



BEST BEST & KRIEGER
ATTORNEYS AT LAW

Indian Wells
(760) 568-2611

Irvine
(949) 263-2600

Los Angeles
(213) 617-8100

Manhattan Beach
(310) 643-8448

3390 University Avenue, 5th Floor, P.O. Box 1028, Riverside, CA 92502
Phone: (951) 686-1450 | Fax: (951) 686-3083 | www.bbklaw.com

Ontario
(909) 989-8584

Sacramento
(916) 325-4000

San Diego
(619) 525-1300

Walnut Creek
(925) 977-3300

Washington, DC
(202) 785-0600

Joseph Ortiz
(951) 826-8291
joseph.ortiz@bbklaw.com

July 20, 2018

VIA U.S. MAIL

Riverside County Grand Jury
P.O. Box 829
Riverside, CA 92502

Re: Response to 2017-2018 Grand Jury Report
Coachella Valley Public Cemetery District

Dear Grand Jury :

Enclosed herewith please find the above-referenced response to your 2017-2018 Grand Jury Report of Coachella Valley Public Cemetery District.

Please feel free to contact the undersigned with any additional questions you may have.

Sincerely,

Joseph Ortiz
of BEST BEST & KRIEGER LLP

JTO:lrc

Enclosure

cc: Client

**RESPONSE TO
2017-2018 GRAND JURY REPORT
Coachella Valley Public Cemetery District (CVPCD)**

Following is the response to the above-referenced Grand Jury Report.

BOARD FUNCTIONS
FINDING NO. 1:

Through statements made during sworn testimony to the Riverside County Grand Jury by Board Members and the General Manager, it was determined that two of the three Board Members, in cooperation with the General Manager, purposely excluded the third Board member from attending Board meetings and from taking part in any Board decisions since March of 2017.

The General Manager has formed the opinion that one Board member has created a hostile work environment among the other Board members and employees of the CVPCD. With the cooperation of the Board President, they commissioned a private investigative firm to conduct an investigation directed at that Board member with a goal of the member's removal or resignation.

RESPONSE: **Respondent agrees with this finding, with the exception of the conclusion that the purpose of the investigation was removal.**

Prior to proper utilization of counsel, the Board was under the misunderstanding that a person under investigation was properly excluded from discussions related to that investigation. This misunderstanding appears to have arisen from the fact that larger boards often form *ad hoc* personnel committees to coordinate with staff on sensitive investigations. While the Board and the General Manager met for the purpose of facilitating the investigation, and while it is clear that the General Manager had strong opinions about what the investigation would conclude, the investigation was intended to provide neutral fact-finding. In other words, the investigation was not implemented for the purpose of facilitating removal of the subject Board member.

RECOMMENDATION NO. 1

Mediation to resolve the issues that exist between Board members and the General Manager is needed. If mediation efforts fail, replacement of the General Manager and/or dissolution of the Board should be considered.

RESPONSE: **Respondent agrees with this recommendation.**

Respondent has retained attorney Jamie Wrage of the firm *Stream Kim Hicks Wrage Alfaro* to act as mediator for relations between the Board members and the General Manager. Ms. Wrage attended the Board meeting on June 20, 2018, in order to make introductions.

LEADERSHIP AND TRAINING

FINDING NO. 2:

The Board suffers from a lack of leadership. The current President, as well as the majority of the members, has received little training to address their duties and responsibilities as Board members.

RESPONSE: Respondent agrees with this finding related to the lack of Board training to address duties and responsibilities.

Respondent agrees that Board members suffer from a lack of training. As of the date of this response, Board member Coronel has attended a significant amount of training regarding conflicts of interest, general manage evaluations, good governance, Brown Act compliance, District liability, harassment avoidance, ethics, and much more.

Counsel, staff, and the Board are working together to identify training opportunities. Currently, several appointments are pending to the Board. Following appointment, the Board anticipates providing training to all Board members on duties and responsibilities.

RECOMMENDATION NO. 2:

The President and Board members should be required to complete training, at District expense, that is offered by the California Association of Public Cemeteries, the California Special Districts Association, and the Special District Leadership Foundation.

Additionally, Board members should discuss and agree upon appropriate training as needed. Certificates of completed training should be maintained at the CVPCD office.

RESPONSE: Respondent agrees with this recommendation.

As of the date of this response, Board member Coronel has attended training related to Governance Foundations, Setting Direction/ Community Leadership, Board's Role in Finance & Fiscal Accountability, and Board's Role in Human Resources. Those courses were attended in February of 2018.

Counsel, staff, and the Board are working together to identify training opportunities. Currently, several appointments are pending to the Board. Following appointment, the Board anticipates providing training to all Board members on duties and responsibilities.

GENERAL MANAGER

FINDING NO. 3:

The General Manager, an employee, is setting the policies and directing the decisions of the Board.

RESPONSE: **Respondent agrees in the sense that the past Board regularly deferred to staff recommendations.**

In this case, the District is awaiting the appointment of three new Board members. Because a majority of the Board will be new in the near future, it cannot be inferred that the new Board will allow the General Manager to set policy or direction. In the past, the Board regularly sought and adhered to staff recommendations.

RECOMMENDATION NO. 3:

The CVPCD Board should reaffirm their position as decision makers. By best practices, the Board should supervise the Manager and the Manager should supervise the other employees.

