



OFFICE OF THE DISTRICT ATTORNEY

COUNTY OF VENTURA, STATE OF CALIFORNIA

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District Attorney

June 7, 2024

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Dear Board Members and Ms. Lee:

On August 27, 2020, the Ventura County District Attorney (VCDA) received a complaint concerning the Bell Canyon Community Services District (BCCSD.) BCCSD was formed in 1984 under the Community Services District Law (Gov. Code, §§ 61000 et seq. [CSD principal act]) to provide a local public agency for the unincorporated Bell Canyon community. The complaint alleged misuse of public monies by BCCSD. Since BCCSD's five-year Municipal Service Review (MSR) by the Ventura Local Agency Formation Commission (LAFCO) was soon due when this complaint was received, the VCDA awaited the results of the MSR before investigating the complaint.

LAFCO is a state-mandated, independent agency with responsibilities that include encouraging the efficient provision of government services by, and encouraging the orderly formation and development of, special districts and other local agencies based in Ventura County. (Gov. Code, §§ 56000 et seq. [LAFCO law].) Pursuant to Government Code Section 56430(a), every five years, LAFCO prepares MSRs while reviewing and updating the spheres of influence of local agencies. During this MSR process, LAFCO makes written determinations regarding the factors set forth in Government Code Section 56430(a).

On March 16, 2022, LAFCO completed its most recent MSR for BCCSD. The MSR included a detailed description of BCCSD's authority, provision of services, budgets, and other issues. As explained in the MSR, both LAFCO law and the CSD principal act provide that any service authorized in a community service district's principal act, but that was not being provided as determined by LAFCO, is considered a "latent service or power." (Gov. Code, §§ 56050.51 and 61002(h)2). Both LAFCO law and the CSD principal act provide that the exercise of a latent service or power by a community services district such as BCCSD requires LAFCO approval pursuant to a statutory process. (Gov. Code, §§ 56375(a)(1) and 61106(a)).

The MSR corroborated some of the allegations contained within the August 27, 2020, complaint submitted to the VCDA. The MSR concluded that BCCSD exceeded its authority under LAFCO law and the CSD principal act and appears to have expended public monies without authorization under applicable law. In particular, the MSR concluded, among other things, that:

- BCCSD lacks legal authority to provide recreational services through, and related funding to, the Bell Canyon Association (BCA) which is a private, non-profit homeowners' association formed under and governed by the Davis-Stirling Act (Civ. Code, §§ 4000 et seq.) serving residents of the same gated community that comprises BCCSD's geographic jurisdiction. The MSR also concluded that BCCSD's provision of recreational services through, and related funding to, the BCA violates LAFCO law, the CSD principal act, and appears to be an improper use of public funds.
- BCCSD lacks legal authority to acquire, construct, improve, maintain, or operate recreation facilities, including parks and open space, and lacks legal authority to provide or fund these services/functions itself, by contract with any person or entity, or by providing funding to the BCA for this purpose. The MSR also concluded that BCCSD's granting of funds to the BCA to improve and maintain BCA-owned recreation facilities including a park, trails, and restrooms, violates LAFCO law, the CSD principal act, and appears to be an improper use of public funds.
- BCCSD lacks legal authority to directly provide traffic enforcement/patrol services or funding to the BCA for this purpose. The MSR also concluded that BCCSD's granting of funds to the BCA for traffic enforcement/patrol services violates LAFCO law, the CSD principal act, and appears to be an improper use of public funds.

The MSR, at page 20, summarizes these issues as follows:

“The expenditure of public funds is proper only insofar as they are authorized, explicitly or implicitly, by legislative enactment. As explained earlier, the BCCSD has no express or implied legal authority to provide/fund recreation programs through the [BCA], and no legal authority to provide/fund services related to recreation facilities, including the maintenance of and improvements to parks and trails. Further, it has no authority to provide traffic enforcement services itself. Therefore, the

granting of funds to the [BCA] for these services appears to be an improper use of public funds.”

Following a criminal investigation of the allegations contained in the August 27, 2020, complaint, VCDA has concluded the BCCSD board of directors (Board) appears to have misused public monies in potential violation of California Penal Code Section 424 during the 2015-2022 period reviewed. The potential violations identified in Section A below are not exhaustive and address the most prominent issues of concern.

