



BURNEY FIRE PROTECTION DISTRICT

Established 1939

July 12, 2006

The Honorable William Gallagher
Presiding Judge of the Superior Court
1500 Court Street
Redding, CA 96002

RE: Response to 2005-2006 Grand Jury Report
Pursuant to California Penal Code 993(c)

Dear Judge Gallagher:

As a public agency with an elected board which sets policy for its agency operations, we find the recent Grand Jury report particularly misguided, and has no basis of fact to support any of their conclusions. The report is based upon rumor, personal attacks, and lack of sound legal research regarding the three areas identified. The information used to draw these conclusions is inaccurate and misleading.

Response to Findings

1. Burney Fire Protection District disagrees wholly with Finding 1 contained in the final report of the Shasta County Grand Jury submitted to the District on July 7, 2006. That finding states that the District's not submitting a purported referendum petition for processing for a potential election "appears" to violate California's Elections Code Section 9145. The finding also seems to imply that it was improper for the District to seek legal advice before and in lieu of processing the purported petition.

The implication is that any document, which is characterized as a referendum petition seeking to reverse any act of the District Board, should be processed through County election officials without legal scrutiny as to the document's validity.

This view simply is incorrect and would constitute poor public policy potentially generating wastes of public funds. Every person and entity, and particularly, every public entity is afforded the right to legal counsel when a legal problem presents itself as it did when the subject petition was presented. The District sought that legal advice and received an opinion that the purported petition was invalid for multiple reasons. The Office of the Shasta County Counsel concurred in that opinion, and, perhaps most telling, the petition proponents did not publicly disagree with the opinion or challenge it in any way. The Grand Jury does not take issue with the legal advice afforded to the District, but still asserts that the District somehow erred in not submitting the flawed petition to the County for processing.

Submitting an invalid petition for processing through an election would constitute a waste of public funds to be expended by the County and the District. Further, should the invalid petition have received a majority of votes cast, a successful lawsuit challenging its validity would likely have been processed, resulting in a further waste of public funds.

The action suggested by the Grand Jury findings would be imprudent in that it would generate a waste of public funds. As such the recommendation will not be implemented because it is not warranted and is not reasonable as stated above.

correspondence\gallagher, william judge superior court

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2. The alleyway referenced in the Grand Jury report has been District property since 1941 when the station was built. This board was unaware of any easement until it was brought up in the Grand Jury investigation. The Grand Jury should have investigated into the "easement" further and provided the Burney Fire Protection District with the information they had prior to their final report. This matter could have been resolved. Our investigation discovered the easement referenced by the Grand Jury is a drainage easement recorded in 1986, prior to the redesign of Main Street. If the Grand Jury had taken the time to review the facts, they would have determined the District, as a public entity, owns the property in fee title and granted the drainage easement to Cal Trans. As such, there is no prohibition against the District's using its own property for its own purposes. The alleyway, even if completely blocked off, would not deny any neighbor access to their property.

The Grand Jury report states the Shasta County Sheriff's office in Burney ordered the Fire Department to remove a padlocked vehicle. If the Grand Jury again had done its research, they would have discovered there is no report by the Shasta County Sheriff's Office ordering the removal of a District vehicle nor are there any log entries to back up the Grand Jury's allegation. The Shasta County Sheriff lacks such authority to even make such an order.

3. The Grand Jury asserts that the District did not provide documents to the Grand Jury regarding the District's legal relationship. In fact, the District did provide a copy of the retainer agreement and a copy of a specific bill requested by the Grand Jury.

Government Code Sections 54950-54962 is the entire Brown Act. The Brown Act does not address the hiring of legal counsel. There also is no requirement that a legislative body hire legal counsel in open session as the Grand Jury asserts. The hiring of legal counsel is permitted by the District's policies.

Based on the Grand Jury's comments in Recommendation 2, "If found, the violation must be corrected in an open session of a Burney Fire Protection District board meeting." This statement in and of itself shows that there was no violation of the Brown Act, since the Brown Act requires no such action. As such, the recommendation will not be implemented because it is not warranted and is not reasonable as stated above. There was no Brown Act violation.

4. We find the inquiry into one's personality beyond the scope of the Grand Jury as defined in the California Penal Code. The City of Redding's Fire Chief, Deputy Chiefs, and firefighters have no idea what policies are set forth by the Burney Fire Protection District Board of Directors. A person's management style is subjective to say the least. Why would twenty eight firefighters from Redding be interviewed about Burney Fire Protection District in the first place? Why not interview Burney's firefighters?

In response to the statements made by two Board members, this is not true, and taken out of context. We are requesting an apology and retraction regarding the Fire Chief. We find the Grand Jury's accusations regarding Chief May libelous.

Sincerely,

Lynn Miller
Board Chair

Attachment

cc: Fire Board, Fire Chief