

FINAL REPORTS 2001 Final Report:

Abuse of the Governmental Process

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Summary:

When a public official moves outside the district in which elected, a vacancy occurs at once and should be filled. A responsible public official, who lives most of the time outside the district in which elected, moreover should resign the office to allow for the proper appointment or election of a replacement. The 2001-2002 Grand Jury reviewed two incidences of local officials who violated this trust.

Carol Cupp continued to serve on the Coastside County Water District (CCWD) Board of Directors for six months after she moved out of the district. Eleanor Wittrup continues to serve on the CCWD board although she teaches full time at the University of the Pacific in Stockton and owns a home there.

The Grand Jury believes that Ms. Cupp manipulated the electoral process and deprived district voters of the right to elect her replacement. As a result of her delay in resigning her office and the inability of the remaining CCWD board members to appoint her replacement or call an election, the decision statutorily defaulted to the San Mateo County Board of Supervisors who then appointed the fifth member to the CCWD board.

The Grand Jury believes Eleanor Wittrup is similarly manipulating the electoral process because she spends most of her time outside the district. These individuals show a callous disregard for democracy and the rule of representative government.

Issue:

1. Did the Coastside County Water District (CCWD) err in its interpretation that state law allows a CCWD board member to continue in office for six months after becoming a nonresident of the district?
2. Did Carol Cupp's continuance in office on the CCWD board after becoming a nonresident of the district constitute a manipulation of the electoral process and, therefore, deprive district voters of the opportunity to elect a new member?
3. Does Eleanor Wittrup's remaining on the CCWD board contribute to the public perception that the governing process is being manipulated to the detriment of the community?

Background:

Carol Cupp, a member of the CCWD Board of Directors, moved with her family to Weed, California, in August 2001. Although no longer living in the district, she continued to sit on the CCWD board for the next six months, officially resigning in February 2002. Her reason for not resigning from the CCWD board after she became a nonresident was based on the opinion of CCWD's counsel that Ms. Cupp could live outside the district for up to six months before she must resign or move back to the district.

Due to Ms. Cupp's continued membership on the CCWD board, district voters were unable to vote for her replacement during the November 2001 general election. Under state law, the CCWD board had a designated time period within which to appoint Ms. Cupp's replacement or call an election.

After Ms. Cupp finally resigned in February 2002, the CCWD board was deadlocked and unable to appoint a replacement. The matter statutorily defaulted to the San Mateo County Board of Supervisors. Unwilling to allow a contentious deadlock situation to exist regarding vital issues such as fire safety and water distribution until the next possible election in November 2002, the Supervisors appointed John Muller as the fifth member of the CCWD Board of Directors on April 2, 2002.

Findings:

Carol Cupp became a nonresident of the district when she moved to Weed, California, in August 2001. There is no issue that she changed her residency to Weed, her actions and words indicated as much. She remained on the CCWD board for six months after her move, however, maintaining that it was proper according to the opinion of CCWD's counsel.

The opinion of San Mateo County Counsel is that Government Code Section 1770 provides that an office becomes vacant when the individual ceases to be an inhabitant of the local area for which local residence is required by law in order to serve in office. Section 1770 does not provide for a time period to submit a resignation due to a change in residency; it simply states that the vacancy is created upon a change in residence. If the individual moved back into the district within six months or if there is any question as to whether the move was permanent, then Water Code Section 30508 may come into play to help determine whether the change in residence was permanent.

Section 30508 provides in effect that, if the individual's place of residence is moved outside of the district and if within 180 days of the move the individual fails to reestablish a place of residence within the district, it shall be presumed that a permanent change of residence has occurred and that a vacancy exists pursuant to Government Code Section 1770. In this instance, there is no issue whether Carol Cupp had a permanent change of residence and, accordingly, Water Code Section 30508 should not come into play. Ms. Cupp's actions and words clearly indicated a permanent change of residency in August 2001 when she moved to Weed. A vacancy was thus created on the CCWD Board of Directors. Further, CCWD counsel should have advised the CCWD board that Water Code Section 30504 directs that under Government Code Section 1780, director vacancies are to be filled either by appointment by the remaining board members or by calling a special election within a designated period.

The CCWD counsel's opinion created the perception that a member of the

CCWD board can remain in office for up to six months after becoming a nonresident of the district and no longer living in the community he or she supposedly represents. CCWD counsel's opinion, and Ms. Cupp's failure to resign, prevented the vacancy on the board from being filled. This deprived the voters of their right to elect her replacement and eventually created a situation whereby the San Mateo County Board of Supervisors decided to appoint a replacement. The Grand Jury believes that the CCWD board manipulated the electoral process and district voters were the losers.

