

CITY OF TAFT EMPLOYEE CONTRACTS

PURPOSE OF INQUIRY:

The Cities and Joint Powers Committee (Committee), of the 2009-2010 Kern County Grand Jury conducted an inquiry into alleged improper actions regarding employee contracts negotiated by the City Manager. The inquiry was conducted pursuant to California Penal Code §919(c) and §925(a).

SUMMARY OF INVESTIGATION:

During the course of this investigation the Committee spent hundreds of hours going over documents received, conducted 12 interviews, met with District Attorney Investigators and met with County Counsel.

The Committee noted there is a distinct rift between two factions of the Taft City Council. The rift seems to be severely hampering the Council's ability to effectively govern the City of Taft. The City Manager has been in the position for over three years and during this time has failed to become fully knowledgeable of all regulations to effectively perform the duties of the office in a legal manner. The City Manager has been in violation of Government and City codes repeatedly during the time in office. The City Manager has shown a lack of respect for the City Attorney's legal opinions.

A monetary transaction between the City Manager and the former Mayor was of poor judgment by both parties. Both should have timely disclosed the transaction to the Fair Political Practice Commission on Form 700 (Statement of Economic Interests). The former Mayor, now City Council member, violated public trust by not recusing himself from the performance evaluations of the City Manager once the monetary transaction took place.

PROCESS:

The Committee met with investigators from the District Attorney's Office on several occasions to discuss the investigation. Subpoenas were issued to obtain documents from the City, and for the City Manager and all members of the City Council to testify before the Grand Jury Committee. The Committee also received and/or researched copies of Government Codes; City Ordinances; e-mails between the City Attorney, City Council members and the City Manager; legal opinions by the City Attorney; a second opinion by a law firm contracted by the City Manager at the direction of the City Council and case law used by both law firms to support the opinions rendered. The City of Taft web-site was used extensively for research. During the investigation the Committee consulted on several occasions with County Counsel to discuss the issues raised in the investigation.

FINDINGS:

1. On August 27, 2009, the Committee initiated the investigation of potential violations of California Government Code §36506 and Taft City Code §1-7-4.
2. Taft is a General Law City with a City Manager form of Government.
3. California Government Code §36506 states, “By resolution or ordinance, the city council shall fix the compensation of all appointive officers and employees. Such officers and employees hold office during the pleasure of the city council.”
4. Taft City Code §1-7-4: Salaries: states, “City council and City Treasurer \$300.00 monthly, City clerk Fixed by resolution, City Attorney Fixed by resolution. All other city employees shall be paid such compensation as may hereafter be fixed by resolution of council.”
5. The current City Manager was hired in September 2006.
6. The City Manager has the authority to negotiate and sign designated management contracts; however, the contracts must be submitted by agenda at a Taft City Council open meeting for ratification by resolution as required by Taft City Code §1-7-4.
7. Six contracts or amendments with five members of the City management staff were negotiated and completed by the City Manager between February 6, 2007 and February 1, 2008 without approval by resolution of the Taft City Council.
8. The Committee requested and received copies of several e-mails and City Attorney Memorandums addressing the proper handling of employee contracts.
9. Some of the employee contracts executed by the City Manager included retroactive pay raises which could result in a determination as a gift of public funds.
10. On multiple occasions beginning in January 2008 the City Manager was advised by the City Attorney to conform to Government Code §36506 and Taft City Code §1-7-4.
11. Seven contracts or amendments with six members of the City management staff were negotiated and completed by the City Manager between July 15, 2008 and April 22, 2009 without Taft City Council resolution and against advice of the City Attorney as outlined in the February 14, 2008 memorandum.