A. Unauthorized Use of Public Funds

Public officials are not free to spend public funds for any “public purpose” they may choose but must instead utilize appropriated funds in accordance with the legislatively designed purpose. (*Stanson v. Mott* (1976) 17 Cal.3d 206.) “[T]hose who willfully accept the responsibility to manage or handle public money cannot remain recklessly ignorant of the nonpenal law regulating their actions. Rather, duty requires the person to acquaint himself with the facts.” *Stark v. Superior Court* (2011) 52 Cal.4th 368, 403 (internal quotation marks omitted.) The appropriation or transfer of public monies without legal authority constitutes a criminal offense when done with *knowledge* that the use is prohibited by law. (*Stark* at 397.)

1. BCCSD’s Unauthorized Use and Transfer of Public Funds to BCA

As part of its criminal investigation, the VCDA executed search warrants on various financial institutions to obtain BCCSD financial records. These records memorialized BCCSD financial activity from June 24, 2015, to January 31, 2023, and consisted of 1,754 transactions. These institutions held public monies entrusted to BCCSD for the implementation of its authorized community services district functions. From July 23, 2015, to October 20, 2022, BCCSD made 84 payments totaling \$111,735 to the BCA.

A VCDA forensic accountant (CPA/CFF, CFE, CIRA) examined the financial records. This forensic accountant is certified in financial forensics and is also a certified fraud examiner. The forensic audit revealed potentially unlawful transfers of public monies from BCCSD to the BCA.

As described in the MSR, BCCSD provided public monies to the BCA primarily to fund recreation programs, recreation facilities, and traffic enforcement/patrol services. The VCDA concurs with the MSR’s conclusions, as summarized above, that BCCSD lacked legal authority to grant or gift such funds to the BCA for recreation programs, recreation facilities, and traffic enforcement/patrol services. Consequently, the transfer of BCCSD’s

public funds to the BCA, a private entity, for these purposes appears to have occurred absent legal authority, in violation of Penal Code Section 424. To the extent BCCSD provided its public monies to BCA for other purposes that BCCSD itself was not authorized to perform, or that could not be performed on its behalf by BCA, such other expenditures would also appear to lack legal authority.

The BCCSD's provision of apparently unrestricted public funds to BCA, in the absence of legal authority, is particularly troubling because, as a private entity, BCA is not subject to public oversight, transparency, or accountability regarding its use or disposition of the funds.

Since BCCSD is on notice that the above-described BCCSD expenditures lack legal authority because they were not used for authorized BCCSD public functions and services and/or could not be conveyed to BCA for carrying out such functions and services, BCCSD's continued expenditure of funds for such unauthorized functions and services and/or provision of such funds to BCA may subject Board members to criminal prosecution under Penal Code Section 424, Misappropriation of Public Funds. Section 424 is a felony.

This apparent unauthorized use of public funds may have occurred because of an inaccurate belief that the Board could spend public monies in any manner benefitting BCCSD's constituents, i.e., the Bell Canyon community. The VCDA also notes that, in BCCSD's February 13, 2023, letter to LAFCO addressing BCCSD's actions taken in response to the 2022 MSR, the letter indicated that, as of that date, BCCSD represented to have stopped utilizing BCA staff and services to hold recreation events and was not providing funding to the BCA for that purpose. The letter also represented that for fiscal year 2022-23, BCCSD's budget did not include any funds for BCA parks, trails or other facilities maintenance or operations, and that BCCSD had not expended any funds for such purposes.

In light of the foregoing considerations, the VCDA is suspending its criminal investigation and will take no further action at this time. However, Board members now possess knowledge that such expenditures are not authorized by law. These topics were also discussed with Board members Richard Levy and Eric Wolf at the Office of the District Attorney on February 22, 2024. With this requisite knowledge, future BCCSD unauthorized use of public monies may result in criminal prosecution against Board members.

2. Unauthorized BCCSD Credit Card Purchases

BCCSD Board member Richard Levy and former BCCSD General Manager Dennis Zine incurred 59 restaurant charges totaling \$4,044 between June 24, 2015, and January 31, 2023. Most of these charges were incurred at local restaurants and thus did not involve BCCSD-related business travel or otherwise appear directly related to the performance of official BCCSD duties.¹

According to VCDA's February 22, 2024, interviews with BCCSD officials, many of these charges were incurred at local restaurants following BCCSD public meetings. No expense forms or reports were prepared documenting the necessity of public expenditures for such meals which provided a personal benefit to the charging BCCSD cardholders. No factual basis establishing these as necessary expenses incurred in the performance of official BCCSD duties was offered during this interview process.