Another member of the CCWD board, Eleanor Wittrup, sold her home in the district and purchased a home in Stockton, California, where she holds a full time position at the University of the Pacific. Ms. Wittrup contends that she continues to be a resident of the district because she rents an apartment there. Although she may be able to make a case that she is technically a resident of the district, the Grand Jury believes that Ms. Wittrup's continued presence on the CCWD board is also a manipulation of the process of representative government.

The intent of a law requiring that an officeholder be a resident of the represented district is that the person be physically in and a part of that community. As a full time faculty member in Stockton, Ms. Wittrup spends most of her time away from the citizens and the pulse of the community that she supposedly represents. The Grand Jury believes that Ms. Wittrup's continued presence on the CCWD board is contrary to the intent of the law.

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Recommendations:

1. The Coastside County Water District Board of Directors should review and publicly clarify what constitutes a board vacancy under the law and the duties and responsibilities of the board when such a vacancy occurs.
2. Members of the Coastside County Water District Board of Directors should remember their public responsibilities and not manipulate the electoral process and thereby deny district voters their right to elect their representatives.
3. The Coastside County Water District Board of Directors should ask Eleanor Wittrup to resign her office as her presence on the board goes against the intent of the law that requires residency in the district and creates the public perception that the governing process is being manipulated.

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Response

Coastside County Water District Response

The Board of Directors of the Coastside County Water District considered the above-referenced report of the County Civil Grand Jury at its meeting held June 10, 2002. This letter shall serve as the District's response to the Grand Jury Report as called for in the letter dated June 3, 2002 from Court Executive Officer Peggy Thompson.

1. Response to the Grand Jury's Findings:

The Board of Directors disagrees with the finding of the Grand Jury Report as follows:

a. Findings Concerning Carol Cupp's residency:

The Board disagrees with the findings of the Grand Jury report analyzing the issue of Carol Cupp's residency. As the Grand Jury Report notes, Government Code section 1770 provides that an office becomes vacant when the individual ceases to be a resident of the district "if the office be local and one for which local residence is required by law." In its analysis, the Grand Jury evidently failed to consider the last clause of that section. The issue, as framed by section 1770, is whether the office of director on a county water district is one "for which residency is required by law." And that issue is addressed by the County Water District law at Water Code section 30508 which provides as follows:

"If a director's place of residence, as defined in Section 244 of the Government Code, is moved outside district boundaries or outside the boundaries of that director's division where elected from a division, and if within 180 days of the move or of the effective date of this section the director fails to reestablish a place of residence within the district or within the director's division, it shall be presumed that a permanent change of residence has occurred and that a vacancy exists on the board of directors pursuant to Section 1770 of the Government Code."

If the Legislature intended there to automatically be a presumption of vacancy when a director's place of residence is moved outside of the district, it could have easily so provided. The statute could then have been written:

"If a director's place of residence, as defined in Section 244 of the Government Code, is moved outside district boundaries or outside the boundaries of that director's division where elected from a division, it shall be presumed that a permanent change of residence has occurred and that a vacancy exists on the board of directors pursuant to Section 1770 of the Government Code."

Instead, the Legislature declared that there is a presumption of vacancy when a director's place of residence is moved outside of a district and the director "fails to reestablish a place of residence within the district" within 180 days. Thus, the notion that a "a member of the CCWD board can remain in office for up to six months after becoming a nonresident of the district and no longer living in the community he or she supposedly represents" is not, as the Grand Jury Report suggests, merely a "perception". It is rather a plain reading of the statute.

The Grand Jury's interpretation, on the other hand, ignores the plain language of the statute. It states:

"Section 1770 does not provide for a time period to submit a resignation due to a change in residency; it simply states that the vacancy is created upon a change in residence. If the individual moved back into the district within six months or if there is any question as to whether the move was permanent, then Water Code Section 30508 may come into play to help determine whether the change in residence was permanent."

The Board of Directors disagrees with this interpretation. First, Section 1770 does not *"simply state[] that the vacancy is created upon a change in residence."* It states that a vacancy is created upon a change in residence *"if the office be local and one for which local residence is required by law"*, thus requiring an examination of the enabling legislation of the particular public agency in order to determine, in the first instance, whether residency is a requirement of holding office. Secondly, section 30508 obviously comes into play *"[i]f the individual moved back into the district within six months..."* In that situation, section 30508 clearly provides that no vacancy has occurred. The question, however, is when can the determination of whether a vacancy is *"permanent"* be made. Reading section 30508 in accordance with its plain meaning, such a determination cannot be made unless, after 180 days, the director has failed to *"reestablish a place of residence within the district."*

