The City of Bell and the Crisis of Trust in Local Government

by Patrick Whitnell



Robert Rizzo, who has run Bell's day-to-day civic affairs since 1993, was unapologetic about his salary. "If that's a number people choke on, maybe I'm in the wrong business," he said. "I could go into private business and make that money. This council has compensated me for the job I've done."[1]

Crisis management is its own branch of public relations. Crisis management consultants who advise municipalities say that the types of crises that occur tend to be remarkably consistent.[2] Natural or man-made, it doesn't take long to realize when you are in a crisis.

Such was the case when the City of Bell scandal erupted in July, 2010. The *Los Angeles Times* article that broke the story produced a national and international firestorm of criticism directed both at the City of Bell and local government in general. Coming at the juncture of the existing economic downturn and a growing skepticism of public employee salaries and pensions, this scandal was tailor-made to spark public outrage. Almost daily, revelations of wrongdoing, corruption, and self-dealing have extended the story long past the normal media cycle.

The scandal sparked calls from the media and members of the public for the disclosure of public employee salaries and benefits. The question became: How many more Bells are out there? Compensation for city managers, in particular, became the focus of intense scrutiny.

This article describes what happened in Bell, the aftermath, and the attempts to explain why it happened. It focuses on the failure of the checks and balances that would typically prevent such corruption. Finally, the article addresses how a local government agency, when faced with having to address a crisis not of its own making, can proactively address public concerns of whether the agency is being properly operated, in a fiscally prudent fashion. The municipal attorney's role in advising a client in such circumstances relies less on legal expertise and more on the ability to counsel the client to make decisions that the client may otherwise be reluctant to make.

The Scandal

The City of Bell held a special election on November 29, 2005 to ask the electorate to adopt a home rule charter. A working-class city of just under 40,000 people, Bell is located in southeast Los Angeles County. The charter measure passed by a vote of 336 to 54, according to the *Los Angeles Times*. Of those votes, 239 were absentee.[3]

In July 2005, Robert Rizzo, Bell's chief administrative officer, renegotiated his employment agreement. In addition to a substantial raise, the amended agreement provided for automatic salary increases in 2006, 2007, and 2008 that would ultimately result in his receiving a *monthly* salary of $46,000. The median *annual* household income in Bell is under $40,000.[4] Subsequent to the November 2005 election, city council members approved salaries for themselves of nearly $100,000, well in excess of the council salary they previously received. It has been speculated that there was a connection between Rizzo's salary increase and the city council's decision to become a charter city.[5] In 2008, Rizzo negotiated a contract amendment to receive a five percent salary increase, and automatic twelve percent salary increases annually thereafter, regardless of his performance. Two months after this amendment, as reported by the *Los Angeles Times*, Rizzo's contract was split into five separate contracts, for which he received compensation as the city manager and as the executive director of four city commissions.[6] It has been speculated that he did this to disguise the full amount of his compensation, were someone to inquire

about the pay of the city manager's position.

In June 2010, reporters from the *Los Angeles Times* submitted a request, under the California Public Records Act, for Rizzo's contract, as well as for the contracts of the City's police chief and assistant administrative officer.[7] The story first broke in a *Los Angeles Times* article published on July 15, 2010.[8] Rizzo, as well as the police chief and the assistant administrative officer, resigned several days later.

The Fallout

The intense media attention generated intense political scrutiny. The Los Angeles County District Attorney charged Rizzo with 54 criminal counts. Four of the five sitting council members were arrested with Rizzo, as were two former council members. Also arrested was Angela Spaccia, Rizzo's assistant city administrative officer, who was receiving a salary of over $375,000.[9]

Attorney General Jerry Brown brought a civil action against Rizzo, Spaccia, the former police chief, Randy Adams, and the council members, seeking to recover money under theories of waste of public funds, negligence, fraud, conflict of interest, and breach of fiduciary duty. Although the Superior Court judge expressed some skepticism and dismissed some portions of the complaint, other parts were permitted to stand.[10]

At the request of Bell's interim city administrative officer, the State Controller's office conducted a series of limited audits of the City and its redevelopment agency. Among the findings were:

