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Grand Jury Report # 2004-AF-01
THE ABSENCE OF ETHICS CODES IN HUMBOLDT COUNTY

EXECUTIVE SUMMARY:

Citizens in Humboldt County have voiced concerns regarding potential conflicts of interest on the part of local elected officials. Conflict of interest codes have been adopted by Humboldt County and each of the seven cities within it, as required by the Political Reform Act (Government Code Sections 81000-91014). However, the Political Reform Act addresses only financial conflicts, and is just one of several sets of rules concerning ethics and conflicts of interest by which public officials should conduct themselves in office.

The Grand Jury learned that Humboldt County does not have a code of ethics, nor do any of the cities within the county with one exception. The Grand Jury reviewed numerous ethics codes that have been adopted by other counties and cities in California, two of which have become statewide models. Although these ethics codes are not a legal requirement, they contain provisions which address the very situations that have confronted local officials and raised controversy over their actions. One such provision, for example, directs officials to avoid participation in a decision which raises “the appearance of impropriety,” even in the absence of a financial conflict of interest. Another ethics code provision prohibits officials from advocating for the interests of private third parties before their own boards or commissions. There are also provisions which place the responsibility on members of the board or commission to intervene when another member’s conduct appears to be in violation of the code of ethics, and which require that ethical standards be included in the orientation for newly-elected or appointed public officials.

The Grand Jury recommends that Humboldt County and the cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Trinidad review the model ethics codes that are available and adopt – or modify – their own codes of ethics, which will apply to all elected and appointed officials. The Grand Jury further recommends that citizen participation be included in the development of the codes of ethics. Finally, the Grand Jury recommends that Humboldt County sponsor regular ethics workshops for all elected and appointed officials in local government.

Grand Jury Report # 2004-AF-02
GRAND JURY ACCESS TO ADULT PROTECTIVE SERVICES FILES

EXECUTIVE SUMMARY:

A prior Grand Jury attempted to investigate a complaint regarding the death of a disabled person who was receiving services from the county’s Adult Protective Services Division (APS), which is part of the Social Services Branch of the Department of Health and Human Services (DHHS). The director of Public Health, another branch of DHHS, refused the Grand Jury’s written request to review the APS file, and refused to permit its staff to testify regarding the case, claiming this information was confidential.

The 2002-2003 Grand Jury requested assistance from its legal adviser, the office of Humboldt County Counsel, in obtaining the file. However, County Counsel, which also provides legal advice to the various departments of the county, agreed with the Director that the Grand Jury could not have the information because it was confidential. County Counsel failed to mention legal authorities concerning the investigative powers of the Grand Jury that were inconsistent with its position, and failed to inform the Grand Jury that it could obtain the information by subpoena. This year, the 2003-2004 Grand Jury requested assistance from the Humboldt County District Attorney’s office, which quickly obtained subpoenas and a court order that required APS to produce the deceased person’s file and required APS and other DHHS staff to testify regarding the handling of the case.

The Grand Jury’s inquiry into the disabled person’s death was delayed because of County Counsel’s failure to advocate for the right of one of its “clients” (the Grand Jury) over the interests of another “client” (DHHS). The Grand Jury recommends that County Counsel be alert to future instances when this inherent conflict of interest may interfere with its advocacy on behalf of the Grand Jury. County Counsel

should inform the Grand Jury when that occurs so it may seek legal advice from the District Attorney. The Grand Jury also recommends that County Counsel and DHHS adopt procedures for properly responding to future Grand Jury requests for confidential information.

Grand Jury Report # 2004-AF-03
“BENEFIT ALLOWANCE”

A SIMPLE PARTIAL SOLUTION TO HUMBOLDT COUNTY’S BUDGET DEFICIT
(This report was released as an early “Interim Final Report” in June 2004)

EXECUTIVE SUMMARY:

Humboldt County faces a projected budget deficit of \$8.4 million for fiscal year 2004-2005. All county departments were requested to reduce their budgets by 20%. The Grand Jury has cooperated in the need to reduce the deficit by reducing its own budget by more than 20%. To assist the Board of Supervisors in reducing the deficit, the Grand Jury reviewed budget documents including Personnel Salary Projections dated March 1, 2004.

