

SALINAS CITY COUNCIL MEMBER JOSÉ CASTAÑEDA



SALINAS CITY COUNCIL MEMBER JOSÉ CASTAÑEDA

SUMMARY

Since being elected to the Salinas City Council in 2012, José Castañeda is often in the local news for disagreements with other City Council members or the City Attorney, as well as being involved in outside legal issues. Unfortunately, Mr. Castañeda's defiant behavior and an apparent disrespect for the law are not recent developments. For example, the year before his election to the City Council, Mr. Castañeda was convicted of a crime of falsifying a publicly filed document. Moreover, upon beginning his term on the City Council, he refused to step down as the Board President and Trustee of the Alisal Union School District (hereinafter "Alisal Board"), although these were unlawful incompatible offices. This refusal led to the City of Salinas bringing a court action at significant expense to the taxpayers to remove him from the Alisal Board. Nearly a year after his election, the Monterey County Superior Court granted Judgment against Mr. Castañeda, removed him from the Alisal Board, and imposed the maximum fine of \$5,000. Mr. Castañeda has never paid this fine despite demands to do so, and the City has long since abandoned its efforts to collect it. The Monterey County Civil Grand Jury (MCCGJ) believes that Mr. Castañeda should be held to the same standard as every other citizen and either immediately pay this outstanding fine to the State, or the City of Salinas should resume efforts in court to collect it.

BACKGROUND

Early in the 2014-2015 Monterey County Civil Grand Jury (MCCGJ) term, it was brought to the panel's attention the fact that a City of Salinas Council member, José Castañeda, may not have paid the \$5,000 fine imposed by the Monterey County Superior Court in 2013 stemming from his incompatible office case. During the course of this investigation, it was discovered that in 2011 Mr. Castañeda had been charged with forgery and other crimes related to his attempt to recall a Monterey County Supervisor.

The MCCGJ began an investigation to determine the details and current status of these matters.

INVESTIGATIVE METHODOLOGY

THE CONFLICT OF INTEREST CASE METHODOLOGY

The MCCGJ interviewed officials of the City of Salinas and reviewed relevant documents created before the filing of the incompatible office case in Superior Court. Also reviewed were relevant pleadings filed in the Monterey Superior Court case, titled *The People of the State of California, on the Relation of the City of Salinas, a charter city and municipal corporation vs. José Castañeda, an individual*, bearing case number M123946, filed on July 9, 2013 (hereinafter

“the incompatible office case”). Finally, documents related to attempts by the City to collect the \$5,000 fine from Mr. Castañeda were reviewed.

THE CRIMINAL CASE METHODOLOGY

The MCCGJ obtained copies of the District Attorney’s Investigation Report, including the evidence that supported the charges against Mr. Castañeda. In addition, the MCCGJ obtained a copy of the written plea agreement that Mr. Castañeda signed in the case titled, *The People of the State of California v. José Castañeda*, Monterey County Superior Court case number SS111127A. An investigation was also made into whether or not Mr. Castañeda completed the terms of his sentencing.¹

Several written and oral attempts to interview José Castañeda were made by the MCCGJ, but he refused to respond in any way.

¹ Mr. Castañeda was elected to the City Council despite being convicted the year before of a criminal charge involving dishonesty related to allegedly filing false recall election documents. This began in April of 2011 when Mr. Castañeda spear-headed a petition to recall Monterey County Supervisor Fernando Armenta. As a part of the recall effort by Mr. Castañeda, a Recall Petition was addressed to Mr. Armenta that explained the reasons for the recall. Mr. Castañeda obtained the requisite number of voter signatures on the petition and completed and signed the attached “Proof of Service,” “Under Penalty of Perjury,” that purportedly verified that he had personally served the petition, as required, on Mr. Armenta at the latter’s Salinas residence at 7:07 pm on April 21, 2011. However, Mr. Armenta denied ever being served with Mr. Castañeda’s Recall Petition, and it was established through documents and witnesses that Mr. Armenta was not at his residence that evening but in Gonzales attending a meeting of the Salinas Valley Solid Waste Authority, and afterwards, he and his wife spent the night outside of the county visiting relatives.

When questioned by Monterey County Election Department employees and a District Attorney investigator as to whether or not he actually served Mr. Armenta with the subject petition on April 21, 2011, Mr. Castañeda was adamant that he personally served Mr. Armenta at his residence. Moreover, after apparently learning of the doubts by officials as to whether he had actually served the petition, Mr. Castañeda filed a second “Amended Proof of Service” with the County Elections Department in which he again signed “Under Penalty of Perjury” that he had served Mr. Armenta at his residence on April 21, 2011, but the time was changed from the first Proof of Service from “7:07 pm” to “9:00 pm to 11:00 pm.”

