



Santa Clara County Office of Education

Charles Weis, Ph.D.
County Superintendent of Schools

Informational Bulletin

District Business & Advisory Services

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Bulletin: 12-019

Date: July 22, 2011

To: District Fiscal Directors
District Chief Business Officers

From: Nimrat Johal

Re: Clarification of Gift of Public Funds

We have had questions arise about the types of expenditures that constitute a gift of public funds. In an effort to provide guidance, we have put together some information that we believe will be helpful.

California Government Code section 8314 (Attachment A) and the California Constitution (Attachment B) prohibit the gift of public funds to any individual, corporation or another government agency. California Education Code section 44015 (Attachment C) defines the kinds of expenditures that would not be considered a gift of public funds.

Attachment D is an informational bulletin issued by the Tulare County Counsel School Team and provides detailed information on the issue of gift of public funds. Also attached (Attachment E) is the State Controller's report on the Bell City audit in which this issue is raised.

ATTACHMENT A

GOVERNMENT CODE

8314. (a) It is unlawful for any elected state or local officer, including any state or local appointee, employee, or consultant, to use or permit others to use public resources for a campaign activity, or personal or other purposes which are not authorized by law.

(b) For purposes of this section:

(1) "Personal purpose" means those activities the purpose of which is for personal enjoyment, private gain or advantage, or an outside endeavor not related to state business. "Personal purpose" does not include the incidental and minimal use of public resources, such as equipment or office space, for personal purposes, including an occasional telephone call.

(2) "Campaign activity" means an activity constituting a contribution as defined in Section 82015 or an expenditure as defined in Section 82025. "Campaign activity" does not include the incidental and minimal use of public resources, such as equipment or office space, for campaign purposes, including the referral of unsolicited political mail, telephone calls, and visitors to private political entities.

(3) "Public resources" means any property or asset owned by the state or any local agency, including, but not limited to, land, buildings, facilities, funds, equipment, supplies, telephones, computers, vehicles, travel, and state-compensated time.

(4) "Use" means a use of public resources which is substantial enough to result in a gain or advantage to the user or a loss to the state or any local agency for which a monetary value may be estimated.

(c) (1) Any person who intentionally or negligently violates this section is liable for a civil penalty not to exceed one thousand dollars (\$1,000) for each day on which a violation occurs, plus three times the value of the unlawful use of public resources. The penalty shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the Attorney General or by any district attorney or any city attorney of a city having a population in excess of 750,000. If two or more persons are responsible for any violation, they shall be jointly and severally liable for the penalty.

(2) If the action is brought by the Attorney General, the moneys recovered shall be paid into the General Fund. If the action is brought by a district attorney, the moneys recovered shall be paid to the treasurer of the county in which the judgment was entered. If the action is brought by a city attorney, the moneys recovered shall be paid to the treasurer of that city.

(3) No civil action alleging a violation of this section may be commenced more than four years after the date the alleged violation occurred.

(d) Nothing in this section shall prohibit the use of public resources for providing information to the public about the possible effects of any bond issue or other ballot measure on state activities, operations, or policies, provided that (1) the informational activities are otherwise authorized by the constitution or laws of this state, and (2) the information provided constitutes a fair and impartial presentation of relevant facts to aid the electorate in reaching an informed judgment regarding the bond issue or ballot measure.

(e) The incidental and minimal use of public resources by an elected state or local officer, including any state or local appointee, employee, or consultant, pursuant to this section shall not be subject to prosecution under Section 424 of the Penal **Code**.

ATTACHMENT B

CALIFORNIA CONSTITUTION
ARTICLE 16 PUBLIC FINANCE

SEC. 6. The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the State now existing, or that may be hereafter established, in aid of or to any person, association, or corporation, whether municipal or otherwise, or to pledge the credit thereof, in any manner whatever, for the payment of the liabilities of any individual, association, municipal or other corporation whatever; nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 3 of Article XVI; and it shall not have power to authorize the State, or any political subdivision thereof, to subscribe for stock, or to become a stockholder in any corporation whatever; provided, further, that irrigation districts for the purpose of acquiring the control of any entire international water system necessary for its use and purposes, a part of which is situated in the United States, and a part thereof in a foreign country, may in the manner authorized by law, acquire the stock of any foreign corporation which is the owner of, or which holds the title to the part of such system situated in a foreign country; provided, further, that irrigation districts for the purpose of acquiring water and water rights and other property necessary for their uses and purposes, may acquire and hold the stock of corporations, domestic or foreign, owning waters, water rights, canals, waterworks, franchises or concessions subject to the same obligations and liabilities as are imposed by law upon all other stockholders in such corporation; and

Provided, further, that this section shall not prohibit any county, city and county, city, township, or other political corporation or subdivision of the State from joining with other such agencies in providing for the payment of workers' compensation, unemployment compensation, tort liability, or public liability losses incurred by such agencies, by entry into an insurance pooling arrangement under a joint exercise of powers agreement, or by membership in such publicly-owned nonprofit corporation or other public agency as may be authorized by the Legislature; and

Provided, further, that nothing contained in this Constitution shall prohibit the use of state money or credit, in aiding veterans who served in the military or naval service of the United States during the time of war, in the acquisition of, or payments for, (1) farms or homes, or in projects of land settlement or in the development of such farms or homes or land settlement projects for the benefit of such veterans, or (2) any business, land or any interest therein, buildings, supplies, equipment, machinery, or tools, to be used by the veteran in pursuing a gainful occupation; and

Provided, further, that nothing contained in this Constitution shall prohibit the State, or any county, city and county, city, township, or other political corporation or subdivision of the State from providing aid or assistance to persons, if found to be in the public interest, for the purpose of clearing debris, natural

materials, and wreckage from privately owned lands and waters deposited thereon or therein during a period of a major disaster or emergency, in either case declared by the President. In such case, the public entity shall be indemnified by the recipient from the award of any claim against the public entity arising from the rendering of such aid or assistance. Such aid or assistance must be eligible for federal reimbursement for the cost thereof.

And provided, still further, that notwithstanding the restrictions contained in this Constitution, the treasurer of any city, county, or city and county shall have power and the duty to make such temporary transfers from the funds in custody as may be necessary to provide funds for meeting the obligations incurred for maintenance purposes by any city, county, city and county, district, or other political subdivision whose funds are in custody and are paid out solely through the treasurer's office. Such temporary transfer of funds to any political subdivision shall be made only upon resolution adopted by the governing body of the city, county, or city and county directing the treasurer of such city, county, or city and county to make such temporary transfer. Such temporary transfer of funds to any political subdivision shall not exceed 85 percent of the anticipated revenues accruing to such political subdivision, shall not be made prior to the first day of the fiscal year nor after the last Monday in April of the current fiscal year, and shall be replaced from the revenues accruing to such political subdivision before any other obligation of such political subdivision is met from such revenue.

INFORMATION RE: GIFT OF PUBLIC FUNDS

CALIFORNIA CODE / EDUCATION CODE SECTION 44015 / Awards to Employees
(Guidelines regarding what is not considered a "Gift of Public Funds")

See also, Tulare County Counsel School Team legal opinion.

44015. (a) The governing board of a school district may make awards to employees who do any of the following:

(1) Propose procedures or ideas that thereafter are adopted and effectuated, and that result in eliminating or reducing district expenditures or improving operations.

(2) Perform special acts or special services in the public interest.

(3) By their superior accomplishments, make exceptional contributions to the efficiency, economy, or other improvement in operations of the school district.

(b) The governing board of a school district may make awards to pupils for excellence.

Before any awards are made pursuant to this section, the governing board shall adopt rules and regulations. The board may appoint one or more merit award committees made up of district officers, district employees, or private citizens to consider employee proposals, special acts, special services, or superior accomplishments and to act affirmatively or negatively thereon or to provide appropriate recommendations thereon to the board.

Any award granted under the provisions of this section that may be made by an awards committee under appropriate district rules, shall not exceed two hundred dollars (\$200), unless a larger award is expressly approved by the governing board.

When an awards program is established in a school district pursuant to this section, the governing board shall budget funds for this purpose but may authorize awards from funds under its control whether or not budgeted funds have been provided or the funds budgeted are exhausted.

NOTES:

1. Any award that is received by an employee is taxable income and the amount of the award would be added to the employee's annual W2 statement.



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School Districts May Not Make Gifts of Public Funds

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June 27, 2006

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I. Gifts of Public Funds are Prohibited

A. Rule

The California Constitution prohibits the gift of public funds to any individual, corporation, or even to another government agency.¹

B. Public Purpose.

Expenditures of school funds must be for a direct and primary public purpose to avoid being a gift. "In determining whether an appropriation of public funds or property is to be considered a gift, the primary question is whether the funds are to be used for a "public" or a "private" purpose. If they are for a "public purpose", they are not a gift within the meaning of [§6 of art. XVI]."²

C. Incidental Benefit.

If an expenditure serves a primary public purpose, it is not a gift even if it incidentally benefits an individual.³

II. When Does an Expenditure Serve a Primary Public Purpose?

A. Legislative Determination.

Courts generally defer to a legislative body's determination of public purpose within its jurisdiction as long as its determination is reasonable and not arbitrary.⁴

B. Statutory Authorization.

School District expenditures determined to be a public purpose are generally authorized by statute.⁵

C. Jurisdiction.

An approved public purpose must be one within the scope of a school district's jurisdiction and purpose.⁶ A school district's jurisdiction does *not* extend to the aid to the indigent and the like, or the promotion of social welfare, though these may be lawful public purposes for other agencies.

1. Educational Benefit. To justify the expenditure of public funds, a school district governing board must determine that the expenditure will *benefit the education of students within its schools*:

- a. Expenditures that most directly and tangibly benefit students' education are more likely justified.
- b. Expenditures motivated by *personal* motives are not justified, even if they have been a long-standing custom locally or are based on benevolent feelings.

D. Legal Consideration is Required.

To avoid a finding that an expenditure is a gift of public funds, courts require a legal "consideration" received by the government agency in exchange for the public funds expended.

1. What is "legal consideration?"

A *legal consideration* is a return commensurate with the value of the expenditure. Whether applied to contracts or the expenditure of public funds, this means "you get what you paid for."

2. Adequacy of the Consideration. To avoid being classified as a gift, the amount and type of the consideration given in exchange must be "adequate;" it cannot be merely "nominal."⁷

3. Types of Legal Consideration. Consideration may be *tangible* or *intangible* so long as it aims at serving a legitimate public purpose.

a. Tangible expenditures. Examples include public school buildings, teacher salaries, or textbooks.

b. Intangible expenditures. Examples which have been upheld when made within a public agency's jurisdiction, include use of public funds to encourage patriotism, protect public health, support destitute persons, and to support veterans in return for their service to the country.⁸ While these ordinarily relate to programs by other state or federal agencies, school district expenditures may also relate to such items pursuant to specific statutory authorization – e.g. purchase of United States flags for classrooms⁹, health programs for students¹⁰, and military leave¹¹.

