



Sacramento County Grand Jury Report

Elk Grove City Council and Conflict of Interest Issues

2004-2005 Sacramento County Grand Jury

Elk Grove City Council Failed to Comply with Conflict of Interest Provisions of State Law When Using the Sacramento Sheriff's Department to Provide Law Enforcement Services

Issues

Did Elk Grove City Council members James Cooper and/or Michael Leary, who are also employees of the Sacramento Sheriff's Department, violate the conflict of interest provisions of state law with respect to the Agreement for Law Enforcement Services between the Sheriff's Department and the City of Elk Grove? Did other members of the Council, the City Manager, the City Attorney, the management of the Sheriff's Department and/or the County of Sacramento meet their responsibilities to ensure that conflict of interest requirements were followed? Did the parties involved conduct themselves in a manner that served the citizens of Elk Grove and the County?

Reason for the Investigation

After its formation in 2000 the City of Elk Grove (Elk Grove or the City) contracted with the Sacramento Sheriff's Department (Sheriff's Department)¹ to provide law enforcement services. The contract was approved in November 2001 and has been augmented several times. Two members of the Elk Grove City Council (the Council), James Cooper and Michael Leary, are also a captain and a sergeant, respectively, in the Sheriff's Department.² Conflict of interest provisions of state law prohibit these Council members from influencing, participating in the making, or voting on any aspect of a contract between the City and the department in which they are employed. The Grand Jury received complaints and conducted an in-depth investigation into questionable Council member actions involving the Agreement for Law Enforcement Services between Elk Grove and the Sheriff's Department. These questionable actions include:

- Whether Sheriff's deputies who are Council members violated state law by voting on, participating in and/or influencing the law enforcement services agreement
- Whether other Council members and other City officials did enough to protect the interests of the City against inappropriate conduct by these deputies
- Whether the Sheriff's Department met its responsibility not to use these deputies to influence the contract and/or its administration, and
- Whether the County Supervisors and County Counsel met their responsibility to ensure that the contract was approved and administered in accordance with state laws.

¹ The contract, called the Agreement for Law Enforcement Services, is legally between Elk Grove and the County of Sacramento, but is negotiated and administered by the Sheriff's Department.

² Mr. Cooper was a Lieutenant at the time of his election in 2000.

In its investigation the Grand Jury reviewed the actions of: Mr. Cooper and Mr. Leary, the other three members of the Council, the City Manager, the City Attorney, the management of the Sheriff's Department, the Sacramento County Counsel and the Sacramento County Board of Supervisors.

Method of Investigation

Members of the Grand Jury³ utilized sworn testimony from:

- The members of the Elk Grove City Council, including Mr. Cooper and Mr. Leary
- The Elk Grove City Manager, Assistant City Manager and Chief of Police
- The Elk Grove City Attorney
- The management of the Sheriff's Department

Members of the Grand Jury utilized information gained from interviews with:

- A member of the Sacramento County Board of Supervisors
- The Sacramento County Counsel
- The Sacramento County Chief Executive and Chief Financial Officers

The Grand Jury reviewed and utilized the following materials in preparing this report:

- Twelve legal analyses related to how state conflict of interest statutes affect Elk Grove officials who were also employees of the Sheriff's Department
- A report prepared by the law firm of Foley & Lardner, which assessed the Council's compliance with the conflict of interest requirements of state law
- The City's Agreement for Law Enforcement Services with the Sheriff's Department
- Materials prepared by the Sacramento County District Attorney's Office that evaluated Council members' compliance with the conflict of interest requirements
- Minutes and other records of the meetings of the Council
- A videotape of the December 3, 2003 meeting of the Council
- Information provided by the Sheriff's Department

The Grand Jury also received legal advice and analysis of evidence from the Sacramento County District Attorney's (District Attorney) Office.

³ Two members of the Grand Jury, Anthony Da Vigo and Norio Yamada, recused themselves from this matter, and did not participate in the investigation, deliberation or preparation of this report in any manner.

Background and Facts

Background – General

The City of Elk Grove was created by a vote of its residents on March 7, 2000. The City was incorporated effective July 1, 2000. Elected to the five member Council were Daniel Briggs, James Cooper, Michael Leary, Sophia Scherman and Richard Soares. Mr. Cooper was appointed by the Council to be Mayor. Mr. Cooper was a Lieutenant in the Sheriff's Department and Mr. Leary was a Sergeant in the Sheriff's Department.

The City hired David Jinkens as its first City Manager. He served until September 2001, when the City then hired John Danielson, the current City Manager. The new city also established a contract with the law firm of Kronick, Moskovitz, Tiedemann and Girard (Kronick) for legal services. That firm designated Anthony Manzanetti as the lead attorney to provide those services. Mr. Manzanetti served as the contracted City Attorney until the City hired him on September 15, 2003 as the "in-house" City Attorney.

By law the Sheriff's Department is required to provide the preexisting level of law enforcement services to a newly incorporated city for a period of one year after incorporation, and is reimbursed by the city for the cost of these services. After the first year the new city must decide how to best provide for ongoing law enforcement services. The Council began exploring this question at its initial meeting in July 2000 and subsequently decided to contract with the Sheriff's Department. An Agreement for Law Enforcement Services was entered into with Sacramento County in November 2001.

Problems Because Two Council Members were also Sheriff's Deputies

Because two members of the Council were employees of the Sheriff's Department, it was recognized that the Council would have to take the utmost care in how it handled matters relating to law enforcement services. The Sheriff's Department was a contender for the ongoing provision of law enforcement services. State law severely limits the involvement of any City employee or Council member in any contract with another department that also employs that person. The penalties for violation of these provisions are severe for the individual, the City and the contracting agency. Outlined below are the conflict of interest requirements.

Conflict of Interest Requirements Relating to Contracted Services between Elk Grove and the Sheriff's Department

Because the City retained the Sheriff's Department to provide law enforcement services, the conflict of interest provisions of Government Code Section 1090 (section 1090) came into play.⁴ Briefly, section 1090 prohibits conflicts affecting the making of contracts.

⁴ Government Code section 87100 also deals with conflict of interest but in a significantly different situation. Here a violation occurs if the official has a "personal financial interest" and attempts to use his or

City officers or employees are prohibited from having a financial interest in any contract made by them in their official capacity, or by any governmental body of which they are members.⁵ The prohibitions apply when a contract is “made” or signed and also during its “making,” which includes preliminary discussions, negotiations, plan preparation, and bid solicitation.

There are two main purposes for conflict of interest requirements. The first is to prevent the prospect of personal financial gain from influencing the decisions of government officials. The second is to prevent conflicts more related to an official’s loyalty or allegiance. Both of these are of concern in the Elk Grove situation.

Generally section 1090 would prohibit the City from contracting with an entity in which one of its Council members has a financial interest. However, under section 1091.5 there is a provision that allows the City to legally contract with Sheriff’s Department under very narrow circumstances, when one or more members of the Council is also an employee of the Sheriff’s Department. For such a contract to be permissible, all of the following conditions must be met:

- The Council members have only a “remote interest” in the contract, such as salary
- The Council members disclose their interest on the record
- The Council members do not vote on the contract, and
- The Council members do not attempt to influence others on the contract.

The penalties for violating sections 1090, et seq. can be severe. A willful violation is a felony punishable by a fine and/or imprisonment in state prison, and the offending official is forever disqualified from holding any public office in the State of California. Any contract established in violation of section 1090 could be found to be void and any monies paid for such services could be recoverable by the City of Elk Grove.