- The salaries paid to city administrators were exorbitant;
- The City made loans to council members and city administrators without any justification of public benefit;
- The City purchased property from a trust controlled by a former mayor, without any justification as to why the property was purchased or for what purpose;
- The City issued general obligation bonds without any documented plan or timeframe for using the proceeds;
- Proceeds from one bond issuance were deposited in a non-interest bearing checking account, thereby costing the city approximately $1.7 million in lost revenues;
- Proceeds from increased property taxes to be used for bond-debt service were not deposited into a trust fund, as contractually required; instead, they were paid into the City's General Fund;
- The city council improperly increased sewer assessments without voter approval, thereby overcharging residents by more than $600,000 in a two-year period;
- The City improperly used funds dedicated to the operations of four assessment districts to pay the chief administrative officer and assistant administrative officer, for regular and holiday pay, and for pay in lieu of vacation; and
- the City improperly raised its pension assessments, which came from property taxes, by nearly $3 million over a two-year period.

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The Controller concluded by recommending that "the City of Bell take[ ] immediate action to institute a system of business policies, processes and procedures that will provide proper checks and balances over public assets and public funds."[11]

The Legislature also got into the act by introducing six "gut-and-amend" bills at the end of the legislative session. Of these six "Bell bills," only one went to the Governor for his signature. That bill required the City to return the overcharged pension assessments to the property owners. The League of California Cities expects that several further Bell bills will be reintroduced in one form or another in the next legislative session.

So ... What Happened?

The full story of the Bell scandal may never be known. The documentation just may not exist. However, based on a review of source documents, press reports, audits, and conversations with knowledgeable persons, the author has constructed the following scenario.

Rizzo was hired by the City of Bell in 1993 as an interim chief administrative officer. Rizzo had previous city manager experience, and his salary at the time was not out of line with what other city managers of similarly-sized cities in Los Angeles County were paid. Several months later in 1993, he entered into an agreement to remove the "interim" designation from his title. This provided Rizzo with a salary increase after twelve months, but tied the increase to specific performance goals. A successor agreement, executed in 1994, again provided Rizzo with a salary increase and tied it to specific performance goals.

A 1996 agreement between Rizzo and the City was the first not to contain specific performance goals, and it changed Rizzo's employment status from at-will to for-cause. It is unusual for a city manager in California be a for-cause employee, as the norm is at-will. All future changes to Rizzo's compensation and his other terms of employment were done through amendments to the 1996 agreement.

The first amendment to this agreement, in 1997, provided that Rizzo would receive a raise in 1998 unless "the City's Audited Statement of the General Fund Balance for fiscal year 1998-1999 evi-

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dences a negative cash flow." For the first time, Rizzo's salary increase was tied to the City's solvency. The next two amendments contained salary adjustments, again tied to the City's solvency. They also provided that Rizzo's retirement and health benefits be paid for by the City, something not too unusual where a city was looking to retain a well-performing city manager.

However, the next amendment, in March 2002, was somewhat unusual. Its sole purpose was to allow Rizzo to borrow up to $80,000 with his accrued vacation and sick leave time as collateral. The interest rate was set at the rate the City received for its funds deposited in the Local Agency Investment Fund, a rate that would be well below the market rate for such a loan. The amendment did not specify the allowable uses for the loan. While it is not unusual for a California city to provide a loan for a specific purpose (for example, to allow for the purchase of a home in the community), it is unusual to see a loan without any specification as to its allowable uses.

An amendment later in 2002 provided the seed for the massive salary increases that Rizzo later received. This amendment gave Rizzo a raise, as well as automatic annual increases, with the only condition being that the City remain solvent. Thus, in 2004, Rizzo was eligible to earn a base salary of $276,912. For a comparable, this salary would be on the high side, and to have it increased automatically without reference to performance is unusual. As discussed previously, this pattern was followed in the 2005 amendment providing for automatic salary increases through to 2008, which resulted in Rizzo's monthly salary exceeding the median annual household income in Bell.

Rizzo's retirement benefits also began to balloon. The City was obligated to pay his costs for participating in the California Public Employee Retirement System (PERS). The second 2002 amendment added that the City would pay the maximum amount allowed into Rizzo's Section 457 plan. Later amendments added payments into a Section 401(a) plan and a supplemental PERS plan.

Later amendments gave Rizzo an automatic annual twelve percent increase in salary, conditioned only upon the City staying solvent. The City was also obligated to "provide for the retirement of advances" that Rizzo took from his PERS account. It has also been reported that Rizzo received 28 weeks a year of vacation time, and that he "cashed out" his accrued leave on a regular basis.[12]

Ultimately, this is about the failure of the checks and balances that are built into our system of local government. The city council members were disengaged or, in some instances, were themselves willing participants, as long as the paychecks kept coming.

