



2011-2012 SANTA CLARA COUNTY CIVIL GRAND JURY REPORT

THE SOUTH SANTA CLARA VALLEY MEMORIAL SPECIAL DISTRICT CONTINUES TO FALL SHORT OF GOOD GOVERNANCE

Issue Statement

The Grand Jury received a complaint claiming that the South Santa Clara Valley Memorial District (District) Board of Directors (Board) was not conducting its business properly. The District is an independent special district serving veterans in southern Santa Clara County (County). The Grand Jury undertook an investigation of the complaint.

Background

A special district is a separate local government that delivers public services to residents in a geographically defined area. The District was formed in 1946 under the California Military and Veterans Code.¹ State law defines a special district as “any agency of the state for the local performance of governmental or proprietary functions within limited boundaries, and shall not include a school district or community college district.”² As an independent special district, it has a governing board of five directors elected for fixed terms. The board members are not compensated for their services. The District, like other special districts, receives a portion of the County’s 1% property tax with which to operate. See Appendix A for more on special districts.

Memorial districts were intended to serve returning World War II and other veterans by offering a social gathering place. The District operates a meeting hall primarily for veterans’ groups. Within that hall is a tenant-operated bar whose patrons must be members of either the American Legion (AL) or the Veterans of Foreign Wars (VFW). The hall is occasionally rented to non-veteran users.

¹ California Military and Veterans Code Sections 1170-1259.

² California Government Code Section 53508.9(b)(2).

Methodology

The Grand Jury conducted interviews with three board members and a staff member. The Grand Jury also reviewed available operating and regulatory required documents, past Grand Jury reports, the 2000 "Little Hoover Commission" Report, board meeting minutes and agendas, board members' training records, required certificates, and operating documents. The Grand Jury also attended two board meetings. A list of documents reviewed is included in Appendix B.

Discussion

The citizen's complaint alleged the Board had attempted to remove a voter-elected board member, which the Board is not authorized to do. In the course of investigating this allegation, the Grand Jury found additional concerns.

Attempted Removal of a Board Member

On October 19, 2011, four board members held a meeting they called a "closed session" meeting and discussed removing the fifth board member, who was not invited to attend. Three of the four board members voted to remove the absent fifth board member. Both the meeting and the attempt to remove a board member were improper.

As to the meeting, the Ralph M. Brown Act (Government Code §§ 54950-54962) governs meeting access for local public bodies, including the District. District meetings must be "open and public." The District is permitted to hold closed-session meetings, but they are the exception and permitted only for certain matters specified by statute. Special public notice and agenda requirements apply for closed-session meetings. (§§ 54954, 54954.2, 54954.5, 54957.7). The October 19 meeting did not meet the criteria for a proper closed-session meeting. While the Brown Act allows for closed-session meetings when certain personnel matters are being discussed, elected officials are specifically excluded from this exception³. Thus, the meeting topic was improper, since a closed session meeting is not permitted to discuss the performance of an elected official. Further, even if they had a permissible subject to discuss, that would require that they meet notice and agenda requirements. They did not.

As to the attempted removal, the Board has no authority to remove a duly elected board member. There are certain mechanisms to remove an elected official. For example, as an elected body, the District board serves at the will of the residents of the District. If voters within a district's boundaries disapprove of an elected official's activities, the voters can pursue a recall. A recall allows voters to remove elected board members before their term of office is complete. An elected official can also be removed from

³ California Government Code Section 54957(b)(4).

office upon the filing of an accusation by the Grand Jury and a finding by a jury that the elected official engaged in willful or corrupt misconduct in office. Additionally, an elected official can be removed pursuant to a *quo warranto* proceeding typically filed by the Attorney General.

The attempted removal of the board member was brought to the attention of Santa Clara County Supervisor Mike Wasserman. He referred the matter to County Counsel. On November 2, 2011, County Counsel provided Supervisor Wasserman with a non-confidential opinion letter stating that the District Board had no lawful authority to remove the absent board member, and that the attempted removal was thus, improper and ineffective.

Supervisor Wasserman mailed County Counsel's letter to the District the same day he received it. County Counsel is not the legal advisor to the District and Supervisor Wasserman has no authority over the District. The non-confidential letter was apparently sought and provided to the District in an effort to inform the board members about the problems with their removal efforts.

Members of the Grand Jury attended the January 18, 2012 District meeting. During this meeting, and despite the information provided in the County Counsel letter that the removal of a board member was ineffective, a board member directed the District's recording secretary to not record the voted-out member's vote. Given that it is the District Board members' responsibility to vote on the affairs of the District, the board member's instruction to the secretary to ignore another board member's vote was tantamount to removal. Further, in spite of being on notice that the Board had no authority to remove a board member, Board members continued to discuss their desire to remove the board member.

