

**Stanislaus County Continuity Review
Grand Jury Case No. 03-27-CO
2002-2003**

1. KEYES FIRE PROTECTION DISTRICT (KFPD)

REASON FOR INVESTIGATION

The 2001-2002 Civil Grand Jury submitted a report on the Keyes Fire Protection District. The report addressed six different issues. The District prepared and submitted a response to the report, dated September 3, 2002, in which the District agreed with the report's findings. The 2002-2003 Civil Grand Jury determined to verify that the responses to those recommendations were addressed.

BACKGROUND

This 2002-2003 Civil Grand Jury followed-up on the District response to insure that steps were taken to implement the recommendations of the 2001-2002 Civil Grand Jury Report.

PROCEDURES FOLLOWED

1. The Civil Grand Jury reviewed the 2001-2002 Civil Grand Jury Report.
2. The Civil Grand Jury reviewed the response to the 2001-2002 Civil Grand Jury Report.
3. The Civil Grand Jury submitted a request to the KFPD for documents. Specifically, the Civil Grand Jury requested:
 - a. List of all trucks/vehicles owned or operated by the District.
 - b. Description of all licenses required to operate said vehicles.
 - c. List of names and positions of all persons who have operated said vehicles during the designated period of time.
 - d. List of names and positions of all persons who are properly licensed and /or certified to operate said vehicles.
 - e. Copy of by-laws.

FINDINGS

1. The District has not yet completed its by-laws and had requested additional time to complete it.
2. The District has taken steps to implement a quarterly statewide Pull Program to insure that fire fighters have the proper license.
3. The District has taken steps to maintain its records in a locked and secured manner.

CONCLUSIONS

The Civil Grand Jury concludes that all recommendations by the 2001/2002 Civil Grand Jury have been substantially complied with, except a revised and complete set of bylaws.

RECOMMENDATIONS

The Civil Grand Jury recommends that the Board of Commissioners of the Keyes Fire Protection District adopt by-laws forthwith. If they do not comply, the Civil Grand Jury recommends that the matter be addressed and resolved by the Board of Supervisors.

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2. Empire Sanitary District

REASON FOR INVESTIGATION

The 2001-2002 Civil Grand Jury submitted a report on the Empire Sanitary District. The report addressed six issues. The District prepared and submitted a response to the report, dated September 26, 2002, in which the District agreed with the reports findings. The 2002-2003 Civil Grand Jury determined to verify that the responses to those recommendations were addressed.

BACKGROUND

This Civil Grand Jury followed up on the District's response to insure that the District acted on the recommendations of the 2001-2002 Civil Grand Jury Report.

PROCEDURES FOLLOWED

1. The Civil Grand Jury reviewed the 2001-2002 Civil Grand Jury Report.
2. The Civil Grand Jury reviewed the response to the 2001-2002 Civil Grand Jury Report.
3. The Civil Grand Jury submitted a request to the Empire Sanitary District for documents. Specifically, the Civil Grand Jury requested:
 - a. Verification that a Certified Public Accountant or accounting firm was employed on September 1, 2002, through April 01, 2003.
 - b. A copy of notice to property owners affected by sewer rate increases during the period of September 1, 2002, through April 1, 2003.
 - c. A copy of the District's policy prohibiting employee gift certificates.
 - d. Written verification that all Board Members have attended a workshop and/or seminar regarding the Brown Act.

FINDINGS

The District complied positively with all recommendations of the 2001-2002 Civil Grand Jury except training of employees in the Brown Act. The District reports having contacted County Counsel to schedule Brown Act training, with no response to its request.

CONCLUSIONS

The Empire Sanitary District Board agreed that all board members should attend the first available county workshop on the Brown Act. The response of the District to the 2001-2002 Civil Grand Jury Report was prepared in September, 2002. The training has not been completed as of April 28, 2003, as represented by the District in the last correspondence to the Civil Grand Jury.

RECOMMENDATIONS

The District must schedule the Brown Act training forthwith. If the District is unable to schedule a timely workshop through County Counsel's office, the District should immediately seek a valid and acceptable Brown Act workshop through another entity.

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3. Auditor-Controller

REASON FOR INVESTIGATION

The 2001-2002 Civil Grand Jury submitted a report on the Auditor-Controller Department. The report addressed three issues. The Auditor-Controller prepared and submitted a response to the report, dated August 29, 2002, in which the Auditor-Controller agreed with the findings. The 2002-2003 Civil Grand Jury determined to verify that the responses to those recommendations were addressed.

