



County Administrator's Office

JPR
7/8/19
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Superior Court of California
County of Tuolumne

By: Diana Teelby Clerk

July 5, 2019

Judge of Superior Court
Honorable Kate Powell Segerstrom
Tuolumne County Superior Court
60 North Washington Street
Sonora, CA 95370

Re: Response to Grand Jury Report – **Tuolumne County Economic Development Authority (TCEDA) /Economic Prosperity Council of Tuolumne County (EPCTC)**

Dear Judge Powell-Segerstrom:

The following is offered in response to the 2018-19 Grand Jury Report as it pertains to the Tuolumne County Economic Development Authority/ Economic Prosperity Council of Tuolumne County.

I feel compelled to speak to a few issues with the 2019 Grand Jury report on the TCEDA/EPCTC. We find the report factually inaccurate, unbalanced and not well documented. Outside of County and TCEDA documents, the primary sources utilized is the Union Democrat, which is not a reliable source, as their articles were unbalanced and not objectively researched and/or written. The 2019 Grand Jury report did not list a single source from the primary stakeholder of the TCEDA, which are local businesses.

Furthermore, the Grand Jury seems to put more onus on the County than the City of Sonora, when each shared equally in the Joint Powers Authority. The County of Tuolumne Board of Supervisors had no jurisdiction or authority over the TCEDA/EPCTC

Grand Jury Findings

F1. Effective economic development is crucial to Tuolumne County, which lags behind the state in economic health.

Response: Agree - Economic Development is crucial to Tuolumne County. Tuolumne County, like most rural counties, lags behind the state in economic growth.

We support the Board of Supervisors in achieving their goals through service and collaboration with County Departments and the Community.

F2. There are multiple instances of lack of control and oversight by the TCEDA/EPCTC Board over the agencies.

Response: Disagree. The TCEDA staff operated under a 5-Year Work Plan and Board directives. The TCEDA/EPCTC Board held monthly public Board meetings in which the TCEDA Executive Director provided updates as to the progress of the work.

F3. This lack of oversight from the Board of Directors allowed the TCEDA Director to be compensated at a high level compared to other counties in California, and to other employees in Tuolumne County.

Response: Partially Agree – While the TCEDA Director was compensated at a higher level than other employees within the County, the TCEDA Director was not a county employee, and as such, should not be compared to County employee salaries. The TCEDA is a separate legal entity, wherein both the City and County had representatives on the governing Board to oversee and approve the compensation of its Director. The Board of Supervisors does not agree with the statement regarding the lack of oversight as the TCEDA Board negotiated and approved the TCEDA Director's contract that outlined salary and benefits. Employment agreements between the TCEDA Board and its Director were approved during a public meeting, as required by the Brown Act.

F4. The Employment Agreement for the TCEDA Director was overly broad with its benefits, travel and expense policies that surpass other County employees/managers.

Response: Partially Agree – The TCEDA Board negotiated and approved the TCEDA Director's compensation and benefits during a public meeting, as well as policies. The TCEDA Director was not a County employee, and because the TCEDA is a completely separate legal entity, it was not legally required to provide the same salary and benefits to its Director as those of County employees, nor is it required to maintain the same policies as either of its forming bodies (i.e. the City or the County).

F5. Private allowance and benefit negotiations of the TCEDA Director's contract hid the true and far-reaching compensation package from other County employees, and from the public.

Response: Disagree-The TCEDA Board approved contract outlined all compensation for the TCEDA Director and referred to the County of Tuolumne Executive/Confidential Compensation Plan for benefits. Employment Agreements were approved by the TCEDA Board during public Board meetings. These documents are public documents that are available to the public at any time. The County MOU and Compensation Plan are on the County website.

F6. TCEDA misused public funds.

Response: Disagree-. Misuse of public funds is strong language and is often times used when referencing a criminal offense. Neither the management or financial accounting audit found any type of criminal offense. More importantly, the Grand Jury did not support this Finding with evidence as is required by law. To make such a strong accusation with absolutely no supporting documentation is inappropriate. While the Grand Jury may not have liked how public monies were used, they should have phrased this finding differently.

F7. The majority of TCEDA/EPCTC monies were not clearly accounted for in publicly available documents for approximately 10 years.

Response: Disagree-All accounting of the TCEDA was processed through the Auditor-Controller's Office and available to the public.

F8. There was a lack of clarity on how to define economic development how to measure TCEDA's effectiveness to develop the County's economy.

Response: Partially Agree – The TCEDA staff worked under the auspice of a Board approved 5-year Work Plan and directives adopted during agendized meetings. This 5-Year Work Plan contained measurable outcomes for the first year of each plan, the TCEDA Director provided progress reports during each regular scheduled meeting and the TCEDA Board received and approved Annual Reports that summarized the results of each year's activities. The TCEDA Board acknowledged that improvement could be made in this process when they responded to the 2018 Grand Jury report.

F9. There persisted a culture of insufficient oversight of TCEDA/EPCTC by its Governing Board over the course of ten years.

Response: Partially Disagree-As referenced above, TCEDA staff operated within the parameters of a 5-Year Work Plan and directives of the TCEDA Board. Furthermore, progress reports were provided to the TCEDA Board during each regular TCEDA Board meeting. The TCEDA Board acknowledged that this process could be improved in their response to the 2018 Grand Jury Report.

