

February 19, 2020

**ATTORNEY-CLIENT PRIVILEGED COMMUNICATION
CONFIDENTIAL**

VIA EMAIL ONLY

angeloc@mendocinocounty.org

Ms. Carmel Angelo
Mendocino County Chief Executive Officer
501 Low Gap Road
Ukiah, CA 95482

Re: *Issues Between DA and Auditor-Controller*
Client-Matter: ME380/001

Dear Carmel:

The purpose of this correspondence is to provide you with our opinion pertaining to the authority and powers of the Auditor-Controller over the Office of the District Attorney. If you have follow-up questions after reviewing the below, please let me know.

I. QUESTIONS PRESENTED

1. Whether the Auditor-Controller has authority to require the District Attorney to comply with County Board of Supervisors' Policies?
2. Whether the District Attorney's use of Asset Forfeiture funds is subject to County policies?
3. Whether the District Attorney's office must provide Travel Authorizations for expenditures or reimbursements made with County funds?

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II. SHORT ANSWERS

1. The Auditor-Controller does not have general authority to require the District Attorney comply with County policies. The Government Code provides that the Auditor-Controller has the authority to audit accounts of County debtors, reconcile County accounts, audit internal accounts, and supervise and review departmental and county-wide internal accounting controls. The Auditor-Controller has authority, however, to not reimburse claims and can deny claims for purchase of goods or services that are not in conformity with existing County policies.
2. The District Attorney may use Asset Forfeiture funds that may fall outside of conformity with County policies but subject to the guidelines outlined by Government Code 11489.
3. The District Attorney's office may have to obtain Travel Authorizations for expenditures but only for those that are not directly related to a case, and either (1) involve travel outside of California or (2) are over \$1000.

III. FACTUAL BACKGROUND

We were provided with the following information from the Auditor-Controller, and the opinions contained herein are based on the following facts:

Staff changes in the Auditor-Controller's office have resulted in closer review of the District Attorney's submission of claims. Several of the District Attorney's claims that had previously been approved are now being followed up with requests for additional information or outright denied.

The District Attorney recently submitted a claim for a 2018 "End of Year Staff Workshop and Continuing Education dinner" at The Broiler. The Auditor-Controller requested supporting documentation, and learned that 42 attendees of the dinner were County employees and 25 were general members of the public. The Auditor-Controller concluded that this event did not comply with either County Policy #1 or #18 and denied the claim. After several attempts to resubmit the claim for full payment, the District Attorney paid the vendor directly and then requested reimbursement from Asset Forfeiture funds. This reimbursement was also denied.

The Auditor-Controller has also taken issue with the District Attorney's stated exemptions to the County requirement to provide Travel Authorizations. The District Attorney believes his office has been exempted by the CEO from ever preparing Travel Authorizations. On January 24, 2018, the CEO issued a memorandum exempting the District Attorney from Budget Directive #2, which required that all travel outside of Mendocino County required Travel Authorizations approved by the CEO. The Auditor-Controller has been denying claims from the

District Attorney's office that are not directly related to a case and were not submitted with Travel Authorizations.

IV. DISCUSSION

A. Auditor-Controller's Authority to Require District Attorney Compliance with County Policy

1. Government Code

There is nothing in the Government Code that gives the Auditor-Controller exclusive authority over the District Attorney's expenditures or gives the Auditor-Controller authority to require the District Attorney comply with County policies. At most, the Auditor-Controller has the authority to supervise and review the County's accounting policies.

Government Code section 26900 *et seq.* gives a county Auditor the power to audit accounts of County debtors and reconcile County accounts. Government Code section 26880 *et seq.* gives the Board of Supervisors authority to create an office of controller which is held by the county Auditor. The Auditor-Controller is the Chief Accounting Officer for the County and may supervise and review departmental and county-wide internal controls (including accounting forms and methods of keeping accounts). (Cal. Gov't. Code § 26881.) The Auditor-Controller may audit the accounts and records of any department, office, board or institution under its control, and if fraud or gross negligence is found, the report shall be filed with the District Attorney. (Cal. Gov't. Code § 26883.)

2. County Policy

The County's Board of Supervisors has adopted policies giving the Auditor-Controller certain authority to deny submitted claims that are not authorized by law or not in conformity with County policy.

County Policy No. 1 (Purchasing, Leasing & Contracting Policy) gives the Auditor-Controller the power to "not reimburse purchases of items not specifically authorized by law unless the purchase is ratified by formal Board of Supervisor action upon a finding that the purchase was necessary and appropriate." (County Policy No. 1, at 2.2) The Auditor-Controller also "will deny any claim for the purchase of goods or services that is not in conformity with existing County policy." (County Policy No. 1, at 2.8) County Policy No. 1 also gives a Department Head, like the District Attorney, the power to make certain direct purchases from vendors if authorized by the Purchasing Agent (designated as the "General Services Agency Director" per the Policy) and/or the Auditor-Controller. (County Policy No. 1, at 2.3.2) The District Attorney is also specifically exempted in County Policy No. 1 in the "Contract Approval Requirements" section which states "a personal and professional service contract is not required to procure the services needed by the Sheriff's Office or the District Attorney to investigate or

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prosecute crimes nor is it necessary for services required by a court order.” (County Policy No. 1, at 6.1)

The Auditor-Controller appears to be using its limited power from subsections 2.2 and 2.8 of County Policy No. 1 to deny the District Attorney’s submitted claims for a supposed violation of County Policy, although it was not made clear which County policy had been violated. Under County Policy No. 1, the Auditor-Controller has the power to deny claims if they are not specifically authorized by law or not in conformity with County policy. If the District Attorney’s claims are specifically authorized by law, the Auditor-Controller does not have the authority to deny such claims. Similarly, if the submitted claims are in conformity with County policy, the Auditor-Controller does not have the authority to deny such claims.

