



TRINITY COUNTY

Board of Supervisors

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TO: The Honorable Michael B. Harper
Judge of the Superior Court

FROM: Trinity County Board of Supervisors

CC: Clerk of the Board of Supervisors

SUBJECT: Response to Recommendations of 2016-2017
Grand Jury Financial and Administrative Committee Final Report
Re: FAR 2016-2017-003 Keeping the Public's Business Public

DATE: September 6, 2017

The Grand Jury Financial and Administrative Committee has requested a written response to their final report on the FAR 2016-2017-003 Keeping the Public's Business Public. The response of the Trinity County Board of Supervisors is as follows:

Finding #1: *The BOS scheduled on its posted agendas a closed session pursuant to Government Code section 54954.5(e) for an employee evaluation of the CC at 11 regular meetings of the BOS for the Calendar Year 2016 (January 1, 2016 thru December 31, 2016).*

Response: Disagree wholly. Deputy clerk says this is inaccurate.

Finding #2: *During the calendar year 2016, the CC was also employed by contract to perform certain duties of the CAO, receiving \$5,000.00 each month for that work.*

Response: Agree.

Finding #3: *During the calendar year 2016, the BOS evaluated only one other County department head, and that person only once.*

Response: Agree. During this time period, the county supervisors only had the right to evaluate this one other employee.

KEITH GROVES
DISTRICT 1

JUDY MORRIS
DISTRICT 2

BOBBI CHADWICK
DISTRICT 3
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VACANT
DISTRICT 4

JOHN FENLEY
DISTRICT 5

Finding #4: BOS minutes, for each meeting held during the calendar year 2016, where an evaluation of the CC was scheduled, indicate, "Evaluation was held," except the meeting on March 1, 2016, where the minutes report, "Direction was given to staff."

Response: Disagree wholly. Administration staff found this not to be accurate.

Finding #5: Evaluation of employees in closed session under Government Code section 54957(b)(1) are limited to frank evaluation of that employee's performance.

Response: Disagree wholly. As provided to the grand Jury previously. In 2001 (Duval vs. Board of Trustees of Coalinga Huron Joint Unified School District) and in 2014 (Save our Peninsula Committee vs. Monterey County) the court ruled that employee reviews can include a wide range of topics. These topics can be discussed as part of an effort to set goals and evaluate performance.

Finding #6: The contract between the BOS and the CC called for creation of criteria and standards for evaluating the CC's performance. Under the contract, performance reviews are to be conducted annually.

Response: Agree.

Finding #7: The BOS and CC have not created such criteria and standards.

Response: Disagree wholly. They were provided to the Grand Jury.

Finding #8: The County has a form for department head performance review that applies to all County department heads. It is called "Trinity County Department Head Performance Review". That form has established the questions and issues suitable and useful for evaluation of County employees, including the CC and the CAO.

Response: Agree.

Finding #9: During the evaluation sessions named in previous Findings, the BOS and the CC did not use or discuss the agreed upon criteria or standards for CC's performance (because none existed) and did not use or discuss the performance review form named in previous Findings.

Response: Cannot state. As the grand Jury was told on many occasions, the board will not violate state law in answering (government section 54963). In fact, a formal complaint was submitted on one grand jury member for unethical and quite possibly illegal behavior due to this line of questioning conducted in the Grand Jury session. Though the vast majority of the Grand Jurors understood and were respectful that the questions that were asked were unethical and illegal to answer, one member badgered witnesses so hard that this person had to later apologize for their actions

Finding #10: *The duties and obligations of the CAO, CC, and BOS are many, varied, complex, and difficult.*

Response: Agree.

Finding #11: *Interview with persons present at the agenized evaluations of the CC revealed that the BOS and CC discussed the performance of other County employees, including department heads.*

Response: See response to finding #9.

Finding #12: *Interviews with persons present at the agenized evaluations of the CC revealed that the BOS and CC discussed advice and counsel the BOS thought helpful to the CC in her dual role of interim or acting CAO because, the BOS suggested to the Grand Jury, the dual role presented problems too complex for a person without previous CAO experience to handle without BOS assistance.*

Response: Again, we cannot respond without violating state law. But it's worthy to note that the question infers just what has been charged by the responding writer that the grand jury did in fact try to ask unethical questions trying to get board members to violate the law as stated earlier.

Finding #13: *Interviews with persons present at the agenized evaluations of the CC revealed that the BOS and CC discussed advice on legal matters affecting the County that was not a proper subject in a closed session.*

Response: See response to finding #9. Noteworthy the question lacks understanding of the Brown Act on matters that can be discussed.

Finding #14: *Interviews with persons present at the agenized evaluations of the CC revealed that the BOS and CC discussed advice regarding drafting an urgency ordinance affecting cannabis cultivation in the County that was not a proper subject in a closed session.*

Response: See response to finding # 9. But this question may be answered if Grand Jury did some investigation by reading the newspaper that disproves above question by the mere fact that other board members were upset that they did not know what was happening in the brown act compliant ad hoc cannabis committee and asked that updates be added to open session agendas.

Finding #15: *The BOS and CC used Government Code section 54957(b) (1) to disguise as employee performance review what was really wide-ranging discussions of County issues and County business.*

Response: See response finding #9. Also, it seems that the Grand Jury did not read the information provided to them, as shown in response to finding # 5. This information clearly shows they do not understand the Brown Act.

WE DID READ THE FIND APPROPRIATE
THESE ARE FINDINGS BUT NOT SUBJECT

Finding #16: *There are important, inherent, and unavoidable conflicts between the responsibilities of the CC and the CAO.*

Response: Disagree wholly. We do not see any inherent conflicts between the two positions.

Finding #17: *The BOS has failed its responsibility to employ a CAO who has the knowledge and experience to run the county with a professional understanding of how all county functions operate together to their best effect. The CAO is a position of leadership.*

Response: Disagree wholly. As the Grand Jury was notified, well over a year ago the Board engaged a top firm to help in the process of hiring a CAO. The board has diligently worked and has interviewed many people for the job. The hiring of CAO that is a good fit for Trinity County is not an easy task nor should it be taken lightly. Bringing the right person in to lead the county is of the utmost priority to the Board of Supervisors

Recommendation #1: *The BOS and CC and CAO always discuss and act on the County's business in public unless the Brown Act clearly allows discussion of such items in closed session.*

Response: Implemented before the present Grand Jury was seated.

Recommendation #2: *The BOS and CC discuss and act on in closed session only those matters clearly within the Government Code section cited on the BOS agenda to justify the closed session.*

Response: Implemented before the present Grand Jury was seated.

Recommendation #3: *The BOS and CC and CAO acknowledge by their actions in future that the Brown Act requires them to conduct the public's business in the open.*

Response: Implemented before the present Grand Jury was seated. We also welcome the Grand Jury to attend the continuing Brown Act classes with the Board to keep them abreast of the most current laws and rulings

Recommendation #4: *The BOS and CC promptly develop and adopt criteria for evaluation of the CC as the employment agreement for the CC requires.*

Response: Implemented before the present Grand Jury was seated.

Recommendation #5: *The BOS should promptly hire and maintain a competent and qualified CAO.*

Response: Implemented; as stated to the Grand Jury in meetings and response to item # 17 the board has been engaged in this process for well over a year to hire a CAO.