



MEMORANDUM

COUNTY OF LAKE

COUNTY COUNSEL

TO: Honorable Lake County Board of Supervisors
FROM: Anita L. Grant *ALG*
SUBJECT: Grand Jury Responses - 2010-2011 Grand Jury Report
DATE: August 29, 2011

The following is my response to the 2010-2011 Grand Jury Report.

A. Response to the recommendations of the Grand Jury in the Report entitled, "Joint Powers Authority The Shadow Government"

1. Recommendation 1: "JPAs operating within the County of Lake be required to include "Joint Powers" in their titles to allow for identification, for auditing, and monitoring purposes."

Response: Any agreement by and between public entities for the joint exercise of powers is required to comply with Government Code Section 6503 which provides that, "The agreements shall state the purpose of the agreement or the power to be exercised. They shall provide for the method by which the purpose will be accomplished or the manner in which the power will be exercised."

The County of Lake has no authority to require independent public entities to include "Joint Powers" in the title of any agreement(s) to which the County is not a party. It is my understanding and belief that the County currently does describe the specific nature of any exercise of joint powers in which the County participates. Since "joint powers agreement", "joint powers authority", and "joint powers agency" each have distinct meanings, the County should continue to ensure that, in any agreement to which it is a party, the exercise of joint powers is expressly stated so that the public clearly understands the nature and intent of any agreement that results in an exercise of joint powers and/or the creation of a joint powers authority.

2. Recommendation 2: "The JPAs be required to comply with the Brown Act with respect to Notice of Meeting and agenda."

Response: All meetings of a joint powers agency must be open to the public and are

subject to the requirements of the Brown Act. It is incumbent upon all members of that joint powers agency to ensure compliance with the Brown Act in order to provide transparency to the public. This is particularly true given that a new joint powers authority is often created in order to pool the resources of various public entities as a means to finance significant public works projects.

3. Recommendation 3: “Lake County Auditor-Controller-Clerk compile a list of all JPAs operating within the County of Lake and that list be made available to the Grand Jury and the public.”

Response: It would be extremely beneficial for a list to be compiled of all JPAs operating within the County. Such a list would be available to the Grand Jury and to the public. Every effort should be made to prepare a list of all JPAs operating within the County, keeping in mind that if the appropriate filings are not made by the joint powers authorities as required, a complete list may be difficult to compile.

4. Recommendation 4: “Clarification of responsibilities and procedures of the County Auditor-Controller-Clerk be made with respect to mandatory filing and monitoring of financial audits submitted by JPAs.”

Response: It would be beneficial for the public to understand the obligations and responsibilities which arise upon entering into a joint powers agreement and/or creating a joint powers authority. If a joint powers agreement creates a separate joint powers agency, that agency must file a Notice of a Joint Powers Agreement with the Secretary of State and with the county clerk. This separate joint powers agency must appoint a treasurer and an auditor. The auditor so appointed must arrange for an annual audit which, when completed, must be filed with the County Auditor. The responsibility for any such mandated filing under the law rests with each joint powers authority and its members.

5. Recommendation 5: “Future Grand Juries perform routine oversights on JPAs operating within Lake County, to determine that the JPAs’ annual audits are being monitored by the Auditor-Controller-Clerk and is within the letter and spirit of the law.”

Response: It is a good idea for future grand juries to perform oversights of the JPAs operating within Lake County and to monitor these agencies as to fiscal accountability. It remains the responsibility of each joint powers authority to ensure that it operates within the law. While it is unclear what is meant by “to determine that the JPAs annual audits are being monitored by the Auditor-Controller-Clerk” as used by the Grand Jury in this recommendation, it is advisable that the Auditor-Controller-Clerk maintain a record of the receipt of all annual audit reports from the joint powers authorities operating in Lake County.

6. Recommendation 6: “Conduct annual oversight of the Auditor-Controller-Clerk with regard to monitoring filed JPAs.”

Response: Again, the use of the word “monitoring” is unclear, but it is well within the purview of the Grand Jury to inquire whether the Auditor-Controller-Clerk is maintaining records which note the receipt, or lack thereof, of annual audit reports from joint powers authorities operating with the County.

- B. Response to the recommendations of the Grand Jury in the Report entitled, “County Counsel”

Response: There were no recommendations in this oversight report. I appreciate the Grand Jury’ inquiry and thank them for their interest and courtesy.