



**ALPINE COUNTY, CALIFORNIA
2006 GRAND JURY
FINAL REPORT**

ALPINE COUNTY GRAND JURY 2005-2006 FINAL REPORT

1. Introduction

Here follows the report of the Alpine County Grand Jury for 2005-2006. This jury was originally impaneled in 2003 by Judge Harold Bradford (now retired). Despite special legislation which allows Alpine County's Grand Jury to operate with 11 members rather than 19 as in most California counties, it proved impossible to achieve the minimum number until 2005, due to dropouts and jurors moving out of the county. Once a stable complement of jurors was achieved, the jury settled down to work.

The jury announced to the public that it was in session, distributing complaint forms and information on how to engage the jury throughout the county. The jury considered all correspondence and complaints. The jury also considered three matters initiated from within itself.

2. Foreman's letter of transmittal and foreman's report

This report is hereby respectfully submitted to the people of Alpine County. The jurors appreciated the opportunity to serve and learn.

The jurors received cooperation from all who were asked. There were differences of opinion, but all witnesses, including county employees, were unanimous in their desire to help the jury find the facts and seek resolutions to problems. The jury thanks all who responded to requests for help.

The jury wishes to thank particularly Superior Court Judge Harold Bradford who originally impaneled this jury and started its training; Superior Court Presiding Judge David L. DeVore and Judge Richard K. Specchio who completed the jury's training and offered much guidance throughout; District Attorney Will Richmond who rendered valuable legal advice; and Jury Commissioner Lisa Cobourn who provided the wherewithal for the jury to conduct its business.

The jury also thanks those who submitted complaints. Citizen apathy is as great a corrosive of the democratic process as outright dishonesty and malfeasance in government. Those who cared enough to complain to the jury are to be commended for their participation in the process.

Unlike most past Grand Juries, this jury did not create standing committees to look at various departments of county government and report on their general functions. The public is invited to peruse past Grand Jury reports for these informational essays. The functions of the departments have not changed lately, and the past reports still stand as substantially accurate accounts of the duties and operations of county departments.

This jury elected instead to focus on specific issues. The early uncertainties about achieving a quorum, along with the difficulties of conducting business with volunteers in a county far flung and seasonally split by winter, led the jury to resolve to concentrate on addressing problems and aiming for closure on specific issues.

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The Grand Jury received specific instructions from the Alpine County Superior Court regarding what was appropriate for the Jury to consider. State law restricts Grand Juries to investigation into whether correct procedures were followed by the County in matters which were the subjects of complaints. State law prohibits Grand Juries from “second guessing” the actions of County employees unless there was malfeasance or procedural violation. Some past Alpine County Grand Juries, which may not have operated under such instructions, have commented on actions and decisions the Jury disagreed with, even though those actions or decisions were taken without malfeasance or procedural violation. In following the Court’s instructions, this Grand Jury steered clear of such comments. This report, therefore, may appear less editorial in its tone than some of those past reports.

The jurors are to be congratulated for giving their time to tackle matters which were often contentious. The tenor of the jury’s meetings was always businesslike and respectful. The 2005-2006 Grand Jury hopes that the people of Alpine County will accept this report in that spirit.

Respectfully Submitted,

A handwritten signature in black ink that reads "Eric Jung". The signature is written in a cursive, flowing style.

Eric Jung, Foreman
Alpine County Grand Jury

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3. List of Jurors and their towns

Eric Jung, Foreman; Bear Valley
 Robert Broyer, Secretary; Bear Valley
 John Bennett, Sergeant at Arms; Woodfords
 Marsha Bennett; Markleeville
 Katherine Rakow; Hung-A-Lei-Ti Community
 Ernestine Fogarty; Markleeville
 Lawrence Mulcaster; Bear Valley
 Joan Remington; Bear Valley
 Deirdre Wallace; Markleeville
 Wanda Cohan; Markleeville
 Thomas Kelly; Markleeville
 Kathryn Harvey; Markleeville

4. Report of Secretary

a. Number of full jury meetings and attendance:

Meeting date	Number Attending
June 24, 2005	10
July 14, 2005	11
August 17, 2005	11
September 2, 2005	11
October 7, 2005	11
October 21, 2005	11
November 9, 2005	10
April 6, 2006	11
May 4, 2006	11
June 1, 2006	11
June 29, 2006	11

b. Number of complaints received (14) and how many were addressed (10):

Complaint	Addressed
Ryan Rush Incident	Yes
School District Administration	Yes
Voter Lists	Yes
Snowmobile Ordinance Enforcement	Yes

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Suicide Investigation	Yes
Sierra Pines Mobile Home Park	Yes
Marin County Public Pension Effect on Budget	Yes
Conversation Between Deputy and Board Assistant	No
Purchase of Telephoto Lens	Yes
Anonymous Complaint re Sheriff	No
Supervisors Conflict of Interest	Yes
Public Works Department Employee	No
Sheriff's Department Time Cards	Yes
Kern County Assistance Request	No

c. Number of non-complaint concerns (3) and how many were addressed (3):

Non-Complaint Concerns	Addressed
County Administrative Officer Concept	Yes
Auditor Standards and Qualifications	Yes
Public Safety Officer Concept	Yes

d. Number of field trips taken:

None

e. Witnesses interviewed by full Grand Jury:

All School District related (8) (not including committee interviews)

5. Reports on Specific Items; each item divided into Summary of Activities; Findings; Recommendations

a. Hiring a CAO

SUMMARY

In 2003, Grand Jury members initiated consideration of the County hiring a County Administrative Officer. In a letter dated August 11, 2005, the Grand Jury received a complaint from an Alpine County resident with concerns about both the Assistant to the Board of Supervisors and the Personnel Director position. Both positions are by appointment by the Board of Supervisors.

