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OPINION	:	No. 83-903
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of	:	<u>FEBRUARY 24, 1984</u>
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THE HONORABLE DENNIS A. BARLOW, COUNTY COUNSEL OF YUBA COUNTY, AND THE HONORABLE DARRELL LARSON, COUNTY COUNSEL OF SUTTER COUNTY, have jointly requested the opinion of this office on the following question:

May committees from grand juries of separate counties lawfully meet together and conduct a joint investigation of a multicounty taxing district which includes such counties?

CONCLUSION

Committees from grand juries of separate counties may lawfully meet together and conduct a joint investigation of a multicounty taxing district which includes such counties for limited purposes to assist their respective grand juries in the performance of their functions.

ANALYSIS

We are advised that information has been provided to members of the grand juries of two counties that misuse of district property has occurred in a multicounty special purpose taxing district which includes those two counties. We are asked whether the law authorizes committees from the two grand juries, selected by their respective foremen, to meet together and conduct a joint investigation of the district in question. It is contemplated that the two committees would hold joint meetings in which they would hear witnesses, review evidence and prepare a joint report to their respective grand juries.

Three statutes provide grand juries with authority to investigate specified matters relating to the misuse of the property of such a district. Penal Code section 917 provides:

"The grand jury may inquire into all public offenses committed or triable within the county and present them to the court by indictment."

Government Code section 3060 provides:

"An accusation in writing against any officer of a district, county, or city, including any member of the governing board or personnel commission of a school district, for willful or corrupt misconduct in office, may be presented by the grand jury of the county for or in which the officer accused is elected or appointed. An accusation may not be presented without the concurrence of at least 12 grand jurors."

Penal Code section 933.5 provides:

"A grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district, or commission."

The first two of these statutes are the bases for the grand jury's accusatory function since their object is the initiation of the prosecution of individuals. Section 933.5¹ on the other hand represents one of the grand jury's "watchdog" or "reportorial" (see *People v. Superior*

¹ Section references are to the Penal Code unless otherwise indicated.

Court (1975) 13 Cal.3d 430, 436) functions since its object is a report on matters investigated by the grand jury.

We are asked whether the investigation contemplated may be conducted by committees of the grand jury. Our research has not revealed any statute expressly authorizing the creation and use of committees of the grand jury. However, section 916 provides:

"Each grand jury shall choose its officers, except the foreman, and shall determine its rules of proceeding."

In our view a grand jury's rules of proceeding could well include the establishment of committees of its members to whom matters cognizable by the grand jury may be referred for investigation and report back to the grand jury. Of course, any such rules would have to be consistent with any statutes governing the grand jury. In support of this view we refer by way of analogy to legislative committees and the case of *Special Assembly Interim Committee v. Southard* (1939) 13 Cal.2d 497, 503, wherein the Supreme Court observed:

"Under these constitutional provisions it is obvious that the major function of the legislature is that of enacting legislation. This power is expressly conferred by the Constitution. This power necessarily presupposes that the members of each house of the legislature must investigate the necessity for legislation. It is impractical that the entire membership should participate in such preliminary investigation. Consequently, it is well settled by practice and decision, that incidental and auxiliary to the express power conferred, the legislature and each house thereof has the inherent and implied power to appoint committees for the purpose of obtaining information concerning proposed legislation, and reporting back their findings to the body appointing them."

Further support for the grand jury committee system is found in its long-accepted use in California² and the tacit legislative approval of the committee system found in statutes authorizing payment for expenses of a grand juror in attending meetings of a grand jury committee as well as those of the entire grand jury.³

² (See *Clinton v. Superior Court* (1937) 23 Cal.App.2d 342, 344; *Gillett etc. v. Kemple* (1978) 83 Cal.App.3d 214, 218; 9 San Diego L.Rev. 134, 162.)

³ (See, e.g., Gov. Code, §§ 76001, 76006, 76008 et seq. added by Stats. 1971, ch. 1204, § 59. Those sections were repealed by Stats. 1980, ch. 1361, § 7, at the same time Gov. Code § 68091 was added by § 1 of the same chapter authorizing boards of supervisors to fix the compensation of

Next we consider the extent to which the use of committees is consistent with the functions of the grand jury which are relevant to this opinion.

