

P. SCOTT BROWNE
ATTORNEY AT LAW

The Old Post Office
131 South Auburn Street
Grass Valley, California 95945-6501
scott@scottbrowne.com
(530) 272-4250
Fax (530) 272-1684

01 OCT 31 11:28

October 29, 2001

Joe Harn
Auditor-Controller
El Dorado County
330 Fair Lane
Placerville, CA 95667

VIA FAX AND MAIL
Fax # (530) 295-2535

Re: *Recent Actions to Remove Funds from the El Dorado LAFCo Budget*

Dear Mr. Harn:

I am writing at the direction of the El Dorado Local Agency Formation Commission to demand that you immediately return the \$13,259 that you unilaterally removed from the LAFCo funding. The Commission further directs that you not take any action to restrict or hinder use of the approximate \$50,000 in LAFCO funds carried over from the previous fiscal year.

As you know, LAFCO is an independent agency of the state for the provision of governmental services at a local level. Since the adoption of the Knox-Nisbet Local Government Reorganization Act in the 1960's, LAFCO has had the authority to establish its own budget and control its own spending, though all funding came from the county. (See 64 Ops.Atty.Gen. 633, 8-12-81) Under the recently adopted Cortese-Knox-Hertzberg Act, effective January 1, 2001, LAFCO's funding has been split between cities, districts and the county. In addition LAFCO's budgeting authority has been further expanded. Where previously under old Section 56381 the County was not obligated to provide more than the prior year's funding plus an annual adjustment factor, the new Section 56381 of Cortese-Knox-Hertzberg sets no upper limit on what amount LAFCO can budget. The law further expressly authorizes LAFCO to carry-over unspent funds from previous years.

Cortese-Knox-Hertzberg also made another important change in the law particularly with respect to the responsibility of the Auditor. Under the prior law, Section 56381(c) the Auditor was charged with the responsibility to "audit and allow or reject all claims for expenditures for county charges incurred pursuant to this chapter [by LAFCO] in lieu of, and with the same effect as, allowance or rejection of claims by the board of supervisors." This provision was removed from the new Section 56381. The Auditor's only responsibility under the new law is to apportion the "net operating expense" of LAFCO amongst the various agencies and collect the funds and turn them over to LAFCO.

This was the first year for LAFCO operating under the new budgeting rules and greatly expanded new responsibilities. Because of the many unknowns, the Commission felt that substantial unallocated reserves were necessary in the event of unforeseen expenses during the year. In their resolution of May 23, 2001, approving the budget, the Commission specifically established an operating contingency in the amount of \$13,259. They did not establish a specific provision for the carry-over from prior fiscal year

Letter to Joe Harn re Recent Actions to Remove Funds from the El Dorado LAFCo Budget

October 29, 2001

pg. 2

because the amount was unknown at the time of budgeting. The tapes of that meetings are available should you have any doubts as to their intent. However I understand you were present for the meetings and spoke on the issues so you should be aware of the Commission's actions and intentions.

LAFCO staff designated the operating contingency to account #7400. This was the account established in previous years at the advice of your office to hold the Commission's operating contingency. Subsequently LAFCO staff sought assistance from Bob Toscano of your office in entering the proper budget account codes for the preliminary budget in view of the new operating situation. He did not return the phone call. LAFCO Staff turned to Suzanne Reed of the County Administrator's office for help. She looked at the budget codes and offered some advice. At her recommendation, LAFCO staff renewed its attempts to obtain advice from your office as to the appropriate budget codes. Again several phone calls asking for assistance were not returned. The dates of these phone calls have been logged and are available for inspection.

On August 6, 2001, the Commission determined that it would indeed be able to hire an additional staff analyst to meet its statutory duties under the new laws. Based on the information available by that time, LAFCO staff advised the Commission that there were sufficient monies in the operating contingency and carry-over from the previous year to fund the position. At its meeting of August 6, 2001, the Commission approved an amendment to its budget to increase its expenditures to fund the new position.

Thereafter, the LAFCO staff again attempted to contact Bob Toscano, this time to identify the account location of the carry-over funds and determine the proper method for transferring the carry-over to fund the new position. Calls were made to him on September 19th and several times in early October. Mr. Toscano finally called back on October 28, 2001, but was unable to provide the necessary information. LAFCo is still waiting for some response on this issue.

In the meantime, in early October LAFCo staff found a change had been made in their budget accounts on the County accounting system removing the \$13,259.00 from revenue. No one had informed LAFCo of this action. Executive Officer, Roseanne Chamberlain contacted your office to try to find out what had happened. She was informed by Sally Zutter that you had personally instructed her to remove the funds from revenue and refund them. Zutter also advised her that she had been instructed by you to further reduce LAFCo revenues by the amount of the carry-over funds. Zutter suggested that Roseanne speak with you to discuss the reasons for the action.

Roseanne immediately called for you on October 5th and 8th. You returned her call on October 15th. For the very first time you advised her that you did not consider the reserve account #7400 a proper expense account and that you therefore were not going to fund any expenditures by LAFCO out of the account. You also advised her that the carry-over funds should have been included in the LAFCo budget and therefore you planned to further reduce LAFCo revenue by the amount of the carry-over and make further refunds. Roseanne asked how the accounts should be redesignated so that the funds could be properly used for additional operating expenses. According to her notes of the conversation, you replied that there was no procedure for correcting clerical errors and that the funds were simply not available for LAFCO expenditure in this fiscal year. When she challenged your authority to make such a decision, you told her "Maybe we'll have to litigate this".

Letter to Joe Harn re Recent Actions to Remove Funds from the El Dorado LAFCo Budget

October 29, 2001

pg. 3

Roseanne subsequently discovered that prior to this conversation you had already sent out notices to the cities and districts advising them of an overbilling and issuing refunds of the Account 7400 monies. You did not disclose this unilateral action had already been taken at the time of the phone conversation with Roseanne.

In view of the clear potential for litigation, the Commission held a closed session at their meeting of October 24, 2001 to discuss your actions. As part of their action, the Commission retained me to represent them in this matter, since County Counsel also advises your office. I was specifically instructed in closed session to send you this letter with the following message.

The Commission is extremely disappointed at the adversarial position you have chosen to take with respect to this issue. You have taken a simple clerical misunderstanding and unilaterally escalated it into a major conflict that is not in the public interest. You did so without even the courtesy of a phone call to the Executive Officer or Chair of the Commission prior to your action.

The Commission demands that you immediately take steps to implement its budget amendment. That requires return the \$13,259 removed from the LAFCO budget and allocation of the carry-over funds from last year in the approximate amount of \$50,000 to proper expenditure accounts for this fiscal year. If we do not receive assurances from you that this will be done by November 8, 2001, I have been directed to proceed with a writ of mandate to compel restoration of the funds.

The Commission does not want to take this action. However, if your cooperation is not forthcoming, the Commission must take action to protect its ability to discharge its public responsibilities. We trust you will consult with County Counsel, consider the public interest at stake and decide to cooperate with the Commission.

I look forward to hearing from you soon.

Sincerely,



P. Scott Browne
Special Counsel for El Dorado LAFCO

cc: El Dorado LAFCO