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One matter included in the citizen's complaint addressed the matter of the Assistant to the Board/Personnel Director not possessing the desirable qualifications and experience necessary in personnel management.

The CAO committee investigated the validity of the complaint. The investigation addressed in this report is based upon information and interviews with other counties' County Counsels, their CAO's, recommendations from the Ron Anderson Consultant report to the Board of Supervisors, and legal opinion in the matter of the Referendum of 1978. The Grand Jury sent a letter on April 6 to the Board of Supervisors, encouraging the Board to hire a CAO.

FINDINGS

1. The 1978 County Referendum on hiring a CAO presents no legal impediment to the hiring of a CAO by Alpine County.
2. In surveying nine surrounding counties, all but one has a CAO.
3. The opinion of all surveyed in other counties is that a true CAO is positive. Those surveyed included people in counties which had upgraded to a CAO position in recent memory. Those surveyed felt that the extra money spent for the salary, benefits, and support staff of a CAO was more than compensated for by savings, grants, elimination of duplication, and avoidance of problems.
4. The small-to-medium sized counties surveyed do combine the CAO functions with the personnel manager functions. Combining the functions can result in savings for the taxpayers. And the Grand Jury found nothing which precludes the combination from a structural standpoint. There is no conflict of interest, since both positions are management positions hired by the Board of Supervisors.

RECOMMENDATION

1. The Grand Jury recommends that the Alpine County Board of Supervisors hire a CAO with administrative qualifications with an emphasis on financial transactions and personnel management. This would require a BA in Public Administration, Business Administration, Government, or Political Science. A Masters Degree in Public Administration would be desirable. Also required would be 5-7 years of increasingly responsible experience in city or county government and at least 3 years experience in a senior management position in another county. *Response Requested: Bd. of Supervisors*

b. Auditor job specifications

SUMMARY

The Grand Jury received a letter from a citizen, stating that the 2001 Grand Jury's recommendations in report on the County Auditor and Financial Practices were not all implemented:

1. No policies and procedures manual
2. Regular maintenance of inventories with annual reports
3. More open bidding for audits, allowing more than one firm to compete in the bidding
4. State Government code sections 26945-26946 should be implemented with addition of "has served as county auditor, chief deputy auditor, or assistant county auditor *in another county* for a continuous period of not less than three years"
5. More training and cross-training needed.

This Grand Jury reviewed and discussed the 2001 Grand Jury report and the citizen's letter. In considering the present practices and procedures of the Auditor's office, the Grand Jury compared requirements for County Auditor in other counties, and received a legal opinion on the Board's latitude in setting job standards for the Auditor position.

FINDINGS

1. Other counties, such as Mono, Sierra, and Sacramento rely on California Government Code 26945 for minimum auditor requirements. Briefly, State Government codes sections 26883, 26900, 26904, 26912, and 26945 recommend: four year college degree in related field or CPA certificate. The State recommends three years related government experience. The citizen's letter suggested adding to auditor's experience "in another county for a continuous period of not less than three years". But one legal opinion states "the Board (*of Supervisors*) has the power to adopt higher standards than prescribed in Government Code 26945, but unreasonably high qualifications that produce 'wasteful, improvident, and completely unnecessary' public spending could violate their obligation to avoid waste".

2. No practices and procedures manual exist for County Auditor.

3. Another legal opinion: "Existing Alpine County Code fails to formally establish the office of County Auditor (a distinct position from Controller under Government Code (p24000 (e))). In what appears to be an inadvertent drafting glitch the County Code authorizes separation of the formerly combined Auditor/Recorder positions, but never

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creates or gives formal duties to the position of Auditor (except, in passing, prescribing certain responsibilities for a vault).”

4. County Board of Supervisors may set qualifications and duties of Auditor by a unanimous vote, with all members present.

5. Regarding how many consecutive years the Board of Supervisors uses the same outside audit firm for county audits, the Grand Jury sees no reason to accelerate the turnover of outside audit firms.

RECOMMENDATIONS

1. GOVERNMENT Code recommendations for auditor duties and qualifications should be implemented (Sec.’s 26883, 26900, 26904, 26912, & 26945). *Response Requested: Bd. of Supervisors; County Auditor*

2. The Grand Jury concludes, based on legal opinion, that if “in another county” were added to the requirement for prior experience, the number of qualified individuals would be so small that it may cut down to too few candidates which could then produce “unnecessary public spending”. The Grand Jury recommends Sacramento County’s requirement: “Progressively responsible accounting or auditing experience, including five years of responsible-management-level supervisory and administrative experience”. *Response Requested: Bd. of Supervisors; Co. Auditor*

3. “Duties and responsibilities and qualifications” should then be listed in policies and procedures manual for Alpine County. Sacramento County’s requirement of five years experience should be included. Five years should assure experience and competence, rather than the stringent suggestion of “three years experience in another California county”. *Response Requested: Bd. of Supervisors; Co. Auditor*

c. Public Safety Officer Concept for east side

SUMMARY

This item was initiated by members of the Grand Jury. The Public Safety Officer system has worked well for Bear Valley, with funding from a benefit assessment on the affected property owners.