The Board failed to seek advice on how to properly perform the desired act of removing a board member. Even though the District was informed by a County Counsel letter that their effort to remove a board member was unlawful and ineffective, certain board members continued to focus their efforts on this result. Following the Grand Jury's attendance at a Board meeting, the matter was dropped and the member was "reinstated." This matter reached an unusually high level of public visibility before board members finally dropped their unlawful efforts.

Business Operations

The Military and Veteran's Code lays out the parameters for doing business, including adopting from time to time regulations for the reasonable use of the hall by veterans or organizations of veterans, and to use the hall for lawful purposes that meet the objectives of this code section. The Grand Jury requested the Board to produce documents that summarize their business operation to evaluate whether the District is adhering to the code. Balance sheets were provided, but they did not contain enough information to allow the Grand Jury or members of the public to evaluate whether the District's actions are in compliance with the code.

The Military and Veterans Code Sections 1221 – 1224 specify the legal requirements for construction and alteration of the hall. The Grand Jury was informed that the Board president hired an architect to draw up plans for a kitchen remodel at a cost of \$8,000. This was done without the benefit of competitive estimates and the expenditure was authorized without Board approval. These actions do not meet the code requirements.

Required Training and Good Governance Documents

Independent special districts are state entities, but are elected by and answerable only to the voters in the District. The District and its board members have a responsibility to follow the Military and Veterans Code and other legal requirements governing its conduct. Every two years, Board members are required to participate in training that covers general ethics principles and a brief summary of specific laws concerning conflicts of interest, prerequisites of office and government transparency. The District is subject to the Brown Act and the Public Records Act. The Board members must comply with the Political Reform Act, which requires, among other responsibilities, that public officials file Form 700, the Statement of Economic Interest, every year. Form 700s, which are disclosures of personal economic interest, help to ensure financial conflicts of interest are avoided. The above tasks must be completed by all board members.

The Grand Jury's investigation revealed that the District had no written bylaws, mission statement, or other written operating guidance documents. Further investigation revealed that only two board members had received Brown Act training and certification, but their certification was out of date. None of the board members had submitted the required Conflict of Interest Form 700 Statements, nor had they completed required biennial ethics training.

SSCVMD Purpose

The District is governed by the California Military and Veteran's Code Sections 1170-1259, which provides for veterans' memorial districts.

Since the District's purpose is to serve all military veterans within its boundaries, the Grand Jury investigated the District's outreach and promotion efforts to veterans. The Grand Jury found there to be none. The District, unlike many other memorial districts in the state, does not have a website to communicate its purpose or to promote its services and rates. It is the only independent special district in the county without an e-mail contact address. The Board president's home address and telephone number are the only contact information available, and this information is only available at the LAFCO website under the topic of special districts.

Oversight or Accountability

The District, along with 27 other special districts in the county, fall under the purview of Local Agency Formation Commission (LAFCO) for Santa Clara County (see Appendix C for more about LAFCO). For this District, LAFCO is primarily responsible for conducting a performance management review every five years. Other than LAFCO, independent special districts are accountable only to the constituents within their district boundaries.

The special district is ultimately accountable to the voters; however, the voters may not be aware that the memorial is a special district funded by their tax dollars or that the voters are ultimately responsible for district oversight.

Conclusions

The Grand Jury found that the District and/or Board members have failed to follow the law in the following respects:

- Attempting to illegally remove one board member
- Conducting an unlawful closed-session meeting on October 16, 2011
- Violating requirements for approving contracts
- Failing to complete required biennial ethics training for all board members
- Failing to complete the Form 700 Statement of Economic Interest Form 700.

Little outreach is performed to inform veterans in south county of the District's services. Board members told the Grand Jury that they do not fully understand their ethical responsibilities or grasp the legal requirements applicable to the District. The Grand Jury determined that the District is significantly lacking in good governance and good business practices.

While the volunteer District board members give freely of their time and effort, they do so without benefit of meaningful guidance, training, accountability or written procedures. Training, including that required by state law, as well as basic business training, will help in overcoming the issues found.

Findings and Recommendations

Finding 1

The Board is conducting meetings and taking unlawful actions without regard to the legal parameters that govern their conduct.

Recommendation 1

The Board should obtain the required training focused on their ethical, legal, and fiscal responsibilities for being a board member and, in particular, for running a veterans memorial district.

Finding 2

The District does not have a written mission statement or bylaws to guide it in defining and fulfilling the District's purpose, and communicating its function to veterans in the community or the District residents in general.

