

Lobbying: The Shadow Government

1. SUMMARY

The Orange County Board of Supervisors and the County's elected and appointed leaders were responsible for over \$4.4 billion of taxpayer funds in fiscal year 2008-2009. These funds support a staggering array of programs and services.¹

The list of government-funded programs is extensive—the expenditures are large—but the public has no means to determine the influence of special interest groups or lobbyists on the use of these funds.

Elected officials, including the Sheriff, District Attorney, Treasurer-Tax Collector, Assessor, Clerk-Recorder and Auditor-Controller manage over \$800 million in tax revenues while County department heads including the Director of Social Services, Director of the Health Care Agency, Chief Probation Officer, and the Director of Public Works manage an additional \$1.5 billion in state, federal and local tax funds. Other locally administered government programs account for the remaining billions.

Los Angeles County spends substantially more on similar government programs, services and capital projects. However, Los Angeles County requires a full accounting of all groups and individuals who lobby County officials to influence the award of contracts and use of funds. In fact, during 2009, over 300 paid lobbyists attempted to influence L.A. County leaders on a host of important issues.² These lobbyists paid over \$130,000 in registration fees and fines for the opportunity to influence county leaders. These fees were used to administer a comprehensive lobbying registration and reporting process that assures transparency and public reporting of all lobbying activities.

¹County of Orange: F2008-2009 Fourth Quarter Budget Report: Sept.22, 2009

²Interview with Director of Program Integrity, Los Angeles County

In a similar manner, other large government jurisdictions throughout California require registration and reporting for paid lobbyists and lobbying organizations.

Is it time for Orange County to consider a similar program to monitor lobbyists and their influence on County Government? The Orange County Grand Jury examined this issue in detail. Key findings include the following:

- With an operating budget of over \$4.4 billion, Orange County is the largest local government entity in California *without* a program to monitor and report lobbying activities.
- Current estimates indicate that upwards of 25 organizations and individuals are paid by interest groups to influence decisions by Orange County elected and appointed officials.
- Enactment of a comprehensive lobbying program will improve the accountability of elected and appointed County officials.
- The Board of Supervisors has begun consideration of this issue, but is divided in its support of a substantive lobbying ordinance.

2. REASON FOR STUDY

- How many groups or individuals attempted to influence key decision makers in Orange County during 2009? **We don't know!**
- How much money was paid to lobbyists to influence our County leaders? **We don't know!**
- How many lobbyists in Orange County **declared** their intent to advocate for specific programs, contracts and services? We do know the answer to this question. **None;** there is no requirement to do so.

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California State Government, Los Angeles County, San Diego County, San Francisco County, the Cities of Los Angeles and San Diego, the Metropolitan Transit Authority and many other large government entities have enacted simple but complete lobbying ordinances requiring lobbyists to register and report their activities.

3. METHOD OF STUDY

The Grand Jury reviewed published reports and documents regarding lobbying activities in Orange County during the past three years. The panel also evaluated ordinances and regulations that mandate lobbyist registration and reporting for several other jurisdictions including Los Angeles, San Diego and San Francisco Counties, the City of Los Angeles, the City of San Diego, and other local government agencies.

Additionally, The Grand Jury interviewed government officials in San Diego and Los Angeles Counties responsible for administration of lobbying activities as well as California State political leaders regarding lobbying requirements. Two of the four sitting members of the Orange County Board of Supervisors provided input regarding the need for a county lobbying ordinance. The other two chose to not meet with the Grand Jury on this issue. The Grand Jury also interviewed key Orange County lobbying groups.

4. BACKGROUND AND FACTS

4.1 Lobbying is Big Business

“**What Recession,**” reported the Associated Press: “amid a stagnant national economy and the worst unemployment in nearly three decades, lobbying expenditures nationwide grew by 5% from \$3.3 billion in 2008 to \$3.5 billion in 2009—up from a *paltry* \$1.4 billion in 1998.”³ The 2009 expenditure is about one-half the amount the federal government spent on the entire Federal Court System.”

³Associated Press Article in “Nation”; Feb. 12, 2010

Nationally, the pharmaceutical companies led all lobbying groups with over \$267 million invested to influence legislators and political leaders. The U.S. Chamber of Commerce, representing broad-based business interests, weighed in at \$183 million, while Exxon Mobil led individual corporate contributors with \$27 million. Organized labor, ideological groups and a plethora of other organizations—large and small—flood legislative bodies and government agencies with millions of dollars to influence public policy. Money talks, and the lobbying industry speaks with a large megaphone that drowns out the voices of the electorate.

By comparison, current lobbying efforts to influence Orange County government are small. Based on discussions with local elected officials and lobbying groups, the Grand Jury estimates that there are no more than 25 individuals and firms actively lobbying County elected and appointed officials and department heads.

The amount of money spent on these activities is unknown and the influence on Orange County government is a matter of speculation.

Ironically, external lobbying conducted by county agencies is fully reported. In calendar year 2008, Orange County agencies spent nearly \$1.1 million in tax funds to lobby other government agencies.

