

## **IT'S NOT OVER YET!**

### **A FAILURE TO COLLECT MENDOCINO COUNTY SUPERVISOR TRAVEL OVERPAYMENTS**

**JUNE 14, 2010**

#### ***Summary***

The Mendocino County Grand Jury, (GJ), is an independent body of 19 citizens that investigates all aspects of county government, special districts, and cities, to ensure effective government and that public monies are being judiciously handled.

The GJ may issue an accusation against public officials that may result in removal from office, if upheld by the court, according to Government Codes §3060-3063.

The 2009-2010 GJ agrees with the three previous GJs which questioned the refusal of the Mendocino County District Attorney, (MCDA), to enforce California Penal Code §932. For the past four years the GJ has investigated and pursued the reimbursement of monies owed the money-strapped County by Mendocino County Supervisors. The amount pursued may seem insignificant; however, this is an elected official who apparently ignored the law. The MCDA refused to uphold the California Penal Code §932, which gave the office full authority to order repayment of funds, citing prosecutorial discretion. One supervisor repaid travel reimbursement overcharges in full. Another supervisor agreed to repay the wrongfully claimed travel reimbursement, but reneged on the agreement. The debt to the county remains unpaid by one Supervisor.

#### ***Methods***

The 2009-2010 GJ reviewed previous GJ reports, (2006-2007, 2007-2008, and 2008-2009), reviewed transcripts of interviews, emails, witness statements, audio recordings, travel reimbursement forms, and County Auditor's records. The GJ interviewed County elected officials.

#### ***Background***

California Penal Code §932 entitled, *Order directing district attorney to institute actions for recovery of money due county*, states: "After investigating the books and accounts of the various officials of the county, as provided in the foregoing sections of this article, the grand jury may order the district attorney of the county to institute suit to recover any money that, in the judgment of the grand jury, may from any cause be due the county. The order of the grand jury, certified by the foreman of the grand jury and filed with the clerk of the superior court of the

county, shall be full authority for the district attorney to institute and maintain any such suit.”

Government Code §3060 states: “An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district or any humane officer, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors, or at least eight grand jurors in a county in which the required number of members of the grand jury is 11”.

Government Code §3061 states: “The accusation shall state the offense charged in ordinary and concise language, and without repetition”.

Government Code §3062 states: “The accusation shall be delivered by the foreman of the grand jury to the district attorney of the county, unless he is the officer accused”.

Government Code §3063 states: “The district attorney shall have a copy of the accusation served upon the defendant, and by notice in writing shall require the accused to appear before the superior court of the county, at a time stated in the notice, and answer the accusation. Appearance shall not be required in less than 10 days from the service of the notice. After service, the original accusation shall be filed with the clerk of the court”.

The only remedy if an elected official is found guilty on Government codes 3060-63, is removal from office.

### ***Findings***

1. The Mendocino County Supervisor who admitted a travel expense overpayment never reimbursed the County for that overpayment.
2. California Penal Code §932 clearly states that the district attorney shall “institute and maintain an action” to recover money due to the County.
3. California Penal Code §932 also states that the order of the grand jury shall be full authority for the district attorney to institute and maintain any such suit.
4. In June, 2007, the MCDA was ordered by the GJ, to recover money owed the County from BOS travel overpayment, in accordance with Penal Code §932.
5. The MCDA chose not to institute the civil proceedings against a Supervisor which were cited in PC §932.
6. The MCDA’s response to a 2009-2010 GJ request to enforce Penal Code §932 and recover overpayments of travel funds made to a Mendocino County Supervisor, was not made because the MCDA stated that prosecutorial discretion allowed the MCDA’s office not to pursue this matter.

7. upon further clarification by the GJ, the MCDA stated that "there is no jurisdiction in Superior Court to enforce the GJ's requested action contained in previous GJ recommendations to recover such funds, because the amount claimed was less than \$5,000".
8. The Mendocino County Board of Supervisors, (BOS), voted to institute a stipend for travel in-lieu of actual reimbursement effective January 1, 2008.
9. The Mendocino County BOS' stipend for travel increased their compensation, retirement benefits, and County payroll costs.
10. Fourth and Fifth District Supervisors have refused to accept the 10% salary reduction mandated by the BOS, for all other County employees.
11. BOS base salary is \$68,000 per year, not including perks such as travel stipends, health insurance benefits, a wellness program and other benefits.

### ***Recommendations***

The Grand Jury recommends that:

1. all members of the BOS accurately report travel expenditures and immediately reimburse the Mendocino County taxpayers for any unearned or inaccurately reported overpayments, as required of any other county employee. (Finding 1)
2. the Mendocino County Board of Supervisors eliminate the travel stipend and revert to actual expenses. (Findings 8-9, 11)
3. the Mendocino County Board of Supervisors resolve that the 10% salary reduction they mandated, applies to all members of the Mendocino County Board of Supervisors, as well as all other Mendocino County employees. (Finding 10-11)
4. in the absence of the recovery of BOS travel overpayment(s), the Mendocino County District Attorney pursue collection of those funds. (Findings 1-7)
5. the Mendocino County Auditor bill any Supervisor for any overpayment incurred. (Findings 1, 4)

### ***Discussion***

It appears to the GJ that elected officials in Mendocino County may file fraudulent claims of less than \$5,000 without repercussion from any County department, including the MCDA's office.

The Mendocino County BOS voted to institute a stipend for travel in-lieu of actual reimbursement effective January 1, 2008. The current stipends paid to the BOS

for in-county travel are:

First District	\$500 per month
Second District	\$250 per month
Third District	\$1,000 per month
Fourth District	\$900 per month
Fifth District	\$900 per month

This travel stipend increased BOS compensation, retirement benefits, and created additional payroll and unfunded liability costs to Mendocino County taxpayers.

Due to the current financial status of Mendocino County, the Board of Supervisors mandated a 10% pay reduction for all County employees except themselves. First, Second, and Third District Supervisors immediately accepted the 10% reduction, while the Fourth and Fifth District Supervisors have steadfastly refused the pay reduction mandated for all other County employees.

The 2009-10 Mendocino County GJ Foreman has requested a California Attorney General's opinion concerning the apparent discrepancy between Penal Code 932, and the District Attorney's use of prosecutorial discretion in this matter.

***Required Response***

Mendocino County Board of Supervisors (Findings 1, 8-11; Recommendations 1-3)

Mendocino County District Attorney (Findings 1-7; Recommendation 4)

Mendocino County Auditor (Finding 1; Recommendation 5)