Over a 15-year period, Robert Rizzo had set himself up as a for-cause employee of the City of Bell and amassed a salary and benefit package grossly in excess of anything that could be considered reasonable by any rational standard. The only limitation was the requirement that Rizzo keep the General Fund balance out of negative territory. And that was his challenge.

The massive salary and pension benefits that he and his management staff were receiving placed a huge burden on the City's General Fund. For a small, poor city like Bell, property tax and sales tax revenues could only go so far, so Rizzo needed to identify other sources. As mentioned earlier, this led to the City increasing revenues by collecting more property tax than was legally permissible to fund its pension obligations, thus decreasing pressure on the General Fund. Property tax money that should have been placed in a separate trust fund and used to repay bonds was also placed in the General Fund, and the bonds themselves became a source of relief of pressure from the General Fund. The bond proceeds became an alternative source of revenue that could be used for purposes outside of the purposes for which they were issued.

News reports indicate that Rizzo or the City used other means to juice up the General Fund. Allegations have been made that the City "shook down" business owners for permit payments that were well in excess of what was legally allowed.[13] City officials are alleged to have pressured police officers to focus on vehicle confiscations in cases where the vehicle or driver wasn't properly licensed — in particular, officers were allegedly ordered to focus on vehicles and drivers with the indicia of illegal immigrants.[14]

Ultimately, this is about the failure of the checks and balances that are built into our system of local government. The city council members were disengaged or, in some instances, were themselves willing participants, as long as the paychecks kept coming. Lower-level city management employees, too, were active participants as well as beneficiaries, and as such, they were willing to ignore the fiscal responsibilities. (The contract city attorney and the City's outside auditor appear to have been unaware of the corruption.) Even the Los Angeles County District Attorney's Public Integrity Unit seems to have ignored the problem, although it is alleged that they received a whistleblower's complaint about Bell at least a year before the story broke in the *Los Angeles Times*. Ironically, the alleged whistleblower was one of the council members who was later criminally charged by the district attorney.[15] Finally, civic engagement was meager. As the *Los Angeles Times* stated, Bell and cities like it:

> have largely poor, immigrant populations that are too busy working to pay close attention to City Hall, which means they can be easily exploited. Voter turnout is low, in part because many residents are undocumented and even many legal immigrants aren't yet qualified to vote. And there's not much media presence because of cutbacks by everyone in the [media], including *The Times*, so the rascals are left to steal with impunity.[16]

Ultimately, only Robert Rizzo can explain why he did what he did. Some explanation, though, may come from press reports that he owns a thoroughbred horse farm in Washington, and raced his horses at several tracks in California.[17]

It's Not Your Fault, But it is Your Crisis

The Bell scandal was not limited to the City of Bell. All public agencies in California came under new scrutiny by those looking for the next Bell. Cities were inundated by public records requests for salaries and compensation information. Many citizens proactively compiled salary and compensation information, and placed this information on their websites. The League of California Cities executed a comprehensive city manager compensation survey. More than 90 percent of cities submitted their information, and the resulting compilation is posted on the League's website.[18] The League's City Managers' Department drafted city manager compensation guidelines and best practices, and the League's board of directors approved the guidelines. (The guidelines are posted at www.cacities.org/opengovernment.)

The Bell scandal also fed the existing controversy over public sector pensions. The extreme pensions that the Bell employees were due to receive reinforced the already growing public perception that public sector pensions are out of control and an unsustainable burden on the taxpayer. The Bell scandal occurred during a period of extreme private sector economic distress, which furthered the public's perception that public sector employees are a privileged class.

All California cities were tainted by the Bell scandal, no matter how well-run and fiscally prudent they were. The Bell scandal offers many lessons. Addressing the initial suspicions early becomes critical, and the following points may be helpful in addressing questions and accusations from concerned citizens:

