

Open-meeting inquiry starts

D.A. probes controversy leading to Thousand Oaks city manager's departure

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The Ventura County District Attorney's Office has begun an initial inquiry into whether members of the Thousand Oaks City Council violated open-meeting laws in a controversy leading to the city manager's departure.

As in any other probe, investigating an alleged violation of open-meeting laws is a matter of "who saw what when where and how," said Tom Harris, special assistant district attorney.

"We're checking with the City Attorney's Office and others," said Harris.

The council voted unanimously last month to seek an investigation into itself following allegations that City Manager Phil Gatch was being forced out.

Mayor Claudia Bill-de la Pena called for an investigation, saying Gatch informed her he was being forced out by Councilman Andy Fox. Gatch told her that Fox implied he had the three votes necessary to fire him, she said.

Gatch's supporters repeatedly accused the three council members of deciding in private conversations to push Gatch out.

Fox, Councilwoman Jacqui Irwin and Councilman Dennis Gillette, for their part, stressed at the April 19 meeting that they had not violated the Brown Act, but questioned whether other council members and staff had improperly revealed conversation from closed session meetings.

Gatch left his office this month. The council accepted his resignation on a 3-2 vote in April. The vote came nearly two years after he was hired on a 3-1 vote in July 2003. Then-councilman Bob Wilson, Bill-de la Pena and Councilman Ed Masry voted for him. Fox dissented, and Gillette abstained. Irwin replaced Wilson on the council after the November 2004 election and voted with Gillette and Fox to accept Gatch's resignation.

Gatch officially vacates his position on June 30.

One of the things the District Attorney's Office is investigating is whether there were any witnesses if council members did violate the state's open-meeting law, known as the Brown Act.

Harris said that even if Fox had implied to Gatch that he had the votes to fire him, such a conversation in itself does not prove he violated open-meeting laws.

The Brown Act requires that a meeting by a majority of a legislative body to discuss government issues must be open to the public with certain exceptions.

The law also forbids elected officials from indirectly discussing matters to come before them among a majority, said Peter Scheer, executive director of the California First Amendment Coalition. The Thousand Oaks City Council comprises five seats.

A violation of the Brown Act could include one council member discussing a desire to fire a city manager with another member and then having the same conversation with a third member, Scheer said.

But Scheer said that many issues under the Brown Act, such as the ability to criticize the city manager's performance, may be open to interpretation.

Although the council decided to seek an investigation into itself by the District Attorney's Office, Fox, Irwin and Gillette voted against a motion to hire an outside investigator to determine whether any city rules had been violated. They said it was a decision to be made after the district attorney made its findings.

Part of the controversy surrounding Gatch's departure centers on contentions by Gatch's supporters that Fox broke a city code limiting the direction an individual council member can give to the city manager.

Although the city's rules allow a council member to discuss matters with the staff and the city manager, the codes also limit the kind of interactions they may have.

The rule states that no individual council member "shall give any orders or instructions to the City Manager."

But the city's code also allows council members to have conversations with the city manager. Specifically, the code states that "the provisions of this act shall not be construed to prevent any council member from discussing matters of the city with the city manager and staff."

Fox's critics contend that he broke that code by allegedly changing the resignation letter Gatch intended to submit.

Critics accuse Fox of editing the letter to omit Gatch's apparent reference to conversations the city manager had with several council members before making his decision.

Gatch has repeatedly declined to comment on the allegations, including whether Fox suggested changes to his resignation letter.

Fox has declined to respond to the accusations.

When asked to comment for this story, Fox said, "I can't help you with your story. It's a personnel matter."

At public meetings, Fox has said he did not violate the Brown Act or city rules. He said he has not done so because he takes his oath of office seriously.

Residents who supported Fox, Gillette and Irwin addressed the council after they voted to accept the resignation. They praised the council members for making a responsible decision and for declining to discuss personnel issues in public.

Bill-de la Pena said this week that she hopes the council decides to move forward with an investigation into possible city code violations. But Irwin said the decision should be made after the District Attorney's Office presents a report. She said she hopes the report will allow the city to move forward with other priorities.

Irwin called the accusations "a lot of political maneuvering."

"There are a lot of issues facing the city, a lot of issues we have to focus on. It's really a waste of time to continue hammering this issue into the ground," Irwin said.

Masry said the report could provide closure or fuel the controversy.

"It may stir it up. It may put it to rest," he said.