OFFICE OF THE DISTRICT ATTORNEY

County of Lassen

INVESTIGATIVE REPORT:

THE STANDISH-LITCHFIELD FIRE PROTECTION DISTRICT

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OVERVIEW

In or about February 2020, the Office of the District Attorney received information and documentation in the form of a citizen complaint about the activities of the Standish Litchfield Fire Protection District ("SLFPD").

The citizen complaint raised concerns regarding perceived Brown Act and other violations and provided several specific examples of the violations that were alleged to have occurred, including, but not limited to:

1. Conflicts of interests amongst members of the Board
2. Confidentiality breaches
3. Brown Act violations in the form of:
    a) Improper agendizing and use of closed session
    b) Expenditure of public funds
    c) The purchase of a vehicle
    d) Employment practices

In addition to the citizen complaint, the District Attorney was also in receipt of reports from the Lassen County Sheriff Office of events taking place at the SLFPD meetings.

The District Attorney's investigative authority is the broadest of all local law enforcement agencies. The investigative functions of the District Attorney extend from the traditional hearings and trials to complex and specialized investigations not routinely handled by police agencies, particularly public integrity investigations.

In larger counties, it is not uncommon for District Attorney offices to have entire public integrity units, dedicated to the investigation of allegations of corruption involving public officials and employees in their official capacities or in the performance of their duties, and initiate criminal charges when appropriate. It is incumbent upon the District Attorney to investigate and enforce the provisions of the Political Reform Act, Elections Code, and issues relating to the open public meeting law (the Brown Act).

Based upon the information and documentation contained in the both the law enforcement reports and the citizen complaint, and the duty bestowed by law, the District Attorney began an inquiry utilizing the California Public Record Act ("CPRA") codified in Government Code section 6254 et.seq, and applying applicable statutes found in both the Health & Safety Code and Government Code of the State of California.

In that Public Record Act request, the District Attorney requested copies of agendas and minutes for meetings held over the past calendar year, along with some other specific information regarding

payments of bills or warrants and other expenditures of public monies by the SLFPD. The SLFPD substantially complied with what was requested.

The request made by the District Attorney was only for records. The SLFPD was not asked nor compelled to make a statement regarding the records requested. However, the SLFPD did, in fact, provide a written response to the District Attorney's request which accompanied the documents submitted.

Upon review of the information received from the citizen complaint, law enforcement reports, and the documents from SLFPD, the District Attorney determined the citizen complaint was with merit. Specifically, an alarming number of Brown Act and other code section violations were discovered. Most of the violations are curable, even to date, and do not appear to have been committed intentionally or with malfeasance. Other violations were arguably intentional or willful, as supported by admissions made by the SLFPD in its written response, potentially exposing the individual members of the Board to criminal prosecution and the SLFPD, as an entity, to civil liability. This report is intended to highlight the most problematic areas.

For purposes of disclosure, none of the staff of the Office of the District Attorney, including the District Attorney or Investigator, reside within the boundaries of or utilize services from the SLFPD. Furthermore, this report does not serve to provide legal advice to any reader. This report contains the findings and conclusions of the District Attorney and is not published to serve as the right to sue for any party. It is hoped that it may serve as a guide for other special districts who may be engaging in similar patterns to recognize the problems and correct them before it gets to the level experienced by the SLFPD.

INTRODUCTION

Fire Protection Districts

The Legislature has found that the local provision of fire protection services, rescue services, emergency medical services, and other services relating to the protection of lives and property is critical to the public peace, health, and safety of the state and its residents. The law governing fire protection districts is referred to as the "Fire Protection District Law of 1987" and is found beginning at Health & Safety Code section 13800 et. seq.

Area Served

The SLFPD serves the communities of Standish and Litchfield and encompasses roughly 91 square miles. The SLFPD is bordered by the Janesville and Susan River Fire Protection Districts to the west, the California Department of Fish and Wildlife Honey Lake Wildlife Area to the east, Honey Lake to the south, and land managed by the Bureau of Land Management's Eagle Lake Field Office to the north, starting at the toe of Shaffer Mountain. The communities of Standish and Litchfield are unincorporated and there is no formal legal or political structure beyond those provided by State and County governing bodies and the Standish-Litchfield Fire Protection District.

The SLFPD also provides services to the Belfast Road Annexation as well as the Wendel and Ravendale areas. Through this investigation it was learned that although these services are rendered to these areas, there is no assessment levied for the occupants therein. The cost of services for these areas are being wholly paid for by the residents within the original boundaries of the district. There is also some evidence to support an allegation that the SLFPD knowingly and intentionally has provided false or misleading information to the insurance service office in attempt to keep its assigned rates down.