One column of the projections is entitled “Benefit Allowance” and is budgeted for 221 positions consisting of elected and appointed officials, and management and confidential employees. Every one of these employees receives all normal benefits: health, life, and dental insurance, plus a retirement program. In addition, each one gets an additional \$10,000 life insurance and two extra weeks vacation which the other 1,971.5 county employees do not get, plus amounts ranging from a base of \$3,200 to \$11,759 per year. These “Benefit Allowance” amounts totaled \$786,389. Since this qualifies as compensation under Internal Revenue Service rules, the County’s cost for Social Security and Medicare is an additional \$60,159, bringing the total cost to \$846,548, or approximately 10% of the projected budget deficit.

The Grand Jury determined that the benefit allowance was established in 2000 with the adoption of Resolution 2000-67, and no justification was given in the Resolution for providing the benefit to this select group.

The Grand Jury recommends that the Board of Supervisors immediately revisit the “Benefit Allowance” sections of Resolution 2000-67 with the intention of suspending, reducing, or possibly eliminating these expenditures until the county’s fiscal condition warrants reconsideration.

Grand Jury Report # 2004-CD-01

**AN INVESTIGATION INTO VIOLATIONS OF THE BROWN ACT BY THE
KLAMATH-TRINITY JOINT UNIFIED SCHOOL DISTRICT GOVERNING BOARD**
(This report was released as an early “Interim Final Report” in February 2004)

EXECUTIVE SUMMARY:

An investigation of a citizen’s complaint involving the Klamath-Trinity Joint Unified School District (K-TJUSD) was dismissed as having no merit. However, from documents received and testimony taken during the course of its investigation, the Grand Jury determined that the K-TJUSD Governing Board (Board) had violated several provisions of Government Code Sections 54950-54963, commonly known as the Ralph M. Brown Act (Brown Act). Under certain circumstances each member of a legislative body who violates the Brown Act is potentially guilty of a misdemeanor (Government Code Sec. 54959).

This conclusion and findings of fact led to recommendations that all Board members be required to be trained in all aspects of the Brown Act by a person competent in requirements of the Brown Act; that the Board operate in accordance with the Brown Act; that closed and open sessions of Board meetings be tape recorded and that those recordings be securely preserved for a period of at least three years.

Grand Jury Report # 2004-CD-02
A REVIEW OF THE HUMBOLDT COUNTY
LOCAL AGENCY FORMATION COMMISSION

EXECUTIVE SUMMARY:

In 1963, legislation created Local Agency Formation Commissions (LAFCO or Commission) in all California counties. Their primary function was to regulate local government boundary issues. The counties were required to fund all LAFCO operating costs. The law remained basically unchanged for 35 years. Recognizing the dramatic changes in population and development that had taken place during that time, the law was amended in 2000 with the enactment of the Cortese-Knox-Hertzberg Act (the Act).

New mandates imposed by the Act include the requirements to promote affordable housing, preserve open space and agricultural lands, encourage efficiency in government services, and compile within five years an inventory of all infrastructure and services within the county. Also, LAFCO operations are now required to be funded equally by the county, cities and special districts within the county.

The Grand Jury has not issued a report on LAFCO since 1971. Given the major changes in the law, it was deemed appropriate for the 2003-2004 Grand Jury to review LAFCO and evaluate how the Commission was meeting its newly assigned tasks. After reviewing documents and interviewing staff, the Grand Jury determined that the Commission has so far met the requirements mandated by the Act, and with the aid of partnerships formed with cities and districts, expects to complete the remainder on time. Further, the Grand Jury is impressed that through internal reorganization LAFCO *under expended* its 2002-2003 budget of \$37,632 by 8%, and *reduced* its projected expenditures for 2003-2004 by another 9%.

The Grand Jury has no findings or recommendations. Based on the above facts and conclusions, the Grand Jury commends the LAFCO Commissioners and staff for responding positively and professionally to their mandated obligations in a fiscally responsible manner.

Grand Jury Report # 2004-CD-03
SPECIAL DISTRICT AUDIT PROGRAM IN JEOPARDY
(This report was released as an early "Interim Final Report" in April 2004)

EXECUTIVE SUMMARY:

Government Code Section 26909 requires the Auditor/Controller to ensure that special districts are audited periodically. The 1999-2000 Grand Jury recommended that the Board of Supervisors (Board) and the Auditor/Controller intensify their efforts to assist special districts to comply with the law.