12. The City Council asked for a second opinion from another attorney in August 2009 on the issues of whether or not the City Manager is in compliance with Government and City Codes when executing employee contracts.
13. The second opinion was presented to the City Council in open session of a City Council meeting on September 29, 2009.
14. The second opinion included references to Government Codes §34851 which provides that municipalities in California may establish by ordinance a City Manager form of government; §34852 which provides that the ordinance shall define the powers and duties of the City Manager; and §34856 which provides that the City Manager may “appoint and dismiss” the Chief of Police and other subordinate appointive officers and employees except the City Attorney.
15. The second opinion also referenced Taft City Codes §1-6-6 (C) and (P) and §1-10-2. §1-6-6 (C) confers authority on the City Manager to appoint employees. Paragraph (P) authorizes the City Manager to sign employment agreements with new employees. §1-10-2 expressly confers on the City Manager the authority to sign contracts with unclassified department heads. The second opinion concludes:

“Viewed as a whole, it seems clear that the effect of these provisions is to allow the City Manager to select unclassified employees and negotiate and execute employment contracts with them. Further, the power to sign a contract includes the power to amend that contract.”

16. The second opinion referenced Government Code §36506 and Taft City Code §1-7-4 and a City Council study session:

“These provisions constrain the City Manager to negotiate and enter into employment contracts with department heads at salaries that comport with the compensation limits established by the Council. As long as the contracted for compensation is within those limits, execution of the contracts is within the City Manger’s authority and those contracts are not required to be separately approved by the Council.”

“At the August 5, 2008 study session, two Councilmembers (names omitted) were quoted in the minutes as commenting that there would be no employee raises in the coming year aside from step increases. Nothing in the minutes, however, suggests that the Council took a formal action to amend the budget to set salaries for unclassified employees at their then-current amounts. The City Manager would not be legally precluded from increasing those salaries, as long as the raises were within the budgeted amounts for employee compensation in the Council-approved budget for the fiscal year.”

17. Using the theory of the second opinion, the City Manager has unaccountable financial powers to redistribute budgeted salary funds within a fiscal year.
18. Case law (*Carlson, Collins, Gordon & Bold v. Banducci (1967) 257 Cal.App.2d 212,223; see also American Building Maintenance Co. v Indemnity Ins. Co. (1932) 214 Cal. 608,615.*) used to support the second opinion was reviewed by the Committee and found to have no relevance to the issues under review.
19. According to the second opinion the City Manager has the authority to ignore the word shall as written in Government Code §36506 and Taft City Code §1-7-4.
20. The Committee subpoenaed each City Council member and the City Manager individually for interviews between October 27, 2009 and November 3, 2009.
21. The City Manager's interview date was changed from October 27, 2009 to November 3, 2009 during a phone conversation with members of the Grand Jury. The subpoena states, "You are further commanded, pursuant to Government Code §7475, not to disclose the record of the Subpoena." The day following the phone call the information of a change in the City Manager's scheduled appearance was reported in a local City newspaper.
22. The City Manager's numerous referrals to past practice might excuse actions prior to January of 2008; but chose to ignore advice of council and executed seven additional contracts noted in finding number 11.
23. The Committee's review of Taft City Codes revealed §1-10-2 and §1-10-5 were amended by ordinance number 649-96 adding certain powers to the City Manager's responsibilities. The review revealed the City Manager has misinterpreted the change to §1-10-2 by completing contracts for two positions not listed in section 2 (G). The City Manager has opted to pick and chose only the portions of City Codes that will be convenient to meet his needs. Of note, the change to Taft City Code §1-10-5 by ordinance number 649-96 states, "The City Council shall adopt rules and regulations for the administration of the personnel system. Such rules and regulations shall be adopted by resolution of the City Council", reinforcing what is stated in section §1-7-4 noted in finding number 4.
24. On November 3, 2009 the City Manager issued a statement in open forum of the Taft City Council; the statement included the following excerpt, "*To the best of my knowledge, the issue regarding Employment Contracts began on August 12, 2009 at 1:58 am when (name omitted) sent an Email to (name omitted) and copied me.*"

