

Contact: Ron Tervelt
Foreman
(925)957-5638

Contra Costa County Grand Jury Report 1007

FIRST 5 COMMISSION

Can We Count on Accountability and Oversight?

**TO: First 5 Contra Costa Children and Families Commission
Contra Costa County Board of Supervisors**

SUMMARY

In 2009, the Contra Costa County Civil Grand Jury received significant complaints regarding the First 5 Contra Costa Children and Families Commission (First 5 Commission). While acknowledging the beneficial work that the First 5 Commission does to facilitate the provision of essential services to children and the families of children from prenatal to age five, the Grand Jury determined that the Commission would greatly benefit from closer County oversight and scrutiny. Specifically, the Grand Jury encourages the First 5 Board of Commissioners to exercise greater diligence to avoid conflicts of interest and the appearance of impropriety in the process of awarding contracts. In addition, the Grand Jury determined that the First 5 Commission would greatly benefit from regular manager and employee training on employment law and best policies and practices.

BACKGROUND

California Proposition 10 established the California Children and Families Act of 1998. The purpose of the Act was to promote the healthy development of children from prenatal to age five

and to ensure their readiness to enter school. The Act established the California Children and Families Program. The Program is funded by a tax on tobacco products. The Act requires participating counties to establish local county commissions that allocate the Program funds to local service providers. The Act further requires that the county commission adopt a Strategic Plan for the support and improvement of early childhood development. The Strategic Plan is to be reviewed annually.

Contra Costa County Ordinance Code Chapter 26-14 established the County's First 5 Commission to implement the provisions of Proposition 10. The Commission is composed of nine commissioners and nine alternates, all appointed by the County Board of Supervisors. The Commission's by-laws regarding Board membership require that:

- One commissioner shall be a member of the Board of Supervisors.
- Three commissioners shall be appointed from among persons responsible for management of certain County functions (i.e., children's services, public health services, behavioral health services, social services and substance abuse prevention and treatment services).
- The remaining five commissioners shall be appointed from:
 - recipients of services
 - educators specializing in early childhood development
 - representatives of a local child care resource, referral agency or coordinating group
 - representatives of a local organization for prevention or early intervention for families at risk
 - representatives of community based organizations that have the goal of promoting and nurturing early childhood development
 - representatives of local school districts

Pursuant to California Government Code Section 1091.3, California Government Code Section 1090 (which generally covers government employees' conflict of interest requirements) is partially inapplicable to the First 5 Commission. A First 5 commissioner can legally have a

significant financial interest in a provider contract. A Commissioner who has a financial interest in the awarding of a contract is required to disclose the interest and recuse him or herself from the vote. He or she is not required, however, to abstain from the discussion or to leave the room during the vote.

The First 5 Commission Strategic Plan is required to include recommendations to address:

- Areas of critical need
- Best and promising practices
- Goals and objectives
- Key strategies for implementing the plan

The Strategic Plan is to be written in consultation with:

- Community-based organizations
- Parents
- Professionals from government
- Private non-profit agencies
- Private business and academia

In fiscal year 2008-2009, the Commission had an annual budget of \$15,200,000, a Sustainability Fund of \$32,600,000, and a Special Reserve Fund of \$5,200,000. The Commission has a staff of 23 employees.

Complaints received by the 2009-2010 Grand Jury regarding the First 5 Commission alleged Board of Commissioners' self-dealing, conflicts of interest, misappropriation of funds in the awarding of contracts, general dereliction of fiduciary duties, and unethical conduct. In addition, complaints alleged illegal or inappropriate employment practices, including discrimination, manager bias and favoritism, sexual harassment and the cover-up of such behavior. Due to the number and nature of the complaints, the Grand Jury conducted an investigation.

METHODOLOGY

The Grand Jury interviewed First 5 Commissioners, employees and County personnel. Grand jurors attended a Commission meeting. The Grand Jury reviewed First 5 governing documents, including By-laws and Procedures, Conflict of Interest Code, Employee Handbook, Financial Statement, and Strategic Plan. In addition, the Grand Jury reviewed State statutes and County ordinances pertinent to the First 5 Commission. Finally, the Grand Jury researched policies, procedures and best practices of First 5 Commissions in other counties.

FINDINGS

1. The First 5 Commission of Contra Costa County is an independent, stand alone, decision-making agency, fully State funded and established by County ordinance. The Commission is neither a County department nor a Special District.
2. The Commission's funds are received from the State and disbursed through the County Treasurer's office.
3. The Commission's Sustainability and Special Reserve Funds are invested under the management of the County Treasurer.
4. The Commission's payroll is processed by the County and employees participate in the County's health and retirement benefit programs.
5. Grand Jury research revealed that, unlike First 5 Contra Costa, more than half of the First 5 Commissions in California operate as units of county government.
6. The Commission utilizes multiple contracts to meet its goals. Some of these contracts are awarded as a result of a Request for Proposal (RFP) process. An examination of the RFP documents and procedures revealed the process to be efficient and effective.
7. Since Commissioners who have a financial interest in a contract are allowed to be present during the discussion and vote on the contract, there is potential for improper or undue influence of Commissioners.
8. The Commission's Executive Committee meets monthly with the Executive Director. It is comprised of four members, two of whom are employed by agencies that receive significant funds from First 5 Contra Costa.

9. The Grand Jury investigation revealed that neither employees nor management clearly understand the First 5 Commission's policies and procedures related to employee complaints and grievances as well as other provisions specified in the Employee Handbook.
10. The Grand Jury investigation revealed that neither employees nor management receive regular, appropriate training regarding best or preferred employment practices.
11. There is no requirement that the First 5 Commission change auditors from time to time. However to enhance accountability it is prudent that the audit firm be changed periodically. First 5 has engaged the same independent auditor for more than five years.

CONCLUSIONS

The Grand Jury commends the First 5 Commission for the beneficial work it has done to provide essential services to children and the families of children from pre-natal to age five. The Grand Jury concludes the Commission would greatly benefit from closer County oversight and regular employee training. By following the Grand Jury's recommendations, the Commission can engender even greater confidence in its role in the community.

RECOMMENDATIONS

1. The Board of Supervisors shall appoint commissioners not affiliated with agencies most likely to be awarded significant funding, thereby minimizing perceptions of impropriety.
2. First 5 Commissioners having financial interests in contracts before the Board of Commissioners shall recuse and physically remove themselves from meetings while the contracts are being considered.
3. First 5 Commission shall select a new independent auditor through a competitive bid process.
4. First 5 Commission shall provide annual training to all employees on Employee Handbook procedures and provisions.
5. The Board of Supervisors shall pursue inclusion of the First 5 Commission as a unit of County government.

REQUIRED RESPONSES

Findings

Contra Costa County Board of Supervisors: 1-11
First 5 Commission Contra Costa County: 1-11

Recommendations

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First 5 Commission Contra Costa County: 1-5