual internal and audited financial statements for the past five years.
- Credit card authority and policy for use.
- Check signing authority and policy.
- Board meeting agendas for the past three years.
- Board meeting minutes for the past three years.
- Original district bylaws governing operations since inception.

- Form 700 Statement of Economic Interests.
- Proof of Ethics Training.
- Financial documents for the past three fiscal years including:
 - Vendor invoices and all documents supporting payments made.
 - Attorney invoices.
 - Bank statements.
 - Correspondence.
- Recent construction documents:
 - Plans and specifications and contract with architect.
 - Documents requesting bids.
 - Responses to requests for bids.
 - Construction contract.
 - Building permit showing final approval by government authority.
- Documentation requested by certified mail.
- Phone calls, visits to BPFDD to obtain documents.
- BPFDD-BOD digital voice recording of meetings reviewed.
- Reviewed Stanislaus County Sheriff's Department (SCSD) police reports.

DISCUSSION

Board Meeting Code of Conduct

A meeting code of conduct does not exist in BPFDD-BOD. Typically government agencies prescribe and enforce rules for their own governance. These rules must be consistent with state laws and regulations. A meeting code of conduct reduces the likelihood of conflict of interest situations where a BPFDD-BOD member or one of his family members has a personal or financial interest that could compromise his independent judgment or responsibilities. BPFDD-BOD is required to eliminate conflicts of interest, disclose ethical, legal, financial, and other conflicts. They must remove themselves from decision-making processes if they would otherwise be called on to act on a conflict involving themselves, their family members, or entities with which they or their family members are closely associated. A governing board is required to adopt a conflict of interest code in compliance with Government Code 87300-87313.

In July 2017, the BPF-D-BOD voted to terminate the existing fire chief. This action resulted in feelings of acrimony and bitterness between the terminated chief and some board members. Anticipating legal action, the BPF-D-BOD consequently hired an attorney. During the SCCGJ observation of BPF-D board meetings, the attorney's role expanded to providing instructions on how to conduct a meeting.

The BPF-D-BOD meetings attended by the SCCGJ were loud and argumentative. BPF-D-BOD interrupted each other and held frequent side conversations. In a closed session the SCCGJ members standing outside of the building could hear word-for-word yelling between board members.

Based on a review of Stanislaus County Sheriff's Department (SCSD) police reports of June 23, 2017 and September 8, 2017 and the testimony of witnesses, the SCSD was called to settle arguments between board members.

Conflict of Interest

A history of conflicts of interest appear to be a factor in the BPF-D-BOD's decision making processes. The SCCGJ investigation revealed that two board members are married to each other. A sitting board member, who was the spouse of the former chief, defended her husband's actions when another board member complained that the chief performed his duties poorly. On July 12, 2017, the BPF-D-BOD voted to terminate the existing chief. Since the existing chief was married to a board member at the time of his termination, this resulted in an atmosphere of acrimony and discord between board members. Witnesses testimonies revealed the existing chief's spouse, a member of the board on July 12, did not recuse herself from the closed session discussion regarding termination.

Another board member's significant other was on the board at an earlier time. A paid part-time clerk was married to a person who had been on the board at the time of the clerk's hiring.

Financial

Monthly financial reports were kept in an unlocked filing cabinet along with other audit reports. Receipts for supplies and equipment repairs were kept in the accounts payable folder in the same unlocked filing cabinet, leaving this information available to anyone. Credit cards were kept in an unlocked desk making them available for anyone to use.

Credit cards were also used by the strike team while they were outside of the district and assigned to fight wildfires. A strike team is a crew of highly trained firefighters fully equipped and trained to respond to wildfires anywhere in the state. Under mutual aid agreements with Cal Fire, BPF-D provides strike teams as needed and is then reimbursed for the team's costs by the California Office of Emergency Services. As a practice, some of the CalOES reimbursement for the strike team has been taken by the chief for administrative duties, even though the chief did not accompany the strike team on its firefighting mission.

The district spent \$600,000 remodeling the fire station. BPF-D negotiated a loan to pay for the remodeling. BPF-D received only one bid for this project. The following is a quote from

California Fire and Rescue Training Authority policy handbook section 3080.5 Informal Bidding Procedures:

“Whenever this policy requires use of informal bidding procedures, the Manager shall obtain, if available, a minimum of three written or verbal quotations or proposals relative to the personal property or services to be acquired for the construction project. The Manager shall award the contract to the vendor or contractor whose quotation or proposal, in the Manager’s discretion, most adequately meets the needs of the Authority at the lowest price.”

