

ISLETON CITY COUNCIL VIOLATES STATE ELECTION LAWS



City of Isleton
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SUMMARY

A Sacramento County Grand Jury investigation, prompted by a citizen complaint, has found that the Isleton City Council violated State of California law and ignored voter concerns by failing to properly fill a council seat following the death of one of its members in April 2021. The position remains empty at the start of 2022 and could potentially go unfilled for the entire year, diluting the public’s representation in government.

The Isleton City Council is comprised of five council members elected by voters to four-year staggered terms. The City of Isleton also employs a City Manager and a City Attorney. On April 23, 2021, one of the Isleton City Council members unexpectedly passed away leaving a vacancy. Government Code section 36512(b) requires that a vacancy on a city council be filled by either appointment or by calling for a Special Election within 60 days from the date of the vacancy. The City of Isleton posted to its website a “Notice of Appointment” instructing applicants to submit a Letter of Interest. The Notice specifically stated that an appointment would be made at the city council meeting on June 22, 2021.

The Isleton City Council subsequently received Letters of Interest from three applicants. While no mention was made regarding their individual qualifications during the June 22, 2021 council meeting, the four remaining council members stated that they did not want to appoint anyone to the vacant position. At this same meeting, the Council was given two critical pieces of information:

1. It would cost \$32,000 to hold a mail-in Special Election.
2. Failure to fill the vacancy by either Special Election or appointment would be a violation of state law.

Even in the face of these requirements, the Council voted unanimously to leave the seat vacant.

The Sacramento County Grand Jury finds that while the City of Isleton did initially appear to work toward meeting the requirements set forth in the Government Code, they violated state law and did not adequately explore options available to them to remedy the situation; a disservice to the residents of Isleton. Further, if an appointment is not made or a Special Election held, the opportunity for Isleton voters to fill the position will not occur until its next election in November 2022.

The Sacramento County Grand Jury recommends that the Isleton City Council appoint a person to fill the vacancy on the Isleton City Council by June 30, 2022. If the City Council fails to make an appointment, a Special Election should be held.

BACKGROUND

The Sacramento County Grand Jury received a citizen complaint on August 15, 2021, alleging that the Isleton City Council, at its June 22, 2021, meeting, unanimously agreed not to fill a vacant city council seat. An investigation was approved by the Sacramento County Grand Jury on September 23, 2021.

Isleton City Council Member Barbara Dockery passed away on April 23, 2021. On June 3, 2021, the City of Isleton posted on its website a “Notice of Appointment to the City Council of the City of Isleton.” The Notice instructed potential applicants to submit a Letter of Interest to Isleton City Hall by June 18, 2021, at noon. The Notice specifically stated, “Appointments will be made at the City Council Meeting of Tuesday, June 22, 2021, at 6:30 P.M.” This notice was posted 20 days prior to the city council meeting.

During the June 22, 2021 Isleton City Council meeting, the City Council members were advised for the first time by the City Manager and the City Attorney that the County Registrar of Voters estimated the cost of holding a Special Election to be \$32,000 for an all-mail ballot election on November 2, 2021. Although there was no estimate made for a precinct election with in-person polling places as well as mail-in ballots, it was presumed that the cost would be even greater than conducting a mail-in ballot election. The elected person would serve out deceased Council Member Dockery’s term to November 2024. Since there was no state election occurring on November 2, 2021, the City of Isleton would bear the entire \$32,000 cost to run the election. The \$32,000 would have come from Isleton’s general fund. With 367 registered voters, the cost for the Special Election would be nearly \$100 per voter.

METHODOLOGY

During its investigation, the Sacramento County Grand Jury conducted several interviews and reviewed numerous documents, websites, and recordings including, but not limited to:

- Notice of Appointment to the City Council of the City of Isleton dated June 3, 2021
- Letters of Interest to the City Council of the City of Isleton from three candidates
- City of Isleton Staff Reports dated May 25, 2021, June 8, 2021, and June 22, 2021
- City of Isleton Regular City Council Meeting Minutes dated Tuesday, June 22, 2021
- Audio tape of the City of Isleton City Council Meeting dated Tuesday, June 22, 2021
- City of Isleton Press Release dated April 28, 2021

DISCUSSION

Both a City of Isleton Staff Report, dated June 22, 2021, and the Isleton City Attorney recommended that the City Council appoint a new council member to fill its vacant seat. At its council meeting on that same date, the Isleton City Attorney was asked specifically by a council member if the Council could leave the position vacant until the scheduled general election in November 2022. The City Attorney specifically stated that he would not give that advice, because “it was not supported by the Elections Code.” The City Attorney further advised the Council that by having only four votes on the City Council, it could yield split decisions and open the Council up to legal challenges.

Four citizens spoke during the public comment period at the meeting. All four citizens recommended that the City Council appoint a replacement to fill the vacancy. All four of the Isleton citizens voiced concerns about the cost of a \$32,000 Special Election which had not been anticipated. They preferred to be represented by a City Council consisting of five members rather than only four members.

During its probe into the Isleton City Council’s unanimous vote, the Sacramento County Grand Jury learned that Government Code section 36512 does not provide any penalty for a city council ignoring its mandate to either appoint or call for a Special Election to fill a vacancy. The Sacramento County Grand Jury also reviewed an analogous provision in Government Code section 1780(f)(1). It provides that if a vacancy occurs to a governing board of a special district (such as an energy district, water district, school district, etc.), and the vacancy is not filled by appointment or by calling for a Special Election within 60 days of the vacancy, then the City Council or the County Board of Supervisors may appoint a person to fill the vacancy. The California State legislature, however, did not provide a similar remedy in Government Code section 36512. There is no comparable provision in Government Code section 36512 allowing the Sacramento County Board of Supervisors to make an appointment to fill the Isleton City Council vacancy.