This committee conducted several interviews involving Sheriff’s Department, Volunteer Fire Departments, and Emergency Medical Service Coordinator Lyn Doyal. The county has an ad hoc committee in place with a plan for first responders. They have been trying to get financing for over a year. The Board of Supervisors has delayed acting on this request.

RECOMMENDATIONS

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1. Most deputies and first responders are very responsive. The Grand Jury sees, however, a need for a salaried Fire Chief full or part time to coordinate the Markleeville and Woodfords volunteers and train them properly. *Response Requested: Bd. of Supervisors; Woodfords Fire Department; Markleeville Fire Department; County Ad Hoc Committee on Fire Protection*

2. The Grand Jury notes the success of the Public Safety Officer system in Bear Valley, showing positive results in training, morale, and voluntarism. The Grand Jury recommends the implementation of a Public Safety Officer system, with cross-training of law enforcement and fire department personnel, for the East Side of the County. The Jury further recommends that this be paid for with an area-specific benefit assessment. The Grand Jury supports the ad hoc committee's recommendation to the Board of Supervisors for an engineer's study of costs and benefits, the first step to implementing this system. *Response Requested: Bd. of Supervisors; Woodfords Fire Department; Markleeville Fire Department; County Ad Hoc Committee on Fire Protection*

d. Complaint Re Voter Lists

SUMMARY

A complaint from outside Alpine County alleged that incorrect voter lists submitted by County Clerks/Registrars of Voters result in unqualified Federal grand and petit juries. Like several other complaints received by this Grand Jury, it appears that the complainant has included Alpine County's Grand Jury in a long list of other individuals and organizations in hope of a response. Others contacted include Senators Boxer and Feinstein, the State Attorney General, the U.S. District Court, and the Grand Jury of the U.S. District Court, Eastern District.

FINDING

This matter has low relevance to Alpine County. The Grand Jury has no comment on the merit of the complaint. Much higher powers have been invoked outside our county, and the complaint is appropriately left to those with more authority and resources.

e. Snowmobile Enforcement

SUMMARY

A complaint was received alleging a pattern of harassment by the Sheriff's Department against citizens who express sentiments against uncontrolled snowmobile use. The complainant offered no details as to specific incidents, and wrote "I have not personally had any negative experience with the Deputy Sheriff." The complaint included as an attachment an article by the Sheriff's office in the Bear Valley newspaper, the Cub

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Reporter, referring to conflicts which came to the attention of the State Off-Highway Motor Vehicle Recreation Commission.

FINDINGS

1. With no specific incidents to investigate, the Grand Jury is unable to substantiate claims of a pattern of harassment.
2. The conflicts referred to in the newspaper article involve proposed changes to the U.S. Forest Service's travel map, regulating where snowmobiles can go in the National Forest. The discussions on the travel map have been going on for at least ten years, and lately culminated in the formation of the Winter Recreation Coalition. The Coalition included motorized and non-motorized groups and individuals. The meetings of the coalition were civil and productive. The participation of the Alpine County Sheriff's Department in the discussions was exemplary.
3. Other conflicts which came to the attention of the OHMVR revolved around snowmobile use within the subdivision of Bear Valley. The community is well aware of the problems, which are discussed regularly in several public arenas. The community has shown no will to stiffen controls on snowmobile use in the village, although the community has consistently supported strong enforcement of existing regulations.

RECOMMENDATIONS

1. The Sheriff should understand that enforcement of snowmobile regulations is a high priority for the community of Bear Valley. The Sheriff should insure that all Deputies know and enforce the law. *Response Requested: Co. Sheriff*
2. The Sheriff should make sure that the Deputies have the resources needed to enforce the law regarding snowmobile use. *Response Requested: Co. Sheriff*
3. The Sheriff should make sure that the Deputies maintain a receptive and professional attitude toward citizens filing complaints about bad snowmobile behavior. *Response Requested: Co. Sheriff*

f. Ryan Rush Incident

SUMMARY

The Grand Jury received a letter dated 1-5-05 from Rita Rush, mother of Ryan Rush, whose body was found on 1-11-04 after he snowboarded out of bounds on 1-5-04 at Bear Valley Mountain Resort. She alleged that the Alpine County Sheriff mishandled the case, causing the needless death of her son.

The Grand Jury conducted an investigation into the allegations as she requested. The Grand Jury interviewed and received reports and documents from: Alpine County Sheriff

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John Crawford, Sgt. Rick Stephens, Deputies Denver Stoner and Jeffrey Sanford, Detective Tom Nagel, Calaveras County Coroner Kevin Raggio, and John E. Baker, M.D.

