

EDMUND G. BROWN JR.
Attorney General

State of California
DEPARTMENT OF JUSTICE



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January 29, 2010

The Honorable Jack M. Jacobson
Judge of the Superior Court
Stanislaus County Superior Court
P.O. Box 3488
Modesto, CA 95353

Re: Stanislaus County Civil Grand Jury Report, No. 010-04 (City of Hughson)
(A.G. Opinion Unit No. 10-0103)

Dear Judge Jacobson:

We are writing in response to a request from the Stanislaus Civil Grand Jury that we comment on its report on allegations of misconduct by members of the Hughson City Council.

As a preliminary matter, we think it is important to point out that we believe the Grand Jury was mistaken when it stated that a response is "required" from this office under Penal Code section 933(c). As you know, Penal code section 933(c) requires an agency to file comments when a grand jury report pertains to matters under that agency's control, and the agency is under the reviewing authority of the grand jury. The Attorney General's office is not under the reviewing authority of the Stanislaus County Civil Grand Jury. Therefore, the Attorney General's Office is not required to file comments under Penal Code section 933(c).

In the spirit of cooperation, however, we are pleased to provide you with these informal observations.

First, we have no independent information about the conduct that is alleged to have violated the Brown Act and Fair Political Practice allegations. Therefore we make no comment, either to agree or to disagree, with the Grand Jury's findings on those matters.

Second, we note that the Grand Jury recommends that three council members should "resign or be removed by the Attorney General of the State of California, the FPPC or a recall by the citizens of Hughson." We presume that this reference to removal by the Attorney General's office refers to our power under Code of Civil Procedure sections 803 through 811 to approve and supervise a petition in quo warranto for the removal of a person who unlawfully holds a

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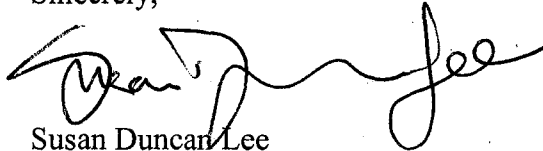
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public office. The Attorney General rarely pursues an action in quo warranto on his own initiative, although we do carefully consider all properly supported applications that are submitted to us. (*See* 11 Cal.Code Regs. §§ 1-11 (application requirements).)

Generally speaking, this office does not approve the filing of quo warranto actions based on allegations of misconduct in office. A quo warranto petition is the proper form of action for removing a person who lacks right or title to the office he purports to hold, as for example when the person does not meet eligibility or residency requirements for the office, or has not been properly elected or appointed to the office. But a person who lawfully holds an office will not be removed from it in a quo warranto action merely because the person has committed some misconduct in the office. (*Wheeler v. Donnell*, 110 Cal. 655, 657-658; 81 Ops.Cal.Atty.Gen. 207, 208.) Based on the contents of the Grand Jury's report, this matter does not appear to be one that would be proper for a quo warranto action.

Finally, we believe that any question regarding the possibility of a removal action under Government Code sections 3060-3074 should be addressed to the District Attorney of Stanislaus County.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Duncan Lee". The signature is fluid and cursive, with a large initial "S" and "L".

Susan Duncan Lee
Supervising Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General