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County of Orange

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California

**Michael B. Giancola**  
County Executive Officer

September 16, 2014

Honorable Glenda Sanders  
Presiding Judge of the Superior Court of California  
700 Civic Center Drive West  
Santa Ana, CA 92701

Subject: Response to Grand Jury Report, "Ethics and Campaign Reporting:  
Why and How to Implement Stronger Oversight, Transparency, and  
Enforcement"

Dear Judge Sanders:

Per your request, and in accordance with Penal Code 933, please find the County of Orange response to the subject report as approved by the Board of Supervisors. The respondent is the Orange County Board of Supervisors.

If you have any questions, please contact Jessica O'Hare of the County Executive Office at (714) 834-7250.

Sincerely,

Michael B. Giancola  
County Executive Officer

Enclosure

cc: FY 2013-14 Orange County Grand Jury Foreman  
Michael B. Giancola, County Executive Officer  
Mark Denny, Chief Operating Officer, County Executive Office  
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## COUNTY OF ORANGE

### Responses to Findings and Recommendations

#### 2013-14 Grand Jury Report entitled “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement”

##### Summary Response Statement:

On June 24, 2014, the Grand Jury released a report entitled: “Ethics and Campaign Reporting: Why and How to Implement Stronger Oversight, Transparency, and Enforcement.” This report directed responses to findings and recommendations to the Orange County Board of Supervisors which are included below.

**F1. Ethics monitoring and enforcement is important, not just to punish violators but to promote understanding of ethical guidelines and to remind public officials, employees, and candidates that their behavior is under close scrutiny. Vigorous ethics monitoring and enforcement is necessary to develop and maintain trust in government.**

Response: The Board of Supervisors (“Board”) agrees with this finding.

**F2. Governmental ethics includes much more than just campaign finance. It covers prohibitions against personal and financial gain, requirements for transparency, and requirements for fair process and merit based decision making. Most importantly, it includes prohibitions of behavior that is unethical but may not be illegal, such as campaign contributions as quid-pro-quo for government favors and lucrative contracts.**

Response: The Board disagrees partially with the finding. The Board agrees that the concept of government ethics includes more than merely the lawful receipt and expenditure of campaign contributions. However, the Grand Jury’s claim that the *quid pro quo* exchange of government favors and lucrative contracts for campaign contributions is “unethical but may not be illegal” is wholly inaccurate. Bribery is prohibited under both state law (*i.e.*, Penal Code § 86) and federal law (*i.e.*, 18 U.S.C. § 666). Bribery can often also be prosecuted as mail or wire fraud (*i.e.*, depriving the public of its right to the honest services of elected officials) per 18 U.S.C. § 1346. Self-dealing in public contracts is prohibited under Gov. Code section 1090.



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F3. Orange County is subject to the same potential for corruption as anywhere else, yet monitoring and enforcement of ethics, and campaign and lobbyist reporting in the County is deficient in a number of areas, including oversight, law and policy advice and recommendations, audits, coordination, transparency, and independence.

Response: The Board disagrees wholly with this finding. By suggesting that the monitoring and enforcement of ethic, campaign, and lobbyist reporting is “deficient,” the Grand Jury suggests that the County is somehow not meeting a legal or other minimum standard. The County of Orange exceeds legal requirements for the areas mentioned above. For example, the Board has established a number of oversight bodies and functions, including the Internal Audit Department, the Performance Audit Department, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee, the Compliance Oversight Committee, and the Orange County Fraud Hotline. In addition, the County already has limits on campaign contributions in County elections through the Orange County Campaign Reform Ordinance (Codified Ordinances of Orange County, Section 1-6-1 *et seq.*) The Board has adopted the Orange County Gift Ban Ordinance (Codified Ordinances of Orange County, Section 1-3-21 *et seq.*) that prohibits County elected officials and high-level employees from receiving gifts from persons doing business, or seeking to do business, with the County. Additionally, the Board has adopted an ordinance requiring the disclosure of lobbyists and lobbying activities through the Lobbyist Registration Ordinance (Codified Ordinances of Orange County, Section 1-1-8 *et seq.*) These oversight agencies and local laws, all of which operate to prevent corruption and the appearance of corruption, are in addition to the required responsibilities of the District Attorney and County Auditor-Controller.





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F4. Independence in monitoring and enforcing of ethics and reporting violations from those who are monitored is critical. Organizations performing these functions in Orange County, including the District Attorney, Internal Audit, Human Resources, The Registrar of Voters, the Clerk of the Board, and even the Grand Jury, are not truly independent since appointment of their head officials, and/or their budget appropriations are controlled by the Board of Supervisors.

Response: The Board disagrees partially with the finding. The Board agrees with that the budgets of the listed County departments are approved by the Board. The Board also notes that the discretionary power vested in the district attorney to control the institution of criminal proceedings may not be controlled by a county board of supervisors. (See Gov.Code, § 26500; Const. Art. 5, § 13.)

