

THE USE OF GOVERNMENT INFLUENCE ON A PRIVATE EDUCATIONAL INSTITUTION

SUMMARY:

On November 1, 2011, a formal and confidential complaint was sent to the Orange County Grand Jury requesting that they investigate allegations that leaders of a taxpayer funded organization had attempted to quash information and debate on issues of public concern and that these leaders had inappropriately attempted to interfere in a local city council election.

Thereafter, the Grand Jury began the accumulation of documents and conducted interviews related to the subject matter of the complaint, i.e. that certain elected officials had exerted, or attempted to exert, pressure upon an independent educational institution and a member of its faculty. This investigation led to the conclusion that various parties had misled educators and misled the Grand Jury. The Grand Jury recommends that all elected public officials be reeducated in the ethics of their offices and those organizations that they represent as a part of their public service.

PURPOSE

The purpose of this study was to investigate and respond to a citizen's complaint alleging what can be summarized as misfeasance of office.

METHODOLOGY

The 2011-2012 Orange County Grand Jury took the following steps to investigate the citizen's complaint letter.

- Compiled and read documents related to the complaint;
- Interviewed by telephone and in person individuals related to the complaint;
- Obtained recorded testimony under oath;
- Researched public documents relating to the ethical obligations of public officials;
- Evaluated the compiled information; and
- Generated this report.

HISTORY:

The Compensation Report

In May of 2009, a private citizen and resident of Laguna Hills, Ca. began organizing a campaign effort for a position as a member of their local city council. Part of the motivation behind this effort was a news story regarding the levels of compensation for various city officials throughout Orange County and the subject city in particular.

INAPPROPRIATE GOVERNMENT INFLUENCE

Following interest in this subject, the prospective candidate filed a public records request in June, 2009 with the local city as well as all of the cities in Orange County in February, 2010. The responses from the cities were considerably less than was expected and lacked much of the particular information requested.

In February, 2010, some nine (9) months prior to the anticipated date of the local election, the candidate approached a local university professor as to the availability of students to assist in obtaining the balance of the information requested from the cities and to complete an analysis of the data obtained.

A professor of governmental studies at the local university recommended two students from the university's Public Administration graduate program. He believed they could benefit from the practical experience of assisting in such a study. This type of independent study, or internship, is considered a standard practice by the university system. Students are usually awarded academic credits in an amount determined by the academic supervisor in return for the practical education that is experienced.

Two students from this university's Masters in Public Administration program were subsequently assigned to the candidate's campaign with the specific understanding that they were to assist in the gathering of financial data from cities in Orange County, Ca. and in the assessment and analysis of the information obtained. A third student, from another university, joined the study group for the distinct purpose of providing assistance in graphing and charting the data.

On May 10, 2010, a report based upon the data received from the cities was generated and released to the general public¹. This report, that cited the salaries and compensation of local city managers, drew the attention of local news outlets and numerous news and public interest stories resulted from the information contained in the report.

The report was strongly critical of the compensation programs for city managers throughout Orange County but concentrated primarily on the compensation program of the city manager in the city in which the candidate was seeking a city council seat.

The report was entitled "*Orange County California City Managers Compensation Report, The Cost of Local Government: A Comparative Analysis of Orange County Municipalities Expenditures for City Managers.*" On the cover page, authorship was credited to the two students who were identified by name and as "*Public Administrative Graduate Students*". A further credit was given for the graphic design to yet the third student identified as a "*Business Administration Graduate Student*".

¹ *Orange County, California, City Managers Compensation Report*; May 10, 2010

The cover page stated that the report included a “forward” (sic) by the “candidate” for the city council position in question. This two page foreword describes the candidate’s difficulty in obtaining the requested information from the city in question as well as other Orange County cities. It describes the manner in which assistance was sought from the professor, who responded and what assistance was provided. “When responses from the municipalities proved insufficient, the interns (students) used all manner of communication to acquire the compensation information necessary for the completion of this comprehensive analysis”.²

The foreword thereafter makes campaign like statements regarding governmental “transparency” and public accessibility to “municipal expenditures”.

The report states on page three (3) of the foreword that “the Orange County City Managers Compensation Report was commissioned by (the candidate) in March of 2010 incidental to (the candidate’s) *analysis* (emphasis added) of information received as a result of the Public Records Act requests....”

Under a section entitled “Commissioning the Study” (page 4) the report states the candidate “sought and received support for the independent commissioning of the Orange County City Managers Compensation Report” from the university. “University Public Administration Graduate students were assigned to the project and were quickly activated to receive, sort, and compile the data received. When responses from the municipalities were insufficient, the graduate students used all manner of communicating to acquire the compensation information necessary for the completion of the comprehensive analysis.” The balance of the report is a discussion of the methodology used, along with attendant charts, as well as the analysis conducted to arrive at the report’s conclusion.