Recommendation 2

The District should adopt a written mission statement and set of bylaws. This activity could be coordinated with the local chapter of the California Association of Special Districts and modeled after other veterans memorial districts.

Finding 3

The District has no oversight that would ensure they are fulfilling their special district obligations.

Recommendation 3

LAFCO should include this district in its next service area review and should expand the review to a performance management review, examining the District's ability to deliver appropriate services and determine whether the District has the operations knowledge to perform their duties.

Finding 4

The District demonstrates no effort to communicate its mission and operations to all District veterans.

Recommendation 4

The District should communicate its mission and advertise their programs to all veterans in the District. For instance, it could establish a website to promote and welcome all military veterans.

Appendix A: What is a Special District?⁴

A special district is a separate local government that delivers a single or, in some cases, a number of public services to a geographically limited area. Typically, they are created by the voters within a geographic area defined as the district, to fill a need they want and are willing to tax themselves to have the service delivered.

Special districts have four distinguishing characteristics:

- They are a form of government created by local voters
- They have governing boards
- They provide a focused service and/or the facilities to do so
- They have defined boundaries.

They have the same basic powers as cities and counties.

Special districts have both corporate power and tax powers. Their *corporate power* is the ability to “do something”; their *tax power* is the authority to raise money to pay for what they do. They operate either under a principal act or a special act. Currently, there are about 50 principal statutes, which local voters can use to create and govern a local special district.

Special districts can be broken down further into the following categories:

- Independent vs. Dependent
- Enterprise vs. Non-enterprise
- Single Function vs. Multiple Function

An independent special district has a governing board; members are usually elected by the voters within the district and serve fixed terms.

One quarter of California’s special districts are enterprise districts, meaning that they operate like business enterprises charging fees for their services.

⁴ Excerpted from *What’s So Special About Special Districts: A Citizen’s Guide to Special Districts in California*, Fourth Edition, Senate Local Government Committee, October, 2010.

Appendix B: List of Documents Reviewed

- California Special District Association, *Guide to Special District Laws and Related Codes*, 2007
- Caligari, Gregory H., Santa Clara County LAFCO, *RE: Response to 2010-2011 Santa Clara County Civil Grand Jury Report Entitled "LAFCO's Responsibility for Special Districts: Overseen or Overlooked?"*, Letter to Judge Richard J. Loftus, Jr., October 5, 2011
- Chiang, John, California State Controller, *Special Districts Annual Report*, 60th Edition, December 13, 2011
- Marquez, Miguel, Santa Clara County, County Counsel, *RE: South Santa Clara Valley Memorial District*, Letter to Supervisor Mike Wasserman, County Supervisor, District 1, November 2, 2011
- Santa Clara County LAFCO, *LAFCO Cost Apportionment: County, Cities, Special Districts – Estimated Costs to Agencies Based on the 2012 LAFCO Budget*, PDF Document
- Santa Clara County LAFCO, *Special Districts*, Website, <http://www.santaclara.lafco.ca.gov/specialdistricts.html>
- State of California Little Hoover Commission, *Special Districts: Relics of the Past or Resources for the Future?*, Report, May 3, 2000
- Senate Local Government Committee, *What's So Special About Special Districts?*, Fourth Edition, October, 2010
- Santa Clara County 2004-2005 Civil Grand Jury, *Special Districts and Joint Powers Agencies*, Final Report
- Santa Clara County 2004-2005 Civil Grand Jury, *Special District and LAFCO Overview*, Final Report
- Santa Clara County 2005-2006 Civil Grand Jury, *Independent Special Districts – Oversight Falls Far Short!*, Final Report
- Santa Cruz County 2008-2009 Civil Grand Jury, *Who is Watching Our Special Districts?*, Final Report
- South Santa Clara Valley Memorial District, *Minutes of December 21, 2011 Board of Directors Meeting*
- South Santa Clara Valley Memorial District, *Minutes of January 18, 2012 Board of Directors Meeting*

Appendix C: Local Agency Formation Commission

The Local Agency Formation Commission (LAFCO) is a state-mandated county agency responsible, in part, for establishing new districts and defining physical boundaries for both new and existing cities and special districts. Additionally, LAFCO has regulatory and planning responsibility for the 28 special districts in Santa Clara County. Santa Clara County's LAFCO is governed by five commissioners: two county supervisors, one city council member from San Jose, one city council member from another city in the county (selected by the cities), and one public citizen selected by the other four members. LAFCO is required to conduct service area reviews of the special districts under its purview every five years.

This report was **PASSED** and **ADOPTED** with a concurrence of at least 12 grand jurors on this 31st day of May, 2012.

Kathryn G. Janoff
Foreperson

Alfred P. Bicho
Foreperson pro tem

James T. Messano
Secretary