Changes to the proposed work were approved by one or two individuals without board approval or without proper documentation. The loan required an audit of BPFD on an annual basis. An audit was not completed on the loan by the bank due to lack of available documentation.

A surplus fire truck was sold for \$1,900 with no documentation indicating its valuation or appraisal prior to its sale. According to witnesses, the fire truck was delivered to the purchaser, and payment was made in cash. The cash was placed in an envelope and put in the chief’s desk. No record is available authorizing the sale or verifying the disposition of the funds received.

Minutes

Because the minutes were not available, many comments and allegations were unsubstantiated by documentation. This created a “he said, she said” environment where voices were raised, and confrontations were common. Acrimony was exacerbated when one board member threatened legal action against the board regarding termination of the previous chief.

Anticipating legal action, the board hired an attorney to help protect the district from a possible wrongful termination lawsuit. The attorney’s job expanded to give guidance on conducting BPFD-BOD meetings. The attorney fees were originally budgeted at \$16,000. This expense has grown to nearly twice the amount budgeted to over \$30,000.

Minutes were often handwritten notes by a board member on a copy of the meeting agenda. These documents were considered personal copies of the board member. Several board members claimed to have recorded the actual minutes and believed their record as personal and private information. For the last year, due to disputes between board members regarding the content of the minutes that exist, a digital voice recorder was used at board meetings. The clerk started transcribing the recordings verbatim. Some records of minutes were maintained on a home computer. Closed session minutes were sometimes combined with regular open meeting minutes. The district board’s meeting minutes failed to meet the minimum requirement for conducting public business.

Documentation

On September 29, 2017, the SCCGJ requested documents by certified mail. With the exception of receiving an abusive telephone call from a BPF-D-BOD member to the SCCGJ, BPF-D-BOD did not respond to SCCGJ's initial request for information. A second SCCGJ request for information was sent by certified mail on October 19, 2017

BPF-D-BOD failed to provide the SCCGJ requested information in a timely fashion. Consequently, it became necessary for members of the SCCGJ to visit the fire station to collect the requested documents. During its search for the requested documents, SCCGJ found that incoming mail to the fire station was placed in an unsecured open box. The SCCGJ also learned that mail is sometimes delivered to board members at their home. Firefighters, who stay in a house next to the fire station, do not check the mail or distribute the mail daily. Apparently no individual has the responsibility to collect and distribute mail.

When the requested documents were obtained by the SCCGJ at the BPF-D office, certified mail sent to BPF-D from other businesses and organizations was found to be unopened and outdated.

The SCCGJ learned the BPF-D part-time paid clerk had no job description, specific hours, or workplace. The SCCGJ also discovered the chief has no job description, which should include a list of responsibilities and duties.

Witnesses stated that firefighters were concerned about their grievances of harassment by management that could result in retaliation or being blacklisted in their profession. The SCCGJ could not find any policies or procedures pertaining to harassment and how they could address their grievances.

FINDINGS

- F1. The BPF-D-BOD is dysfunctional. Board members lack training, leadership skills, and the ability to communicate effectively.
- F2. The lack of written conflict of interest policies and procedures is a frequent issue.
- F3. Legal fees have depleted the funds available for the district's core mission.
- F4. No records exist accounting for the cash funds received from the sale of the BPF-D fire truck.
- F5. State funds reimbursing the district for administrative costs for strike teams were improperly paid to an employee.
- F6. Credit cards were left unsecured with no written policy for their use.
- F7. BPF-D-BOD failed to provide financial statements and audit reports.
- F8. BPF-D-BOD failed to provide Form 700 Statement of Economic Interests and evidence of ethics training as required by California law.
- F9. BPF-D-BOD failed to provide board agendas and minutes as required by the Brown Act.
- F10. Agendas for special meetings were not posted as required by the Brown Act.

- F11. BPFD-BOD has no written policies, procedures, or bylaws.
- F12. Employees have no job descriptions and therefore have little understanding of what their job responsibilities truly are.
- F13. BPFD has no grievance procedure for protection against any form of abuse.