Advice Provided to Council Members on Conflict of Interest Requirements

All Council members received extensive information regarding the conflict of interest limitations. At least 12 written legal opinions were provided to the Council members over a period of three years. Four of these opinions were provided prior to the first Council meeting in July 2000. Since the greatest concern was over potential conflicts involving Mr. Cooper and Mr. Leary, the legal opinions were typically both delivered to them and discussed with them.

her position to influence a government decision. No contract need be involved. Based on the evidence and the advice provided by the Sacramento County District Attorney’s Office, the Grand Jury has concluded that problems related to complying with this provision do not appear to apply to the Elk Grove situation.⁵ One court opinion indicates the purpose of the section 1090 prohibition “is to remove or limit the possibility of any personal influence, either directly or indirectly, which might bear on an official’s decision...” It is also intended “not only to strike at actual impropriety, but also to strike at the appearance of impropriety.” Further “...Conflict-of-interest statutes are concerned with what might have happened, rather than merely what actually happened; they are aimed at eliminating temptation, avoiding appearances of impropriety and assuring governmental officers’ undivided and uncompromised allegiance.”

A. Written Advice

This issue was first addressed on March 8, 2000, one day after the incorporation election. On that date County Counsel Robert Ryan sent a memo regarding Elk Grove contracting for law enforcement services⁶ to the Sacramento County Board of Supervisors and to Sheriff Lou Blanas. The Ryan opinion concluded that should either Mr. Cooper or Mr. Leary participate, directly or indirectly, in contracting with the County for law enforcement services, such a contract would be void and any monies paid for such services could be recoverable by the City. It warned that the prohibitions of section 1090 are applicable to both direct and indirect participation. That is, not only are affected officials prohibited from voting on the contract, they also are not allowed to attempt to influence the vote of others on the contract.

A series of 11 additional opinions followed from May 2000 to July 2003. All dealt with various aspects of the conflict of interest laws. They all support the original opinion in the Ryan memo.⁷ A listing of these opinions is provided in Table 1. Below are several examples:

- *May 9, 2000 memo to Mayor-Elect and Members Elect of the Council and Anthony Manzanetti, City Attorney, from Michael Dean of Kronick; Subject: Conflict of Interest Under Government Code 1090 Arising Out of Contracting for Law Enforcement Services with the County of Sacramento.* Mr. Cooper and Mr. Leary requested this opinion in response to Mr. Ryan's March 8 opinion. Mr. Dean's opinion was that they could not participate in any contract with the Sheriff's Department and if they did participate that the contract would be void.
- *May 15, 2000 memo to Assemblyman Anthony Pescetti from Ben Dale, Deputy Legislative Counsel, Subject: Conflict of Interest: Council: Sheriff's Lieutenant or Sergeant.* Mr. Cooper and Mr. Leary also requested this opinion in response to Mr. Ryan's March 8 opinion. Again, this memo is consistent with Mr. Ryan's opinion.
- *October 1, 2002 memo to Terry Fitzwater, Elk Grove Assistant City Manager from Harriet Steiner of McDonough, Holland and Allen law firm, Subject: Potential Conflicts of Interest Related to Sheriff's Contract.* This opinion was an independent request from the Elk Grove City Manager. The memo supports prior opinions.

⁶ This opinion is included in this report as Attachment 1.

⁷ In several cases the ensuing memos made it clear that the conflict of interest limitations are more encompassing than those expressed in the Ryan memo.

Table 1 – Written Opinions Provided to Elk Grove City Council Members

1. March 8, 2000 memo from County Counsel Robert Ryan to the Board of Supervisors and Sheriff Lou Blanas
2. May 9, 2000 memo from Michael Dean of Kronick: Requested by Mr. Cooper and Mr. Leary in response to County Counsel's memo
3. May 15, 2000 memo from the Legislative Counsel to Assemblyman Anthony Pescetti: Requested by Mr. Cooper and Mr. Leary
4. May 17, 2000 memo from Michael Dean of Kronick regarding Mr. Cooper and Mr. Leary's prohibition from participation in decisions regarding contracting for services with the Sheriff's Department
5. July 18, 2000 letter from County Counsel to Rodney Lilyquist, Senior Assistant Attorney General on the conflict of interest issue
6. August 2, 2000 letter from Michael Dean of Kronick to the Council regarding Mr. Cooper and Mr. Leary participating in public forums, hearings and workshops related to law enforcement issues
7. June 20, 2001 memo from Mr. Manzanetti and Mr. Dean regarding Police Chief Ed Flint's participation in the Law Enforcement Service Plan Development
8. October 1, 2001 memo from Harriet Steiner of McDonough to Terry Fitzwater. This opinion came as a result of an independent request from Mr. Fitzwater and Mr. John Danielson, the City Manager
9. December 20, 2001 letter from Mr. Manzanetti to Mr. Danielson regarding prohibitions on Mr. Cooper and Mr. Leary participating in a vote on a grant program for additional law enforcement funding
10. February 19, 2003 memo from Kronick to the Council regarding Mr. Cooper and Mr. Leary and conflict of interest
11. May 16, 2003 memo from Kronick to the Council regarding Mr. Cooper and Mr. Leary participating in discussion about creating new positions in the police department
12. July 16, 2003 memo from Kronick to the Council regarding newly adopted legislation on how to disclose conflict of interest issues at a public meeting

B. Verbal Advice

In addition to written guidance, verbal advice and warnings were provided. The written opinions were discussed and explained to affected Council members. When potential specific conflict of interest situations were identified, the affected Council members were advised. In general, the City Attorney would identify items which involved potential conflicts, and would advise members about conflicts prior to the Council meeting. When it was agreed that a conflict existed and a recusal was required, the City Attorney would ask the affected Council member if they would make the recusal statement, or if they wanted a statement to be made by the City Attorney.⁸ The City Attorney advised the Council member that the statement of conflict needed to be made each time a conflict of interest issue came up, and that it was not sufficient to simply abstain from the vote.

Development of Agreement for Law Enforcement Services with the Sheriff's Department; Subsequent Modifications

For the first year of its existence the newly incorporated City received, by law, the same level of law enforcement services that it had prior to incorporation. These services were provided by the Sheriff's Department, but paid for by the City at a cost of approximately \$7.7 million for fiscal year 2000-2001. This process allowed the City time to decide how to best provide law enforcement services on an ongoing basis.

The first reference to establishing an ongoing contract for law enforcement services was at the initial meeting of the Council on July 19, 2000. The City Manager was directed to provide information regarding the City's expectations of its law enforcement provider, to identify who was capable of providing those kinds of services, and to prepare criteria for a Request for Proposal.

The City ultimately decided to contract with the Sheriff's Department for law enforcement services. This contract was approved in November 2001. The cost of services for the fiscal year 2001-02 was approximately \$9.9 million. The contract was signed by Richard Soares, Council member representing Elk Grove⁹ and Roger Niello, Chairperson, Sacramento County Board of Supervisors.

After the contract went into effect, there were several amendments, including the annual service plans.¹⁰ These modifications steadily increased the cost of the contract, which

⁸ For example, Mr. Manzanetti made the following statement on the record at the first Council meeting on July 19, 2000. "Mayor Cooper and Council Member Leary disclosed that they are both employed by the County of Sacramento Sheriff's Department. They understand that financial interests under the Conflict of Interest Laws in the Government Code section 1090 et seq. disqualifies each of them from participating in, directly or indirectly, the making of the contract for law enforcement services. For this reason, Mayor Cooper has turned over control of the meeting to Mayor Pro Tempore Soares and both the Mayor and Council Member Leary will not be participating in the discussion on this item, 'Discussion and Possible Action/Creation of Council Ad Hoc Committee on Law Enforcement'."