Both the Board and Auditor/Controller accepted and implemented the recommendation. A senior accountant-auditor position was funded, and through the efforts of this employee all but two of the 48 special districts in Humboldt County were in compliance at June 30, 2003. Due to the retirement of the Auditor/Controller in 2003 and subsequent promotions within the Auditor/Controller's office, this position was left vacant and not funded in the current fiscal year.

This finding of facts led to a recommendation that the Board immediately restore funding to the Auditor/Controller's office to permit this position to be filled permanently, and allow this beneficial program to continue.

Grand Jury Report # 2004-HS-01
AN INVESTIGATION INTO HUMBOLDT COUNTY'S
ADULT PROTECTIVE SERVICES
AND IN-HOME SUPPORTIVE SERVICES

EXECUTIVE SUMMARY:

This Grand Jury investigation was precipitated by the death of a disabled person who had been a client of two units of Humboldt County's Department of Health and Human Services (DHHS), Adult Protective Services (APS) and In-Home Supportive Services (IHSS). APS services are governed by Senate Bill 2199, which was passed to "...remedy situations of immediate danger to vulnerable elders and dependent adults" which result from abuse and neglect. IHSS services are provided pursuant to Assembly Bill 1682 (AB 1682), which mandates that counties provide in-home caregiver assistance to elderly and disabled persons so they may remain safely in their homes rather than being placed in an institution.

AB 1682 requires counties to assist recipients in finding a caregiver, to provide caregiver training, and to investigate the qualifications and background of potential caregivers. The state does not provide funding for the county to carry out these mandates, although it does fund the caregivers' salaries. DHHS only requires training and background investigation for caregivers who are selected by recipients from a local registry. Recipients are allowed to choose non-registry caregivers, who may be nurturing family members but may also be scam artists, drug addicts, or convicted felons. Even though some of these caregivers may constitute a threat to the physical, emotional and financial welfare of the recipients, the county continues to approve payment for their services.

The DHHS policy is based on the decision-making principle of "freedom over safety," which deems the "free-will" of a client (who may be under the influence or duress of an abusive or unscrupulous caregiver) to be more important than the client's ultimate safety. At least one county has taken the opposite position that it will discontinue approving IHSS payments to an abusive caregiver. This decision was upheld in a Fair Hearing on the grounds that the county was "under a duty to protect the individual."

Like IHSS, APS also adheres to the principle of "freedom over safety," pursuant to which it will close out a case when an elderly or dependent client refuses further case management services, even though the client may be at risk of abuse or neglect.

At the time of death, the deceased individual in this case weighed only 60 pounds and had numerous bone-deep bedsores. The caregiver, with no file documentation of having undergone any formal training or background investigation by Humboldt County, continued to receive IHSS approval for payment until the person died. APS had closed the case about four months earlier, without following proper department procedures, and in spite of the fact that the caseworker believed the individual needed continued monitoring.

The Grand Jury's investigation has determined that DHHS fails to safeguard the county's vulnerable elderly and dependent adults by:

- Closing cases rather than providing ongoing case management;
- Following the principle of "freedom over safety";
- Failing to require background checks, fingerprinting, and training for all caregivers;
- Inadequately documenting cases;
- Inadequately communicating with other involved agencies, and between staff and management; and
- Failing to establish a centralized system for cross-checking caregivers' time cards to verify services were provided, and to prevent fraudulent payments.

In addition, it was determined that APS fails to adequately adhere to the county's guidelines for mandated reporters and that the Humboldt County Sheriff's Department has no written policy with respect to mandated reporting of abuse or welfare checks.

It is the Grand Jury's opinion that DHHS' current interpretations of the laws governing APS and IHSS create a potential risk of liability to the county by using taxpayer dollars to pay abusive, neglectful, or incompetent caregivers. DHHS maintains that the lack of funding prevents it from changing its practices and that its only recourse is to continue lobbying the state for assistance in carrying out the legislative mandates. However, this does not protect those persons for whom the county is responsible.

