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September 18, 2000

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Honorable Charles W. Campbell, Jr.
Presiding Judge of the Superior Court
Ventura County Hall of Justice
800 South Victoria Avenue
Ventura, California 93009

Re: Response to 1999-2000 Ventura County Grand Jury Report titled "LAFCO
and the Santa Paula Expanded Sphere of Influence"

Dear Judge Campbell:

The 1999-2000 Grand Jury required that the County Counsel respond to Findings 4, 5 and 6, Conclusions 1 and 2, and Recommendation 3 of its report titled "LAFCO and the Santa Paula Expanded Sphere of Influence." This is the County Counsel's response.

Finding 4 states:

The commissioner's original handbook states that "the policies and standards for annexations will also be applied to sphere applications." The County Counsel memorandum of October 21, 1999 indicates: "such authority for sphere amendments may be reasonably implied from the Act" (Cortese-Knox). Notwithstanding this implication, this policy recital was deleted at County Counsel's suggestion.

RESPONSE

The report implies that the "commissioner's original handbook" was an official document of the Local Agency Formation Commission ("LAFCO" or "the commission"). It was not. Subsequent to the County Counsel's memorandum of October 21, 1999, referenced in the finding, it was discovered by LAFCO's then executive officer that the handbook had been prepared by a prior executive officer in 1994, but had never been submitted to the commission for adoption. Thus, the quoted statement, "the policies and standards for annexations will also be applied to sphere applications," was never the adopted policy of LAFCO. The Grand Jury's implication to the contrary is incorrect.

The Grand Jury's finding misconstrues the advice of the County Counsel to LAFCO's executive officer in the October 21, 1999, memorandum. The full paragraph from which the Grand Jury excerpted the phrase "such authority for sphere amendments may be reasonably implied from the Act," states as follows:

Section XXIII. B.2. at the top of page 32 states that the policies and standards for annexations will also be applied to sphere applications. It seems imprudent to apply the same standards to these different processes, since the purposes are different, the Commission does not have the same statutory authority, and the specific statutory authority to adopt *standards* is given only for changes of organization and reorganization. While such authority for sphere amendments may be reasonably implied from the Act, it would not include application of the current standards the Commission has for annexations. I recommend this provision be deleted.

The phrase quoted by the Grand Jury refers to the *lack* of specific statutory authority to adopt standards for spheres of influence, and is intended to emphasize that while the commission probably has some implied authority to adopt standards for sphere of influence applications, it certainly cannot apply the same standards to those applications as it does to changes of organization and reorganization, including annexations.

Finding F-4 is incorrect.

Finding 5 states:

As of October 1999, the Commissioner's Handbook provided (Section XXIV): "Major amendments to a sphere of influence will only be considered after a comprehensive review of the entire sphere." County Counsel advised in its memo of October 21, 1999, with reference to this provision: "It is, of course, a source of attack for those who oppose a sphere amendment." This policy recital was deleted from the handbook at County Counsel's suggestion.

RESPONSE

This finding is erroneous because it mischaracterizes the full advice of the County Counsel to LAFCO's executive officer, and ignores the fact that the handbook was not an official commission document. The paragraph in the County Counsel's memorandum, from which the Grand Jury excerpted and incorrectly quoted only a part of one sentence, states:

Under section XXIV., in the first paragraph at the top of page 36, the policy states that, "Major amendments to a sphere of influence will only be considered after a comprehensive review of the entire sphere. . . ." What is a "comprehensive review?" I have not found a definition of this term, and it is, of course, a source of attack for those who oppose a sphere amendment. It would appear appropriate to either define this term, or delete it.

Contrary to the implication in the report, it is plain from the full context of the County Counsel's memorandum that the "source of attack" was the failure of the unadopted handbook to define the term "comprehensive review," not the idea of such a policy. Moreover, although the *exact* language of the quoted policy is not in the handbook adopted by the commission on December 15, 1999, a closely similar policy is. Chapter Three, section D. of the adopted handbook contains the following policy at page 18:

It is the policy of Ventura LAFCO that Major amendments to a sphere of influence will only be considered after a review of the entire sphere, which may include a complete environmental analysis

Finding F-5 is incorrect in every respect.

Finding 6 states:

The original handbook (page 36) states: "General/specific plan references must include policy identification in all seven (7) mandated elements, as required by Title 7, Chapter 6500 of the Government Code." County Counsel's advice to the commission, as stated in the October 21, 1999, memo was: "This is another fertile area for those who object to a (sphere) amendment....it should be deleted."