Other intangible expenditures may likewise be upheld when related to the purposes for which school districts are established.¹² For example, a school may spend funds to provide home-to-school bus transportation to its students, even though transportation is not literally a type of "education," because it aids in getting the children to school where educational programs take place.¹³

b. Moral Consideration is not Legal Consideration. By contrast, and as explained below, a “moral or equitable obligation” is not a “legal consideration” that justifies a public expenditure.¹⁴

III. Examples of Prohibited Gifts of Public Funds

A. Flowers and Candy.

The very nature and character of giving flowers or candy has a *personal* as opposed to *public* character.

1. Public Purpose Flowers. Flowers purchased as part of an awards ceremony or as decorations at a public event have a public as opposed to a personal character.
2. Private Purpose Flowers. By contrast, a gift of flowers to show sympathy due to illness or death, or to express joy or congratulations for achieving *personal milestones* such as a birthday or a wedding, is a *very personal gift* of *primarily* individual benefit. Such gifts, if paid for with public funds, are an unlawful gift of public funds.

B. Gift Certificates.

1. Gift Certificates to Individuals. When purchased with public funds, gift certificates are ordinarily going to be characterized as gifts of public funds, even when purchased for an event with a public purpose, because they confer a tangible private benefit on an individual.
2. Gift Certificates from Outside Organizations. To avoid making a gift of public funds, gift certificates may be donated by merchants or individuals, such as for raffles and door prizes.

C. Advertisements for Private Award Ceremonies.

1. Advertising Solicitations. Community and educational organizations sometimes solicit donations in the forms of “advertisements” in an awards program.
2. Private Nature of Such Awards. Such events recognize and honor individuals for their contributions. Although this is commendable, it is not a public matter.
3. Applies to School District Employees. Even if the individuals honored include your own school employees, it is improper to use public funds to

financially support the organization for this purpose, despite the link between the employment and the contributions the employee may make to advance public education.

D. Other Donations of Public Funds.

1. Charity. School Districts may not *donate* public funds for charitable purposes, no matter how worthy the cause. For instance, a district may not donate funds to an individual needy student, or use school equipment for a charity fund-raising drive. This rule does not prohibit a school from providing students with essentials needed at school (e.g. pencil, pens, paper), because this is expressly authorized by statute and serves the educational mission of the schools.¹⁵

2. Student Body Funds. Student body funds may be expended on “activities on behalf of the students approved by the school authorities and not in conflict with the authority and responsibility of the public school officials.”¹⁶ Student body funds are public funds, subject to the constitutional prohibition against the gift of public funds. This rule does not prohibit giving a scholarship or award to an identified class of students under statutory guidelines, as these are specifically authorized by statute as a public purpose.

E. District Paid Health Insurance Coverage for a Surviving Spouse.

1. Statutory Benefits. One must provide or offer health benefits to resigning, retiring, or deceased employees in compliance with the state law and consistent with COBRA.

2. Sympathy Benefits. Providing a special additional benefit beyond this to someone individually, motivated by sympathy, is an unlawful gift of public funds.

IV. Faulty Rationales for Making Gifts of Public Funds

We are sometimes offered faulty rationales (“Myths”) for making expenditures which violate the prohibition against the gift of public funds. None of these proposed rationales serve to authorize an expenditure in violation of the constitutional prohibition against the gift of public funds.

A. Goodwill.

Myth: “*Our public purpose is ‘goodwill’ or ‘public relations.’*”

Reality:

1. School districts can not justify the expenditure of public funds for gifts to individuals based on the abstract concept of “goodwill.” The California Attorney General considered this rationale some years ago, and concluded that “goodwill” is not an “actual and necessary” expenditure.¹⁷ A nebulous concept such as “public relations” may not be used to justify the expenditure of public funds for food or personal items.¹⁸
2. A public purpose must be something more clear than an abstract “goodwill” or “public relations” benefit to the school district.
3. School districts are indeed authorized to “inform and make known to the citizens of the district” its educational programs and activities.¹⁹ But due to the constitutional prohibition and the public nature of school districts, this authority cannot be interpreted to authorize the kind of personal gifts or perks promoting a brand name or firm loyalty which may be accepted in the private business world. Instead, school boards should determine with some thoughtfulness what legitimate public purpose may justify an expenditure.

B. Professional Enhancement Confused for Public Benefit.

Myth: “*It is our people (administrators, teachers, consultants, donors, etc.) that build our reputation; our gifts to them build relationships.*”

Reality:

1. School officials sometimes confuse a benefit to the school district with what is more objectively a benefit to themselves. They rationalize that anything that enhances the reputation of the school district is necessarily dependent on the esteem and reputation of its board members, administrators, teachers, and other staff. But this rationalization is not a legitimate excuse to expend public funds for things of personal benefit.
2. California law strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public.²⁰
3. This conflict of interest doctrine applies to situations involving any

kind of personal interests, and not only financial interests.²¹ Even if motives are pure, members of the public may perceive the situation from a cynical perspective, believing that their taxpayer dollars are being mis-used to advance the personal interests of school officials rather than the welfare of the students.

4. School officials should understand and follow these guidelines:

a. A public officer is bound to exercise her conferred powers with disinterested skill, zeal, and diligence and primarily for the benefit of the public, and to that end, an official must not place herself in a position where she might be tempted to serve her own purposes.²²

b. Public officials, by virtue of their office, must avoid enhancing their private interests through their official action.²³

c. Under California common law, public officials should avoid even the appearance of impropriety.²⁴

d. While school district administrators or board members may feel that the school district derives benefit from positive relationships by sending gifts to students, parents, consultants, board members, donors, other public officials, etc., the real “public relations value” is of primary benefit to the respective individual leaders involved, not the school district itself as an institution. If you want to send gifts, use private funds, not public funds.

C. Awards.

Myth: “*Since we can give awards, we’re allowed to recognize birthdays, weddings, and the like to employees and community members.*”

Reality:

1. Awards to employees for exceptional contributions, and to students for excellence, are authorized by statute.²⁵ Awards to community members are not.

2. Pursuant to statute, a district can recognize superior accomplishments of an employee, within specified guidelines. Life transition events like birthdays, weddings, and the like, occur to everyone, so cannot be considered superior accomplishments.

3 Awards are often signified by letters of commendation, board resolutions, trophies, certificates, plaques, medals, badges, pins and the like, but may also be in the form of a cash award, gift certificate, or a scholarship, within the statutory monetary limits and subject to IRS reporting requirements.²⁶ Since a cash award is allowable, the board may also approve an expenditure for flowers, candy, and the like, as part of an award, so long as the school district's adopted awards policy complies with Education Code and IRS regulations.

4. Notwithstanding this rule, giving gift items for the recognition of funerals, personal birthdays, weddings, holidays, and the like cannot be justified as a form of "award" because the statute sets forth only certain kinds of "special acts or services" to public education for which awards may be granted.

5. Awards may be given to recognize years of service at the time of retirement, but the statutory authority to make awards does not authorize paying for a "retirement party." (However, a school district may adopt a policy to hold an appropriate public awards event or ceremony using public funds.)

D. Virtuous Nature of a Gift or Moral Obligation.

Myth: *"But a student died; it seems immoral not to buy flowers for his funeral!"*

Reality:

1. "A gift is a gift even though the purpose may be noble; for example, a school district may not give flowers for a funeral of a student or employee using public funds, even though the district leadership, students, and parents may feel the expenditure to be a virtuous one."²⁷

2. Such "noble" or virtuous purposes are what is known legally as a "moral" or "equitable" obligation." A "moral obligation" is not a "legal consideration" that justifies a school district expenditure. Try not to confuse these two opposing concepts, though the commendable caring qualities of most educators make it easy to do so.

3. Examples of "moral obligations" include a desire to convey gratitude, or perhaps sympathy to someone suffering a personal misfortune. Moral obligations may also motivate you to recognize close relationships of others to honor and celebrate such things as birthdays or other significant life events.

4. In such situations, use privately - raised funds instead of public funds.

E. “Trifling” Expenditures.

Myth: “*Our gift should be overlooked because it’s only a few dollars.*”

Reality:

1. The concept of a “trifling” amount which can be disregarded in some contexts,²⁸ known as the *de minimis* doctrine,²⁹ does not logically apply to the expenditure of public funds.

2. Given modern governmental accounting practices and regulations³⁰, conflict of interest law³¹, and criminal law³², expenditures of public funds or use of public funds for which a monetary value may be estimated can never be considered trifling or *de minimis*. In fact, the law clearly holds the misappropriation of public funds to be a criminal act, with no minimum monetary limit specified.³³

3. Expenditures involving inherent, measurable value are never logically trifling or *de minimis* even if the price is only a few cents or dollars. The *de minimis* doctrine applies only to amounts which are purely incidental compared to a substantive lawful action – and are usually difficult or impossible to quantify.³⁴

V. Conclusion

A. The constitutional prohibition was designed to halt the mis-use of public money.

B. By law, the County Superintendent is required to examine each order on school district funds, and may approve only warrants “properly drawn for the payment of legally authorized expenses against the proper funds of the district.”³⁵ Such items as flowers, candy, or gift certificates by their nature raise the question of whether their purchase constitutes a gift of public funds.

C. School districts face potential liability, taxpayer lawsuits, loss of public confidence, and even possible criminal sanctions for violation of conflict of interest and embezzlement laws when there are allegations of the mis-use of public funds.

D. Because public officers have a special duty to uphold the public trust and to use public funds strictly for public purposes, school officials should avoid any expenditure which creates even an appearance of impropriety.

E. School administrators should seek to uphold the spirit of the law, not just the letter of the law, to avoid allegations that they have misused public funds.

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Endnotes

¹ The legislature has no power "to make any gift or authorize the making of any gift, of any public money or thing of value to any individual, municipal or other corporation" Calif. Const. Art. 16, section 6,

² *County of Alameda v. Janssen* (1940) 16 Cal.2d 276; accord *California Housing Finance Agency v. Elliot* (1976) 17 Cal.3d 575.

³ *Paramount Unified School Dist. v. Teachers Assn. of Paramount* (1994) 26 Cal.App.4th 1371.

⁴ *Mannheim v. Superior Court* (1970) 3 Cal.3d 678.

⁵ There are many specific statutes authorizing school expenditures for a variety of specific purposes: e.g., to hold and convey property for the use and benefit of the school district, Education Code § 35162; payment of salaries to certificated employees, Education Code § 45022; to pay other debts and contracts, Education Code § 35200; to purchase necessary school supplies, Education Code § 38110, 38111, 38112, & 38118 (including furniture, supplies, equipment, uniforms, writing and drawing paper, pens, inks, blackboards, blackboard erasers, crayons, lead pencils, and "other necessary supplies for the use of the schools"); research and promotional activities, Education Code § 35172; transportation for pupils, Education Code § 39800); to reimburse persons for the loss or destruction of personal property under strict conditions, Education Code § 35213; and for many other purposes. In addition, school districts have "broad authority to activities and programs, including the expenditure of funds" to support their educational programs. Education Code § 35160.1.