⁹ Mayor Cooper recused himself from this item, and Council member Soares signed for the City Council.

¹⁰ The service plan is actually a contract extension and an amendment to the original contract. Legally it is just as much a contract as the original Agreement for Law Enforcement Services

rose to \$11.3 million in fiscal year 2002-2003, \$14.4 million in fiscal year 2003-2004 and \$16.9 million in fiscal year 2004-2005.

According to the original agreement, the Service Plan for each fiscal year should have been independently adopted by the Council and approved in writing by the Sheriff and County Executive. However, for three fiscal years the annual municipal budget simply included funds for expanded police services that would be included in the Service Plan, and no independent action was taken by the Council to approve the Service Plan. It was only on June 2, 2004, that the Council for the first time adopted the municipal budget for fiscal year 2004-2005 with the Service Plan adopted in a separate vote as required in the original agreement.

Violations of Conflict of Interest Requirements

As was noted previously, City and County officials were well aware that conflict of interest concerns had frequently arisen due to Mr. Cooper's and Mr. Leary's positions both as Council members and as Sheriff's Department employees. In early 2004, as controversy over conflict of interest issues intensified, the City hired the law firm of Foley & Lardner to investigate this situation. This investigation examined the history of Council actions related to the Agreement for Law Enforcement Services to determine what factors influenced the contractual decisions and to assess if conflict of interest laws were followed. Its report (the Foley report) identified "numerous unmistakable violations of Government Code 1090."

An analysis of the Council's compliance with conflict of interest requirements was also prepared by the District Attorney's Office during this investigation. That assessment also identified numerous violations of section 1090.

Based on the evaluations referenced above, and on other evidence and sworn testimony, the Grand Jury identified 20 separate meetings where the Council considered some matter related to law enforcement services in a manner that was not consistent with the conflict of interest requirements of section 1090. The first of these meetings occurred on June 20, 2000, and the last on May 19, 2004. Council member Cooper voted on or participated in a matter related to police services during all 20 of the meetings. Council member Leary voted or participated in a matter related to police services during 16 of the 20 meetings.

This review also revealed numerous inconsistencies relative to how Mr. Cooper and Mr. Leary adhered to conflict of interest requirements. Many times they participated in actions concerning a police matter related to the contract, but sometimes they did not. Both the Foley Report and the District Attorney's Office analysis noted eight occasions between June 2000 and June 2004 when Mr. Cooper and/or Mr. Leary abstained from votes when issues related to law enforcement services were considered. Sometimes when they did not vote, a recusal statement was made. More often than not, they simply refrained from voting. Three examples of their participation are provided as follows:

August 1, 2001 - Discussion of Law Enforcement Agreement Service Plan - The Agenda included Action Item No. 7.3: Consideration of the Law Enforcement “Service Plan.” At that point, the new contract with the Sheriff’s Department had not been finalized. According to testimony Mr. Cooper and Mr. Leary were advised to not participate on this agenda item.¹¹ Both Mr. Cooper and Mr. Leary disregarded that advice and participated and voted.

June 5, 2002 - Approval of Municipal Budget for 2002-03 - The Municipal Budget for 2002-03 contained the funding for the annual Service Plan for the Law Enforcement Services agreement. This was the only action taken that year by the Council to consider the Service Plan. By participating in the discussion and voting on the overall budget Mr. Cooper and Mr. Leary voted on a contract amendment.

December 3, 2003 - Meeting Regarding the Police Services Contract - The meeting was to discuss the hiring of a consultant to evaluate law enforcement services provided by the Sheriff’s Department to Elk Grove. This evaluation could include an assessment of alternative methods for the provision of law enforcement services. Mr. Cooper announced that he and Mr. Leary would recuse themselves from the discussion and leave the dais due to their conflict of interest as employees of the Sheriff’s Department.¹² Both Mr. Cooper and Mr. Leary then proceeded to the public podium to address the Council concerning the study.¹³

Based on the testimony presented to the Grand Jury, it is clear that both Mr. Cooper and Mr. Leary were advised that they should not address the Council on this issue.^{14,15} Mr. Cooper’s and Mr. Leary’s testimony to the Council urged the continued support of the Law Enforcement Service Agreement with the Sheriff’s Department, and was clearly aimed at influencing the Council to maintain that agreement.

¹¹ Testimony indicated that Mr. Cooper insisted he could raise the issues because it wasn’t really the contract. Mr. Cooper’s view was that the contract was not in place; this was just the service plan, on which he could vote. However, Mr. Cooper was advised that the service plan is part of the contract, and would become an amendment to the contract.

¹² Newly amended regulations of the Fair Political Practices Commission outlined how elected officials could disclose conflicts of interest and speak during a meeting as a member of the public regarding “personal financial interests”. A July 16, 2003 memo from Mr. Manzanetti specifically outlined when Council members could speak as a member of the public. This memo concluded that the circumstances under which a Council member might be able to testify were limited to circumstances where a matter in which they held a personal financial interest, such as property, was under discussion. These circumstances did not apply to the matter under consideration at the December 3 meeting.

¹³ Mr. Leary started his comments with a thank you to Mr. Manzanetti for allowing him to speak under new provisions of the conflict of interest law. Mr. Manzanetti interrupted and made a statement that was ambiguous about the ability of Mr. Leary to testify. This statement was not consistent with his pre-meeting advice.

¹⁴ Testimony indicated that Mr. Cooper and Mr. Leary were advised that they could not participate, could not attempt to influence the contract, and that testifying could have serious criminal implications.

¹⁵ Testimony indicated that Mr. Cooper and Mr. Leary believed that Mr. Manzanetti’s interpretation was too narrow. They contended they were permitted to address the Council. They viewed Mr. Manzanetti’s advice as just an opinion from another lawyer who was trying to prevent them from participating in a matter, law enforcement, which they knew best.

Table 2 presents a list of 25 Council meetings between June 2001 and June 2004 when law enforcement services matters were considered a total of 28 times.¹⁶ The table indicates how Council members Cooper and Leary participated in each of these matters. It was prepared using the Foley Report, information prepared by the District Attorney's Office and the other evidence available to the Grand Jury. The table identifies which actions of Mr. Cooper and/or Mr. Leary were judged by the Grand Jury to be inconsistent with section 1090 requirements.

Elk Grove and County Officials Failed to Ensure that Conflict of Interest Requirements Were Followed

A. Council Members Cooper and Leary

1. Failure to Accept the Limitations Imposed by Law Regarding Conflict of Interest

Upon election to office, in March 2000, the members of the new Council, including Mr. Cooper and Mr. Leary, received a training manual from the Kronick law firm. This manual contained specific information about conflict of interest issues. Additionally, Mr. Leary had attended training seminars for public officials in Monterey, CA and New York.

In addition to the training manual and the training seminars, 12 separate legal memos regarding the conflict of interest issue were sent to the Council. According to testimony, upon being informed of the interpretation contained in each successive opinion, both Mr. Cooper and Mr. Leary repeatedly disagreed with the interpretation of the law and requested further legal opinions. They both indicated to Mr. Manzanetti that they were seeking their own legal advice from other sources.

Despite the importance of this issue, both Mr. Cooper and Mr. Leary were vague in their recollection about the content of the memos. They indicated that they had an incomplete personal understanding of the conflict of interest requirements and did not, until recently, fully understand the full consequences of violations of the law.

