



2006-2007 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

INQUIRY INTO EXPENDITURES FOR THE CITY OF SAN JOSE MAYOR'S TRAVEL AND SECURITY

Introduction

The 2006-2007 Santa Clara County Civil Grand Jury (Grand Jury) received information from the 2005-2006 Grand Jury that the Santa Clara County District Attorney's Office (District Attorney) had begun an investigation into the propriety of using San Jose City funds to provide travel and security for the Mayor of San Jose (Mayor) while on political and/or personal business, including out-of-town political events.

Background

The Mayoral/Council Security Detail for the City of San Jose (City) has evolved over the years since its inception in 1978 following the assassination of the San Francisco Mayor and a member of the Board of Supervisors. However, the San Jose Police Department did not have a formal written policy covering this protective detail. In addition to his regular duties, the Mayor has attended numerous partisan political events that have involved the use of the protective detail while in office.

In a letter to the San Jose City Attorney (City Attorney) questioning the legality of the security expenditures, the District Attorney cited several legal codes that address the use of public funds for political purposes.

We realize that the charter declares 'the Mayor shall be the political leader within the community.' (Art.V, Sec.501.) However, Penal Code § 72.5 declares that the expenditure of public funds for a person to attend a political function organized to support or oppose any political party or political candidate is a felony. Further, Penal Code § 424 prohibits a public officer, without authorization of law, from causing the appropriation of public funds for the use of another person. Finally, Government Code § 8314 declares it unlawful for an elected officer to 'permit others to use resources for campaign activity, or personal or other purposes which are not authorized by law.' Public resources include funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time. (Government Code, § 8314(b) (3).)

Observations

In December 2005, the District Attorney sent a letter to the San Jose City Attorney questioning the legal basis for the expenditure of public resources to provide security for the Mayor at what appeared to be purely political events. The City Attorney responded to the District Attorney in a letter dated April 28, 2006, citing various statutory and case law in support of the protective detail, and concluded that (1) there was a legal precedent to provide security detail for a public official, and (2) the actions by the San Jose Police Department officer did not constitute political activity. Pursuant to the City Attorney's letter, the District Attorney determined that there was no clear legal authority on this issue and decided not to pursue the matter further.

Additionally, in his letter to the District Attorney, the City Attorney stated that the City would develop guidelines for the use of a security detail for the Mayor and Council members. The Grand Jury contacted the City Attorney on August 14, 2006, to determine the status of the draft policy. On August 17, 2006, the City Attorney faxed to the Grand Jury a copy of the San Jose Police Department's "Mayor's Protective Detail Unit Guidelines," dated August 2006. These guidelines stipulate that "The Mayor's Protective Detail will serve as Security for the Mayor including any local, statewide, and national non-personal travel." Current guidelines provide for a minimum of two officers to be assigned full-time to this detail. Their duties include ensuring security at City Council meetings, checking the physical security of the Council chambers, conducting a proper advance of the Mayor's scheduled off-site visits, arranging for parking at events, maintaining the transportation vehicles, arranging for the planning and executing of the Mayor's movements when traveling within or out of the State, and determining emergency protocol when needed.

Conclusions

The Grand Jury concluded that two legal entities have decided there is no clear legal authority forbidding the City's security expenditures for the Mayor's nonpersonal travel. In addition, an official guideline has been established by the San Jose Police Department defining the conditions under which security will be provided for the Mayor on a daily basis and during nonpersonal travel.

PASSED and **ADOPTED** by the Santa Clara County Civil Grand Jury on this 12th day of December 2006.

Ronald R. Layman
Foreperson

David M. Burnham
Foreperson Pro tem

Kathryn C. Philp
Secretary

Bibliography

Doyle, Richard, Office of the City Attorney, City of San Jose. Letter to George W. Kennedy, Office of the District Attorney, County of Santa Clara, April 28, 2006.

Kennedy, George W., Office of the District Attorney, County of Santa Clara. Letter to Richard Doyle, Office of the City Attorney, City of San Jose, December 8, 2005.

Kennedy, George W., Office of the District Attorney, County of Santa Clara. Letter to the Santa Clara County Civil Grand Jury, September 27, 2006.

San Jose Police Department, "*Mayor's Protective Detail Unit Guidelines*," August 2006.