The accusatory functions of the grand jury authorized by section 917 and Government Code section 3060 are usually initiated by the district attorney who is authorized by section 935 to present evidence of crime or official misconduct to the grand jury. The district attorney will have had the offense investigated and will have marshalled the evidence relevant thereto prior to its presentation to the grand jury. The grand jury then evaluates the evidence in secret deliberations (see §§ 939, 924.2) and decides by vote whether to issue an indictment or accusation. This investigative process on which an indictment or accusation may be founded may be styled a formal investigation by the grand jury. All testimony must be sworn and only evidence which is admissible over objection in a criminal trial may be received in such formal investigations. (§ 939.6.) A stenographic reporter must record the testimony in shorthand and prepare a transcript thereof. (§§ 938 & 938.1.) An indictment can be found only with the concurrence of 12 grand jurors (14 for 23 member grand juries) and 12 votes are also required for an accusation. (See § 640 & Gov. Code, § 3060.) Grand jurors voting for an indictment must have heard all of the evidence presented thereon. (*Stern v. Superior Court* (1947) 78 Cal.App.2d 9, 16.) We believe it is evident from these requirements that the Legislature intended that such formal investigations are to take place before the entire grand jury and not before a committee thereof. We conclude therefore that a formal investigation upon which an indictment or accusation may be found must be conducted before the entire grand jury convened as such and may not be conducted before a committee of the grand jury.

It does not follow, however, that a grand jury committee may not be utilized in performing some of the grand jury's accusatory functions. The grand jury is not limited to matters initiated by the district attorney in performing its accusatory role. Section 918 provides:

"If a member of a grand jury knows, or has reason to believe, that a public offense, triable within the county, has been committed, he may declare it to his fellow jurors, who may thereupon investigate it."

Information may come to a grand jury either from one of its members or from others indicating the commission of crime or official misconduct. When such information is received an initial determination must be made whether to conduct a formal investigation of the matter. While this is a decision to be made by the entire grand jury (see *Clinton v. Superior Court* (1937) 23 Cal.App.2d 342, 345) we see no reason why a grand jury could

grand jurors by ordinance. We have no doubt that ordinances enacted pursuant to Gov. Code § 68091 similarly refer to attendance at meetings of committees of the grand jury.)

not refer such information to a committee of its members for an informal inquiry into the facts and a report and recommendation to the entire grand jury thereon to assist the grand jury in making such decision. A grand jury has no authority to hire detectives to detect crime (*Allen v. Payne* (1934) 1 Cal.2d 607) except as expressly authorized by statute,⁴ nor may it engage in "fishing expeditions" or indiscriminate meddling with public or private matters, that is, conduct an investigation without some prior information to indicate a crime or official misconduct has been committed (see *Board of Trustees v. Leach* (1968) 258 Cal.App.2d 281, 287) though it is not necessary that formal charges of specific offenses shall first be made against particular named individuals to authorize a grand jury to institute an investigation thereof. (*Samish v. Superior Court* (1938) 28 Cal.App.2d 685,688; *Monroe v. Garrett* (1971) 17 Cal.App.3d 280, 283.) A grand jury would be well advised to call upon the district attorney for his assistance and advice in its review of the information it has received whether as a body or by committee. The district attorney's assistance will be essential in the conduct of any formal investigation of the matter and if an indictment or accusation is found it is the district attorney who must prosecute the case in the trial court.

The only statute our research has disclosed which concerns the manner in which a grand jury is to conduct its "watchdog" or reportorial functions is section 939.9 which provides:

"A grand jury shall make no report, declaration, or recommendation on any matter except on the basis of its own investigation of the matter made by such grand jury. A grand jury shall not adopt as its own the recommendation of another grand jury unless the grand jury adopting such recommendation does so after its own investigation of the matter as to which the recommendation is made, as required by this section."

Section 939.6, quoted above, which limits the grand jury to the receipt of evidence admissible over objection at trial by its express terms applies only to "the investigation of

⁴ Section 926(a) provides:

"(a) If, in the judgment of the grand jury, the services of one or more experts are necessary for the purposes of Sections 925, 925a, 928, 933.1 and 933.5 or any of them, the grand jury may employ one or more experts, at an agreed compensation, to be first approved by the court. If, in the judgment of the grand jury, the services of assistants to such experts are required, the grand jury may employ such assistants, at a compensation to be agreed upon and approved by the court. Expenditures for the services of experts and assistants for the purposes of Section 933.5 shall not exceed the sum of thirty thousand dollars (\$30,000) annually, unless such expenditures shall also be approved by the board of supervisors."

a charge." The rules of evidence would have no application to a grand jury's examination of the books and records of a taxing district nor to its investigation of the "method or system of performing the duties" of such district under section 933.5 quoted above. (See *Gillett Harris-Duranceau & Associates, Inc. v. Kemple* (1978) 83 Cal.App.3d 214, 222.) As to such investigations, section 939.9 simply requires that any report or recommendations the grand jury makes must be based on its own investigation of the matter.

