

DELAY IN CORRECTING AN AMBIGUOUS ORDINANCE: PUBLIC ADMINISTRATOR/PUBLIC GUARDIAN 'HOMELESS' FOR TWENTY MONTHS

SUMMARY

On March 5, 1998, the San Diego County Board of Supervisors approved an ordinance transferring the functions of the Public Administrator/Public Guardian (PAPG) from an independent County department into the Health and Human Services Agency (HHS). Though an opinion by San Diego County Counsel on April 9, 2001, advised that the ordinance was ambiguous, the original ordinance was not amended by the County Board of Supervisors until December 10, 2002. This report by the 2002-2003 San Diego Grand Jury seeks to determine reasons for such an inordinate delay in rectifying the situation.

During its investigation, the Grand Jury also found that ambiguities in the language of the ordinance made it unclear whether the Director of HHS was to assume the role and responsibilities of the PAPG. A series of events led the Director of HHS to believe he was not employed to assume the responsibilities of PAPG.

The Grand Jury's recommendations propose changes in San Diego County government procedures to prevent such problems from happening again.

PURPOSE OF THE STUDY

The purpose of this study is to:

- Inquire into what methods and procedures used resulted in a twenty month delay in correcting the ordinance that transferred the functions of the PAPG to the HHS.
- Determine why the Director of HHS did not assume the responsibilities of the PAPG though directed to do so by ordinance.
- Determine whose role it is to bring any ambiguous ordinance into compliance with the San Diego County Charter and California Government Code in a timely manner.

BACKGROUND INFORMATION

The position of PAPG requires the skills and capabilities for managing approximately \$57 million in assets and tending to the care and welfare of approximately 150 conservatees (wards of the court). The performance of the PAPG is under the constant scrutiny of the San Diego Superior Court. The PAPG must file estate accountings and other pleadings with the Superior Court; sell stocks, bonds, and other assets; and manage real and personal belongings of the individuals under his/her care.

On March 5, 1998, the San Diego County Board of Supervisors, by an amendment to the San Diego County Administrative Code, transferred the official functions and responsibilities of the PAPG to the San Diego County Health and Human Services Agency.¹ Previously, the PAPG had been an independent department reporting to the San Diego County Chief Administrative Officer (CAO); it now became a subdivision of HHSA. The ordinance was unclear as to whether the Director of HHSA should assume the position of PAPG though he never, in fact, did so.

Beginning in 1999, the person serving as PAPG wrote a series of letters to County Counsel and HHSA alleging that the 1998 ordinance was invalid. On April 9, 2001, a Deputy County Counsel authored an opinion that the transfer of the PAPG to the HHSA may be in violation of the San Diego County Charter² and the California Government Code³. The opinion also stated that the situation should be resolved as soon as possible by County management.

At the urging of the person serving as PAPG in July 2001, a Deputy Director of HHSA outlined, various alternatives for correcting the 1998 ordinance, in a detailed letter to the Director of HHSA and County Counsel.

The person serving as PAPG gave notice in February 2002 of his intention to resign in March 2002. A new PAPG was immediately appointed by the CAO, when the resignation became effective.

In October 2002, the Grand Jury received a complaint addressing why, despite an extended period of time, County management did not address the legal issues related to the PAPG position.

PROCEDURES EMPLOYED

The 2002-2003 San Diego Grand Jury:

- Interviewed the former Public Administrator/Public Guardian.

¹ San Diego Administrative Code § 203

² San Diego County Charter § 501

³ California Government Code § 24000, 24101 and 24104

- Interviewed the Director of HHSA, two Deputy County Counsels, the San Diego County Chief Administrative Officer, and the current Public Administrator/Public Guardian.
- Corresponded with the Office of the California Attorney General.
- Reviewed various documents including correspondence between the parties involved, the 1998 ordinance, the April 9, 2001, County Counsel opinion and the December 10, 2002, ordinance amendment.