FINDINGS

1. Ryan's friend, Kurt Peckler, first reported Ryan missing around 5:30pm on 1-5-04. Ski Patrol and Sheriff's deputies searched and found nothing. At around 6:10pm Peckler then reported that Ryan had received a ride with friends. After Ryan's body was found days later, Peckler admitted he lied about Ryan's getting a ride so that he could quit waiting for him. The search was called off, but reinstated on 1-6-04 when phone calls by friends, family, and Sheriff's deputies failed to locate him. In an interview by Deputy Stoner, Peckler stated "I lied to you guys and I will take the consequences for that."
2. Through 1-7-04, Sheriff's deputies checked further on the possibility that Ryan Rush was in other counties, and as reported by Deputy Sanford, "Pending further leads, there was nothing more we could do at this time."
3. A search was reinstated and a helicopter dispatched on 1-10-04 when Ryan Rush's family filed a missing persons report.
4. Two helicopters, two search teams (one from Calaveras County - a detective, a deputy, and four Ebbetts Pass Search and Rescue team members), ski area Ski Patrol, and Sheriff's deputies all were involved in this search, and Ryan Rush's body was found on 1-11-04 around 10:20am.

CONCLUSIONS

1. Kurt Peckler's lying to officers investigating the missing Ryan Rush led directly to Mr. Rush's accidental death from exposure and hypothermia in the Mokelumne Canyon. Had Mr. Peckler told the truth immediately, this unfortunate accident might have been avoided.
2. As a result of this case, Alpine County Sheriff's Department now insists on actual physical contact with the reported missing person when that person is reported as no longer missing, to verify that fact. Many phone calls and visits to friends' and family's residences were made in this case in an effort to verify the "missing" fact.
3. Kurt Peckler pled guilty and has been convicted of obstruction of justice: Penal Code 148(a) (1), Penal Code 148.3(a), misdemeanors, and Penal Code 148.3(b), a felony.
4. The Grand Jury concludes that all parties concerned with the search and recovery of Ryan Rush are blameless. No further action will be taken by the Grand Jury.

g. ACUSD

SUMMARY

A complaint was received requesting that the Grand Jury investigate a broad range of activities on the part of the Alpine County Unified School District Board and the County School Superintendent. The complaint focused on a sequence of events involving an alleged pattern of hiring and laying off of personnel, and the manner in which the school budget was handled. The complaint alleged that improper procedures were followed in the hiring of the Superintendent's wife. Subsequent layoffs were interpreted by the complainants as retaliation by the Superintendent for objections to that hiring, with the complicity of the School Board. It was alleged that the Superintendent exercised undue influence over the actions of the School Board in the running of meetings and in the general exercise of the Superintendent's administrative powers. The complaint alleged improper meeting procedures, violations of the Brown Act, inappropriate handling of District funds, and an unresponsive attitude toward District employees, the public, and advisory bodies like the Site Council. The complaint requested, among other things, a management audit of the School District.

The Jury interviewed two representatives of the complainants, the School Superintendent, a past chairman of the Site Council, and the five members of the School Board. The Jury examined School Board meeting minutes and viewed a videotape of one School Board meeting. The Jury considered two letters from a past and a present District employee, and a letter signed by 15 members of the staff of Diamond Valley School. The Jury examined the 2004 District Audit Report. The Jury examined proposals for a management audit from two private contractors and from the State-operated Fiscal Crisis Management Audit Team (FCMAT).

The Jury sought guidance from the Alpine County Superior Court on the permissible scope of its authority in investigating the complaint. The Jury learned that in its civil investigatory capacity a Grand Jury is constrained by law to investigate and report only upon a special district's "method or system of performing (its) duties", that the concept of "method or system" encompasses operational procedure, and that such procedural matters are to be distinguished from substantive concerns: "Thus, the parameter of operational *procedure* does not extend to an inquiry as to the merit, wisdom, or expediency of substantive policy determinations which may fall within the jurisdiction and discretion of a particular district..." (46 Opinions California Attorney General 900)

Therefore, the Jury determined that the investigation it was asked to perform in many respects was overbroad. The Jury concluded it could not properly delve into the manner in which the District, i.e. the Superintendent, Board, or both, carried out policies and procedures that were in place, although it could, and did, examine the policies and procedures imposed by both District action and State law in respects of the subjects of the complaint. Thus the Jury's inquiry included whether the District followed its own and State mandated procedures for personnel termination, the noticing and conduct of meetings, fiscal management, and written agreements with its employees.

In short, whether any particular action taken pursuant to such procedures was appropriate was beyond the Jury's role, and as the members of the School Board and the Superintendent are all elected by Alpine County voters they are accountable through the

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electoral process for discontent with the implementation of any given policy or procedure.

Once having determined that budgetary decisions on where to allocate funds and whether to lay off certain employees were made using substantially correct procedures within the correctly applied authority of the Board and the District, the Jury was therefore prohibited from expressing an opinion on whether those decisions were fiscally prudent or made with ulterior motives.

The crux of the matter, which stands outside the purview of the Grand Jury, is whether the Superintendent and the Board overstated the severity of fiscal problems to justify layoffs which were allegedly made for other reasons. The complaint alleged that the District had resources available to it which it could have used to avoid layoffs, but chose not to. The Superintendent and the Board members all expressed a belief that all appropriate ongoing funds were used to avoid layoffs, and that other funds not used for that purpose were either “one time” money whose future receipt was uncertain or “earmarked” funds whose use was limited by law to specific expenditures other than salaries.

