



2010 – 2011

Richard D. Frank
Foreman

Kimberly Ballew

Jack Brewer

Robert Cathaway

Linda Cook

Doris Duquette

Peter Granucci

Jacqueline Henry

Warren S. Jones

F. Richard Macy

John Mainland

Raymond Mortimer

Anthony Noce

Gordon Patterson

Guy Porter

Dwight Reynolds

Peggy Reynolds

Charlie Stowell

Judith Waters

1415 TRUXTON AVENUE, STE. 600
BAKERSFIELD, CA 93301
(661) 868-4797
FAX: (661) 321-0761
www.co.kern.ca.us/grandjury

Kern County GRAND JURY

April 21, 2011

Ms. Christine L. Frazier, Superintendent
Kern County Superintendent of Schools.
1300 17th Street.
Bakersfield, CA 93301

Dear Superintendent Frazier:

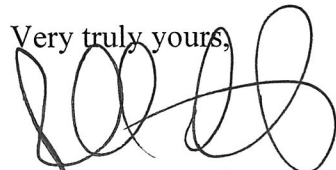
We are transmitting and sending one copy of the enclosed Grand Jury Final Report concerning the **GRAND JURY AUTHORITY REGARDING SCHOOL DISTRICTS** report in accordance with the provisions of Penal Code Section 933.05(f) which states as follows:

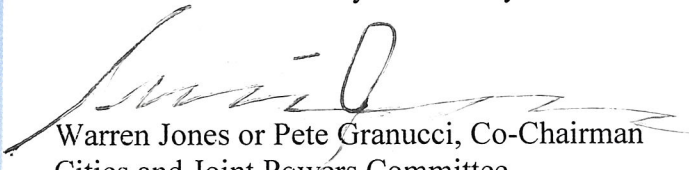
“A grand jury shall provide to the affected agency a copy of the portion of the grand jury report relating to that person or entity two working days prior to its public release and after the approval of the presiding judge. No office, agency, department, or governing body of a public agency, shall disclose any contents of the report prior to the public release of the final report.”

Please note that this report is confidential until public release. The grand jury will be releasing this report to the public on **April 26, 2011**. Accordingly, **you are instructed not to disclose the contents of the report until that time has run.**

Thank you for your consideration and cooperation.

Very truly yours,


Richard D. Frank, Foreman
2010-2011 Kern County Grand Jury


Warren Jones or Pete Granucci, Co-Chairman
Cities and Joint Powers Committee

GRAND JURY AUTHORITY REGARDING SCHOOL DISTRICTS

PURPOSE OF INQUIRY:

Sometimes when a school district disagrees with the findings or recommendations in a Grand Jury report, the district will categorically deny that the Grand Jury has the authority to investigate a school district. While the California Grand Juries have the authority to investigate school districts and schools within their respective jurisdictions, this authority is by no means unlimited. This report is issued to describe the nature and the extent of the Grand Jury's authority to investigate school districts and schools.

The Cities and Joint Powers Committee (Committee) of the 2010-2011 Kern County Grand Jury (Grand Jury) researched the issue of how much authority the Grand Jury has when it investigates school districts, pursuant to Penal Code § 933.5. It has come to the attention of the Grand Jury that some school districts are not aware that the State Legislature has granted grand juries throughout the State the power to investigate school districts. The State Attorney General rendered an official opinion on the extent to which grand juries may investigate school districts. This report describes these powers.

PROCESS:

The Committee researched the following:

1. California Penal Code § 933.5.
2. Compendium of Grand Jury Law—2010, California Grand Jury Association.
3. 78 Op Atty. Gen. 290, Sept 13, 1995 (Opinion 95-113).
4. Several school district final reports done by several Grand Juries over the years.
5. Several school district responses to final reports over the years.
6. Consultation with Kern County Counsel's Office and Office of the Kern County Superintendent of Schools.
7. Research at Kern County Law Library.

BACKGROUND:

Throughout California, County Grand Juries have found it important to investigate school districts from time to time. In sampling just five Southern California Grand Jury year-end reports for the fiscal year 2009-2010, two grand juries issued reports pertaining to school districts.

From 1978 through 2009, the Kern County Grand Jury has investigated 24 school districts, eight school programs, and 26 individual schools. As is true with all grand jury reports, each report contained findings and (in most cases) recommendations. Usually, the school districts have understood the Grand Jury's authority in investigating school districts.