2. Failure to Recuse Themselves

In Council meetings between June 2001 and May 2004, Mr. Cooper voted on or participated in issues directly or indirectly related to the law enforcement contract with the Sheriff's Department a total of 20 times. During this same period, Mr. Leary voted on or participated in issues related directly or indirectly to the law enforcement contract with the Sheriff's Department a total of 16 times. Analyses in the Foley Report and by

¹⁶ On three occasions more than one item related to police services was considered at one meeting.

Table 2 - Council Actions Affecting the Law Enforcement Agreement¹⁷

June 20, 2001	Approved 90 Day Extension of Law Enforcement Agreement Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 Authorized staff to prepare Police Services Plan Mr. Cooper and Mr. Leary abstained, vote was 3-0
July 11, 2001	Adopted Municipal Budget for 2001-02 (includes Police Services Plan) Mr. Cooper voted to approve . Mr. Leary absent, vote was 4-0
Aug. 1, 2001	Approval of Police Services Plan Mr. Cooper and Mr. Leary voted to approve , vote was 5-0
Sept 5, 2001	Approved clerical staffing increase to Police Services Plan Mr. Cooper and Mr. Leary voted to approve , vote was 5-0
Oct. 3, 2001	Approved towing service agreement Mr. Cooper and Mr. Leary voted to approve , vote was 5-0
Jan. 9, 2002	Approved grant for police staffing increase Mr. Cooper and Mr. Leary abstained, vote was 3-0
Apr. 10, 2002	Accepted grant funds for staffing increase for police services Mr. Cooper voted to approve , Mr. Leary absent, vote was 4-0
June 5, 2002	Adopted Municipal Budget for 2002-03 (includes Police Services Plan) Mr. Cooper and Mr. Leary voted to approve , vote was 3-0
Aug. 7, 2002	Approved staffing increase to Police Services Plan Mr. Cooper and Mr. Leary abstained, vote was 2-0
Oct 16, 2002	Approved application for DUI/Traffic grant Mr. Cooper and Mr. Leary abstained, vote was 3-0
Jan. 15, 2003	Vote concerning levying special tax for police services Mr. Cooper and Mr. Leary voted to approve , vote was 5-0 Approved staffing increase to Police Services plan Mr. Cooper and Mr. Leary abstained, vote was 3-0

¹⁷ Actions that are inconsistent with the requirements of Section 1090, based the Grand Jury's review of the evidence, the analysis in the Foley Report and the assessment of the District Attorney's Office, are shown in **Bold**. Those listed in bold only include cases where Mr. Cooper and/or Mr. Leary voted or participated. They do not include cases where section 1090 may have been violated solely due to a failure to properly announce a recusal from the proceeding.

Table 2 -- Continued

- Mar. 5, 2003 Authority to use State funds to purchase police equipment
Mr. Cooper and Mr. Leary voted to approve, vote was 4-0
- Apr. 2, 2003 Adopted ordinance levying special tax for police services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- May 21, 2003 Amended Police Services Plan, adding staff
Mr. Cooper and Mr. Leary abstained, vote was 3-0
- June 4, 2003 Adopted Municipal Budget for 2003-04 (including Police Services Plan)
Mr. Cooper and Mr. Leary voted to approve, vote was 4-0
- Oct. 15, 2003 Approved use of grant funds for police services
Mr. Cooper voted to approve, Mr. Leary absent, vote was 3-0
- Nov. 5, 2003 Adopted ordinance levying special tax to finance police services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Nov. 19, 2003 Second reading – ordinance levying special tax for police services
Mr. Cooper and Mr. Leary approved by consent
Amended Police Services Plan to increase staffing
Mr. Cooper and Mr. Leary abstained, vote was 3-0
- Dec. 3, 2003 Discussion of evaluation of law enforcement contract with Sheriff’s Dept.
Mr. Cooper and Mr. Leary testified to Council in support of contract
- Jan. 7, 2004 Authorized contract to evaluate police services provided by Sheriff’s Dept.
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Mar. 3, 2004 Adopted resolution to annex territory to levy tax for police services
Mr. Cooper and Mr. Leary approved by consent
- Apr. 7, 2004 Adopted ordinance levying special tax for Police Services
Mr. Cooper and Mr. Leary voted to approve, vote was 5-0
- Apr. 21, 2004 Second reading – adopted ordinance levying special tax for police services
Mr. Cooper approved by consent, Mr. Leary absent
- May 19, 2004 Adopted resolution to annex territory to levy tax for police services
Mr. Cooper and Mr. Leary approved by consent
- June 2, 2004 Adopted Police Services Budget for 2004-2005
Mr. Cooper and Mr. Leary recused themselves, vote was 3-0

the District Attorney's Office concluded that most, if not all, of the votes were not allowed under conflict of interest laws, specifically the provisions of section 1090. In a number of other meetings when issues directly or indirectly related to law enforcement contract with the Sheriff's Department were discussed, Mr. Cooper and Mr. Leary abstained from voting. However, in many of these instances they failed to properly note the reason for their abstention.

Mr. Cooper and Mr. Leary contend that they always followed the advice of the City Attorney. They claimed that any failure to follow the law was not willful on their part, but rather the result of inadequate legal advice.¹⁸ However, testimony by several parties indicated there were multiple times when Mr. Cooper and Mr. Leary were clearly advised before a meeting that they should not participate in a matter that was before the Council, and yet they voted or otherwise participated. These improper actions occurred despite the numerous memos and discussions that advised them about conflict of interest limitations.

In summary, Mr. Cooper and Mr. Leary exhibited a pattern of knowingly and willfully disregarding their responsibility to abide by the conflict of interest provisions of state law. The evidence and sworn testimony received by the Grand Jury does not support any claim that their failure to follow the law resulted from either erroneous legal advice or an incomplete understanding of the law.

3. Attempts to Influence the Agreement for Law Enforcement Services

In addition to improper votes at Council meetings, there were numerous instances of efforts by Mr. Cooper or Mr. Leary to influence other Council members or City staff on matters related to the Agreement for Law Enforcement Services.

One clear example occurred at the December 3, 2003 Council meeting. Both Mr. Cooper and Mr. Leary recused themselves from voting, left the Council dais and spoke from the public podium to the Council on an issue regarding a study of the law enforcement contract.

At times Mr. Cooper and Mr. Leary conveyed their support for the Agreement for Law Enforcement Services to City staff. On another occasion, Mr. Leary met with a fellow Council member at a local restaurant and discussed issues related to the law enforcement contract. On other occasions during Council meetings their actions were interpreted by fellow Council members as intimidating¹⁹ and as an attempt to influence the deliberations.²⁰

¹⁸ However, as noted in the Foley Report, the courts have ruled that the fact that an office holder has sought, and followed, the specific advice of the city attorney will not relieve him or her of personal liability for the violation.

¹⁹ The testimony revealed that as the debate over the police study intensified, Mr. Cooper began to wear his gun to Council meetings, which was seen as an effort to intimidate the Council into keeping the agreement with the Sheriff's Department.

²⁰ One member testified that Mr. Cooper and Mr. Leary would banter with each other about the Law Enforcement Services Agreement across other Council members seated between them, and that they rapped impatiently on the dais in response to comments they apparently regarded as adverse to their support of the

A final example is the participation of Mr. Cooper and Mr. Leary in the controversy over the consideration of establishing a city police department. In late September 2003 the management of the Sheriff's Department became concerned about the potential formation of an independent police department by the City. These concerns occurred after Captain Ed Flint, the City's Chief of Police (an employee of the Sheriff's Department) informed the Sheriff's Department that the City was contemplating a study of the current law enforcement services. This was seen as a possible first step in the formation of a city police department.