Any use of BCCSD funds – including but not limited to credit card purchases – must be for an authorized BCCSD public function or service and cannot be for a BCCSD official's personal use or benefit. Expenditures for personal uses, or that are not otherwise directly related to the performance of official BCCSD duties, are not legally authorized and may subject the individual to criminal prosecution under Penal Code Section 424, or under Penal Code Section 487, Grand Theft.

Since the time period during which these credit card expenditures were incurred, as indicated in its above-mentioned February 13, 2023, letter, BCCSD has adopted a Policy Manual that includes a specific policy regarding credit card usage. This Policy 6.4 recognizes that "Use of credit cards for any personal or non-District-related business is strictly prohibited and in violation of State law (e.g., Gov. Code § 8314; Penal Code § 424, Political Reform Act, as applicable)." This policy also provides: "All purchases and use of the District credit card shall be accompanied by a receipt and description of the District-related purpose within one month of the credit card charge." Going forward, BCCSD and its officials should fully comply with this credit card policy to ensure legal compliance.

These apparent unauthorized BCCSD credit card expenditures may have occurred based on a misunderstanding about when BCCSD officials were entitled to spend public monies

¹ Lovi's Delicatessen was the most frequented establishment, with \$1,726 incurred over 21 charges. This restaurant is located 6.5 miles from BCCSD's office at 30 Hackamore Lane.

on meals and other expenditures that appear to provide a personal benefit. BCCSD officials now possess knowledge that use of credit cards for any personal or non-District-related business is prohibited and in violation of state law. Moreover, BCCSD has taken a significant step toward addressing this issue by adopting its aforementioned credit card policy. As such, the VCDA is suspending its criminal investigation and will take no further action at this time while continuing to monitor this issue.

B. Potential Conflicts of Interest Arising from Concurrent Membership on BCCSD and BCA Governing Boards

During the 2015-2022 period when BCCSD appears to have transferred public funds to the BCA without legal authorization, multiple BCCSD Board members concurrently served on BCA's governing board. This dual membership created potential conflicts of interest for the individuals under the Political Reform Act's conflict-of-interest provisions (Gov. Code, §§ 87100 et seq.) and under California's prohibition of contractual conflicts of interest as set forth at Government Code Section 1090 et seq.

That is because BCCSD officials have a potentially disqualifying economic interest in the BCA if the BCA is a source of income or gifts to the BCCSD official. Thus, if a BCCSD official (i.e., Board members, employees, or contractors) receives income or gifts from the BCA, the BCA would be a potentially disqualifying economic interest to the BCCSD official as to BCA-related matters before the BCCSD. (Gov. Code, §§ 87103(c) and (d); *see also* FPPC Adv. I-98-209, 1998 WL 671300.)

On March 22, 2013, the VCDA sent a letter to BCCSD concerning a citizen complaint. This letter, in part, stated that public confidence would be enhanced "by eliminating the appearance of impropriety" created by a BCCSD Board member also serving on the BCA governing board. The VCDA letter noted the government has the "right to absolute, undivided, uncompromised allegiance of public officials." (Citing *People v. Honig* (1996) 48 Cal.App.4th 289, 324-325.) We understand that certain Board members have since inaccurately characterized this 2013 letter as the VCDA's endorsement of such concurrent service. That is not true. As recognized in our 2013 letter regarding conflict-of-interest matters, while an individual serving in these concurrent governing roles would not be a per-se conflict of interest or present an incompatibility of public office, the VCDA continues to maintain that public confidence would be enhanced, and the potential for individual conflicts of interest reduced, by avoiding such dual roles.

Note that the FPPC and VCDA have concurrent jurisdiction to prosecute violations of State conflict-of-interest laws, and each agency may have different interpretations and enforcement positions regarding them and their application.

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Conclusion

The VCDA will continue monitoring BCCSD expenditures and related activities to ensure BCCSD officials' compliance with applicable laws prohibiting misappropriation of public funds and conflicts of interest.

Sincerely,



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