After the report regarding city managers compensation was released, the report became the frequent topic of discussion at various public and private forums. A copy of the report was reprinted in its entirety on the web site of the Orange County Register newspaper.

The Professor

The university professor who was approached and asked to provide students to assist in the study is well known throughout the university systems as well as throughout the offices of local governments. He is a tenured professor in the university system, who is assigned to the developing graduate program of an affiliate university. He is the author of a number of publications where he has made his opinions known, some of which have suggested the consolidation of some Orange County cities. Some of his opinions were, and are, disagreeable to a number of local city officials. He has been a frequent lecturer and advisor in various governmental circles and has written numerous publications regarding governmental trends and

² Orange County, California, City Managers Compensation Report; May 10, 2010

practices. Frequently, local politicians and governmental officials were guest lecturers in his classes.

On the same date as the release of the report, a complaint by the city manager of the subject city was lodged with the professor. The complaint was a concern that the cover page of the report stated that it was “by” the students from the university, thereby indicating that it was authored by the students and gave the report undeserved and unsanctioned credibility. This concern was raised in spite of the explanation and clarifications contained in the foreword immediately following the title page.

The professor submitted a request to the candidate that the authorship of the report be clarified so as to alleviate any possible confusion as to the origination of the report,

A subsequent “*amended*” report was thereafter issued with a “*new*” title page which credited authorship to the candidate for the city council seat, with “*Research and Technical Assistance Provided by...*” the students, who were also identified by their respective university affiliation.

The sum and substance of the balance of the report remained substantially the same.

The City Councilmen

On Wednesday, May 19, 2010, a publically funded non- profit corporation organized on behalf of public entities met for their regular meeting. Present were duly elected local city councilmen who serve on the local board, the staff of the local division, as well as their regional director. Minutes were taken and recorded.

A city councilman from Tustin, CA. called the meeting to order and various items of business were discussed.

Under the heading “*Matters from the City Managers Association*”, a past president and a current director of the non-profit, who was also a current councilman from Laguna Hills, CA, the city which was the primary subject of the Compensation Report, brought to the attention of the board, a news article regarding “*City Managers Compensation*”. The minutes further indicate: “*A controversial report was released by council candidates and graduate students.... The (city where the election was taking place) is extremely upset that (the university) could be so irresponsible and that the Orange County Register would put a Watchdog column on the front page of the Orange County Register. The councilman and current director “suggested that a response is necessary in significant fashion, as the article indicates first of a series.”*”³

The minutes further show that a local city manager, “*responded by stating this type of issue happens regularly, and the need to be cautious about how to approach and avoid making this issue bigger.*” A decision was made that there will be a “follow-up” with the university and the

³ League of California Cities – Orange County Minutes, May 19, 2010

professor to address their concerns. The city councilman from Tustin, CA. agreed that the matter needed to be addressed but that they would not request a “further study”.

A meeting was scheduled for July 8, 2010, with the president of the local university, said meeting to include the councilman from Laguna Hills, CA. which was the subject of the report, the city councilman from Tustin, CA., and the existing executive director of the local division of the non-profit corporation.

In a subsequent board meeting of the non-profit corporation on Wednesday, July 21, 2010, the city councilman from Tustin, CA., *“shared that he had a productive meeting”* with the president as to the *“University Salary Survey”*. The university president *“said he would look into the matter further. It was a congenial meeting.”*⁴

COMMUNICATIONS

A series of communications ensued after the release of the original report on May 10, 2010. These communications are informative as to the various actions taken by the involved individuals.

The professor stated in a letter to the Orange County Register that for purposes of clarification, the source for the graph in the original report was the candidate. He further indicated that the graduate students were working in the campaign as unpaid interns who gathered data for the report and that the report was not a product of or sanctioned by the university.

Thereafter a series of electronic communications took place between and among the various individuals. The university president communicated his displeasure with the professor related to the events that were described to him in the visit with the city councilmen.

The professor indicated in communications that he was making efforts to correct any misunderstanding regarding the authorship of the original report, but also refused to disclose personal information regarding the students as requested by one of the city officials.

Communications from the city councilman of Laguna Hills, CA. directed to university officials reflected his intentions to see that the local newspaper reject the original report as not being scholarly.

Some of the language used in these communications was included by the professor in his subsequent communications. It was represented to the Orange County Grand Jury that this particular language was “dictated” to the professor by the councilman from Laguna Hills, CA.

