



EL DORADO COUNTY GRAND JURY 2010-2011

CONSENT CALENDAR

Case Number GJ010-010

REASON FOR REPORT

On June 17, 2008 and October 21, 2008 important items referring to an agreement between the South Lake Tahoe Area Transit Authority and El Dorado County (EDC) were placed on the Consent Calendar for consideration by the El Dorado County Board of Supervisors (BOS). A complaint was lodged with the Grand Jury alleging that placement of these items on the Consent Calendar was improper, and constituted an abuse of the process since it was later determined these items required additional review.

BOS Policy B-12 limits the dollar amount of contracts acted on by the BOS without Auditor review up to \$100,000. The contention is that these transactions were complex, involved substantial legal issues, and far exceeded the limitations on cost for agenda items as described in BOS Policy B-12. In addition, these actions violate generally accepted government practices of handling a Consent Calendar.

BACKGROUND

The following definition and examples of items appropriate for a Consent Calendar were obtained from two sources referenced as follows:

www.BOSsource.org 09/23/2010 BoardSource is a nationally recognized organization based in Washington, D.C., dedicated to building effective non-profit boards.

www.garberconsulting.com 09/23/2010 Nathan Garber & Associates is a consulting firm based in Ontario, Canada, dedicated to assisting nonprofit organizations in organizational development, governance, strategic and program planning.

A Consent Calendar (or Consent Agenda) is a component of a general meeting agenda that enables a BOS to group routine items and resolutions under one umbrella and approve all these items together. It differs from the regular BOS agenda in that regular items may involve substantial discussion, while Consent Agenda items involve no discussion. The EDC Chief Administrative Officer (CAO) directs which items are placed on the calendar. Any member of the BOS may pull or transfer an item from one category to the other. A member of the public may request transfer of an item from the Consent Calendar, but may not require that it be done. Members of the public may comment on items on the Consent Calendar before action is taken.

Unless a BOS member requests the removal of that item, the entire Consent Calendar is voted on as a package.

It is generally accepted in business and government that proper use of a Consent Calendar is vital to the conduct of business. Without use of a Consent Calendar some working bodies might grind to a halt.

Sample items which are generally considered appropriate for a Consent Calendar are listed below:

- Committee and previous BOS meeting minutes
- Office reports
- Routine correspondence
- Minor changes in procedure
- Routine revisions in policy
- Updating documents
- Standard contracts that are regularly used
- Final approval of proposals or reports that the BOS has been dealing with for some time and all members are familiar with the implications
- Committee appointments
- Staff appointments requiring BOS confirmation
- Reports provided for information only
- Correspondence requiring no action

2000-2001 EDC Grand Jury – Government and Administration Committee “Procedures for BOS Meetings”

The 2000-2001 EDC Grand Jury recommended that all written recommendations to the BOS concerning items of large financial impact should be submitted to the Auditor-

Controller for consultation prior to submission to the BOS. This item was intended to apply to items involving potential cost or liability exceeding the sum of \$10,000.

The BOS adopted a modified version of the recommendation, BOS Policy B-12 on 03/01/2005. This policy raised the dollar amount on contracts from \$10,000 to \$100,000 before a contract is sent to the Auditor-Controller for review.

The 2000-2001 EDC Grand Jury addressed the manner in which last minute unpublished and unnoticed changes to the agenda of public legislation and administrative bodies within the County were accomplished.

“In theory, Consent Calendar items are supposed to include only items as to which no possible controversy can reasonably be envisioned, e.g., payment of ongoing bills, resolutions for certificates or appreciation, etc. In the past, however, the Consent Calendar has included items involving some controversy. In the opinion of the Grand Jury, this has had the appearance of an attempt to evade public scrutiny of the items.”

The BOS should adopt and adhere to a policy prohibiting the placement on the Consent Calendar of any items which could reasonably be anticipated to be controversial to a significant number of members of the public.