B. District Attorney’s Use of Asset Forfeiture Funds

County Policy No. 1, at 1.1.1 states that purchases may be made outside of County Policy if “otherwise provided by law (department must provide applicable Code Sections).”

Government Code 11489 provides for the Asset Forfeiture fund and part of its distribution clause states that the fund “shall be used for the sole purpose of funding programs designed to combat drug abuse and divert gang activity, and shall wherever possible involve educators, parents, community-based organizations and local businesses, and uniformed law enforcement officers.” The DA’s Asset Forfeiture funds, based on the County’s website, are to be used for “proprietary efforts” in mitigating drug problems. So long as the DA’s use of the funds are generally related to mitigating drug and gang problems, use of the Asset Forfeiture fund should be in compliance with the law and do not have to adhere to County Policy.

Accordingly, the DA’s office may use Asset Forfeiture funds outside of County Policies, but it is not true that there are “no guidelines.” The use of the funds must still adhere to the restrictions of any other law it uses for its spending authority per Government Code 11489.

The Auditor-Controller argues that the claims that the District Attorney submitted under the Asset Forfeiture fund did not “meet the Government Code specified allowable uses of DA’s ‘Special Fund’” and were thus denied. The Auditor-Controller cited to Government Code 29404 for the “allowable uses.” Per Government Code 29404, the District Attorney’s “special appropriation” is \$5000 set aside to pay for the District Attorney’s expenses lawfully incurred in criminal and civil actions. This “special appropriation” fund is separate and distinct from the District Attorney’s Asset Forfeiture fund. The “special appropriation” is made available by the Board, and the Code does not require or even contemplate that the funds come from the Asset Forfeiture fund. Per Government Code 29407, the District Attorney’s “special appropriation” is in addition to any of its other expenses, which would include the Asset Forfeiture fund, and thus has no bearing on the District Attorney’s spending of the Asset Forfeiture funds.

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C. District Attorney's Travel Authorizations

County Policy No. 18 (Travel and Meal Policy) at 2.1 requires that travel outside of the State of California get prior approval by the CEO. Similarly, at section 2.2, travel for which the total anticipated cost per person is in excess of \$1,000 requires prior approval by the CEO.

County Policy No. 18 at section 2.1.1 provides an exception to the travel authorization requirement: "Necessary travel involving apprehension, investigation, and transportation of prisoners, dependents or wards of the Court; prosecution or incarceration activities are exempt from the requirements of this section." The Auditor-Controller admits that any travel submitted by the District Attorney that is directly related to a case is consistent with County policy and would not have grounds for denial.

Budget Directive #2, dated December 12, 2008, required all departments to submit all out-of-county travel to the Executive Office for review and limited out-of-county travel to mandatory training, client related travel, and out-of-county required meetings. Budget Directive #2 did not change County Policy requiring Travel Authorizations for travel out of California and travel over \$1,000, but expanded the requirement to include all travel expenditures out of Mendocino County. On January 23, 2018, the CEO issued a Memorandum that exempted the District Attorney's office from Budget Directive #2.

The January 2018 Memorandum did not exempt the District Attorney's office from County Policy No. 18 sections 2.1 or 2.2. As argued by the Auditor-Controller, County Policy therefore arguably still applies to the District Attorney's office for travel unrelated to a case and either over \$1000 or outside of California. The District Attorney's office is exempt from the requirement of Travel Authorizations for travel outside of the County, as required of every other department per Budget Directive #2. Per County Policy, the District Attorney's office is also still exempt from Travel Authorizations if the travel is directly related to a case.

Accordingly, the District Attorney's office must obtain Travel Authorizations for expenditures that are not directly related to a case, and are either (1) out of California or (2) over \$1000. However, none of the examples provided by the Auditor-Controller (which were all rejected as requiring Travel Authorizations) were over \$1000 or involving travel outside of California. The Auditor-Controller admits that the District-Attorney's office is exempt from Travel Authorizations for expenditures directly related to a case.

V. CONCLUSION

The Auditor-Controller's office has limited authority to deny the District Attorney's claims. For purchases of goods or services, the Auditor-Controller can deny claims or reimbursements that are outside County Policy and not specifically authorized by law. The Asset Forfeiture fund is specifically authorized by Government Code 11489 and therefore claims

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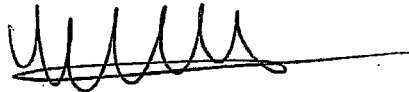
stemming from that fund should be considered with an eye to Government Code 11489 and not merely County Policy.

The District Attorney has likely not been completely exempted from the County's Travel Authorization requirement. Per County Policy, the District Attorney's office must obtain Travel Authorizations for expenditures that are not directly related to a case, and are either (1) out of California or (2) over \$1000.

Please let me know if you have additional questions after having reviewed the above.

Sincerely,

LIEBERT CASSIDY WHITMORE

A handwritten signature in black ink, appearing to read 'Morin I. Jacob', with a horizontal line extending to the right.

Morin I. Jacob

MIJ:mij