During the June 22, 2021, Council meeting, the Isleton City Attorney explained the fact that there was no penalty for doing nothing. Consequently, the Isleton City Manager ignored the recommendation of the Staff Report dated June 22, 2021, the advice of the City Attorney, and the input from four concerned citizens and proposed that the City Council “do not appoint” anyone to fill the vacancy.

The Grand Jury determined that this lack of a penalty appeared to be a major factor in the Council's decision to ignore the law and violate the requirements of Government Code section 36512. The City Council voted unanimously (4 to 0) to not call for a Special Election and to not appoint a new member to the vacant board seat.

The following discussion identifies the laws, and codes under which the Isleton City Council must operate, as well as an accounting of the steps taken by the City Council in addressing the vacant City Council seat.

Government Code sections 36512(b) and (d)

California Government Code section 36512 states:

“(b) If a vacancy occurs in an elective office provided for in this chapter, the council shall, within 60 days from the commencement of the vacancy, either fill the vacancy by appointment or call a special election to fill the vacancy. . . (Emphasis added.)

(d) (1) Notwithstanding subdivision (b) and Section 34902, an appointment shall not be made to fill a vacancy on a city council if the appointment would result in a majority of the members serving on the council having been appointed. The vacancy shall be filled in the manner provided by this subdivision.

(2) The city council may call an election to fill the vacancy, to be held on the next regularly established election date not less than 114 days after the call.

(3) If the city council does not call an election pursuant to paragraph (2), the vacancy shall be filled at the next regularly established election date.”

The City of Isleton Code of Conduct

The City of Isleton Code of Conduct for Isleton City Council Members, effective January 24, 2008, states:

“2. Dedicated Service in Compliance with the Law:

City Council members will not exceed their authority, breach the law or City policy, nor ask others to do so. They will work in cooperation with each other, other public officials, and staff.”

Isleton City Council Membership

The Isleton City Council is comprised of five City Council members who are each elected by the voters for four-year staggered terms. Elections are held every two years for Council seats whose terms have expired.

The present Isleton City Council consists of the following individuals:

Isleton Mayor
Isleton Vice Mayor
City Council Member
City Council Member
City Council Member

Eric Pene (re-elected in 2018)
Pamela Bulahan (elected in 2018)
Paul Steele (elected in 2020)
Iva Walton (elected in 2018)
Vacant

Another relevant city employee is Charles Bergson, the Isleton City Manager. The City is represented by the law firm of Kronick Moskowitz Tiedemann and Girard.

FINDINGS

- F1.** The Isleton City Council violated Government Code section 36512(b) by failing to appoint and/or failing to call for a Special Election to replace a vacancy on the Isleton City Council.
- F2.** The Isleton City Council disregarded Government Code section 36512(b), the advice of its City Attorney, the advice contained in the Staff Report dated June 22, 2021, and recommendations of several citizens during the June 22, 2021 City Council Meeting when it failed to appoint and/or failed to call for a Special Election to fill a vacancy on the City Council.
- F3.** Failure of the Isleton City Council to follow the mandate of Government Code section 36512(b) was a breach of the City of Isleton Code of Conduct for City Council Members.
- F4.** Failure to appoint a person to fill the vacancy on the Isleton City Council dilutes the public's representation in government since there is one fewer Council Member to express views, opinions, ideas, and diverse opinions as well as potentially resulting in split decisions which would inhibit the Council from making appropriate decisions.
- F5.** The lack of a penalty provision for failure to comply with Government Code section 36512(b) motivated the Isleton City Council to ignore the mandatory requirement to either appoint or call for a Special Election to fill the vacancy on the City Council and leave its constituency with no redress.

RECOMMENDATIONS

- R1.** The Isleton City Council should appoint a person to fill the vacancy on the Isleton City Council by June 30, 2022.
- R2.** If the Isleton City Council fails to appoint a replacement by June 30, 2022, a Special Election should be held.

REQUIRED RESPONSES

Pursuant to Penal Code sections 933 and 933.05, the grand jury requests responses as follows:

From the following elected county officials within 60 days:

- Isleton City Council
City of Isleton
P.O. Box 716
Isleton, CA 95641

Mail or deliver a hard copy response to:

- Hon. Michael Bowman
Presiding Judge
Sacramento County Superior Court
720 9th St.
Sacramento, CA 95814

Please email a copy of this response to:

- Ginger Durham
Jury Commissioner
DurhamG@saccourt.ca.gov
- Ms. Erendira Tapia-Bouthillier
Grand Jury
TapiaE@saccourt.ca.gov

INVITED RESPONSES

- Charles Bergson, Isleton City Manager
City of Isleton
P.O. Box 716
Isleton, CA 95641
- Bill Dodd, State Senator
Senate District 3
1021 O Street, Suite 6620
Sacramento, CA 95814-4900
- Vacant, State Assemblymember
Assembly District 11
1021 O Street, Suite 5150
Sacramento, CA 95814
- California State Senate Committee on Elections and Constitutional Amendments
State Capitol, Room 409/410
Sacramento, CA 95814
- California State Assembly Committee on Elections
1020 N Street, Room 365
Sacramento, California 95814
- Kronick Moskovitz Tiedemann and Girard
1331 Garden Hwy, 2nd Floor
Sacramento, CA 95833

Mail or deliver a hard copy response to:

- Hon. Michael Bowman
Presiding Judge
Sacramento County Superior Court
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Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.