

March 22, 2022

FPPC Meeting March 24, 2022 - Public Comments Submission

Subject: Follow on from Charles Grace Section 1090 Violation

Dear FPPC Commissioners and Staff,

It is believed valuable for the FPPC Commissioners to know what happened because of the precedent setting Grace Section 1090 violation at the district, community, and complainant level. You will recall, the stipulation order was approved at the November 2021 Commission meeting.

Three San Simeon CSD directors had and continue to take a public position that nothing was done wrong and that there was absolutely no harm done. It was a trivial "inadvertent" (FPPC staff characterization) violation. All other supplemental complaints filed by citizens were "frivolous" as stated by Grace's attorney.

1. Payment of Grace's FPPC related legal fees by San Simeon CSD - \$49,246.63

At a March 8, 2022, Special Closed Session San Simeon CSD (SSCSD) Board Meeting:

"CONFERENCE WITH LEGAL COUNSEL - POTENTIAL LITIGATION Pursuant to Government Code §54956.9(d)(2) Title: Grace Environmental Services, LLC – Request for indemnity."

Grace's attorney was demanding indemnification for all of Grace's legal fees related to FPPC actions totaling \$49,246.63 and payment of his fine of \$4,500.

At the open session, the following business action item was considered and acted upon:

"Item 6.E. Consideration and Approval of Indemnification for Grace Environmental Services, LLC ("GES") Costs Incurred in FPPC Investigation."

Board Chair Gwen Kellas moved swiftly with two other directors to approve payment of the \$49,246.63 in Grace's legal fees and not pay Grace's fine of \$4,500. The legal fees detail invoice was heavily redacted even for the directors. Attorneys' rates were at \$550 and \$600/hour as compared to the District's legal counsel rate of \$215.00/hr. No hourly or dollar limits were set for this or future charges.

Voiding of Grace's original 2016 contract with the SSCSD, using Section 1090 violation authority, was never agendized.

2. Public announcements by Chair Kellas regarding the violation of Section 1090 and the other supplemental citizen complaints.

Besides statements made at the March 8, 2022 Board meeting, an example follows from the recent March 16th North Coast Advisory Council meeting. This council is advisory to San Luis Obispo County Supervisor Bruce Gibson and includes Cambria and San Simeon representatives and various county staff. The meeting is covered by local press.

Kellas NCAC statement:

"In reference to the indemnity clause in the General Manager's [Grace's company] contract and the Board vote to honor the contract, the Fair Political Practices Commission researched a wide range of alleged violations and found no intent to harm, conceal, mislead or deceive. The fine of \$4,500 was due to Charles Grace not leaving a 2016 Board meeting during the negotiation of his contract. FPPC noted the violation was inadvertent. FPPC did not void or have the power to void the 2016 contract. Legal fees for this complaint have cost taxpayers over \$49K since the Board voted to pay the full amount. Since the ruling, three more complaints have been filed on the same topic and all three have been rejected by the FPPC."

3. SSCSD Chair Kellas threatens legal action against FPPC complainants for "frivolous" complaints.

At the March 8th SSCSD Board, after approving the payment of Grace's legal fees, Chair Kellas made the following statement:

"I would like to have an add to the agenda item, that if it is possible for the District to sue the people [Hank Krzciuk and Julie Tacker] that are costing us a small fortune in legal bills and with the amount of frivolous various in sundry whatever's that they keep applying to us. There has to some way that we can recoup the expenditures based on what several people have classified, with way more knowledge than I have, of what they refer to as "frivolous" charges. So, I would like to add that to a future agenda."

As of the date of this letter, the threat of legal action remains open. SSCSD District Counsel Jeffery Minnery remained silent at the meeting.

4. Chilling effect of statement made by SSCSD Chair Kellas

There are additional matters that I wish to comment on and one related to this case, the FPPC Commissioners and FPPC staff. However, I will not be speaking to these matters because of the SSCSD Chair's threatening statement and other statements made by the SSCSD General Manager and his attorney's, and now with SSCSD funding to intimidate and interfere with my rights to criticize my government. Given what has happened with this case and its consequences for citizens, a reasonable person might hesitate to file complaints with the FPPC, anonymously or not.

Requests for FPPC action:

A. Letter of clarification to San Simeon CSD stating that the original complaint regarding Charles Grace was initiated by the FPPC in coordination with the San Luis Obispo County District Attorney's Office subsequently resulting in a joint investigation. Ms. Julie Tacker and I did not initiate this complaint but provided additional supplemental information in the form of sworn complaints that were incorporated into the investigation.

Further, at the February 2022 FPPC meeting, staff made it clear that final stipulation orders are often the result of negotiations and sometimes quite limited in their extent by staff

resources, meaning considerable concessions are made. It should not mean that all other related supplemental complaints are “frivolous” and without basis as has been portrayed here.

B. Continued action by the FPPC in coordination with the District Attorney’s association to obtain a broader authority jointly or separately to act and void contracts ab initio when a Section 1090 violation occurs. As it stands now based on this precedent setting case, a once feared Section 1090 violation resulted in a relatively small fine compared to potential gains for the involved party.

C. If there are protections for citizens making complaints, e.g., whistleblower type protection, such information should be made available. This is particularly problematic when a government agency or officer of such agency is involved in making legal threats and potentially suing as has occurred here.

Respectfully,

A handwritten signature in black ink that reads "Henry Krzciuk". The signature is written in a cursive, flowing style.

Henry Krzciuk
San Simeon Resident