

January 05, 2006

IMMEDIATE ISSUES INTERIM REPORT

Auburn Recreation District (ARD)

SUMMARY:

The District Administrator of the Auburn Recreation District (ARD) has presented the Board with a draft of a new employment contract. This contract was discussed by the Board at its closed session meetings in November and December without resolution. Earlier, in 2004, the District Administrator had filed claims against the Board alleging violations of his rights as an employee, and the status of those claims is a matter of debate. Some Board members believe that offering to abandon the prior claims is being used as leverage by the District Administrator to gain a new contract. All of this has received substantial publicity in the Auburn community including several articles in local newspapers. The Placer County Grand Jury, having monitored ARD for the past three years, has chosen to investigate this matter and to publish a formal Interim Report. Based on our investigation, we find that a new contract should not be considered at this time, and we recommend that the Board cease considering it. Further, we recommend that the Board and the District Administrator make every attempt to put their differences behind them in order to provide cohesive and effective leadership for the District. The Board should clearly state its rejection of prior claims by the District Administrator. We also recommend that all involved in closed session meetings adhere to their legal responsibilities under the Brown act.

BACKGROUND:

The Placer County Grand Jury has maintained cognizance of ARD for the past several years. Each year's final report has included findings and recommendations regarding ARD. Although ARD has been generally responsive to Grand Jury recommendations, some problems persist as evidenced by the on-going negative attention given to ARD in the community and in local newspapers. The ARD Board and the District Administrator have continued to have difficulty conducting themselves as an effective team. Their divisiveness is apparent to anyone who attends an ARD monthly public meeting.

By state law, the Grand Jury makes the results of its investigations known by the means of a Final Report published in June of each year and where circumstances demand, Interim Reports published at any time. All reports are structured in the form of facts derived from investigation, findings based on those facts and related experience, and recommendations made to appropriate public officials. Each report identifies respondents who, by law, must respond in writing indicating agreement, disagreement, and resulting actions.

This is an Interim Report whose necessity is dictated by the unresolved discussion by the ARD Board of a proposed new contract for its District Administrator. This item has been under discussion at ARD Board closed session meetings for the past three months. It has become an increasingly contentious matter among Board members and has led to strong negative comments concerning ARD in the local press. The matter is clearly detrimental to the effective functioning of the ARD.

Thus, the Grand Jury has chosen to prepare an Interim Report. Our facts, findings, and recommendations are reported below.

METHODOLOGY:

The 2005-2006 Grand Jury is continuing to monitor ARD and anticipates that a new set of overall findings and recommendations will be made in this year's final report. Toward that end, members of the Grand Jury attend every public Board meeting. Each meeting agenda and report is read and discussed. The Grand Jury has conducted interviews with the Board and others using carefully prepared sets of questions.

NARRATIVE/FACTS:

The facts related to the consideration of a new contract for the ARD District Administrator are presented in three sections: A: Facts Preceding the Presentation of the Proposed Contract to the ARD Board; B; Facts Regarding the Content of the Proposed Contract; and C: Facts Following the Presentation of the Proposed Contract to the ARD Board.

A. FACTS PRECEDING THE PRESENTATION OF THE PROPOSED CONTRACT TO THE ARD BOARD

Following are facts that occurred before the presentation of the proposed contract to the ARD Board. The source of these facts are previous Grand Jury Reports concerning ARD, observations of Grand Jury members from attending ARD public board meetings, and Grand Jury interviews of ARD board members and the district administrator.

