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Assembly
California Legislature

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APPROPRIATIONS
PUBLIC EMPLOYEES, RETIREMENT AND SOCIAL SECURITY
REVENUE AND TAXATION

6/15/2015

Honorable Mike Gipson
Chair, Joint Legislative Audit Committee
1020 N Street, Room 107
Sacramento, CA 95811

Dear Assemblymember Gipson:

The undersigned members of the Orange County legislative delegation oppose the request before the Joint Legislative Audit Committee to audit the Irvine City Council's Great Park Audit. The proposed "audit of the audit" is redundant, wasteful, disruptive, and contrary to the mission of the Committee.

The Great Park Audit was authorized on January 8, 2013 by unanimous vote of the Irvine City Council. The vote approved an RFP for contract compliance/forensic for contracts exceeding $50,000 and appropriated $250,000 towards the audit. Management of the audit was delegated by city council action to a sub-committee of two councilmembers that regularly updated the full city council on the progress of the audit. Qualified professional auditors and legal counsel were retained to guarantee validity and transparency.

As you know, audits sometimes result in uncomfortable findings. This appears to be the situation with the Great Park Audit. Unfortunately, some of those entities and individuals whose actions have been exposed by the audit are now looking to get the legislature to weigh in and protect them from those uncomfortable audit findings by changing or obfuscating the results. This will do a severe disservice to the process, the people of Orange County, and the idea of a fair and impartial legislative audit committee.

There is no need, nor any general legislative purpose, for the Committee to take this drastic step of auditing the audit. The Irvine City Council has entered into tolling agreements with many of the firms identified in the Great Park Audit. In fact, the company behind this JLAC audit request, San Diego based Gafcon, Inc. has entered into a tolling agreement with the City of Irvine. Paragraph 7 of that tolling agreement prohibits any party, including Gafcon, from initiating any administrative action or proceedings before JLAC.

Any disputes that cannot be resolved between Gafcon, the City of Irvine, or any other party, are subject to legal rights and defenses in court. Those proceedings could be adversely affected by any determinations by the State Auditor that are inconsistent with any agreements, judicial determinations or formal resolution of any disputes by the parties.

Additionally, Rule 25(d) of the JLAC provides that JLAC shall "[r]efer the [audit] request to another agency, if another agency is the more appropriate venue." In light of the tolling agreements, "the more appropriate venue" is to allow the City and the parties to attempt to resolve their differences and then to resort to a judicial form, if necessary, subject to the parties' rights and defenses in that more appropriate forum.

Furthermore, the City of Irvine will assert its legal rights to preserve our investigation. The City of Irvine is a charter city. As you are aware, under the California Constitution, the municipal affairs of a charter city are generally left in the hands of that charter city, as a matter of constitutional law. (California Constitution, Art. XI, Section 5). No State funds were used for the Great Park Audit and the Great Park Audit is a municipal affair of Irvine, a charter city. An "audit of the audit" would therefore be counter to the California Constitution and fall well outside the legitimate purview of the Committee.

Finally, we note that the Orange County District Attorney is currently investigating the conduct uncovered by the audit. The DA's office rightly refused to take a position on whether the proposed audit of the audit should go forward. It is, after all, inconceivable that a county law enforcement agency would take any position at all on the acts of the State legislature in the performance of its own constitutional duties. But the proposed audit of the audit cannot help but be incomplete or compromised while the DA's investigation is ongoing. For example, targets of the investigation will have to take the Fifth Amendment, thus thwarting an accurate completion of the audit of the audit. Or investigators might well grant total or partial immunity to witnesses or targets of the investigation, thereby influencing their testimony and undermining or tainting any cooperation with the audit of the audit. Under no circumstances can a complete and trustworthy audit be completed with the specter of a significant criminal investigation hanging over that audit.

For the foregoing reasons, we believe that no legitimate state purpose can be served, and the ability of County and City officials to do their jobs will be severely compromised, by the proposed audit of the audit.

We respectfully urge the committee to deny this audit request.

Sincerely,

Donald P. Wagner
68th Assembly District

Travis Allen
72nd Assembly District

Patricia Bates
36th Senate District

William Brough
73rd Assembly District

Ling Ling Chang
55th Assembly District

Matthew Harper
74th Assembly District

Bob Huff
29th Senate District

Young Kim
65th Assembly District

John Moorlach
37th Senate District

Janet Nguyen
34th Senate District