Thus the disagreement over how to cope with shrinking enrollment, shrinking revenues, and the possibility of layoffs, centered on whether one subscribes to the fiscal philosophy that only ongoing revenues should be used for ongoing expenses (salaries), or alternatively that all possible resources should have been used to avoid layoffs until absolutely necessary.

The Grand Jury being constrained as mentioned above nonetheless recognizes the benefit to Alpine County citizens of information on the manner and means of policy/procedure implementation within the District and recommends and will fund from its budget an outside fiscal and management audit which may incidentally address such matters in consideration of the propriety of existing policies and procedures. The Grand Jury considered and rejected hiring a private firm as too costly, up to \$30,000. The Jury decided that an investigation by the State Fiscal Crisis Management Audit Team (FCMAT) would serve as well, for far less money, around \$5,000. FCMAT is a state-subsidized entity which specializes in analyzing not only the bare numbers of a school district's finances, as would be examined in the usual audit, but also the policies and decisions surrounding those finances – a management audit. FCMAT visits school districts throughout the state which are in financial difficulty, analyzes the situation and its causes, and recommends cures.

The Grand Jury first proposed that FCMAT be invited to do a management audit of the Alpine County Unified School District, with the modest cost to be split between the ACUSD and the Board of Supervisors. Both entities replied that they were not opposed to a FCMAT investigation but they were not interested in paying for it. The Grand Jury then resolved to pay for it out of its own budget, as approved by the Superior Court Judge. But FCMAT only responds to requests from a school district or a Board of Supervisors. The Grand Jury then sent a letter to the School District, requesting that the District ask FCMAT for a management audit, with the Grand Jury paying for it and having input as to the scope of the investigation.

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FINDINGS

1. Was the hiring of the Superintendent's wife procedurally correct?

The salary range was adjusted pursuant to a Public Employee Review Board (PERB) settlement hearing. Other procedures appeared to be correct.

2. Was the position for which the Superintendent's wife was hired advertised correctly?

The Grand Jury found no irregularities in the advertising of the position.

3. Were the conditions of the hiring consistent with the advertising?

The Grand Jury found no inconsistencies.

4. Was the principal removed as Mrs. Parsons' evaluator? If so, why?

The principal was laid off as a fiscal decision. The decision was justified by the District Board as a financial necessity, resulting from declining enrollment and shrinking revenues. The decision was made legally, and it is outside the Grand Jury's purview to speculate on the appropriateness of or motivation for the decision.

5. Are Site Council votes binding on the District Board?

The Site Council is advisory to the District Board, and its recommendations are not binding on the District Board. Site Council funds are earmarked funds with restrictions on their use.

6. Did the District Board reject a Site Council recommendation to use Title I dollars for ongoing jobs?

The Grand Jury found no evidence that such a recommendation was made by the Site Council.

7. In a response to an evaluation, the principal requested that the response not be shown to the Superintendent. The District Board gave the response to the Superintendent. Was this a procedural violation?

The response was specifically stated by the respondent as an official response to an evaluation. As such, the Superintendent was entitled to see it. The request to the Board to withhold it from the Superintendent was not a request the Board was obliged to honor. The refusal to share the response would not have been appropriate administrative practice.

8. One emergency District Board meeting (March 1, 2005) was held with 25 hour notice. What is the Brown Act requirement for notice for an emergency meeting? Was the ACUSD Board meeting of March 1, 2005, properly noticed?

The Brown Act requires 24 hour notice for an emergency meeting. The meeting was properly noticed within the letter of the Brown Act. The notice included the required notice of proposed actions. The Grand Jury finds that there was no violation of the Brown Act regarding the notice requirements for this meeting.

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9. The complaint alleged that unanimous votes without discussion by the School Board at Board meetings were evidence of Brown Act violations, as in collusion or serial meetings before Board meetings. The complaint alleged that this was evidence of undue influence on the Board by the Superintendent.

In interviews, the Superintendent and School Board members appeared to understand Brown Act prohibitions against serial meetings in which three or more Board members discussed their votes before the meetings. All denied any such meetings, and explained their customary procedures to prepare for meetings. All the Board members offered plausible explanations for their votes on various matters, and all insisted that they reached their decisions independently, based on their personal evaluations of the merits of the issues. Board members expressed a willingness to disagree with the Superintendent when they felt it appropriate, and some Board members offered examples.

Board members demonstrated in interviews a general familiarity with the issues including the ability to explain coherently their reasons for budgetary and administrative decisions in question.

The Grand Jury found no evidence of violations of the Brown Act. This complaint was based on the dubious assumption that the only explanation for a unanimous vote without discussion is that the Board members had illegally agreed to the vote beforehand. Some of the Board members took exception to the implication that their votes were made without due consideration solely on the basis of the Superintendent's desires.

10. District bylaws stipulate that the Board President is to run meetings. Was it a violation of these bylaws that the Superintendent appeared to be running meetings? Is the Board President allowed to delegate responsibility for running meetings?

The Grand Jury found no rule prohibiting the Board President from delegating responsibility for running Board meetings, as long as it is understood that the Board President may intervene at any time and assume control. The Superintendent and Board members appeared to understand this prerogative of the Board President.