On the evening of September 24, Mr. Cooper and Mr. Leary confronted Chief Flint and the City Manager regarding the same issue. The testimony indicated that the members of the management of the Sheriff's Department met and spoke with Mr. Leary before and after the confrontation with Chief Flint. Mr. Cooper and Mr. Leary first met with Chief Flint, and immediately thereafter with the City Manager. Testimony indicated that the meetings were very intense, confrontational, and that abusive language was used. The purpose of these meetings was to put pressure on Chief Flint to be loyal to the Sheriff's Department, and to discourage him from any support of an independent Elk Grove police department. An additional reason for the second meeting was to pressure the City Manager to dismiss Chief Flint.²¹

4. Intimidating and Vulgar Behavior with City Management and other Council Members

Testimony demonstrated that Mr. Cooper and Mr. Leary acted repeatedly in a belligerent and uncivil manner with the City Attorney, the City Manager and fellow Council members. City officials and fellow Council members testified that Mr. Cooper and Mr. Leary created an atmosphere of intimidation and used vulgarity on numerous occasions when the issue of their involvement in the law enforcement services agreement was being discussed.²² They exhibited similar behavior in the confrontation with the Chief of Police over concerns about the possible formation of a city police department.

Testimony also indicated that when the opinions on conflict of interest limitations were discussed with Mr. Cooper and Mr. Leary their response was never accepting of the content of the opinions, and often resulted in abusive behavior. Council members and City employees observed Mr. Cooper and Mr. Leary engaged in "shouting matches" with the City Attorney over disagreements about conflict of interest interpretations.

Sheriff and the County contract. Another witness testified "It never stopped. It was always, you know, a comment here or there."

²¹ The Grand Jury believes that Mr. Danielson was put under great pressure to fire Chief Flint, and was told that if that didn't occur, Mr. Danielson's own job would be in jeopardy.

²² Testimony indicated that Mr. Cooper and Mr. Leary often used use profanity when addressing Mr. Manzanetti about interpretations of conflict of interest requirements.

B. Other Council Members and City Officials

1. Other City Council Members

Although the primary burden to avoid violations of the conflict of interest laws lies with the individuals subject to conflict of interest limitations, the rest of the Council also had an obligation to ensure legal requirements were observed. Each Council member was informed of conflict of interest requirements, and all knew that the two members had a clear conflict relative to the Agreement for Law Enforcement Services.

The testimony showed that other Council members felt intimidated by Mr. Cooper's and Mr. Leary's language and behavior but did not seriously attempt to halt this situation either publicly or privately. They were unwilling to confront these two members. The Council members were victims of an environment of intimidation to which they contributed by their failure of leadership. This choice of inaction and acquiescence put the Agreement for Law Enforcement Services and the City of Elk Grove in jeopardy.

2. The City Manager

The City Manager is the administrative head of the City government, and is responsible for the operation of all City departments. He serves at the pleasure of the Council. The current City Manager, Mr. John Danielson, has served since 2001. He prepares the agenda for the Council meetings, briefs the Council members before the meetings and has great influence over the process used by the Council in its deliberations.

The City Manager was well aware that Mr. Cooper and Mr. Leary were strongly resisting advice to strictly adhere to conflict of interest requirements, and that they were very antagonistic towards the City Attorney with respect to this issue. In an attempt to address the conflict issue in October of 2001 the City Manager provided an outside legal opinion from the McDonough legal firm. The opinion was prepared without the knowledge of the City Attorney, so that the two Council members would know that it was independent of Mr. Manzenetti's legal opinions.²³

The City Manager knew that conflict of interest problems relative to law enforcement services occurred repeatedly. He was aware that conflict of interest requirements were not being observed. He could have, but did not, establish a process to ensure that conflict of interest issues were dealt with explicitly and in accordance with the law.

In addition to the many times when the Council explicitly considered issues related to the Agreement for Law Enforcement Services, there were instances in which law enforcement issues were commingled with other budget issues in a single vote. Votes on the law enforcement budget items were included within the total municipal budget²⁴ on October 4, 2000, July 11, 2001, June 5, 2002, and June 4, 2003. Each of these appears to

²³ The memo was, in the opinion of one witness: "... the strongest of all the opinions we had seen to date."

²⁴ The City Council approved the annual service plan as part of the budget. When it approved the budget, it amended the contract with the Sheriff's Department.

have been a violation of the conflict of interest requirements of section 1090. The City Manager should have ensured that issues related to the Agreement for Law Enforcement Services were separated from other Council actions so that the members with conflicts could recuse themselves and avoid voting inappropriately.

3. The City Attorney

The City Attorney is responsible to the Council as a whole, but does not formally represent an individual Council member in a legal capacity. However, the City Attorney did act as a legal advisor to Council members when conflict of interest limitations affected their actions. Since the City's inception, Mr. Anthony Manzanetti has performed these functions. Mr. Manzanetti was hired as the "in-house" City Attorney for Elk Grove on September 15, 2003. Prior to that time, he acted as the City Attorney as a partner of the Kronick law firm whose services were contracted by the City of Elk Grove.

Knowing the potential for conflict of interest problems, the City Attorney provided extensive materials and advice pertaining to conflict of interest issues, as summarized previously. He discussed many of these memos with the Council members. As it became clear that Mr. Cooper and Mr. Leary were refusing to accept strict interpretations of the conflict of interest provisions, the City Attorney repeatedly sought additional information to bolster and clarify the information previously provided. As time went by, Mr. Cooper and Mr. Leary became more and more dissatisfied with the position taken by the City Attorney on how conflict of interest requirements limited their involvement in most activities related to law enforcement in Elk Grove. Testimony also indicated that Mr. Cooper and Mr. Leary threatened the City Attorney with termination if he did not accede to their wishes in this matter. In addition, Mr. Cooper and Mr. Leary often were publicly abusive and threatening towards the City Attorney.

Based on the assessments made in the Foley Report and by the District Attorney's Office, there were times when the City Attorney advised that participation was permissible when it was likely prohibited by conflict of interest requirements. In addition, the City Attorney inappropriately allowed the Council to consider law enforcement budget items within the total City budget on a single vote.

It appears that Mr. Cooper's and Mr. Leary's repeated disregard for his legal advice led Mr. Manzanetti to conclude that they were not going to consistently comply with the law.²⁵ He could have publicly noted that their actions were not permitted or urged the Council to institute a consistent protocol for avoiding violations of the conflict of interest laws, but he apparently decided that neither approach was appropriate.

²⁵ To quote from testimony received from a person knowledgeable about Mr. Manzanetti's handling of the conflict issue: "I think he did it not only adequately, I think he did it courageously with no regard to the volume of vulgar comments and belittling comments that they would make towards him each and every time he brought it up."

C. Sacramento Sheriff's Department

1. The Department Failed to Address Conflict of Interest Issues in a Timely Manner

The Sheriff's Department was informed in March 2000 of the potential problems that could be caused by either Mr. Cooper's or Mr. Leary's failure to fully observe conflict of interest limitations that resulted from their employment by the Sheriff's Department and their election to the Elk Grove City Council. According to testimony provided by representatives of the Sheriff's Department, the department was generally aware of the potential problems, but did not provide any formal direction to either of its employees.²⁶

Furthermore, as has been shown in other parts of this report, there were numerous occasions between incorporation in July of 2000, and the recent events of 2004 when conflict of interest violations likely resulted due to the actions of Sheriff's Department employees on the Council. Yet despite early warnings and repeated problems, the Sheriff's Department waited for over four years to take any effective action to protect the validity of the County contract with Elk Grove or to ensure the proper conduct of its employees.

