



County of Orange
C a l i f o r n i a

Thomas G. Mauk
County Executive Officer

July 31, 2007

Mike Penn, Foreperson
FY 06/07 Grand Jury
Superior Court of California
700 Civic Center Drive West
Santa Ana, CA 92702

Subject: Response to Orange County Grand Jury Report, "Orange
County Disciplinary Procedures for Elected Officials?"

Dear Mr. Penn:

Per your request, and in accordance with Penal Code 933, enclosed please find the response to the subject report submitted on behalf of the Board of Supervisors, Assessor, Auditor Controller, County Clerk-Recorder, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector. If you have any questions, please contact Theresa Stanberry at (714) 834-3727 in the County Executive Office who will either assist you or direct you to the appropriate individual.

Very truly yours,

A handwritten signature in cursive script that reads "Thomas G. Mauk".

Thomas G. Mauk
County Executive Officer

Enclosure

County Executive Office
10 Civic Center Plaza
Third Floor
Santa Ana, California
92701-4062

Tel: (714) 834-2345
Fax: (714) 834-3018
Web: www.oc.ca.gov

2006-07 Grand Jury Report
“Orange County Disciplinary Procedures for Elected Officials”
Response to Findings and Recommendations

INTRODUCTION

This constitutes the responses by the Board of Supervisors, Assessor, Auditor-Controller, County Clerk-Recorder, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector to the 2006-2007 Grand Jury report titled *Orange County Disciplinary Procedures for Elected Officials*. Our response is based upon the County’s application, administration and enforcement of countywide procedures and state laws that in many instances define and limit the investigation of elected officials.

The Grand Jury report alleges the absence of any published procedures concerning non-EEO misconduct that does not rise to the level of willful or corrupt. It is unclear what type of misconduct falls within this definition. The examples of non-EEO misconduct provided by the Grand Jury for which there are no published procedures are malfeasance, bribery, theft and fraud. These examples are types of misconduct that are willful and corrupt. The County of Orange has an Internal Audit Department that has established and implemented written procedures to review any reported alleged misconduct such as bribery, fraud, theft, as well as misuse of County resources. In addition, as the Grand Jury notes, California Penal Code Section 919 allows the Grand Jury to investigate alleged willful and corrupt misconduct of elected officials.

Moreover, statutory and case law have recognized the relative autonomy of elected officials and limited the supervision of elected officials. For example, in *Hicks v. Board of Supervisors*, (1977) 69 Cal.App. 3d 228 the court prohibited the supervision of the investigative and prosecutorial functions of the District Attorney’s office by the Board of Supervisors. Consistent with the *Hicks* rationale, the California Supreme Court also ruled that the Board could not control the manner in which a county assessor performed his functions as assessor. (*Connolly v. County of Orange* (1992) 1 Cal.4th 105.) The same is true for the Sheriff. In *Brandt v. Board of Supervisors of Madera County* (1978) 84 Cal.App.3d 598, the court held that the Board of Supervisors had no authority over the Sheriff in his operation of county jails except to provide him with funding for food, clothing and bedding for inmates. In addition, the California Constitution states that the Attorney General has direct supervision over the District Attorney and the Sheriff in all matters pertaining to the duties of their offices. (Cal. Const. article 5, § 13.)

Each elected official undergoes training in general ethics principles and ethics laws relevant to his or her public service. (Cal. Gov. Code §§ 53234-53235.2.) Lastly, elected officials are ultimately subject to review by the electorate. The electorate can express its dissatisfaction with any elected official by recalling the official from office or choosing not to re-elect the official.

This preliminary statement is incorporated into the following responses as though fully set forth therein.

Response to the Finding(s)

- F-1 Published Procedures to Investigate Misconduct:** Other than Penal Code section 919c which grants the Grand Jury the authority to inquire into willful or corrupt misconduct by public officers, there are no authorized published procedures by the county or agencies to investigate non-EEO misconduct by an elected official that does not rise to the level of willful or corrupt.

Response: The Board of Supervisors, Assessor, Auditor-Controller, County Clerk-Recorder, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector disagree wholly with this finding.

It is unclear what type of misconduct the Grand Jury means by non-EEO misconduct that does not rise to the level of willful or corrupt. The examples provided by the Grand Jury of possible non-EEO misconduct to be investigated (malfeasance, bribery, theft and fraud) are types of misconduct that rise to the level of willful and corrupt. The County through its Internal Audit Department has generated and implemented written procedures to review such misconduct and other forms of malfeasance. As part of its procedures for reviewing alleged misconduct involving bribery, theft, fraud, and misuse of County resources, the Internal Audit Department has established a Hotline accessible by telephone or through the internet (the telephone number is (714) 834-3608 and the website is <http://www.ocgov.com/audit/fraud.asp>).

Response to the Recommendation(s)

- R-1 Generate and Implement Procedures:** Each Agency should generate and implement a set of procedures to facilitate an investigation of any non-EEO misconduct that does not rise to the level of willful or corrupt claim against its own elected official in Orange County.

Response: The Board of Supervisors, Assessor, Auditor-Controller, County Clerk-Recorder, Public Administrator, Sheriff-Coroner, and Treasurer-Tax Collector decline to implement the recommendation because it is not warranted and it is not reasonable.

As stated in the Response to Findings section, it is unclear what the Grand Jury means by non-EEO misconduct that does not rise to the level of willful or corrupt. Furthermore, as stated in the Response to Findings section, the County through its Internal Audit Department has generated and implemented procedures to review non-EEO misconduct cited by the Grand Jury such as fraud, theft, and bribery. Finally, statutory and case laws have limited the supervision of elected officials when performing their official functions.