⁶ Education Code § 35160 (programs and authority, including for expenditures, are authorized when "not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established."); *Golden Gate Bridge & Highway Dist. v. Luehring* (1970) 4 Cal.App.3d 204, 214 (A contribution from one public agency to another for a purely local purpose of the donee agency is in violation of the constitutional prohibition against public funds, but is lawful if serves the public purpose of the donor agency), ; 88 California Attorney General Opinion No. 05-309, Ops. Cal. Atty. Gen. 213, 05 Cal. Daily Op. Serv. 10360, 2005 Daily Journal D.A.R. 14172, 2005 WL 3348201 (Dec. 6, 2005) (Travel reimbursement is authorized if the district reasonably determines that the performance of services connected with the travel will directly assist the district in accomplishing its authorized public responsibilities).

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- ⁷ *Winkelman v. City of Tiburon* (1973) 32 Cal.App.3d 834.
- ⁸ 58 Cal. Jur. 3d State of California, Section 88: Public Purpose (2004).
- ⁹ Education Code § 38117.
- ¹⁰ Education Code § 49400 et seq.
- ¹¹ Military Leave -
http://www.tularecountycounsel.org/schools/personnel/leaves/military_leave.pdf
- ¹² Education Code § 35160 & 35160.1.
- ¹³ Education Code § 39800 et seq.
- ¹⁴ *Veterans' Welfare Board v. Riley* (1922) 189 Cal. 159, 170. ("An appropriation of public funds based upon a moral obligation as a consideration is a gift within the meaning of the constitution."); *Jordan v. Department of Motor Vehicles* (2002) 100 Cal.App.4th 431. ("The term "gift" in the constitutional provision 'includes all appropriations of public money for which there is no authority or enforceable claim,' even if there is a moral or equitable obligation. (*Conlin v. Board of Supervisors* (1893) 99 Cal. 17, 21-22 [33 P. 753].)")
- ¹⁵ Education Code § 38118.
- ¹⁶ Education Code § 38930.
- ¹⁷ 61 Ops. Cal. Atty. Gen. 303 (1978) (a governing board is not authorized to provide for payment for the cost of meals purchased for community leaders, "irrespective of whether such acts are deemed to be in the best interest of the school district.")
- ¹⁸ Tulare County Counsel Memo to All Tulare County School Districts, November 30, 1989, RE: Expenditure of funds for Meals Authorized by Governing Boards.
- ¹⁹ Education Code § 35172.
- ²⁰ *Noble v. City of Palo Alto* (1928) 89 Cal.App. 47, 51-52; 46 Ops.Cal.Atty.Gen. 74, 86 (1965).
- ²¹ 26 Ops.Cal.Atty.Gen. 5 (1955).
- ²² *Clark v City of Hermosa Beach* (1996) 48 Cal.App.4th 1152.
- ²³ 53 Ops.Cal.Atty.Gen. 163 (1970).
- ²⁴ *City of Imperial Beach v. Bailey* (1980) 103 Cal.App.3d 791.

²⁵ Education Code § 44015. Such awards shall not exceed \$200 unless a larger award is expressly approved by the governing board.

²⁶ Op. Cal. Atty Gen. No 01-1201, 85 Ops. Cal. Atty. Gen. 167, 2002 WL 1979108 (August 28, 2002), <http://caag.state.ca.us/opinions/published/01-1201.pdf>. (School districts and county boards of education acting as the governing board of a school district may grant scholarships and monetary awards to students pursuant to subdivision (b) of Education Code § 44015 and other authority). The language authorizing awards in subdivision (a) for employees is substantially identical as the language in subdivision (b) for students, so we conclude that a cash award is permissible under this statute in both cases. For IRS reporting requirements, see note 31.

²⁷ Tulare County Counsel Memo to All Tulare County School District, November 30, 1989, RE: Expenditure of funds for Meals Authorized by Governing Boards.

²⁸ What is *de minimis* in the law depends upon *both* the context of the transaction involved and its relative percentage compared to an overall value. For example, in a million dollar deal, a \$10 mistake is *de minimis*. The Concise Law Encyclopedia, http://www.thelawencyclopedia.com/term/de_minimis , accessed 11-16-05. Other examples indicate that the doctrine applies to situations where the “trivial” amount at issue is incidental or relative to a larger transaction or event for which monetary expenditures are legitimate.

²⁹ The *de minimis* doctrine is the principle that the law is not concerned with insignificant or minor matters: *de minimis non curat lex* [Black’s Law Dictionary, (Rev. 4th Ed., p. 482)]. Under California law, this is phrased as: “The law disregards trifles.” California Civil Code § 3533. A traditional example is that the law will not regard an error in calculation of a fractional part of a penny.

³⁰ “Due to their unique operating environment, governments have a responsibility to be accountable for the use of resources that is significantly different from business enterprises.” See GASB White Paper: Why Governmental Accounting and Financial Reporting Is—and Should Be—Different http://www.gasb.org/white_paper_mar_2006.html (accessed 6-5-06).

³¹ “Conflict of interest laws prohibit a government official from having a conflict between his or her public duties and personal financial interests.” Government Code section 1090 et seq., & Government Code section 81000 et seq. These laws apply without regard to the good faith, honesty or integrity of the individual. [See: http://www.tularecountycounsel.org/schools/conflict/](http://www.tularecountycounsel.org/schools/conflict/)

³² e.g. Government. Code § 8314 (use of public resources for unauthorized purposes and imposing civil penalties); Penal Code Section 424 (misappropriation of public funds a felony.)

³³ In *People v. Wall* (1980) 114 C.A.3d 15, 20, 170 C.R. 522 ,. a parking meter attendant was convicted of a felony for misappropriating mere coins from a parking meter.

³⁴ Usually, such items are those which have little or no determinable monetary value. In the employment context, for example, an occasional personal phone call or use of a copy machine by an employee may be considered *de minimis*. But under federal tax law, a cash or cash equivalent like a gift certificate is never excluded from taxable wages as a *de minimis* fringe benefit, no matter the cost, because it has a readily ascertainable value and it is not unreasonable or administratively impractical to account for. Internal Revenue Code Section 132; 26 CFR Section 1.132-6; Employer's Tax Guide to Fringe Benefits, IRS Publication 15-B (2005). Note that the IRS authority for an employer to exclude certain fringe benefits from taxes is not the same as authority for a public agency, contrasted to a private employer, to make even *de minimis* gifts in the first place.

³⁴ Education Code § 42636.

³⁵ Education Code § 426368

CITY OF BELL

Audit Report

ADMINISTRATIVE AND INTERNAL ACCOUNTING CONTROLS

July 1, 2008, through June 30, 2010



JOHN CHIANG
California State Controller

September 2010



JOHN CHIANG
California State Controller

September 22, 2010

Pedro Carrillo
Interim City Administrator
City of Bell
6330 Pine Avenue
Bell, CA 90201

Dear Mr. Carrillo:

Enclosed is the report of the State Controller's Office audit of the City of Bell's administrative and internal accounting controls system. The audit was conducted at your request for an assessment of the adequacy of the city's controls to safeguard public assets and to ensure proper use of public funds.

Our audit found that, because the control deficiencies were so serious and pervasive, the City of Bell's internal control system was virtually non-existent. All of the city's financial activities and transactions evolved around one individual—the former Chief Administrative Officer (CAO)—who for all intents and purposes had complete control and discretion over how city funds were to be used. There is no evidence of any oversight by members of the Bell City Council, most of whom received additional compensation and/or loans as a result of actions authorized by the CAO. Under this environment, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

Based on a review of a very limited sample of transactions, we identified the following conditions that suggest possible intentional abuse and misuse of city funds (Finding 1):

- The Bell City Council approved exorbitant salary and benefits for the former CAO without any accountability for performance. The former CAO continued this process by allowing enormous salaries for other chief administrative staff.
- More than \$93,000 in city funds was used to repay the former CAO's personal loans, apparently without any authorization or justification of public benefit, which constitutes a gift of public funds.
- Approximately \$1.5 million in loans were made to members of the Bell City Council, city officials, and city employees at the sole discretion of the former CAO and without any justification of public benefit, which again constitutes a gift of public funds.

- Payments were made to a contractor, who was also acting as the city's "Director of Planning Services." Payments continued even after the contract had expired in June 1997. The contractor also charged the city a 10% administrative fee (profit) for any subcontractor he hired, which raised questions about conflict-of-interest with his role of the Director of Planning Services. Total payment to two firms owned by the contractor was in excess of \$10.4 million from January 1995 through June 2010. In effect, the Director oversaw many subcontractors of the city, each garnering him a 10% administrative fee (profit).
- The city in May 2009 purchased real property for \$4.8 million from a trust established by a former Bell mayor who paid \$480,000 for it in 1981. There was no documentation available to show what the property was to be used for, how the property was selected, and cost analyses to justify the purchase amount. The store on the acquired site has been vacated and there has not been any activity on this site.

In addition, we found the city mismanaged its voter-approved Measure A bond funds (Finding 2) as follows:

- The city issued \$50 million in general obligation bonds for Measure A without any documented plan and timeframe to utilize the proceeds and apparent need for the funds.
- The 2007 series of bond proceeds of \$35 million had the former CAO assume the role of fiscal agent. As such he had total control and discretion over how bond funds were to be used. As of August 31, 2010, approximately \$11.5 million of the \$35 million had been spent. Given the questionable practices of the former CAO identified in other sections of this report, the risk for improper use of bond funds is very high.
- The amount of 2007 series of bond issuance (\$35 million) was far in excess of the amount that was needed and thus unnecessarily increased the city's costs of borrowing. In addition, the surplus funds inexplicably were deposited in a non-interest-bearing checking account which, assuming an interest factor of 2% per annum, resulted in interest losses of approximately \$1.7 million as of August 31, 2010.
- Rather than depositing increased property tax proceeds in a separate Debt Service Trust Account as specified in the city's paying agent agreement with the U.S. Bank National Association, the funds were deposited in the General Fund, which artificially inflated the General Fund cash balance. Under the former CAO's employment agreement with the city, his salary increases were contingent on a positive cash position in the General Fund. Again, at least in appearance, this practice could be self-serving.

We also found the Bell City Council exceeded its authority in increasing assessments and taxes without voter approval (Finding 3). Specifically, we found that:

- The Bell City Council improperly increased the assessment of the Sanitation and Sewerage System District without voter approval. The estimated amount of overcharge is \$621,737 for FY 2007-08 through FY 2009-10.