These demands being made upon the professor escalated, requesting that he continue to make efforts questioning the credibility of the original report regarding city compensation.

⁴ League of California Cities – Orange County Minutes, July 21, 2010

The candidate who released the compensation report also entered the conversation by acknowledging that the “origination of the report was exclusively mine”, and that the criticisms were thinly veiled political schemes.

Additional communications indicated that university officials were requesting that the university professor communicate directly with the local politicians so that a warmer relationship could be reestablished.

Thereafter, a flurry of e-mail communications began between the professor and university officials regarding the storm of publicity which was resulting from the report and the attendant explosion of notoriety associated with disclosure of the financial affairs taking place in nearby Bell, Ca.

PUBLICITY

National news networks began a series of interviews with the students, with the candidate and others. The universities’ public relations officials became involved in an effort to establish the appropriate “talking points” for the various appearances, along with suggestions on how to capitalize on the use of the name of the university during these appearances.

The California State Legislature requested testimony from the students and the professor. A state senator congratulated the students and the professor and indicated an intention to sponsor legislation related to the subjects raised in the report.

The California State Attorney General announced an indication that his office was preparing to investigate any and all local governments that were paying city officials in excess of three hundred thousand (\$300,000) per year.

Local newspapers continued to publish articles related to the subject of the report along with recommendations for additional oversight regarding matters of compensation for various city officials.

Congratulations and accolades to the students, the professor, and the university were extensive. Demands for more transparency by the cities were being made. Plaques were being awarded.

On November 2, 2010, the election was held in Laguna Hills, CA and the candidate who originated the report was elected.

Thereafter, circumstances surrounding this matter appeared to languish for approximately ten (ten) months until information was publically circulated to the effect that the professor had been terminated from his position, and that that action was related to city officials being upset over the various political positions voiced by the professor.

INTERVIEWS

During the course of this study, the Grand Jury conducted numerous interviews.

Officials of the non-profit organization indicated that any actions or efforts in this regard by the local public or elected officials were taken without approval or sanction by the state organization.

The executive director of the local division, as well as both councilmen, gave differing versions as to the events which took place before, during, and after the meeting with the university president. The information they provided to the Grand Jury also varied from the written documentation obtained.

Thereafter, the Orange County Grand Jury conducted interviews on a formal record.

The Executive Director

The former Executive Director of the publically funded non-profit corporation was interviewed under oath and verified the agendas and recorded minutes of the local division, validated their accuracy, and acknowledged that there is a City Managers organization in Orange County and that they hold a non-voting position on the local board.

In summary of that interview, the director recalled the meeting where the matter of the compensation study was discussed and what actions if any were to be taken. Ultimately, the chairman of the city managers association was contacted and he agreed that a meeting with the president of the university be held. Thereafter, an appointment with the president of the university was made for a meeting that was to include the city councilman from Laguna Hills, CA. the city councilman from Tustin, CA. as well as the executive director of the local division of the non-profit corporation.

The director acknowledged attendance at that meeting, and that the city councilman from Laguna Hills, CA. brought with him a marked and flagged copy of the compensation report and provided it to the president and made it clear what areas of the report were of concern.

Councilman from Tustin, CA.

A similar interview under oath was conducted with the councilman of Tustin, CA. as to the circumstances leading up to the meeting with the university president, its purpose, and the matters discussed.

The councilman indicated that the compensation report was under considerable discussion at various meetings including the meeting of the non-profit corporation and that the councilman from Laguna Hills, CA. was unhappy with it.

He acknowledged that prior discussions took place at the meeting of the non-profit as well as the decision to meet with the university president. He further acknowledged that the subject of the compensation report arose during the meeting with the president and that the professor's name arose as well. The councilman from Laguna Hills, CA. alleged that the professor was working with the candidate on the campaign and that the students were being misused by using them as campaign activists.

The Tustin city councilman also acknowledged speaking with other university officials and in those conversation discussed the universities possible involvement with local political officials in the future.

The Tustin, CA. city councilman acknowledged that the subject of city manager compensation arose because the city councilman from Laguna Hills, CA. came along and he was exercised about the report.

Councilman from Laguna Hills, CA.

The Orange County Grand Jury also conducted an interview under oath with the city councilman from the City of Laguna Hills, CA. The inquiry was directed at the events which led to the meeting with the university president, the subject of the meeting, and any results thereafter.

He acknowledged that the purpose of the meeting which took place with the president was to inform the president of the compensation report.

He further indicated to the Orange County Grand Jury that as to the future impact of these circumstances on the students of the university, that it was obvious to all concerned that it was not the best thing for them to do, i.e. to be criticizing city managers when they are the ones that do the hiring. And that the university president and the professor were bright individuals who could see the relationship and that it wouldn't be smart to slam city managers. He acknowledged that there wasn't any threat but it was just sort of self evident.