- **Think before you speak**. The wrong thing said at the wrong time by the wrong person can turn a manageable situation into a major crisis. While this is not always possible to avoid, communications among upper management, key personnel, and decision-makers is critical in developing a coherent message to counteract the negative message being directed at you.
- **Avoid "Oh, that's just City of X. That could never happen here."** Now is not the time to be arrogant or dismissive; you are just asking for someone to try to embarrass you by proving you wrong. Again, this is a recipe for turning a manageable situation into a major crisis.
- **Take the high road**. Be sensitive to the plight of the citizens of the City of X. Don't minimize or dismiss it. This will help to show that you "get it."
- **Maintain your credibility**. You've got nothing to hide, right? Then don't act like you are hiding something. Transparency and disclosure is one of the strongest ways to demonstrate your credibility, particularly when it is proactive and voluntary, as opposed to being compelled by the press or the local civic gadfly. On the other hand, looking like you have something to hide will just make you look like the next scandal in line.
- **Do something**. When was the last time you examined or renewed your ethics policy, or did ethics training for your elected officials? How often do you conduct salary surveys to determine whether your management and employee compensation is in line with comparable local governments? What about civic engagement?[19] Would town-hall meetings or workshops be useful to explain who and what you are?
- **But don't do something just to do it**. Is it really necessary for every employee, from the city manager down to the junior engineering aide, to go through a six-hour ethics training course? Probably not. Tying City Hall into a knot only hurts the city, without appreciably adding to the public's perception of the city's credibility.
- **Use social media. Or maybe not**. While Facebook and Twitter can be valuable tools for communicating your message more directly and in real-time, setting up social media communications in crisis mode is not recommended. Social media is full of pitfalls. A city would be well-advised to proceed cautiously before deciding to enter the world of social media, and to develop carefully thought-out policies before proceeding.[20]

Conclusion

The City of Bell scandal was a combination of unbridled greed and a failure of the checks and balances. It created a crisis of trust in local government. The League of California Cities, and individual cities in California, worked hard to restore some of that trust, but we will need to work continuously to maintain that regained trust. It is incumbent on municipal attorneys to be part of that process.

Notes

1. Jeff Gottlieb and Ruben Vives, *Is a city manager worth $800,000?*, L.A. Times, July 15, 2010, *available at* http://www.latimes.com.
2. Scott Summerfield and Sheri Benninghoven, *Crisis at City Hall: Planning Ahead Can Make the Difference*, Western City, August 2010 and September 2010, available at http://www.westerncity.com.
3. Jeff Gottlieb, *Bell council used little-noticed ballot measure to skirt state salary limits,* L.A. Times, July 23, 2010, *available at* http://www.latimes.com.
4. United States Census Bureau, 2006-2008 American Community Survey 3-Year Estimates.
5. In California, a city council in a city with a home-rule charter may set council salaries at any level it sees fit; salaries for city council members in general law cities is strictly limited by a state statute adopted in 2005. Cal. Gov't Code § 36516 (2010). *See also*, City Attorneys' Department League of California Cities, *The California Municipal Law Handbook* § 1.209 (2010 ed.).
6. Jeff Gottlieb and Ruben Vives, *In wake of Bell scandal, CalPERS may change pension calculation rules,* L.A. Times, September 4, 2010, *available at* http://www.latimes.com. ("His total compensation remained the same. He received about $221,460 a year to run the city, and the remaining $566,177 was split among the authorities.") Later reports indicated that Rizzo's total compensation, including payments into three separate

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retirement accounts, may have exceeded $1.5 million.
7. For the *Los Angeles Times* reporter's account, see James Spencer, *The Story of How the Bell Scandal Broke: An Account From LA Times Reporter Jeff Gottlieb*, August 11, 2010, *available at* http://www.publicceo.com.
8. Jeff Gottlieb and Ruben Vives, *supra* note 1.
9. Police Chief Randy Adams, who was receiving a salary of over $450,000, was not charged.
10. Richard Winton, *Attorney general's lawsuit against bell officials could be in jeopardy*, L.A. TIMES, November 5, 2010, *available at* http://www.latimes.com
11. Letter from John Chiang, California State Controller, to Pedro Carrillo, Interim City Administrator, City of Bell, dated Sept. 22, 2010, enclosing the report of the State Controller's Office audit. The letter is available online at http://www.sco.ca.gov/Press-Releases/2010/controller_chiang_2010_bell_audit_letter.pdf.
12. Jeff Gottlieb and Ruben Vives, *Benefits push Bell ex-manager's compensation to more than $1.5 million*, L.A. TIMES, August 8, 2010, *available at* http://www.latimes.com.
13. Paloma Esquivel and Robert J. Lopez, *Times investigation: Bell demanded extra fees from some businesses*, L.A. TIMES, November 2, 2010, *available at* www.latimes.com.
14. Ruben Vives and Richard Winton, *Bell generates big money from towing cars; resident demands investigation*, L.A. TIMES, August 2, 2010, *available at* www.latimes.com.
15. Paul Pringle, *Did Steve Cooley's office neglect Bell probe?* L.A. TIMES, October 28, 2010, *available at* http://www.latimes.com.
16. Steve Lopez, *The bleeding Bell blues*, L.A. TIMES, July 21, 2010, *available at* http://www.latimes.com.
17. Paul Pringle, Corina Knoll and Kim Murphy, *Rizzo's horse had come in*, L.A. TIMES, August 22, 2010, *available at* http://www.latimes.com.
18. The survey may be accessed online at http://www.cacities.org/compensationsurvey.
19. The Institute for Local Government has resources on public engagement and collaborative governance on their website at http://www.ca-ilg.org.
20. For examples of social media policies that California cities have adopted, go to http://www.cacities.org/socialmediaresources. ML