- The city improperly used \$1,143,618 in funds from four assessment districts (Sanitation and Sewerage System, Refuse Collection, Recycling and Integrated Waste Management, and Landscape and Lighting) to pay for portions of payments to the former CAO and the Assistant CAO for regular and holiday pay, and pay in lieu of vacation. The California Constitution stipulates that charges against assessment districts must be directly related to services provided to the districts.
- Other unauthorized increases in pension assessment and business license taxes have had the effect of reducing General Fund pension obligations or enhancing General Fund revenues, which in turn provided greater flexibility to increase compensation. At least in appearance, this raised the question of whether the decisions to increase assessments and taxes were motivated by personal gain considerations. The amount of the unallowable pension assessment is \$2,934,144 for FY 2007-08 through FY 2009-10. The estimated overcharge to the business license taxes is \$2,105,441 for calendar years 2000 through 2010.

We recommend the City of Bell takes immediate action to institute a system of business policies, processes and procedures that will provide proper checks and balances over public assets and public funds. The city should take other measures to refund unallowable excess amounts of assessments and taxes collected and, to the extent possible, recoup any inappropriate payments or loans. Furthermore, the Director of Planning Services should be a city employee to avoid conflict of interest and save the city money. In addition, as certain matters disclosed in this report suggest possible intentional misuse of public funds that may involve collusive practices, we will provide copies of this report to all appropriate law enforcement agencies for consideration of additional investigation and possible legal action.

The above findings were discussed with the City of Bell management during an audit exit conference on September 16, 2010. In its response, included as Attachment E of this report, the city did not dispute any of the findings contained in this report but offered legal theories suggesting that at least some of the increases in the Sanitation and Sewerage assessments and business license taxes were justifiable and that these matters require further legal review. These are legal issues that the city ultimately must address with the citizens or the businesses that paid the higher assessments and taxes.

If you have any questions, please contact Jeffrey V. Brownfield, Chief, Division of Audits, at (916) 324-1696.

Sincerely,

Original signed by:

JOHN CHIANG
California State Controller

cc: The Honorable Edmund G. Brown, California Attorney General
The Honorable Steve Cooley, Los Angeles County District Attorney
Andre Birotte Jr., U.S. Attorney, Central District of California

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Audit Report

Introduction

The State Controller's Office (SCO) audited the City of Bell's system of administrative and internal accounting controls for the period of July 1, 2008, through June 30, 2010. On July 28, 2010, the newly appointed interim Chief Administrative Officer (CAO) of the City of Bell made a request with the State Controller to perform an audit of the city to address numerous disclosures made in the news media suggesting possible misuse of public funds by senior management staff. In response, the State Controller agreed to perform an audit of the city's system of internal controls, property and business license tax revenues, and state and federal funding.

This report presents the results of findings and conclusions reached in the SCO audit of the city's administrative and internal accounting controls system.

Separate reports will be issued for our audits of the Special Gas Tax Street Improvement Fund, City of Bell's Redevelopment Agency, and other state and federal funding at a later date. In addition, we have issued letters concerning the City of Bell's Pension Assessment Fund (Attachment A), the Sanitation and Sewerage System District Assessment Fund (Attachment B), and the Business License Taxes (Attachment C).

Background

The City of Bell is located in Los Angeles County, California. The population was 36,664 in the 2000 census; at 2.5 square miles, it is 13th among the 25 geographically smallest cities in the United States with population of at least 25,000.

City residents voted to become a charter city in a special municipal election on November 29, 2005. Fewer than 400 residents, representing approximately 1.1% of the city's total population turned out for the special election. The charter provided more autonomy to city management and exempted the city from needing to follow state contracting procedures or complying with a state law that limits council members' salaries.

The Los Angeles Times was the first to break a story of the City of Bell in July 2010. A series of articles revealed that some City of Bell administrators and council members were receiving disproportionately high salaries.

Many Bell citizens became outraged and called for the suspension of the salaries of these officials and later the resignation of several council and staff members. On July 23, 2010, the administrative officers resigned their positions with the city, while the Mayor and the City Council continued to govern the city.

On July 24, 2010, the City Council hired (contracted) the Chief Executive Officer (CEO) of a consulting firm the city was paying for other services to be the interim CAO of the city.

One of the first actions taken by the newly-appointed interim CAO was to request an audit of the City of Bell. In response to this request, the SCO agreed to perform an audit to assess whether the city has had adequate administrative and internal accounting controls to ensure proper accountability over use of public funds and assets.

Objectives, Scope, and Methodology

The objective of this performance audit was to evaluate the City of Bell's system of administrative and internal accounting controls to ensure:

- Effectiveness and efficiency of operations;
- Reliability of financial reporting;
- Compliance with applicable laws and regulations; and
- Adequate safeguard of public resources.

During our audit, we became aware of poorly designed and ineffective controls. Although the scope of our internal control review was city-wide, our audit focused on areas that we believed to have the greatest risk to city operations. These areas included budgets, payroll, expenditures, contracting, property and business license tax revenues, and the city's general obligation bonds.

To accomplish our audit objective, we performed the following audit procedures:

- Evaluated the city's formal written internal policies and procedures.
- Reviewed the independent auditor's working papers for the audit of the city's financial statements for Fiscal Year (FY) 2007-08 and FY 2008-09.
- Conducted interviews with city employees and observed the city's business operations for the purpose of evaluating city-wide administrative and internal accounting controls.
- Reviewed the city's documentation and supporting financial records.
- On a limited basis, performed test of transactions to ensure adherence with prescribed policies and procedures and to validate and test the effectiveness of controls.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Conclusion

We found the City of Bell's administrative and internal accounting control system to be, in effect, non-existent as all financial activities and transactions evolved around one individual—the former Chief Administrative Officer (CAO)—who apparently had complete control and discretion over how city funds were to be used. Evidence suggests that the former CAO used public funds for personal gains. Members of the City Council, most of whom received additional compensation and/or loans as a result of action authorized by the former CAO, have never questioned or rejected any of the former CAO's requests or proposals. Under this environment, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

We also found the city, under the direction of the former CAO, mismanaged its voter-approved Measure A bond funds, which resulted in its citizens absorbing millions of dollars in unnecessary interest charges or losses in interest income.

In addition, we found the Bell City Council approved increased assessments/taxes without voter approval. A significant portion of the increased assessments/taxes was used to increase the compensation of two of the city's senior management staff members.

Views of Responsible Officials

The SCO conducted an exit conference on September 16, 2010, at which a draft report dated September 16, 2010, was presented. The auditee was informed that any responses should be made by September 20, 2010, at 5:00 p.m. Pedro Carrillo, Interim Chief Administrative Officer of the City of Bell, e-mailed a response on September 20, 2010, that failed to specifically agree or disagree on Finding 1 and Finding 2, and gave comments to parts of Finding 3 (see Attachment E).

The SCO has made specific comments in regards to the issues commented on by the city (see Attachment F).

Restricted Use

This report is solely for the information and use of the City of Bell and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

September 22, 2010

Findings and Recommendations

FINDING 1—
The SCO identified significant control deficiencies in virtually every aspect of the city's fiscal functions. Under the current system, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

The State Controller's Office (SCO) made an assessment of the city's fiscal functions using standards adopted by the American Institute of Certified Public Accountants and the auditing profession that prescribe essential elements for a sound administrative and internal accounting controls system. In general, internal control encompasses a system of checks and balances designed to safeguard the entity's assets and to reduce the possibilities of intentional and/or unintentional errors. Examples of internal control include sound policies and procedures, a system of authorization and approval, clearly defined responsibilities, and separation of duties in relation to operations and custody of assets.

The results of our internal control assessment are presented in a matrix as Appendix 1 of this report. In essence, we found the city's system of internal control to be non-existent as all financial activities and transactions evolved around one individual, the former Chief Administrative Officer (CAO), who had complete control and discretion over how city funds were used. For example, the former CAO could approve any purchase transaction of \$50,000 or less, and transactions of more than \$50,000 were to be reviewed and approved by the members of the Bell City Council, most of whom received additional compensation and/or loans as a result of actions authorized by the former CAO. A review of the Bell City Council meeting minutes found all of the requests were approved by the City Council members with little or no question or deliberation. As disclosed in later parts of this finding, evidence suggests that the former CAO may have used public funds for personal gain. Under an environment of weak controls and questionable ethics, the potential for waste, fraud, abuse, and misappropriation of public funds is extremely high.

As a part of our assessment, we selected a limited number of transactions to validate and test the effectiveness of internal controls. Our review identified a number of instances where questions exist as to whether payments for goods or services were necessary, reasonable, and legal. It is highly probable that the conditions identified in our limited sample are pervasive throughout the city's system. Specifically, we identified the following conditions:

- **The Bell City Council approved raises for the CAO without any accountability for performance. The CAO continued this process by allowing enormous salaries for other top administrative staff.**

Our audit disclosed that the City Council minutes did not contain any detailed discussion or fiscal analysis of the CAO salary increases as the CAO's salary and compensation package continued to grow after his hiring. In 1993, his salary was \$72,000 per year and by the time he resigned in 2010, his employment contract, effective July 1, 2010, had his salary top out at \$787,000 per year. In addition, we could not determine any accountability for his performance. Many of his employment contracts required annual performance evaluations; however, our audit did not disclose any such evaluations.

In addition, our audit disclosed that the CAO authorized disproportionate salary and benefit package increases for top city administrators. The City Charter allows the CAO to appoint, promote, demote, suspend or remove, all department heads, officers and employees, except elected officials and those department heads, officers and employees the power to whose appointment is vested by the City Charter. Our audit did not disclose any annual performance evaluations as required by many of these employment contracts or any detailed discussion or fiscal analysis of compensation increases in the City Council minutes or personnel files.

The result was a significant increase in payroll for top city administrators. By FY 2009-10, the city expended \$2,391,544 in salaries and \$3,385,783 in compensation for six top city administrators, City Council members, and the mayor (see Appendix 2 for a list of staff members and their salary and compensation).

- **Public funds were used to repay the former CAO's personal loans, apparently without authorization.**

For the pay periods ended July 6, 2008, and August 16, 2009, the city's payroll registers indicated that the former CAO's earnings included "Miscellaneous" items in the amounts of \$47,563.09 and \$45,877.47, respectively. The same payroll registers also contained "Miscellaneous" deductions for the same amounts. Further inquiry disclosed that the former CAO, on April 2, 2004, borrowed \$50,000 each from his 401(a) and 457 retirement savings accounts at an interest rate of 6.875% and 5.8512%, respectively, per annum. Repayment of both loans commenced on May 2, 2004, and was to end on March 12, 2034.

Upon further review, our audit noted the city repaid the two loans on behalf of the former CAO by wire-transferring \$47,875.59 from its payroll account to the ICMA Retirement Corp. on July 14, 2008, and another \$45,877.47 on August 12, 2009. We reviewed the former CAO's employment contract which did not contain any provision authorizing repayment of his personal loans. The Bell City Council's meeting minutes did not contain any entry suggesting that the City Council authorized the repayments or even knew about them. None of the city's administrative or personnel staff could provide any explanation or documentation as to who authorized the repayments. The rationale and basis for the transactions according to the City Treasurer, "was to pay for the CAO's shortage of contribution to his retirement plans."

