

## **Special Assistants**

Report of the 2000-2001 San Francisco Civil Grand Jury

### **SUMMARY**

The Civil Grand Jury (CGJ) investigated city employment practices under the Special Assistant category. This category of city employees is "exempt" from civil service testing, appointment and tenure requirements. They can be hired and fired at the discretion of management.

There is a growing perception by the public and the media that the Special Assistant category is being used to provide patronage jobs and "payback" positions. This is evident by the number of negative news articles.

There is public perception that elected officials are using some Special Assistants for political campaigning activities. These perceptions erode the confidence of the public in city government and create discontent and resentment among other city employees and the residents of San Francisco.

The number of Special Assistants and their salaries have grown over the last five years from approximately 240 to 634 employees, with total yearly salaries, not including benefits, showing a cost increase from \$15.6 million to \$48.2 million per year.

The CGJ experienced a lack of openness and cooperation from city officials in a portion of this investigation.

The CGJ recommends that:

The Board of Supervisors take a more active role in the control of expenditures for Special Assistant categories.

A limited independent audit be conducted on Special Assistant hiring and new policies be put in place dealing with political activities in the workplace.

Changes be made to the City Charter and Civil Service Rules to clarify the number of Special Assistants allowed, how they are approved and how exceptions to the guidelines are handled.

The Department of Human Resources (DHR) take a more proactive role in the evaluation and review procedures (post-hiring) for exempt city employees, including Special Assistants.

The City Attorney issue a letter to all city employees advising openness and cooperation in all legal inquiries and reviews of city systems and offices.

### **INVESTIGATION**

In August 2000 the CGJ obtained documents from the Office of the Controller covering several years of Special Assistant job titles and financial data, including overall budgets by department. Document requests and interviews with the DHR were initiated in September 2000 and continued throughout the remainder of the CGJ term. Interviews with the Civil Service Commission and documentation requests were started in January 2001.

The CGJ conducted Interviews of city employees and outside professionals beginning in March 2001 and continuing throughout the term.

Numerous public documents such as the Civil Service Commission Rules, San Francisco City Charter, Oakland City Charter, video tapes of Board of Supervisor committee meetings, newspaper articles, San Francisco Budget Analyst report and presentations made by the public and city officials were reviewed as part of our investigation. Jury members also attended pertinent Board of Supervisor meetings.

We reviewed a number of requests for Special Assistant positions. We interviewed the department head of DHR and the chair of the Civil Service Commission.

In May the CGJ requested by letter, 13 employees in the Special Assistant category appear as witnesses. The purpose for requesting these interviews was to determine facts about three concerns:

How is the work product, from the positions occupied by these individuals, structured and evaluated?

Does the Special Assistant employee campaign for an elected official on public time or personal time? Does the employee feel campaign activities are a requisite for employment, retention and/or promotion?

Did the Special Assistant apply for the job, was the job competitively posted, did the employee compete or go through some generally acceptable screening process for promotion to the next level of Special Assistant?

To gather information about the perceptions of the individual employee, we chose to interview the employees directly.

Subsequently, we obtained a copy of an Email (Attachment 1) indicating the mayor's office had canvassed employees to determine who had received our requests for interview.

We also received a letter from the Mayor dated May 8, 2001, indicating that he did not support our inquiry (Attachment 2). As a result, only two Special Assistants appeared for the interview. We subsequently petitioned the Presiding Judge to issue subpoenas to a portion of the remaining Special Assistants.

It is evident from this occurrence that some city officials and employees feel they may support or interfere with CGJ inquiries dependent on whether they agree with them.

Since the CGJ is constituted by statute as part of the system of checks and balances, it is incumbent on elected officials to actively support its inquiries. City employees are subject to a higher standard when they become vested with the public trust. Scrutiny by legally empowered bodies is inherent in the position. Checks and balances only function with open cooperation.

## FINDINGS AND RECOMMENDATIONS

The CGJ recognizes that the Special Assistant category includes excellent hardworking employees who make substantial contributions to the City of San Francisco. The CGJ also believes that elected officials should have the flexibility to hire some exempt employees.

It is also our opinion that the current situation surrounding the employment of Special Assistants erodes public trust and confidence in city government. There must be a balance mandated by fair and equitable rules imposed by officials with accountability.