When a Grand Jury report is issued concerning a school district, it will always contain findings, and often it will contain one or more recommendations for improving the procedures of the school district. Under Penal Code § 933(c), the school district must respond to the Grand Jury report if the report contains any recommendations. According to Penal Code § 933.05, the school district may disagree with a given finding or recommendation in its response, provided this is done in accordance with the aforementioned Penal Code section.

FACTS:

The State Attorney General's Opinion about the Authority of the Grand Jury to Investigate School Districts.

Throughout the history of California, governmental entities have sought the formal opinion of the California State Attorney General. Although these opinions do not have the same force as court decisions, they are used as the basis of governmental actions throughout the state because they are issued by the highest legal official of the State of California. The Attorney General's Office researches these opinions quite thoroughly, and these opinions are taken very seriously throughout the State.

An Attorney General's Opinion (Opinion) on the grand juries' authority to investigate school districts was issued on September 13, 1995. In order to make sure that the Opinion had not been altered in any way, the Committee researched it through the offices of the Kern County Law Library, using the procedure of 'Shepherdizing'. Using this procedure, the Committee found that there were no subsequent court decisions or Attorney General Opinions that altered the Opinion issued on September 13, 1995.

The issue that this Opinion attempted to answer was: "May grand juries investigate and report upon the manner in which a school district performs its duties and functions?"

The conclusion was: "A grand jury may investigate and report upon the manner in which a school district performs its duties and functions." It based this conclusion on a prior Attorney General's Opinion (46 Ops.Cal.Atty.Gen 144, 146 (1965)), which concluded: "...that a school district was a 'special purpose assessing or taxing district.'"

The Opinion was also based on a court decision rendered by the State Court of Appeals in Board of Trustees v. Leach (1968) 258 Cal.App.2d 281, 286-287, in which the court concluded that school districts came within the terms of Penal Code § 933.5.

The conclusion appears to be very broad in scope, allowing grand juries complete authority over what they can investigate when studying school districts. In the rationale, the Attorney General draws a distinction between **procedural** considerations and **substantive** concerns. The Attorney General begins: "...the investigative authority of a grand jury with respect to special districts encompasses the operational procedure of any such district."

The Attorney General then defines 'procedure' in the following manner: "Procedural considerations are to be carefully distinguished from substantive concerns. Therefore, the parameter of operational procedure does not extend to an inquiry as to the merit, wisdom, or expediency of substantive policy determinations which may fall within the jurisdiction and discretion of a particular district...."

The question then arises: what are substantive concerns (which are not subject to grand jury review) and what are procedural considerations (which are subject to grand jury review)? The Attorney General's opinion defines the terms as listed below:

Examples of Substantive Concerns (Not Subject to Grand Jury Investigation)

1. The selection of school sites.
2. The purchase and improvement of school property.
3. School district reorganizations (including such matters as the annexation of territory or the transfer of territory of the district to another district).
4. The substantive makeup of a course of study.
5. The actual selection of a particular officer or other school personnel.
6. Why a district chose a certain policy, such as, a truancy policy.
7. The nature of the financial controls a school board uses to prevent possible fraud or illegal expenditures.

The Attorney General's Opinion makes it clear that grand juries may investigate a district's or school's "sloppy business practices" and/or "operations." The Opinion gives several examples.

Examples of Procedural Concerns (Subject to Grand Jury Investigation)

1. The manner in which a school district decides upon its "course of study."
2. The way in which a school district determines the number of officers, teachers, and personnel.
3. The way in which a school district selects its officers, teachers, or other personnel.
4. The process, procedure, or manner of reaching a truancy decision.
5. The controls used over personnel authorized to expend school district funds.
6. The effectiveness of a school district's financial controls used to prevent possible fraud or other illegal expenditures.

The examples given by the Attorney General's Opinion are not meant to be all inclusive. The distinction between what can and cannot be investigated is whether an area of study is either a procedural (or operational) matter or a substantive matter.

FINDINGS:

- F1. Although the Grand Jury may investigate a school district, its investigation pursuant to Penal Code section 933.5 is confined to operational concerns as outlined in the discussion above.
- F2. School districts **shall** respond to Grand Jury investigations in the manner described under Penal Code § 933.05.

RECOMMENDATIONS:

No Recommendations

The Grand Jury solicits the good offices of the Kern County Superintendent of Schools to disseminate this report to all the school districts in Kern County.

The Kern County Superintendent of Schools 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 through the Kern County Library system and on the Kern County Grand Jury website: www.co.kern.ca.us/grandjury

NO RESPONSE REQUIRED