In summary, the Grand Jury's quarrel would appear with the State Legislature for enacting Water Code section 30508. The Legislature's *"intent"* statute appears to be consistent with the plain meaning of the statute, to permit a director of a county water district to remain in office for up to 180 days after his or her residence has moved outside of the district. And the Grand Jury's interpretation of the *"intent"* appears to be largely conjecture.

b. Findings Concerning Eleanor Wittrup's Residency:

The Board also disagrees with the Grand Jury's findings concerning Eleanor Wittrup's "continued presence on the CCWD board" or, more precisely, her legal right to continue to hold office as an elected member of the Board of Directors. In this regard, the Grand Jury Report stops short of stating that Director Wittrup is legally disqualified from continued office on the Board of Directors. Instead, based on the fact that President Wittrup has a full-time job and owns a residence in Stockton, the report states that the Grand Jury *"believes that Ms. Wittrup's continued presence on the CCWD board is contrary to the intent of the law."* [emphasis added]. It is unclear upon what the Grand Jury bases its views on the *"intent of the law."* The District's legal counsel has opined that a basic rule of statutory construction is that the intent of a statute is to be determined, in the first instance, from its plain meaning. And the opinion of the District's legal counsel is that Director Wittrup is a resident for purposes of qualifying for elective office in the District.

That opinion was based upon the following facts: Director Wittrup was elected to the Coastside County Water District Board of Directors in November 1999. At that time, she owned a residence within the jurisdictional boundaries of the District. In August 2001, President Wittrup and her husband George Carman closed escrow on a house in the City of Stockton and listed their Half Moon Bay residence for sale. Earlier this year, the Half Moon Bay residence

sold, and President Wittrup and Mr. Carmen leased an apartment located within the District. President Wittrup's driver's license, voter registration, State and Federal tax returns, and vehicle registration all list her address as within the District. She also states that at all times relevant to this matter she was a resident of the District, has resided within the District on a continuous basis, and has considered the District to be her place of residence.

While the amount of time a Director spends within the District may be an important policy issue, there does not appear to be any legal basis for the notion put forth by the Grand Jury's that, once elected, a director must spend "*most of her time*" in the District in order to remain in office. In fact, given the plain language of Section 30508, the intent appears to be to provide some flexibility to enable a director to remain in office when, for business or other reasons, he or she leaves the District for less than 180 days.

In summary, as a legal analysis, the Board of Directors believes that the Grand Jury report is flawed. And as a policy statement, while it appears to deal with issues which may confront an individual director whose place of residence has moved outside the District, and offers food for thought in that context, the Grand Jury Report deals with issues over which the District Board, as a decision-making body, does not have control.

2. Response to the Grand Jury's Recommendations:

Although the Board of Directors disagrees with the findings of the Grand Jury as detailed above, it has nevertheless implemented the recommendations contained in the Grand Jury Report as follows:

A. Recommendation: The Coastside County Water District Board of Directors should review and publicly clarify what constitutes a board vacancy under the law and the duties and responsibilities of the board when such a vacancy occurs.

The District has implemented the Grand Jury's recommendation. In addition to the meeting held on June 10, 2002, the Board considered the issue of "*what constitutes a board vacancy*" in November, 2001 and April, 2002 when it received and considered two separate reports from the District's legal counsel concerning President Wittrup's residency. The Board recognizes that the issue of what constitutes a board vacancy is specified by California Government Code section 1770 generally, and specifically with respect to the residency of a board member on a county water district, like CCWD, by Water Code section 30508. And the Board recognizes the District's legal obligations in the event of a Board vacancy are set forth at Government Code section 1780.

B. Recommendation: Members of the Coastside County Water District

Board of Directors should remember their public responsibilities and not manipulate the electoral process and thereby deny district voters their right to elect their representatives.

The Board of Directors has implemented this recommendation. The Board agrees with the statement that Board Members should "*remember their public responsibilities*" and not "*manipulate the*

electoral process and thereby deny district voters their right to elect their representatives."

C. Recommendation: The Coastside County Water District Board of Directors should ask Eleanor Wittrup to resign her office as her presence on the board goes against the intent of the law that requires residence in the district and creates the public perception that the governing process is being manipulated.

The Board of Directors has implemented this recommendation. The Board voted at the meeting of June 10, 2002 to "*ask Eleanor Wittrup to resign her office.*" The vote passed 4-0 with Director Wittrup abstaining. After the vote was taken Director Wittrup responded "*no*".

On behalf of the Coastside County Water District, I would like to thank you for your consideration of the foregoing and thank the Grand Jury for its important service to the community concerning these policy issues.

John Muller, President Ed Schmidt, General Manager
Coastside County Water District Coastside County Water District
Board of Directors

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