

El Dorado County Grand Jury 2011-2012

Unlawful Use of Taxpayer Funds

Case number GJ-11-011

Approved by: Presiding Judge, Suzanne N. Kingsbury
and Supervising Judge, Steven C. Bailey.

Reason for Report

The El Dorado County Auditor/Controller rejected a request by the Pioneer Fire Protection District for what he believed was unlawful as a payment of public money to gain passage of a ballot measure by a local consulting firm and its associate in violation of California Government Code §54964, and rejected the request for payment. He then referred the matter to the Grand Jury.

Background

On June 2, 2011, a request was presented to the El Dorado County Auditor/Controller for payment of a local consultant's service to assist Pioneer Fire Protection District in the securing passage of Ballot Measure F pertaining to a tax assessment.

On June 10, 2011, the El Dorado County Auditor/Controller again rejected the request for payment to the consultants, and advised the Pioneer Fire Protection District Board that the contract submitted was unlawful under California Government Code §54964.

The consultants and the Pioneer Fire Protection District Board then met and redrafted the contract, in the Grand Juries opinion, to accomplish the same result as the previous contract, to assist in passing Ballot Measure F, but by using terms to change the reasons for payment.

The new revised contract was resubmitted on August 20, 2011, and based on the language the El Dorado County Auditor/Controller questioned the agreement; however, made the first payment as required under the contract.

The El Dorado County Auditor/Controller maintained his suspicions of the contract's arrangements and referred that matter to the Grand Jury.

California Government Code §54964 makes it unlawful to use public money for the purpose of passing a campaign issue by a government body; however, a Supreme Court case Santa Barbara County Coalition v. Santa Barbara County Association, 167 Cal. App.4 1229, makes a distinction that work performed before the ballot measure is certified for the election is not included in the exclusion of the government code.

Methodology

Documents reviewed:

Ballot Arguments in Favor of Measure F
California Government Code
 §8314 – Unlawful Use of State Resources
 §54964 – Unlawful Expenditure in Support of Ballot Measure
California Penal Code
 §932 – Order Directing District Attorney to Institute Actions for Recovery
 of Money Due County

Interviews:

Dan Dellinger Consulting and associate
El Dorado County Auditor/Controller's Office
El Dorado County Election's Office
El Dorado County District Attorney's Office
Pioneer Fire Protection District Board Members

Facts/Findings

1. The expenditures by Pioneer Fire Protection District to the consultants and associate, performed after the ballot certification are in violation of California Government Code §54964 (Unlawful Expenditure in Support of Ballot Measure) and California Government Code §8314 (Unlawful Use of State Resources).
2. Under Penal Code §932 the Grand Jury can order the District Attorney of the county to review the work done, determine the amount and value of work performed prior to certification and to recover any money that was charged or expended for work after that date. Those funds request or charged for work after certification are in the Grand Jury's judgment is not to be paid or if paid to be returned to the county.

Recommendations

1. The Grand Jury orders that the El Dorado County District Attorney's Office institute suit to recover the \$10,000 already paid to the local consultant firm.
2. The Grand Jury recommends that El Dorado County and/or Pioneer Fire Protection District not pay the additional \$12,000 to the local consultant until an audit is made of allowable versus illegal payments.

Responses

Responses to both the findings and recommendations in this report are required by law 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:

El Dorado County Auditor/Controller
El Dorado County Board of Supervisors
El Dorado County District Attorney's Office
El Dorado County Elections Department
Pioneer Fire Protection District

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