1. The District Administrator currently serves under a contract, which expires in 2008.
 2. He filed two complaints against the ARD board in 2004. These complaints alleged violations of his rights as an employee. They named both the board as a whole and Directors Holbrook and Kirby as individuals.
 3. Under normal legal process, the Board had a specified period of time to respond to these complaints. If rejected, then the District Administrator had a specified period of time to press his claims through the courts. If suit was not filed before the end of that period of time, then under law his right to sue expires.
 4. The ARD Board's response to the claims was not precise. That has created a situation in which both the board and the District Administrator are uncertain of his right to sue. He maintains that his right remains open. Some board members hold that the claims were all rejected and his right to sue has expired. Others are uncertain.
 5. Some present and past board members have admittedly favored termination of the District Administrator. This has created a situation of tension between the District Administrator and the Board that has been evident at every recent board session and by the testimony of all concerned to the Grand Jury.
 6. The District Administrator has sought to resolve his situation by proposing and drafting a new contract.
 7. The draft of a proposed new contract was distributed at the closed session of the November 2005 Board meeting.
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B. FACTS REGARDING THE CONTENT OF THE PROPOSED CONTRACT

Following are facts concerning the content of the proposed contract. The source is a copy of the draft.

1. The period of the contract is July 1, 2005 to October 31, 2013, a period of 8 years, 4 months.
2. The initial salary is \$89,758 with an annual cost of living increase of 2% (or by the amount of the percentage increase in the consumer price index for urban areas), plus a 5% - 10% annual merit increase.
3. There is no provision for a cost of living decrease nor for an annual merit review of less than 5%.
4. Thus, for example, if the annual cost of living were 2% and an annual merit increase of 7.5% were granted, the annual salary by year would be: July 1, 2005 - \$89,758; July 1, 2006 - \$98,285; July 1, 2007 - \$107,622; July 1, 2008 - \$117,846; July 1, 2009 - \$129,041; July 1, 2010 - \$141,299; July 1, 2011 - \$154,723; July 1, 2012 - \$169,422; July 1 thru -October 31, 2013 - \$46,379. This amounts to an aggregate basic salary of \$1,054,375 not including any fringe benefit costs.
5. The proposed effective contract date would include retroactive compensation from the date of contract signing to July 1, 2005 – a period of at least seven months with a cash value of more than \$50,000.
6. The contract requires that ARD pay for medical, dental, vision, and short and long term disability for the District Administrator and his dependents, or at his option he could elect to be paid in cash for the annual costs of these benefits. In addition, \$50,000 in life insurance benefit is specified. The grand jury has not attempted to estimate the annual and aggregate costs of these benefits, but they would be substantial.
7. ARD is required to annually reimburse him for his employee contribution to PERS and in addition to match his contribution by a like amount into a tax deferred account. The grand jury has not attempted to estimate the annual and aggregate costs of these benefits, but they would be substantial.
8. ARD is required to provide a district vehicle for his unlimited use within a 100-mile radius of the district and beyond 100 miles with notification to the Board. There is no provision for the board to limit use beyond 100 miles even when notified.
9. ARD is required to reimburse him for all costs and expenses for him to attend any accredited college or university up to and including a master's degree in a related field.
10. There are additional provisions for reimbursement of expenses at professional meetings at local, state, or national levels and for membership expenses in service organizations.
11. The initial paid vacation allowance is 18 days per year increasing to 25 days per year on February 1, 2008. An additional 12 days of paid discretionary leave days is granted. An additional 12 days of sick leave time is granted. In sum, these vacation, discretionary, and sick leave days total 49, or 9.8 workweeks after February 1, 2008. He may elect at any time to take cash in lieu of unused vacation or discretionary time.
12. In the event of termination for by the Board or upon his 60 day written notice, the contract provides that “during the remaining time of this contract plus two years, the District Administrator will be paid at the same rate and benefits as provided by this contract. In other words, it is within the scope of the contract as written that he could give 60 days notice the day after the contract was signed and ARD would still be financially obligated to him until October 31, 2015

In summary, the contract specifies an ARD obligation to the District Administrator that would exceed \$1.5 Million over a period of 10 years, 4 months.

C. FACTS FOLLOWING THE PRESENTATION OF THE PROPOSED CONTRACT TO THE ARD BOARD

Facts following in time from the presentation of the proposed contract to the board are listed below. The sources are interviews with all board members and the District Administrator, citizen complaints filed with the grand jury, and observations by grand jury members attending ARD board meetings.