After a complete investigation by the Monterey County District Attorney’s Office, the District Attorney filed a felony criminal complaint against Mr. Castañeda. The Complaint charged him with four felony counts arising from his filing of the two allegedly perjured documents with the County Elections Department.

Despite an overwhelming case against him, a plea bargain was reached on August 24, 2011, in which the felony charges were dismissed and Mr. Castañeda pled “nolo contendere” (guilty) to a new single lesser misdemeanor charge of a violation of the Elections Code by filing false affidavits. As a part of the plea agreement, Mr. Castañeda was fined \$1830, plus \$100 in restitution, \$140 in court costs, 40 days in jail or a work alternative, and three years of supervised probation. The investigation by the MCCGJ revealed that Mr. Castañeda completed the sentence imposed and avoided doing any jail time.

DISCUSSION

INCOMPATIBLE OFFICE

Under California Law, certain public offices (positions) are considered incompatible with each other and cannot be held by the same person. Incompatible offices create a conflict of interest, though not necessarily a financial conflict. (The use of the term “conflict of interest” herein refers to incompatible offices.)

At the time of his election to the City Council in 2012, Mr. Castañeda was President and a long-term member of the Alisal Union School District Board of Trustees. The law is clear that a person serving in a city as both a member of a school board and a member of the city’s council, is engaged in a conflict interest [*Government Code* § 1099 (Hereinafter § 1099), and the published Attorney General Opinions and appellate cases decided thereunder]. This conflict of interest *required* that Mr. Castañeda resign as a member of the board of the Alisal Union School District, the first position held. The investigation by the MCCGJ revealed that Mr. Castañeda was urged in writing by the City to resign from his Alisal Board position. This urging included a detailed legal discussion showing that Mr. Castañeda had no defense to the de facto incompatible office. However, he refused to comply and remained on the Alisal Board.

Subsequently, the City retained outside counsel to bring a court action on behalf of the People of the State of California seeking an order under § 1099 to remove him from the Alisal Board and impose the maximum fine of \$5,000 pursuant to *Code of Civil Procedure* § 809. That action was brought on July 9, 2013, nearly seven months after Mr. Castañeda swore his Oath of Office on December 18, 2012. Although Mr. Castañeda offered no factual or legal defense to the action, he still refused to resign, and the case went to Judgment. The Judgment was entered on September 20, 2013 and included an order that Mr. Castañeda be removed from the Alisal Board and imposed the maximum fine of \$5,000 pursuant to *Code of Civil Procedure* § 809. This Order is attached to this report. It cost the City \$26,555 in legal fees to obtain the judgment in the incompatible office case.

From December of 2012 until the Judgment, approximately nine months, Mr. Castañeda was not permitted by either the Alisal Board or the City Council to participate or vote on any matters.

Shortly after the entry of the Judgment, the City began proceedings to collect the fine from Mr. Castañeda, but gave up when it was revealed that Mr. Castañeda did not have any visible assets or sufficient income to levy on and he had several other prior uncollected civil judgments against him. The City also did not want to expend any more resources on the matter considering that the fine was payable to the State and not the City. The last written demand made on Mr. Castañeda to pay the fine was on June 3, 2014.

The City has failed to pursue all legal avenues in requiring Mr. Castañeda to pay the \$5,000 fine.² Even though it may not be “cost effective” to resume efforts to collect the fine from Mr. Cas-

² As early as the turn of the last century, the California Supreme Court held that a fine imposed pursuant to *Code of Civil Procedure* § 809 is in the nature of a *penal* fine not a *civil* fine [*People ex. Rel. Warfield v. Sutter S. R. Co.* (1900) 129 Cal. 545].

This means that the City has the potential remedy of seeking the incarceration of Mr. Castañeda under a contempt of court motion if it goes back to court to enforce the payment of the fine [*Code of Civil Procedure* § 1209 (a)(5)].

taneda, it is the MCCGJ's opinion that Mr. Castaneda must be held to the same standard as any other citizen and pay this legal obligation, especially since he brought it upon himself.

CONCLUSION

Unfortunately, a seemingly popular Salinas elected official has conducted himself after taking office in manner that reflects poor legal and ethical decisions, if not a disrespect for the law. He should consider placing the incompatible office difficulties behind him by paying the \$5,000 fine without costing the City any further legal expense.

