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AUG 28 2017



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

FROM: Margaret E. Long, County Counsel

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: August 22, 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 Trinity County Counsel is as follows:

The County does not currently have a County Administrative Officer, or an interim/acting County Administrative Officer. By way of Trinity County Resolution No. 2015-128, my office has been temporarily given certain additional responsibilities. In the capacity of County Counsel, please accept the following responses.

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**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. Based on the evaluation by the Deputy Clerk of the Board, this number is inaccurate.

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

**Response:** Agree. Besides the County Counsel, County Administrative Officer, and Road Commissioner/Planning Director, the Board of Supervisors does not have the authority to perform yearly evaluations on any other Department Heads. As a result, and without a current

CAO, the Road Commissioner/Planning Director would be the only other employee the Board of Supervisors could evaluate.

**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. The scope of the employee evaluation by a Board of Supervisors has been expanded by the California Courts. See *Duval vs. Board of Trustees of the Coalinga-Huron Joint Unified School District* (2001) and *Save Our Peninsula Committee v Monterey County* (2014). The Court in these cases specifically ruled that employee reviews can include a wide range of topics that can be discussed as part of an effort to set goals and evaluate performance under the County's deliberate management approach. These cases were provided to the Grand Jury on December 2, 2016.

**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:** Wholly disagree. Not only were these standards created, but 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:** Responding party cannot respond to these findings.

As the Grand Jury is aware, activities that occur in closed session are confidential, and it is a misdemeanor to publically discuss what occurred in closed session. See Government Code Section 54963. The Grand Jury is asking responding party to commit a misdemeanor crime by discussing activities. Responding party will not commit a misdemeanor, or violate attorney/client privilege. Further, responding party will caution the Grand Jury that asking parties to reveal what occurred in closed session is illegal and publishing illegally obtained information is not proper.

Further, County Counsel also has the right to privacy under the California Constitution as to her evaluations, which the Grand Jury chose to violate.

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

**Response:** Agree.

**Finding #11:** *Interviews with persons present at the agendaized 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.

Regardless, and without discussing any activities that occurred in closed session, as the Grand Jury is aware, County Counsel supervises many County employees, including Department Heads. It is entirely appropriate for County Counsel to be evaluated on how she is doing in her responsibilities of supervising these employees.

**Finding #12:** *Interviews with persons present at the agendaized 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, as 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:** Responding party cannot respond to what an alleged unnamed BOS member stated to the Grand Jury. Responding Party will note that the Grand Jury should not have requested that a member of the Board of Supervisors reveal information of what occurred during closed session, as discussed in Finding #9. It should also be noted that County Counsel is not "interim or acting CAO," as was discussed with the Grand Jury. County Counsel's only role is as County Counsel, with additional responsibilities have been assigned to her under Resolution \_\_\_\_.

Wrong

**Finding #13:** *Interviews with persons present at the agendaized 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:** Responding Party would love to respond to this finding, as it is both inaccurate and lacks legal understanding of the Brown Act. However, see response to Finding #9. It is recommended that the Grand Jury participate in Brown Act training prior to publishing reports of this nature in the future.

**Finding #14:** *Interviews with persons present at the agendaized 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.

Regardless, it should be noted that discussions regarding the scheduling of special meetings do not need to be done at a publically noticed meeting, for obvious reasons. It should also be noted that the drafting of the Urgency Ordinance accrued at an *ad hoc* committee meeting, which is allowable under the Brown Act.

**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 to Finding #9. It appears that the Grand Jury does not understand the scope of activities that can occur under closed session, and is making claims based on information illegally obtained from an alleged unnamed confidential source.

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

**Response:** Disagree wholly. There is no conflict between the position of CC and CAO.

It should be noted that many Counties, including, as of recently, Colusa, Alpine, Glenn, and Plumas, have functioned without a CAO for a substantial period of time. In these Counties, County Counsel assumes additional responsibilities, which is appropriate given they are the only other party that serves solely at the pleasure of the Board.

**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:** Recommendation has been implemented prior to 2016 and Responding Party strongly denies that any improper discussions occurred in closed session.

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

**Response:** Recommendation has been implemented prior to 2016 and Responding Party strongly denies that any improper discussions occurred in closed session.

**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:** Recommendation has been implemented prior to 2016 and Responding Party strongly denies that any improper discussions occurred in closed session.

**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:** Recommendation was implemented prior to 2016.