1. The proposed contract has been an agenda item for the closed session of the monthly ARD meeting in both November and December.
2. No resolution of the matter has been made.
3. Board members are uncertain as to the positions on the new contract of other board members.
4. Some board members believe that the District Administrator is attempting to use the possibility of pursuing his claims in court and the naming of individual board members as plaintiffs as leverage to gain approval of a new contract.
5. The tension surrounding this matter has materially affected the Board's ability to function as a cohesive group.
6. Details of the proposed contract have appeared in the local press suggesting the possibility that one or more closed session attendees have violated the Brown Act provisions regarding public disclosure of closed session content.
7. Two board members took the extraordinary step of addressing the board as members of the public during the public comments agenda item of the December Board meeting.
8. Some board members have filed complaints with the Grand Jury concerning issues involving the proposed contract.

FINDINGS:

Based on the facts presented above, the 2005-2006 Placer County Grand Jury makes the following findings with respect to the matter of a proposed new contract for the District Administrator and the ensuing public discussion.

1. This year's Grand Jury believes that there is no circumstance in which it is advisable to allow an employee to draft his or her own employment contract and under no circumstances should such a draft be considered as a basis for contract discussion or negotiation.
 2. We find that there is no logic which would permit an employee's legal complaints to be any basis whatsoever for considering a new contract. The two matters must be maintained as separate and distinct.
 3. The proposed contract extends far beyond the term of any current board member. It would be poor practice to award a new contract that obligates future boards when it is impossible to understand if that action will cause great harm to the budget process of those future boards. The uncertainty of future income and the uncertainty as to the need in the future for ARD to have an executive director are unknown at this time.
 4. Considering that the District Administrator is currently under a contract not expiring until 2008, there is no apparent need to consider an extension or modification at this time, especially considering the tenuous relationship between the District Administrator and the Board.
 5. The draft contract presented by the District Administrator requests compensation far beyond the value of the position.
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6. The termination provisions are almost certainly illegal under state law in exceeding the maximum allowable 18-month severance compensation.
7. Continuing consideration of this matter in ARD Board closed session meetings has been divisive and an impediment to the Board's effective direction of ARD.
8. There is a likelihood that the content of closed session meetings of the ARD Board regarding the proposed contract has been disclosed to local newspapers either by one or more meeting attendees or through intermediaries.
9. Such disclosures, if they in fact occurred, are a violation of the Brown Act, Section 54963, and are subject to legal remedies.

CONCLUSIONS/RECOMMENDATIONS

As noted previously, the Grand Jury anticipates that it will continue to investigate ARD and to report its overall findings and recommendations. This report addresses only the immediate questions of considering a new contract for the District Administrator and the public disclosure of the proposed terms. Thus, the Grand Jury makes the following recommendations at this time

1. All discussion and consideration of a new contract for the District Administrator should cease.
2. The Board should document and state clearly in writing to the District Administrator that it has rejected all of his claims. If he then chooses to resign or to pursue the matter by other legal means, that is his decision.
3. The Grand Jury urges all board members and the District Administrator to put personal agendas and differences behind them and to make a conscientious and sincere attempt to begin to work together as an effective team. Anyone who cannot with clear conscience adhere to this recommendation and act accordingly should resign in the best overall interest of ARD.
4. The Grand Jury reminds all participants in closed session meetings of the ARD Board that the proper avenues under the law for strong disagreement with meeting content are the Grand Jury and the District Attorney. We offer no sympathy to anyone who has chosen, out of disagreement with other members of the board or the District Administrator, to violate the law governing the conduct of elected boards. Such actions run the risk of further diminishing ARD's reputation and of subjecting ARD and individual members to liability.

REQUEST FOR RESPONSE (S):

California State law provides requirements for response to Grand Jury report findings and recommendations. These are detailed on pages 39 through 42 of the Final Report of the 2004-2005 Grand Jury. Copies are provided to each respondent below. The specified respondents to this Interim Report are as follows:

Each member of the ARD Board as an individual respondent
The ARD District Administrator

By law, written responses are required in 60 days. However, we urge that the Board and the District Administrator accept the recommendations of this report and implement them immediately.

