

First Five Fresno County
Fresno County Grand Jury Report No. 2
July 2019

SUMMARY

The 2018-2019 Grand Jury received a citizen complaint requesting the review of two issues regarding First 5 of Fresno County (hereinafter “First 5 Fresno”). The first issue concerned the number of commissioners on the First 5 Fresno Commission; the second issue questioned whether First 5 Fresno’s use of funds to purchase property and build the Lighthouse for Children (hereinafter “Lighthouse”) building was an appropriate use of Proposition 10 funds.

Based on the Grand Jury’s investigation, it is concluded that First 5 Fresno is not in compliance with the California statute regarding the criteria used in the appointment of its commission and that the use of First 5 Fresno funds to build the Lighthouse was an appropriate economic use of surplus funds.

BACKGROUND

First 5 of California was established in 1998 pursuant to the passing of Proposition 10, known as “The California Children and Families Act of 1998” (hereinafter “the Act”). The purpose of the Act is to promote the health and education of children in their first five years. Pursuant to the Act, the California Children and Families Commission, also known as First 5 California, was established. First 5 California and the various county First 5 commissions are funded from a tax on tobacco products sold in California. Each county’s First 5 commission then disperses these funds to local organizations that offer direct services for child care, preventative health, early education, and other family support services for children age five and under. [California Health & Safety Code section 130100, *et seq.*]

Pursuant to the Act, each county’s First 5 commission or board can be either an independent public agency with its own commission appointed by the county’s Board of Supervisors, or a department within the county government. In 1998, and revised in 1999, the Fresno County Board of Supervisors created the Children and Families Commission (First 5 Fresno) [Fresno County, CA Code of Ordinances 2.38, *et seq.*] as an independent public agency with its own commission and by-laws. The original 1998 ordinance required the First 5 Fresno commission to be composed of five members. This number was increased to nine in 1999. The commission members are to be from the following groups: One commissioner would be a member of the Fresno County Board of Supervisors; two commissioners were to be Fresno county employees chosen from the “county health officer and persons responsible for management of the following

county functions: children's services, public health service, behavioral health services, social services, and tobacco and other substance abuse prevention and treatment services;" and six from either the above group and from recipients of project services, early childhood development educators, local child care agencies, organizations working for the prevention or early intervention for families at risk, community based organizations having the goal of promoting nurturing and early childhood development, local school districts, and medical professions.

Additionally, the ordinance required the commissioners be guided by the County of Fresno Administrative Policy Number 1, "Code of Ethics." County of Fresno Administrative Policy Number 1 is basically a listing of how a county employee should conduct him/herself in an ethical manner, including not dispensing special favors or privileges that might be construed as influencing the performance of one's duties or in a manner to promote personal goals. Essentially, it is a conflict of interest prohibition.

In 2014, partly because two positions on the Commission had never been filled (pursuant to interviewees), and partly because of what appeared to be a difference of opinion among Supervisors,, the Board of Supervisors reduced the number of commissioners from nine to seven persons coming from the same categories stated above.

As indicated by interviewees, commencing January 2012, First 5 Fresno researched and determined that there was a need for child care in downtown Fresno for Fresno County employees and granted Fresno County funds to open and operate a child care center at the Fresno County Plaza. At the same time, First 5 Fresno started a search for an administrative office and child care center. To this end, First 5 Fresno sought to purchase property in downtown Fresno from the City of Fresno using unspent tobacco tax funds and loans. However, First 5 Fresno, as a government agency, could not take advantage of the New Market Tax Credits ("NMTC") to purchase and build the structure, so it established Lighthouse as a non-profit 501(c)(3) agency to take ownership and management of the building which, when built, would offer not only administrative offices for First 5 Fresno but also offer space to child care service providers.

This report does not address the issue of whether the use of surplus funds to build the Lighthouse was an appropriate use of funds insofar as accomplishing the mission of First 5.

METHODOLOGY

Face-to-face interviews were conducted with people who have knowledge regarding the issues before the Grand Jury.

All NMTC documents were reviewed by a certified public account.

Documents reviewed

Pertinent portions of the Children and Families Act
Fresno County, CA Code of Ordinances
County of Fresno, Board of Supervisors Meeting Agenda Item(s)
First 5 Fresno By-Laws
NMTC Loan documents
NMTC Operating Agreements

Internet search

First 5 Fresno website
Fresno County Recorder website
US New Market Tax Credit website

DISCUSSION

In 2014, when the Fresno County Board of supervisors voted to change the ordinance to decrease the number of First 5 Fresno commissioners from nine to seven, it also passed an ordinance with a stringent conflict of interest provision. The new ordinance (Fresno County Ordinance Code §2.38.010.D.) excluded any person from being a commissioner who was employed by, consulted for or contracted with, or had a spouse, partner, or immediate family member who was employed by, consulted for or contracted with, any agency or organization that is a recipient of First 5 Fresno funds. This new ordinance has proven to be, in effect, in conflict with sections 130140(a)(1)(A)(iii) of the Act regarding the qualifications of the commissioners in that it added restrictions that served to reduce the pool of community-wide potential applicants. According to several interviewees, efforts made to recruit additional commissioners have been hindered in large part due to the stringent conflict of interest qualification.