The Grand Jury recommends that:

- DHHS begin background checking, fingerprinting, and training for all IHSS caregivers.
- DHHS discontinue approval of payment to caregivers who are abusive or unqualified.
- DHHS permanently disqualify caregivers who have committed fraud.
- DHHS establish a centralized system for cross-checking caregiver timecards.
- DHHS implement a written policy for ongoing case monitoring when the physical safety of the client is in question.
- DHHS establish a multi-disciplinary team to determine case closure when client safety is at issue.
- DHHS provide mandatory training for proper case documentation.
- DHHS adjust caseworker caseloads to provide adequate client support.
- DHHS implement a process of sharing case information with workers in other DHHS units/divisions.
- The Sheriff's Department develop a written policy and provide training for deputies to follow in mandated reporting of abuse and conducting welfare checks.

Grand Jury Report # 2004-HS-02 HUMBOLDT COUNTY'S FOSTER CARE PROGRAM NEEDS HELP NOW

EXECUTIVE SUMMARY:

This investigation of the Child Welfare Services (CWS) unit of the Humboldt County Department of Health and Human Services (DHHS) was initiated by a physician's complaint about serious shortcomings in the county's foster care program. A four-year project to redesign the county's foster care program is underway. However, certain matters of serious concern affecting the county's foster care children must be addressed now.

Personnel: CWS has a high turnover rate for caseworkers, which creates tension, stress and turmoil for foster children and their families as well as in the department. Caseworkers are not permitted overtime or flex scheduling to help manage their caseloads and, as a result, they resort to shortcuts to meet demands. Due to a shortage of caseworkers, caseloads are nearly double state guidelines. At the same time, in the past two years, there has been an increase in the number of supervisors, who never work directly with or even see the children or families. Supervisors who have no first-hand case knowledge often override caseworkers' decisions. In addition, communication between caseworkers and those in the supervisory chain of command is discouraged beyond the level one supervisor.

Children/Families: The instability in CWS staff adds to the lack of security already felt by foster children. Their caseworkers, foster parents, and counselors are constantly changing, they frequently must change schools and doctors, and too often siblings are separated from one another. Little attention is paid to what is best for the child. Although the foster care program is mandated to encourage family reunification and family maintenance, current programs for improving parenting skills are ineffective.

Foster Families: There is a serious shortage of licensed foster homes and recruitment of new foster parents is difficult. Testimony attributed this in large part to department policies and practices, which result in tension between the department and foster parents. Decisions affecting foster families are made at supervisory levels without meeting with the child, the biological parents, or the foster parents. Families

are dealt with inconsistently from the time a case is opened through its investigation and court appearances.

Services: Children in crisis need reliable, expert support and the best possible services. The support and services CWS provides to foster children fall short of this standard. Caseworker requests for expenditures have to go up the chain of command, and may take months for approval. A rotating contingent of interns at Humboldt County Mental Health provides services and may see a child only one hour per week. CWS sometimes refuses to authorize payment for court-ordered services and does not always follow medical doctors' opinions and recommendations for treatment, often citing cost as the reason. Dental care is difficult to obtain because few dentists accept MediCal.

Court Proceedings: Frequent continuances of court hearings result from lack of preparation and absences by both attorneys and caseworkers. Delays in legal proceedings prevent timely resolution of important issues in the foster children's lives, frustrate and inconvenience the families involved, add to the caseworkers' workload, and overload the court's calendar.

DHHS attributes many of the deficiencies in its CWS foster care program to lack of money for hiring more caseworkers, obtaining better medical, dental and counseling services from private practitioners, and providing training for caseworkers, supervisors, parents, and foster parents.

The Grand Jury recommends that DHHS reduce caseloads, establish flexible hours, provide ready access to funds for caseworkers to use for clients' emergency needs, and provide regular, mandatory training for caseworkers and supervisors in conflict resolution and preparation for court appearances. The Grand Jury also recommends that DHHS make no critical supervisory decisions without meeting with the caseworkers, the children, and the parents and/or foster parents, and without reviewing all relevant information. The Grand Jury recommends that CWS staff make it a priority to place children with relatives within 15 days of involvement in order to avoid the court taking jurisdiction. When court orders are made, CWS should seek modification rather than ignore them or assert cost as a justification for failing to comply. In addition, the Grand Jury recommends that DHHS improve relations with foster parents and work with child development specialists to design and implement new approaches to parent-child visits and parental training. Finally, the Grand Jury recommends that DHHS reallocate funds to better provide for foster children's physical and emotional needs.

