

LAKE VALLEY FIRE PROTECTION DISTRICT



RESPONSE TO EL DORADO COUNTY GRAND JURY REPORT NUMBER GJ-13-12

The Lake Valley Fire Protection District's responses to each finding and recommendation are embedded within the following Grand Jury report using *italicized font*.

**EL DORADO COUNTY GRAND JURY 2013-2014
LAKE VALLEY FIRE PROTECTION DISTRICT
RADIO EQUIPMENT PURCHASES
Case Number GJ-13-12**

REASON FOR REPORT

The Grand Jury received a complaint alleging that the Chief of the Lake Valley Fire Protection District sold the District radios and related equipment in violation of California Government Code § 1090. The Grand Jury found that purchases made were not in violation of that statute and payment should be made.

BACKGROUND

The Lake Valley Fire Protection District is in Meyers, California. Gareth Harris was first employed by the District in 2005 when he was hired as Fire Marshal and Battalion Chief. He was promoted to Chief of the District on June 18, 2011.

Harris has experience in the radio business long predating his working for the District. He owned Tamalpais Emergency Services in Marin County, a retail store selling radio equipment. One of the services offered was outfitting mobile emergency command vehicles with communications equipment. Harris became a dealer for Kenwood Communications. Kenwood requires its dealers to have specific training and only allows its equipment to be sold by authorized dealers who can also service that equipment. Harris closed his retail store in 2002, but continued to operate the business from his home. When he was hired by Lake Valley Fire Protection District he transferred his Kenwood license to his home in South Lake Tahoe.

When Harris was first employed by Lake Valley, the District had significant communications problems. Radio repeaters were not located properly and officers responding to an incident in the field could not communicate with dispatch. In addition, a change in FCC rules required the District to replace its broad band equipment with narrow band radios by 2013.

Harris began selling Kenwood radios and related equipment to the District beginning in 2008 after being asked to submit a bid by former District Fire Chief Jeff Michael.

California Government Code § 1090 prohibits public officers or employees from having any financial interest in any contract made by them or in their official capacity. Harris reported that he was unaware of this statute prior to this issue being raised by the El Dorado County (EDC) Auditor Controller. Several witnesses reported that Chief Michael said he had checked with the District's attorney about selling to the District.

Harris originally sold radio equipment to the District at 5% over cost. The additional 5% covered his hard costs incurred in configuring, programming and setting up the radios. He did not charge the District for the time he spent configuring, programming and setting up each radio. In his capacity as Fire Marshall and Battalion Chief, Harris had no official responsibilities in the procurement of goods or services for the District.

After Harris became Chief of the District in June 2011, he no longer charged the District 5% over cost but charged exactly what he paid Kenwood and sales tax to the State Board of Equalization.

Harris told the Grand Jury he acted out of concern for the District's budget as it was required to spend significant amounts of money to improve its communications capabilities and meet new FCC requirements.

Harris is proud of the work he did to upgrade communications capabilities for the Lake Valley Fire Protection District and bring it into compliance with FCC requirements. His enthusiasm for this work was apparent to the Grand Jury. He showed the Grand Jury pictures of the equipment he installed and the work of the installation. It required many hours of Harris' uncompensated time. Installing a repeater on Angel's Roost alone consumed approximately 40 hours of Harris' time.

The Chairman of the District Board told the Grand Jury that the Chief had saved the District thousands of dollars. Harris testified that a retailer would have charged 2-3 times the equipment cost for the same work.

Records supplied to the Grand Jury reveal that from August 2008 through July 2009 Harris, doing business as Tamalpais Emergency Services, submitted four invoices and was paid \$7,357.42 by Lake Valley Fire Protection District. From July 2010 through September 2012, while Harris was Lake Valley Protection Fire District Chief, he submitted six invoices and was paid \$6,647.09. These were all approved by the members of Lake Valley Fire Protection District's governing board and paid by the El Dorado County Auditor Controller.

