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OPINION	:	No. 02-1108
	:	
of	:	June 6, 2003
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THE HONORABLE TAMARA C. FALOR, COUNTY COUNSEL, COUNTY OF HUMBOLDT, has requested an opinion on the following questions:

1. Does a grand jury, sitting in its civil “watchdog” capacity, have the authority to admonish a witness not to disclose what the witness learns in the grand jury room regarding the subject of the grand jury’s inquiry?
2. May a violation of the admonition constitute contempt of court?
3. Would the following admonition be legally sufficient:

“You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury’s investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury

proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court”?

CONCLUSIONS

1. A grand jury, sitting in its civil “watchdog” capacity, has the authority to admonish a witness not to disclose what the witness learns in the grand jury room regarding the subject of the grand jury’s inquiry.

2. A violation of the admonition may constitute contempt of court.

3. The following admonition would be legally sufficient:

“You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury’s investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court.”

ANALYSIS

Penal Code section 888¹ describes the duties of a county grand jury as follows:

“A grand jury is a body of the required number of persons returned from the citizens of the county before a court of competent jurisdiction, and sworn to inquire of public offenses committed or triable within the county.

“Each grand jury or, if more than one has been duly impaneled . . . , one grand jury in each county, shall be charged and sworn to investigate or inquire into county matters of civil concern, such as the needs of county officers, including the abolition or creation of offices for, the purchase, lease, or sale of equipment for, or changes in the method or system of, performing the duties

¹ All further statutory reference are to the Penal Code unless otherwise specified.

of the agencies subject to investigation”

In *McClatchy Newspapers v. Superior Court* (1988) 44 Cal.3d 1162, 1170, the court summarized the functions of a grand jury as follows:

“The California grand jury has three basic functions: to weigh criminal charges and determine whether indictments should be returned (§ 917); to weigh allegations of misconduct against public officials and determine whether to present formal accusations requesting their removal from office (§ 922; see Gov. Code, § 3060 et seq.); and to act as the public’s ‘watchdog’ by investigating and reporting upon the affairs of local government (e.g., §§ 919, 925 et seq.). Of these functions, the watchdog role is by far the one most often played by the modern grand jury in California. [Citations.]” (Fn. omitted.)

The three questions presented for resolution concern the authority of a grand jury, acting in its role as the public’s “watchdog,”² to admonish witnesses not to disclose what they learn in the grand jury room.

1. Authority to Admonish Witnesses

The first question concerns whether a grand jury may admonish witnesses regarding the secrecy of grand jury proceedings. We conclude that a grand jury may admonish witnesses not to disclose what they learn in the grand jury room.

Preliminarily, we note that proceedings held by a grand jury sitting in its civil watchdog capacity are generally closed to the public (§§ 915, 939, 939.1), and grand jurors are prohibited from disclosing any evidence presented in such sessions except when required by a court (§ 924.1). Grand jurors take an oath pledging not to disclose any evidence brought before the grand jury or any statements made by a grand juror during the proceedings. (§ 911.) These provisions reflect “the strong historic policy of preserving grand jury secrecy.” (*McClatchy Newspapers v. Superior Court, supra*, 44 Cal.3d at p. 1174, quoting *United States v. Sells Engineering, Inc.* (1983) 463 U.S. 418, 428.) The importance of maintaining the secrecy of grand jury proceedings has been noted by the courts and this office in a variety of contexts. (See, e.g., *Daily Journal Corp. v. Superior Court* (1999) 20 Cal.4th 1117, 1122-1125; *Brooks v. Binderup* (1995) 39 Cal.App.4th 1287, 1291-1292; *Farnow v. Superior Court* (1990) 226 Cal.App.3d 481, 488-489; 83 Ops.Cal.Atty.Gen. 161, 162-163 (2000); 79 Ops.Cal.Atty.Gen. 186, 187-190 (1996).)

² More particularly, the powers and duties of county grand juries (§§ 914-945) include the investigation of county, city, and district affairs (see, e.g., §§ 919, 920, 925, 925a, 927, 928, 933.1, 933.5, 933.6).

