
ELK GROVE CITY COUNCIL THE HANDLING OF POLITICAL DISSENT

Issue

Do Councilman Michael P. Leary and other members of the Elk Grove City Council (EGCC) promote or allow the free expression of political dissent with respect to the activities or policies of the council?

Reason for the Investigation

The Grand Jury received complaints that Councilman Leary and other members of the EGCC engaged in conduct which, by its nature, was intended or designed to intimidate the free expression of political dissent with respect to the activities or policies of the council.

Method of Investigation

The Grand Jury received sworn testimony from the following:

- Constituents and residents of the City of Elk Grove
- Two members of the EGCC, including Councilman Leary

The Grand Jury reviewed video tapes of public meetings of the EGCC, and the Code of Ethics adopted at the April 27, 2005 city council meeting.

The Grand Jury obtained by, legal process, and reviewed an exchange of electronic mail between Councilman Leary and a constituent.

The Grand Jury consulted California state and federal appellate and Supreme Court cases bearing upon the conduct of a city council.

Background and Facts

The Grand Jury received a complaint that EGCC Councilman Leary, at a meeting of the city council on April 27, 2005, threatened to deny grant funds to any organization whose members publicly criticized the council with respect to an unrelated matter. Councilman Leary did, in fact, threaten to withhold funding from an organization, one or more members of which had expressed disagreement with the EGCC, to wit:

“I will be quite frank with a situation that grinds me the wrong way. Individuals in this community want to throw darts at this council and want to trash us and say things that are

inappropriate. And then on the other hand, want to come up with their hat in their hand asking for money for different programs they are involved with. I would like to say that I am not apt to fund things that those individuals sit on.”

Mayor Daniel Briggs interjected that board members might be making comments outside the scope of their board membership, and that organizations that solicit funds from the city should take more care when selecting their board members.

Councilman Leary continued:

“Common sense would kick in and say, ‘On one hand, I am beating them up in the paper, and another time I am sitting here asking them for money.’ I am putting that particular person on notice about how I am feeling.”

Other council members verbally indicated concurrence with Councilmen Leary and Briggs. At the May 11, 2005 EGCC meeting, one council member expressly disassociated herself from the remarks made at the April 27th meeting.

In the Grand Jury’s view, Councilman Leary and concurring members, by these remarks, compromised their duty to predicate their decisions based upon the public good, rather than for the purpose of impairing political dissent. It has been held by the courts of this state:

“Governing bodies of municipalities stand in a higher category, higher than that of mere employees and directors of a private corporation; whatever other functions they may be called upon to perform, members of a municipal council or other body are at all times trustees of the public welfare. Obviously, such trusteeship does not call for competition and strife between such bodies and the interested members of the public.” (*Los Angeles County v. City Council of Lawndale* (1962) 202 Cal. App. 2d 20, 24, *Hubble v. City of Los Angeles* (1956) 142 Cal. App. 2d 1, 5.)

The Supreme Court of the United States also has held that a funding decision by a public agency cannot be aimed at suppressing criticism. (*Legal Services Corp. v. Velazquez* (2001) 531 U.S. 533, 548-549.)

The EGCC, later in the same meeting of April 27, 2005, adopted an eleven point City Code of Ethics. This Code of Ethics was in response to a Sacramento County Grand Jury Report dated February 28, 2005 (www.sacgrandjury.org). One of these points states, “I treat my fellow city officials, staff, commission members and the public with patience, courtesy, civility and respect, even when we disagree on what is best for the community and its citizens.”

The Grand Jury is also in receipt of a complaint relating to comments by electronic mail from EGCC Councilman Leary to a constituent in response to the constituent’s earlier email critical of Councilman Leary’s action at a meeting of the city council on June 16, 2004. In his response to this email and to the constituent’s ongoing criticism, which he viewed as “anti-law enforcement,” he threatened to publicly expose a past misdemeanor conviction of the constituent.

At the time, Councilman Leary was employed as a Sergeant with the Sacramento County Sheriff's Department, and made the threat through official law enforcement channels of communication.

In the Grand Jury's view, Councilman Leary's attitude to political dissent by a constituent is inconsistent with our "... 'profound national commitment,' to the principal that 'debate on public issues should be uninhibited, robust, and wide open.'" (*Boos v. Barry (1988) 485 U.S. 312, 318.*) This profound national commitment, as applied to a city council, is codified in California in Government Code section 54954.3(c): "The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs or services of the agency, or of the acts or omissions of the legislative body."

The threat was even more egregious because it was made through official law enforcement channels, giving it the color of law.

Findings and Recommendations

Finding 1. Councilman Leary's comments in open session of a meeting of the EGCC on April 27, 2005 were inconsistent with the proper role of the legislative body of a local agency, in that the threat to deny funding was intended, designed and clearly perceived as a means of limiting political dissent with respect to the council's policies, procedures, programs or services.

Recommendation 1. Councilman Leary's comments and communications, which are the subject of this report, should be censured by the entire city council in open session.

Finding 2. With one exception, council members failed to disassociate from Councilman Leary's intimidating comments about council funding. Mayor Briggs' suggestion that boards carefully select board members confirms his agreement with Councilman Leary's threats.

Recommendation 2. Individual council members must clearly disassociate themselves from intimidating and unacceptable comments made, and behaviors expressed, by other members which are the subject of this report.

Finding 3. While the city council adopted a Code of Ethics, they did not put in place any enforcement procedures or consequences.

Recommendation 3. The city council should adopt procedures and policies related to the enforcement of the Code of Ethics.

Finding 4. Councilman Leary made threats through official law enforcement related electronic channels of communication to expose to the public a constituent's past.

Recommendation 4. Councilman Leary should refrain from using any official law- enforcement channel of communication to engage in any non law-enforcement related activity.

Response Requirements

Penal Code sections 933 and 933.05 require that specific responses to both the finding and recommendations contained in this report be submitted to the Presiding Judge of the Sacramento Superior Court by October 1, 2006:

- **The Elk Grove City Council. (1, 2, 3)**

The Grand Jury believes the public interest would be best served by, and residents of the City of Elk Grove deserve, a full and forthright response from Councilman Michael P. Leary to the Presiding Judge of the Sacramento Superior Court, and to the residents of Elk Grove.

- **Councilman Leary (1, 4)**