Composition of the Board

The Board is comprised of five (5) non-paid members who must be residents within the boundaries of the District. The term of service is four (4) years.

Currently there are four sitting members, one of whom was recently appointed in February 2020. There is also a paid Secretary who is responsible for the preparation of agendas, minutes, and other documents or correspondence. The current paid Secretary is the daughter of the chairperson and was recently approved, by motion of the chairperson, to receive a raise. A fire chief is on staff as well.

Each member of the Board is required, pursuant to Health & Safety Code section 13841, to be both a resident and a registered voter of the area the district serves. The seats are elected, however, it is of note that there have been approximately fifteen, if not more, members of the Board in as many

years, all of whom have been appointed rather than elected. This serial appointment process is quite common in special districts; however, the consequence of high turnover of board members, at a minimum, is that the board members do not get an opportunity to become experienced board members, and the constituents of those districts do not get the benefit of such.

Board members are required to complete ethics training as well as complete and submit annual "Statement of Economic Interests (Form 700)" pursuant to California's Political Reform Act.

The Board meets regularly once a month on the first Wednesday of the month (with the exception of the period of time during the COVID-19 pandemic). The Board, pursuant to Health & Safety Code section 13855, is only required to meet once every three months. This Board should be commended for their efforts in keeping monthly meetings and business moving. However, meetings of this Board are subject to the provisions of the Ralph M. Brown Act, codified in Government Code section 54950 et. seq. and it is a lack of compliance with those provisions that is the main source of discussion in this report.

Budget

Pursuant to Health & Safety Code sections 13890 and 13893, the Board is required to adopt a preliminary or proposed budget on or before June 30 of each year. The Board shall publish a notice stating all of the following:

1) That is has adopted a preliminary budget which is available for inspection at a time and place within the District;
2) The date, time, and place when the Board will meet to adopt the final budget and that any person may appear and be heard regarding any item in the budget or regarding the addition of other items.

The notice should also be provided in the newspaper as well, and if not, notice shall be posted in three public places within the District at least two weeks before the meeting where the budget will be proposed.

The 19/20 fiscal year budget topic began appearing on the agenda in April 2019. A proposed or preliminary budget was not presented until July 10, 2019, but was subsequently tabled until a future date citing discrepancies in revenues the SLFPD receives from county tax allocations.

Pursuant to Health & Safety Code section 13895, on or before October 1 of each year, after making any changes in the preliminary budget, the board shall adopt a final budget, which shall establish its appropriation limit and forwarded to the county auditor.

The matter was never agendized after the July 10, 2019 date. The next time the budget was on an agenda was for the February 5, 2020 meeting where an item entitled "Budget Appropriation

Transfer" was listed and the minutes indicate the chairperson and the secretary worked with the county Auditor to arrange for a $65,000 appropriation to increase the annual operating budget to appropriate fund items.

The SLFPD's budget is available online through the Lassen County Auditor's website. As of the date of the inquiry into the budget, the SLFPD had spent approximately 88% of its budget with 77% of the year lapsed. The SLFPD is funded by a percentage of property taxes collected within the district boundary as well as reimbursement from the state or federal government for fire suppression support.

In its response to the request concerning the financials, the SLFPD referred the District Attorney to the Lassen County Auditor. While the District Attorney was able to locate the information requested through the Auditor, it should be noted and the SLFPD should be aware, that pursuant to Health & Safety Code section 13868, a district board shall keep a record of all its acts, including its financial transactions. It is not the responsibility of other agencies or entities to keep the records of the district, absent some other legal obligation to do so. In light of this requirement, the District Attorney should have been able to procure the requested items directly from the SLFPD.

There was a specific purchase that was the subject of the District Attorney's inquiry regarding that of a Dodge Ram pick-up truck that is discussed in a separate portion of this report.

AREAS OF CONCERN

CONFLICT OF INTEREST

(Government Code section 1090 et seq, 87100 et seq, 2 Calif. Code Regs 18700 et seq)

Public officials, which includes members of a board of a special district, cannot make or influence a governmental decision in which they have a conflict of interest. A member will have a conflict of interest if the decision has a foreseeable financial effect on their economic interests. They may not exert influence on a decision in which they have a conflict of interest unless their participation is legally required, or the member can establish that effect of the decision is indistinguishable from the effect on the general population. This is in conjunction with the Political Reform Act of 1974 discussed in the next section.

There is one sitting Board member also serving as an employee for another fire district. While that fact in and of itself may or may not be a conflict of interest, it certainly could create the appearance of a conflict if there are times when the SLFPD needs to utilize paid services from that particular district and this Board member is participating in the discussion to do so. There certainly could be an incompatibility of offices.

Another item of concern regarding a conflict of interest occurred during the repair of a pump house.

