



Unified School District

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September 29, 2003

The Honorable Michael T. Garcia
Presiding Judge
Sacramento County Superior Court
720 Ninth Street, Dept. 47
Sacramento, CA 95814

Re: Elk Grove Unified School District's Response to Finding
and Recommendation of Grand Jury Report Re: Elk Grove
Unified School District Fiscal Responsibility Investigation

Dear Judge Garcia:

The Elk Grove Unified School District respectfully submits the enclosed Response to the June 25, 2003 Findings and Recommendations of the Grand Jury Report regarding Elk Grove Unified School District's Fiscal Responsibility Investigation. This Response is served pursuant to sections 933-933.05 of the California Penal Code.

Very truly yours,

David W. Gordon
Superintendent
Elk Grove Unified School District

DMC:sw
Enclosure

**Elk Grove Unified School District's Specific Response to
Findings and Recommendation of the
Sacramento County Grand Jury Report of June 30, 2003
Re: Charges of Fiscal Irresponsibility**

INTRODUCTION

Elk Grove Unified School District (hereafter "the District") respectfully submits the following Specific Response to the Sacramento County Grand Jury Report of June 30, 2003 (hereafter "Grand Jury II Report"). This response to the Findings and Recommendations of the Grand Jury is submitted pursuant to California Penal Code section 933-933.05. While the statutory response reflects the District's nonconcurrence with the Grand Jury II Report, the District wishes to emphasize that it shares the Grand Jury's desire that the process of school site selection and property acquisition be undertaken with the highest standards of integrity, professionalism and fiscal responsibility. The District is committed to establishing and ultimately operating state of the art schools. That commitment is reflected in the following responses to the Findings and Recommendations set forth in the Grand Jury II Report and the actions that have been and will be undertaken by the District.

The District respectfully responds to the Grand Jury II Report Findings and Recommendations as follows:

FINDING NO. 1:

The EGUSD gave insider information to a real estate agent which allowed the agent to make a profit in excess of \$2 million on school site #8.

RESPONSE TO FINDING NO. 1:

As noted above, the District has been and remains committed to the highest standards of integrity and professionalism in all transactions involving the District and the public funds entrusted to it. Whenever concerns are raised regarding any transaction, the District takes such concerns seriously, investigating, and where appropriate, taking action to remedy any substantiated concern about procedures or the specific acts or omissions of personnel. When concerns were first raised over the purchase of the Subject Property three years ago, the District began an immediate and thorough investigation with an outside consultant. While that investigation found no evidence of wrongdoing or any illegal activity, based on the continued concerns expressed in the Grand Jury II Report, the District here commits to continued and heightened care and scrutiny of all site selection and purchase transactions for facilities developed by the District.

With regard to the Subject Property transaction, the issues of the District's duties in that purchase were recently the subject of Superior Court proceedings. In an action initiated by a local citizens group, in which it was alleged that the District violated its fiduciary duties in the amount paid for the Subject Property, the Sacramento Superior Court found that the District did not violate such duty. The Grand Jury can be assured that the District will not sanction or allow **any improprieties** in dealings with the District by outside contractors, whether in the form of "insider dealings" or undue profits.

RECOMMENDATION NO. 1 A:

The EGUSD should take immediate disciplinary action against responsible staff.

RESPONSE TO RECOMMENDATION NO. 1 A:

The District remains committed to taking any appropriate disciplinary action warranted by substantiated evidence.

RECOMMENDATION NO. 1 B:

The Superintendent and Board of Education should provide oversight to the staff responsible for the purchase of school sites.

RESPONSE TO RECOMMENDATION NO. 1 B:

The Superintendent and the Board of Education will continue to provide careful and appropriate oversight of staff responsible for the purchase of school sites. This oversight shall include conducting open, public meetings for the acquisition of any school site wherein the public can express any concerns or reservations they may have regarding such acquisition.

FINDING NO 2:

The EGUSD failed its fiduciary responsibility to the taxpayers by paying \$2.4 million more than the fair market value for school site #8.

RESPONSE TO FINDING NO. 2:

The issue of the District's fiduciary duty to pay fair market value for the Subject Property was researched, briefed and argued before the Sacramento Superior Court in proceedings initiated against the District by a local citizens group. In analyzing the contention that District improperly paid more than fair market value, the Superior Court found no breach of the District's fiduciary duty.

The District in fact paid slightly less than the appraised value for the Subject Property, as established by a professional independent appraiser. However, as noted above, the District takes very seriously its fiscal responsibilities in its development of school site facilities. This Grand Jury can be assured that the District will adhere to the highest ethical standards in property acquisitions, and will guard against any violations of its fiduciary duties to protect the public trust.

RECOMMENDATION NO. 2 A:

The District should require staff members responsible for the purchase of property, supplies, or services to sign a fiduciary responsibility statement. District staff should also be accountable under the EGUSD conflict of interest policy.