What the Grand Jury appears to reject, however, is the basic principle that the Board, as a legislative body, represents the People, and operates as a constitutional check and balance on the executive and administrative functions of County government. No executive or administrative function of government should be beyond the reach and control of the electorate, acting through its locally chosen representatives. A separation of powers, and a system of checks and balances, are the basic pillars of our local, state, and federal government. Indeed, the question of whether the executive functions of government should be "independent" of the legislative branch was resolved in favor of the People in 1783 with America's victory over British in the American Revolutionary War. As James Madison explained in *Federalist* No. 47, "The accumulation of all powers, legislative, executive, and judiciary, in the same hands...may justly be pronounced the very definition of tyranny." This Board is not going to create an "independent" branch of government that is above the law and accountable to no one. Before the Grand Jury issues further complaints about the absence of true executive branch "independence," the Board respectfully encourages the Grand Jury to read and consider *The Federalist*, the *Declaration of Independence*, and other foundational documents that shed light on the features and meaning of our Constitutional system of government.



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F5. Hiring the FPPC to enforce the County’s TINCUP ordinance has some advantages, but would have a number of drawbacks:

**a) It could more than double TINCUP contribution limits.**

Response: The Board disagrees wholly with the finding. As a matter of law, the finding is factually incorrect and ignores the public direction given by the Board of Supervisors of February 4, 2014, to preserve TINCUP’s existing campaign contribution limits no matter which agency provides administrative enforcement of campaign reform ordinances. The video of the February 4, 2014, Board meeting, item 22, at 2:16:00, is available at the following link:

[http://ocgov.granicus.com/MediaPlayer.php?view\\_id=6&clip\\_id=1395](http://ocgov.granicus.com/MediaPlayer.php?view_id=6&clip_id=1395)

In any event, TINCUP can only be amended by a majority vote of the electors (registered voters) of Orange County. Section Sec. 1-6-23, subdivision (b), of the Codified Ordinances of the County of Orange (*i.e.*, TINCUP) states, “no amendment or repeal of any provision of this division shall be effective unless the proposition of its amendment or repeal shall first have been submitted to the electors of the County and approved by a majority vote.” Authorizing the FPPC to prosecute violations of TINCUP would not change the substantive requirements and contribution limits of TINCUP nor would it have any impact on the County’s gift ban ordinance.

**b) A contract with the FPPC would be under the control of the Board of Supervisors, while at the same time the FPPC would be responsible for policing the Board.**

Response: The Board disagrees wholly with the finding. The FPPC is an independent state agency, governed by a five-member commission appointed by the Governor, and enjoys complete prosecutorial discretion in deciding which cases to prosecute. Moreover, the FPPC’s budget is approved by the state Legislature. If a contract with the County is approved, the FPPC would receive only a small portion of its operating budget from the County of Orange. The County’s contract with the FPPC would be a matter of public record and would not permit the County to interfere with FPPC prosecution decisions. In any event, it is highly unlikely that the FPPC would ever agree to such control as suggested by this Finding.



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**c) Enforcement would only include civil and not criminal violations.**

Response: The Board agrees with the finding, but asserts that this finding is irrelevant. The Orange County District Attorney is charged with the responsibility of prosecuting crimes that occur in the County of Orange. (See Gov.Code, § 26500; Const. Art. 5, § 13.) Whether the County reaches an agreement with the FPPC for the civil and administrative enforcement of TINCUP, the District Attorney retains jurisdiction to prosecute criminal violations of TINCUP.

**d) It would be a pioneering and entirely new enforcement model in California versus the already established ethics commission model.**

Response: The Board disagrees wholly with the finding. The County has followed the successful precedent set by the County of San Bernardino. Moreover, the Grand Jury’s finding assumes facts for which there is no evidence. The Grand Jury has not provided, nor does any evidence exist that local ethics commissions effectively reduce corruption. Yet local ethics commissions are subject to many of the same concerns (*e.g.*, cronyism, favoritism, lack of independence, etc.) that contracting with the FPPC would avoid by virtue of their appointments coming from those they purport to regulate.

**e) It may soon become irrelevant because campaign finance regarding contribution limits may disappear in the near future given the current trend of decisions by the U.S. Supreme Court.**

Response: The Board disagrees wholly with this finding. The Board, like the Grand Jury, is in no position to assess the probability that the Supreme Court will invalidate campaign contribution limits in the future. Reasonable campaign contribution limits, aimed at preventing corruption and the appearance of corruption, have been upheld by the U.S. Supreme Court since 1976, when the Supreme Court decided *Buckley v. Valeo*, 424 U.S. 1 (1976). In any event, this wholly speculative finding presents no reason not to authorize the FPPC to prosecute violations of TINCUP for as long as reasonable campaign contribution limits are constitutional.

