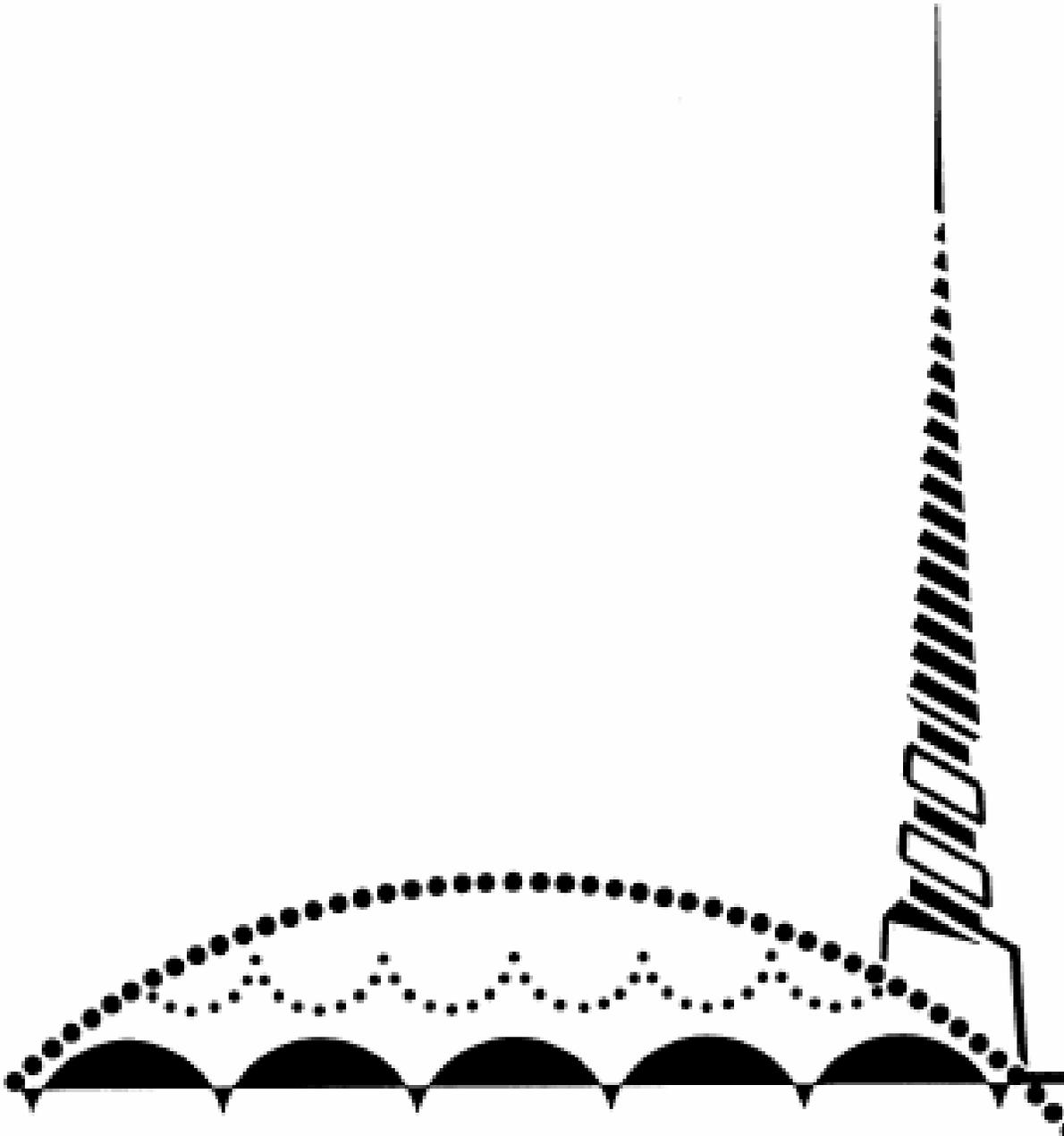
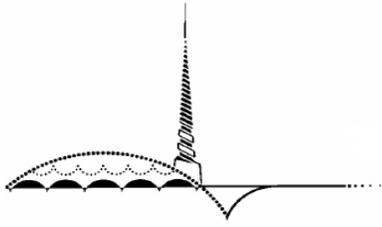


2005-2006 MARIN COUNTY CIVIL GRAND JURY

Agendizing Responses to Grand Jury Reports

May 26, 2006





Agendizing Responses to Grand Jury Reports

SUMMARY

Civil Grand Juries in California act as the public's watchdog by investigating and reporting on the affairs of local government. Grand Juries issue reports and California law requires responses from governing bodies, including the Board of Supervisors, city and town councils, school boards, and special district boards.