BACKGROUND

The Civil Grand Jury has followed-up on the Auditor-Controller response to insure that the Auditor-Controller implemented the recommendations of the 2001-2002 Civil Grand Jury Report.

PROCEDURES FOLLOWED

1. The Civil Grand Jury reviewed the 2001-2002 Civil Grand Jury Report.
2. The Civil Grand Jury reviewed the Auditor Controller Response to the 2001-2002 Civil Grand Jury Report.
3. The Civil Grand Jury submitted a request for documents. Specifically, the Civil Grand Jury requested:
 - a. A copy of written policy regarding issuance to county employees of county credit cards which have a credit limit of \$5,000 or more.
 - b. A copy of written policy regarding issuance to county employees of county credit cards which have a credit limit of \$10,000 or more.
 - c. A list of the full names, positions/titles, departments each works in, of all county employees having possession of or authority to use a county credit card having a credit limit of \$10,000 or more.

FINDINGS

1. The Auditor-Controller completed an audit of credit card use for the period of December 1, 2001-February 13, 2003. A draft copy of the audit report was completed on April 21, 2003.
2. The Audit-Controller prepared an updated Stanislaus County Purchasing Card Policy. The draft of the policy was prepared on February 28, 2003.

CONCLUSIONS

The Board of Supervisors did not finalize and approve the drafts of the Audit Report and Purchasing Card Policy.

RECOMMENDATIONS

The Civil Grand Jury recommends:

1. The Auditor/Controller finalize the drafts and submit them to the Board of Supervisors.
2. The Annual Audit reports be presented to the Stanislaus County Board of Supervisors (SCBOS) for review with recommendations to improve the Purchasing Card Policy. Amendments to the policy should be made on an annual basis to enhance the policy.

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4. CIVIL GRAND JURY OPERATIONS & ISSUES

REASON FOR INVESTIGATION

The 2001-2002 Civil Grand Jury submitted a report on the operations of the Civil Grand Jury, Part 9. The report addressed three issues. The 2002-2003 Civil Grand Jury determined to focus the investigation on the public release of confidential Civil Grand Jury documents from the 2000-2001 Civil Grand Jury.

BACKGROUND

The Civil Grand Jury followed up on responses of the County Counsel and the Civil Grand Jury staff person, and the recommendations of the Stanislaus County Board of Supervisors, regarding the 2001-2002 Civil Grand Jury Report, Part 9, specifically whether the County Counsel's release of the confidential Civil Grand Jury documents was supported by California legal authority.

PROCEDURES FOLLOWED

1. The Civil Grand Jury interviewed the following persons:
 - a. A Stanislaus County Senior Official
 - b. Stanislaus County Employees
 - c. A Former Grand Juror
 - d. A State Attorney General staff attorney
 - e. Stanislaus County Supervisor
 - f. Official in County Counsel's office

2. The Civil Grand Jury submitted various requests for documents. Specifically the Civil Grand Jury requested and/or reviewed the following:
 - a. Documents, transcripts, e-mail and letters delivered and acquired through the County Executive Officer (CEO) office dealing with the "personal and thorough" investigation that is reported to have been done (Board of Supervisors public meeting 9/24/02) that led to the decision of the Board of Supervisors not to accept or follow the recommendations of the 2001-2002 Report, Part 9.
 - b. Compilation of all County Counsel's documentation of the legal opinions generated between County Counsel and former grand juries, CEO's office, DA's office and Board of Supervisors from 2000 to current. (This request

was objected to by County Counsel based upon the opinion of the Attorney General and was not provided by County Counsel.)

- c. The 2001-2002 Grand Jury Report, Part 9.
- d. Responses by County Counsel and the staff person to the Civil Grand Jury Report, Part 9.
- e. The transcripts from the 9/24/02 Stanislaus County Board of Supervisors meeting, in which responses by County Counsel and the staff person were heard.
- f. The Civil Grand Jury requested and received approval from the presiding judge to review all evidentiary transcripts (Penal Code 924.4) and documents from the 2001-20002 Grand Jury, regarding the investigation.
- g. A memorandum of the Attorney General's office, dated June 6, 2003.
- h. The Following Penal Codes were reviewed: Penal Code section 915; section 934; section 939 and section 929; section 95; section 904.6; Government Code 6245, California Public Records Act.
- i. Attorney General opinion 2003 DJDAR 6321, dated June 12, 2003.

