

Opinion: The law matters little to EDC officials

By Larry Weitzman

El Dorado County has issues with law: either not understanding it, ignoring it or just plain flaunting it. Mostly it's at our highest levels in county government. But even former county public officials have this problem.

In a recent lawsuit filed by former county Supervisors Ron Briggs and Norma Santiago, and supported by former Chief Administrative Officer Terri Daly, Briggs and Santiago claim they are due back pay from a series of resolutions mostly passed during their terms of office. Daly filed a declaration under penalty of perjury in support of the plaintiffs, Briggs and Santiago.



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If I remember right, not only did Santiago praise the inept Daly as a champion of EDC employees (forget EDC residents) but supported paying Daly three times her contract severance pay which amounted to nine months salary or about \$153,000 when she became an embarrassment to the BOS and EDC.

Daly's declaration – under penalty of perjury – may prove to be her undoing.

But notwithstanding any possible quid pro quos, Briggs and

Santiago are suing for alleged back pay. They claim the county owes them because they never received any of the wage increases and benefits via a series of salary and benefit resolutions that other county officials received, maybe \$100,000 or more each. The county has rightly defended this lawsuit.

The Briggs and Santiago case has a fatal legal flaw (as well as factual flaws) and it is called the California Constitution Article XI, Sections 1 and 4. It revolves around how a board of supervisors' compensation is set for charter counties like El Dorado County. Section 1(b) of Article XI says, "Each governing body (BOS) shall prescribe by ordinance the compensation of its members..." It also repeats itself in Section 4 (b). Factual flaws in two declarations under penalty of perjury of Briggs and Daly is the claim that in June 2014 the elected department heads all received a 5 percent raise. Absolutely false, only appointed department heads received raises, such as Daly, then Assistant CAO Kim Kerr and Human Resources Director Pam Knorr, but none of the elected department heads received anything. Now the question becomes does that make Briggs and Daly perjurers?

Additionally, Daly's declaration may be a violation of her severance agreement (Transition Agreement And Release Of Claims, dated Nov. 4, 2014) in that Daly agreed in paragraph 4 (a) of that agreement to assist the "county in regards to matters in which she was involved during her employment including but not limited to assistance in connection with any actual or threatened claims, complaints, litigation or lawsuits in which the county and/or Daly, in her official capacity, are named as subjects or defendants..." The same paragraph further said, "In consideration of the foregoing, county will pay Daly a total of nine (9) months base salary... \$153,519." That amount plus management leave, vacation leave and float time, Cobra insurance, etc., was paid to Daly within the first week of January 2015. Daly's declaration – clearly

against the county – was executed less than 11 months later and violates her severance agreement. Why hasn't the county initiated a lawsuit against Daly for the return of their \$153,519 for Daly's clear violation of her written severance promises? It's a slam dunk!

The basis for Briggs-Santiago claim is a series of county ordinances, the last ordinance (4675) passed on July 12, 2005, which properly set the BOS annual salary as of Jan. 7, 2007, at \$76,875, but added a provision that said, "The salary, set forth above, and benefits of the BOS shall increase in the same proportion as increases in the salary and benefits to elected department heads with such changes becoming effective at the time any salary or benefit modifications for elected department heads become effective as allowed by law." In other words, if a later resolution gives an elected department head a cost of living increase or any other percentage raise, according to the ordinance passed in 2005, the BOS gets the same raise by that resolution.

But therein lies a problem. Salary and benefits of elected department heads and other county officials can be set by resolution and not by the more rigorous standards of an ordinance (an ordinance requires two hearings (readings) and published notice. A resolution can be passed at one hearing and does not require published notice. And as also stated in the California Constitution, Article XI, Section 1 an "ordinance prescribing such compensation shall be subject to referendum," a resolution is not.

Perhaps the BOS who passed those ordinances to allow later increases to the BOS compensation by resolutions for elected department heads thought they found a clever way to bypass the requirements of the California Constitution, but it appears not. The California Constitution clearly and unambiguously requires that only an ordinance can prescribe the BOS compensation. No exceptions.

The EDC BOS passed an ordinance that said BOS compensation can be changed by resolution which is why Briggs and Santiago say they are entitled to additional compensation. The California Constitution only an ordinance and not a resolution can be used to change BOS compensation. In such a conflict, the Constitution clearly trumps.

Santiago and Briggs were both on the BOS for at least eight years. Why did they wait nine years or more before filing this claim? Why didn't they do it seven years ago, five years ago, even two years ago? Maybe they both felt bound by the oath they swore to uphold the California Constitution during office? They are not that deep.

In their pleadings Briggs and Santiago are claiming that the above July 2005 ordinance granted them the later several cost of living raises received by elected department heads but were not done pursuant to an ordinance but were granted all by resolution to those elected department heads; to wit Resolution 323-2001 (Dec. 11, 2011), Resolution 247-2005 (Aug. 16, 2005) and Resolution 089-2014 (June 24, 2014). Therefore, BOS pay was not granted by ordinance, but by resolution which is a strict violation of the California Constitution that says compensation for members of a county BOS are set by ordinance, not by resolution.

This whole scheme is a subterfuge to directly violate the California Constitution and therefore is illegal on its face. It is illegal to pass an ordinance that allows the BOS to give themselves a raise by resolution. This is exactly what Briggs and Santiago claim.

"In looking for people to hire, you look for three qualities, integrity, intelligence and energy. And if they don't have the first, the other two will kill you." Warren Buffet, CEO Berkshire Hathaway.

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