The above transactions demonstrate the severity of the internal control deficiencies as transactions of this nature and these amounts could be carried out without full justification and documentation. For instance, for Fiscal Year (FY) 2007-08 through FY 2009-10, total compensation of the former CAO increased significantly, in part through the above transactions and other practices (such as payment-in-lieu of vacation and sick leave and contributions to deferred compensation funds) authorized by the City Council through the CAO's employment contract.

The vacation and sick leave buyback practices were extended to other city officials and employees. For FY 2008-09 and FY 2009-10, the city paid a total of \$529,433 in sick leave buybacks and \$1,245,072.45 in vacation buybacks to its officials and employees. Appendix 2 provides a schedule of the compensation (excluding fringe benefits) of the former CAO, the City Council members, and some senior staff members that included sick leave and vacation buybacks.

- **Loans in the form of advances were made to members of the Bell City Council, city officials, and city employees at the discretion of the former CAO. This constituted a gift of public funds.**

The city made loans to City Council members, senior staff members, and employees totaling approximately \$1.5 million from November 2002 through March 2010. In addition, the city loaned another \$300,000 to a business owner in the city. The employee loan amounts ranged from \$1,000 to \$130,000, with senior management staff members receiving the most significant amounts. Four officials—the Assistant CAO, the Director of Administrative Services, the Director of Community Services, and a Deputy Chief of Police—collectively received more than \$690,000 in loans from the city. In addition, three City Council members each received \$20,000 in loans.

We noted that this practice first began in March 2002 when the city executed an addendum to the employment agreement of the former CAO to provide for a loan of \$80,000 to be repaid through his future vacation and sick leave earnings. The addendum language was used as a model for an “administrative agreement” (see Attachment D for an example) between the city and the employees, requiring repayment within a specified period at an interest rate tied to the Local Agency Investment Fund, which as of September 3, 2010, was 0.531%. Our current audit has identified the following concerns:

- There was no ordinance or written policy authorizing this loan practice or prescribing circumstances under which such loans could be authorized. When interviewed, city officials and employees informed the auditors that the loans were made at the sole discretion of the former CAO. This leads to questions about possible favoritism by the former CAO and conflict-of-interest by those individuals (including members of the City Council) who received the loans.
- These loans had no public benefit. As such, they are a gift of public funds. The California Constitution, Article XVI, section 6, prohibits any public agency from making any gift or loan of public money or thing of value to, among other things, any individual. In determining whether there has been an illegal gift of public funds in violation of the Constitution, the primary question is whether funds are used for a “public purpose.” The loans appear to be made for private, rather than public, purposes, and therefore are a gift of public funds.

- The loan amounts apparently were also determined at the sole discretion of the former CAO in absence of policy or guidelines. When interviewed, some city officials and employees stated that they believed the loans were to be based on the employees' accrued vacation and sick leave balances. However, as part-time elected officials, City Council members do not accrue any vacation or sick leave benefits.
- The "administrative agreements" were in actuality contracts, which, according to the city ordinance, require Bell City Council approval if the amount exceeds \$50,000. There is no evidence that the City Council approved any of the loans.
- A \$300,000 loan to a business entity in the city apparently was made without any knowledge or consent of the City Council. The loan currently is in default, which raises questions as to whether it constitutes gift of public funds.
- **Payments were made to a contractor, who was also acting as the city's Director of Planning Services. Payments continued even after the contract had expired in June 1997.**

In April 1995, the city contracted with D & J Engineering to "provide engineering services for the development of the plans and specifications for the Curb, Gutter and Sidewalk Improvement Project." The owner of the engineering firm was listed in the city's latest five-year budget plan as the "Director of Planning Services." This individual is not on the city's payroll but has been paid a monthly retainer to perform this role through the contract with the city. In addition, this individual also owns TD Urban Planners which also had a contract with the city.

Under the contract, D & J Engineering was to be paid for the following services:

- Cost of services on a time-and-materials basis not exceeding \$24,500 without prior authorization.
- Direct out-of-pocket expenses as included in the bid proposal based on hourly rates that range from \$35 to \$105 per hour. In addition, the contractor was to be reimbursed at cost plus 10% overhead of prints, research material, and other incidental expenses. It is our understanding D & J Engineering in reality used this 10% above the invoice amount to pay for a subcontractor retained by the firm to work on city projects.

According to its payment history, the city paid D & J Engineering a total of \$10,002,902.97 from January 3, 1995, through June 29, 2010. In addition, the city paid \$430,605.82 to TD Urban Planners from December 5, 2006, through June 28, 2010.

Our audit identified the following concerns:

- The most current D & J Engineering contract on file with the city expired on June 30, 1997. City officials told the auditors they were not aware of any contract extensions or amendments beyond that date. We also inquired with the Director of Planning Services who stated that he was unaware that the contract had expired and that he would see if he has a current contract. To date, he has yet to provide the auditors with a current contract. Unless a current contract is in effect, the city did not have the legal authority to pay for invoices after the contract had expired. Moreover, the relevance and necessity of the scope of work identified in a contract executed more than ten years ago is highly questionable.
- All of the D & J Engineering's invoices we reviewed show they were either approved by the former CAO or by the Assistant CAO on behalf of the former CAO. The invoices do not appear to contain sufficient details for meaningful reviews. For example, each invoice contained billing of \$10,000 for services to the Planning Department and \$10,000 for the Building and Safety Department without identifying what services had been performed. The more than \$10 million in payments made to firms owned by the Director of Planning Services show a high risk for abuse.
- The City Planner should have been acting as an independent city official in overseeing these contracts. However, because he was actually receiving his pay as part of one of the contracts, his independence was compromised.
- **The City of Bell purchased real property from a trust established by a former Bell mayor for \$4.8 million. However, there was no documentation available to show what the property was to be used for, how the property was selected, and cost analyses to justify the purchase amount.**

In May 2009, the city purchased a property located within the City of Bell for \$4.8 million that was owned by a trust established by a former mayor of the city who purchased it for \$480,000 in 1981. According to the purchase agreement, the Bell City Council, acting as the Bell Community Redevelopment Agency made a \$200,000 down payment and the trust financed the remaining \$4.6 million at an annual interest rate of 6% for 15 years at \$38,817.41 in monthly installment payments.

We have reviewed the project file and found inadequate information or documentation for a transaction of this magnitude. For example, the project file contains no documentation regarding what the property was to be used for, how many properties were considered, and how this particular property was selected. The project file includes only one appraisal report. That report shows the property was appraised at \$4.8 million. However, in absence of other cost analyses, the one appraisal report by itself does not appear to be sufficient to justify a transaction of this magnitude.

Most discussions about this purchase occurred during closed sessions of the Bell City Council meeting as the Bell Community Redevelopment Agency. Therefore, we have no basis upon which to assess the necessity or reasonableness of this property acquisition. However, the store on the acquired site has been vacated and there has not been any activity on this site. This matter merits further scrutiny which is beyond the scope of an internal control audit.

**FINDING 2—
The city mismanaged its
voter-approved
Measure A bond funds,
which resulted in its
citizens absorbing
unnecessary interest
charges and/or lost
interest incomes.**

In the November 2003 election, the voters of the City of Bell approved Measure A, authorizing issuance of \$70 million in general obligation bonds. According to the ballot measure, the fund was to be used to “develop the Bell Sports Complex to include a gymnasium for indoor soccer, basketball, cheerleading and the baseball facility; expand the Bell Community center and other parks, recreational and cultural facilities; construct a new full service Bell Community Library, Performing Arts Theatre, public safety and civic facilities.”

To date, the city has issued \$50 million in bonds under Measure A in two series—the first issuance of \$15 million in 2004 and the second bond issuance of \$35 million in 2007. Approximately \$27 million of the bond proceeds had been spent as of August 31, 2010, and approximately \$23.5 million is currently on deposit in a non-interest bearing commercial checking account at Wells Fargo Bank. In addition, approximately \$5.0 million of the \$27 million was used to pay interest on the bonds. Appendix 3 provides a schedule of expenditures incurred as of August 31, 2010, on the various projects. Our review of controls and transactions related to Measure A funds identified the following concerns:

- For the first issuance, the bond proceeds were deposited in an outside account maintained with Citigroup. Thus, expenditures were—at least on a cursory level—subjected to an outside review before they were reimbursed. However, the CAO assumed the role of fiscal agent for the second issuance of \$35 million. The removal of the outside account provided the former CAO with total discretion over how bond funds were to be used. The Director of Administrative Services authorized purchase requisitions for reimbursement of project expenditures from Measure A funds. When questioned, the Director of Administrative Services told the auditors that she had a limited role with bond expenditures as the former CAO “controlled everything.”
- We could not find any plans or documentation identifying what projects were to be funded through Measure A funds, the budget for each project, milestones and timeframes for completion, and periodic assessments of the status of the projects. The election authorizing the bond measure was held in November 2003. However, our review of the City Council meeting minutes noted that the first time the possibility of putting this measure before the public was not discussed until a meeting in June 2003. As a result, there has been little discussion or deliberation of project priorities before or after the election, and funding decisions essentially were deferred to the former CAO who also acted as the fiscal agent for the second issuance of \$35 million in 2007.
- The city did not establish separate accounts in accordance with its paying agent agreement with the U.S. Bank National Association, which maintains trust accounts on behalf of the bondholders. The paying agent agreement specifically requires a Debt Service Account held in trust solely for payment of principal and interest on bonds. The city did not increase property taxes to pay for bond indebtedness until FY 2009-10, but the increased property tax proceeds were deposited in the General Fund instead of a Debt Service Fund, which

inflated the General Fund cash balance. Under the former CAO's employment agreement with the city, his salary increases were contingent on positive cash position in the city's General Fund.

- We could not find the rationale why the city issued a second bond issuance of \$35 million. The total proceeds were deposited in August 2007 in the Wells Fargo checking account. That account still had a cash balance of approximately \$23.5 million as of August 31, 2010. Of the \$11.5 million expended for the 2007 issuance, approximately \$5 million was spent on bond interest, with only \$6.5 million spent on projects. The issuance of bonds exceeding the amount actually needed resulted in the citizens of the city incurring unnecessary interest expenses at approximately 5% annually. The city could have mitigated the interest expenses to some extent by depositing the funds in an interest-bearing account, which is a customary practice for handling bond proceeds. Inexplicably, the \$35 million was deposited in a non-interest-bearing account which resulted in losses of interest income. Assuming an interest factor of 2% per annum, the interest losses would be approximately \$1.7 million as of August 31, 2010.
- There appears to be little activity on the Bell Sports Complex which, according to various city officials, was the primary thrust of Measure A. In six years, it is unclear what has been accomplished except for acquiring a site that consists of a dirt lot with a masonry wall around it and a water pumping station in the middle. We did not find any documentation regarding plans for completion of this project.