FINDINGS

1. In its September 24, 2002, meeting, the Stanislaus County Board of Supervisors recommended that the Attorney General investigate alleged improper manipulation of the 2001-2002 Civil Grand Jury regarding Report Part 9.
2. The 2001-2002 Civil Grand Jury recommended that the Attorney General investigate the report for criminal violations.
3. The Stanislaus County Chief Executive Officer recommended that the 2002-2003 Civil Grand Jury investigate what happened in the 2000-2001 Civil Grand Jury term and that the matter be referred to the State Attorney's office for possible criminal violations.
4. The Stanislaus County Board of Supervisors did not conduct an independent investigation nor seek alternate legal advice pertaining to the County Counsel's decision to release Grand Jury documents.
5. When the Supervisors accepted the County Counsel and staff person responses, they relied on the oral representations of the Stanislaus County Chief Executive Officer, made at the September 24, 2002, board meeting and on unsworn statements by various persons who addressed the Board of Supervisors at that same meeting.
6. Statements of an investigation by the Stanislaus County Chief Executive, represented to be a "personal and thorough" investigation, that were made at the September 24, 2002, Board of Supervisors public meeting, consisted of the Responses of the County Counsel and staff person, not written under oath, and statements of eight persons taken by his staff, not made under oath. No questions or responses in his investigation dealt with County Counsel's release of documents.
7. The 2001-2002 Civil Grand Jury Report, Part 9, consisted of sworn testimony of 27 witnesses, made under oath, and 74 supporting letters, emails, memos, job descriptions and Grand Jury handbooks.
8. The primary arguments County Counsel used in supporting his release of confidential Grand Jury documents was the California Public Records Act.

9. County Counsel was not requested by a Civil Grand Jury member to review for libel the released Civil Grand Jury confidential documents.
10. The Attorney General Memo dated June 6, 2003, concluded: "In light of the factual circumstances presented by the Civil Grand Jury's findings, in the 2001-2002 Final Report, Part Nine, Complaint # 2, and the legal authorities discussed above, the release by County Counsel of both Mayor's letter to the Civil Grand Jury and the Foreperson's reply in case 01-10-C is without legal support and deemed contrary to California's statutory scheme controlling disclosure of grand jury proceedings."

CONCLUSIONS

1. The California Attorney General's office provided a legal analysis of the issue of the release of confidential Grand Jury documents by County Counsel. It is the opinion of the Attorney General that the position of the County Counsel in releasing the confidential Grand Jury Documents is not supported by California legal authority.
2. The California Attorney General's opinion is consistent with 2001-2002 Grand Jury Report, Part Nine, pertaining to the release of confidential Civil Grand Jury documents, and inconsistent with the County Counsel response, which had been supported by the Stanislaus County Executive Officer and adopted by the County Board of Supervisors, publicly at its September 24, 2002, meeting.
3. The issue presented to the Attorney General was whether material presented to a Civil Grand Jury may be released to the public under the California Public Records Act. The County Counsel had concluded that it could. The office of the State of California Department of Justice Attorney General on June 6, 2003 concluded: "In light of the factual circumstances presented by the Civil Grand Jury's findings in the 2001-2002 Final Report, Part Nine, Complaint #2, and the legal authorities discussed above, the release by the County Counsel of both the Mayor's letter to the Civil Grand Jury and the Foreperson's reply in case 01-10-C is without legal support and deemed contrary to California's statutory scheme controlling disclosure of grand jury proceedings."

RECOMMENDATIONS

1. In light of the California Attorney General's findings and conclusions, the 2002-2003 Civil Grand Jury reiterates the recommendations of the 2001-2002 Civil Grand Jury Report, Part 9, complaint # 2.
Those recommendations were:
 - (a) All requests for Civil Grand Jury documents and information must be addressed to the Presiding Judge of the Superior Court as prescribed in Penal Code Section 929.
 - (b) According to Penal Code Section 934(a), County Counsel may be an advisor to the Civil Grand Jury and should only respond with a legal opinion(s) if requested from the Civil Grand Jury Foreperson.
 - (c) Future Civil Grand Juries maintain control over their activities and the direction of their investigations.

2. The Stanislaus County Board of Supervisors should promote and develop a written policy within Stanislaus County that protects the confidentiality of the Stanislaus County Civil Grand Jury.