So long as a grand jury makes its own investigation of the matter it is authorized under section 916, quoted above, to "determine its rules of proceeding" in such investigations. When a grand jury undertakes to examine the books and records of an agency or to investigate the method or system of performing its duties (see 64 Ops.Cal.Atty.Gen. 900) the scope of such an activity might well suggest some division of labor on the project. Assigning portions of the subject matter to individual members or groups of members for particularized study would permit a more comprehensive investigation for the same time and effort expended than would a study of the whole matter by all of the grand jurors. The results of such separate studies could then be reported to the entire grand jury and the committee's recommendations could be adopted, modified or rejected by the entire grand jury following a review of the committee's report. We are aware of no statute which would preclude the use of such a committee system in the performance of a grand jury's "watchdog" and reportorial functions.

We next consider whether committees of grand juries from separate counties may meet together and jointly investigate a matter of common interest. Section 939 provides:

"No person other than those specified in Article 3 (commencing with Section 934), Chapter 3 of this title and in Section 939.1 is permitted to be present during the session of the grand jury except the members and witnesses actually under examination. No person shall be permitted to be present during the expression of the opinions of the grand jurors, or the giving of their votes upon any matter before them."

This section clearly prohibits the entire grand juries of separate counties from meeting together since members of the grand jury of another county are not among those specified in article 3 who may be present during a session of the grand jury. However, section 939 does not purport to apply to the conduct of individual members or committees of a grand jury which do not constitute a quorum of the entire grand jury.

The authority to examine books and records of a district (see §§ 933.5, quoted above) includes the authority to examine such records in the office where they are kept as well as the authority to summon witnesses and command the production of the

records before the grand jury by subpoena. Indeed, before such a subpoena could be issued some information concerning the records to be examined would be necessary. A preliminary examination of the records by someone, together with some informal inquiry of those familiar with the method of their preparation, would seem a logical preliminary step to a more formal investigation. While the grand jury may request law enforcement agencies to make such a preliminary investigation or employ their own experts for such purpose (see fn. 4) we see no reason why such a preliminary investigation could not be made by a member or committee of the grand jury authorized by the grand jury to take such action on its behalf.

The grand jury's authority under section 933.5 to investigate the method or system of performing the duties of a district would also appear to require some kind of preliminary fact gathering investigation in order to know what witnesses to call and what questions to ask in a more formal investigation by the grand jury. We see no reason why this could not be done by a member or committee of the grand jury assigned to the task by the grand jury. Similarly, informal inquiries necessary to the performance of the grand jury's accusatory functions may be undertaken by a committee of the grand jury as discussed above.

Having concluded that the powers of a grand jury relevant to the investigation contemplated by the question submitted may be exercised in part by committees of a grand jury, we consider finally the extent to which such committee functions may be consolidated. First we see no reason why a grand jury may not authorize a single committee of its members to conduct a preliminary examination of the books and records, the method of performing its duties and any crime or official misconduct concerning a particular taxing district in the county when it has received information indicating misuse of district property and report back its findings and recommendations to the entire grand jury. Where the district to be investigated embraces more than one county the grand juries of the several counties included within such district may each conduct similar preliminary investigations by means of their respective committees. Our research has disclosed no law which would prohibit the grand jury committees given such an assignment by their respective grand juries meeting together and conducting their preliminary examination of the district in concert when their respective grand juries have authorized such joint committee meetings. We conclude that the grand juries of two counties may lawfully authorize committees of their respective members to meet together to investigate the misuse of district property in a multicounty special purpose taxing district which includes both counties for limited purposes.

We hasten to add that a number of constraints would attend any such joint investigation by committees of separate grand juries. Since the purpose of each committee is to gather facts and to report back to its own grand jury we see no basis for the committees

to make a joint report. Each committee must make its own report of the information learned and the recommendations it makes to the grand jury which created it. It would have no authority to report its views to another grand jury.

Such a joint meeting of committees of separate grand juries could not provide the forum in which evidence to support an indictment or accusation would be received for the reasons discussed above. However, the reports of the respective committees of information learned at such joint meeting might well induce any or all of the grand juries involved to conduct a formal investigation which could lead to an indictment or accusation.

The members of the committees of separate grand juries which meet jointly remain bound by their oath (§ 911) and by section 924.1 not to disclose any evidence adduced at their joint meeting or what any member of either committee may have said except to their respective grand juries. (Compare § 926(b).)
