

LIBRARY CHARTER SCHOOL: The Law of Unintended Consequences

INTRODUCTION

In the rush to break ground on a new downtown library, civic leaders failed to anticipate the unintended consequences of co-locating a charter school in the building. For decades, some San Diegans and advocacy groups have been lobbying for a showpiece downtown library. Lacking a mandate from the citizens, creative fundraising was used in an effort to secure the approximately \$180 million required to construct the library. This creative funding includes a grant from the State of California, private donations and advance lease payments made by the San Diego Unified School District (SDUSD) for space in the library building for a school. The 2010/2011 San Diego County Grand Jury (Grand Jury) investigated the project and found that there was no clear vision nor a demonstrable need for the elementary school first proposed. However, the infusion of up-front lease money from the SDUSD was the critical piece enabling the City of San Diego (City) to begin construction on the library building in August 2010. The City is still hopeful that private donations will be sufficient to close the multimillion-dollar funding gap no later than January 2012. Fundraisers are still \$32.5 million short of the total needed to complete construction. Without the needed funds, construction would stop.¹

The Grand Jury received a citizen complaint questioning the legality of the library financing, which involved mortgaging the City's interests in more than 20 acres of land on Torrey Pines Mesa, including the Torrey Pines Hilton Hotel property, in favor of the SDUSD. The Grand Jury's investigation determined encumbering City-owned property did not violate the City Charter or any other legal prohibition. The Grand Jury then focused its attention on the unique attributes of the school itself.

The Grand Jury has serious concerns regarding the proposed school, and recommends the SDUSD Superintendent of Schools consider them carefully during construction and take action before the school opens.

INVESTIGATION

It was apparent from the start of the investigation that financial participation of the SDUSD was needed to make the downtown library project viable. This participation came in the form of an agreement between the City and the SDUSD to utilize the sixth and seventh floors of the library building for a school. That space could be used later for library expansion. The school district's \$20 million advance would prepay a 40-year lease. While this partnership appeared workable, including a school created many obstacles that had to be overcome. This became evident by the frequent changes in the

¹ "Schoobrary Fundraising Slow" Jan. 18, 2011.
http://www.voiceofsandiego.org/government/thehall/article_561695a8-234b-11e0-8ed3-001cc4c002e0.html.

plans for the new school. To garner initial support, the school as proposed in 2003 was to be an elementary school; however, this proposal did not survive because of California's seismic code requirements. Searching for a workable alternative, the SDUSD proposed in 2009 that a traditional middle or high school occupy the space. That proposal ran into difficulties; the final proposal in 2010 recommends the establishment of a charter high school.

During the Grand Jury investigation, interviews were conducted with:

- SDUSD personnel
- San Diego Library Foundation personnel
- Elected officials
- A representative of the City Attorney's office
- The original complainant
- An educational consultant

DISCUSSION

Downtown development and/or redevelopment have been hot topics for years with passionate discourse over proposed downtown sports facilities, a new city hall, and a showpiece central library. With little public support for these major civic projects, library backers began soliciting private donations and looking for creative ways to finance their vision for downtown. A solution was to combine a school with the library, apply for a State of California grant, seek additional private grants and solicit the SDUSD's financial participation.

Plans for an elementary school changed after noting that California earthquake standards prohibit elementary schools from being housed above the second floor. Since only the sixth and seventh floors of the library building are available for the school, the elementary school plan was abandoned.

The next proposal in 2009 was for a traditional 400-student middle or high school. This plan also faced difficulties because meeting earthquake construction standards for public schools would significantly increase library building costs. To circumvent this problem, the new school was designated a charter school. Except under very rare circumstances, charter schools are not required to comply with the earthquake standards established by the Field Act.² The library charter school is exempt from those standards.³

Charter schools are usually formed by special-interest groups and must meet specific criteria. Once a charter is granted, the charter group must seek existing, appropriate school district facilities. With the library charter school, the opposite situation exists: the yet-to-be-constructed facilities are looking for an approved charter school group.

² Enacted in 1933 by the California Legislature, the Field Act mandated earthquake resistant construction for schools in California.

³ In 1997, based on the language of the California Charter Schools Act of 1992, an attorney general's opinion held that charter schools are exempt from Field Act provisions unless their charter specifically dictates otherwise.

Several groups are interested in operating the new school, including a group calling itself *Downtown Charter High*. The SDUSD Board will ultimately select a group and award the franchise; however, many questions remain around the efficacy and operation of the library charter school.