Grand Jury Reports # 2004-JL-01 through #2004-JL-10 HUMBOLDT COUNTY'S JAILS AND HOLDING FACILITIES

EXECUTIVE SUMMARY:

Pursuant to California Penal Code Section 919(b), the Grand Jury inspected each prison facility, jail, and holding facility within the County. Ten such facilities are addressed in the reports referenced above. Two additional facilities operated by law enforcement agencies in the County were also inspected and are mentioned in these reports.

The following facilities were found clean and well maintained and warranted no Findings or Recommendations: Arcata Police Department, Eureka Police Department, Fortuna Police Department, Sheriff's Agricultural Farm, Eel River Conservation Camp, and High Rock Conservation Camp. These facilities are described in Reports # 2004-JL-01 through # 2004-JL-05.

Inspection of five additional facilities resulted in Findings and Recommendations that require responses from the operating agencies. These facilities are described in Reports #2004-JL-06 through #2004-JL-10. The Grand Jury's Recommendations are essentially as follows:

Sheriff's Substation – Hoopa 1) Steel security screens should be retrofitted to eliminate a potential hazard in the event of fire. 2) Two deteriorating concrete toilet units should be replaced.

Sheriff's Substation – Garberville 1) The building should be made compliant with the Americans With Disabilities Act. 2) The building should be remodeled and enlarged to accommodate increased law enforcement activities occurring on holidays and special events. 3) Items held in the evidence/storage locker for a long time should be disposed of or stored in the Sheriff's central evidence locker in Eureka.

Juvenile Hall The building should be made compliant with the Americans With Disabilities Act.

Regional Facility Damaged acoustical ceiling tiles in two day rooms should be replaced.

Humboldt County Correctional Facility – Computer System 1) A new state-of-the-art computer system should be purchased as soon as possible. 2) The terms of purchase for any future computer system should incorporate the authority and ability by the County to upgrade, enhance, and expand the system.

**Grand Jury Report # 2004-LJ-01
PUBLIC DEFENDER, COUNTY CONFLICT COUNSEL,
AND ALTERNATE CONFLICT COUNSEL**

EXECUTIVE SUMMARY:

The Grand Jury made an independent review of the offices of the Public Defender, the County Conflict Counsel, and the Alternate Conflict Counsel. The three offices employ 17 attorneys, four investigators, and eight legal/clerical staff; they handled over 5,000 cases in the fiscal year ended June 30, 2003. In that fiscal year the three offices spent \$2,423,245, of which \$1,654,257 was provided by the County's General Fund.

**Grand Jury Report # 2004-LJ-02
HUMBOLDT COUNTY SHERIFF'S STORAGE YARD**

EXECUTIVE SUMMARY:

On December 16, 2003, members of the Grand Jury inspected the Sheriff's Storage Yard and found that many items have been retained there in disarray for as long as ten years. Evidence and lost-and-found property is stored there for safekeeping; evidence is marked by an assigned case number. The Grand Jury recommends that the Sheriff install and use a computerized inventory system, identify items still needed in the legal system, and store those items in a neat and logical manner. The Grand Jury further recommends that the Sheriff dispose of property which is lost-and-found but cannot be returned, is obsolete, or no longer needed in the legal system.

**Grand Jury Report # 2004-PW-01
CITIZEN COMPLAINTS ABOUT COMMUNITY DEVELOPMENT SERVICES (CDS)**

EXECUTIVE SUMMARY:

A Grand Jury investigation in response to citizen complaints discovered that no adequate system of filing, storing, tracking or analyzing customer complaints has been developed at CDS. This is despite past promises to the contrary, and an acknowledgment that such a system is desirable. In addition, the Board of Supervisors spends considerable time responding to constituents' inquiries regarding complaints and status of projects. Many complaints concern delaying factors that were unknown to the applicant at the beginning of the process. Therefore, the Grand Jury recommends that CDS develop a customer complaint system that facilitates analysis of the complaints, that the complaint policy be clearly communicated to consumers, and that the existing informational brochures be revised to show both complaint procedures and delaying factors.

