

September 21, 2004

The Honorable David G. Vander Wall
Presiding Judge
Stanislaus County Superior Court
800 11th Street
Modesto, CA 95354

**IN RE: RESPONSE TO 2003-2004 CIVIL GRAND JURY CASE
 NO. 04-47 BY THE CHIEF EXECUTIVE OFFICE AND
 THE OFFICE OF COUNTY COUNSEL**

Dear Judge Vander Wall:

This is a response to the 2003-2004 Civil Grand Jury Report, Case No. 04-47 by the Chief Executive Office and the Office of County Counsel.

I.

INTRODUCTION

It should be noted that most, if not all of the issues raised in Civil Grand Jury Case No. 04-47, had been addressed by the Board of Supervisors prior to the release of Report No. 04-47 on June 30, 2004. Specifically, the Board of Supervisors, earlier this year adopted a revised Travel Policy on June 15, 2004 (Resolution # 2004-466) and a revised Purchase Card Policy on August 12, 2003 (Resolution # 2003-762). In addition, the Board amended the Stanislaus County Code relating to the responsibility and duties of the Chief Executive Officer on June 22, 2004 (Ordinance No. C.S. 891; 2004-472). Further, it should be noted that the Grand Jury interviewed only one Board member regarding the issues set forth in Case No. 04-47, and did not interview any members of the County Counsel's office, which would have resulted in different findings and conclusions.

II.

RESPONSE TO FINDINGS

FINDING #1:

''1. Section 2.08.010(A) of the Stanislaus County Code states, in part, 'The CEO shall act under the supervision of the board of supervisors and be subject to its direction.'''

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Response:

AGREE.

FINDING #2:

``2. The CEO's most recent employment agreement with the County was entered into on May 6, 2002 and was valid from June 30, 2002 though June 30, 2007.''

Response:

AGREE.

FINDING #3:

``3. Section 6.01 of that Agreement states, 'Employee may terminate his obligation under this Agreement by giving County at least One Hundred Eight (180) days notice in advance....''

Response:

AGREE.

FINDING #4:

``4. Section 6.04 of the May 6, 2002 Agreement also states that, 'Employee may be terminated for cause under the following conditions ... (3) For any material breach of this Agreement, insubordination, or gross negligence in performing his duties as included in this Agreement and set forth in Stanislaus County Code Chapter 2.08.' This revision was not found in the May 13, 1997 Agreement.''

Response:

AGREE.

FINDING #5:

``5. The May 6, 2002 Section 6.03 states that if terminated for cause, the Employee would not receive severance pay.''

Response:

AGREE.

FINDING #6:

The CEO resigned his duties effective July 8, 2003.

Response:

DISAGREE. Former Chief Executive Officer Reagan Wilson submitted his resignation to the Board on July 8, 2003, prior to a Closed Session of the Board of Supervisors and in full compliance with the May 6, 2002, contract providing a six-month notice to terminate his employment as Chief Executive Officer. The Board of Supervisors entered into an Amended Employment Agreement dated July 22, 2003, that provided that Mr. Wilson would be immediately removed from his position as Chief Executive Officer effective July 8, 2003, but would remain as a management, county employee through October 15, 2003.

FINDING #7:

''7. Following the CEO's resignation on July 8, 2003, Stanislaus County entered into an Amendment to the earlier employment agreement on July 22, 2003. The Amendment provided for mutual promises, terms and conditions under the May 6, 2002 agreement which had terminated. The Amendment allowed him to remain as a 'management employee' of the Stanislaus County until October 15, 2003 to assist their staff in specific areas.''

Response:

AGREE.

FINDING #8:

''8. In the Amendment to the Employment Agreement, Stanislaus County agreed to pay the CEO a total of six months' salary plus benefits.''

Response:

AGREE.

FINDING #9:

''9. Section 2.02 of the May 6, 2002 employment agreement states, ''This agreement shall not be interpreted to prohibit Employee from making personal investments or conducting private business

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affairs otherwise legally allowed by applicable statutes, ordinances and regulations.''

Response:

AGREE.

FINDING #10:

''10. Stanislaus County Code Section 2.08.040, last sentence, states, 'The CEO shall not engage in any other business or occupation during their appointment without prior approval of the board.'''

Response:

AGREE.

FINDING #11:

''11. The CEO did not receive approval by the Stanislaus County Board of Supervisors to engage in any other business activities outside his duties.

Response:

DISAGREE. Former Chief Executive Officer Reagan Wilson received approval under section 2.02 of his May 6, 2002 Employment Agreement ''...to conduct private business affairs otherwise legally allowed by applicable statute, ordinance or regulation....''

FINDING #12:

''12. The CEO engaged in business arrangements with DTW Energy Corporation and Stanislaus Energy Partners. These activities were a matter of public record as of 4/4/03, as presented in the CEO's statement in the Superior Court Case # 321449.''