25. It appears the City Manager lacks knowledge of Government Codes directing how a General Law City in the State of California should be operated.
26. The City Council has spent too much time trying to circumvent the City Attorney's opinions.
27. The City Council has failed in Council fiduciary responsibilities of ensuring the City Manager is compliant with all applicable Government and City Codes.
28. During the Committee's investigation, the issue of an alleged personal loan of \$200,000 between the former Mayor of Taft and the City Manager was addressed. While it was determined the exchange of money between the two individuals was not a personal loan, neither individual included any reference to the transaction on their 2007, 2008 or 2009 California Form 700 (STATEMENT OF ECONOMIC INTERESTS). At the bottom right of the cover page of Form 700 is a block for verification. Both have since submitted amendments. Below is a copy of the verification part of the form.

5. Verification

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date signed

Signature

29. From the moment of the monetary transaction between the former Mayor and the City Manager a perceived conflict of interest (as defined in Government Code §87302) existed. During that time the former Mayor (now City Council Member) failed to recuse himself from all discussions concerning the performance of the City Manager. The City Manager, having knowledge of the potential conflict of interest failed to inform the City Council.
30. The Taft City Council does not have a procedures manual to use as a guide for the responsibilities and duties of a City Council member.

31. The Committee received a copy of the December 15, 2009, City Council agenda. On the agenda is a proposed resolution which as written could result in violations of the Brown Act if approved. Government Code §54952.2 (b) (1) states “A majority of the members of a legislative body shall not, outside a meeting authorized by this chapter, use a series of communications of any kind, directly or through intermediaries, to discuss, deliberate, or take action on any item of business that is within the subject matter jurisdiction of the legislative body.”
32. During the City Council meeting on December 15, 2009, the City Council refused to receive and file the City Attorney’s Memorandum of November 3, 2009, which was a comprehensive rebuttal to the second attorney’s opinion.

COMMENTS:

California Government Code §36506 cannot be circumvented by local City Codes. The City Council has shown little knowledge of Government Codes (including the Brown Act) and Taft City Codes and has failed for many years to exercise fiduciary control of the City Manager’s use of taxpayer monies and his failure to adhere to Government Codes and Taft City Codes. Past practices, while ordinarily a useful guide, should not be used blindly. The citizens of Taft should become more involved in holding the City Council members accountable for their actions and/or inactions.

RECOMMENDATIONS:

1. The City Council should take immediate action to hold the City Manager accountable for his conduct as the City Manager.
2. The Taft City Council should direct the City Manager to become more familiar with and compliant with Government Codes and Taft City Codes.
3. The Taft City Council should require all future City Managers to be familiar with all regulations pertaining to the management of the City prior to completing a probationary period.
4. The City Council should direct the City Attorney to investigate the retroactive pay raises and determine if a gift of public funds has occurred.
5. Members of the Taft City Council must become familiar with the duties and responsibilities of the position of Council member.
6. The City Council should develop a procedures manual to outline responsibilities of the office of Council member.

7. The City Council members should visit the website WWW.leginfo.ca.gov/calaw and review Government Codes §54950-54963 (Brown Act). This should have been required reading when elected. Training on the Brown Act is available through the County of Kern, County Counsel.
8. The City of Taft should post a copy of this report where it will be available for public review.

Note: Present and past Kern County Grand Jury Final Reports and Responses can be accessed on the Kern County Grand Jury website: www.co.kern.ca.us/grandjury

Persons wishing to receive an email notification of newly released reports may sign up at www.co.kern.ca.us/grandjury, click on: Sign up for early releases.

RESPONSE REQUIRED WITHIN 60 DAYS TO:

**PRESIDING JUDGE
KERN COUNTY SUPERIOR COURT
1415 TRUXTUN AVENUE 2ND FLOOR
BAKERSFIELD, CA 93301**

**cc: FOREMAN
KERN COUNTY GRAND JURY
1415 TRUXTUN AVENUE, SUITE 600
BAKERSFIELD, CA 93301**