FINDINGS

- F1.** José Castañeda is currently serving a four-year term, until the end of 2016, as one of the seven elected members of the Salinas City Council. He was elected to the Council in November 2012 to represent District 1.
- F2.** At the time of his election to the City Council, José Castañeda was President and a long-term member of the Alisal Union School District Board of Trustees ("Alisal Board").
- F3.** The law is clear that a person who is serving in a city as both a member of a school board and a member of the city's council is holding incompatible offices and must resign the first office that he was elected to.
- F4.** Mr. Castañeda refused to resign from his position with the Alisal Board, forcing the City of Salinas to hire outside counsel to bring a court action ("the incompatible office case") seeking an order to remove him from the Alisal Board.
- F5.** On September 20, 2013 a Judgment was entered in the incompatible office case removing Mr. Castañeda from his position with the Alisal Board and ordering him to pay a fine to the State of California in the sum of \$5,000.
- F6.** The incompatible office case cost the City of Salinas the sum of \$26,555 in legal fees.
- F7.** Mr. Castañeda has failed and refused to pay the \$5,000 fine.
- F8.** Subsequent to the Judgment in the Action, the City began collection efforts, including a demand that Mr. Castañeda pay the \$5,000 fine, but it gave up efforts when it was learned that he had no attachable assets and he had other civil judgments against him.

RECOMMENDATIONS

- R1.** José Castañeda immediately pay the \$5,000 fine that is outstanding in the incompatible office case.
- R2.** The City of Salinas pursue the appropriate post-judgment proceedings in the incompatible office case to enforce payment of the \$5,000 fine from José Castañeda to the State.
- R3.** The City explore amending the City's Charter to provide for the removal of a City Council Member upon conviction of a crime involving moral turpitude or the failure to pay a fine imposed by a court.

RESPONSES REQUIRED

Pursuant to Penal Code § 933.05, the MCCGJ requests responses to all Findings and Recommendations R2 and R3 from the following governing body:

- Salinas City Council (minus José Castañeda)

The MCCGJ invites José Castañeda to respond to all Findings and Recommendation R1.

1 VANESSA W. VALLARTA, State Bar No. 142404
2 CHRISTOPHER A. CALLIHAN, State Bar No. 203010
3 CITY OF SALINAS
4 OFFICE OF THE CITY ATTORNEY
5 200 Lincoln Avenue
6 Salinas, CA 93901
7 Phone: (831) 758-7256
8 Fax: (831) 758-7257
9 Email: vanessav@ci.salinas.ca.us

10 THOMAS A. WILLIS, State Bar No. 160989
11 KAREN GETMAN, State Bar No. 136285
12 REMCHO, JOHANSEN & PURCELL, LLP
13 201 Dolores Avenue
14 San Leandro, CA 94577
15 Phone: (510) 346-6200
16 Fax: (510) 346-6201
17 Email: twillis@rjp.com

18 Attorneys for Relator City of Salinas

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF MONTEREY

21 THE PEOPLE OF THE STATE OF
22 CALIFORNIA, on the Relation of the
23 CITY OF SALINAS, a charter city and
24 municipal corporation,

25 Plaintiff,

26 vs.

27 JOSÉ CASTAÑEDA, an individual,

28 Defendant.

FILED

SEP 20 2013

CONNIE MAZZEI
CLERK OF THE SUPERIOR COURT
DEPUTY

Chellis
C. SHERA

No.: M123946

Action Filed: July 9, 2013

KTK
PROPOSED JUDGMENT

Hearing:

Date: September 20, 2013
Time: 9:00 a.m.
Dept.: 15

(The Honorable Lydia M. Villarreal)

[PROPOSED] JUDGMENT

1 The motion for judgment on the pleadings of plaintiff The People of the State of
2 California, on the relation of the City of Salinas was heard by this Court on September 20, 2013.
3 Thomas A. Willis of Remcho, Johansen & Purcell appeared for plaintiff and José Castañeda appeared
4 in pro per. After considering the motion for judgment on the pleadings, opposition, and the
5 accompanying points and authorities submitted by plaintiffs, the paper and records on file in this
6 action, and oral argument, and GOOD CAUSE APPEARING,

7 IT IS ORDERED that:

- 8 1. Plaintiff's Motion for Judgment on the Pleadings is GRANTED;
- 9 2. Judgment is entered in favor of plaintiff; and
- 10 3. Mr. Castañeda is hereby removed from his office of Trustee of Alisal Union
11 School District and shall pay a fine of \$5,000, payable to the State of California.

12 DATED: SEP 20 2013

13
14 
15 JUDGE OF THE SUPERIOR COURT
16 KAY T. KINGSLEY
17
18
19
20
21
22
23
24
25
26
27
28