F10. Two previous Grand Jury investigations indicated significant mismanagement issues and lack of measurable effectiveness of the TCEDA, which indicates longstanding, structural incompetency of the agency.

Response: Partially Disagree – Two prior Grand Jury reports did address issues related to lack of measurable effectiveness, and the TCEDA responded to those reports. Mismanagement is another issue altogether and the County of Tuolumne does not agree that such issues existed.

F11. The County and City acknowledged the failure of the agency by dissolving it in 2019, even before the financial and managerial audits were complete.

Response: Disagree – The Tuolumne County Board of Supervisors did not withdraw from the TCEDA due to the failure of the agency. The Board strongly believes in Economic Development and was concerned there was too much damage being done to the relationship between the City and County related to this JPA. The Board believes in most instances collaboration with the City is a win-win for both entities and the residents of the County. The Board left open room in the future to consider collaboration once again.

F12. The TCEDA Board is responsible for countless hours spent by County Counsel and TCEDA's employee in responding to lawsuits and public records request, and in three investigations by grand juries, because of its ongoing lack of transparency and its mismanagement.

Response: Disagree – An enormous amount of time was spent responding to numerous Public Records Act requests, one lawsuit and responding to Grand Jury inquiries. This absolutely took staff away from other work to focus on these matters. The Public Records Act requests stemmed from various individuals with different perspectives on economic development. It appears the philosophy of some individuals about economic development is one of preventing the service entirely, rather than attempting to find ways to make it better.

Further, the TCEDA Board stated publicly it was attempting to balance the privacy concern of the businesses it served vs. that of the public's right to know what records existed. It is unfortunate the most recent Grand Jury did not appear to interview any businesses served by the TCEDA in order to provide a balanced investigation and report. The business perspective should have been taken into account by the Grand Jury during its investigation. It is the business community that is a primary stakeholder of any Economic Development organization. Had the Grand Jury conducted a more thorough and balanced investigation, it would have made different findings.

F13. A conflict of interest review of TCEDA Board members serving on multiple boards was done at the request of the 2017-2018 Grand Jury by County Counsel, but due to attorney-client privilege, none of the findings of the review are available to the 2018-2019 Grand Jury or the public.

Response: Agree. The County Counsel's Office is the legal advisor to the TCEDA Board. The County Counsel's Office responded to the last Grand Jury by informing them that the Office would perform a review but were unable to release their confidential analysis because it was governed by the attorney-client privilege. Attorneys are governed by Business and Professions Code Section 6068(e)(1), which

states it is the duty of an attorney “To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.” Case law and Attorney General Opinions have determined the attorney-client privilege applies to governmental entities, such as the TCEDA. The Attorney General has opined a Grand Jury is not legally authorized to access attorney-client privileged information. While I understand the public and the Grand Jury may want to know how a legal advisor has advised its client, the Grand Jury failed to understand the larger purpose behind the attorney-client privilege. This privilege dates back to common law in England. It is a fundamental pillar of the legal system and it serves a broader public purpose. It encourages clients to provide full and frank disclosure of facts and information to their attorneys’ so the attorneys can provide the best advice possible. Without full disclosure and maintenance of the confidentiality that comes along with the privilege, public attorneys would be limited in their ability to provide the best advice possible to their clients. That serves no purpose.

Grand Jury Recommendations

R1. Tuolumne County and City of Sonora maintain continuous investment in economic development going forward (F1).

Response: Implemented - The Tuolumne County Board of Supervisors has always been and remains committed to Economic Development as has been demonstrated in the creation of an internal Economic Development Department and the appointment of an Economic Development Director on July 2, 2019.

R2. A new Economic Development entity be developed, and be accountable to CAO of the County (F2, F9).

Response: Partially Implemented - A new Economic Development entity will not be developed as the Board of Supervisors created a new Economic Development Department, that is an internal department of the County of Tuolumne. The newly appointed Economic Development Director is a Board appointed Department Head who falls under administrative direction of the County Administrative Officer (as are all other Board appointed Department Heads).

R3. Tuolumne County appoint an Economic Development leader who is a County employee, under County policies and procedures, with standard County compensation packages (F2, F3, F4, F5, F6).

Response: This recommendation has already been implemented. The Board of Supervisors appointed an Economic Development Director on July 2. This position is a County employee, and as such, will be subject to the same policies, procedures and benefits as other County employees.

R4. The County develop measures to track progress of economic development (F7, F8).

Response: This recommendation will be implemented as the County Administrator is currently developing a draft plan for documenting progress and performance measures for Board approval.

R5. The CAO and the City Administrator educate their respective elected officials and managers of "Code of Conduct" and "Code of Ethics" expectations as public servants, by providing ethics training on an annual basis, to ensure that they understand that their primary missions are to serve the public of Tuolumne County (F10, F11, F12).

Response: The County of Tuolumne County Counsel's office provides annual ethics training for all staff, including elected officials. Further, the Fair Political Practices Commission also provides free training, which is available online.

Thank you for the opportunity to respond to the above findings and recommendations. Please feel free to contact me should you have any questions regarding same.

Sincerely,

A handwritten signature in cursive script that reads "Tracie M. Riggs".

Tracie M. Riggs
County Administrator