

Opinion: EDC's top lawyer got it wrong

By Larry Weitzman

El Dorado County officers are sworn to uphold the law, which includes following the federal and state Constitutions, the statutory and codified laws of the federal government and state of California and the various rules and regulations promulgated thereunder and the laws, regulations and ordinances of our local jurisdictions when and as they perform their specified job. County counsel has a slightly different job. He is an advocate as well as an advisor.

An advocate is one who supports by argument and logic a position, in this case public policy or a legal position. But as a lawyer, a person must also advise his client as to all sides of an issue and argument, the current law with respect to policy and the pitfalls with respect to taking certain positions. Is our county counsel advising accordingly? When it comes to the law, politics are supposed to be removed from the equation.



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Through the California Public Records Act, several documents were acquired including the response letter from our newly appointed county counsel, Mike Ciccozzi, to an inquiry from CalPERS questioning the contract of then interim Chief Administrator Officer Larry Combs as to whether the contract

was in compliance with the California laws against double dipping, specifically code sections 21221(h) and 21224.

These code sections create two issues for the Combs contract that was prepared by the county counsel. First, was it executed without an open recruitment for a new permanent CAO being under way and did the contract have a specific end date?

Ciccozzi's six-page letter to CalPERS dated March 1, 2016, admits that the law specifies that a recruitment (for a new, permanent CAO) needs to have begun before the Combs contract was signed, although in an article published in the *Mountain Democrat* on Feb. 5, 2016, Ciccozzi said that a more recent CalPERS document "does not require that the employment requirements of a retired annuitant include a specific end date or that the appointment be during an open recruitment." In that letter to CalPERS just three weeks later, he admits that a recruitment must be ongoing. In his March 1 letter, Ciccozzi spends four pages describing how a recruitment was ongoing since November 2014 that was also evidenced by the former CAO Terry Daly's transition agreement and release of claims. Ciccozzi then describes meetings discussing EDC's plans to hire a new CAO, researching executive search teams and BOS discussions about "recruiting" a new permanent CAO.

Ciccozzi claims to CalPERS that all of these machinations of internal discussions and talking to search firms satisfies the requirement of a recruitment as per Section 21221 (h). Funny, when just three weeks before Ciccozzi said in the newspaper that having a recruitment ongoing before hiring a retired annuitant as an interim CAO wasn't the law. Some lawyer.

But Ciccozzi has another impediment in the form of the published El Dorado County Personnel Rules adopted on May 7, 2013, by Resolution 048-2013 and revised as of March 4, 2014, by Resolution 015-2014. This revised resolution, which has the force of law, is titled of all things "recruitment" and defines what recruitment is and what is required for the

county to do a recruitment and it isn't anything like what Ciccozzi claims was an EDC recruitment which was nothing more than a series of meetings and a bunch of talk. In fact, a recruitment firm wasn't even hired by EDC until six months after Combs was hired. Even more interesting is that the eventual new CAO came from in house, Don Ashton, who was EDC's head of Health and Human Services. All that talk from Ciccozzi was nothing more than bovine.

According to the law in EDC, to have a valid recruitment, "The Human Resources Department shall make public announcements of all recruitments. ... All recruitment announcements will be posted on the county's website and other appropriate locations..." The resolution goes on to describe what the announcements shall include. None of that was done for at least six months after Combs contract was executed and he started work. According to our own county laws, Ciccozzi's description of a recruitment wasn't according to the laws of his own employer and Ciccozzi's ignorance of the law, especially EDC rules, regulations and laws is not an excuse.

County counsel's attempt to bull his way through this problem (as in a China shop) should not work and the responsibility falls directly on the county counsel for not knowing and following the law that more than likely was written and reviewed by guess who? That's [lw1] right, county counsel. The result of this failure is a potential huge liability for EDC and hopefully a windfall for CalPERS which has nearly a trillion dollars of unfunded liability as it can recover from Combs the \$200,000 they paid him during his EDC employment as pension benefits because the contract did not conform to state and county law making him a double dipper and CalPERS can demand he return his pension benefits because of his double dipping. On top of that CalPERS can also demand pension benefits be paid by EDC on the salary they paid Combs as well (about another \$30,000). Want more salt, we pay this county counsel over \$196,000 a year plus benefits and retirement

which totaled more than \$54,000 for 2015. This year (2016) it will be higher.

But there are more potential mistakes made by Ciccozzi and that goes back to a BOS meeting that occurred on Nov. 17, 2015, and involves his flawed analysis of the Walker v. San Clemente case regarding EDC's compliance with the Mitigation Fee Act. More to come.

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