The Grand Jury finds that there is not strictly a procedural violation when the Superintendent runs a Board meeting. There is, however, the matter of the perception which may arise from such a procedure. The complaint demonstrates that such a procedure may lead to the assumption by the public that the Board which follows the Superintendent's lead in simple matters of meeting conduct may also do the Superintendent's bidding in more substantive matters.

11. The Board declined to read the text of resolutions during meetings. Was this a violation of Board bylaws, the Brown Act, or of Roberts' Rules of Order?

Roberts' Rules of Order state that resolutions should be read if anyone present requests it. Board bylaws state that Roberts' Rules of Order should be followed during meetings, in the absence of any countermanding Board bylaws. The Grand Jury finds, therefore, that the resolutions should have been read. The Brown Act contains no requirement that the text of a resolution be read at a meeting, so there was no violation of the Brown Act in this regard.

12. Board members declined to answer questions put to them by audience members during meetings, sometimes deferring to the Superintendent for answers. Was this a

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violation of Board bylaws or the Brown Act? Is the Board required to allow audience participation in discussions during meetings of matters which are not designated as public hearings?

Board bylaws, State rules for Board conduct, and the Brown Act leave it to the Board chair or President's discretion whether to allow public discussion of Board agenda items, except in the case of designated public hearings where the chair may set reasonable rules for public testimony but must allow all to speak who wish. There is no requirement to allow interrogation of Board members by members of the public during meetings, even in a public hearing, and therefore no requirement for Board members to respond to questions from the audience at any time during a meeting. Board members therefore exceeded the minimum required of them in asking the Superintendent to answer questions put to them. In interviews, Board members stated that they felt more comfortable having the Superintendent answer audience questions sometimes, especially when the questions were very technical or contentious.

As with the matter of who runs the meeting, this matter raises the issue of perception. Public meetings in Alpine County tend to offer more opportunity for public participation, since there are usually fewer attendees than in bigger counties or cities, and participants often know each other. Departure from this happy tradition may create a less productive atmosphere.

13. The complaint alleged that the Superintendent exercised undue influence over Board members. Is there any evidence of such improper influence, such as specific instances of the Superintendent using condescending, demeaning, threatening, or confusing language toward Board members? Is there any evidence of the Superintendent trying to change Board members' votes after such votes were taken, whether by scolding, threatening, or demeaning Board members?

The Grand Jury found no evidence of such behavior. As noted above, in interviews all Board members insisted that they studied their meeting packets, asked questions of District staff and others when they felt it appropriate, and drew their own conclusions. While they expressed respect for the Superintendent's abilities and allowed that his input was important to them, none was willing to concede an unwillingness to disagree with him. And none agreed that the Superintendent had ever behaved inappropriately to secure their agreement with him. One Board member expressed regret in hindsight over the hiring of the Superintendent's wife, due to the unanticipated reaction it provoked with the teachers. But this Board member insisted that the decision seemed reasonable at the time and was made based on administrative principles. All Board members insisted that the foremost principle guiding their decisions was the good of the children.

14. How do the Board members feel about the Superintendent's relation with them and his job performance in general? Do they feel that the Superintendent gives good understandable explanations of matters that come before them?

The Board members when interviewed expressed general satisfaction with the Superintendent's job performance. They feel that the Superintendent explains matters appropriately.

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15. What do the Board members say about allegations of retaliation? Do they feel that actions taken had good reasons other than retaliation?

When interviewed, as noted above, Board members took full responsibility for their votes and felt that they always had good reasons for doing what they did, without any consideration of retaliation.

16. Did the Board refuse to meet with staff?

There was one occasion when the Board declined to meet with staff. Staff asked to talk with the Board on a matter which was the subject of negotiations and a PERB action. Board members said they felt it would have been improper to go outside the established procedures for the negotiations and the PERB hearing. The Board was under no obligation to meet with staff on these matters outside established procedures for such negotiations, and may in fact have exposed the Board to charges of procedural violations if they had.

17. The Board sometimes votes on matters without discussion. Is this a violation of Board bylaws or the Brown Act? Do Board members appear to understand meeting rules? Is there a requirement for discussion, either before or after a motion is made?

There is no requirement for Board discussion on motions. Roberts' Rules of Order state that the meeting chair should call for Board discussion after a motion is made and seconded and before the vote is taken. But there is no requirement that any discussion should take place.

This is another instance where perception might be taken into consideration. A wise chairman will take measures to insure that all present understand the proceedings, including clarification of a motion and one last opportunity for the presentation of new information. Before a motion is accepted, it is usually a good idea to make sure all viewpoints have been aired, including those of audience members. Going beyond the bare requirements of meeting procedure to include the audience is usually healthy for the democratic process.

18. The District Board cited declining enrollment at Diamond Valley School as a reason for layoffs. The complaint implied that the decline in enrollment was exaggerated.

The Grand Jury examined attendance figures and determined that the decline in enrollment was as reported by the Superintendent, and did in fact result in decreased revenue to the District. Layoffs proposed by the District did not appear to reduce student/teacher ratios below acceptable levels.