FINDING 3—
The city engaged in questionable practices of raising assessments/taxes without voter approval; a significant portion of the increased assessments were used to increase compensation for two of the city’s senior management staff members.

The SCO found that the Bell City Council exceeded its legal authority in increasing the direct assessment for the Sanitation and Sewerage System District without obtaining voter approval. A portion of the assessments, along with proceeds from other increases in assessments that the Bell City Council has the legal authority to impose, was used to significantly increase the compensation of the former CAO and the Assistant CAO.

In 2007, the Bell City Council adopted a series of resolutions that, in total, nearly doubled the assessments for the Sanitation and Sewerage System District, the Refuse Collection District, the Recycling and Integrated Waste Management District, and the Landscape and Lighting District starting in Fiscal Year (FY) 2007-08. The increase in rates cumulatively resulted in approximately \$4,742,340—from a total of \$4,957,805 to a total of \$9,700,145—in additional assessments for the four districts for FY 2007-08 through FY 2009-10. These increases coincided with significant increases in the compensation of the former CAO and the Assistant CAO who, collectively, over the same three-year period, received additional compensation totaling \$1,143,618 from the accounts of the four districts. In essence, the city used approximately 24% of the increased assessment funded by the ratepayers for sanitation, refuse, recycling, and lighting services to enhance the compensation of the former CAO and the Assistant CAO. The SCO audit identified the following concerns:

- **The Bell City Council had no legal authority to increase the assessment of the Sanitation and Sewerage System District without voter approval.**

At the request of the auditors, the SCO Legal Office reviewed the resolutions that authorized the increases and opined that the Bell City Council had legal authority to increase the assessment rates for the Refuse Collection District, the Recycling and Integrated Waste Management District, and the Landscape and Lighting District. However, the SCO Legal Counsel concluded that the increase in assessment of the Sanitation and Sewerage System District, referred to in the original authorizing resolution as a “standby” charge, is in violation of the California Constitution, Article XIII D, section 6, subsection (b)(4). That provision stipulates that sewer “standby” charges, be classified as assessments and shall not be imposed without complying with the California Constitution, Article XIII D, section 4, which requires a vote of the property owners who would be affected by the assessment. The estimated amount of charges related to the Sanitation and Sewerage System increase for FY 2007-08 through FY 2009-10 is \$621,737.

In a letter dated September 9, 2010, a law firm representing the city disagreed with our conclusion that the increase was for sewer standby charges and thus required voter approval. Through its legal representative, the city asserted that the amount imposed is a “new” sewer fee that did not require voter approval. We reviewed the rationale and basis for this assertion and find it to be non-persuasive. Thus, our finding remains unchanged. The legal representative’s letter and our response is included as Attachment A.

- **The total of \$1,143,618 used to fund portions of payments to the former CAO and the Assistant CAO for regular and holiday pay, and pay in lieu of vacation was inappropriately charged against four districts for FY 2007-08 through FY 2009-10.**

In general, compensation for the former CAO and the Assistant CAO's are costs of carrying out the operations of the city government and thus are to be charged against the city's General Fund. The California Constitution, Article XIII D, section 4(a), provides, "An agency which proposes to levy an assessment shall identify all parcels which will have a special benefit upon them and upon which an assessment will be imposed. . . ." The California Constitution, Article XIII D, section 6(b)(4), provides, "No fee or charge may be imposed for a service unless that service is actually used by, or immediately available to, the owner of the property in question." Thus, these charges are inappropriate unless it is clearly demonstrated (and documented) that they are directly related to providing services to the districts funded through assessments. City staff members said that compensation for the former CAO and the Assistant CAO was charged to the districts on a percentage basis. There is apparently no relation to services provided.

- **There may be other questionable charges against the districts funded through direct assessments.**

Given the lack of internal controls noted in previous sections of this audit report, there is a high probability that there may have been other inappropriate charges against the increased assessments. As the scope of the SCO audit focused on the city's internal controls, we did not conduct a detailed examination of the charges against the funds of the districts funded through direct assessments.

In addition to the findings regarding programs funded through direct assessments, the SCO identified questionable practices related to pension assessment and business license taxes where the Bell City Council or city management may have inappropriately increased tax levies. These increases either increased the city's General Fund revenues or reduced the General Fund burden to fund pension obligations, which in turn increased the amount available to fund increase in compensation of the city managers and staff members. Specifically, the audit found:

- *Pension Assessment*

On July 23, 2007, the Bell City Council adopted Resolution No. 2007-42 to increase the tax levy related to the payment of the city's pension obligation, from 0.187554% in FY 2006-07 to 0.237554% in FY 2007-08, 0.257554% in FY 2008-09, and 0.277554% in FY 2009-10—an increase of approximately 48% over a three-year period. The increased rates resulted in \$2,934,144 in additional taxes over a three-year period, and reduced the city's General Fund burden to fund pension obligations by the same amount.

The SCO found the increased tax levy to be unallowable under Revenue and Taxation Code section 96.31(b). Under this section, the City of Bell had no authority to levy a property tax rate greater than the rate imposed in FY 1982-83 or FY 1983-84. Thus, the \$2,934,144 in additional tax levies is unallowable. In a letter dated August 13, 2010, to the Los Angeles County Auditor–Controller, the State Controller identified this issue and requested immediate action to reduce the property tax levy that ultimately was applied toward the city’s pension obligation during FY 2010-11, and to repay the excess amounts collected in accordance with applicable statutory provisions.

o *Business License Taxes*

The city increased the amount for business license taxes, which includes rental business license taxes, by more than 50% for more than 1,000 business owners in the city since the 2000 calendar year. The increase was made without voter approval. In addition, there is no evidence to suggest that the Bell City Council had approved the increases.

The passage of Proposition 218 in 1996 added Articles XIII C to the California Constitution which specifies, “No local government may impose, extend, or increase any general tax unless and until that tax is submitted to the electorate and approved by a majority vote.” With respect to business licenses, the SCO found that the cities and counties levy business license fees and taxes for different purposes. In general, when a fee is levied for regulatory purposes, voter approval is not required. If the tax is levied for revenue generating purposes, then voter approval is required.

The Bell Municipal Code clearly states that business license taxes are taxes for revenue generating purposes. Bell Municipal Code section 5.04.020 states, “The purpose of the provisions of this division is to prescribe a schedule of business license taxes, **for revenue purposes only** [emphasis added], for all businesses located within the city, in the amounts and manner as set forth hereinafter.”

In addition, revenue collected from business license taxes is deposited in the city’s General Fund and are available at the discretion of the city’s management, subject to the approval of the City Council, to fund any operation or activity within the city government. Therefore, we believe the increases were general tax increases and subject to voter approval.

In addition, we found the city’s method of calculating increases to be in conflict with Bell Municipal Code section 5.08.030 which states:

No cost of living increase or decrease, in any calendar year, shall exceed the principal amount of the business license tax imposed during the preceding calendar year, by more than five percent.

The city increased the business license tax by approximately 20% for the 2000 calendar year and by approximately 19% for the 2005 calendar year. The justification was that the city did not impose cost of living increases in prior years and thus it was applying the increases retroactively. The municipal code section cited above contains no provision to allow the city to apply cost of living increases retroactively.

It is not possible to quantify the specific amount of additional business license taxes collected as a result of the increase imposed without voter approval because more than 1,000 businesses, with varying rates, are involved. However, based on annual collection figures, we estimate the total to be more than \$2.1 million for calendar years 2000 to 2010.

RECOMMENDATIONS

The SCO recommends that the City of Bell take the following actions:

1. Retain the services of an outside firm to develop new business policies, processes, and procedures as well as institute sound administrative and accounting internal controls. The current system does not have the capacity to implement needed changes with the current management structure and staff. To ensure independence, selection of the outside firm should be made using a sound request-for-proposal system and final selection should be made openly and competitively with citizen participation.
2. As an alternative to the above recommendation, the city should contact the League of California Cities and seek assistance to install a new internal control system from a panel of its peers.
3. Assess the status of the current projects funded through Measure A bond funds and develop a plan for completion that includes budgets, milestones, status, and completion date. Prior to adoption, the plan should be present to the City Council in open sessions and public input should be carefully considered. Once the plan is adopted, monthly updates of the status of implementation and costs incurred on the projects should be made to the City Council in open sessions. The services of outside contractors needed to complete the projects should be acquired through open, competitive bids.
4. Immediately refund the unallowable excess amounts of taxes (pension levy and business license) collected.
5. Immediately refund or offset future Sanitation and Sewerage System District assessments that were collected without voter approval.
6. Comply with its paying agent agreement with the U.S. Bank National Association by establishing separate trust accounts for Measure A funding in accordance with the provisions of the agreement.
7. Reverse the salary charges that were incorrectly charged to four districts and allocate the amounts to the appropriate funds.
8. Seek repayment as soon as legally possible on all outstanding "administrative agreement" loans as well as the \$300,000 business loan.
9. Make the Director of Planning Services a city employee to avoid conflicts of interest and save the city money.

In addition, as certain matters disclosed in this report suggest possible intentional misuse of public funds that may involve collusive practices, the Controller's Office is providing copies of this report to the appropriate law enforcement agencies for consideration of additional investigation and possible legal action.

Appendix 1— Evaluation of Elements of Internal Control

		Yes	No	Comments
Management Oversight & Control (Control Environment)				
A1.	Integrity and Ethical Values			
	<p>a. Are code of conduct and other policies regarding acceptable business practices, conflicts of interest, or expected standards to ethical and moral behavior in existence and communicated to all city management and employees?</p>		✓	<p>Non-existent and it appears that lack of communication exists. Events or transactions that occurred are as follows:</p> <ul style="list-style-type: none"> • Salaries of the City Council and management are disproportionate when compared with salaries in other cities. We noted that the average annual salary of 4 of 5 City Council members was \$97,372, while annual salaries of City Council members around the Los Angeles area average \$13,977. In addition, the City of Bell’s Chief Administrative Officer’s (CAO) annual salary was \$666,733 and the Assistant CAO’s was \$325,180. The average salaries for the same position around the Los Angeles area are \$209,050, and \$165,277, respectively. • Contracts for several vendors were missing or non-existent. For Fiscal Year (FY) 2008-09 and FY 2009-10, \$841,766 and \$110,000 were paid to D & J Engineering and to Urban & Associates, Inc. The contract agreement between the city and D & J Engineering expired in June 30, 1996. The folder file for Urban & Associates did not contain any contract agreement. • Some purchases of capital assets are questionable. For example, the city purchased properties from the Pete Werrlein Children’s Private Annuity Trust for \$4.8 million. From the file that was provided to us, we cannot determine what business benefit will be gained by the city in purchasing these properties. • City Council members did not perform adequate review relating to budgets, purchases approval, and employee salaries and advancements. <ol style="list-style-type: none"> 1. The City Council approved the Program of Service/Budget for the Fiscal Years Commencing July 1, 2008 and Ending June 30, 2011 (a revision to the five-year budget 2005-10). However, from our inquiry, a copy of this program service budget was not provided to the City Council until three days before the City Council meeting. Normally, the City Council will review the budget revenue estimates five months before the beginning of the fiscal year. 2. The City Council was to conduct an evaluation of the performance of the CAO. There were no evaluation reports found in the CAO’s personnel record. • The city made payments on personal loans. The CAO obtained personal loans (total amount of \$100,000) from his deferred compensation plans (457 and 4019(a)). We noted that these personal loans were paid by the city. • The city had unacceptable loan arrangements for several city employees. Several city officials and employees obtained a personal loan from the city and these loans were paid with accrued sick leave and vacation.

