

Supervisor's Discretionary Fund March 13, 2001

Summary

This Grand Jury report addresses the operation of a funding source in Marin County under the discretion and control of the Board of Supervisors, which the Grand Jury has identified as the "Supervisors Discretionary Fund" ("The Fund"). For the fiscal year ending June 30, 2001, it is anticipated that a total of \$625,000 will be disbursed from The Fund. Our review of the current operation of The Fund identified the following major concerns:

- the failure of the Board of Supervisors to subject the anticipated disbursements from The Fund to the normal budgeting approval process;
- a questionable legal interpretation by County Officials which allows the County to circumvent the prohibition of gifts or contributions of public funds to organizations and entities without the requisite performance of comparable value-added services to the benefit of the County; and
- creation of a system of disbursements which by the very nature of the process, gives rise to a real or perceived political patronage system beholden to members of the Board of Supervisors and its high level County personnel.

It is important to point out that nothing in the Grand Jury's comments on this issue is meant to detract from the fine work and reputation of the many organizations, which were the recipients of the questioned disbursements. It is safe to say that their participation was consistent with the procedures they presumed were in place at the County level.

The Grand Jury also examined whether The Fund should exist at all and if it is to exist in the future, what safeguards should be put in place.

Background

The Grand Jury became aware that the Board of Supervisors was directing County funds to various governmental units, agencies and non-profit organizations within the County, which disbursements appeared to be outside the normal budgetary approval process. Subsequent inquiries and investigation led to the discovery of The Fund which for the 2000/2001 fiscal year has the potential for disbursements of approximately \$625,000 in total, or when divided equally among each of the five Supervisors, \$125,000 each.

The official budget of the County of Marin contains no reference to any category of the type which the Grand Jury has identified as the Supervisor's Discretionary Fund. Rather, County Officials have represented to the Grand Jury that the \$625,000 is included within a category entitled "235-Miscellaneous Various". Attached as [Appendix A](#) are the pages of the 2000-2001 budget document describing the 235-Miscellaneous Various" account and it can be seen that there is neither a reference to a Supervisor's Discretionary Fund nor is there any line item designating an appropriation of \$ 625,000. [1](#)

Methodology

It came to the attention of the Grand Jury that a Supervisors Discretionary Fund existed. Thereupon, an inquiry was made to the Auditor-Controller's office and the existence of The Fund was confirmed. The existence of an Agreement For Services between the County and the recipient supporting the expenditure was also disclosed to the Grand Jury .

Interviews were conducted with selected County supervisors where details of The Fund and the process for disbursement were confirmed.

Interviews were conducted with the County Administrator, the Auditor-Controller and the County Counsel's office to review the process and administration of The Fund.

Finally, the Grand Jury reviewed various county files and records pertaining to disbursements from The Fund and the relevant supporting Agreement For Services.

Discussion

Who are the beneficiaries of disbursements from The Fund?

The attached [Appendix B](#) discloses the expenditures for the approximate six-month period from July 1, 2000 through January 2001, sorted by Supervisor sponsorship. A significant portion of these expenditures is distributed to non-profit corporations qualifying as charitable organizations, public entities such as municipalities, schools and special districts or to other organizations such as individual homeowner groups.

California law prohibits a gift of public funds by a county government (California Constitution, Article 16, Section 6). In order for disbursements from The Fund to be in accordance with California law, there must be services provided to the County by the organization or public entity receiving the funds. In addition, there is a requirement that the payment of public funds be for a public purpose and for the benefit of the citizens of Marin County.

In order to address the legal requirement imposed by the California Constitution (referred to in the preceding paragraph), the County has developed a standard contract for services, which accompanies any disbursement from The Fund. Attached as Appendix C (not available in electronic form) is a blank copy of the document referred to as an Agreement For Services. The Agreement For Services is prepared by the County of Marin Auditor-Controller's Office using information provided by the County Administrator. It has been represented to the Grand Jury that each entity that receives monies from The Fund signs the Agreement and acknowledges receipt of funds from the County. A review of selected agreements on file at the Auditor-Controller's office indicates very general, and somewhat standard wording where the receiving entity contracts or promises to perform some service that benefits the County of Marin.

Interviews with both the County Auditor-Controller and the County Administrator indicated that there is no audit or follow-up procedures with the entities that receive funds in order to ensure that the County money was used for the purpose for which it was received and that it provided benefit to the County.

What is the basis for distributions from The Fund?

The disbursements, contributions, or allocations (by whatever description one wants to call the giving of these funds) do not appear to be on any uniform or consistent basis. There are no written guidelines; both large and small organizations receive disbursements from The Fund. Some organizations are well known and recognized within the County of Marin, but others appear to be little known and small in nature. Various cities and special districts receive funds from time to time, usually for specific projects. The nature of the organizations receiving funds and the amounts of individual disbursements varies widely as disclosed in Appendix B, which was provided by the County Administrator's office at the request of the Grand Jury.

Is there public scrutiny in connection with the Fund process?