RESPONSE TO RECOMMENDATION NO. 2 A:

The District has a Conflict of Interest Policy applicable to all District employees. The District will be diligent in taking action against any violation of that policy.

RECOMMENDATION NO. 2 B:

The District should develop policies and procedures for the purchase of school sites that protect the financial interests of taxpayers.

RESPONSE TO RECOMMENDATION NO. 2 B:

The District will conscientiously adhere to procedures designed to assure the integrity of transactions with the District. As noted above, it is the policy of the District to conduct all financial dealings ethically and in a manner that protects the resources entrusted to the District.

FINDING NO. 3:

The EGUSD failed to perform due diligence in the search for school site #8.

RESPONSE TO FINDING NO. 3:

The policies and procedures followed by the District with regard to the designation and acquisition of school site facilities have been reemphasized as a result of this Grand Jury's concerns, and the District's attention to those procedures will protect the integrity of that process in future site developments. As set forth above, with regard to the Subject Property acquisition the District did not violate its fiduciary duty and it exercised appropriate due diligence. The District's satisfaction of such due diligence obligations was recently confirmed in the decision of the Sacramento Superior Court, issued in the context of a challenge to the District's site selection and acquisition process under the terms of the California Environmental Protection Act. Following comprehensive briefing, presentation of extensive oral argument, and thorough review and evaluation of the scope of the District's satisfaction of its duties, the court found that all of the District's requisite performance under the Environmental Impact Report had in fact been satisfied, including the necessary steps for proper site selection and acquisition. This judicial determination stands as an independent affirmation of the District's diligence as detailed as set forth above.

The District will continue to exercise due diligence and professional care in all future school site facility acquisitions.

RECOMMENDATION NO. 3:

The District should require staff to do their own research on potential school sites and not rely solely on agents and developers.

RESPONSE TO RECOMMENDATION NO 3:

The District will use care and diligence in the site acquisition process, including utilizing qualified staff and where necessary or appropriate, professional consultants; with the goal of obtaining qualified site locations.

FINDING NO. 4:

The EGUSD refuses to admit a mistake was made and to take responsibility for its actions.

RESPONSE TO FINDING NO 4:

As documented in each of the above responses, the District desires to avoid any future concerns by the Grand Jury with regard to the acquisition of the Subject Property. To that end, the District has made the above-referenced commitments with regard to the implementation and enforcement of policies and procedures associated with site acquisitions. The District acknowledges that it is responsible for the protection of the resources to which it is entrusted, and remains committed to prudent and fiscally responsible use of those resources to provide the best available educational facilities for the students of the District.

RECOMMENDATION NO. 4:

The District should take responsibility for its actions and implement policies and procedures to make sure this situation never happens again.

RESPONSE TO RECOMMENDATION NO. 4:

The responses to the Findings and Recommendations set forth above memorialize the District's dedication to assuring that future school site facility acquisitions will be completed in accord with governing regulations and the highest standards of professionalism.

In addition to the Findings and Recommendations set forth in the Grand Jury II Report, there was included in that Report a "notice" to the citizens of the Elk Grove Unified School District, setting forth additional concerns about the conduct of the District. In that "notice" the Grand Jury suggested that in the course of the recent investigation the District had taken steps to "obfuscate, delay and refuse to talk without a subpoena...." and the Grand Jury urged that the citizens of the District "demand better leadership from your elected officials." As emphasized in the District's response to the Findings and Recommendations set forth above, the District takes seriously the duty to effectively and responsibly administer the resources to which it is entrusted, and the overriding goal the finest education and educational facilities available to the students of this District. The District's long history of academic excellence and achievement evidences the District's dedication to that goal. The District's Responses set forth above acknowledge receipt of the Grand Jury's concerns, and reconfirm the District's dedication to assuring proper procedures and the highest standards of ethical conduct in the process of site selection and development.

It is the sincere desire of the District to satisfactorily and completely resolve the concerns raised by the Grand Jury, and nothing about this Response is intended to be defiant nor provocative of yet a

third Grand Jury report. However, the gravity of the contentions and admonitions set forth in the final commentary of the Grand Jury II Report compel a clarifying response, notwithstanding the risk of unintended offense. Contrary to the suggestion of the Grand Jury II Report, the District has made no attempt to evade the Grand Jury's inquiries nor to hinder the investigation of the Grand Jury. The District Superintendent voluntarily met with representatives of the Grand Jury on multiple occasions and willingly and completely responded to supplemental questioning by the Grand Jury. The District's voluntary cooperation included the preparation of written responses to inquiries, and the production without subpoena of hundreds of pages of documentation. The District investigated the concerns raised by the Grand Jury, and repeatedly petitioned the Grand Jury to make available to the District any substantive evidence supporting a finding of wrongful acts. These efforts do not support the contention that the District acted to "obfuscate, delay, and refuse to talk without a subpoena".