Response:

UNABLE TO RESPOND. Staff is unable to comment specifically as to what documents were included in the Superior Court file as the contents of that file were not brought to the staff or the Board's attention, nor did staff or Board members review materials filed in Superior Court Case No. 321449. It is believed the court file referenced in the Grand Jury report involved a dissolution of marriage between Mr. Wilson and his spouse, a private legal matter which did not involve the County.

FINDING #13:

``13. In Paragraph 14 of July 22, 2003 Amendment to the Employment Agreement, the CEO agreed to ``resign any Director, Officer or Executive position he currently holds with DTW Energy Corporation and Stanislaus Energy Partners for which he has a personal business interest...''

Response:

AGREE. This condition, along with several others, was included in the July 22, 2003, Amendment Employment Agreement, which provided that Mr. Wilson would continue to be employed as a management employee until October 15, 2003, and be available for transition purposes until January 8, 2004.

FINDING #14:

``14. On April 4, 2003, in Stanislaus Superior Court Case # 321449, the CEO stated in his Responsive Declaration, ``I am the President of DTW Energy Corporation. ... I am entitled to a Director fee of \$1500 per month...''

Response:

UNABLE TO RESPOND. Neither staff or the Board is able to respond specifically as to what information was contained in Superior Court File No. 321449, as the contents of that file were not brought to staff's or the Board's attention, nor did staff or Board members review materials filed in Superior Court Case No. 321449. It is believed that the Superior Court file referenced in the Grand Jury report involved a dissolution of marriage involving Mr. Wilson and his spouse.

FINDING #15:

``15. Section 2.08.030 of the County Code states in part, 'The CEO is entitled to all actual and necessary budgeted expenses for conducting county business....''

Response:

DISAGREE, in part. This section was included in section 2.08.030 of the Stanislaus County Code prior to its being amended by the Board on June 22, 2004. The language referred to in Finding No. 15 has now been omitted from the ordinance. Therefore, the Stanislaus

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County Code currently does not include the language that was referenced above in Finding No. 15.

FINDING #16:

``16. Section 29741 of the California Government Code requires the County Auditor to 'allow or reject claims' for expenditures by County officials.''

Response:

AGREE.

FINDING #17:

``17. The Policies and Procedures of the Stanislaus County Auditor titled 'Trip Authorization, Travel and Purchasing Cards' and 'A/P Claims Process' require that all claims for payment to an employee or an outside source be backed up by supporting documentation explaining and justifying the expense.''

Response:

AGREE.

FINDING #18:

``18. An independent audit of the CEO's expenses, conducted in September, 2003 by the independent accounting firm, after the CEO's employment ended, cited claims that were paid by the County Auditor without proper documentation.''

Response:

DISAGREE, in part. The Amended Employment Agreement entered into between Mr. Wilson and the County on July 22, 2003, provided that Mr. Wilson's employment with the County did not end until October 15, 2003. The independent audit called for by the Board did find a total of \$10,319.02 in questionable charges without receipts and/or without a documented business purpose.

II.

CONCLUSIONS

CONCLUSION #1:

- ``1. The CEO resigned without giving the 180-day notice. This did not entitle him to further compensation and severance pay as required by Section 6.01 of his May 6, 2002 Employment Agreement.''

Response:

DISAGREE. Mr. Wilson submitted his resignation on July 8, 2003 which had an effective termination date of January 8, 2004 (180 days), pursuant to his May 6, 2002 Employment Agreement.

CONCLUSION #2:

- ``2. The CEO's outside business dealings were a breach of his employment contract.''

Response:

DISAGREE. As noted in response to Finding No. 11, former Chief Executive Officer Reagan Wilson's May 6, 2002, Employment Agreement provided, under Section 2.08.020 that Mr. Wilson was allowed ``...to conduct private business affairs otherwise legally allowed by applicable statutes, ordinances and regulations.''

CONCLUSION #3:

- ``3. The Board of Supervisors had the authority through Section 6.04(3) of the May 6, 2002 Employment Agreement to terminate the CEO for cause.''

Response:

AGREE, in part. Although the Employment Agreement provided that the Board possessed the legal authority to terminate former Chief Executive Officer Reagan Wilson for cause in July 2003, there was no evidence to support a termination for cause at the time of his resignation. The final audits showing that Mr. Wilson had not always complied with the purchasing card policy were not completed until October 28, 2003, several months after the July 22, 2003, Amended Employment Agreement had been executed. The Board requested an independent audit of Reagan Wilson's expenses in September 2003. On October 28, 2003, the Board of Supervisors authorized the Auditor-Controller to withhold \$20,120.05 from Mr. Wilson's final pay.

CONCLUSION #4:

- ``4. The Board of Supervisors should not have agreed to any additional compensation for the CEO.''