2. Recent Direction by the Department to Mr. Cooper and Mr. Leary

On December 9, 2004, Sheriff Blanas issued directives to Mr. Cooper and Mr. Leary regarding limitations on their activities while they are concurrently members of the Elk Grove City Council and employees of the Department. These directives clearly communicate to Mr. Cooper and Mr. Leary that they are admonished to obey section 1090 "which makes it a felony for you to participate in any way in Council decisions affecting that city's [referring to Elk Grove] arrangement for law enforcement services." The directive further states: "This prohibition extends to discussion of operational issues, including traffic enforcement, law enforcement funding, selection or removal of the Chief of Police, memorandums of agreement between the Sheriff's Department and the City, and proposal for any adjustment in the level of law enforcement services to be provided." A copy of the directive to Mr. Cooper is provided as a sample in Attachment 2.

D. County of Sacramento

In March 2000 the County Counsel sent a memorandum²⁷ to the Sacramento County Board of Supervisors and the Sheriff's Department that alerted both parties of potential conflict of interest problems under section 1090 because two Sheriff's deputies were elected to the Council. The memorandum concluded that should either deputy participate, directly or indirectly, in contracting with the County for law enforcement

²⁶ None of the parties who testified could specifically recall any explicit guidance on this issue. One party, for example, testified that he "may have had [a conversation with Mr. Cooper and/or Mr. Leary over this issue] or ... staff may have [had such a conversation] because the purpose was to make sure that ... staff [referring to Mr. Cooper and Mr. Leary] knew that they couldn't be involved in the contract."

²⁷ The "Ryan Opinion," provided as Attachment 1.

services, such a contract would be void and any monies paid for such services might need to be repaid to the City.

In November 2001 the Board of Supervisors and the City signed the initial contract for law enforcement services. Between then and the present, the contract has been amended and augmented several times, each time with the approval of the Board of Supervisors. Although the County was advised of the potential that a conflict of interest violation by the Council could void the contract, it did not review the contract or subsequent amendments to ensure that they were properly adopted by the Elk Grove City Council.

Summary and Conclusions

The Grand Jury finds that there was a sweeping, widespread failure by the elected and appointed leaders of the City of Elk Grove and the Sheriff's Department in creating, managing, and implementing the Agreement for Law Enforcement Services so that it was free from the effects of conflicts of interests involving two Council members, James Cooper and Michael Leary. As a consequence, numerous violations of state conflict of interest law occurred during Council meetings between June 2000 and May 2004.

The Grand Jury further finds that the interests of the citizens of Elk Grove were not properly protected because the actions of Council members Cooper and Leary have placed the validity of the law enforcement contract into serious jeopardy.

Council members and City staff made numerous errors in the process of approving and amending the agreement with the Sheriff's Department, and failed to ensure that all legal requirements were met. Attempts by City officials to ensure compliance by Council members Cooper and Leary were met with resistance, which was often accompanied by behavior that can only be described as vulgar, unprofessional and abusive. The Sheriff's Department and the County of Sacramento failed to heed early warnings about potential problems, and failed to address problems when they occurred.

Each of the parties listed bears a share of the responsibility for this widespread failure. The Grand Jury finds that some individuals involved bear more responsibility than others. The Grand Jury has fashioned specific findings applicable to individuals or groups of individuals. Following each finding are recommendations designed to prevent future violations and inappropriate conduct. The Grand Jury believes that if any of the recommended remedial actions had been taken in a timely manner, the violations of conflict of interest laws could have been avoided.

The Grand Jury wishes to make explicit notice of its belief that the actions and behavior of the Council members Cooper and Leary were not only reprehensible, but were also severe enough to cause the Grand Jury to consider filing an accusation in this case. (An accusation is a legal process used to address an elected official's misuse of office. If convicted of an accusation, the penalty is the removal from elective office.)

Ultimately the Grand Jury determined that addressing this matter in a written report was a more appropriate remedy. The decision was made to issue a report rather than file an accusation against Mr. Cooper and Mr. Leary because the Grand Jury believes that encouraging the adoption of our recommendations provides a more timely and efficient method to remedy the problems uncovered in this investigation. Furthermore, such an approach avoids the considerable legal, technical, and tactical obstacles, as identified by the District Attorney's Office, to obtaining their removal from office.

Our recommendations cannot directly address how the citizens of Elk Grove should take into account the performance of their elected and appointed officials in this matter. However, the Grand Jury strongly believes that the actions of City officials uncovered in this investigation need to be fully disclosed. We have presented the facts and our assessment as completely and clearly as possible, within the constraints placed on us by state law.²⁸ **We urge the citizens of Elk Grove to review our report in determining the adequacy of the performance of their elected and appointed officials.**

Findings and Recommendations

A. Findings and Recommendations Concerning Council Member James Cooper and Council Member Michael Leary

Finding A-1: Both Mr. Cooper and Mr. Leary received substantial and more than adequate legal advice regarding the requirements of the conflict of interest law. This advice clearly identified how their actions were limited relative to influencing, participating in the making of or voting on any aspect of a contract between Elk Grove and the Sheriff's Department. They either knew, or reasonably should have known, that they were required to recuse themselves from voting on any aspect of such a contract, and that they were prohibited from participating in actions that might influence members of the Council or staff on any aspect of such a contract. Any claim in defense of their actions that they did not fully understand conflict of interest requirements and that they always followed the advice of the City Attorney on potential conflicts are not credible in light of the sworn testimony and other evidence available to the Grand Jury.

Recommendation A-1: So long as the Sheriff's Department provides law enforcement services to Elk Grove, Mr. Cooper and Mr. Leary should completely recuse themselves from any and all activities that involve police services in the City. This recusal should encompass all discussions or votes by the Council concerning law enforcement services. It should also include all actions that could involve the funding or curtailment of police services, any discussion about or involvement in the operation, management or evaluation of police services, and any activities related to personnel decisions in the Elk Grove Police Department.

²⁸ Penal Code section 929 generally prohibits the Grand Jury from specifically attributing testimony to a specific witness, but allows the Grand Jury, with the authorization of the court, to reference in its report the testimony and documentary evidence that it has relied upon. Accordingly, this report excludes specific use of privileged testimony that might reveal the identities of the parties who provided the testimony.

Finding A-2: During 20 Council meetings between June 2001 and May 2004, Mr. Cooper and/or Mr. Leary failed to recuse themselves and voted or otherwise participated in matters that directly or indirectly affected the City's contract for law enforcement services with the Sheriff's Department. Based on the testimony and evidence available to us, the Grand Jury believes that many of these actions constituted deliberate and willful violations of state conflict of interest requirements.

Recommendation A-2: Mr. Cooper and Mr. Leary should commit to a written procedure that clearly defines how they will fully recuse themselves from any further involvement in any activities related to the provision of police services in the City of Elk Grove, regardless of whether or not the involvement would be deemed illegal under state law.²⁹ To ensure ongoing compliance the activities of Mr. Cooper and Mr. Leary in following the recusal procedure should be closely monitored and documented. All Elk Grove officials involved in any aspect of providing, assessing or contracting for police services should be informed of the recusal procedure, and be required to report any failure to follow the procedure to the City Manager.

