

2001-2002 SANTA CLARA COUNTY CIVIL GRAND JURY

THE ROLE OF THE GRAND JURY IN THE ACCUSATION OF MISCONDUCT BY THE MAYOR OF THE CITY OF MOUNTAIN VIEW

INTRODUCTION

Penal Code Section 922, Removal of Public Officers, establishes the powers and duties of the Grand Jury in connection with proceedings for the removal of a district, county or city officer. According to Government Code Section 3060, the Grand Jury must issue a written accusation for willful or corrupt misconduct in office before a jury trial can take place. Conviction of knowing and willful misconduct results in removal from office in accordance with Government Code Section 3072.

Although a Grand Jury has the exclusive legal and statutory authority to issue an accusation for misconduct in office, it rarely occurs. Between 1885 to 1999 there were only thirty-seven reported appellate case decisions in the state of California involving accusations. This accusation procedure does not fit neatly into the oversight and reporting processes the Grand Jury normally considers when adopting its rules of procedure required by Penal Code 916. This report therefore does not contain sections on findings and recommendations. It offers a brief history of the case and describes the role of the 2001-2002 Santa Clara County Civil Grand Jury in the legal process that resulted in the removal of the mayor of Mountain View from office.

BACKGROUND

In the City of Mountain View, the city council makes policy decisions and the city manager implements these policies. This division of responsibilities is expressed in Mountain View's City Charter Section 607, which in part states, "Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the city manager, and neither the council nor any member thereof shall give orders to any subordinate of the city manager, either publicly or privately."

When the mayor, a member of the city council, repeatedly went directly to city staff to express opinions and urge actions rather than through the city manager, there was a violation of the charter. Several attempts by the city manager and city attorney to address this problem with the mayor failed to stop the conduct. The city manager was placed in a position of resolving the problem by going to the city council or by requesting an independent investigation by the county district attorney. Choosing the latter, the district attorney's office conducted an investigation. After completing the investigation the district attorney was convinced there was enough evidence to present a proposed accusation to the Grand Jury. This is the process required by the law. The district attorney must convince the Grand Jury there is reasonable cause that the accused is guilty of the allegation and should stand

trial. If the Grand Jury agrees, it then issues a formal written accusation.

On Oct. 29-30, 2002, the Grand Jury heard testimony from Mountain View officials. Under the guidance of the special assistant district attorney, the mayor's actions were described by the eight witnesses called to testify. Enough evidence was presented to convince the Grand Jury to present a formal written accusation that the mayor had committed "knowing and willful corrupt misconduct in office" leading to a jury trial to determine guilt or innocence.

CONCLUSIONS

After more than two days of testimony and deliberation, the Grand Jury found probable cause that alleged acts had taken place and a jury trial was warranted. An accusation to that effect was issued. On April 11, 2002, a trial jury issued a verdict of guilty against the defendant of knowing and willful misconduct, and on April 18, 2002, the Superior Court issued an order that removed the defendant from the office of councilperson for the City of Mountain View, California. (SEE ATTACHMENT)

Other cities separating policy making and administrative powers are urged to review their policies and practices to be certain their governing documents specifically describe prohibited conduct and the consequences if it occurs. Cities can use the review as an opportunity to assure misconduct is not taking place.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury this 16th day of May 2002.

Bruce E. Capron
Foreperson

Norman N. Abrahams, DDS
Foreperson Pro Tem

Joyce S. Byrne
Secretary