Response:

AGREE. The Board did not agree to pay any additional compensation and as stated in Finding No. 8 above because the County only agreed to pay former Chief Executive Officer Reagan Wilson a total of six months salary plus benefits and as noted in response to Conclusion #1, Mr. Wilson was entitled to six months pay under his May 6, 2002 employment agreement. In fact, Mr. Wilson received six months pay as a result of his resignation and the Amended Employment Agreement which was entered into between Mr. Wilson and the County on July 22, 2003.

CONCLUSION #5:

''5. There are not any provisions in the Stanislaus County Code, the CEO's Employment Agreement, or any other document made available to the Civil Grand Jury that allows the County to provide unrestricted and unchecked expenses for the CEO.''

Response:

AGREE.

CONCLUSION #6:

''6. The CEO violated Stanislaus County policies for travel expenses and procurement of services.''

Response:

AGREE. In September 2003, the Board of Supervisors requested an independent audit of former Chief Executive Officer Reagan Wilson's expenses. On October 28, 2003, the Board of Supervisors authorized the Auditor-Controller to withhold the sum of \$20,120.05 from Mr. Wilson's final pay. On November 25, 2003, a final accounting was presented to the Board and it was determined that Mr. Wilson had provided an additional \$9,218.08 of verifiable receipts for authorized County activities. It should be noted that these audits were not completed until several months after the Amended Employment Agreement dated July 22, 2003, was entered into between the County and former Chief Executive Officer Reagan Wilson.

CONCLUSION #7:

''7. Neither the County Code nor the CEO's Employment Contract exempts him from submitting claims for payment not backed up with proper proof of documentation.''

Response:

AGREE. As noted above, the independent audits completed on October 28, 2003, reviewed various purchasing card transaction claims and expenses by former Chief Executive Officer Reagan Wilson. All claims that were not backed up with proper proof or documents as required with County policies, were deducted from Mr. Wilson's final pay. The final audit which was presented to the Board on October 28, 2003, found that Mr. Wilson had \$20,120.05 in charges that were not in compliance with County policy. The Board of Supervisors authorized the Auditor-Controller to withhold those monies from Mr. Wilson's final pay. On November 25, 2003, Mr. Wilson provided an additional \$9,218.08 worth of verifiable receipts for authorized County activities.

CONCLUSION #8:

''8. The County Auditor's staff should have rejected the claims for payments which lacked proper justification.''

Response:

AGREE. The County Auditor-Controller is an elected position and should follow all County policies regarding claims for payments. Any claim which lacks proper justification or violated County policies should have been rejected by the County Auditor-Controller. It should be noted that the Auditor-Controller has recently revised both the County's Travel Policy and Purchasing Card Policy. The Board of Supervisors has adopted these revisions. The new revised policies provide for stricter and clearer guidelines regarding reimbursements for claims and travel expenses. The Board provided additional internal audit staff to the Auditor-Controller's office and that office is now performing audits of all purchasing card transactions.

CONCLUSION #9:

''9. The Board of Supervisors did not exercise sufficient oversight of the CEO.''

Response:

DISAGREE. In September, the Board of Supervisors authorized an independent audit of the former Chief Executive Officer Reagan Wilson's expenses. On October 28, 2003, the Board of Supervisors took appropriate action by deducting \$20,120.05 from Mr. Wilson's final compensation. Until the audits were completed on October 28, 2004, the Board had no direct knowledge of Mr. Wilson's failure to comply with County policies relating to travel expenses and purchasing card claims by Mr. Wilson. The Board of Supervisors

have now adopted revised Purchasing Card and Travel policies, in conjunction with the Auditor-Controller, which will now prevent such actions recurring in the future. The Board has also provided the Auditor-Controller's office with additional audit staff to insure all purchasing card and travel transactions of all County employees are reviewed by staff of the Auditor-Controller's office.

III.

RECOMMENDATIONS

RECOMMENDATION #1:

''1. The Board of Supervisors must be diligent in overseeing the activities and expenditures of the CEO. They must have in place a monitoring system whereby the activities, and especially the expenditure records, of the CEO are periodically monitored.''

Response:

AGREE. This recommendation was implemented prior to this report being released. The Board has adopted revised purchasing card and travel policies. Additionally, the Board provided additional audit staff to the Auditor-Controller's office to review all expenditure records of the Chief Executive Officer and all other County employees on a regular basis.

RECOMMENDATION #2:

''2. The Board of Supervisors must enforce all provisions of the employment contracts of employees.''

Response:

AGREE.

RECOMMENDATION #3:

''3. The County Auditor's staff must be diligent in scrutinizing claims for credit card payments, regardless of who the payee is. They must adhere to all state and county codes as well as all policies it establishes.''

Response:

AGREE.

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Very truly yours,

Patricia Hill Thomas
Interim Chief Executive Officer

Michael H. Krausnick
County Counsel