THE RESULTS

The executive officer of the local division of the publically funded non-profit corporation acknowledged that the subject of the compensation study was discussed as part of the formal meeting of the non-profit board and that the proposed action of meeting with the university president was part of that discussion. It also appeared that the city councilman from Laguna Hills, CA. was very upset with the report, and that he came to the meeting with the university president with a copy of the compensation study, and that the study was marked with considerable particularity as to those areas with which he took issue.

The university president acknowledged that the meeting took place and under what auspices. The visiting public officials questioned the accuracy of the report in question and had statistical issues with the data. They alleged that their ethical issue was that the report was written by the candidate, was a political diatribe by her and she put the university's seal on it.

After the meeting with the city councilmen and the executive director, the university president interceded in this matter and began efforts to direct the professor to correct any misunderstandings that may have taken place. He did communicate to others that the feedback from this meeting with the city councilmen and the executive director was very negative; with much resentment and that this circumstance would have an effect on students' job opportunities.

On Oct. 12, 2011, the professor resigned from his position as director of the MPA (Masters of Public Administration) at the university. A copy of his resignation was provided to the Orange

County Grand Jury wherein he stated that his motive in doing so was “*I resigned because it was clear to me that a breakaway group from the (non-profit corporation) and other disgruntled elected leaders had convinced (university) administrators that I could no longer be an effective public face for the program.*”

GRAND JURY RESPONSIBILITIES

Californian Penal Code section 925a states:

The Grand Jury may at any time examine the books and records of any incorporated city or joint powers agency located in the county. In addition to any other investigatory powers granted by this chapter, the grand jury may investigate and report upon the operations, accounts, and records of the officers, department functions, and the method or system of performing the duties of any such city or joint powers agency and make such recommendations as it may deem proper and fit.

The grand jury may investigate and report upon the needs of all joint powers agencies in the county, including the abolition or creation of agencies and the equipment for, or the method or system of performing the duties of, the several agencies. It shall cause a copy of any such report to be transmitted to the governing body of any affected agency.

Section 933.6 states:

A grand jury may at any time examine the books and records of any nonprofit corporation established by, or operated on behalf of a public entity, the books and records of which it is authorized by law to examine, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system for performing the duties of such nonprofit corporation.

Upon the receipt of a formal complaint in regard to the foregoing information, the 2011-2012 Orange County Grand Jury investigated and came to the opinion that these circumstances warranted further review accompanied by appropriate recommendations as to any future conduct of a similar nature which may be considered.

California Government Code section #3204 is entitled “Use of office, authority or influence to obtain change in position or compensation upon corrupt condition or consideration”, and states:

No one who holds, or who is seeking election or appointment to, any office or employment in a state or local agency shall, directly or indirectly, use, promise, threaten or attempt to use any office, authority, or influence, whether then possessed or merely anticipated, to confer upon or secure for any individual person, or to aid or obstruct any individual person in securing, or to prevent any individual person from securing, any position, nomination, confirmation, promotion, or change in compensation or position, within the state or local agency, upon consideration or condition that the vote or political influence or action of such person or another shall be given or used in behalf of, or withheld from, any candidate, officer, or party, or upon any other corrupt condition or

consideration. This prohibition shall apply to urging or discouraging the individual employee's action.

The Institute for Local Government is the nonprofit research affiliate of the League of California Cities and the California State Association of Counties. "Its mission is to promote good government at the local level". In their publication entitled "Understanding the Basics of Public Service Ethics, Fair Process Laws and Merit-Based Decision-Making", (2009), they ask what is an ethics law?

For those involved in public service, "ethics laws" tend to be those laws whose central purpose is to protect the public's trust in its public institutions and those who serve in them." Many of these ethics laws are prohibitions: they forbid certain actions that would undermine the public's trust that decisions are being made to benefit the public's interests (as opposed to the personal or political interests of the decision-maker). These laws are to prevent a decision-maker "from being involved in a decision if the decision-maker has a real or perceived conflict of interest." "Because public trust and confidence is vital to the strength of a democratic system, ethics laws sometimes set very high standards for public official conduct." "Just because a given course of conduct is legal does not mean that it is ethical.

ANALYSIS:

From the wording in these communications, it appeared that the city councilman from Laguna Hills, CA. was influencing certain actions of the professor in that some of the exact language that was to be used in the professor's letter was the same as that which was communicated by the councilman. It is equally apparent that the professor felt compromised and was attempting to defend the actions of himself and the students in raising public interest in the political process. The issue of crediting the students with the authorship of the report on the cover page, notwithstanding the rather elaborate explanation in the attending foreword, was magnified beyond its significance, apparently for political reasons.