FACTS AND FINDINGS

- A. In March 1998, the San Diego County Board of Supervisors enacted an ordinance transferring the functions of the PAPG to the HHSA. In April 2001, the Office of the County Counsel wrote an opinion advising that changes needed to be made to correct the ambiguous language in the ordinance
- B. The former PAPG complained that as the result of the enactment of the 1998 ordinance, the PAPG's budget and personnel were controlled by the Director of HHSA with the result that the operation of the PAPG was adversely impacted. The present PAPG, when interviewed, assured the Grand Jury that during the nine months in the position these problems did not exist. The budget for the PAPG was completely under control, as was the hiring and firing of PAPG personnel.
- C. Although the PAPG, HHSA management, and the Office of County Counsel exchanged correspondence and held meetings between early 1999 and October 2002, no corrective action was taken apart from the issuance of the April 2001 County Counsel opinion.
- D. The Chief Administrative Officer and the San Diego County Board of Supervisors were not copied with the April 9, 2001, opinion by County Counsel.
- E. The 2002-2003 San Diego County Grand Jury contacted the Office of the County Counsel in October 2002 with a request for background information about the alleged invalidity of the 1998 ordinance as it related to the transfer of the PAPG to the HHSA.
- F. On December 10, 2002, the San Diego County Board of Supervisors enacted a new ordinance to correct the situation. Approximately twenty months had passed since the County Counsel opinion advising a change to correct the ambiguous language of the original ordinance (April 2001) and the enactment of the ordinance correction (December 2002). The Grand Jury learned that a correction of this type would have taken no more than 5 working days to prepare.
- G. Reasons for the delay never became clear to the San Diego County Grand Jury. Some of the reasons given to the Grand Jury were that 'it was something that just

slipped through the cracks’, ‘it was at the bottom of the pile’, and ‘it wasn’t a high priority item’.

- H. During a 57-month period of time beginning in March 1998 through December 2002, no Director of HHSA assumed the responsibility of the PAPG position. The Director of HHSA was never directed to assume the responsibilities of the PAPG office by the CAO.
- I. The Grand Jury finds that, when there is an alleged violation of the County Charter or the California Government Code, the situation should be addressed by County management in an expeditious manner.
- J. It is the responsibility of the Board of Supervisors to bring all ordinances into compliance with the San Diego County Charter and California Government Code in a timely manner.

RECOMMENDATIONS

The San Diego Grand Jury recommends that the San Diego County Board of Supervisors, San Diego County Chief Administrative Officer, and the Office of the County Counsel establish procedures that, when:

- 03-43:** County Counsel is alerted to the fact that an ordinance may be out of compliance with controlling documents that County Counsel should, within 30 days, investigate the situation, take appropriate action, and provide written documentation.
- 03-44:** County Counsel renders an opinion, stating that an ordinance enacted by the Board of Supervisors contains ambiguous language or possibly violates San Diego County Charter provisions or State law, that opinion is copied to the San Diego County Chief Administrative Officer and all of the Director(s) of the department or agency(ies) involved. All parties must then respond, in writing, to the situation within 30 days (sending copies to all involved along the way).
- 03-45:** An ordinance directs that a County officer assume responsibilities associated with a specific position, that officer should act immediately to comply with the ordinance or notify the Chief Administrative Officer, in writing, within 30 days, stating the reasons s/he could or should not comply.

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.
 - (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the

elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required by the date indicated from:

<u>RESPONDING AGENCY</u>	<u>RECOMMENDATIONS</u>	<u>DATE</u>
SAN DIEGO COUNTY BOARD OF SUPERVISORS	03-43, 03-44, 03-45	07/29/03
SAN DIEGO COUNTY CHIEF ADMINISTRATIVE OFFICER	03-43, 03-44, 03-45	07/29/03
SAN DIEGO COUNTY COUNSEL'S OFFICE	03-43, 03-44, 03-45	07/29/03