



EL DORADO COUNTY GRAND JURY 2009-2010

CITY OF SOUTH LAKE TAHOE CITY COUNCIL

Case No. GJ 09-008

REASON FOR REPORT

A Grand Jury investigation originated from a complaint by a local union official that there had been violations of California State law including the Ralph M. Brown Act, and local City and county ordinances. It was alleged that the violations had been committed by a member or members of the City Council of the City of South Lake Tahoe. The complaint related to the release of confidential personnel information. Specifically, during the hiring process for a new City Attorney, local news media outlets reported that two members of the City Attorney's staff had not passed the California State Bar examination. The information was believed to have come from members of the City Council, and possibly from closed sessions of City Council meetings. As the investigation into the violations progressed, the Grand Jury became aware of additional issues. It was stated that breaches of confidentiality affected the conduct and fiduciary functions of the City Council, compromising its ability to govern.

BACKGROUND

The City of South Lake Tahoe is a "general law" City incorporated in 1965. The City Council of five members acts as the legislative body and elects a Mayor each fiscal year from among its members. Council members who are elected by the citizens of the City of South Lake Tahoe serve a term of four years. The members of the City Council, when their four-year term has expired, may run for re-election. There are no term limits for City Council members. The City Clerk and the City Treasurer are the other elected officers. There is no term limit for these positions. The governance of the City is vested in the City Council, a City Manager (who is hired and appointed by the City Council), a City Clerk, a City Treasurer, and such subordinate officers or employees as are provided for by law, and deemed necessary by the City Council for the proper administration of the municipal government.

METHODOLOGY

The Grand Jury interviewed several officials and staff of the City government. Additionally, members of the media were interviewed and comments from the public were collected. The Grand Jury reviewed documents, watched internet videos of the City Council, and attended various Council meetings.

Interviews conducted:

- Elected City officials
- Appointed City staff
- City employees
- Local media personnel
- A trainer of municipal officers and employees

Documentation reviewed:

- Emails (inside City government and outside sources)
- Handwritten notes from City officials
- Hard copies of online media reports
- Hard copies of public responses published online
- Memoranda authored by various City officers and employees
- Paid warrants and the procedures for the issuance of warrants
- Published media reports (newspapers)
- Sections of City policy and procedures manuals

FINDINGS

In accordance with the California Penal Code §933 and §933.05, each numbered finding and recommendation will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court.

The El Dorado County Grand Jury arrived at the following findings:

1. The Grand Jury investigation revealed that many factors have contributed to impaired functioning of the City's government at multiple levels.
 - a. Constant hostility and bickering among members of the City Council and their unprofessional conduct has resulted in a consistent 3/2 split vote creating two "camps" of Council members. The voting often appears to be the result of Council members pursuing personal agendas rather than operating in the best interests of the City. The bickering and nitpicking

between Council members during meetings, combined with hostile comments to media outlets and behind the scenes “back biting” has resulted in the failure to address routine and important business entrusted to the Council by the citizens of the City of South Lake Tahoe.

- b. Council members and senior staff are unwilling or afraid to address and deal with the existing hostile work environment. In a matter that involved an inappropriate written poem (involving sexual comments from one Council member to another), the City Manager and the City Council failed to take action until questioned by the Grand Jury.
2. The City Council, when facing controversial issues or after threat of litigation, routinely drops issues, even if addressing the issue would improve the function of government or service to the public.
 - a. When a City Attorney recommended that the City Finance Director be placed under the direct control of the City Council, rather than the City Manager, the Finance Director expressed strong opposition. This action came after the City Attorney had challenged the Finance Director about the propriety and amounts of an expenditure made by the City. This move for the Finance Director to be placed under City Council control was a suggestion that had been made by a City Council member in prior years. The City Manager, fearing loss of supervisory control of the Finance Director, advised the City Council that the Finance Director would probably file an official complaint against the City Attorney and the City charging them with harassment if the move took place. This statement was viewed by some employees as a threat by the City Manager.
 - b. During a contentious June 30, 2009 City Council meeting it was suggested that the City Manager should resign. Testimony received indicated the City Manager later threatened to file a Workers Compensation claim, hire outside counsel, and sue the City.
 - c. The City Manager used intimidation to retain control over parts of government. The City Manager attempted to keep the Finance Director under his direct control. He informed the City Attorney that he could make the Finance Director’s complaints against the City Attorney “go away” if the City Attorney dropped the suggestion to move the Finance Director under direct control of the City Council as an “at will” employee.
 - d. Based on testimony received by the Grand Jury the public impression is that the City of South Lake Tahoe has a “bush league” City Council, which is incapable of maintaining confidences, operates in an atmosphere of intimidation, and is frequently distracted from important City business by personal feuds. The Council operates at an inconsistent and barely functional level.