In 2013, the Lake Valley Fire Protection District submitted an additional invoice in the amount of \$6,784.18 for payment. However, on March 20, 2013 the EDC Auditor Controller, Joe Harn, notified the District that he would not pay this invoice because it appeared payment would be in violation of Government Code § 1090. Harn told the District that he would consult with County Counsel and invited them to submit any additional information to County Counsel.

The District's board took no additional action to secure payment of the bill. The radio equipment remains installed and operating. Harris has never been reimbursed for the amounts he paid Kenwood and the Board of Equalization for this equipment. He has ceased supplying radio equipment to the District.

Harris' interest in Tamalpais Emergency Services was reported on his Statement of Economic Interest, Form 700.

ACTIONS

The Grand Jury interviewed the complainant, Chief Harris, the Chairman of the Board of the Lake Valley Fire District, District employees and EDC Auditor Controller, Joe Harn.

The Grand Jury reviewed documents:

- Invoices from Kenwood Communications to Tamalpais Emergency Services and from Tamalpais Emergency Services to Lake Valley Fire District
- Letter dated March 20, 2013, from Joe Harn, Auditor-Controller, to Lake Valley Fire District
- Government Code § 1090.

FINDINGS

1. Gareth Harris, doing business as Tamalpais Emergency Services, provided radios and radio equipment to the Lake Valley Fire Protection District while serving first as Fire Marshall and Battalion Chief and later as Chief of the District.

The Lake Valley Fire Protection District ("District") agrees with Finding 1, with the exception that the name of Chief Harris's business is Tamalpais Emergency Systems.

2. While serving as Fire Marshall and Battalion Chief, Harris charged the District 5% over the amounts he paid Kenwood for equipment. Although he certainly had out of pocket costs, the Grand Jury had insufficient information to determine those costs.

The District agrees with Finding 2.

3. While serving as Chief, Harris made no profit from the District but charged exactly the sum he paid to Kenwood Communications and to the Board of Equalization. He received no compensation from the District or Kenwood for these sales.

The District agrees with Finding 3.

4. Procuring equipment through Harris and Tamalpais Emergency Services saved Lake Valley Fire District substantial amounts of money. Without Harris' assistance in these procurements the District would have faced significant financial hardship in its efforts to comply with FCC requirements to upgrade its equipment. Public safety may well have been jeopardized.

The District agrees with Finding 4.

5. While serving as Fire Marshall and Battalion Chief, Harris had no role in making procurement decisions for the District.

The District agrees with Finding 5.

6. The only financial interest Harris may have had in sales to the District after he became Chief were those that might accrue in the future from his continued relationship with Kenwood. These are both speculative and de minimis.

The District agrees with Finding 6.

7. Gareth Harris, acting as Tamalpais Emergency Services, did not violate Government Code § 1090 when he sold radios and equipment to the District.

The District agrees with Finding 7 and its Board has reauthorized payment to Tamalpais Emergency Systems in the amount of \$6,784.18.

RECOMMENDATIONS

1. The Lake Valley Fire Protection District should resubmit its request that a check be issued to Tamalpais Emergency Services in the amount of \$6,784.18.

Response to Recommendation #1: The recommendation has been implemented. At its public meeting on June 19, 2014, the District Board of Directors reauthorized the payment and has submitted its request to the Auditor-Controller of El Dorado County to issue a check in the amount of \$6,784.18 to Tamalpais Emergency Systems.

2. The Auditor-Controller for El Dorado County should issue the check as requested.

Response to Recommendation #2: The District agrees that recommendation #2 should be implemented, but the recommendation is outside the District's jurisdiction and for that reason, the District makes no response.

RESPONSES

Responses to both 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 addressed to the Lake Valley Fire District and the El Dorado County Auditor Controller for review and response, and provided to the El Dorado County Board of Supervisors.

The Presiding Judge of the El Dorado County Superior Court additionally requests that the responses be sent electronically as a "Word" file or "PDF" file to facilitate the economical and timely distribution of such responses. Please email responses to the El Dorado County Grand Jury at: courtadmin@eldoradocourt.org