Finding A-3: Mr. Cooper and Mr. Leary both repeatedly acted in an unprofessional, abusive and inappropriate manner with the City Manager, the City Attorney, the City Chief of Police and other members of the Council. Their conduct was intimidating towards all of these parties and, in the opinion of the Grand Jury, disrupted the orderly functioning of the Council. This improper and reprehensible conduct significantly contributed to an atmosphere where their failure to observe conflict of interest requirements went unchallenged.

Recommendation A-3: Mr. Cooper and Mr. Leary should cease their inappropriate behavior towards other Council members and City staff. They and the rest of the Council should develop a code of conduct that promotes communication and civil interaction, and eliminates abusive behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff.

²⁹ As elected Council members of the Elk Grove, Mr. Cooper and Mr. Leary were obligated to act in the best interests of the City and its residents in any matter before the Council, or that otherwise related to City business. As Sheriff's deputies, Mr. Cooper and Mr. Leary were expected to be loyal to the Department, and any actions perceived as being disloyal could adversely affect their careers in the Department. This situation created an inherent conflict of interest when they participated in matters involving both the City and the Sheriff's Department, whether or not such participation was allowed by law. Because of this situation, the Grand Jury believes that Mr. Cooper and Mr. Leary should recuse themselves from any and all matters where the Department is a provider of law enforcement services to the City, even if such involvement would not violate state law governing financial conflict of interests

B. Findings and Recommendations Concerning the City Council, the City Manager and the City Attorney

Finding B-1: The City Manager knew of the potential conflict of interest problems caused by Mr. Cooper's and Mr. Leary's refusal to accept and follow legal advice relative to limits on their actions required by the conflict of interest laws. The City Manager was remiss in failing to establish clearly elaborated and consistent procedures to deal with Council actions that might result in possible conflict of interest violations.

Recommendation B-1: The City Manager should develop and the Council should adopt and implement an explicit procedure to:

- Determine if a conflict of interest requirement might apply to any Council member for any item before the Council
- Explicitly advise the affected Council member and all other members of the potential conflict
- Explicitly document the determination that a conflict of interest restriction applies or does not apply, and
- Report on the record during each Council meeting on the actions being taken to ensure that all conflict of interest requirements are met

Finding B-2: The City Attorney is commended for the actions that he took to repeatedly advise Mr. Cooper and Mr. Leary on conflict of interest issues in the face of their abusive and intimidating behavior. The City Attorney provided both Mr. Cooper and Mr. Leary with substantial, compelling and repeated written legal opinions, as well as verbal guidance, regarding how conflict of interest laws limited their actions relative to voting on, influencing, or participating in the making of any agreement between the City and the Sheriff's Department. The City Attorney met his responsibility to convey the legal requirements of the conflict of interest statutes; however, he ultimately failed in his duty to protect the City and to ensure that the contract for law enforcement services with the Sheriff's Department was legally executed. The City Attorney did not provide clear and consistent procedures to identify, deal with and document each potential conflict of interest situation, and, at times, may have failed to adequately identify potential conflicts.

Recommendation B-2: The Elk Grove City Council should instruct the City Attorney to explicitly advise the Council whenever a Council member may be acting in violation of conflict of interest requirements. The City Attorney should ensure that he has a complete and thorough understanding of how conflict of interest requirements apply to any matter before the Council. He should develop a method of obtaining expert legal opinions in cases where there is any doubt about how conflict of interest requirements apply.

Finding B-3: The City Manager should not have allowed the Council to approve the annual "Service Plan" as part of its approval of the annual city budget. The annual Service Plan was an amendment to the Agreement for Law Enforcement Services. This procedure of "bundling" the Service Plan within the annual municipal budget made it more difficult to detect and avoid conflict of interest violations.

Recommendation B-3: The City Manager should ensure that all actions on contracts that could potentially involve a conflict of interest are considered separately and discretely by the Council.

Finding B-4: The three other Council members were aware of the conflict of interest problems that could be caused by Mr. Cooper's and Mr. Leary's refusal to accept and follow advice relative to limits on their actions. Each Council member was advised regarding the obligations to observe the conflict of interest statutes, and of the serious consequences that violations of those statutes could have. Council members could have insisted that the Council establish procedures and safeguards to avoid actions that might involve possible conflict of interest violations. Further, when confronted with potential violations by either Mr. Cooper or Mr. Leary, the other Council members could have used their power to stop the proceedings until it could be determined if the actions were legally permissible.

Recommendation B-4: All Council members should be fully advised and trained on how conflict of interest and other ethics requirements may limit their actions, and how they can ensure that they and other Council members abide by legal requirements and observe standards of ethical conduct. The Elk Grove City Council should instruct and empower the City Manager and the City Attorney to explicitly warn the Council whenever a Council Member may be acting in violation of conflict of interest requirements.

Finding B-5: The Grand Jury received sworn testimony that illustrated how Mr. Cooper and Mr. Leary used abusive behavior and vulgar language to intimidate Council members and City staff. This behavior played a significant part in allowing actions contrary to conflict of interest laws to go unchallenged. Yet the Council members, both individually and collectively, failed to take action to confront, address and correct this behavior.

Recommendation B-5: The Council should develop an explicit code of conduct that promotes communication and civil interaction, and eliminates abusive or intimidating behavior. This code of conduct should be followed in all interactions among Council members and between Council members and City staff. All Council members should commit to following the code of conduct.

Finding B-6: Because conflict of interest statutes were not followed, the Agreement for Law Enforcement Services with the Sheriff's Department is in jeopardy of being voided.

Recommendation B-6: The City of Elk Grove and the Sheriff's Department should mutually agree upon a method of providing law enforcement services should a court determine that the existing Agreement for Law Enforcement Services is void. This agreement should include a mutually acceptable method to resolve any financial problems resulting from a voiding of the contract.

C. Findings and Recommendations Concerning the Sheriff's Department

Finding C-1: The Sheriff's Department was informed in March 2000 of the severe potential problems that could be caused by either Mr. Cooper's or Mr. Leary's failure to fully observe conflict of interest limitations created by their employment by the Department and their election to the Elk Grove City Council. The Department was also aware that it would be illegal for any of its employees to use either Mr. Leary or Mr. Cooper to influence any matter related to the contract between the Department and the City. The Department erred in failing to provide clear direction to Mr. Cooper and Mr. Leary that they were to avoid any and all involvement in law enforcement matters between the City and the Department.

Recommendation C-1: On December 9, 2004 the Sheriff's Department provided clear direction to Captain Cooper and Sergeant Leary that they must avoid any and all involvement in matters between the Elk Grove and the Department.³⁰ Adherence to this policy should be closely monitored. The same policy should be applied to all other Department employees who serve as elected or appointed officials to entities that have contracts with the Department. Finally, the Department should provide clear direction to all of its employees that it would be improper to involve any such official, who is also an employee of the Sheriff's Department, in any matter of police business that involves the entity the official represents.

D. Findings and Recommendations Concerning the Board of Supervisors

Finding D-1: The Board of Supervisors was informed in March of 2000 that conflict of interest limitations of section 1090 affected any potential contract with Elk Grove, and that a failure to observe these limitations could void any contract and adversely affect the County financially. The Board should have established a review process to ensure the subsequent contracts were free of defects related to section 1090, but did not. Furthermore, the County still does not have any policies in place to ensure that other County employees who are also elected or appointed officeholders are instructed to avoid all involvement in County contracts with the entity the employee represents.