Federal

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7. Fed. Trade Comm'n, *FTC Extended Enforcement Policy: Identify Theft Red Flags Rule*, 16 CFR 681.1 (Apr. 30, 2009).
8. Brief for Plaintiff-Appellee, *American Bar Ass'n v. Fed. Trade Comm'n*, No. 10-5057 (Aug. 20, 2010).
9. Red Flag Clarification Act of 2010, Pub. L. No. 111-319 (Dec. 18, 2010).
10. *Id.* ML

Supreme Court

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public nuisance against the owners and operators based on their contributions to global warming. (The City alleged that unrestrained emissions of greenhouse gases would increase the temperature in the City, which would, in turn, increase heat-related deaths, damage the coastal infrastructure, and wreak havoc in its residents' daily lives).

The power companies petitioned for a writ of certiorari, challenging the plaintiffs' standing to bring the actions, the existence of a cause of action to cap carbon dioxide emissions under the federal common law, and the existence of justiciable claims. The questions presented in the case are: (1) Whether states and private parties may seek emissions caps on utilities for their alleged contribution to global climate change; (2) whether a cause of action to cap carbon dioxide emissions can be implied under federal common law; and (3) whether claims seeking to cap carbon dioxide emissions based on a court's weighing of the potential risks of climate change against the socio-economic utility of defendants' conduct would be governed by "judicially discoverable and manageable standards," or could be resolved without "initial policy determination[s] of a kind clearly for nonjudicial discretion." See *American Electric Power Co. v. Connecticut*, 582 F.3d 309 (2d Cir. 2009), *cert. granted*, 2010 WL 4922905 (U.S. December 06, 2010) (No. 10-174). ML

Electronic Signatures

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governmental affairs." UETA § 2(16).
14. 15 U.S.C. § 7001(a); UETA § 7.
15. *See* Thomas J. Smedinghoff and Ruth Hill Bro, *Moving with Change: Electronic Signature Legislation as a Vehicle for Advancing E-Commerce*, 17 J. MARSHALL J. COMPUTER & INFORMATION L. 723 (Spring 1999).
16. 15 U.S.C. § 7001(a).
17. UETA §7(a), (c), and (d).
18. *See* E-SIGN, 15 U.S.C. § 7003, and UETA § 3(b) for a complete list of exceptions.
19. 15 U.S.C. § 7001.
20. *Id.* at § 7002(a).
21. UETA § 5(b).
22. *Id.* and comment 3. Some state enactments of UETA (e.g., California) require such consent to be in electronic form.
23. 15 U.S.C. § 7006(5); UETA, § 2(8) (definitions of "electronic signature").
24. 15 U.S.C. § 7001(a) and 7006(5); UETA, § 2(8) and 7(d).
25. For more on Information Assurance, see http://en.wikipedia.org/wiki/Information_assurance.
26. 15 U.S.C. § 7001(e).
27. UETA § 8(c).
28. *See* FED. R. EVID. 901(a) (1995).
29. *See* Information Security Committee, Electronic Commerce Division, ABA Section of Science & Technology Law, *Digital Signature Guidelines* (Aug. 1996), available at www.abanet.org/scitech/ec/isc/dsgfree.html. One definition of non-repudiation is "[s]trong and substantial evidence of the identity of the signer of a message and of message integrity, sufficient to prevent a party from successfully denying the origin, submission or delivery of the message and the integrity of its contents." *Id.* at § 1.20.
30. *See* FED. R. EVID. 901(b)(9)(1995). ML