During the "Board Reports" of the May 1, 2019 meeting, the Board discussed repairs that needed to be made to the electrical box in a pump house in the amount of $7000-$8000. Rather than seeking bids for repairs, one member offered his friend to do the repairs. The Board voted to approve the repairs.

The District Attorney requested receipts, invoices, or other documents for these repairs. The SLFPD responded, dated April 11, 2020, with the following:

> "The pump house repair of approximately $7000 was paid and being handled by former board member [NAME DELETED]. When [NAME DELETED] resigned from the Board, the repairs were never completed and current board members have no way to communicate with the person to complete the repairs..."

The now-former Board member not only participated, he was the "second" for the motion to pass, for his friend to complete the repairs. Additionally, this former Board member was the person responsible for overseeing the completion of the repairs, including handling the money allotted for the repairs.

The law most applicable to the facts in this matter is Penal Code section 424(a) dealing with misappropriation of public offense. This is a felony offense which carries a term of imprisonment of up to four years. Penal Code section 424(a) applies to "...every person charged with the receipt, safekeeping, transfer, or disbursement of public moneys, who ... without authority of law, appropriates the same, or any portion thereof, to his or her own use, or to the use of another..." As those who approve warrants and otherwise direct how SLFPD's funds should be spend, board members fall squarely within this code section.

The California Supreme Court has held that:

> "Public officers who either retain custody of public funds or are authorized to direct the expenditure of such funds bear a peculiar and very grave responsibility, and ... courts and legislatures, mindful of the need to protect the public treasury, have traditionally imposed stringent standards on such officials." [Stark v. Superior Court of Sutter County (2011) 52 Cal.4th 368.]

Elsewhere in that decision, the Supreme Court noted that "even in complex situations, public officials and other are nevertheless obligated to act in 'strict compliance with the law'. They are expected to take reasonably necessary steps to determine the appropriateness of their conduct". At the same time, the Supreme Court recognized that in applying Penal Code section 424(a), public officials should not be criminally liable for a reasonable, good faith mistake regarding their legal responsibilities.

This Board has taken no steps to attempt to have the repairs completed by the individual paid or to recover the money. There were, and perhaps still are, remedies available including but not limited to a crime report with the Lassen County Sheriff's Office or civil actions through the Superior Court. The response from the SLFPD explained that "nobody will help [SLFPD] because they do not want to 'get involved'".

The mishandling of this task and subsequent inaction by this Board resulted in a loss of approximately $7000 of public funds towards repairs that, to date, have not been made.

Political Reform Act of 1974
(Government Code sections 81000-81003)

The Political Reform Act of 1974 inhibits improper practices of state and local government officials in election campaigns and ensures that they serve the needs of all citizens equally, and perform their duties free from bias caused by their own financial interests. The Act requires certain public officials to disclose their finances, assets, expenditures and income. Board members of the SLFPD are included as officials who must complete and submit a disclosure form.

These Form 700's are to be on file on or before April 1 of each year. There are currently three Form 700's on file, all dated August 23, 2019, which should have been filed on or before April 1, 2019. Each one indicates that there are "no reportable interests on any schedule".

One sitting member of this Board also serves on a fire team for another fire protection district. Another Board member runs a non-profit and a side business, yet neither of these are mentioned in the document. Even non-reportable interests may create conflicts of interests and could be grounds for disqualification from certain decisions.

The Form 700 is available online and while it may seem like a daunting task to fill out, is accompanied with instructions on how to complete the form as well as including a number to seek advice from the FPPC on whether something needs to be reported. Assistance is available and Board members are encouraged to refer to the instruction sheet or the FPPC if they have questions about reportable interests or conflict of interests. With these assistance outlets available, non-compliance is inexcusable.

VIOLATIONS OF THE RALPH M. BROWN ACT

(*Government Code section 54950 et seq*)

The Ralph M. Brown Act was adopted in 1953 to provide guidance to local governments for conducting open and public hearings and circumstances which a government body can hold a closed session. All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, unless an exception applies.

As stated above, the District Attorney investigation yielded the discovery of multiple potential "Brown Act" violations. Most, occurring in the form of improper agendizing, appear to be unintentional and are likely attributed to a lack of training by the Board and staff. However, a few, as discussed below appear to be intentional or willful.

1. Agendas and Meetings

A "meeting", as defined in the Brown Act, is any gathering of a majority of the members of a legislative body at the same time and location to hear, discuss, deliberate or take action on any item that is within the subject matter jurisdiction of the body. This includes meetings by teleconference or communications by other electronic means. A fire protection district board is a legislative body for purposes of this Act.

There are two types of meetings: regular and special, and they each have particular public notice requirements.