METHODOLOGY

The EDC Grand Jury interviewed several staff members and elected officials:

- Auditor/Controller staff
- BOS staff
- Members of the BOS

The EDC Grand Jury reviewed relevant portions of the following documents:

- 2000-2001 EDC Grand Jury Report pages 92, 93, 98, 99, 100
- 2000-2001 EDC Grand Jury Report Responses to Finding F-7; Recommendation R-4; Response to Recommendation 4; Recommendation R-9; Response to Recommendation 9; Recommendation R-10; Response to Recommendation 10
- Amador County Policy & Procedures Manual policy 1-300 Agenda and Consent Agenda process (page 1 only) issued 02/05/2002
- Boardsource Organization (internet Q&A regarding Consent Agenda or Consent Calendar) 09/23/2010
- BOS Policy B-12 adopted 03/01/2005
- Contract routing sheet – Contract AGMT 08-1691 between EDC Department of Transportation and Area Transit Management, Inc. 05/07/2008

- EDC BOS Policy H-1: Written Communications to BOS from Non-County Agencies and Individuals 10/20/2010
- EDC Ordinance Chapter 2.03 – BOS Meetings 11/21/2010
- E-mail correspondence between EDC Principal Financial Analyst and Bluego Transit Administrator regarding further concerns about the legal structure and nature of STATA 12/08/2008
- First amendment to the Transfer Agreement between the STATA and EDC regarding funding of BLUE GO On Call Demand Responsive Transit Services (no date on document), effective date 11/01/2008
- Garber Consulting (internet Q&A regarding Consent Agenda) 09/23/2010
- Internet copies of articles appearing in the Tahoe Daily Tribune dated 7/2/2008, 6/6/2009, 5/25/2010, 6/1/2010, 10/15/2010
- Letter from EDC Auditor-Controller to TRPA dated December 11, 2008, expressing concerns on the legality of their allocation instructions. The letter specifically states the “entity” of STATA may not fall within the definition of a consolidated transportation service agency eligible for TRPA designation under California Law
- Letter from EDC County Counsel to EDC BOS recommending approval of the First Amended agreement 02/23/2009
- Memorandum from Tahoe Regional Planning Agency (TRPA) staff to TRPA Governing Board dated November 12, 2008, consisting of a resolution allocating Local Transportation Funds and State Transit Assistance funds to the South Tahoe Area Transit Authority for the operation of BLUE GO Transit Services in the City of South Lake Tahoe and EDC
- Placer County BOS policy Sec. 15.7 Agendas (d) 11/23/2010
- STATA Executive Committee Agenda 10/15/2009
- Transfer agreement between South Tahoe Area Transit Authority (STATA) and EDC 10/21/2008
- EDC Meeting Agenda Tuesday, March 15, 2011 (pages 1 & 2)
- South Lake Tahoe City Council Meeting Agenda January 3, 2006 (page 2)

FINDINGS

1. EDC does not have a written policy or procedure to direct the handling of a Consent Calendar. Past practice has been for the CAO to review all agenda items and indicate by writing on the item the letter “C” for consent, or “D” for discussion. The contract matter under review had neither letter designation. According to one prominent official the CAO knew that at least one member of the BOS was very interested in having the contract move forward, and allowed this item to “slip by.”
2. The EDC Fiscal Review Process (Policy B-12) was adopted March 1, 2005. The policy was not followed in this case.

3. The items under review substantially exceeded the dollar amount specified in BOS Policy B-12. In addition, the contract had been reviewed by Human Resources on 4/25/08, Risk Management and County Counsel on 5/14/08, none of whom detected the problems later discovered by the Auditor/Controller Office.
4. EDC does not have a written policy delineating guidelines covering what items are appropriate for inclusion in a Consent Calendar and the mechanics of inclusion (or removal) of such items. Development and implementation of, and adherence to such a policy, are seen as key components for the efficient function of EDC Government, and a positive step forward building confidence in the BOS.
5. The EDC Grand Jury was informed that in addition to any member of the BOS, any member of the public may request an item be pulled for further discussion or correction.
6. Printed copies of EDC BOS meeting agendas contain no information informing the public how to have an item pulled from the Consent Calendar for discussion.

RECOMMENDATIONS

1. The BOS should adopt a written policy for use of the Consent Calendar.
2. The EDC BOS should revise Policy B-12 to require Auditor/Controller review of contracts exceeding \$100,000.
3. EDC should provide instruction for the public on printed agendas explaining the method for pulling a Consent Calendar item for discussion.

RESPONSES

Responses to both numbered findings and recommendations in this report are required in accordance with California Penal Code §933 and §933.05. Address responses to: The Honorable Suzanne N. Kingsbury, Presiding Judge of the El Dorado County Superior Court, 1354 Johnson Blvd., South Lake Tahoe, CA 96150.

This report has been provided to the BOS Chairperson for response.

Elected officials under statute are given 60 days to respond, and non-elected officials are provided a 90-day response period from the release date of this report.