RECOMMENDATIONS

- R1. LAFCO should consider dissolving BPFD or consolidating it with another district by June 30, 2019.
- R2. BPFD-BOD must conduct public meetings in a professional manner led by the board chair in congruence with the district's adopted written policies, customary parliamentary procedures, and the Brown Act by August 1, 2018.
- R3. Develop procedures and rules for BPFD-BOD on conducting public meetings by participating in state-approved courses on the Leadership of Special Districts Foundation in California by December 1, 2018.
- R.4 Develop and implement a conflict of interest policy and procedures to establish expectations of balancing the personal and business interests of BPFD.
- R5. Retain Financial Disclosure Forms (Form 700) for a minimum of five years to be held at the BPFD office and at the Stanislaus County Election Office by September 1, 2018.
- R6. Maintain Ethics training certificates for a minimum of three years to be held at BPFD office by August 1, 2018.
- R7. Establish bylaws requiring new and returning BPFD-BOD to complete biannual training in the Brown Act, Public Records Act (Government Code 1090-1098), and the Political Reform Act (Government Code 87100-87505) by December 1, 2018.
- R8. The BPFD website should focus on governance information and financial transparency no later than August 1, 2018 by posting:
- Regular meeting agendas 72 hours prior to the meeting.
 - Special meeting agendas 24 hours prior to the meeting.
 - Emergency meeting agendas one hour prior to the meeting.
 - Board minutes.
 - Monthly budget reports.
 - Financial transaction reports.

- Annual audit information.
- R9. Use the BPFDF website to provide information about the district to encourage public attendance and participation by September 1, 2018.
- R10. Encourage public attendance and involvement by clearly posting BPFDF-BOD meeting dates, times, agendas, at locations visible to the public by August 1, 2018.
- R11. BPFDF-BOD needs to develop job descriptions and responsibilities for all employees and volunteers by December 1, 2018.
- R12. Develop a grievance procedure free from the fear of retaliation by January 1, 2019.
- R13. BPFDF-BOD is directed to support the current fire chief and assistant chief by encouraging them to connect with the Stanislaus County Fire Warden’s Office to assist this leadership staff with strategic planning, training, and other support services to effectively manage the district by August 1, 2018.
- R14. Ensure LAFCO website shows the correct monthly board meeting time and location and update when necessary by September 1, 2018.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Stanislaus County Civil Grand Jury requests responses as follows:

Burbank-Paradise Fire District Board of Directors – Recommendations R2-R13 within 90 days.

INVITED RESPONSES

BPFDF Fire Chief

LAFCO

Stanislaus County Board of Supervisor

BIBLIOGRAPHY

CALIFORNIA STATE LAW

GOVERNMENT CODE

- Title 1. General [100-7914]
 - Division 1. Cost Records to be Kept [4000-4007]
 - Division 4. Public Officers and Employees [1000-3599]

Chapter 1. General [1000-1241]
 Article 4. Prohibitions Applicable to Specified Officers [1090-1099]
 Division 7. Miscellaneous [6000-7599.2]
 Chapter 3.5 Inspection of Public Records [6250-6276.48]
 Article 1. General Provision [6250-6270.5]
 Title 3. Government of Counties [23000-33205]
 Division 2. Officers [24000-28085]
 Part 3. Other Officers [26500-27773]
 Chapter 4. Auditor [26900-26914]
 Article 1. Duties Generally [26900-26914]
 Title 5. Local Agencies [50001-57550]
 Article 2.4 Ethics Training [53234-53235.2]
 Division 2. Cities, Counties and other Agencies [53000-55821]
 Part 1. Power and Duties [53000-54999.7]
 Chapter 9 Meetings Ralph M. Brown Act [54950-54963]
 Title 9. Political Reform [81000-91014]
 Chapter 7. Conflicts of Interest [87100-87505]
 Article 2. Disclosure [87200-87210]

HEALTH & SAFETY CODE

Division 12. Fire and Fire Protection [13000-14960]
 Part 2.7. Fire Protection District Law of 1987 [13800-13970]
 Chapter 7. Finance [13890-13906]

PUBLIC CONTRACT CODE

Division 2. General Provisions [1100-22355]
 Part 3. Contracting by Local Agencies [20100-20928]
 Chapter 1. Local Agency Public Construction Act [20100-20929]
 Article 53. Fire Protection Districts [20810-20813]

APPENDIX

SPECIAL AND FIRE DISTRICT ASSOCIATIONS

Institute for Local Government Good Governance Checklist	http://www.ca-ilg.org/
California Special District Association	http://www.csda.net/special-districts/
Fire District Association of California	http://www.csda.net/special-districts/
Special District Leadership Foundation	https://www.sdlf.org/

DISCLAIMER

This report of case number 18-06C of the Burbank-Paradise Fire District is issued by the 2017-2018 Stanislaus County Civil Grand Jury with the following exception: one member of the grand jury volunteered to recuse himself due to a perceived conflict of interest. This grand juror was excluded from all phases of the investigation, including interviews, deliberations, voting, and in 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.