Pursuant to information provided by interviewees and the First 5 Commission minutes on First 5 website, since 2014, there have not been seven First 5 Fresno commissioners; there have been only five commissioners serving on the commission since that time: one member from the Board of Supervisors; two members from Fresno County; and two from the community. At the time of the investigation, the First 5 Fresno commission included community member(s) who did not meet the statutory qualifications for commission community members. It appeared their only qualifications were parenthood, financial acumen, relationship with an underserved community, and presence on a variety of boards. These qualities are not among those stated in the statute or ordinance as a qualifying criteria to be a community member of the First 5 Fresno commission. (See, H&S § 130140(a)(1)(A)(iii); Fresno Co Code of Ordinances § 2.38.010.B.)

A qualified person wishing to be appointed to First 5 Fresno's commission, can fill out an application obtained from their local Supervisor's office or from the Board of Supervisors' website.

As stated above, First 5 Fresno determined in 2012 that a child care center in downtown Fresno was necessary and that it wanted to leave a legacy of helping families and children by building a permanent home that could be used by First 5 Fresno for administrative purposes, as well as provide a centrally located day care center, educational support and, eventually, medical care for children age five and under. New Market Tax Credits were found to be a tool to build this permanent home for 61% of cost.

New Market Tax Credits were created by the U.S Congress in 2000 to assist low income areas where the poverty rate was at least 20%. Investment money is made available to these communities for businesses or economic development projects. In return, a 39% tax credit is made available to investors.

In order to build this legacy, First 5 Fresno founded Lighthouse as a non-profit agency to purchase and own the property in order to take advantage of the NMTC to secure construction loans. First 5 Fresno's payment for the purchase of the property and construction of the building was \$10,956,060.00 in cash. This cash came from unused grant funds which had been returned to First 5 Fresno by its partners. First 5 Fresno had been saving these funds since its inception.

NMTC work as follows: A lending institution invests funds in a non-profit agency and receives a tax credit in the amount of the investment and interest payments from mortgagee. In this instance, Chase Community Equity, LLC, invested \$8,000,000.00 into Chase NMTC Lighthouse Investment Fund for 100% ownership. In addition, First Five loaned \$10,956,060 to Chase NMTC Lighthouse Investment Fund. At that time, Chase NMTC Lighthouse Investment Fund made four loans totaling \$16,000,000 to Lighthouse for the necessary purchase and construction funds. A Put/Call agreement between Chase Community Equity, LLC, and First 5 Fresno includes an ownership put/call option which may be exercised in 2020. Chase Community Equity, LLC, may "put" (sell) its ownership interest in Chase NMTC Lighthouse Investment Fund to First 5 Fresno or First 5 Fresno may "call" (buy) all of Chase Community Equity's equity in Chase NMTC Lighthouse Investment Fund. In either case, upon the exercise of the put/call option in 2020, First 5 Fresno will own 100% of Chase NMTC Lighthouse Investment Fund. First 5 Fresno will then cancel the loans and Lighthouse will own the building free and clear of debt. The put/call exercise price would be \$1,000.00 plus fees.

The current value of the property and building is approximately \$16 Million.

The Lighthouse building is leased to First 5 under a Master Lease Agreement. First 5's 2019-2020 proposed budget states that First 5 occupies 15% of the space for its administrative offices.

The remaining space is subleased. In addition, First 5 Fresno is in negotiation with Valley Children's Hospital to build an additional facility on the property, at no extra cost to First 5 Fresno, to house medical services for children.

FINDINGS

- F1. Not all available commission positions are filled.
- F2. Not all of the current commissioners meet the qualification criteria to be a commissioner as required by the Act.
- F3. The conflict of interest ordinance (Fresno County Ordinance Code § 2.38.010.D.) enacted in 2014 is, in effect, in conflict with the Act in that it has excluded from the Commission the very people from the community that the Act expressly states are qualified to serve on the Commission.
- F4. First 5 Fresno appropriately and wisely used their tobacco funds and NMTC to facilitate the purchase of property and building of a facility in downtown Fresno to be used for day care, education, and medical care of children age 5 and under. First 5 Fresno is to be commended for being good stewards of their funds.

RECOMMENDATIONS

- R1. Fresno County Board of Supervisors fill all available commission positions by December 31, 2019. (F1)
- R2. Fresno County Board of Supervisors should review the qualifications of all current First 5 Fresno Commissioners in light of the requirements of the State mandated standard as codified by California Children and Families Act of 1998 by December 31, 2019. (F2)
- R3. Fresno County Board of Supervisors should modify Fresno County Ordinances Code § 2.38.010.D., the conflict of interest ordinance, to conform to the Act and County of Fresno Administrative Policy No 1 by December 31, 2019. (F3)

REQUEST FOR RESPONSES

Pursuant to California Penal Code, section 933.05, the Fresno County Grand Jury requests responses to each of the specific findings and recommendations. It is required that responses from elected officials are due within 60 days of the receipt of this report and 90 days for others.

RESPONDENTS:

Chairperson of Fresno County Board of Supervisors (F1, F2, F3 and F4) and (R1, R2, and R3)

Emilia Reyes, Executive Director of First 5 Fresno (F1 and F2) and (R2)

DISCLAIMER

Reports issued by the Grand Jury do not identify individuals interviewed. Penal Code, section 929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Grand Jury.