This includes:

- \$336,000 by the Orange County Transportation Authority
- \$240,000 by Orange County Government
- \$120,000 for the Orange County Water District
- \$110,000 by the Orange County Sanitation District
- \$80,000 by the Municipal Water District of Orange County
- \$60,000 by the Orange County Fire Authority
- \$40,000 by the Orange County Employee Retirement System
- \$30,000 by the Clerk Recorder

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County departments and special districts are required to report their expenditures in lobbying efforts. Yet, there are no requirements for lobbyists to report their activities in lobbying these same entities.

4.2 Proposed Lobbying Ordinance for Orange County

The purpose of an ordinance is to ensure that the citizens of Orange County have access to information about groups and individuals who attempt to influence decisions of County Government through the use of paid lobbyists. The regulations should establish clear and unambiguous registration and disclosure requirements.

4.3 Lobbying Definition and Practices

Lobbyist: A lobbyist is any individual who is employed, contracts or otherwise receives compensation to communicate directly or through agents,

employees or subcontractors with any County appointed or elected official or Department Head for the purpose of influencing official County action.

Lobbyist Firm: A lobbyist firm means a business entity, including an individual lobbyist, that receives or becomes entitled to receive any compensation for the purpose of influencing official County action on behalf of any other person or entity.

5. FINDINGS

In accordance with California Penal Code Sections 933 and 933.05, each finding will be responded to by the government entity to which it is addressed. The responses are to be submitted to the Presiding Judge of the Superior Court. The 2009-2010 Grand Jury arrived at the following findings:

- F1. Orange County does not have a lobbying ordinance. This is in stark contrast to other large government entities.

Lobbying in Other Government Agencies					
	Lobbying Ordinance	Ordinance Applies To	Registration	Reporting	Fees
State of California	Yes	Lobbying \$5,000 and over	Yes, within 10 days of \$5,000+amount	Quarterly	\$25 per lobbyist every (2) years
Los Angeles County	Yes	Lobbyists, lobbying firms, and employees	Must register within 10 days of becoming a lobbyist	Quarterly	\$450 Annual from lobbyist
City of Los Angeles	Yes	Lobbyists	YES	Quarterly	\$75 lobbyist employer
San Diego County	Yes	Lobbyists	Owner, officer & employees	Quarterly	None
City of San Diego	Yes	Lobbyists and Firms	No	Quarterly	None
Orange County	None	Not Applicable	Not applicable	Not Applicable	Not Applicable

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F2. With at least \$4.4 billion dollars at stake, the public deserves to know:

- How the money is spent
- How decisions are made to allocate these funds and
- The influence of paid lobbyists in this decision process

F3. The lack of a lobbying ordinance reduces transparency of County Government.

F4. Most lobbying ordinances apply both to elected and appointed officials as well as department heads.

F5. The Board of Supervisors has begun consideration of this issue, but is divided in its support of a substantive lobbying ordinance.

Responses to Findings F.1, F.2, F.3, and F.4 are required from the Orange County Board of Supervisors.

6. RECOMMENDATIONS

R1. Orange County Board of Supervisors should adopt a lobbying ordinance that includes the following key elements:

1. **Registration:** Any individual as defined as a lobbyist shall register with the County Clerk of the Board as a “Registered Lobbyist” prior to contact with or within 10 calendar days after contact with any member of the Board of Supervisors or other elected or appointed County Officeholder or Department Head. All lobbyists or lobbying firms will update their registration annually.
2. **Fees:** The County should establish a fee schedule for initial and annual registration of lobbyists. The fees should be adequate to offset the cost of administering the lobbyist registration and reporting process.
3. **Reporting:** Each lobbyist and lobbying firm should file a quarterly report with

the Clerk of the Board detailing their lobbying activities during the preceding quarter, including the following:

- a. A description of the matters for which the lobbyist or lobbyist firm attempted to influence official action.
 - b. The payments made to the lobbyist or lobbyist firm for their services and the source of payment.
 - c. Payments in any form given to County officials during the preceding month.
 - d. Campaign contributions made to County elected officials.
4. **Data Base:** The Clerk of the Board should maintain comprehensive data regarding all registered lobbyists including quarterly reports and registration information. These data will be part of the public record and be fully accessible to the public including electronic access to records.
 5. **Enforcement:** Lobbyist or Lobbying firms failing to register or report should be subject to fines and penalties up to and including the filing of misdemeanor charges. Fees and penalties should be progressive and tough enough to ensure compliance.

R2. The language in the lobbying ordinance should be written in a manner to improve the community’s trust in county government.

R3. The Orange County ordinance should apply to all elected and appointed County Officers as well as all County Department Heads.

Responses to Recommendations R.1, R.2, and R.3. are required from the Orange County Board of Supervisors.

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7. REQUIRED RESPONSES

The California Penal Code specifies the required permissible responses to the findings and recommendations contained in this report. The specific sections are quoted below:

§933.05

(a) For purposes of Subdivision (b) of Section 933, 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 therefore.

(b) For purposes of subdivision (b) of Section 933, 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 timeframe for implementation.
- (3) The recommendation requires further analysis, with an explanation and the scope and parameters of an analysis or study, and a timeframe 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 timeframe 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 therefore.