Penal Code Section 933 and the Ralph M. Brown Act require that responses to Grand Jury reports be placed on public agendas, so they can be discussed and acted upon in public meetings. The current Grand Jury utilized a 2004-2005 Grand Jury report to determine if governing bodies in Marin County were placing the responses on agendas for council and board meetings so that they could be discussed and acted upon in public meetings.

The Grand Jury found that seven municipalities and the County Board of Supervisors complied with their legal obligations to agendize their responses, but four municipalities did not.



The Grand Jury also determined that some municipalities, while technically complying with the Penal Code and the Brown Act, placed their responses on the consent calendar of the agenda. As a consequence, there was no encouragement for public discussion concerning their responses to the Grand Jury report.

The Grand Jury recommends that the governing bodies adopt procedures that require responses to Grand Jury reports be placed on their public agendas rather than their consent calendars.

BACKGROUND

Civil Grand Juries in California act as the public's watchdog by investigating and reporting on the affairs of local government. Each of California's 58 counties, including Marin County, impanels a Civil Grand Jury which serves for one year. Civil Grand Juries

may investigate the operations of the county as well as the municipalities and special districts and must investigate public prisons within their respective counties.

The Civil Grand Jury submits a report of each completed investigation with findings and recommendations to the presiding judge of the Superior Court. After the judge has reviewed the report for compliance with the law, it is distributed to the appropriate officials and governing bodies.

All elected boards, municipal councils and elected officials are required to respond to Grand Jury reports by addressing the specific findings and recommendations in the report. This law is contained in California Penal Code Section 933(c).

“No later than 90 days after the Grand Jury submits a final report on the operations of a public agency subject to its reviewing authority, the governing body of the public agency shall comment to the presiding judge of the superior court on the findings and recommendations pertaining to matters under control of the governing body ...”

The Ralph M. Brown Act requires that deliberations and actions of governing bodies be conducted at properly agendized public meetings. The intent is to guarantee the public’s right to actively discuss important issues in meetings of local legislative bodies. The responses by governing bodies to Grand Jury findings and recommendations are subject to the Brown Act.

The Grand Jury was concerned that responses to prior year reports by some municipalities and the Board of Supervisors might not have been in compliance with the agendizing requirements of the Brown Act. Accordingly, the Grand Jury undertook this investigation to determine whether they were in compliance.

APPROACH

The Grand Jury reviewed the specific processes used by governing bodies in responding to a 2004-2005 Marin Grand Jury report that required responses from the town or city councils of the eleven Marin municipalities and from the Board of Supervisors of Marin County.

The Grand Jury investigated the procedures that were followed by each municipality upon receipt of the Grand Jury report and how those governing bodies examined, analyzed, and drafted their responses. The Grand Jury also sought to determine which official actually wrote the response.

The Grand Jury reviewed responses from municipalities to reports as well as agendas and minutes of council meetings by Internet and interviewed seven city and town managers.

DISCUSSION

County Counsel for Marin County, in a written opinion dated November 8, 2005, stated that responses to Grand Jury reports from governing bodies must be announced with properly posted advance agendas and acted upon in an open public meeting pursuant to the Ralph M. Brown Act. (See Appendix A)

A review of the County Board of Supervisors' numerous responses in recent years indicates that all of them have been deliberated and acted upon in open and agendized meetings.

A review of the responses of the eleven municipalities to the 2004-2005 report mentioned above produced mixed results. Seven municipalities agendized and voted on their responses at an open council meeting. Four municipalities did not properly agendize their responses.

In interviews with the city and town managers of the four non-compliant municipalities, the Grand Jury found no intent to willfully violate laws or procedures. The lack of compliance in all cases stemmed from oversight or misunderstanding. All four managers indicated that in the future they intend to conform to the requirement to agendize their responses to Grand Jury reports.