In 66 Ops.Cal.Atty.Gen. 85 (1983), we addressed whether a grand jury, sitting in its criminal indictment role, may give a secrecy admonition to a witness. We concluded:

“The statutes evidencing a clear legislative intention that grand jury proceedings remain secret have been noted. Where the general purpose of a statute is declared, the details provided for its accomplishment will be regarded as necessary incidents. [Citation.] Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication. [Citation.] The secrecy of grand jury proceedings would be defeated if witnesses were free to relate their testimony to the press as they left the grand jury room. The authority and duty of grand jurors to keep their proceedings secret includes the authority to take reasonable measures to maintain such secrecy. A secrecy admonition to grand jury witnesses is a reasonable measure to maintain that secrecy. We conclude that a California grand jury does have the authority, implied from the statutes which require secrecy of grand jury proceedings, to admonish witnesses appearing before them not to reveal to others what the witness learns from his or her grand jury appearance about the matters under consideration by the grand jury.” (*Id.* at pp. 89-90.)

We found support for our conclusion in *People v. Mersino* (1965) 237 Cal.App.2d 265, where a grand jury witness was given the following admonishment: “You are admonished not to discuss or repeat at any time outside this jury room the questions that have been asked you in regard to this matter and your answers with the understanding that such disclosure on your part may be the basis for charges of contempt of court.” (*Id.* at p. 268.) The court approved the admonishment given by the grand jury in its role of returning criminal indictments, stating in part:

“There are good and satisfying reasons why witnesses before a grand jury may be admonished not to disclose the questions asked them or their answers. One sufficient reason is that a charge may be under investigation as to a person against whom no indictment is returned. It may be to such person’s advantage that the pendency of such investigation be not made public. If the investigation should result in an indictment, it may be to the public advantage that the person indicted have no advance warning. [Citation.]” (*Id.* at p. 269.)

We believe the Legislature’s policy of preserving the secrecy of grand jury proceedings is not only applicable when a grand jury is performing its criminal indictment function, but also when it is performing its civil watchdog function. In *McClatchy Newspapers v. Superior Court, supra*, 44 Cal.3d 1162, the Supreme Court observed:

“The importance of secrecy is well established in the context of the grand jury’s criminal indictment function. By the same token, when the grand jury conducts a watchdog investigation of local government operations as in the instant case, secrecy appears equally vital. Compared with indictment proceedings, the efficacy and credibility of watchdog investigations no less require that witnesses testify without fear of reproach by their peers or their superiors. Though the watchdog investigation and report serve a different social purpose than the criminal indictment, eliciting candid testimony is obviously critical to both functions of the grand jury.

“Significantly, the separate and distinct functions of watchdog and indictment grand juries are sometimes intermingled, in the sense that watchdog inquiries into alleged corruption may involve the weighing of possible criminal indictments against county officials and others being investigated. . . . Whether or not a watchdog grand jury actually undertakes the weighing of indictments, secrecy ‘provides the proper atmosphere in which to generate uninhibited testimony from county employees who might otherwise be intimidated by political and employment considerations.’ [Citations.]

“Secrecy also serves to protect the reputations of those who may be unjustly accused during the course of a watchdog investigation. ‘Grand jury secrecy . . . is “as important for the protection of the innocent as for the pursuit of the guilty.” [Citation omitted.]’ [Citation.]” (*Id.* at pp. 1175-1176.)

Accordingly, a secrecy admonition given to a witness in a grand jury’s civil watchdog proceeding would serve to promote “the grand jury’s effective operation” (*McClatchy Newspapers v. Superior Court, supra*, 44 Cal.3d at p. 1173) and would be consistent with the general legislative policy that “grand jury secrecy is the rule and openness is the exception” (*id.* at p. 1180).³

We conclude that in order to carry out the Legislature’s policy of preserving the secrecy of grand jury proceedings, a grand jury, sitting in its civil watchdog capacity, may admonish a witness not to disclose what the witness learns in the grand jury room.

³ We recognize that in a different context, the courts have declined to approve the exercise of a grand jury’s “inherent” or “implied” powers. (See, e.g., *Daily Journal Corp. v. Superior Court, supra*, 20 Cal.4th at p. 1125; *Allen v. Payne* (1934) 1 Cal.2d 607, 608.) Here, in contrast, we believe “the Legislature has deemed appropriate” (*McClatchy Newspapers v. Superior Court, supra*, 44 Cal.3d at pp. 1179) preserving the secrecy of civil watchdog proceedings which a grand jury may accomplish by issuing a secrecy admonition to a witness.

