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# Civil charges planned against Capistrano Unified officials

**The looming complaint alleges district officials violated the state's open-meetings law.**

**By Seema Mehta, Tony Barboza and Yvonne Villarreal, Times Staff Writers**

Orange County prosecutors plan to file a civil case against Capistrano Unified School District officials alleging that trustees illegally conducted public business in secret, including approving millions of dollars in construction cost overruns at the new district headquarters, according to grand jury transcripts unsealed Friday.

The looming complaint alleging that district officials violated the state's open-meetings law is the latest controversy in the beleaguered south Orange County school district, which in May saw its superintendent and another top official indicted. Susan Schroeder, a spokeswoman for the Orange County district attorney's office, confirmed that the civil case would be filed, but declined comment on details.

Deputy Dist. Atty. Dan Hess told the grand jurors in May about the planned civil filing. His comments were included in more than 1,300 pages of county grand jury transcripts that include the testimony of 14 district employees and trustees. Along with district documents seized by prosecutors, the testimony led to the indictments of former Supt. James A. Fleming and former Assistant Supt. Susan McGill over the creation of an enemies list of district critics.

Fleming was charged with misappropriating public funds, using district money to influence an election and conspiracy to commit an act injurious to the public. McGill was charged with conspiracy and perjury. They are to be arraigned Friday.

Although most of the district's 56 schools are well-regarded academically, its trustees and administrators have been mired in a string of controversies for more than three years. Critics of the 50,000-student district have loudly protested the location of a new high school, attendance boundary changes and construction of a \$35-million administration complex while hundreds of classes were being held in aging portables.

The critics tried to recall all seven district trustees in 2005 but didn't get

enough signatures to qualify for the ballot. They succeeded in placing three new trustees on the school board in November. Earlier this week, they announced the launch of a recall against the four remaining old-guard trustees.

The transcripts laid out the creation of the two lists that are at the heart of the indictments. The first, a list of people receiving e-mails from recall proponents, was created by Fleming and his secretary Kate McIntyre, according to the testimony. McIntyre offered varying accounts of what prompted the list's creation, first repeating Fleming's defense that it was the result of an investigation into whether someone had hacked into the district's databases of parent and student information. But under further questioning, she said Fleming had hoped to use the list to appeal to recall backers.

"We were just trying to figure out where these people that wanted to recall the trustees were, what their issues might have been," she said.

The second list, created at Fleming's direction by McGill and her secretary Bobbie Thacker, included personal information about the recall backers who gathered signatures on petitions, according to testimony.

McGill and former district spokesman David Smollar visited the county registrar of voters and were illegally allowed to look at the recall petitions. McGill testified that she never created a list, but Thacker said that McGill gave her a list of those who gathered signatures and had her consult confidential pupil data to look up addresses, the names and schools of their children and other information.

Thacker testified that she didn't understand why district critics and prosecutors were making such a big deal about the lists. "Not discounting anything that you all are doing, but ... it's been blown way out of proportion," she told prosecutors. "I know Dr. Fleming would never target any children, you know. He just probably wanted to know what he was up against."

Fleming refused to answer most of the prosecutors' questions on the grounds that he could incriminate himself, aside from a handful of basic questions, such as his wife's name, Lilly. McGill did testify, which led to the perjury charge.

The Brown Act complaint stems from two closed meetings in 2005. The first, held in July, was billed as an evaluation of Fleming, which can take place in private. However, topics scheduled for discussion included advertising on school buses and the naming of a new road at San Juan Hills High School.

Trustee Marlene Draper told prosecutors that the board needed to consider

a broad swath of topics to evaluate Fleming. Deputy Dist. Atty. Michael Lubinski repeatedly asked how issues such as the road-naming were relevant.

"How did that go into the superintendent's evaluation?" he asked. "Were you going to name it after him?"

During the meeting, the board agreed to settle a potential lawsuit with the general contractor for the district's new \$35-million headquarters. The district paid the firm an extra \$3.8 million and signed the settlement during a closed-session meeting in August.

Although potential litigation legally can be discussed during closed session, prosecutors questioned why once the matter was settled it was not made public. Lubinski asked why the district was trying to "hide" the cost overrun and deemed the superintendent evaluation meeting "a secret board meeting."

Draper said the board discussed in closed session that the payment should not be made public because it could make it easier for other district contractors to drive up prices.

"I wouldn't say it was secret," she testified. "I would say it was supposed to be confidential."

Former Trustee John Casabianca initially testified that the timing of the settlement, which occurred as district critics were gathering recall signatures, also played a role. But after consulting his attorney, Casabianca said the board kept the settlement confidential on the advice of its lawyer, and not because of the recall attempt.

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