**F6. Ethics bodies in California function effectively to monitor and enforce campaign finance laws as well as other ethics laws and policies, and serve as a check and balance on government officials, employees, and candidates.**



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Response: The Board disagrees wholly with the finding. The effectiveness of the “ethics bodies” is a matter of opinion and difficult to determine. The Grand Jury’s report did not provide any metrics or analysis to explain how “effectiveness” of an ethics body is defined nor did they provide any evidence or examples of said effectiveness. In any event, other institutions also monitor and enforce campaign finance laws, ethics laws, and policies, including the District Attorney, the County Auditor-Controller, the Registrar of Voters, the County Internal Audit Department, the County Performance Audit Department, the Office of Independent Review, the Audit Oversight Committee, the Treasurer’s Oversight Committee and the Compliance Oversight Committee. The Board itself conducts oversight of County officials and employees. Additionally, private citizens can themselves file “private attorney general lawsuits” under the California Political Reform Act and also TINCUP to enforce campaign finance laws. However, the Grand Jury did not analyze the effectiveness of these other enforcement mechanisms.

**R1. The Board of Supervisors should place a proposition on the next available general election ballot to establish an Orange County Campaign Reporting and Ethics Commission, similar to commissions in other jurisdictions in California.**

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. The 2012-13 Grand Jury also looked at ethics and made a number of findings and recommendations. In response to that report and based on research and analysis, the County determined that San Bernardino’s model of contracting with the FPPC was the best option to meet the recommendations from the Grand Jury. As a result, the recommended efforts are duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to prosecute violations of the Orange County Campaign Finance Reform Ordinance pending future legislative authorization.

**R2. The Board of Supervisors should carefully weigh the drawbacks to FPPC enforcement outlined in the Findings before pursuing it as an option to enforcing the County’s campaign finance ordinance.**

Response: The recommendation has already been implemented. Prior to seeking legislation and placing a measure on the ballot, the Board of Supervisors reviewed the advantages and disadvantages of FPPC enforcement and determined that FPPC enforcement was the best and most cost effective option for the County. The County will continue to pursue this course of action under Board direction.





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R3. If the Board of Supervisors contracts with the FPPC for enforcement of the County's campaign finance ordinance, it should establish an Office of Ethics and Compliance charged with receiving complaints, monitoring, and investigating possible ethics law and policy violations, and offering training, advice and recommendations regarding such laws and policies. The Office should have the following characteristics:

- a) a director nominated independently from County government officials,
- b) a budget mandated by ordinance, with a floor on year-to-year reductions
- c) paid staff, including its own inside or outside counsel, and
- d) power to subpoena records and persons.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. An Office of Ethics is duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to provide those services with legislative authority. Also, County of Orange adopted an Electronic Campaign Disclosure ordinance (section 1-6-32), which requires county officers, candidates, or committees to file campaign disclosure documents electronically. These are available to search, review, and export online at [www.ocvote.com/voting/campaign-finance-info/](http://www.ocvote.com/voting/campaign-finance-info/). Also, the FPPC already makes the Form 700: Statement of Economic Interest available for all County Supervisors on the [www.fppc.ca.gov](http://www.fppc.ca.gov) website.

In the County's budget the amount of discretionary or non-mandated general purpose revenue is extremely limited. Orange County is underfunded and ranks last out of all 58 counties in allocation of property tax revenues. The creation of another County department would be duplicative and costly and being an ongoing drain on those scarce resources.





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R4. At a minimum, to address current deficiencies in ethics and campaign and lobbyist oversight and reporting, the Board of Supervisors should:

1. Charge and appropriate funds for an existing agency in the County to perform comprehensive oversight of ethics compliance.
2. Charge and appropriate funds for the Registrar of Voters and the Clerk of the Board to accomplish more comprehensive oversight of campaign and lobbyist reporting, including more complete audits.
3. Charge and appropriate funds for an existing agency in the County to create and manage a consolidated, compressive database of economic interest and campaign reporting data and information, available to the public via the Internet.

Response: The recommendation will not be implemented because it is not warranted and is not reasonable. The recommended efforts are duplicative and costly as the Board has placed a measure on the November ballot to allow the FPPC to provide those services with legislative authority. As noted in F3, the County disagrees with the use of the word "deficiency" and maintains that all requirements are met and in many cases exceeded.

As noted above in R3, the County makes campaign disclosure documents available on the Registrar of Voters website. (See <http://www.ocvote.com/voting/campaign-finance-info/>). Statements of Economic Interest (FPPC Form 700) filed by members of the Board of Supervisors are already publicly available on the FPPC website. (See <http://www.fppc.ca.gov/index.php?id=592>.) The creation of an additional database would be duplicative and costly as this information is already available to the public.