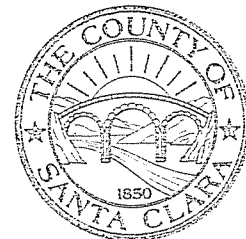


County of Santa Clara

Office of the County Executive

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Jeffrey V. Smith
County Executive

April 10, 2013

The Honorable Kamala D. Harris
Attorney General of California
1300 I Street
Sacramento, CA 94244

Dear Madam Attorney General,

With this letter I am requesting an investigation by the Attorney General of certain irregularities related to the Santa Clara District Attorney's office. Jeffrey F. Rosen is the District Attorney in Santa Clara County. Because there are rational assertions that criminal activity may be involved, and the concerns involve the actions of the District Attorney, the County does not have the expertise, or authority, to do a complete investigation into this matter. Given the facts, I believe that it would be best if this is investigated by the Attorney General. Below is a summary of the issues known within the public.

Two years ago, the County and the union representing the Deputy District Attorneys consummated a labor agreement that included certain concessions as part of a countywide effort to reduce employee costs. The General Attorney's Association (GAA) has sole authority to negotiate on the behalf of its union members and the County Board of Supervisors delegates the County's authority to the Labor Relations Division of the Employee Services Agency.

As part of the ultimate agreement, a 5% stipend was eliminated for GAA lead attorneys throughout the County. That concession, during negotiations, was considered by both parties to have a value of approximately \$280,000 for the District Attorney's office alone for the two years of the contract. Lead attorneys, also called SuDDAs, are members of GAA who are chosen by the District Attorney to provide some oversight for the more junior attorneys in the office. Lead attorneys are not supervisors. They are part of the Merit System, and they are chosen by the District Attorney, not by the County or the GAA, to serve in this role.

The District Attorney was upset about the 5% concession at the time, and complained about it vigorously. At the time, Jeff Rosen argued vigorously that he believed that this approach was detrimental to his office. However, the concession was implemented as it was part of the Memorandum of Understanding (MOU) with the union.

Subsequently, the District Attorney chose to replace the benefit by providing the SuDDAs with the benefit of administrative paid leave in an amount roughly equivalent to the worth of the 5% stipend. He directed his Chief Deputy to modify timesheets in order to substitute administrative paid leave time for vacation, sick time, and other hours. In some cases, there was a substitution of paid leave for vacation. This allows the employees to "bank" their vacation benefit hours and sell the hours back to the County for cash. At this point, it is unclear whether or not the lead attorneys knew of this at all times and whether or not they believed that this "work-around" was appropriate. The administrative paid leave qualifies as compensation for the employee. Thus, a number of questions are raised by this behavior on the part of the District Attorney. Some of these questions are:

1. Was this action consistent with County policies and procedures?
2. Does the District Attorney have the authority to sidestep the union MOU in this manner?
3. Was this benefit allocated in a fair and equitable manner, was there an obligation to do so?
4. Did the SuDDAs work with the District Attorney in order to obtain this benefit?
5. Do the facts support the need for any enforcement action from the Attorney General?

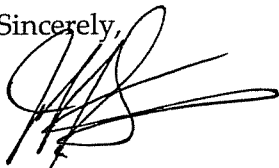
I can imagine that other questions may become evident during the investigation process. The fifth question above is clearly outside of our realm of knowledge. Certainly, if this situation had occurred with another department head, or other County employees, I would have asked that the District Attorney get involved in the investigation. In this situation, I cannot do that.

Thus, I request that the Attorney General's Office initiate an appropriate investigation of the situation. Initially, we had planned to do our own internal investigation related only to whether or not there was compliance with County policies and procedures. We will continue with this part of the investigation. However, because of the other questions presented, because of the assertion by Jeff Rosen that he was told that his behavior was "ok," and because the attorney from GAA has asserted that the District Attorney's actions violated state law, we do not believe that Santa Clara County has the authority or capability to do such an investigation.

Please accept this request for an investigation of these issues to be done by your office.

I appreciate your assistance with this matter.

Sincerely,



Jeffrey V. Smith
County Executive

Attachment (Letter from Government Attorney Association)

April 7, 2013

Via E-Mail & U.S. Mail

Max Zarzana, President
GAA
c/o WMPR
2125 Canoas Garden Ave #120
San Jose, CA 95125

Re: Administrative Leave for Supervising Deputy District Attorneys

Dear Max:

You have asked that I provide advice regarding District Attorney Jeff Rosen's provision to Supervising Deputy District Attorneys (SuDDAs) with administrative leave in an amount equivalent to 104 hours per fiscal year or 5% of minimum expected work hours. Based on yesterday's investigative piece broadcast on KNTV Bay Area News, and this morning's front page story in the San Jose Mercury News, Rosen admits that he authorized this expenditure. Moreover, the KNTV broadcast revealed that management officials altered individual employee time sheets by substituting administrative leave for requested paid leave.

In the KNTV broadcast, Rosen stated that as a matter of policy, within the Office of the District Attorney, SuDDAs received time off with full pay equal to 5% of pay. Administrative leave, in lieu of paid vacation or sick time off, is an economic benefit to

employees since it avoids debiting employee leave banks. Administrative leave permits employees to preserve either vacation or sick time leave. These employees may then cash out unused vacation time either annually, or upon separation. This is an additional cost to the County and a financial benefit to the employee.

It is clear that Rosen has approved a gift of public funds in violation of Government Code, Section 8314. He may have violated Penal Code Section 424.

Rosen's actions violate, Section 4.2 of the MOA between the GAA and the County of Santa Clara. That section states that the 5% lead differential pay to SuDDAs "shall be suspended effective September 5, 2011 through June 23, 2013." As the news reports confirm, we know that District Attorney Rosen objected to the provisions of Section 4.2 in the MOA. It is evident that the District Attorney circumvented the MOA by providing administrative leave to SuDDAs in an amount equal to 5% of full time work hours for at least one full calendar year

I conclude that actions and policy of the District Attorney is a gift of public funds, in violation of Government Code § 8314. Put simply, despite express limitations of Section 4.2 of the MOA, Rosen spent public funds in the form of administrative leave for the private benefit of individual SuDDAs.

I recommend that the GAA inform its members that the receipt of the administrative leave constitutes a gift of public funds. The GAA should recommend that GAA

Letter to Max Zarzana
April 7, 2013
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members immediately offer to re-credit the County for the administrative leave and cooperate with any investigation into this matter.

If you have any questions concerning the foregoing, please contact me.

Very truly yours,


CHRISTOPHER E. PLATTEN

CEP:imt
cc: Kevin Smith, GAA

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