The final comments of the Grand Jury, in calling for a demand for better leadership, advocate an extrajudicial remedy beyond the scope of the Grand Jury's appointed responsibilities. This political indictment accused District officials of serious misconduct in office and recommended, in the most thinly veiled terms, the ouster of the District leadership by the community. Notwithstanding the District's extensive efforts to voluntarily cooperate with the Grand Jury, that entity tried and convicted District officials of offenses falling within the purview of Government Code sections 3060 *et seq.* without affording them any of the due process protections established by those sections. The Grand Jury has used its influence as an instrumentality of the state court system to urge local citizens to impose upon the District a punishment against which it had no means of defense. The open letter concluding the Grand Jury II Report is nothing if not a "final condemnation," with an "incalculable" injury to the District and its officials. *McClatchy Newspapers v. Superior Court of Fresno County*, 44 Cal.3d 1162, 1170 (1988). Such a final condemnation is expressly prohibited by the laws governing the operation of the Grand Jury.

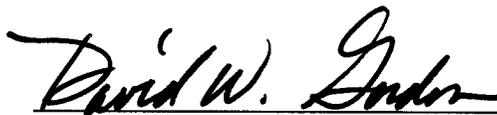
In contrast to a criminal indictment issued by a grand jury pursuant to Penal Code section 917, or a formal accusation made by a grand jury pursuant to Government Code section 3060, a grand jury report cannot be founded upon the grand jury's own sense of right and wrong. As the court in *McClatchy Newspapers* stated, a grand jury report:

Based as it is upon the grand jury's own criteria of public or private morals, charges the violation of subjective and unexpressed standards of morality and is the first and last step of the judicial process. It is at once an accusation and a final condemnation, and, emanating from a judicial body occupying a position of respect and importance in the community, its potential for harm is incalculable.

McClatchy Newspapers, 44 Cal.3d at 1176.

The District's disagreement with the conclusions and recommendations set forth in the commentary to the citizens of the Elk Grove Unified School District should not be viewed as detracting from, or qualifying in any way, the District's commitment to providing excellence in locating, purchasing and building state of the art schools for the current and future generations of students in the Elk Grove Unified School District.

Respectfully submitted

A handwritten signature in black ink that reads "David W. Gordon". The signature is written in a cursive style with a large, prominent "G".

David W. Gordon
Superintendent
Elk Grove Unified School District

1 Re: Elk Grove Unified School District's Response to Finding and Recommendation
2 of Grand Jury Report

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4 **PROOF OF SERVICE**

5 I, Debbie A. Prior declare:

6 I am a resident of the State of California and over the age of eighteen years,
7 and not a party to the within action; my business address is Best Best & Krieger LLP, 400
8 Capitol Mall, Suite 1650, Sacramento, California 95814 . On September 29, 2003, I served
9 the within documents:

10 **Elk Grove Unified School District's Specific Response to Findings
11 and Recommendation of the Sacramento County Grand Jury Report
12 of June 30, 2003 Re: Charges of Fiscal Irresponsibility**

13 X By causing a true copy thereof to be delivered to the party or parties at the
14 address(es) listed below, by and/or through the services of Capitol Mall
15 Courier Services.

16 Hon. Michael T. Garcia, Presiding Judge
17 Sacramento Superior Court
18 720 Ninth Street, Dept. 47
19 Sacramento, CA 95814

20 Mark Norris, Director of Finance
21 County-Clerk Recorder Division
22 600 - 8th Street
23 Sacramento, CA 95814

24 Sacramento County Grand Jury
25 720 Ninth Street, Room 611
26 Sacramento, CA 95814
27 Attention: Michelle Park
28 (20 copies delivered)

I declare under penalty of perjury under the laws of the State of California that
the above is true and correct.

Executed on September 29, 2003, at Sacramento, California.


Debbie A. Prior



September 5, 2003

Honorable Michael T. Garcia, Presiding Judge
Sacramento Superior Court
720 Ninth Street, Department 37
Sacramento CA 95814

RE: Response by City of Galt to June 2003 Grand Jury Report

Dear Judge Garcia:

On behalf of the City Council of the City of Galt, I am responding to the Grand Jury's June 27, 2003 report relating to the City of Galt ("City").

The City recognizes the time and effort which the Grand Jury has spent in studying a broad variety of issues, including the January 29, 2002, action by the then City Council in appointing a person to fill a council vacancy. It was, and continues to be, City's position that the January 29, 2002 actions were valid and consistent with applicable law as discussed below.