RECOMMENDATIONS

1. The Grand Jury recommends that the District request a FCMAT audit of the ACUSD as soon as possible, to be paid for by the Grand Jury, and with the Grand Jury setting the parameters of the investigation as approved by the Alpine County Superior Court. The Grand Jury sent a letter on June 9 to the ACUSD, requesting that the District initiate a FCMAT management audit under those conditions. The ACUSD responded with request for a clarification of the Grand Jury's suggestion. At this writing, the Grand

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Jury is working with the ACUSD Board toward a FCMAT audit. *Response Requested: County School Board*

2. If FCMAT does not conduct an investigation in the near future, the next Grand Jury should consider a more detailed look at the District's financial procedures.

3. The District Board should consider going beyond the bare minimum requirements for meeting procedures as a way to improve the public's understanding of District proceedings. This could include having the Board President take a more active role in conducting meetings, to take pressure off the Superintendent and help the public understand the relationship between the Board and the Superintendent. Board members may consider at least a brief statement before voting on motions to explain their thought process. Admittedly, this is a matter of style. If the public wants to insist on more talkative Board members, it may do so through the ballot box. *Response Requested: County School Board*

4. Allegations of Brown Act violations are serious matters, which are, alas, often poorly understood by members of the public. District employees who participated in a public mailer making such accusations offered no compelling evidence of violations and should consider carefully the manner in which such accusations are made and the undesirable effects they may have.

5. The School Board, the Superintendent, and the District employees should consider measures to avoid a repeat of the misunderstandings which occurred. For the Board and the Superintendent, extra effort to explain the District's workings may be called for. This could include meetings, either as full Board workshops with employees or meetings between employee representatives and a committee of the Board. Employees may consider sending a representative to all Board meetings. Board members may consider extra outreach toward District employees and constituents, in the form of occasional public forums and newsletters. Alpine County had a tradition of community picnics once, and the school sites are perfect places for such gatherings, offering an opportunity to establish personal relationships and trade information in a less threatening environment than a Board meeting. The Board may consider a handout for employees, explaining the Brown Act and the Board's meeting procedures, outlining how to participate effectively in meetings, and explaining how to contact Board members outside of meetings.

The Grand Jury was impressed with the passion and commitment of everyone contacted regarding these matters. The District's decision-making process was viewed by some as not inclusive of all stakeholders for a time, resulting in misperceptions about the process and the motives of the people in the process. Anything the District can do to restore a feeling of inclusiveness in its workings will get all that passion and commitment pulling in the same direction, to the benefit of the children. *Response Requested: County School Board*

h. Suicide Investigation

SUMMARY

The Grand Jury received complaint forms dated 2/20/06 and 2/27/06, requesting an investigation into the death of William G. McKinnon. The complaint focused on the Sheriff's Department and their conclusion that Mr. McKinnon's death was directly the result of a self-inflicted gunshot wound. The complainant believed the Sheriff's office investigator reports contained discrepancies and hearsay testimony. Further, they believed that "Bill was murdered".

The Grand Jury's role in this matter was limited in the same respects as it was with the School District as discussed above. The Jury's authority does not extend to either directing the Sheriff how to conduct investigations or what conclusions to draw there from. The Jury's role was to determine if the Sheriff conducted the investigation according to established procedure.

FINDING

The Grand Jury reviewed incident reports from the Sheriff's office; the autopsy report; witness statements; the coroner's report; and family correspondence. The Grand Jury concluded that the Sheriff's office did follow proper procedures in conducting its investigation of Mr. McKinnon's death.

It is not within the purview of the Grand Jury to comment on the evidence itself. The Sheriff's office recorded a missing person's report on 7/6/05 and subsequently conducted a search and rescue call-out. Mr. McKinnon was found on 7/7/05 approximately 200 yards from his residence. A coroner's investigation was conducted and concluded in a procedurally appropriate manner.

i. Trailer Park

SUMMARY

A complaint dated September 19, 2005 was received from an individual allegedly representing the homeowners at Sierra Pines Mobile home Park. The complaint was against county "Administration, Health & Safety, Planning/Zoning, Social Services". The issue apparently giving rise to the complaint was a recent space rent increase, which followed prior increases and prior complaints to county grand juries, and did not provide all the relief sought in those complaints. A memorandum attached to the complaint listed a number of conditions that were provided to illustrate the complainant's dissatisfaction with the mobile home park. The memorandum's concluding statement was "There is much more that needs to be investigated and resolved, but the immediate needs are to provide an Alpine County Mobile home Ordinance. We need help." An extensive collection of documents was provided to the jury as informational exhibits including, for

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example, State and local ordinances, news articles, and photographs. Additional specific complaints were presented to the jury in September and October 2005, unsigned, but probably from the same resident of the park who was identified in the original complaint.

This jury addressed the complaints through staff in the Administration, Health Services, and Sheriff Departments. Notably in 2001, the Grand Jury instigated reconstruction of the septic tank sewage disposal system within the Sierra Pines Mobile home Park through grant funding. That jury completed its report before the reconstruction project was completed.

FINDINGS

This jury determined through its examination of public documents and interviews of Alpine County staff with respect to the sewage disposal system that:

1. The septic tank and treatment field were completed in the prescribed manner.
2. All public agencies participating in the grant oversight and construction inspections have indicated their approval of the completed project.
3. The sources and uses of the grant funds were properly handled.
4. The health hazard identified in 2001 has been corrected.
5. The disposal system continues to perform within specifications.