1. Finding: The number of Special Assistants and the related salary costs has grown rapidly with very little budgetary oversight.

Reports from the City Controller's Office, Budget Analyst and the DHR show the growth of salaries from December 1995 from \$15.6 million to approximately \$48.2 million in April 2001. The number of Special Assistant positions has increased from 240 to 634 in the same time period. The current average salary is approximately \$75,000 per year. Some Special Assistant salaries are in excess of \$100,000.

The CGJ recognizes that recently the Board of Supervisors has begun to address the issue of Special Assistants. The Board of Supervisors should take a more active role in the control of expenditures for Special Assistant categories during their budgetary review process. At the budget review time the Board of Supervisors should place a limit on the total number of Special Assistant jobs and a total budget limit for these jobs.

Recommendations:

- a. For the 2002 budget, the Board of Supervisors place a limit for total Special Assistant salaries. Any budgetary overruns in this category would have to have Board of Supervisors approval on a case-by-case basis.
- b. The Board of Supervisors approve each request for Special Assistant positions with base salaries above \$100,000 per year.

Required Response

Board of Supervisors - 90 Days

2. Finding: Newspaper articles (SF Chronicle, SF Examiner, Independent), public testimony before the Finance Committee of the Board of Supervisors and other testimony and documents received by the CGJ show a public perception that

the Special Assistant category is being used to provide "patronage and political pay back" jobs. There has also been public and private testimony that some Special Assistants have been pressured to campaign for elected officials.

Recommendations:

. The Ethics Commission review the policies governing political activities by city employees. The Commission should promulgate guidelines and conduct periodic reviews to insure there is neither coercion of employees nor improper political influence in the workplace and make recommendations to Board of Supervisors for consideration and adoption.

- a. The Board of Supervisors commission an independent audit of the Special Assistant hires employed in the last five years. The audit should focus its efforts on the request process (by department heads), the approval system (DHR and Civil Service Commission), hiring process (department heads), qualifications of hired personnel, job function and actual duties performed. The audit could concentrate its efforts on those jobs with salary levels above \$75,000 per year.
- b. The Board of Supervisors also review the charters of similar size cities to evaluate how the hiring and administration of non-civil service employees are handled.

Required Response

Board of Supervisors - 90 Days (for Recommendations 2.b, 2.c.)

Ethics Commission - 60 Days (for Recommendation 2.a.)

3. Finding: City Charter Section 10.104 describes the 2% rule. This rule apparently establishes the number of employees exempt from civil service guidelines in relation to the total number of city employees. The language of this statute is ambiguous and is subject to misinterpretation

The DHR, which processes exempt employee Special Assistant positions, and the Civil Service Commission, which approves them, treat the 2% rule as a minimum rather than a maximum.

This is evident by statements made by and the actions of DHR management personnel that there is essentially a 2% floor on the hiring of exempt personnel.

Charter Section 10.104, by its nature, should provide limits to expenditures and activities of city government. Section 10.104, by its implementation, does not achieve that end.

The Civil Service Commission also interprets this Charter Section in such a manner that they must explicitly approve hires above the 2% cap after review.

Key management personnel in DHR believe that if the requested job positions above the 2% level meet all the requirements of an exempt position then the Civil Service Commission must by Charter automatically approve the position. We found no evidence that the Civil Service Commission ever rejected a request for a Special Assistant position.

The City Attorney provided us with an interpretation of Charter Section 10.104. It was vague and ambiguous (Attachment 3).

Recommendations:

. The Board of Supervisors prepare an amendment to Charter Section 10.104 to clarify it and present this amendment to the voters. The amendment should specifically provide a cap to Special Assistant hires.

a. The Civil Service Commission modify Civil Service Rule 114.45.1 to require written approval by the Board of Supervisors for each Special Assistant hired above the 2% cap.

Required Response

Board of Supervisors - 90 Days (for Recommendation 3.a.)

Civil Service Commission - 60 Days (for Recommendation 3.b.)

4. Finding: The DHR testifies that it does not have the responsibility to maintain centralized records about employee performance evaluations.

It is a recognized good business practice to have centralized records of performance reviews and evaluations of employees. The DHR has not established procedures, files or data documentation systems for the collection and maintenance of these records.