Regular Meetings

Agendas for regular meetings must be posted at least 72 hours in advance in a location that is freely accessible to the public and on the local agency's website (if available).

The agendas must include: brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session; the time and location of the meeting; and information for requesting disability-related modifications or accommodations.

The Board must allow for public comment on every agenda item and items not on the agenda. A further discussion regarding public comment is addressed in another section of this report.

In review of the agendas provided by SLFPD, they are facially deficient. The agendas routinely and consistently contain only one or two words in description of an item and will only indicate "Information/Action" with respect to what the Board is being asked to do. An agenda item must include a brief general description of each item of business to be transacted or discussed at the meeting so as to give the public a fair chance to participate in matters of particular or general concern. The public is not required to guess or surmise at the actions that the board would be taking on the item.

At any given meeting, it is unclear from the agenda what the Board is to be discussing or what action is being requested. The interested public is left to wait and see when the item is addressed at the meeting.

On multiple occasions, the Board took action on items that were not on the agenda at all. With narrow and limited exceptions, discussion and action on matters not on the agenda is prohibited. Members may only: briefly respond to statements/questions from the public, ask a question for clarification, make a brief announcement or report on his or her activities, provide a reference to staff or other sources for factual information, request staff report back at a later meeting, or direct staff to place the matter on a future agenda.

Items may only be added to an agenda for action when: a majority decides that an emergency situation exists (work stoppage, natural disaster, etc.,); or 2/3 or the members (or all members if less than 2/3 are present) determine there is a need to take immediate action that came to the attention of the agency after the agenda was posted. It must be established that no one in the agency knew of the issue before agenda was posted. The item must be so urgent that the need to take action cannot wait for the next regular meeting.

The items the Board took action on without being agendized did not appear to be of any urgency. Some of the items involved the expenditure, or gift, of public funds. The public was not provided

the opportunity to provide input during the comment period because of the improper agendizing. Examples include but are not limited to: retention of a trash receptacle at a cost of $57.00 quarterly; establishment of a "fire payroll account" and allocating $30,000 to it; repairs to the pumphouse at a cost of $7000-$8000; auctioning off a water tender for a price of $1; and purchase of water truck decals in excess of $1300.

The SLFPD did offer an explanation for its deficiencies in agendizing, in which it acknowledges the errors and identifies a plan of correction:

> "When (NAME DELETED) quit and refused to train or help the new Board members and Secretary, we all continued to do things the way that (NAME DELETED) was doing them, which did not include a formal format for report of actions taken in closed session. It is unfortunate that some meeting minutes do not reflect any closed session report outs. Considering the knowledge and training of the new Secretary, there is now a formal format to report actions taken during closed session, compliant with the Brown Act. The current practice of the Board, since making the multiple improvements to policies and procedures for the District since staff changes, is to report closed session actions in the subsequent open session meeting as compliant with the Brown Act, and have been reflected in the meeting minutes as appropriate."

It is noted that throughout this investigation, the SLFPD continuously blamed its failures in transparency on members of the public or prior staff members. There was very little, if any, accountability on the part of the agency.

Special Meetings

A special meeting is one which is heard at a different time, date, or location from regular meetings, or is being called to discuss a particular item. Notice must be posted at least 24 hours in advance of the special meeting. Written notice must be sent at least 24 hours in advance to each member of the body, to each local newspaper in general circulation, and to radio or television stations requesting written notice. The notice must include time and location of meeting and each item of business to be transacted or discussed (brief general description is recommended). Public comment at special meetings can be limited to only the item that is on the agenda to be discussed.

There are three meetings in particular that should having been noticed as "special" meetings. The Board meets regularly the first Wednesday of the month, at the Chappuis Lane Fire Station at 7:00pm.

In July 2019, rather than a meeting on July 3, the Board noticed its regular meeting for July 10, 2019. It is likely the July 3 meeting was cancelled due to the 4th of July holiday, but there did not appear to be any notification regarding the change in order to be certain.

The second meeting was on August 7, 2019. The regular location of the meetings is the Chappuis Lane Fire Station. This meeting was held at the Standish Bible Church on Plumas Ave in Standish and as such, should have been noticed as a "special meeting".

The third meeting was December 11, 2019. This meeting was held at 9:00am and the agenda made no reference to this being a "special meeting".

The Board substantially complied with appropriate notification for subsequent "special meetings".

2. Purchase of a 2017 Dodge Ram Truck

The District Attorney's investigation also encompassed the circumstances surrounding the purchase of a pickup truck by the SLFPD. The District Attorney asked the SLFPD to provide "receipts or invoices, agendas, minutes, or other communications regarding and involving the purchase of a 2018 [sic] Dodge Ram pickup" made by the SLFPD. The vehicle actually purchased was a 2017 Dodge Ram, not a 2018, and cost $31,249.07 – of public monies. The purchase of this vehicle was not placed on any regular nor special meeting agenda prior to occurring, nor was it ever addressed at any subsequent meeting.