Grand Jury Report # 2004-PW-02
THE LEGALITY OF COUNTY BUILDING INSPECTION
DIVISION "RAPID CHECK" AND "RAPID PROCESS" SURCHARGES

EXECUTIVE SUMMARY:

The Grand Jury investigated a citizen complaint regarding certain fees charged by the Building Inspection Division (BID) of Humboldt County Community Development Services (CDS) for checking plans that are submitted in order to obtain building permits. Ordinarily, the plan checks are performed by the Plan Checker or the Chief Building Official on a first-come, first-served basis. The time it will take for a particular set of plans to come to the top of the pile will vary throughout the year, depending on the number and complexity of the plans submitted before it. Fees are charged for plan checks according to a Fee Schedule that is approved by the Board of Supervisors and enacted by ordinance.

In fiscal year 1999-2000, BID instituted "rapid check" and "rapid process" for checking plans on an expedited basis for applicants who pay a surcharge to avoid having to wait their ordinary turn. Under "rapid check," plans are checked and returned within a day or two after they are submitted, for a 50% surcharge over the basic plan check fee. "Rapid process" includes the expedited plan check plus follow-up assistance in completing other steps necessary to obtain a permit, for a 100% surcharge over the basic fee. The service is not publicized by BID or CDS because it is available solely at the discretion of the Plan Checker and the Chief Building Official, who perform the expedited service only on overtime. While the surcharges are intended to cover the overtime cost of the expedited service, BID and CDS do not keep adequate accounting records to confirm this. The "rapid check" and "rapid process" surcharges are not listed in the BID Fee Schedule, nor was CDS able to provide documentation that these surcharges were approved by the Board of Supervisors before they were instituted.

Based on the information the Grand Jury obtained during its investigation, including advice from the County Counsel, the Grand Jury concluded that the "rapid check" and "rapid process" surcharges are invalid under the applicable Government Code sections because (1) they were not created through the required legal procedures, and (2) they are arbitrary figures that cannot be related to the actual cost of providing the service with the current record-keeping system. The Grand Jury, therefore, recommends that "rapid check" and "rapid process" be discontinued until they are properly adopted by the Board of Supervisors, following which CDS should develop a method of keeping accurate records to account for the amounts spent and received performing the service. The Grand Jury also recommends that, if the surcharges are properly adopted, the general public be informed of their existence through brochures and the CDS website.

Finally, the Grand Jury also noted that Humboldt County has only one full-time Plan Checker, and that hiring a replacement through normal county hiring procedures may take as long as six months. The Grand Jury recommends that CDS develop a plan for dealing with an unanticipated long-term or permanent absence of the Plan Checker, to avoid the serious adverse effect this would have on residential and commercial construction in the county's jurisdiction.

Grand Jury Report # 2004-CC-01
FOLLOW-UP ON RESPONSES TO THE GRAND JURY FINAL REPORT OF 2001-2002

EXECUTIVE SUMMARY:

The 2003-2004 Grand Jury is obligated to review responses to the 2001-2002 Grand Jury Final Report, to see if actions agreed upon by departments had been taken.

That report contained 205 findings, 58 conclusions, and 45 recommendations. Of the recommendations, 24 were implemented, nine were to be implemented, and 12 were not to be implemented because of reasons given.

The 2003-2004 Grand Jury verified responses to the 24 “implemented” recommendations. Nine “will be implemented” responses to recommendations were investigated. Of the nine, six of the County Parks’ items were checked and found to be largely compliant. Three Sheriff’s items were found to be still lacking after more than one Grand Jury recommended an agreed-upon action: Americans with Disabilities Act inaccessibility at the Garberville substation, stainless steel toilets not yet installed at the Hoopa substation, and inadequate computer tracking at the evidence room.

Grand Jury Report # 2004-CC-02
FOLLOW-UP ON RESPONSES TO THE GRAND JURY FINAL REPORT OF 2002-2003

EXECUTIVE SUMMARY:

The 2003-2004 Grand Jury reviewed written responses to the 2002-2003 Grand Jury Report, which contained 89 findings and 64 recommendations. Recommendations which officials agreed to implement, and those which were to be studied for possible implementation, were verified through document inspection and official testimony, to see if actions or studies agreed upon had been made.

Americans with Disabilities Act compliance continues to be a problem in the county, both in Parks and at the Garberville Sheriff’s Substation. Both the Regional Facility and the Sheriff’s Department received commendations for fulfilling recommendations. The Redwood National Park Building in Orick does not provide visitor services as required by local zoning regulations.