3. Some City officials engaged in avoidance and obstruction during the Grand Jury investigation. Despite assurances from the City Council that City officers and employees would cooperate with the Grand Jury in its attempts to analyze City government, actions by senior City officials were engineered in an attempt to keep the Grand Jury from getting the information it requested.
 - a. The Grand Jury submitted a written request to the Mayor asking for introduction of an agenda item to have the City Council waive the attorney-client privilege so that the City Attorneys could be free to give complete answers to all inquiries. The Mayor, through the City Attorney, responded by stating that the request had been improperly addressed to the Mayor and not to the City Council. Therefore, it could not be placed on the City Council agenda. This information was subsequently contradicted by the City Manager advising the Grand Jury that the Mayor can place items for City Council discussion on the agenda. According to other testimony, Council members can only place items on the agenda when at least three out of five members agree. According to the City Manager, both he and the City Attorney can place items on the agenda at their discretion.
 - b. Prior to being interviewed by the Grand Jury, some employees were counseled by the City Attorney on how to testify in a manner that was designed to limit the information that the Grand Jury would receive. City employees who had been subpoenaed to testify before the Grand Jury, were instructed by memo that they should not volunteer any information, and they should not attempt to refresh their memories when asked about specific events or topics. The memorandum and the counseling go beyond normal and acceptable witness preparation for testimony in Grand Jury proceedings.
4. The City's government employs a notable number of married couples and family members among its employees, commission members, and elected officials. Some of the related employees are in positions of significant influence. Although the policy relating to nepotism does not seem to have been violated, the existence of these close relationships has resulted in an atmosphere where many employees are afraid to discuss operational problems in the City. They are concerned that their observations might be viewed as criticism of family members. In testimony received, there is "angst" by City employees who believe, that employees who have spoken about problems within City government have ended up on "layoff lists". This fear is so pervasive that some witnesses requested assurance, when they appeared before the Grand Jury, that members of the Grand Jury were not related to officers and employees of the South Lake Tahoe City government before they testified.

5. City Council members and City officials have varying degrees of understanding and openly disagree with the Brown Act. Although bound by the laws of the State of California to obey the same, some violate them on a regular basis. For example:
 - a. More than one Council member or City staff member erroneously has reported Brown Act violations by City officials.
 - b. One Council member has publicly and frequently expressed disdain for the Brown Act and has often been identified as the source of improper disclosures about confidential matters within City government. This Council member also disclosed information which was discussed in closed session by the City Council.
 - c. Closed sessions are reserved for discussions of confidential and sensitive information. Disclosures of information from closed sessions could have detrimental consequences for the City. When information about this disclosure was obtained by the other members of the City Council, they failed to take the appropriate corrective action by censuring or officially reprimanding the offending City Council member.
 - d. The instructor selected by the City of South Lake Tahoe gave ethics training to Council members with only cursory information about the Brown Act, and appeared to have limited knowledge about the Act.
6. A City Council member filed a complaint with the Grand Jury that the City Manager was operating without authority and not doing his job. The Council member also made these remarks in public. The Grand Jury received testimony and found these accusations without merit and misleading. The City Council hires and supervises the City Manager and apparently was unwilling to conduct its own investigation to address these accusations. Instead, the Council attempted to use the Grand Jury as its tool to correct a situation that was completely within their jurisdiction.
7. Testimony supports that City officers and employees at times operate using accepted historical practices that conflict with official written policy. This has resulted in misunderstandings, contentious City Council meetings, and a public impression that the City's government operates outside the law. These misconceptions could expose the City to lawsuits.
 - a. A member of the City Council requested reimbursement for legal fees paid to an outside law firm. The legal advice consisted of a legal opinion and preparation of a letter to the Fair Political Practices Commission. No contract had been signed and the City Council had not approved the expenditure in advance. The City Manager stated

that he gave verbal approval for the expenditure. California State Law clearly states that government contracts for payment may not be backdated. All unusual expenditures should be approved in open session. The City's Purchasing Policy and Procedure Manual calls for the presence of written contracts when professional services are sought, and makes no provision for payment and reimbursement absent the presence of a contract.

RECOMMENDATIONS

The 2009-2010 El Dorado County Grand Jury makes the following recommendations:

1. The City Council should develop a code of conduct, a code of ethics, practice professionalism, and receive training in conflict resolution. Council members should be able to express concerns about City issues without being exposed to ridicule by their fellow Council members.
2. The City Council must be more assertive in dealing with inappropriate conduct by Council members. This should include securing opinions from the City Attorney, the El Dorado County District Attorney, the California League of Cities, or other appropriate agencies.
3. The City Council should review the current practice that requires three Council members agree before they can put items on meeting agendas. The procedure for placing items on the agenda should be adopted as written policy.
4. City Council members, elected City officers, and senior appointed City officers should receive mandatory training, on a regular basis, in the duties and responsibilities of their positions.
5. The City should review its written policies on nepotism and job relationships between family members and domestic partners. The policies should be changed as necessary to assure that these relationships do not interfere with City operations, and promote an atmosphere of cooperation.
6. City employees, starting with City Council members and senior City officials, should receive mandatory training in ethics, sexual harassment, and confidentiality, with emphasis on the Brown Act. The City should consider training from sources other than those used in the past.
7. City officials must find a way to assure that the City adheres to written policies and procedures, and does not allow itself to "cut corners" by using historically accepted practices that violate written policies. Senior City officials and Council members should receive mandatory annual training on

policies and procedures. Enforcing adherence to this might require establishment of an Ombudsman or Inspector General position.

CONCLUSION

The City Council, in its reports, procedures and by evidence received by the Grand Jury, points to a severely handicapped organization that needs major changes. The 2009-2010 Grand Jury has recommended to the County Supervisor for District V, that the City of South Lake Tahoe needs a “Management and Procedural Review” to be conducted by an independent consultant. The consultant should make their report to the District Attorney for possible legal action. This Grand Jury is of the opinion that an accusation for malfeasance or nonfeasance by this City Council may be appropriate after the study is concluded. The Grand Jury only touched the “tip of the iceberg” in its investigation and recommends that the citizens of South Lake Tahoe get involved with their City government. It is up to the citizens to establish the kind of governance they desire, to exercise their democratic right to vote, and get a City government that works for the common good and in an efficient manner for its citizens.

RESPONSES

Responses to both findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.