2. Contempt of Court

The second question presented for resolution concerns whether a violation of a grand jury’s secrecy admonition, given in the performance of its civil watchdog function, may constitute contempt of court. We conclude that it may.

Code of Civil Procedure section 1209 describes various contempts of court as follows:

“(a) The following acts or omissions in respect to a court of justice, or proceedings therein, are contempts of the authority of the court:

“.....
“5. Disobedience of any lawful judgment, order, or process of the court;
“.....”

For purposes of Code of Civil Procedure section 1209, we find that a grand jury is a component part of the superior court (*People v. Superior Court (1973 Grand Jury)* (1975) 13 Cal.3d 430, 433), a “judicial body” (*Ex parte Sterns* (1889) 82 Cal. 245, 247), “an instrumentality of the courts of this state” (*In re Shuler* (1930) 210 Cal. 377, 405), and “an arm of the court and part of the judicial system” (*People v. Superior Court (1973 Grand Jury)*, *supra*, 13 Cal.3d at p. 442). (See, e.g., §§ 914, 914.1 [impaneling of grand jury by court for purposes of inquiry into matters of civil concern], 914.5 [court approval needed for grand jury expenditures in excess of amount budgeted for investigative activities], 933 [grand jury must submit final report of findings and recommendations concerning county government matters to presiding judge of superior court].)

In our 1983 opinion, we concluded that a violation of a secrecy admonition given by a grand jury in its criminal indictment role could be punishable as contempt of court. (66 Ops.Cal.Atty.Gen., *supra*, at pp. 91-94.) In reaching our conclusion, we relied upon numerous court decisions and prior opinions. In 25 Ops.Cal.Atty.Gen. 259 (1955), for example, we observed:

“A grand jury is a judicial body [citations]. Grand jurors are officers of the court [citation], and the jury itself is a component part of the superior court [citations]. The relationship and unity of the court and jury is such that

contempt of the grand jury is contempt of the superior court [citations].” (*Id.* at p. 259.)⁴

Following upon our prior opinions, we conclude that a violation of a secrecy admonition given to a witness by a grand jury, sitting in its civil watchdog capacity, may constitute contempt of court.

3. Terms of the Admonition

The third question presented for resolution concerns the terms of a proposed secrecy admonition. Would the following admonition be legally sufficient:

“You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury’s investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court”?

We conclude that such an admonition would be legally sufficient.

The proposed admonition is essentially the same as the one we approved in 66 Ops.Cal.Atty.Gen. 85, *supra*, for issuance while a grand jury is performing its criminal indictment function. (*Id.* at p. 91.) The only differences reflect the different procedures that apply to civil and criminal grand jury proceedings. A transcript of the testimony given during the proceeding is required to be made only when *criminal* causes are being investigated (see § 938); hence, the proposed admonition’s reference to a transcript “if any” would be appropriate. Since a grand jury conducting a civil investigation is required to submit a final report of its findings and recommendations to the superior court (§ 933), the proposed admonition properly provides for the release of the report by the court as a point

⁴ We are aware that in a different context, the courts have recently described a superior court’s authority over a grand jury as limited to preventing the grand jury from violating the law. (See *Daily Journal Corp. v. Superior Court*, *supra*, 20 Cal.4th at pp. 1128-1131; *People v. Superior Court (1973 Grand Jury)*, *supra*, 13 Cal.3d at pp. 439-441; *Board of Retirement v. Santa Barbara County Grand Jury* (1997) 58 Cal.App.4th 1185, 1191-1192.) Here, on the other hand, we have a grand jury’s admonition entitled to court enforcement to effectuate the Legislature’s policy of preserving the secrecy of grand jury proceedings and to promote the grand jury’s effective operation.

at which the veil of secrecy may be lifted. No other differences between the admonition we approved in 1983 and the proposed admonition merit discussion.

Based upon our 1966 opinion and the cases cited therein, we conclude that the following admonition given to a witness by a grand jury, when sitting in its civil watchdog capacity, would be legally sufficient:

“You are admonished not to reveal to any person, except as directed by the court, which questions were asked or what responses were given or any other matters concerning the nature or subject of the grand jury’s investigation which you learned during your appearance before the grand jury, unless and until such time as a transcript (if any), or a final report, of this grand jury proceeding is made public or until authorized by this grand jury or the court to disclose such matters. A violation of this admonition is punishable as contempt of court.”