According to the Alpine County Sheriff Department records, this jury found that approximately two case reports per month are generated from within the Sierra Pines Mobile home Park. The jury expresses no opinion as to the implications of such a statistic. Because of the dual agency dispatch system, there is no accurate record of the number of law enforcement incidents at the park.

The jury observed that health and safety code, building code, and traffic and vehicle code violations are enforced by county and state agencies, but the jury noted that certain violations are not enforceable on private property such as the mobile home park. Local county and state agencies apparently cooperate with each other in enforcement efforts.

RECOMMENDATIONS

1. The Grand Jury is not charged with enforcement powers and residents of the park should seek redress for alleged ordinance violations through appropriate local and State agencies including but not necessarily limited to the County Health Department, Department of Housing and Community Development, the District Attorney, and the State Attorney General.
2. It is out of the purview of the Grand Jury to express an opinion on the merits of rent control, or mobile home and other regulatory ordinances including the use of eminent

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domain authority. The Grand Jury also considers it outside its purview to make a recommendation on the advisability of the County taking over some of the State's administrative authority over the mobile home park. Park residents may wish to consult with their elected representatives for such opinions.

j. Marin County Public Pension Effect on Budget

SUMMARY

A letter was received from the Marin County Civil Grand Jury, alleging that abuses in the public pension system are draining county budgets. The Alpine County Grand Jury responded by letter, noting that all pensions in our county are part of the annual negotiations between the Board of Supervisors and the county employees. Pensions in the county are examined regularly in the course of these negotiations. The Grand Jury has no desire to intrude into this process at this time. It is true that salaries and benefits (including pensions) now take up a much greater percentage of the budget than was true years ago. This is true for all counties, and it is true in the private sector as well. Alpine County's benefit package appears to be within the range of what is customary for other counties.

k. Conversation between Deputy & Board Assistant

SUMMARY

A complaint was received, alleging inappropriate conversation between county employees.

FINDING

1. The jury believes that the conversation as stated in the complaint was subject to interpretation and not actionable.

l. Purchase of Telephoto Lens

SUMMARY

A complaint was received by the Grand Jury regarding a questionable purchase of camera equipment by the Sheriff's Department. The Grand Jury interviewed the Auditor and personnel in the Sheriff's Department, and determined that the deputy was not making a personal purchase.

FINDING

The deputy was instructed to buy the camera equipment for the Sheriff's Department using his own credit card. He was reimbursed for the entire purchase. One of the lenses

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was back ordered. This part of the order was then canceled by the Sheriff's Department. The camera company reimbursed the cost of the lens to the deputy, who then reimbursed the County.

This was a misunderstanding regarding who was the recipient of the equipment.

It was also determined that there had been problems with County credit cards with some employees of the County. The Sheriff's Department had already dealt with this issue by removing County credit cards from employees. The new policy is to use a purchase order or a receipt and reimbursement procedure.

m. Anonymous Complaint re Sheriff

SUMMARY

A complaint was received regarding the Sheriff's Department. The complaint was unsigned. The District Attorney advised the jury that, since there was no possibility of following up with the unnamed complainant, it was inappropriate for the jury to consider the matter.

n. Conflict of Interest, Board of Supervisors

SUMMARY

A complaint was received alleging violation of Conflict of Interest rules by a member of the Board of Supervisors who was voting on matters in which the Supervisor's spouse has a financial interest. The Grand Jury responded to the complainant by letter, stating that the complainant might wish to contact the State Fair Political Practices Commission. The FPPC is specifically charged with investigating such complaints and has greater authority than the Grand Jury to enforce its rulings.

The complainant wrote back to the Grand Jury stating that the complaint was conveyed to the FPPC. The Grand Jury took no further action.

o. County Counsel Conflict of Interest

SUMMARY

The Grand Jury received a letter from the Humboldt County Grand Jury, seeking an opinion as to the potential conflict of interest a County Counsel may have when advising the Grand Jury on matters concerning the Board of Supervisors. The Grand Jury responded with a letter based on its training manual and other advice from the Alpine County Superior Court Judges, stating that the County Counsel does indeed have a conflict of interest in matters involving the Board of Supervisors, since the Board is the County Counsel's client. Our Grand Jury has been advised that it has other legal resources to call upon when it feels that it might be inappropriate to seek advice from one particular person. Those resources include the Superior Court Judges, the District

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Attorney, the State Attorney General, and in special cases with the Judge's approval, an outside attorney hired for a specific matter.

p. Sheriff's Department Time Cards

SUMMARY

A complaint was received to the effect that a Deputy in the Sheriff's Department was performing personal work of his own during times that he was on duty as a Deputy Sheriff and during times he was being paid to serve as an on-duty Deputy Sheriff (on shift).

Members of the Grand Jury discussed this matter with the Sheriff, who consulted Department records concerning locations and activities of Deputies while on duty (on shift). The Sheriff informed the jurors that he trusted his deputies to be where those records indicated during the times indicated (such records being completed by each respective Deputy contemporaneously with the occurrence of the event). Also, later contact and correspondence received from third parties often verified such Department Records.

The Sheriff indicated that he realized that proper adequate documentation was very important.

FINDING

1. No cause was found for any further Grand Jury action at this time.

RECOMMENDATION

1. The Sheriff might consider installing GPS tracking devices on all the Department's vehicles, both for safety and for accountability. *Response requested: Co. Sheriff*