

COUNTY OF SONOMA

BOARD OF SUPERVISORS

575 ADMINISTRATION DRIVE, RM. 100A
SANTA ROSA, CALIFORNIA 95403

(707) 565-2241 FAX (707) 565-3778

EVEE T. LEWIS
COUNTY CLERK



MEMBERS OF THE BOARD

TIM SMITH
CHAIRMAN

PAUL L. KELLEY
VICE CHAIRMAN

VALERIE BROWN

MIKE KERNS
MIKE REILLY

September 28, 2005

TO: The Honorable Robert Boyd
Presiding Judge, Sonoma County Superior Court

FROM: Sonoma County Board of Supervisors

SUBJECT: Response to Final Report of the 2004-2005 Grand Jury

BOARD OF SUPERVISORS
RESPONSE TO THE 2004-2005 GRAND JURY FINAL REPORT

Conflict of Interest

Recommendations: Page 15

Rl. Adopt an Incompatible Activities List

Each commission, committee, board and public agency should have it's own Incompatibility Activities list as a supplemental resource. This list would assist the officials in understanding how to avoid conflict-of-interest issues, enhance the assurance of public trust-the integrity of officials-and political processes as well.

RESPONSE: The recommendation will be implemented in part.

There currently are a substantial number of resources readily available which could be utilized to meet the grand jury's intent. Instead of having each committee, board, and public agency struggle to create its own list of prohibitions, the County will make available to all committees, boards, and agencies, under the Board's supervision, documentation identifying the numerous conflict laws and restrictions that apply to public officials, and summarizing the requirements of those laws. In addition, the County will add to its website a "Government Ethics" link that will identify publications and training material available to assist local officials in becoming better informed on the requirements that apply to them.

R2. Adopt a Code of Ethics

Sonoma County and each city should establish and implement a Code of Ethics. All commissions, committees and boards, as well as elected and appointed officials, should review the Code of Ethics and attest to understanding the policy as it pertains to their position. Thereafter, the County and city officials should mandate periodic ethics training and testing, just as is required of federal and state employees. For establishing a Code of Ethics, the Attorney General's Office and the FPPC, have developed a web-based ethics training course. The California League of Cities also has information and guidelines.

RESPONSE: The recommendation has been implemented in part.

The County has already adopted a Conflict of interest Code, which identifies every officer and employee involved in making decisions that could possibly affect any personal financial interest of the employee, and requires those officers and employees to disclose all of their personal financial interests that could possibly be affected by their governmental decisions. All of those "disclosure statements" are public records. In addition, in the early 1990's, the County required each County department to adopt an incompatible activities policy, which prohibits County employees from participating in activities, for compensation, that might be incompatible with their public employment. The County is in the process of updating those policies—a process which should be completed within this fiscal year. The County will also add links to the County web page to government ethics resources.

There is a balance involved in deciding the circumstances in which to prohibit public officials from participating in decisions, and public employees from participating in outside activities. The boundaries of that balance have been established by the people of the State of California in the Political Reform Act, and by the Legislature in the other laws that prohibit conflicts of interest. Public officials have been elected by their constituents to represent those constituents in deciding the public's business. Clearly, when a public official has an interest that would be a conflict under state law, the official should disqualify him or herself from participating in any decision affecting that interest. Each official must determine when to decline to participate in a decision—thus depriving his or her constituents of representation in that decision particularly when the official does not have a conflict of interest, but is merely concerned that his or her participation might be controversial. The official has a responsibility to represent his or her constituency particularly when he or she is not prohibited from doing so. As discussed in the response to RI above, the County is taking steps to increase officials' awareness of the requirements already existing in the law concerning conflicts of interests; however, at this time, the County declines to adopt a broader-reaching code of ethics that might in fact prohibit public officials from lawfully representing their constituents.

R3. Increase fines and penalties; prohibit use of campaign funds to pay penalties

The grand jury recommends that local officials from the County and the nine cities contact their senate and assembly members to consider amending the Political Reform Act to address the following two issues:

- R3. a. Raise fines and penalties commensurate with the amounts realized from personal gain. The cost of penalties for conflict-of-interest violations are insufficient to deter violators, therefore, the fines should be significantly higher-the dollar amount ratio should be closer to the dollar amount gained.*
- R3. b. The grand jury found several officials paid off their FPPC fines with campaign funds. The California Legislature should rescind and amend Government Code § 89513 and § 89514 to prohibit, rather than permit, campaign funds to be utilized to pay off government-imposed monetary penalties.*

RESPONSE: The recommendations provided in R3a and R3b will not be implemented because they are not reasonable or warranted.

State law already provides remedies for local jurisdictions harmed by a public official's failure to disclose an economic interest, or improper participation in a decision. If, in his judgment, the facts support a legal action, the District Attorney, elected city attorney, or any other person residing in the harmed jurisdiction, is authorized (after request to the District Attorney) to file a civil action to recover (1) for a failure to disclose an interest, up to the amount or value not properly reported (Government Code section 91004) or (2) for a failure to disqualify him or herself from a transaction in which a public official has an interest, up to three times the value of the benefit. (Government Code section 91005). The County will add to its website information on how to report violations to both the Fair Political Practices Commission (the state watch-dog agency) and the Sonoma County District Attorney.

- R4. Institute regular, mandatory training*
Provide Designated Filers with basic informational training.
Increase utilization of FPPC for training of Form 700 Filing Officers and Clerks
Require Code of Ethics training at the city and County level as similar to that as mandated by state agencies (available online).
Require basic conflict-of-interest training for:
-Incumbent elected and appointed officials
-New appointees and elected officials

RESPONSE: The recommendation will be implemented in part.

The County agrees that it would be helpful to provide more information to designated employees, and to elected and appointed officials. As discussed in the response to R1, the County will provide written information summarizing conflict of interest laws to boards, committees, and commissions, and will establish web links to make that information available to employees and the public. In addition, the County will provide web links to ethics training material developed by the State, and available on line. The County Clerk has indicated she will include additional information to all agencies, boards, and commissions. The County is reluctant to impose mandatory programs on all officials, many of whom are citizens volunteering their time to serve the public, and would prefer that these officials voluntarily participate in programs as they determine best suits their level of expertise in this area. The new links to Government Ethics on the County website will ensure that resources are available to these officials in the event a question arises as to their responsibilities under the various conflict of interest laws.

R5. Re-file Form 700 on a material change

Sonoma County administration and respective cities in Sonoma County should require all Designated Filers to file amendments to Form 700 with clerks of the County or city within 30 days of a material change. "Material Change" is defined in Government Code § 87103.

RESPONSE: The recommendation will not be implemented because it is not reasonable.

There are, in the County, over 700 designated employees who file annual statements of economic interest (Form 700). In addition, over 292 officials from over 20 boards and commissions, and 603 employees and officials from over 82 separate agencies under the supervision of the Board of Supervisors, file annual statements. The form already requires that for each economic interest, the filer state the date the interest was acquired, and the date it was sold or the interest changed. All new or changed interests therefore become public information upon the filing of the next year's statement of economic interest. In light of the enormous task of monitoring the annual filing process, and the bi-annual process of updating codes for all jurisdictions, the Board is reluctant to impose an additional filing and monitoring requirement.

A Disaster Waiting To Happen!

Findings: Page 26

F9. All County employees are listed as disaster recovery resources, as indeed are members of the grand jury, but there is no clear plan on how they will report in for duty, or how they will be used.

RESPONSE: Partially agree with this finding.