NOTE TO RESPONDENTS

The legal requirements affecting respondents and responses to Grand Jury findings and recommendations are contained in California Penal Code, Section 933.05. The full text of the law is printed below.

Each Respondent should become familiar with these legal requirements and, if in doubt, should consult legal counsel prior to responding.

For the assistance of all Respondents, Sections 933.05 of the California Penal Code is summarized as follows:

The responding person or entity must respond in one of two ways:

1. That you agree with the finding.
2. That you disagree 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 for the disagreement.

HOW TO REPORT ACTION IN RESPONSE TO RECOMMENDATIONS

Recommendations by the Grand Jury require action. The responding person or entity must report action on all recommendations in one of four ways:

1. The recommendation has been implemented, with a summary of the implemented action.
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. If a person or entity reports in this manner, the law requires a detailed explanation of the analysis or study must be submitted to the officer, director, or governing body of the agency being investigated.
4. The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefore.

BUDGETARY or PERSONNEL RECOMMENDATIONS

If either a finding or recommendation deals with budgetary or personnel matters of a County department headed by an elected officer, both the elected officer and the Board of Supervisors shall respond if the Grand Jury so requests. While the Board of Supervisors' response is somewhat limited, the response by the department head must address all aspects of the findings and recommendations.

APPEARANCE BEFORE THE GRAND JURY

Prior to the publication or release of Grand Jury findings, the Grand Jury may request a personal appearance by the person or entity to discuss the proposed findings.

ADVANCE RELEASE OF GRAND JURY REPORT DISCLOSURE PROHIBITED PRIOR TO PUBLIC RELEASE

Two working days prior to release of the Final Report, the Grand Jury will provide a copy of the portion of the report to all affected agencies or persons. No officer, agency, department, or governing body of a public agency shall disclose the contents of the report prior to its release.

TIME TO RESPOND, WHERE AND TO WHOM TO RESPOND

Section 933.(c), Penal Code, depending on the type of Respondent, provides for two different response times and to whom you must respond:

1. Public Agency: The governing body of any public agency must respond within ninety (90) days. The response must be addressed to the Presiding Judge of the Superior Court.
2. Elective Office or Agency Head: All elected officers or heads of agencies who are required to respond must do so within sixty (60) days, to the Presiding Judge of the Superior Court, with an information copy provided to the Board of Supervisors.

The Presiding Judge of the Placer County Superior Court system is:

The Honorable Frances Kearney
Presiding Judge of the Superior Court
County of Placer
11546 B Avenue
Auburn, CA 95603

Also, please send a carbon copy to the Placer County Grand Jury, addressed as follows:

Placer County Grand Jury
11490 C Avenue
Auburn, CA 95603

**CALIFORNIA PENAL CODE
SECTION 933.05**

- a. For purposes of subdivision (b) of Section 933, 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. For purposes of subdivision (b) of Section 933, as to each Grand Jury finding, the responding person or entity shall indicate one of the following actions:
 - i. The recommendation has been implemented, with a summary regarding the implemented action.
 - ii. The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - iii. 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.
 - iv. The recommendation will not be implemented because it is not warranted or is not reasonable, with
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an explanation therefore.

- c. However, 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 authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.
 - d. A Grand Jury may request a subject person or entity to come before the Grand Jury for the purpose of reading and discussing the findings of the Grand Jury report that relates to that person or entity in order to verify the accuracy of the findings prior to their release.
 - e. During an investigation, the Grand Jury shall meet with the subject of that investigation regarding that investigation, unless the court, either on its own determination or upon request of the foreperson of the Grand Jury, determines that such a meeting would be detrimental.
 - f. A Grand Jury shall provide to the affected agency a copy of the portion of the Grand Jury report relating to that person or entity two (2) working days prior to its public release and after the approval of the Presiding Judge. No officer, agency, department, or governing body of a public agency shall disclose any contents of the report prior to the public release of the Final Report.
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