

CITY OF AMERICAN CANYON

Napa Valley's New Destination



Received
Napa Superior Court

SEP 14 2009

File No.: 199/302

September 14, 2009

Court Executive Office

FILED

SEP 17 2009

VIA U.S. MAIL

Honorable Raymond A. Guadagni, Presiding Judge
Superior Court of the State of California
County of Napa
825 Brown Street
Napa, CA 94559

Clerk of the Napa Superior Court
By: C. Bean
Deputy

Re: Response of the American Canyon Fire Protection District, a subsidiary Special District of the City of American Canyon and the City of American Canyon to the Napa County Civil Grand Jury Final Report on American Canyon Fire Fighters Education Incentive Payments

Dear Judge Guadagni:

This communication responds, consistent with the provisions of Penal Code Sections 933(a), 933.05 and 933.5, to the report of the Napa County Civil Grand Jury ("Grand Jury") dated June 5, 2009 released on June 15, 2009 to the American Canyon Fire Protection District, a subsidiary special district of the City of American Canyon (the "District") and the City of American Canyon ("City"), entitled "Final Report on American Canyon Fire Fighters Educational Incentives; *The Cost of Lack of Transparency*" (the "Grand Jury Report"). The Grand Jury Report investigation apparently began before the November 2008 General Election.

Preliminary Statement

Initially, both the District and the City question the motivation for the investigations and whether Grand Jury procedures were followed as is developed in this communication. In specific instances the confidentiality requirement of the Grand Jury Proceedings were breached by the Civil Grand Jury and the procedures followed by the Grand Jury were not consistent with those provided in its enabling statute, Penal Code section 914 *et seq.*

The District and City also maintain that the scope of the investigation unnecessarily intruded into the resolution of a District personnel matter and that the Grand Jury did exceed its authority and jurisdiction. One cause of the Grand Jury's wide ranging inquiry

Received

SEP 14 2009

4381 Broadway, Suite 201, American Canyon, CA 94503 • (707) 647-4336 • FAX (707) 643-2355 •
www.cityofamericancanyon.org

Napa Superior Court

was the Grand Jury's insistence that one of its members could provide legal services and advice to the Civil Grand Jury under the guise of a purported monetary savings to the citizens and taxpayers of Napa County. This practice was documented in the Napa County Grand Jury 2008-2009 Final Report on the Office of the County Counsel.¹ It is this consistent position of the 2008-2009 Civil Grand Jury that both procedurally and substantively bears on the accuracy and the conclusions of the report with respect to the District and to a certain extent with respect to the City.

Recommendations of the Report

The Report makes the following Recommendations:

1. The City of American Canyon and the Fire Protection District try to create more transparency in the people's business.
2. The City of American Canyon and Fire Protection District develop a process to control legal expenses and evaluate the costs and benefits of employing a full-time City Attorney to advise and represent the City and District.
3. The City of American Canyon and Fire Protection District create policies and procedures to ensure that any future contractual obligations are developed through a request for proposal in order to provide for quality and the cost effective means for acquiring such services.
4. The City of American Canyon and Fire Protection District review, modify or change policy to ensure public access to governmental representatives and vital information that is necessary for the public welfare.

¹ See, referenced Final Report page 6, wherein the following is mentioned;
"The Grand Jury has four options regarding legal assistance; .

- County Counsel's Office
- District Attorney's Office
- "Outside lawyers,
- Represent itself"

If there is a member or members of the Grand Jury who have requisite expertise, the Grand Jury can represent itself...

The Grand Jury requested responses from the District and City as follows on the Recommendations:

1. The City American Canyon Fire Protection District Board of Directors on recommendations: 1, 2, 3 and 4.

2. The City American Canyon Fire Protection District Board of Directors on Recommendations: 1, 3 and 4.

3. The City American Canyon Fire Protection District Board of Directors on Recommendations: 1, 2, and 3.

4. The City American Canyon Fire Protection District Board of Directors on Recommendations 1, 2, 3, and 4.

Factual Corrections

Prior to responding to the recommendations of the Grand Jury, the District, its Board of Directors and the City and its City Council and the Fire Chief believe it is important to correct certain factual misunderstandings and misrepresentations and not omissions of fact in the Grand Jury Report.

First, the Grand Jury Report description of the District is inaccurate. It is suggested that the Report version set forth below be revised as suggested as the revisions are consistent with the evidence and testimony given to the Grand Jury.

The Grand Jury Report currently provides the following:

Description of ACFPD – The District

The ACFPD was formed in 1957 by a vote of the citizens as a Subsidiary Special District to the City of American Canyon. It covers seven square miles and serves a population of approximately 15,000. American Canyon is a rapidly growing area and the population is predicted to continue to grow. The District has responsibilities beyond the City limits. It is bordered on the south by the City of Vallejo, on the west by the Napa River and on the east by Interstate 80. During the seventies, the governing body was an independent, five person Board of Directors. This has since been changed

as the City Council now acts as the District Board of Directors. The Board of Directors appoints the District Fire Chief. The Fire Chief reports to the Board. The Fire Chief of seventeen years retired in 2007 and a new Fire Chief was promoted from Assistant Chief.

One Administrative Assistant supports the firefighter personnel. Other than the Fire Chief, there is no District Manager. ACFPD has a total of fifteen firefighters. All firefighters are either paramedics or emergency medical technicians. There is a residency requirement for firefighters to live within fifty miles. There are also 200 volunteer reserve firefighters; all are residents of American Canyon. Automatic aid response from Vallejo and Napa provides eight more firefighting personnel and additional equipment in response to an emergency incident. The ACFPD is housed in a new Public Safety facility on East Donaldson Way. As a fire District, 70 percent of its funds are derived by property taxes and fees. It also receives various government grants. Payroll disbursements are handled by the City's Finance Department on direction of the Board and the Fire Chief.