Appendix 1 (continued)

		Yes	No	Comments
	b. Is reasonable management attitude “Tone at the Top” established by management and communicated to city management and staff?		✓	The former CAO had too much autonomy and no one questioned his decisions or processes to be implemented. The CAO appoints, and may promote, demote, suspend or remove, all department heads, officers, and employees of the city except elected officers and those department heads appointed by the City Council. In addition, the CAO approved purchases ranging from \$50 to \$50,000. The CAO had two personal loans of less than \$50,000 each that were paid by the city.
	c. Is everyday dealing with vendors, clients, auditors and other parties based on honesty and fairness?		✓	Several vendors and service providers who were receiving payments from the city did not have contracts, or contracts are missing or expired. For FY 2008-09 and FY 2009-10, D & J Engineering was paid a total of \$841,766 without a current contract and Urban & Associates, Inc. was paid \$110,000 without a contract included in its vendor file.
	d. Is appropriate remedial action taken in response to non-compliance?		✓	Per our inquiry, there were no established procedures to address non-compliance. The city staff relied on the CAO on what action(s) to do regarding non-compliance.
	e. Is management intervention in overriding established controls documented?		✓	None noted.
A2.	Commitment to Competence			
	a. Is management analyzing tasks relative to a particular job regarding need and extent of supervision?		✓	The city does not have full staffing to perform its daily operations. The CAO, Assistant CAO, and the Director of Community and Social Services resigned from their respective positions. In addition, other city staff members were assigned to the City of Maywood to perform accounting and other administrative services for that city.
	b. Is management evaluating and determining the knowledge and skills needed to perform jobs and the employees have the required knowledge and skill to perform assigned tasks?		✓	No management evaluation noted regarding employees competence during our review of personnel records. In addition, City Council is supposed evaluate the CAO’s performance as condition for his salary increases but there were no evaluation reports found in the CAO’s personnel file.
A3.	Management and Operating Style			
	a. Is management conservative in accepting risks, moves carefully, and proceeds only after careful evaluation?		✓	No. City management made various decisions that appear to be unreasonable. For example, there was an issuance of a lease revenue bond where the city is in danger of defaulting; purchase of city lots from a former mayor does not make good business sense; and increases of property taxes over the limit established by the regulation.
	b. Is personnel turn-over in key functions at an acceptable level and not excessive?		✓	See A2a above.

Appendix 1 (continued)

		Yes	No	Comments
	c. Is management’s attitude positive towards internal control and audit function?		✓	The city management has given consideration to the adequacy of internal control (as stated in its Procedures Manual); however, adequate separation of duties is lacking due inadequate staffing, there were improper authorization of transactions and activities (see A1a above), and documents and records are inadequate to provide reasonable assurance (see A1c). The city does not have an internal audit unit and no internal auditor. The city contracted with an independent CPA firm to complete its annual financial statements.
	d. Are there frequent interactions of senior management and operation management in both formal and informal settings?		✓	Per our inquiry, the Director of Administrative Services stated that there were no set formal or informal meetings between the CAO and other city management personnel.
	e. Is management’s attitude appropriate towards financial reporting and other operational reporting?		✓	There were errors noted in the CAO’s direct labor distribution report. This is the same with other high management personnel of the city. The CAO allocated direct labor salaries to different fund accounts (e.g., 35% to the General Fund). However, there was no vacation and sick leave pay allocated to the General Fund for the same pay period.
A4.	Organizational Structure			
	a. Is the organization structure centralized or decentralized to facilitate flow of information?		✓	The organization structure is centralized; however, there were no procedures established on how information was disseminated to the staff and the City Council. From our observations, letters, e-mail and direct oral communication were the medium of communication.
	b. Are key managers’ responsibilities adequately defined and communicated?		✓	Key managers’ responsibilities were defined; however, incompatible functions were performed by these managers due to inadequate staffing. Most of the time, daily operation functions were performed by “whoever is available.”
	c. Do managers in charge have the required knowledge, experience, and training?		✓	Some of the managers that we have inquired with appear to have the required knowledge to perform their primary responsibilities; however, these managers will follow orders and instructions from the CAO without question. For example, the payments of the CAO’s personal loans were never questioned.
	d. Does the city’s established reporting relationship ensure effective communication between employees, supervisors, managers, and officers?		✓	To a limited extent. There is a serious crossover of employees performing different functions due to inadequate staffing. For example, if the accounts payable clerk is absent from work, whoever is available from the staff will perform her work. It appears from our observation, that almost all of the management and employees of the administrative services receive cash payments from the public.
A5.	Assignment of Authority and Responsibility			
	a. Is proper information considered in determining the level of authority and scope of responsibility to an employee?	✓		Proper information was considered in determining level of authority and scope of responsibility; however, the CAO had the ability to do whatever he wanted. For example, a document needed for the CAO personal loan application was signed by the Assistant CAO. This document should have been approved by a higher authority.

Appendix 1 (continued)

		Yes	No	Comments
	b. Are responsibilities for decisions related to assignment of authority and responsibility?		✓	Based upon our inquiry, most of the decisions are referred to the CAO. For example, significant revision of revenue items that were included in the budget was up to the CAO. Additional engineering services between D & J Engineering were discussed with the CAO.
	c. Are employees at the right level empowered to correct problems or implement improvements?		✓	Yes, but only to a certain extent. Processing of payroll and correction of errors were made by either the treasurer or the accounting manager. Most city staff members follow orders and instructions from the CAO.
	d. Do job descriptions exist and contain specific references to control-related responsibilities?	✓		Job descriptions exist and contain specific references to control-related responsibilities; however, staff members perform incompatible duties due to inadequate staffing.
A6.	Human Resources Policies and Practices			
	a. Are policies and procedures established for hiring, training, and promoting employees and management particularly in hiring and training?		✓	The CAO is responsible for hiring, firing, and promoting city staff (see A1b. above).
	b. Are employees made aware of their responsibilities and expectations of them?	✓		Employees are made aware of their responsibilities and expectations of them during the hiring process. There was no follow-up after an employee is hired. There were no evaluation report noted in the personnel file that we reviewed.
	c. Is management's response to failure to carry out assigned responsibilities appropriate?		✓	This is the sole responsibility of the CAO. There was no documentation questioning the CAO's decisions.
Risk Analysis				
B1.	Goals and Objectives			
	a. Are there entity-wide objectives that were established by management?	✓		Goals were established by management within the administrative services unit but not city-wide objectives. The City of Bell's procedures manual that was provided to the auditors was only for the administrative services unit.
	b. Does information relating to objectives disseminated to all city employees?		✓	There was no documented procedural process of relaying information among city staff except that employees are notified either by co-workers or their superiors about new information.
	c. Are goals (with specific targets and deadlines) established and relate to objectives?		✓	No. Staff's goals are limited to their roles and responsibilities in performing their assigned tasks. The staff's attitude is that the goals and objectives are up to management, mostly to the CAO.
	d. Are measurement data included in the objectives?		✓	We were not able to obtain any measurement data.
	e. Are plans reviewed annually to ensure consistency (strategic plans, bus plans, budget, etc)?		✓	We were not able to obtain any annual reviews.
	f. Are managers involved in establishing objectives for which they are responsible?		✓	It appears that managers are isolated to their departmental goals and objectives.

Appendix 1 (continued)

		Yes	No	Comments
B2.	Risk			
	a. Does the risk-assessment process in place consider the extent and internal factors affecting objectives?		✓	There was no documented assessment process relative to risk. The Risk Assessment Officer (Assistant Chief Administrator) no longer works for the city. The Director of Administrative Services temporarily took over this position.
	b. Does the risk assessment process include estimated significance of risks, assessing likelihood of occurrence, and determining the needed actions to prevent risks?		✓	Staff members were neither concerned nor did they have a clear understanding at the relevance of risk assessment. We were not able to obtain any documentation in support of a risk assessment.
	c. Is management considering the risks related to Human Resources, budgeting, labor relations, and Information Systems?		✓	There was no documentation, and both staff members and management stated that they were not involved in risk assessment.
B3.	Managing Change			
	a. Are there mechanisms in place to anticipate, identify, and react to routine events or acts that affect achievement of objectives?		✓	There was no documentation—written or verbal—relative to addressing routine events or acts that may affect objectives.
	b. Are there mechanisms in place to identify and react to changes that can have dramatic and pervasive effect on the City?		✓	No. The CAO will address all changes and will make recommendations to the City Council for approval.
Control Activities				
C1.	Management Reviews			
	a. Controls are performed and checked for reasonableness, allowability and validity of transactions?		✓	It appears that some controls are performed and checked for reasonableness, allowability, and validity of transactions; however, there were unreasonable and unallowable transactions that were processed. For example, personal loans by the CAO were paid through the city’s accounting system.
	b. Are controlled items counted check periodically?		✓	Records were kept for some controlled items; however, these records were incomplete.
	c. Does management compare different sets of data and investigate variances?	✓		Yes, variances relating to staff payroll records were investigated and corrected. We did not note if management performs these comparisons on other areas of the accounting transaction cycles.
	d. Are duties properly segregated?		✓	See A2b above.
	e. Are administrative and operation policies in writing, current, and do they set clear procedures for compliance?	✓		The City of Bell has a procedures manual. This manual was last updated in August 2007.