According to the County Auditor-Controller, disbursements from The Fund above \$5,000 are included on the Board of Supervisor's regular agenda or the Consent Calendar. For disbursements of \$5,000 or less, the County Administrator, upon request of an individual supervisor, will authorize the issuance of a check by the Auditor-Controller's office. Thereafter, on a monthly basis, the disbursements of \$5,000 or less are "bundled" together and placed on the Board of Supervisor's Consent Calendar and are routinely approved post-issuance.

While it is true that the disbursements appear in the public record, the reality is that there is little, if any, discussion of these items during the approval process.

Is there an overall awareness by County taxpayers of the Fund?

The Grand Jury believes there is little, if any, general public knowledge concerning the existence or size of The Fund. It appears that selective or aggressive organizations, through word of mouth or past practice,

know about the existence of The Fund and informally ask or apply to a particular Supervisor for funding. Organizations without such knowledge do not know about the existence of The Fund, much less know how to request participation.

Should there be a Supervisor's Discretionary Fund?

The Grand Jury considers the operation of The Fund (currently estimated at approximately \$125,000 per Supervisor or a total of \$625,000) as a form of political patronage that exists in Marin County. It should be noted that no instances of political abuse came to the attention of the Grand Jury during this investigation. However, the existing process is not a healthy one. Whether real or perceived, alliances are created and favors carried by reason of such payments.

Should tax dollars from residents of Marin County be appropriated to select organizations within the County **without full public disclosure and knowledge**? The Grand Jury's answer is an emphatic NO!

Assuming for the moment that The Fund is considered acceptable public policy, the Grand Jury then believes that there must be better public knowledge and advertisement of the existence of The Fund and the opportunity for all worthwhile organizations (both public and charitable) to avail themselves of the benefits. The Grand Jury calls upon the Board of Supervisors to establish such a process including the challenge to the recipient organizations to demonstrate that the citizens of Marin County are receiving fair value benefit for the expenditure. Clearly, the Board of Supervisors is responsible for ensuring that the entities receiving funds are actually providing the services set forth in the Agreement For Services, which the recipient entities contracted to provide.

Findings

1. There exists within the County of Marin budget under the heading "235-Miscellaneous Various" a non-designated, non-described source of monies, which the Grand Jury has identified as the Supervisor's Discretionary Fund. Present plans call for the disbursement of approximately \$625,000 (allocated evenly among the five County Supervisors) for the current fiscal year ending June 30, 2001. As of January 31, 2001, approximately \$250,000 has been disbursed. The amount tends to vary from year to year; the amount expended for the year ended June 30, 2000 being approximately \$420,000 (See [Appendix D](#)).
2. According to County officials, the Supervisor's Discretionary Fund has existed for at least ten years.
3. According to information provided by County officials, both the overall amount of the Supervisor's Discretionary Fund and the individual expenditures from it are not subject to the normal process of budgetary review and debate.
4. The Agreement For Services entered into between the County and the recipients are, in many instances, very vague and subjective as to the services to be provided in support of the contractual arrangement. The Agreement For Services appears to be the vehicle selected in order to avoid the issue of the prohibition of a gift or donation of public funds by the County.
5. There is no general public knowledge of the existence of the Supervisor's Discretionary Fund. While the Grand Jury questions the need for The Fund, or in some cases the borderline legality of certain of the disbursements, many worthwhile non-profit organizations and public entities within the County are not knowledgeable about the existence of The Fund and therefore may not apply for money from The Fund.
6. There is no provision for auditing or follow-up by the Board of Supervisors (or their designee) to ensure that recipients of disbursements from The Fund have performed their contractual obligations.
7. The Grand Jury has noted instances of public acknowledgement of disbursements from The Fund in the name of individual supervisors with no recognition that these were County funds. Thus, the potential exists for confusion or abuse in acknowledging the donor (the County should be acknowledged and not the individual supervisor).

Recommendations

1. Given the potential for political patronage abuse and the vagueness in interpretation of benefits being provided to the County noted in a number of the Agreement For Services arrangements with the recipients, the Grand Jury is of the opinion that continued existence of The Fund in its present

- form is unacceptable. The current Supervisors Discretionary Fund should be eliminated; or in the alternative The Fund should be broken out as a separate line item in the budget and subjected to the normal budgetary review process.
2. Further, if the existence of The Fund is continued, the Board of Supervisors should cause procedures to be adopted which:
- allow all eligible organizations to participate in an application process that will ensure that all worthwhile organizations (both public and non-profit) have an opportunity to apply for monies from The Fund;
 - provide for an accurate and detailed Agreement For Service to ensure that organizations or public entities receiving funds actually perform a meaningful service benefiting the citizens of Marin County;
 - assume responsibility to institute provisions for auditing and/or a follow-up procedure to assure that the services contracted for by the County in connection with these fund disbursements have been performed in accordance with their contractual obligations; and
 - provide a written communication accompanying each disbursement from The Fund stating that these are County funds and any acknowledgement by the recipient should reflect this fact.

Request for Responses

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses to each and all of the above Findings and Recommendations from the Board of Supervisors, Auditor-Controller, County Administrator and County Counsel.