The history of the communications is evidence of the existence of the pressure being brought to bear upon the university and the professor.

If, by express statement or by implication, it was stated or implied to the university officials that their students may or may not have altered employment expectations based upon the outcome of those concerns as represented by the elected city officials and the representations which were made regarding the compensation report, then an ethical breach was certainly taking place. And if not, there still remains a significant cloud of impropriety and circumspection over the entire affair.

The Orange County Grand Jury is concerned that these efforts were an attempt to interfere with the academic freedom and the curriculum of an educational institution, and that these elected officials misused their position as directors of a publically funded, non-profit political organization, and their political offices, to attempt to influence the operation of an independent university, its governing officials, and its faculty and students. Equally important, their conduct

INAPPROPRIATE GOVERNMENT INFLUENCE

inadvertently or otherwise, may have brought negative influences to bear on the continuing career of an education professional.

In addition, it appears that the university, its governing officials, faculty, and students were being influenced by the public officials for the purpose of manipulating circumstances related to a local election. If, for example, the report in question could be discredited, it would reflect badly upon the candidate who generated the report and who was using its results as the cornerstone of her campaign efforts.

There are many reasons why the curriculum and operations of educational institutions are considered sacrosanct, and many reasons why ethical considerations by public officials must be followed. This is certainly one.

FINDINGS AND CONCLUSIONS:

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each city affected by the **findings** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation the 2011-2012 Orange County Grand Jury has four findings:

F1. City officials apparently misused their membership in a non-profit corporation established on behalf of public entities to promote their own political agenda by using their status with that organization in an effort to influence the officials at a local university.

F2. City officials arranged a meeting with the office of a university president indicating they were to introduce the executive director of the non-profit entity, when their intentions were to influence the university to investigate and discredit the report where students were assigned as interns to a political campaign by the Masters in Public Administration department.

F3. The influence wielded by city officials appears to have been an attempt to cause the officials of a local university, to exert influence on a member of their faculty.

F4. City officials may not have been forthcoming with the Orange County Grand Jury in their testimony about the primary purpose in meeting with university officials and the facts and circumstances related thereto.

RECOMMENDATIONS:

In accordance with California Penal Code Sections 933 and 933.05, the 2011-2012 Grand Jury requires responses from each agency affected by the **recommendations** presented in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

Based on its investigation of the agencies in Orange County, the 2011-2012 Orange County Grand Jury makes the following three recommendations:

R1. The Laguna Hills, CA. City Council and the Tustin, CA. City Council should review the conduct of their city officials and determine what action should be taken so as to prevent future acts of misfeasance.

R2. Elected officials in Laguna Hills, CA. and Tustin, CA should refrain from attempting to exercise influence over public and private educational institutions.

R3. Additional efforts, including additional hours of study and training, regarding continuing ethical training should be required of those elected officials delineated in recommendation No.1.

REQUIREMENTS AND INSTRUCTIONS:

In accordance with *California Penal Code* Sections §933 and §933.05, the 2011-2012 Orange County Grand Jury requires responses from each agency affected by the **Findings/Conclusions** and **Recommendations presented** in this section. The responses are to be submitted to the Presiding Judge of the Superior Court.

“Not later than 90 days after the grand jury submits a final report on the operations of any public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under the control of the governing body, and every elected county officer or agency head for which the grand jury has responsibility pursuant to Section §914.1 shall comment within 60 days to the presiding judge of the superior court, with an information copy sent to the board of supervisors, on the findings and recommendations pertaining to matters under the control of that county officer or agency head and any agency or agencies which that officer or agency head supervises or controls. In any city and county, the mayor shall also comment on the findings and recommendations...”

(a.) As to each Grand Jury finding, the responding person or entity shall indicate one of the following:

(1) The respondent agrees with the finding

(2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefore.

(b.) As to each Grand Jury recommendation, the responding person or entity shall report one of the following actions:

(1) The recommendation has been implemented, with a summary regarding the implemented action.

INAPPROPRIATE GOVERNMENT INFLUENCE

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the Grand Jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not warranted or is not reasonable, with an explanation therefore.
- (c.) If a finding or recommendation of the Grand Jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the Grand Jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making aspects of the findings or recommendations affecting his or her agency or department.

RESPONSE MATRIX:

	F1	F2	F3	F4	F5	R1	R2	R3
City of Laguna Hills	X	X	X	X				
City of Tustin	X	X	X	X				
City of Laguna Hills						X	X	X
City of Tustin						X	X	X