It is recommended that the description be revised to provide as follows.

Corrections to "Description of ACFPD – The District"

The ACFPD was formed in 1957 as an Independent Special District governed by an at large, three person Board of Directors. The District's jurisdictional boundaries are approximately eight square miles with a larger area and population of approximately 16,000 being served. American Canyon is a rapidly growing area and the population is predicted to continue to grow. The District has responsibilities beyond the City limits as established by the Napa County Local Agency Formation Commission. The response area is bordered on the south by the City of Vallejo, on the west by the Napa River and on the east by Interstate 80. During the seventies, the independent governing body was changed from a three person to a five person Board of Directors. When the City of American Canyon Incorporated in 1992, the five person Board of Directors became the City Council/Fire District Board and the Fire District became a Subsidiary Special District to the City of American Canyon. The Council/Board appoints the District Fire Chief. The Fire Chief reports to the Council/Board. The Fire Chief of seventeen years retired in 2007 and a new Fire Chief was promoted from Assistant Chief.

One Administrative Assistant supports the firefighter personnel. Other than the Fire Chief, there is no District Manager. ACFPD has a total of fifteen firefighters (not including the Fire Chief and Assistant Chief). All firefighters are either paramedics or emergency medical technicians. There is no residency requirement for firefighters. There are also 20 volunteer reserve firefighters; all are residents of the American Canyon area. Automatic aid response from Vallejo and Napa provides additional firefighting personnel and equipment in response to certain emergency incidents. The ACFPD is housed in a two year old Public Safety facility on Donaldson Way East. As a special district, approximately 82 percent of its funds are derived by property taxes and fees. It also receives funding from various government grants, and reimbursement for state mandated costs as well as reimbursement for use of District equipment and personnel under the State Master Mutual Aid Agreement. Payroll disbursements are handled by the City's Finance Department on direction of the Board and the Fire Chief.

Responses to Recommendations of the Report

District Board of Directors

1. The District Board of Directors agree that more transparency is needed on District business and is continually evaluating and modifying efforts to achieve such transparency through periodic meetings of the District and the encouragement of public participation.
2. The District Board disagrees with the Recommendation and will exercise its discretion concerning how District Counsel is to be retained.
3. The District utilizes RFP process for those procedures that it is authorized to under Public Contract section 20814, an area not inquired into by the Grand Jury.
4. The District disagrees with Recommendation No. 4 maintaining that it did, and does comply with all the requirements and policies for public access. This position was confirmed with respect to the matter investigated by final orders of the Napa County Superior Court in the matter of, *Napa Valley Publishing Co. v. City of American Canyon et al.*, Napa County Superior Court Case No. 26-45603 evidencing compliance with the Brown Act (Government Code section 54950 *et seq.*) and the Public Records Act (Government Code section 6250 *et seq.*), a fact *not acknowledged in the Grand Jury Report.*

Responses by the District Chief

1. The District Chief agrees with Recommendation No. 1 and indicates that it is continually evaluating methods to increase transparency in the District's business and furnishing those recommendations to the District Board for review, implementation or modification.
2. The District Chief disagrees with Recommendation No. 2 and will exercise his or her discretion in conjunction with the District Board for retention of District Counsel.
3. The District Chief partially agrees with Recommendation No. 3 as it is continually reviewing the cost effectiveness of the District especially because of its ongoing relationship with other local government agencies in the State of California as required under the State Master Mutual Aid Agreement.
4. The District Chief partially agrees with the Recommendation No. 4 of the Grand Jury in that *currently* does review, modify and make recommended changes for enhancing public access to governing Board Members and participation in District business.

**Responses to Recommendations of the City of American Canyon
Finance Department/District**

The responses of the City Council and the District Board Directors and the City Counsel on its own (See No. 4 *infra*) are the responses to the respective Grand Jury Recommendations. The City Finance Department cannot respond to the Recommendations with reference to confidential evidence presented to the Grand Jury.

**Responses to Recommendations of the City of American
Canyon/District Board**

The responses of the City of American Canyon City Council/District Board on Recommendations Nos. 1, 2, 3 and 4 incorporate those responses already made as the City Council sits in an *ex officio* capacity as the District Board of Directors. The City Council additionally notes that the examination of the City Attorney was incomplete, as it did not examine critical portions of that legal advice and representation with respect to

Honorable Raymond A. Guadagni, Presiding Judge
Superior Court of the State of California
September 14, 2009
Page 7

either the District or the City which had established case precedent which have benefited both the District and the City.

Second, the City Attorney in conjunction with special counsel recently completed an administrative settlement with AMCAN Beverages Inc., and Coca-Cola of North America resulting in a 7.6 million dollar monetary award to the City for failure of the involved entities to comply with water quality standards of the State and the City.

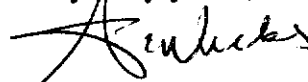
Similar actions and results have been occasioned by the City Attorney/District Counsel on a periodic basis for both the District and the City which are not acknowledged in the Grand Jury Report.

Very truly yours,



Leon Garcia
Mayor/Chairman

Very truly yours,



Glen E. Weeks
Fire Chief

GEW/LG:sf

Enclosure: Grand Jury Report

cc: Cindy Coffey, Board Member
Don Callison, Board Member
Joan Bennett, Board Member
Ed West, Board Member

Glen E. Weeks, Fire Chief

Honorable Raymond A. Guadagni, Presiding Judge
Superior Court of the State of California
September 14, 2009
Page 8

Ex officio District Board of Directors

William D. Ross
City Attorney
District Counsel

Sherry Kelly
Interim City Clerk

Glen E. Weeks
District Clerk

John Tuteur
County Clerk-Recorder