Of the seven municipalities that properly agendized their response, a number of them placed the item on consent calendars. Consent calendars are typically used for minor items that a governing body is willing to vote on without discussion or open deliberation. By placing their responses on the consent calendar and avoiding public discussion, these municipalities technically complied with the Brown Act but may not have complied with the spirit of the law.

To the extent that The Grand Jury's instructions for responses have been perceived as confusing or insufficient in providing guidelines for responding entities, it is the Grand Jury's intention to provide clearer guidelines for responses to future Grand Jury reports.

FINDINGS

- F1. Governing bodies must consider and approve their response to a Grand Jury report at a properly agendized public meeting in order to be in compliance with California Penal Code Section 933 and the Ralph M. Brown Act.
- F2. The Marin County Board of Supervisors has consistently responded to Grand Jury reports at properly agendized public meetings.
- F3. Some of Marin's eleven municipalities have considered and approved their responses to the Grand Jury report at properly agendized public meetings. Others have not.
- F4. Municipalities that did approve their responses at an agendized public meeting did so with the item listed and approved on a consent calendar. While this

technically complies with legal requirements, it may not best serve the public interest to relegate an important public issue to a consent calendar.

RECOMMENDATIONS

The Grand Jury recommends as follows:

- R1. That all Marin governing bodies (Board of Supervisors, city or town councils, school boards and special district boards) adopt procedures that require their responses to Grand Jury reports be placed on their public meeting agendas in compliance with Penal Code Section 933 and the Ralph M. Brown Act in order to provide opportunity for public discussion.
- R2. Though not required, all governing bodies should place Grand Jury responses on their public agendas rather than their consent calendars.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses as follows:

From the following governing bodies:

- City and Town councils: F1, R1, R2
- Marin County Board of Supervisors: F1, F2, R1, R2
- The boards of each of the Special Districts: F1, R1, R2
- Marin County Board of Education: F1, R1, R2
- The boards of each of the Marin County school districts: F1, R1, R2

The comment or response of the governing body must be conducted in accordance with Penal Code section 933(c) and subject to the notice, agenda and open meeting requirements of the Brown Act.

The California Penal Code Section 933(c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

APPENDIX A

Inter-office memorandum from Office of County Counsel to 2005-2006 Marin County Civil Grand Jury, November 8, 2005, titled “Responses to Grand Jury Reports.”

BIBLIOGRAPHY

The Ralph M. Brown Act: California Government Code Sections 54950 et seq. (available at www.cafc.ca.gov/PDF/brownact.pdf)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.

APPENDIX A

INTER-OFFICE MEMORANDUM
Office of County Counsel

TO: Catherine McKown, Chair
2005-2006 Marin County Grand Jury

FROM: Patrick Faulkner, County Counsel *PKF*

DATE: November 8, 2005

RE: Responses to Grand Jury Reports

You have requested that this office advise the Grand Jury on the methods by which public entity responses to Grand Jury reports may be generated. Specifically, I am informed that it appears to current Grand Jury members that public entity responses to prior Grand Jury reports have been generated without consideration by the governing board of the public entity at a meeting noticed and convened pursuant to the Brown Act. It is the opinion of this office that California Penal Code section 933(c), which states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body,..." requires a formal, noticed action by the governing body. There are no court decisions interpreting this statute.

In 1998, this office opined that a separate response from an appointed department head, in addition to a response formally adopted by the Board of Supervisors, was not required by the Penal Code. As part of that opinion, this office also advised that a response prepared by a department or department head without formal adoption by the Board of Supervisors does not comply with the requirements of the Penal Code. As a consequence, since that time responses from the Marin County Board of Supervisors have been prepared by the affected department with the assistance of the County Administrator, and then presented to the Board of Supervisors at one of its weekly noticed public meetings for adoption by the Board as its own response.

The Ralph M. Brown Act requires that any action of a public entity governing board occur only at a public meeting noticed and agenzized according to its terms (Government Code section 54950 et seq.) Since the Penal Code requires a governing board to "comment" on a grand jury report, it is the opinion of this office that the collective act of a governing body generating the "comment" is within the definition of a "meeting" in the Brown Act, such that it must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act. If no such meeting has occurred, then it would appear that the governing body of the responding entity has not itself "commented" on the Grand Jury report, as required by the Penal Code.

Please don't hesitate to contact me if you have any questions on the above.