FACTUAL BACKGROUND

The Galt City Council is a five member council. However, in January 2002, the Galt City Council had consisted of only two members, with two positions vacant.¹ When a vacancy occurs, the City Council has only thirty days in which to take action. Within this comparatively short period, the Council may fill the vacancy by appointment or call for a special election to fill the vacancy. If the Council takes no action during this period, the seat remains vacant for the unexpired term of the incumbent.² (Government Code Section 36512). Although not legally required, the Council requested interested persons to submit letters of interest and identified a January 23, 2002 deadline for such submittals.

APPLICABLE LAW

California law recognizes that the "existing membership" (of a governing board) may be less than the fixed membership body if one or more seats are vacant. (62 Cal.Opps Attorney General 698,700 (1979). In a situation strikingly similar to that facing the Galt Council in January 2002, the California

¹ The vacancy stemmed from the resignation of Christina De La Cruz and the death of Tony Gora.

² In short, if the Galt Council had taken no action by February 12, 2002 (thirty days after Tony Gora's death), that Council seat would have remained vacant until December 2004.

Supreme Court has held that, where there are only two remaining members of a five member City Council, the two members are authorized to act on behalf of the City as a quorum. (*Nezbit v. Bolz*, 13 Cal 2d 677,679 (1939). Therefore, because two seats were vacant, three members of the Council constituted the Council membership.

Government Section 36810 provides: "(a) majority of the Council constitutes a quorum for transaction of business." "A quorum consists of a majority (more than half) of the existing membership of the body." (62 Cal.Opp Attorney General, *supra* 700, (emphasis added); see also 75 Cal.Opps Attorney General 47, 49, footnote 2 (1992). Therefore, with the two vacant seats, (1) there were three members of the Council, (2) a quorum of the three was two members, and (3) two members, as a quorum and as a majority of the three sitting members were authorized to take action on behalf of the City, except for such actions which applicable law³ require action by three members of the Council.

CITY RESOLUTION 2000-65

The Grand Jury Report states: "the rule governing the Galt City Council's ability to transact business was clear" and specifically points to Council Resolution 2000-65, Section 6, second paragraph. Section 6 of that resolution states in full:

Quorum a majority of all members elected to the Council and qualified to hold office shall constitute a quorum in any regular, special or emergency meeting of the Council. Unless otherwise required by law, a simple majority of the members present may take action and adopt ordinances or resolutions.

Three council members shall constitute a quorum for the transaction of business. When there is no quorum, the presiding officer or the city clerk may adjourn such meeting. . .

Under Resolution 200-65, Section 6, first paragraph, a quorum is "a majority of all members elected to the Council and qualified to hold office." Thus, on January 29, 2002, with only three council members elected to the council and qualified to hold office, a majority of three members was, in fact, two members. A quorum at that time thus constituted two council members.

Reviewing Resolution 200-65, Section 6, second paragraph on its face would appear to conflict with the first paragraph of Section 6; however, California law makes clear that, whenever possible, two seemingly inconsistent statutes or provisions are to be construed to harmonize, rather than to conflict (See *E. G. Lundgren v. Deukemejian*, 45 Cal 3d 727,735 (1988)). As analyzed above, California law defines a

³ Government Code 36936, as it existed in January 2002, required: "resolutions and orders for the payment of money, and all ordinances require the votes of at least three councilmen for passage." However, the January 29, 2002 action appointing Mr. Stancil to the Council was neither a "resolution and order for the payment of money" nor "an ordinance". Effective January 1, 2003, Government Code Section 36936 requires a majority vote of the total council membership for resolutions, orders for the payment of money and all ordinances.

Honorable Michael T. Garcia
September 4, 2003
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quorum under the circumstances (i.e. only three valid council members) to be two of the three. Thus, harmonizing the two sections of Resolution 2000-65, section 6, results in a determination that the second paragraph concerns a typical situation of the full five member council, while the first paragraph concerns all situations, not just a five-member council but also a council when fewer than five members are validly holding office.

CONCLUSION

Based on the above, it is the position of the Galt City Council that the Council has followed applicable California law and its own resolutions at the time it took action in January 2002. Although not legally necessary, the Council may consider revising the second paragraph of Resolution 200-65⁴, Section 6. The Council has complied with its resolutions, ordinances and applicable law, and will continue to do so.

The City Council appreciates the opportunity to comment and respond to the Grand Jury Report.

Sincerely,



Darryl Clare, Mayor
City of Galt

cc: Mark Norris, Director of Finance
County Clerk Recorder Division
Sacramento Grand Jury, Attention Michelle Park
City of Galt Council Members
Ted Anderson, City Manager, City of Galt
Ruthann G. Ziegler, City Attorney, City of Galt

⁴ In January 2002, the applicable resolution concerning City Council procedures was resolution 2000-65. Subsequently, that resolution was amended, but not section 6 thereof, to be Resolution 2002-104. Any amendments would, in fact, be that later resolution adopted in 2002.