RESPONSE: **Respondent agrees with this recommendation.**

Counsel, staff, and the Board are working together to identify training opportunities. Currently, several appointments are pending to the Board. Following appointment, the Board anticipates providing training to all Board members on duties and responsibilities.

TRANSPARENCY

FINDING NO. 4:

The CVPCD has no website on the internet, which makes public access to meetings, agenda items and minutes difficult. A search of "CVPCD" reveals commercial sites for various purposes, such as finding a gravesite, or getting directions to the Cemetery.

RESPONSE: **Respondent agrees with this finding.**

RECOMMENDATION NO. 4:

Create a computer website which communicates CVPCD meetings and agendas to the public. The California Special District Association recommends over 15 items to be included on District websites to promote transparency and public access.

RESPONSE: **Respondent agrees with this recommendation.**

Respondent is currently researching the cost and design options related to maintaining a web site for the purpose of promoting transparency and public access in conformity with the California Special District Association's recommendations.

THE BROWN ACT

FINDING NO. 5:

Under sworn testimony, Board members have described violations of the Ralph M. Brown Act committed by the CVPCD. Meetings were conducted without notifying the third Trustee. Agendas were not always sent to Trustees at least 72 hours in advance of meeting times

RESPONSE: **Respondent agrees that meetings were conducted without notifying the third Trustee.**

As stated in Respondent’s response to Finding No. 1, Respondent’s Board members were under the misunderstanding that meetings could be held with two Board members in the context of an *ad hoc* personnel committee. The Board members were not aware that a meeting of the majority of the Board members *required* full and proper notice as well as compliance with the *Brown Act*. Staff, however, physically posted the agendas at the District location more than 72 hours in advance of meeting time.

RECOMMENDATION NO. 5:

Post all public meeting notices as required by law. Notify all Board members of anticipated meetings and agendas in a timely manner. Conduct meetings in a transparent fashion and encourage public participation.

RESPONSE: **Respondent agrees with this recommendation.**

COMMUNICATIONS

FINDING NO. 6:

To date, the only effort made by either Board members or employees of the CVPCD to resolve the district problems has been the commission of the private investigation and the composition of a letter dated March 20, 2017 to the District Supervisor, which was never sent or delivered.

RESPONSE: **Respondent disagrees with this finding.**

Prior to the issuance of this Grand Jury Report, Respondent was embroiled protracted issues related to its counsel, which resulted in the issuance of a notice of withdrawal of representation by prior counsel, the law firm of *Jeppson & Griffin LLP* on March 27, 2018. Prior to the issuance of the Grand Jury Report and in the context of this withdrawal of counsel, Respondent sought and retained its current counsel for the purpose of providing guidance related to the resolution of these problems. Additionally, inquiry was made to Special District Risk Management Authority as to the potential for mediation prior to the Grand Jury Report.

Contemporaneously, in conjunction with the private investigation, Respondent also received and evaluated numerous employee complaints related to the Board member who was the subject of the investigation.

RECOMMENDATION NO. 6:

Establish a line of communication with Riverside County Board of Supervisors as well as Mentor Managers and Mentor Trustees designated by the California Association of Public Cemeteries, to obtain advice should future Board problems arise.

RESPONSE: **Respondent agrees with this recommendation.**

DISTRICT RESIDENCES

FINDING NO. 7:

The General Manager and the Head Mechanic are currently living in residences on the cemetery property. This practice has gone on for years and is considered a benefit of the positions. This benefit exists without the usual requirements such as rental or lease agreements or payments.

RESPONSE: **Respondent agrees that the General Manager and Head Mechanic current live on premises. Respondent disagrees with the finding that the benefit does not require least agreement or payments.**

The Board approved a policy on April 13, 2010 that required the General Manager and Head Mechanic to live in residence as a condition of employment and for the convenience of the District. Per the policy, any employee living on premises must “[s]ign a lease or occupancy agreement with the District.” (Housing Policy, attached as Exhibit 1.) Per the general District policies, such housing is deemed *de minimus* value and the employee is responsible for any taxes which is found due and owing by reason of the employee’s occupancy. (District Handbook, p.34, Section 8.5.4 [Housing].), attached as Exhibit 2.)

RECOMMENDATION NO. 7:

Consider the appropriateness of bestowing a benefit such as housing without accounting for such compensation as part of the employee's salary. Require some type of use or rental agreement to be signed by the employees. Such a document would clarify issues of liability, insurance, maintenance, and utility usage.

RESPONSE: **Respondent agrees with this recommendation.**

BOARD EXPANSION
FINDING NO. 8

The CVPCD operates with a three-member Board of Trustees, which lends itself to the possibility of manipulation by a strong member, General Manager, or Clerk of the Board. Very few Special District Boards are composed of less than five Trustees because of inherent problems.

RESPONSE: **Respondent agrees that a small board lends itself to potential *Brown Act* violations.**

RECOMMENDATION NO. 8:

Expand to either a five or seven member Board of Trustees.

RESPONSE: **Respondent agrees with this recommendation.**

On June 12, 2018, the Board adopted Resolution 91 requesting that the Riverside County Board of Supervisors increase the number of Board members from three (3) to five (5) members.