Recommendation D-1: The County Counsel is to be commended for his March 2000 opinion alerting the Board of Supervisors and the Sheriff of potential conflict of interest requirements. (No response is required). The Board of Supervisors should maintain oversight for any contract where county employees of the contracting department are also elected or appointed to the entity that contracts for services. Further, the Board of Supervisors should direct county employees who are also elected or appointed officeholders to avoid all involvement in the formation, negotiation and execution of county contracts between the county department that employs the officeholder and the entity the employee represents.

³⁰ See Attachment 2

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the findings and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by May 31, 2005, from:

- **Elk Grove City Council**
- **Sacramento Sheriff's Department**
- **Sacramento County Board of Supervisors**

The Grand Jury cannot require individual council members to respond to the findings and recommendations in this report. However, we believe that the public would be best served if Mr. Cooper and Mr. Leary individually respond to findings and recommendations A-1 through A-3. Therefore, we invite Mr. Cooper and Mr. Leary to provide responses to the Presiding Judge of the Sacramento Superior Court by May 31, 2005.

COUNTY OF SACRAMENTO
OFFICE OF THE COUNTY COUNSEL
Inter-Department Correspondence

March 8, 2000

To: Chairperson and Members
Board of Supervisors

Sheriff Lou Blanas

From: Robert A. Ryan, Jr.
County Counsel

Subject: City of Elk Grove – Contracting for Law Enforcement Services

As you are aware, voters have approved the incorporation of the City of Elk Grove. The new City will come into existence on July 1 of this year.

At the same time, members of the new City Council of Elk Grove were elected. At present, it appears that two Sheriff's officers, Lieutenant Jim Cooper and Sergeant Michael Leary have been elected to the Council. This Office does not represent the new city nor its new council members.

However, it is the opinion of this Office that should either Lt. Cooper or Sgt. Leary participate, directly or indirectly, in contracting with the County for law enforcement services, such a contract will be void and any money paid for such services will be recoverable by the City.

DISCUSSION

Government Code section 1090 prohibits governmental officers from being financially interested in contracts of the agency for which they serve. Government Code section 1091 permits a public agency to enter a contract in which an officer is interested if there is only a remote interest:

"(a) An officer shall not be deemed to be interested in a contract entered into by a body or board of which the officer is a member within the meaning of this article if the officer has only a remote interest in the contract and if the fact of that interest is disclosed to the body or board of which the officer is a member and noted in its official records, and thereafter the body or board authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer or member with the remote interest."

A "remote interest" is defined to include "that of a person receiving salary, per-diem, or reimbursement for expenses from a government entity."¹

Together, sections 1090 and 1091 will prohibit Sheriff's officers who are also members of the City Council from participating in a contract with the County for the provision of law enforcement services to the City of Elk Grove. Provided that Lt. Cooper and Sgt. Leary disclose their interest and do not participate, the City may enter into such a contract.

The prohibitions of sections 1090 and 1091 are applicable to both direct and indirect participation. That is, not only may interested officers not vote on the contract, but they may not attempt to influence the vote of others on the contract.

"In enacting the conflict-of-interest provisions the Legislature was not concerned with the technical terms and rules applicable to the making of contracts, but instead sought to establish rules governing the conduct of governmental officials. [Citation omitted.] Accordingly, those provisions cannot be given a narrow and technical interpretation that would limit their scope and defeat the legislative purpose. [Citations omitted] Thus, in *Stigall v. City of Taft*, supra, where a member of the city council participated in preliminary matters leading to the adoption of a contract but resigned before the formal award of the contract, the court refused to construe the word "made" in a narrow and technical sense and instead held that it encompassed the planning, preliminary discussion, compromises, drawing of plans and specifications and solicitation of bids that led up to the formal making of the contract." (*People vs. Honig* (1996) 48 Cal.App.4th 289, at 314, 315.)

Further:

"Section 1091 applies to an officer who is a member of a body or board that authorizes, approves or ratifies a contract. Such an officer will not be deemed to be interested in a contract if his or her interest is one of the remote interests set forth in the section, the officer makes full disclosure of the interest, the officer abstains from voting, the officer does not influence or attempt to influence any other member, and the body or board authorizes, approves or ratifies the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote of the officer with the remote interest." (*Id.*, at 317, 318.)

¹ Section 1091.5 provides that even this does not constitute a financial interest "... unless the contract directly involves the department of the government entity that employs the officer or employee, provided that the interest is disclosed to the body or board at the time of consideration of the contract, and provided further that the interest is noted in its official record."

March 8, 2000

Section 1091 affords a safe haven for contracts only insofar as there is compliance. A contract entered into in violation of either section 1090 or 1091 is void. The remedy is made more draconian by the fact that the public agency which approved the contract and whose officers violated sections 1090 or 1091 may recover any funds expended under the contract. (*Thomson v. Call* (1985) 38 Cal.3d 633; *People ex rel. State of Cal. v. Drinkhouse* (1970) 4 Cal.App.3d 931.)

For this reason, the prohibitions become relevant not only to the City of Elk Grove and the members of its council, but to the County as a potential contracting party. In the event either of the Sheriff's officers apparently elected to the council attempt to influence the Council's decision on a contract with the County for law enforcement services, this Office believes that the contract would be void and that any payments received from the City under such a contract could be required to be repaid to the City.²

As a result, care and prudence should be exercised as the new City forms and discussions regarding potential contracts for law enforcement services commence.

If you have questions regarding this matter, please contact me.



ROBERT A. RYAN, JR.

cc: Mr. Terry Schutten

²Criminal sanctions are imposed on individuals violating the provisions of these sections.



COUNTY OF SACRAMENTO

Inter-Department Correspondence

LOU BLANAS

Sheriff

December 9, 2004

To: CAPTAIN JAMES COOPER

From:


LOU BLANAS, SHERIFF

Subject: POLITICAL ACTIVITY WHILE A MEMBER OF THE SHERIFF'S
DEPARTMENT

THE FOLLOWING IS TO BE CONSIDERED AS MY DIRECT ORDER, VIOLATION OF WHICH MAY SUBJECT YOU TO DISCIPLINARY SANCTION AND CRIMINAL PROSECUTION.

You are admonished that while a member of this Department and a member of the Elk Grove City Council, you must obey Government Code Section 1090, which makes it a felony for you to participate in any way in Council decisions affecting that city's arrangement for law enforcement services, including its contract with this Department or any consideration of alternatives, such as contracting with another agency or choosing instead to create its own Department. This prohibition extends to discussion of operational issues, including traffic enforcement, law enforcement funding, selection or removal of the Chief of Police, memorandums of agreement between the Sheriff's Department and the City, and proposals for any adjustment in the level of law enforcement services to be provided.

You are further notified that neither I nor any members of this administration will have any discussions with you concerning the Elk Grove Police Services Contract. Any concerns that you have, any concerns voiced by your constituents or by any other members of the City Council or the administration of City of Elk Grove shall be taken up with either the Chief of Police or the Assistant Chief of Police for the City of Elk Grove. You are not to bring up any issues concerning the Police Services Contract directly or indirectly with any member of the Sacramento Sheriff's Department.

Any violation of this section will be deemed to be outside the scope of your employment with this Department and you will bear individual responsibility for the consequences of any actionable breach.

Captain James Cooper
December 9, 2004
Page 2

This order shall remain in effect throughout your term as a city council member. A copy of this order will be placed in your personnel file for ready reference.

I, Captain James Cooper, acknowledge receipt of this order and my understanding of same this 9th day of December, 2004, at Sacramento, California.