On the June 5, 2019 agenda, there is an item entitled "Vehicle Payment" but due to the vagueness in description, it is unknown whether this was the vehicle that item was intended to address. Additionally, according to the minutes for that meeting, no such item was ever discussed.

In their responsive documents, the SLFPD did provide a sales contract for the purchase of the vehicle. In its explanation of the purchase, the SLFPD states the following:

> "The purchase of the 2017 Dodge Ram (command vehicle) was initiated by former board member (NAME DELETED). (NAME DELETED) found the truck and the board held an emergency closed meeting and voted by phone due to the time sensitive contractual nature of the purchase. Please note that this was a Confidential Closed Meeting with no subsequent open session to report actions taken. Because of the confidentiality of closed session meetings, this information has not been provided to (NAME DELETED) in his multiple records requests. The SLFPD Board of Directors has maintained appropriate confidentiality regarding confidential closed session meetings.....It is very common for Fire Departments to often purchase vehicles and equipment...Regardless, this was a legal vehicle/equipment purchase by SLFPD and expenditures regarding this purchase can be accessed [at the Auditor's website]".

First and foremost, there is no such thing as a "confidential closed meeting". A meeting is always considered "open" until declared "closed". Closed session is allowed in very select circumstances

and the Board should go into a closed session only when absolutely required and then only when allowed by law. The public must be informed of the closed session and a brief description of the items to be discussed must be given.

Second, a vehicle purchase is not the type of transaction that would necessitate either a closed session or an emergency special meeting. Only topics specifically authorized under the Brown Act may be discussed in closed session. The most common closed session topics are: litigation or a risk thereof, real estate negotiations, personnel matters, and labor negotiations.

Third, even if there were such appropriate circumstances to warrant the immediate purchase of the vehicle without discussion at a meeting, there is no set of circumstances that would allow for the Board to refuse to report the purchase at a subsequent meeting. There must be a report out of the action and vote, no matter how late. The SLFPD could presently cure this defect by reporting out at the next meeting.

A board must publicly report 1) any action taken in closed session and 2) the vote or abstention on that action of each member present for the action. Action by secret ballot is prohibited.

Absent one of the identifiable closed session topics listed above, it is not enough that a subject is sensitive, embarrassing, or controversial. If a board intends to convene in closed session, it must include the section of the Government Code authorizing the closed session in advance on the agenda and it must make a public announcement prior to the closed session discussion, even if only a simple reference to the agenda item.

Following a closed session, the board must provide an oral or written report on certain actions taken and the vote of every elected member present. The timing and content of the report varies according to the reason for the closed session and the action taken.

This Board purchased the vehicle through what they liken to a teleconference meeting. Pursuant to the Brown Act, teleconference meetings (any electronic or audio or video connection) are appropriate in limited circumstances and may be conducted under if all of the following conditions are met:

- Agendas must be posted at teleconference locations specifying all teleconference locations. There cannot be any last-minute teleconferences.
- There is public access to teleconference locations. No teleconference from car or plane while traveling.
- There is public opportunity to speak at each teleconference location.
- All votes for action on any item are taken by roll call.

None of these conditions were met in this particular instance.

Lastly, if requested, any copies of contracts, settlement agreements, or other documents finally approved or adopted in closed session must be provided to the requestor(s) after the closed session, if final approval of such documents does not rest with any other party to the contract or settlement. Although provided to the District Attorney in response to a records act request, the SLFPD admits to denying release of these documents to a member of the public who requested them through the same mechanism, deeming them "confidential".

While true that matters discussed in closed session are to remain confidential, that confidentiality only applies to matters that are appropriately suited for closed session discussion. Matters cannot be illegitimately deemed "closed session items" to purposely avoid public reporting requirements. Incidents such as this are the essence of why the Brown Act came to be. This creates the appearance that the Board intentionally deemed this item "confidential" to avoid transparency in the expenditure of public funds.

3. Employment Practices

Part of the citizen complaint centered included the "termination" of two volunteer firefighters for the SLFPD. It was alleged that the two firefighters were denied due process and the terminations were conducted in violation of the Brown Act.

It was not originally the intention of the District Attorney to explore the employment practices of a volunteer fire protection district. The issue had exploded on local social media and it became increasingly difficult to ascertain the truth of what had occurred. However, by removing the collateral fallout and looking solely at the procedures involved, it became apparent that the SLFPD's employment practices, in at least one particular case, were not in accordance with the law.

