

Will criminal charges be filed in State Parks scandal?

By Matt Weiser, Sacramento Bee

Six months after the public learned that California state parks officials had concealed \$20 million even as they were crying poor and closing parks, one crucial issue remains foggy as ever: Were any crimes committed, and if so, will anyone be held to answer?

The state attorney general's investigation into the secret funds, released Jan. 4, made it clear that \$20.5 million was kept hidden in the State Parks and Recreation Fund (SPRF). The fund is the primary collection point for all visitor fees paid at the 278 parks in the California Department of Parks and Recreation system. Another \$33 million, held in the Off Highway Vehicle Fund, was not intentionally hidden, according to the report, but was obscured nonetheless by complexities in managing that fund.

The investigation also revealed that, although the amount of the hidden funds varied over time and originally piled up because of budgeting errors, numerous high-ranking officials at parks headquarters in Sacramento made a decision to keep the money concealed from state finance officials for as long as 13 years.

"It is clear," the investigation states, "that by no later than 2003, and perhaps as early as 1999, the failure to accurately report all SPRF monies ... became conscious and deliberate."

This finding raises the specter of criminal conduct, according to several legal experts interviewed by The Bee. And many state parks advocates – who opened their own wallets and volunteered time to keep parks open – are waiting for answers

to this question.

"If there is evidence that crimes were committed, they should be prosecuted," said Daniel Winkelman, a retired state parks ranger who lives in Folsom. "It's as simple as that."

The attorney general's office did not review whether any crimes were committed. It conducted only an "administrative" investigation in response to a request from the Governor's Office, said Richard Stapler, a spokesman for the Natural Resources Agency, which oversees state parks.

Officials at the Natural Resources Agency initially said they would review the attorney general's investigation for signs of criminal conduct, then refer the investigation to the Sacramento County District Attorney's Office, which would be responsible for bringing any criminal charges.

Now Stapler says the Natural Resources Agency will depend upon the attorney general to share its investigation with the district attorney.

"We do not have criminal attorneys working for us," Stapler said. "We need to have it reviewed through that lens of someone who does criminal prosecution in order to make any type of public determination."

Linda Gledhill, a spokeswoman for the attorney general, said her agency planned to formally share its investigation with the district attorney "in the next few days."

Several former officials at state parks have admitted, in testimony released by the attorney general, that they chose to keep quiet about the surplus money over many years.

Some cited a concern that if they informed the Department of Finance about the money, the parks department's general fund budget allocation would be reduced by an equal amount the next year, potentially harming park operations.

Others said they considered the surplus money a “rainy day fund.” They told investigators they hoped this money could be used to support parks, like a safety net, in the event a natural disaster slashed visitor revenues.

These choices violate numerous state administrative policies, as well as sections of the Government Code, which require employees to file accurate reports and to reconcile, or explain, inconsistencies between accounts reported to the controller and the finance department.

Shaun Martin, a law professor at the University of San Diego, said a key criminal statute that may have been violated is Penal Code section 424.

This law makes it a felony if a public official “knowingly keeps any false account” or “fraudulently alters, falsifies, conceals, destroys or obliterates any account.” It ascribes mandatory prison terms of two to four years and bars the guilty party from ever holding public office again.

“I think the prosecution would have a decent shot at getting a conviction,” Martin told The Bee. “There are other statutes you could potentially charge them with, but this one, I think, would be the strongest.”

He said bringing charges under this law, however, will be complicated: Penal Code section 424, itself, is the subject of an evolving legal debate.

The debate stems from a case in Sutter County that is similar, in some ways, to the parks scandal.

The Sutter County auditor-controller was indicted by a grand jury in 2005 for allegedly misappropriating funds, and charged with violating Penal Code section 424. Just as in the state parks case, no money was embezzled or spent on anything improper. The auditor-controller simply allocated money in a way that conflicted with the wishes of the county

administrator and the board of supervisors.

The case found its way to the California Supreme Court in a legal battle over the limits of section 424, an element of the state criminal code that dates to the 1880s.

The dispute the court considered was a longstanding tenet of law, which holds that ignorance of the law does not excuse criminal behavior. In other words, if you punch someone in the face, you can be convicted of assault even if you didn't know that punching someone is a crime.

In its 2011 ruling in the Sutter County case, known as Stark v. Superior Court, the California Supreme Court turned this basic legal concept around. It concluded that where Penal Code section 424 is concerned, ignorance of the law may, in fact, be an acceptable defense. A government official who misappropriates money or refuses to transfer money as ordered may not be guilty of a crime if he acted in "good faith" and did not know the actions were unlawful.

"Public officials and others should not be criminally liable for a reasonable, good faith mistake regarding their legal responsibilities," the court wrote in its unanimous opinion. "Nor is section 424 intended to criminalize ordinary negligence or good faith errors in judgment."

The decision could make prosecuting state parks employees under this section of the Penal Code more difficult. A prosecutor may have to prove the employees knew the law – and knew they were breaking it.

"It's an interesting area of law right now, because the Supreme Court has given us this hybrid intent kind of a crime that doesn't exist anywhere else," said Carl Adams, the Sutter County district attorney who is prosecuting the auditor-controller. The case is still pending before the local superior court. "Exactly how we define that difference – those cases will resolve over the next decade."

His adversary, Sacramento attorney M. Bradley Wishek, represents Robert Stark, the Sutter County auditor-controller, who has been re-elected by voters twice since the 2005 indictment. Wishek asserts that Stark never did anything unlawful, and believes the Supreme Court ruling means it will not be possible for a jury to find Stark guilty.

“When the law is so complex that reasonable minds could differ, then we have to ask: If you guess wrong, does that mean you committed a felony?” Wishek said. “According to the Supreme Court, it doesn’t.”

Significantly, there is one clause in Penal Code section 424 where the Supreme Court did not make this conclusion. It is the clause that states a government employee who “knowingly keeps any false account” is guilty of a felony.

This may be the clearest parallel to what happened in the state parks scandal. Martin, the San Diego law professor, said the Supreme Court ruling left nothing to quibble over here.

“Under this clause, ignorance of the law is no excuse,” he said. “If you know that your account is false, you’re guilty – period.”

It then becomes a choice by the prosecutor whether the behavior is egregious enough to warrant criminal charges and possible prison time, Martin said. The Sacramento County district attorney will have to decide whether to make an example of the parks employees.

“I think it’s the right call to make things like this illegal,” Martin said. “But is it morally desirable to impose penalties on someone for making mistakes like this? It’s the prosecutor that has the hard choice to make in a case like that, not the jury.”

