



EL DORADO COUNTY GRAND JURY 2009-2010

HAPPY HOMESTEAD CEMETERY DISTRICT PAYMENT FOR TEMPORARY PERSONNEL

Case No. GJ 09-028

REASON FOR REPORT

A complaint was received from the El Dorado County Auditor/Controller concerning claims submitted by the Happy Homestead Cemetery District (HHCD) for temporary employment services. Two issues were presented by the complainant. The first issue involves a retroactive charge in the amount of \$2,272 for a temporary office worker. The second issue concerns a \$3,000 settlement agreement proposed by the employment agency to settle potential legal claims.

BACKGROUND

The HHCD has used the same employment agency for many years. When a need for temporary office help arose, the employment agency deployed a worker to the District office. Eight months after the temporary worker started working, the co-owner of the agency sent a new contract to the HHCD. This contract provided that the new rate was \$1,200 per month – an increase of \$284 per month and a total difference of \$2,272. The contract further stated that the pay increase was to apply not only prospectively, but also retroactively since the commencement of employment for the temporary worker.

The settlement agreement for \$3,000 appeared as an item on a monthly voucher sent to the El Dorado County Auditor/Controller for payment. The Auditor/Controller was told it was for a "Release of Responsibility". The settlement proposed by the employment agency provided for a payment of \$3,000 in order to satisfy the current claim, as well as to prevent any further legal action.

The Auditor/Controller Department pays the bills for the HHCD Special District. The Auditor/Controller advised the HHCD that the proposed settlement agreement could not be paid without a proper claim. In a letter dated 9/02/09 to the HHCD the Auditor/Controller stated that payment would be held pending consultation with County Counsel.

As of the date of this report, no claim has been received, and no payment has been made.

The co-owner of the employment agency is married to the former Chairperson of the HHCD Board of Directors. Upon the advice of the HHCD legal counsel, a Board member other than the HHCD Board Chair endorsed the new contract with its prospective and retroactive pay increase.

The El Dorado County Counsel's Office rendered an informal verbal opinion that the Board Chair could be married to a contract supplier for the District, provided that same Board member be excused from consideration of any business with or decision involving that same contractor.

METHODOLOGY

Interviews conducted:

- Chief Assistant County Counsel
- El Dorado County Auditor/Controller
- Happy Homestead Cemetery District Board of Directors

Documents reviewed:

- "Agreement for Services as Clerk of the Board for Happy Homestead Cemetery District" signed 08/12/09 by the HHCD Chairperson and on 8/13/09 by the co-owner of the employment agency
- "Agreement for Services as Bookkeeper for HHCD" signed 8/12/09
- "Settlement Agreement and Mutual Release of Claims" signed 8/12/09 and 8/13/09
- California Constitution, Article 11, Section 10(a)
- California Government Code §1090 and §1099
- District Payable Vouchers (5/22/09 and 8/26/09)
- Itemized billings from employment agency to HHCD (4/04/09-1/31/10)
- Memoranda between the HHCD and Auditor/Controller (6/01/09-2/26/10)
- Minutes of HHCD board meetings (1983-2007)

FINDINGS

The Grand Jury conducted a group interview of all members of the current HHCD Board of Directors on April 22, 2010. The Board was interviewed at some length concerning the issues presented by the demand for a retroactive pay increase and the settlement agreement proposed by the employment agency.

Only one of the original members is still on the Board. The rest of the Board is relatively new, including the Chairperson.

A subsequent voucher was received from the HHCD for \$2,272, the difference between \$916 and \$1,200 for eight months (the period of employment for which a retroactive pay increase/charge is sought). This payment is in contention and has not been paid by the Auditor/Controller.

The HHCD position with respect to these issues was received in a letter sent after the Board was interviewed by the Grand Jury. The HHCD letter cites two obscure court precedents in support of the contention that a retroactive pay increase should be permitted and that the settlement agreement should be paid.

1. There are two governing California Government Code (CGC) Sections that address these issues and the inherent potential for significant conflicts of interest. CGC §1090 provides in pertinent part that:

“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.”

California Government Code §1099 (a) further provides that:

“(a) A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible. Offices are incompatible when any of the following circumstances are present, unless simultaneous holding of the particular offices is compelled or expressly authorized by law...(2) Based on the powers and jurisdiction of the offices, there is a possibility of a significant clash of duties or loyalties between the offices.”

However, retroactive claims that increase compensation are considered unconstitutional.

2. According to the California Constitution, Article 11, Section 10 (a):

“A local government may not grant extra allowance to a public officer, public employee, or contractor after service has been rendered.”

During the Grand Jury group interview with the HHCD Board of Directors, it was suggested that they renegotiate the contract with the employment agency to correct the retroactive pay increase portion. The Board was also requested to ask the employment agency for a claim, as required by law, for the \$3,000 for Release of Responsibility (Settlement Agreement).

Later that week the Board Chairperson sent a package of documents to the Grand Jury. The cover letter essentially ignored the advice of the Grand Jury and stated that they would continue to pursue their original goal of trying to convince the County to pay for the Settlement Agreement and the retroactive pay increase.

3. The HHCD entered into retroactive contracts increasing the compensation rate for temporary workers. The California Constitution prohibits retroactive contracts that increase compensation because they are considered to be a gift of public funds;
4. The HHCD signed the Agreement dated 8/12/09 which would pay the employment agency \$3,000 to settle all claims. A copy of the claim which resulted in the signing of the Release of Responsibility was requested by the Grand Jury but never received;
5. According to testimony received, both of the above actions were encouraged by the HHCD legal counsel;
6. The HHCD continues to seek compensation for the employment agency.

In a letter dated April 20, 2010 and signed by the Foreman of the Grand Jury, the HHCD was specifically asked for:

- “A copy of the claim form which resulted in your agreement for services as clerk of the board for Happy Homestead Cemetery District;
- A copy of the contract with [the employment agency] which was in effect on February 9, 2009; and
- A copy of a letter from County Counsel re: [the former Board Chairperson’s] position on the board of directors, as recorded in your minutes of Dec. 11, 2003.”

The Grand Jury also specifically asked the HHCD to phone the Grand Jury if any of these requested documents did not exist. No phone communication was received. The HHCD Board of Directors also did not respond to the April 20, 2010 Grand Jury letter.

The HHCD Board of Directors failed to respond to the Grand Jury.

RECOMMENDATIONS

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

1. The HHCD must show why the claim for a retroactive charge for temporary employment services is legal and does not constitute a gift of public funds.
2. The HHCD must show why the payment for the proposed Settlement Agreement is legally justified.
3. The HHCD must explain why payment of either claim is **not** in direct violation of California Government Code §1090 and §1099, as well as the California Constitution, Article 11, Section 10(a).
4. The El Dorado County Auditor/Controller should not pay either the retroactive charge or proposed settlement amount until or unless the HHCD meets the requirements stated in the recommendations above. This should be determined by both the County Counsel's Office and the Auditor/Controller.

RESPONSES

Responses to both numbered 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.

Responses are required from the Happy Homestead Cemetery District Board of Directors, the El Dorado County Counsel's Office, and the El Dorado County Auditor/Controller.