Based upon the documentation provided, in both the citizen complaint and the SLFPD's response, during closed session of the June 5, 2019 meeting, allegations of misconduct on the part of one firefighter were discussed between the then-fire chief and the Board. At the next meeting on July 10, 2019, a closed session decision was made to terminate this firefighter, agendized simply as "Personnel".

There was no report out from that closed session meeting and after the meeting, the fire chief contacted the firefighter to notify him he had been terminated. The firefighter was then, on July 16, 2019, terminated via a letter entitled "Notice of Dismissal", for "Conduct Unbecoming of an Officer", with no further description.

This letter informed him of his right to appeal the decision at the next meeting (August 7, 2019), but did not inform him of his right to have the appeal heard in either open or closed session.

There is some question as to whether the letter was actually received by the firefighter after it was mailed. Eventually he did come into possession of the letter and on or about August 23, 2019 notified the Board Secretary that he wished to appeal the decision at the September 4, 2019 meeting. His request was denied, citing it as untimely.

On August 7, 2019, the Board went into closed session to discuss what was agendized only as "Personnel" and upon the conclusion of such, reported out a decision had been made to terminate the fire chief. A report out on a dismissal made in closed session must be deferred until administrative remedies, if any, are exhausted.

The fire chief was served at the meeting with a form of "Notice of Termination" citing a breach of confidentiality from closed session and also an incompatibility of management styles. The letter did inform him of his right to appeal, but not that he had the right to have the appeal heard in either open or closed session. Based upon the documents received, it appears the fire chief has attempted to schedule this appeal on a number of occasions.

The appeal was first requested for the September 4, 2019 meeting. Prior to that meeting, the Chairperson of the Board filed and was granted a temporary restraining order against the fire chief's spouse, effectively precluding her from appearing as his advocate at the hearing. At the meeting, there were many community members present and the Board became unable to control the meeting. The meeting was adjourned and the appeal was deemed concluded.

The fire chief attempted multiple times since then to re-schedule the appeal, all of which were denied until the beginning of 2020. As of the date of this investigation, according to agendas, the appeal has still not been heard (notwithstanding COVID-19).

The Brown Act authorizes a closed session "to consider the appointment, employment, evaluation of performance, discipline, or dismissal of a public employee or to hear complaints or charges brought against the employee." The purpose of this exception is to avoid undue publicity or embarrassment for an employee or applicant for employment and to allow full and candid discussion by the board.

Pursuant to Health & Safety Code section 13802(e), an "employee" means any personnel of a district, including any regular or on-call firefighter hired and paid on a full-time or part-time basis, or any volunteer firefighter. "Employee" also includes any person who assists in the provision of any authorized emergency duty or service at the request of a person who has been authorized by the district board to request this assistance from other persons.

These two terminated individuals were employees by definition.

An employee must be given at least 24-hour notice of any closed session convened to hear specific complaints or charges against him or her. This occurs when the board is reviewing evidence. A board may examine or exclude witnesses and when an affected employee and/or advocate have an official or essential role to play, they may be permitted to participate in the closed session. The employee is not entitled to be present for the closed session discussion unless invited. If the employee is not given the 24-hour prior notice, any disciplinary action is null and void. ***This is the only non-curable Brown Act violation.***

For this reason, correct labeling of the closed session on the agenda is critical. A closed session agenda that merely identifies "personnel" is not sufficient to allow dismissal of an employee.

The personnel matters were not agendized correctly. Notice of intent to terminate or dismiss was not provided within the 24-hour requirements. One firefighter was outright denied an appeal and the other one, to date, has not received his although has requested one on multiple occasions.

To further complicate the situation, the SLFPD chairperson had filed restraining orders against a number of individuals. The restraining order applications were filed concurrent with a crime report of vandalism on SLFPD vehicles as well as personal vehicles of some Board members. However, the timing of the restraining order applications also happened to coincide with dates where the appeal for the terminated fire chief was agendized to be heard and the restrained individuals would presumably be witnesses or advocates at the appeal. The restraining order applications were subsequently withdrawn and therefore it is difficult to determine with any degree of certainty whether the restraining orders were applied for with a legitimate purpose or solely to preclude the named individuals from being present for the appeal.

The investigation into the vandalism is still ongoing and is separate from the focus of this report.

Other than investigating for purposes of Brown Act violations, the District Attorney cannot further comment on the available employment remedies for the terminated personnel. That is a matter for civil litigation and the involved parties should consult with an attorney practicing in that area of law.

4. Public Comment

The Brown Act authorizes public entities to put reasonable restrictions on the amount of time a speaker can speak at a meeting and through case law it has been established that 2 – 3 minutes is a reasonable restriction. The time-limit restriction is not violative of the First Amendment because it does not restrict the content of the speaker, only the amount of time the speaker has. Speech at government meetings is not unlimited and public entities can limit speech in terms of requiring a speaker to address only the topic or agenda item at issue. Public comment regulations cannot

prohibit public criticism of the entity's acts or omissions, policies, procedures, programs or services.