GRAND JURY REPORTS

Grand Jury Report #2004-AF-01 THE ABSENCE OF ETHICS CODES IN HUMBOLDT COUNTY

WHO SHALL RESPOND:

Pursuant to California Penal Code Section 933 and 933.05, responses to the Findings and Recommendations of GRAND JURY REPORT # 2004-AF-01 shall be provided as follows:

- The Humboldt County Board of Supervisors shall respond to Findings and Recommendations 1, 4, and 5.
 - The Humboldt County Chief Administrative Officer shall respond to Finding and Recommendation 5.
 - The City of Blue Lake shall respond to Findings and Recommendations 1 and 4.
 - The City of Eureka shall respond to Findings and Recommendations 1 and 4.
 - The City of Ferndale shall respond to Findings and Recommendations 1 and 4.
 - The City of Rio Dell shall respond to Findings and Recommendations 1 and 4.
 - The City of Trinidad shall respond to Findings and Recommendations 1 and 4.
 - The City of Fortuna shall respond to Findings and Recommendations 2 and 4.
 - The City of Arcata shall respond to Findings and Recommendations 3 and 4.
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The citizens of Humboldt County are entitled to have fair, ethical and accountable local government. Such a government requires that public officials:

- Comply with both the letter and the spirit of the laws and policies affecting operations of the government;
- Be independent, impartial and fair in their judgment and actions; and
- Use their public office for the public good, not for personal gain.

With these principles in mind, the Grand Jury conducted a study regarding codes of ethics in response to citizens' concerns about potential conflicts of interest on the part of local elected officials.

In one instance, the Grand Jury took note of the public debate that arose when a majority of County Supervisors voted against the District Attorney's request for funding to hire outside counsel to prosecute a fraud lawsuit against a corporation doing business in the county. In numerous letters to the editor, editorial opinions, and newspaper articles, there were conflicting opinions as to whether, by voting on this matter, one or more of the Supervisors violated conflict of interest laws or ethical rules of conduct.

The Fair Political Practices Commission has jurisdiction over financial conflicts of interest pursuant to the Political Reform Act (Government Code Sections 81000-91014). However, the debate continues because of a belief by some members of the public that principles of ethics other than purely financial conflicts of interest should have led one or more of the Supervisors to abstain from voting on this particular issue.

This prompted the Grand Jury to inquire of the County Administrative Office whether Humboldt County has adopted an "ethics code" of any kind, which might have addressed the concerns voiced by troubled citizens and offered guidance to the officials in deciding whether they should abstain from voting. The County has no such code.

The Grand Jury also surveyed 54 of the other counties in California. Although ethics codes are not a legal requirement, of the 41 counties that responded, ten have either adopted formal ethics codes or incorporated various ethical principles and guidelines into their administrative policies. After reviewing these counties' ethics codes and the ethics codes adopted by a number of cities – two of which have become statewide models – the Grand Jury concluded that a number of these codes contain provisions which address the situation that confronted the aforementioned Humboldt County officials.

These provisions pertain to a concept known as the “appearance [or perception] of impropriety.” This is not a phrase lacking in legal significance. It appears more than a hundred times in the reported cases of the California Courts of Appeal and Supreme Court, in Opinions of the California Attorney General, and even in the Code of Judicial Ethics. It is expressed in simple language in the City of Mountain View’s code of conduct for its City Council:

“When participation in action or decision-making as a public official does not implicate the specific statutory criteria for conflicts of interest, however participation still does not ‘look’ or ‘feel’ right, that public official has probably encountered the appearance of impropriety. For the public to have faith and confidence that government authority will be implemented in an even-handed and ethical manner, public officials may need to step aside even though no technical conflict exists . . . For the good of the community, members who encounter the appearance of impropriety should step aside.”

The Grand Jury concurs with this principle. Furthermore, there are other provisions in the ethics codes the Grand Jury reviewed which address additional situations that have generated controversy and distrust in the community over the conduct of other elected officials.

In the second instance, in response to a citizen’s complaint, the Grand Jury investigated an alleged conflict of interest by a city council member in one of the county’s seven municipalities. One of the responsibilities of the city council is to review – and either approve or reject – the recommendations of the city’s planning commission, the members of which are appointed by the mayor and approved by the city council. There was evidence that a particular council member became involved as an agent and advocate for a property owner’s proposed subdivision project and lobbied before the city planning commission on its behalf.