Employee reviews, evaluations and record keeping are left to the discretion of individual department heads without any apparent oversight by DHR. Only limited DHR systems are in place to track job classification and status of exempt employees after initial hiring.

DHR's records show inconsistencies in the level of documentation accompanying requests for Special Assistants. The amount of documentation submitted and accepted as adequate by DHR varies by department.

Written and verbal presentation by the DHR management affirms their belief that Charter Section 10.104 provides a floor of 2% for exempt hires and not a ceiling. By administering the Charter Section in this manner the city will almost always be above that level.

Recommendations:

- . The DHR treat Section 10.104, in the City Charter as a limitation to the number of Special Assistants authorized.

- a. The DHR establish oversight and maintain records of written reviews and evaluations for all exempt personnel.
- b. The DHR maintain personnel files containing all job reclassification documentation.
- c. The DHR review and update its presently used guidelines for exempt personnel to assure that all position requests are equally evaluated.
- d. A written procedure and database needs to be established to track and control the movement of exempt employees from job to job and the duration of an approved position.

Required Response

Department of Human Resources - 60 Days

5. Finding: We interviewed a small number of Special Assistants. One purpose of these interviews was to get the employees' perspectives of job description, performance standards, the work evaluation process and promotion procedures.

All witnesses were clear on the scope of their respective jobs and most could articulate general performance goals. Those participating in the pay for performance program were clear in the area of goals.

Most stated that they received job evaluations from their supervisors although one did not know the name of the supervisor.

Answers were mixed to questions of how individuals applied for their jobs. It was unclear if the witnesses actually went through an application process. Some were not sure how they received promotions.

Based on information received by the CGJ that some Special Assistants were used in political campaigns, witnesses were also asked about their involvement in elections.

All witnesses admitted to some campaigning but all stated it was not on public time.

Some of the subpoenaed witnesses testified that the mayor's letter had influenced them to decline our informal invitation. One witness stated he did not initially appear in

response to our letter because he "didn't feel like it". One witness refused to answer some questions.

All but one of the witnesses stated they had consulted a Deputy City Attorney about our original informal request to appear as a witness. All but one testified that a Deputy City Attorney advised them that it was their option to appear.

It should be noted that all witnesses were sworn and admonished (Attachment 4) not to discuss the questions presented them in the hearing. This is done to preserve the integrity of CGJ investigations. Later a news article appeared in the San Francisco Chronicle discussing privileged matters from the hearing. The article referenced witnesses as the source of the information.

Recommendation:

The City Attorney issue a letter to all city employees advising openness and cooperation in all legal inquiries and reviews of city systems and offices.

Required Response

City Attorney - 60 Days

ATTACHMENT 1  
E-MAIL DATED MAY 8, 2001  
FROM KRISTEN HOLLAND

TO  
MAYOR'S STAFF

ATTACHMENT 2  
LETTER DATED MAY 8, 2001  
FROM WILLIE BROWN, MAYOR,  
TO

ALAN NICHOLSON, FOREMAN, 2000-2001 CIVIL GRAND JURY

ATTACHMENT 3  
SAN FRANCISCO CITY ATTORNEY OPINION  
DATED MAY 18, 2001

"EXEMPT APPOINTMENTS UNDER CHARTER SECTION 10.104"  
FROM

LINDA ROSS, DEPUTY CITY ATTORNEY AND CHIEF LABOR ATTORNEY  
TO

ALAN NICHOLSON, FOREMAN, 2000-2001 CIVIL GRAND JURY  
ATTACHMENT 4

Oath to Witness:

You do solemnly swear that the evidence you shall give in this investigation now pending before this Grand Jury shall be the truth, the whole truth, and nothing but the truth, so help you God.



Admonition to Witness Not to Discuss Testimony:

You are admonished not to discuss or impart at any time, outside of this jury room, the questions that have been asked of you in regard to this matter, or your answers, until authorized by this grand jury or the Court to discuss or impart such matters. You will understand that a violation of these instructions on your part may be the basis for a charge against you of contempt of court. This admonition, of course, does not preclude you from discussing your legal rights with any legally employed attorney, should you feel that your own personal rights are in any way in jeopardy