The essence of the free speech clause of the First Amendment is to protect the rights of citizens to speak out against government. Individuals have the absolute right to be critical of government and to express that criticism without fear of prosecution. That said, threats of physical harm or violence or death against individuals can cross the line of free speech into speech that may not be protected.

The SLFPD provided in its response to the District Attorney's request several pages of social media print-outs containing posts by community members making statements of the SLFPD and its board. The SLFPD representative informed the District Attorney that these messages were harassing and/or threatening in nature. The District Attorney reviewed the nearly-70 pages of social media posts and was also able to locate video recordings of the meetings which included public comment portions.

Upon review, although some of the comments made were understandably insulting or hurtful, none of the statements made therein contained "threats" as defined under criminal law. In terms of harassment, with public service also comes public criticism and those who choose to step up into public roles inevitably will endure comments from constituents, sometimes harsh in nature, but that in general does not harassment make.

While members of the public do not have the right to disrupt the meeting (see Penal Code section 403; *White v. City of Norwalk* (1990) 900 F.2d 1421), mere words most likely do not constitute a "disruption" in themselves. The Board can prohibit "demonstrations" which include booing, hissing, or clapping, as these actions can be chilling to discourse and inhibit the free speech of others who may also wish to speak. By way of example, upon review of one video recording, the terminated fire chief was attempting to address the board but the vocal reactions of the audience, although offered in support of him, ended up reducing his time to speak freely to the Board.

Even with rules of decorum in place, board members, as all public entity officials, must be prepared to tolerate criticism of themselves and of the entity. It is hoped that no board would ever be confronted with a situation where a person or group of people willfully interrupts a meeting such that orderly conduct of the meeting cannot be restored by their removal. If that scenario does occur, the Brown Act does provide authority for the board to clear the room and continue in session.

It serves no legitimate public or professional purpose for members of the board to engage in retorts with public commentators, whether during public comment or on social media. The chairperson, the secretary, and another Board member all were observed creating and responding to social

media posts regarding their decision to terminate the firefighters and they would be better advised to refrain from doing so to avoid an inadvertent serial meeting.

5. Conduct of Closed Sessions
(Government Code section 54945.5(a)-(i))

Meetings are either fully open, or fully closed, there is nothing in between. Closed sessions are an exception to the rule that agency meetings must be open and public. As stated above, a meeting is always considered "open" until it is declared "closed".

Closed sessions are allowed in very select circumstances, and a board should go into a closed session only when absolutely required. The public must be informed of the closed session and a brief description of the items on the agenda must be given. A minute book may be kept, but is not required, but the results of action taken must be made in public.

A board must pay particular attention to the authorized attendees for the particular type of closed session, which may differ based on the topic of the closed session. Closed sessions may involve only the members of the board, counsel, management, support staff, and consultants necessary for consideration of the matter that is the subject of closed session, with very limited exceptions for adversaries or witnesses with official roles in particular types of hearings (e.g. personnel disciplinary hearings).

In any case, individuals who do not have an official role in the closed session subject matters must be excluded from closed sessions. On more than one occasion, this Board permitted certain members of the public to be present during closed session. There may have been an appropriate reason for this, yet due to improper agendizing for closed session, those reasons remain unexplained.

The Brown Act explicitly prohibits the unauthorized disclosure of confidential information acquired in a closed session by any person present, and offers various remedies to address breaches of confidentiality. The remedies can include injunctive relief; and, if the breach is a willful disclosure of confidential information, the remedies include disciplinary action against an employee, and referral of a member of the board to the Grand Jury.

Breach of Confidentiality

It is incumbent upon all those attending lawful closed sessions to protect the confidentiality of those discussions. A board cannot be compelled to divulge the content of closed session discussions through the discovery process. Only the board acting as a body may agree to divulge confidential closed session information.

During this investigation, although not requested, the District Attorney was provided minutes from several closed sessions.

In the closed session portion of the May 1, 2019 meeting, the chairperson informed the rest of the Board of a conversation had with a former employee. The former employee stated to the chairperson that he was in possession of property belonging to the SLFPD and was refusing to return the property as he believed he had not been paid for fires he worked on two years prior. He also, according to the chairperson, stated that he had knowledge of or involvement in a break-in of the SLFPD building. It appears the chairperson, to date, has never provided this information to law enforcement to aid in the investigation or arrest of a suspect in a crime. No attempts to reclaim the property of the SLFPD were addressed.