Regardless of what group holds the school's charter, the Grand Jury has serious concerns about the school and its facilities. Among those concerns are:

1. Operating a library and school together presents unique security challenges. With drastic budgetary cuts to school police staff and the San Diego Police Department, security for students and staff in downtown must be determined in advance.
 - The warmth, comfort and facilities of the current downtown library attract indigents from the local streets. What are the plans to keep the students and the indigents separated at the new library school?
 - Child predators will be able to mingle with the library patrons and be lost in the crowd. How will the students be protected?
 - How will entrances and elevators be secured to ensure that only students, faculty, staff and approved visitors are allowed to enter the school?
 - Even under the best of circumstances, elevators and other areas of public buildings are subject to vandalism. With 400 students utilizing the library building daily, how will the facilities be protected?
2. Parking as proposed is inadequate for the population served by the library school. There are six parking spaces reserved for the school, with up to 30 more available for an estimated monthly fee of \$170 each. When proposed as an elementary school, parking was inadequate. Now that there will be high school students with cars, how will adequate, affordable parking be assured for students, staff, administrators and parents?
3. Food service plans for students must be made. Will students eat in the library building or be allowed to go off-campus?

FACTS AND FINDINGS

Fact: Construction has begun on the library, which is not yet fully funded.

Fact: As of this writing, a charter group has not been selected.

Fact: Traditional elementary, middle and high schools must meet California earthquake standards.

Fact: Charter schools are not required to comply with California earthquake standards.

Finding 01: The library charter school presents unique operational and safety challenges because of its location and mixed uses.

Finding 02: In the rush to fund the construction of the new San Diego library, the City failed to give proper weight and consideration to the challenges caused by the joint use of the facility.

RECOMMENDATIONS

The 2010/2011 San Diego County Grand Jury recommends that the Superintendent of the San Diego Unified School District:

- 11-08: Conduct a new needs assessment to ensure that the library charter school serves the actual or potential downtown population.**
- 11-09: Select a charter group before additional planning for the library charter school proceeds.**
- 11-10: Require the approved charter group to provide a written plan for ensuring the safety of up to 400 students.**
- 11-11: Plan, budget, and take action to address the Grand Jury's concerns identified in the Discussion section.**

REQUIREMENTS AND INSTRUCTIONS

The California Penal Code §933(c) requires any public agency which the Grand Jury has reviewed, and about which it has issued a final report, to comment to the Presiding Judge of the Superior Court on the findings and recommendations pertaining to matters under the control of the agency. Such comment shall be made *no later than 90 days* after the Grand Jury publishes its report (filed with the Clerk of the Court); except that in the case of a report containing findings and recommendations pertaining to a department or agency headed by an elected County official (e.g. District Attorney, Sheriff, etc.), such comment shall be made *within 60 days* to the Presiding Judge with an information copy sent to the Board of Supervisors.

Furthermore, California Penal Code §933.05(a), (b), (c), details, as follows, the manner in which such comment(s) are to be made:

- (a) As to each grand jury finding, the responding person or entity shall indicate one of the following:
 - (1) The respondent agrees with the finding
 - (2) The respondent disagrees wholly or partially with the finding, in which case the response shall specify the portion of the finding that is disputed and shall include an explanation of the reasons therefor.
- (b) As to each grand jury recommendation, the responding person or entity shall report one of the following actions:
 - (1) The recommendation has been implemented, with a summary regarding the implemented action.

- (2) The recommendation has not yet been implemented, but will be implemented in the future, with a time frame for implementation.
 - (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a time frame for the matter to be prepared for discussion by the officer or head of the agency or department being investigated or reviewed, including the governing body of the public agency when applicable. This time frame shall not exceed six months from the date of publication of the grand jury report.
 - (4) The recommendation will not be implemented because it is not warranted or is not reasonable, with an explanation therefor.
- (c) If a finding or recommendation of the grand jury addresses budgetary or personnel matters of a county agency or department headed by an elected officer, both the agency or department head and the Board of Supervisors shall respond if requested by the grand jury, but the response of the Board of Supervisors shall address only those budgetary or personnel matters over which it has some decision making authority. The response of the elected agency or department head shall address all aspects of the findings or recommendations affecting his or her agency or department.

Comments to the Presiding Judge of the Superior Court in compliance with the Penal Code §933.05 are required from the:

Responding Agency	Recommendations	Date
Superintendent San Diego Unified School District	11-08 through 11-11	7/11/11