Appendix 1 (continued)

		Yes	No	Comments
Information and Communication				
D1.	Information			
	a. Are mechanisms in place to obtain relevant information on program, legislative or regulatory developments, budget, or economic changes?		✓	Information relative to some programs and budgets were not available and information regarding legislative or regulatory development or economic changes is not in place to readily access information. There was no staff or management assigned to perform such functions.
	b. Have long range information technology plans been developed and linked with strategic initiatives?		✓	None noted.
D2.	Communications			
	a. Are communication vehicles sufficient in effecting communications?	✓		E-mails and updates from co-workers and supervisors.
	b. Do employees know the objectives of their own activity and how their duties contribute to achieving objectives and others goals?	✓		Employees know the objectives of their own activity, but not how their duties contribute to achieving objectives and others goals. From our inquiries, staff knew of their specific job objectives but not how they contributed to other staff's objectives and goals.
	c. Are communications channeled to people to report suspected act, permits anonymity, and feedbacks are provided?		✓	We were not able to obtain any documentation.
	d. Does adequate communication exist across the organization? Is information complete, timely, and sufficient?		✓	We were unable to document communication flowing from management to staff and staff to management.
	e. Are feedback mechanism for external parties (suggestions, input, complaints) directed to relevant internal parties?		✓	From our observation and inquiry, all complaints and suggestions were taken at the office counter.
	f. Are staff and other personnel receptive to report problems from external parties?	✓		Staff members at the office counter will address problems from external parties and will get supervisors involved if needed.
	g. Is top management aware of the nature and volume of complaints?		✓	Complaint log is not maintained.
Monitoring				
E1.	Ongoing Monitoring			
	a. Are operational information integrated or reconciled with data generated by the administrative services?	✓		Information is included in the city's procedures manual.
	b. Are operation personnel required to "sign off" on the accuracy of their unit's records?		✓	Staff will perform their assigned tasks but confirmation on the accuracy of their work is not a procedure that is in place.

Appendix 1 (continued)

		Yes	No	Comments
	c. Are communications from outside parties and monthly statements of accounts payable used as control monitoring technique?		✓	From our inquiry, the accounts payable clerk or her supervisor does not use inquiry and questions of external parties for monitoring technique.
	d. Are periodic comparisons of amounts recorded by accounting system compared with physical assets?	✓		Records were kept for some physical assets; however, these records were incomplete and not reconciled to physical assets.
	e. Does City management have proper authority to decide which of the auditors' recommendations are to be implemented?			N/A. The city does not have an internal audit unit. Recommendations from external CPA were addressed by the CAO.
	f. Are employees' suggestions communicated and acted on as appropriate?		✓	From our inquiry, there were no formal processes of addressing employee or external parties' suggestions.
	g. Does a policy exist to adopt an Incompatible Activities Statement of Conduct?	✓		This is stated in the City of Bell procedural manual. However, the city was inadequately staffed to perform in incompatible duties.
E2.	Separate Evaluation			
	a. Do employees with appropriate skills evaluate portions of the internal control?		✓	From our inquiry and observation, the staff and management did not evaluate internal controls.
	b. Do city staff members gain sufficient understanding of internal controls?		✓	No internal control reviews employed by the city with the exception of the annual financial audits.
	c. Are policy manuals, organization charts, and operational instructions available for review?	✓		Only the City Bell procedures manual, City Charter Provision, and City Ordinance.
E3.	Reporting Deficiencies			
	a. Are means of obtaining reports of deficiencies from both internal and external sources exist?		✓	Report of deficiencies is not maintained.
	b. Is there ongoing monitoring of internal controls?		✓	Although procedures for monitoring internal control is stated in the procedures manual, from our observation and inquiry, monitoring of internal control has not been performed by city staff.
	c. Are deficiencies directly reported to the person directly responsible for the act and to a person at least one level higher?			N/A, see comment above, E3b.
	d. Are the transactions or event identified investigated, causes determined, and problem corrected We were not able to obtain any measurement data.?			N/A, see comment above, E3b.

**Appendix 2—
Summary of Annual Compensation
For Selected City Officers
For the Fiscal Years 2008-09 and 2009-10**

	Fiscal Year		Total
	2008-09	2009-10	
Mayor:			
Community Redevelopment Agency–Regular Salary	\$ 722.71	\$ 722.71	\$ 1,445.42
Life Insurance	396.00	396.00	792.00
Deferred Compensation		16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary		826.95	826.95
Regular Salary–Surplus Prop. Auth.	17,964.63	18,803.06	36,767.69
Total	\$ 92,748.76	\$ 114,268.08	\$ 207,016.84
City Council Member A:			
Community Redevelopment Agency–Regular Salary	\$ 722.71	\$ 722.71	\$ 1,445.42
Life Insurance	258.00	258.00	516.00
Deferred Compensation	—	16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary	—	826.95	826.95
Regular Salary - Surplus Prop. Auth.	—	18,803.06	18,803.06
Total	\$ 74,646.13	\$ 114,130.08	\$ 188,776.21
City Council Member B:			
Community Redevelopment Agency–Regular Salary	\$ 647.95	\$ 722.71	\$ 1,370.66
Life Insurance	258.00	396.00	654.00
Deferred Compensation	—	16,500.00	16,500.00
Regular Salary	73,665.42	77,019.36	150,684.78
Retro Pay–Regular Salary		826.95	826.95
Regular Salary - Surplus Prop. Auth.	17,964.63	18,803.06	36,767.69
Total	\$ 92,536.00	\$ 114,268.08	\$ 206,804.08
City Council Member C:			
Community Redevelopment Agency–Regular Salary	\$ 545.49	\$ 722.71	\$ 1,268.20
Life Insurance	11.50	90.00	101.50
Deferred Compensation		16,500.00	16,500.00
Regular Salary	55,601.87	77,019.36	132,621.23
Retro Pay - regular salary		826.95	826.95
Regular Salary– Surplus Prop. Auth.	13,559.51	18,803.06	32,362.57
Total	\$ 69,718.37	\$ 113,962.08	\$ 183,680.45
City Council Member D¹:			
Community Redevelopment Agency–Regular Salary	\$ —	\$ 520.57	\$ 520.57
Life Insurance	—	46.00	46.00
Deferred Compensation	—	—	—
Regular Salary	—	4,515.56	4,515.56
Retro Pay–Regular Salary	—	—	—
Regular Salary–Surplus Prop. Auth.	—	803.51	803.51
Total	\$ —	\$ 5,885.64	\$ 5,885.64

Appendix 2 (continued)

	Fiscal Year		Total
	2008-09	2009-10	
Chief Administrative Officer ²:			
401(a)	\$ 48,000.00	\$ 48,000.00	\$ 96,000.00
Auto Allowance	4,320.11	4,818.59	9,138.70
Float Holiday	2,415.00		2,415.00
Holiday	19,205.00	26,758.20	45,963.20
Life Insurance	138.00	258.00	396.00
Miscellaneous	47,563.09	45,877.47	93,440.56
OT–Deferred Comp 457	22,000.00	22,000.00	44,000.00
Regular Pay ²	538,430.00	666,733.20	1,205,163.20
Retroactive Pay		12,461.40	
Sick Paid	80,059.41	96,057.52	176,116.93
Vacation Paid	237,994.30	286,518.75	524,513.05
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	\$ 1,001,124.91	\$ 1,210,483.13	\$ 2,210,608.04
Assistant Chief Administrative Officer:			
401(a)	\$ 48,000.00	\$ 48,000.00	\$ 96,000.00
Float Holiday	1,177.85	—	1,177.85
Holiday	11,582.19	13,050.56	24,632.75
Life Insurance	138.00	138.00	276.00
Miscellaneous	1,000.00	1,000.00	2,000.00
Regular Pay	286,020.73	325,180.34	611,201.07
Retroactive Pay		6,077.69	
Sick Paid	41,010.00	46,524.91	87,534.91
Vacation Paid	122,023.88	138,231.65	260,255.53
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	\$ 510,952.65	\$ 578,203.15	\$ 1,089,155.80
Director of Administrative Services:			
401(a)	\$ —	\$ —	\$ —
Float Holiday	3,273.08	—	3,273.08
Holiday	7,005.38	8,795.84	15,801.22
Life Insurance	60.00	60.00	120.00
OT–Deferred Comp 457	16,500.00	16,500.00	
Regular Pay	188,804.77	219,165.13	407,969.90
Retroactive pay	—	4,096.22	
Sick Paid	1,190.77	6,570.48	7,761.25
Vacation	793.85	—	—
Vacation Paid	27,487.11	17,506.56	44,993.67
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	\$ 245,114.96	\$ 272,694.23	\$ 517,809.19
Director of Community Services and Social Services:			
401(a)			
Float Holiday			
Holiday	\$ 6,161.54	\$ 6,161.52	\$ 12,323.06
Life Insurance	138.00	138.00	276.00
OT–Deferred Comp 457	4,000.11	4,207.65	—
Regular Pay	154,038.53	154,670.56	308,709.09
Vacation	616.15	—	—
Vacation Paid	19,704.62	19,723.10	39,427.72
Regular Salary–Surplus Prop. Auth.	—	—	—
Total	\$ 184,658.95	\$ 184,900.83	\$ 369,559.78

Appendix 2 (continued)

	Fiscal Year		Total
	2008-09	2009-10	
Director of General Services:			
401(a)	\$ —	\$ —	\$ —
Float Holiday	3,969.23		3,969.23
Holiday	7,895.40	8,795.83	16,691.23
Life Insurance	60.00	60.00	120.00
OT–Deferred Comp 457	16,500.00	16,500.00	
Regular Pay	193,434.06	219,165.13	412,599.19
Retroactive pay	—	4,096.22	4,096.22
Total	\$ 221,858.69	\$ 248,617.18	\$ 470,475.87
Chief of Police ³ :			
Holiday		\$ 15,819.30	\$ 15,819.30
Regular Pay		411,301.64	411,301.64
Uniform	—	1,250.00	1,250.00
Total	—	\$ 428,370.94	\$ 428,370.94

¹ Appointed as City Council Member on October 12, 2009.

² Regular pay includes compensation for performing duties as the City's CAO as well as the Executive Director of the following authorities effective September 1, 2008: Bell Surplus Property, Bell Solid Waste and Recycling, Bell Community Housing, Bell Public Financing, Bell Community Redevelopment.

³ Employed as Chief of Police on April 28, 2009.

**Appendix 3—
Uses of General Obligation Bond—Measure A
(2003 Election) Proceeds ¹**

Use of Proceeds	2004 Issuance	2007 Issuance	Total
Little Bear Park	\$ 6,199,210.90	\$ 2,487,886.45	\$ 8,687,097.35
Bell Sports Complex	3,100,083.83	3,004,238.86	6,104,322.69
Bond Interest	—	4,987,697.92	4,987,697.92
Deb's Park	1,533,081.78	—	1,533,081.78
Veteran's Clubhouse	1,507,093.52	—	1,507,093.52
Skate Park	1,224,401.09	18,860.00	1,243,261.09
Nueva Vista Park	1,223,209.41	4,550.00	1,227,759.41
Cost of Issuance	255,855.48	162,745.05	418,600.53
Veteran's Park	16,941.14	545,635.69	562,576.83
Civic Center	398,822.16	—	398,822.16
City Hall/Police Department	—	265,257.60	265,257.60
Treder Park	50,371.41	15,297.98	65,669.39
Election Costs	28,701.37	—	28,701.37
Miscellaneous	8,736.46	8,474.55	17,211.01
City Monument	2,877.00	—	2,877.00
Total	\$ 15,549,385.55	\$ 11,500,644.10	\$ 27,050,029.65

¹ The amounts presented on this Appendix are based on city-prepared, unaudited documents.