RESPONSE

The Grand Jury has again excerpted only a part of the County Counsel's advice to LAFCO's executive officer (contrary to the statement in the finding, the memorandum was addressed to the executive officer, not to the commission). The paragraph containing the advice states, in pertinent part:

This is another fertile area for those who object to an amendment. Unless the Commission actually requires proof of this for every sphere amendment, it should be deleted.

The second quoted sentence refers to underlying communications by the executive officer which described the fact that the policy referred to in the Finding had *never* been followed by the commission, and its source was unknown. It was the attempt to track the genesis of this policy (and similar ones) that led the executive officer to the discovery that a prior executive officer had authored the handbook but had never submitted it to the commission for review and adoption. Thus, that unadopted handbook contained numerous policies which had never been followed. Had the Grand Jury fully investigated, it would have found that: (a) the handbook and this policy had never been adopted by the commission; (b) neither the executive officer nor the commission had ever followed the policy; and (c) due to its ambiguity, no one really knew what the policy meant.

Because the Grand Jury omitted a critical part of the County Counsel's advice to the executive officer, it mischaracterized the import of that advice, and the Finding is therefore incorrect.

Conclusion 1 states:

The above-recited revisions and deletions suggest that a majority of the Ventura County LAFCO commissioners do not understand and appreciate their mandate under the Cortese-Knox legislation establishing their agency. As expressed earlier, in the opinion of the Attorney General (Ops. Atty. Gen. 118, 3/8/77), spheres of influence are required to be a comprehensive, detailed planning tool and as such should contain, among other things, an inventory of the maximum service area and service capacity of each affected local government agency.

RESPONSE

The commission is composed of elected county, city and special district representatives who are appointed by their peers, and public members who are appointed by the other members, all of whom devote many hours in preparing for monthly commission meetings. Most attend annual CALAFCO conferences to learn more about their duties and responsibilities. All of them understand and appreciate the statutory mandate of the commission. Certainly, with respect to the matters addressed in the report, the commission members fully appreciated their duties and responsibilities and acted in accordance with the Cortese-Knox Act.

The Act and the role of the commission are complex. That complexity is reflected in the recent Report of Commission on Local Governance in the 21st Century and the pending comprehensive revisions to the Act contained in Assembly Bill 2838. Unfortunately, the report of the Grand Jury reflects a misapprehension of the commission's powers and duties, and its quasi-legislative role in establishing boundaries for cities.

The correct citation to the Attorney General's opinion referred to by the Grand Jury is 60 Ops.Cal.Atty.Gen. 118, 119 (1977). Although the definition of a sphere of influence has changed somewhat since that opinion was issued, it remains a boundary planning tool for LAFCO, and LAFCO is informed through that tool and others of the maximum service area and capacity of the local governmental agencies whose boundaries it regulates.

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Conclusion 2 states:

The commissioner's interpretation of the Cortese-Knox legislation, as reflected in its amended handbook, appears to have diluted its effectiveness in implementing its legislative mandate.

RESPONSE

This conclusion, founded as it is on incorrect facts, is itself incorrect. There is no "amended handbook"; the handbook adopted on December 15, 1999, was the first official handbook of the commission. That which the Grand Jury refers to as the "original handbook" was never the adopted policy of the commission, but was instead the unadopted work of a previous executive officer. It had never been exposed to critical review by the commission, the public, or legal counsel. Since the presumed fact on which the Grand Jury bases its conclusion is false, the conclusion is false.

It would appear as though the Grand Jury has interpreted the law based on several misunderstandings and some faulty assumptions. The commission's effectiveness in implementing its legislative mandate has in no way been diluted by any of its actions with respect to the handbook. The only apparent reason for conclusion C-2 is the Grand Jury's disagreement with the commission's exercise of its legislative discretion.

Recommendation 3 states:

LAFCO should organize an ad hoc committee of all interested parties to determine which, if any, deleted handbook standards should be re-incorporated to adequately preserve the original mandate of the Cortese-Knox legislation.

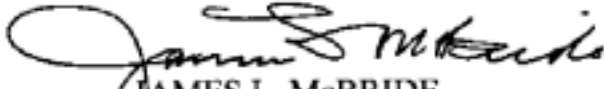
RESPONSE

The commission is certainly free to convene a committee to review its policies and procedures; however, I would note that the mandate of the Cortese-Knox Act is contained and preserved in the legislation itself, and not in policies adopted by an individual LAFCO. I would also point out, once again, that there really are no "deleted handbook"

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standards which could be "re-incorporated." The policies for which the Grand Jury argues were never official LAFCO policies—never adopted by LAFCO.

Very truly yours,


JAMES L. McBRIDE
County Counsel

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