The council member claimed to have been acting as a “private citizen,” disclaimed any financial interest in the proposed subdivision property and, therefore, saw no conflict of interest. However, there are guidelines in several of the ethics codes reviewed by the Grand Jury which specifically address this troubling scenario. For example, the City of Sunnyvale’s Code of Ethics (one of the recognized models) provides:

“In keeping with their role as stewards of the public interest, members of Council shall not appear on behalf of the private interests of third parties before the Council or any board, commission or proceeding of the City, nor shall members of boards and commissions appear before their own bodies or before the Council on behalf of the private interests of third parties on matters related to the areas of service of their bodies.”

Yet another disturbing fact the Grand Jury encountered in the same investigation of the city council member’s conduct before the planning commission was the absence of any sense on the part of the other city council members who were interviewed that they had either the responsibility or authority to address what had occurred. They disapproved of it, they believed it created a bad impression, they were concerned that it cast doubt in the minds of the public about the integrity of the city’s procedures, and they believed the errant council person should be confronted with the problem and counseled about the appearance of impropriety and potential conflicts of interest. However, they took no action to rectify the problem.

The reticence of elected officials to confront a difficult situation involving “one of their own” has been anticipated and addressed by several of the ethics codes the Grand Jury reviewed. For example, the Sunnyvale Code of Ethics states that:

“Members [of the city council] themselves have the primary responsibility

to assure that ethical standards are understood and met, and that the public can continue to have full confidence in the integrity of government. . . . The chairs of boards and commissions and the Mayor have the additional responsibility to intervene when actions of members that appear to be in violation of the Code of Ethics are brought to their attention. . . . The City Council may impose sanctions on members whose conduct does not comply with the City's ethical standards, such as reprimand, formal censure, loss of seniority or committee assignment, or budget restriction."

Finally, the Grand Jury believes, based on interviews it conducted of a number of elected officials in both county and city governments, that there is a pervasive lack of understanding that the Political Reform Act is just one of several sets of laws concerning ethics and conflicts of interest by which they should conduct themselves in office. The answer to this problem, of course, is education and training. Several ethics codes incorporate such a requirement, e.g., the Sunnyvale Code of Ethics which states:

"...ethical standards shall be included in the regular orientation for candidates for City Council. . . . Members entering office shall sign a statement affirming they read and understood the City of Sunnyvale Code of Ethics. In addition, the Code of Ethics shall be annually reviewed by the City Council, boards and commissions."

In this regard, Humboldt County's Administrative Office is to be congratulated for sponsoring a half-day Ethics Workshop in October of 2003 for department heads and their assistants. The leader was trained at the Josephson Institute of Ethics in the Workplace, and 41 people attended at a cost of \$26.90 each. Several city officials indicated they would have been interested in attending such a workshop if they had been notified. Although they were informed of the workshop, none of the members of the Board of Supervisors attended. According to the County Administrative Officer:

"The workshop was well received. The feedback I had from most was that we should do this more often. I have given thought . . . to developing a local ethics program that would further define standards of conduct, train and educate employees, and integrate behavior that is reflective of core ethical values of trustworthiness, respect, responsibility, fairness, caring and citizenship."

Based on the foregoing, the Grand Jury has reached the following findings and recommendations:

FINDING 1: Humboldt County and the cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Trinidad have adopted by ordinance the financial conflict of interest regulations required by the Political Reform Act. However, Humboldt County and the cities of Blue Lake, Eureka, Ferndale, Rio Dell, and Trinidad have not formally adopted ethics codes or any similar codes of conduct that identify and incorporate other important public policies and principles of law regarding ethics and conflicts of interest.

RECOMMENDATION 1: The Grand Jury recommends that Humboldt County and the cities of Blue Lake, Eureka, Ferndale, Rio Dell, and Trinidad review available model ethics codes and adopt their own codes of ethics, to apply to all officials, elected and appointed.

FINDING 2: In 1998, the City of Fortuna adopted Rules of Conduct for its City Council. Although one of these eight rules contains a general directive that conflicts of interest must be avoided, the City Council has no actual code of ethics.

RECOMMENDATION 2: The Grand Jury recommends that the City of Fortuna review available model ethics codes and adopt its own code of ethics, to apply to all officials, elected and appointed.

FINDING 3: The City of Arcata has adopted a Code of Ethics which is found in the Appendix to its City