In another set of minutes from the closed session portion of the June 5, 2019 meeting, the three board members that were present discussed a fourth member who was not present. The members discussed that the absent member had a conflict of interest due to his employment with another fire district. The remaining members also discussed that the absent member was refusing to provide proof of ethics training and "lied" about the employment of firefighters with other districts. One member stated he believed it was a conflict of interest to continue to allow this member to remain on the Board and a plan was made to consult with an attorney to inquire about this member's removal. To date, this member is still on the Board.

These "confidential" minutes were not required to be recorded or produced, yet it was helpful in ascertaining the level of impropriety at which certain members of this Board are operating.

Also helpful were the approximately 70 pages of printouts from social media posts. These posts were not requested by the District Attorney but were provided by SLFPD in an attempt to show a pattern of harassment of the SLFPD and its board members by members of the community. One of the printouts appears to be a private message thread between the chairperson and a local individual who serves as an administrator on a social media community page.

Both individuals were discussing a suspected arson and both claimed to have intimate knowledge of who started the fire yet, upon a review of records it appears neither of them gave this information to law enforcement. The chairperson then implored the other individual to not publicly share the information because the chairperson would "lose [her] position on the Fire Board...LOL". The chairperson then went on to relish in the fact she possessed this information and expressed that it was "going to be fun" for her to watch the situation regarding the fire play out.

It is problematic that the chairperson appeared to have information of a crime being committed and rather than providing that information to law enforcement, instead attempted to wield it as some sort of power of being "in the know".

CONCLUSIONS AND RECOMMENDATIONS

Finding people to serve on the boards and commissions of the special districts of Lassen County is a challenge. Many times, election cycles pass where no one signs up to run for vacant seats on some of these boards and commissions. Likewise, rather than contested races for vacant seats between persons with competing ideas on how to manage the district for which they would like to serve, seats get filled by appointment in lieu of election because there are not enough persons willing to serve. This kind of service is almost exclusively volunteer and unpaid, motivated by simple willingness to serve the community.

At the same time, the legal requirements imposed by the State Legislature on the management of these districts are numerous and growing: the Ralph M. Brown Act, the Public Records Act, Political Reform Act, conflict of interest laws, public budgeting, state employment laws, and federal employment laws to name just a few. Simply showing up to participate in a board meeting as a sitting board member requires a knowledge that few possess and can take years of experience to acquire.

The expectations of the public are high. Taxpayers want a fair service in exchange for the hard-earned dollars taken from their earnings by the government. Transparency, accountability, and competence in decision making are just the beginning of the conversation. A board or commission's failure to observe these basic expectations of the public they serve can be nothing short of incendiary. That is what has happened here.

It is difficult for constituents to maintain confidence in their public officials when such transgressions are being so blatantly committed. To err, is of course human, but the efforts to correct those errors are a testament to the integrity of the board. It is unfortunate that this current Board has had many opportunities to correct the errors but did not. It is more unfortunate that this current Board took steps to overtly hide its errors from the public.

This is not the first time the board of this district has been embroiled in impropriety. In 2015/2016, under the direction of a different set of board members, the Lassen County Grand Jury investigated this entity and made findings of Brown Act violations, deficiencies in agendizing, and a problematic appointment process for new board members. Only a mere five years later, the SLFPD once again finds itself the subject of an investigation for the same practices.

Brown Act violations are punishable as a misdemeanor under California law, however, a criminal prosecution will not be pursued in this particular set of circumstances. Criminal filings for Brown Act violations are rare throughout the state. The thought of criminal prosecution adds another chilling effect to the already scarce willingness of people to serve publicly. The State of California has revised its budget for the upcoming fiscal year which includes reductions in funds allocated towards public safety departments. Criminal prosecutions are costly and it is important during these times to be fiscally responsible with such limited resources.

The District Attorney will, however, continue to investigate to determine whether public funds were misappropriated, as indicated above; and also whether a fraud has occurred with respect to the assessments and insurance ratings.

Most agencies respond by taking appropriate action to cure or remedy violations upon receipt of a simple letter by the district attorney encouraging them to do so. The District Attorney will serve a "demand to cure" letter upon the SLFPD accordingly, however it is unlikely that course of action would provoke change by the SLFPD.

In fact, it is clear that this current board, left to its own devices, is completely devoid of the ability to accept responsibility, learn from past mistakes, or heed to the advice of watchdog entities such as the Grand Jury and has no interest in doing so.

It would at this time be the recommendation of the Lassen County District Attorney that the Local Area Formation Committee (LAFCo), pursuant to the authority bestowed upon it under Government Code section 53600 et seq, re-evaluate the services provided by the Standish-Litchfield Fire Protection District and determine if a merger or consolidation with a nearby district would be appropriate.