

# THE LIBRARY

May 27, 2015

## SUMMARY

This is the second time in two years the Grand Jury has chosen to review Mendocino County's handling of the County Free Library.

During the investigation, a frequent answer to many of the Grand Jury's questions that dealt with why the County is using a particular method of handling an issue was, "I don't know" or "Ask the Auditor." These responses seemed a bit strange to the Grand Jury when coming from the staff responsible for constructing the budget for presentation to the Board of Supervisors.

When the Grand Jury looked at the listing of revenue and expenses in the Library budget, the only change from the 2013-14 FY to the 2014-15 FY was a line item labeled A-87.

The County administration still does not recognize the Library as a Special District, despite State law and clearly stated conclusions by previous County officials conceding the issue.

The State Revenue and Taxation Code<sup>1</sup> states:

“...any special district authorized to levy a property tax by the statute under which the district was formed shall be considered a special district. Additionally, a county free library established pursuant to Article 1 (Commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code and for which a property tax was levied in the 1977-78 fiscal year, shall be considered a special district.”

Prior to the enactment of Prop 13, the Mendocino County Free Library was supported by a property tax levy in the 1977-78 fiscal year. Therefore, after Prop 13, the Library in Mendocino County is still a Special District entitled to its pro rata share of the property tax.<sup>2</sup>

The 2013-14 Grand Jury pointed out that the Librarian's salary is required to be paid out of the **same** fund as that of other County officials as stated in Education Code §19147. This reading of the code section is categorically rejected by County officials.

Their current interpretation of this code section relies on changing the word “**same**” into “**same kind of**” and on ignoring the companion section, Education Code §19148.

Many of the questions asked by the Grand Jury of County officials were answered by referring the Grand Jury to the County Auditor for answers. The Grand Jury then asked the County Auditor the questions and one of the responses the Grand Jury received was (in the case of why items were reflected in the budget a certain way), “We have always done it this way.”

The Grand Jury heard from various staff and officials that they do not understand many, if any, of the A-87 rules and regulations. The Grand Jury found this to be disappointing given the report from last year that raised serious issues about the propriety of A-87 costs for equipment and building use.

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<sup>1</sup> Revenue and Taxation Code Article 1 §95. This section is under the heading of Implementation of Article XIII of the California Constitution – otherwise known as Prop 13.

<sup>2</sup> Exhibit 1 to case number 65933 filed in Superior Court, Mendocino County

The other primary response to issues concerning the various A-87 costs was that the State Auditor accepted the reports issued by the County Auditor on A-87 costs. The A-87 cost plan is audited by the State to determine if the plan is correct for the State and Federal cost accounting purposes only. The County applies the plan to the Library for a different purpose.

The Grand Jury believes that the staff working on the budget and the Board of Supervisors voting on the budget should question if doing the budget “the same way” is either the proper or correct manner of enacting a budget.

The Grand Jury devoted time and effort in reviewing the responses to the Report from 2013-14. It was clear that fuller explanations in the responses, as required by Penal Code §933.05, would enhance the public’s understanding of the issues.

## **GLOSSARY**

- Use Fees      A charge for the use of a fixed asset by an entity. This type charge may not exceed the actual cost of the asset. (See page 79 of the *Handbook of Cost Plan Procedures for California Counties* issued by the State Controller.) This is the County’s choice instead of depreciation.
- A-87            This alpha/numeric designation refers to the Federal Office of Management and Budget Circular No. A-87, which establishes cost principles for the allocation of central administrative and overhead expenses to County departments related to federally funded grants or programs.<sup>3</sup>
- General Fund    The main operating fund used to account for Countywide financial resources and liabilities, except those that require separate fund accounting.<sup>4</sup>
- Handbook       The publication from the State Controller, *Handbook of Cost Plan Procedures for California Counties*

## **BACKGROUND**

Following the issuance of the report on the Library by the 2013-14 Grand Jury, responses from the required respondents led the 2014-15 Grand Jury to take another look at the primary issues raised in the report.

## **APPROACH**

The Grand Jury interviewed the County Executive Officer (CEO), County Auditor, and County Librarian and met with County Counsel. The Grand Jury interviewed personnel from the CEO’s office and County General Services Agency. The Grand Jury reviewed State codes, State regulations, Federal pamphlets, the State A-87 handbook, news articles, and published documents from various County officials. The Grand Jury reviewed documents from the County Auditor’s office and County General Services Agency. The Grand Jury reviewed the current and past budgets for Mendocino County.

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<sup>3</sup> See the Glossary of the 2014-15 Final Budget page J-1

<sup>4</sup> See the Glossary of the 2014-15 Final Budget page J-5

## FACTS

### Overhead Charges

#### A. General Explanation

The expenditures in the Library's budget include both direct and indirect costs. Direct costs include salaries, materials, insurance, and direct billed payments to the County General Services Agency. These costs appear as line items and are paid for by the Library's dedicated funds.

Indirect costs, or overhead, appear as A-87 charges. The two elements of these charges, support services and use of equipment and buildings, appear as a combined figure in the Library budget.<sup>5</sup>

In response to last year's Grand Jury Report, the A-87 charges now have a separate line item rather than being listed as "Operating Expenses Out" which could include other expenses. This increases the transparency of the Library's budget.

The term "A-87" is derived from the title of a Federal publication, OMB (Office of Management and Budget) Circular A-87, stating what indirect costs may be charged against **Federal** grants. To ensure consistent calculations by the counties, the State Controller issued a Handbook detailing the process for development of A-87 Cost Plans.<sup>6</sup>

Every year the Auditor submits to the State the County's A-87 Cost Plan. The plan gives, for each County department or affiliated agency, the amount the County could charge to recoup its cost in **administering** State and/or Federal programs, for example, MediCal or Child Protective Services. The State audits the cost plan yearly for compliance with State guidelines for charges to be assessed **against State or Federal funding**.

#### B. Specific Application to the Library

If the Library was administering a State or Federal program, its Cost Plan would be used to determine the charge for overhead. That is not the situation here. The County is neither mandating the Library to administer a program nor providing money for any program.

The County does, through the General Fund, pay for services that support the Library in its daily operation, for example, payroll processing, vehicle maintenance, and human resources. The figures in the A-87 Cost Plan for these services are derived from time studies and actual hours spent providing specific services. Although the tool (the Cost Plan) was developed for another purpose (Federal or State programs), most parties agree that these costs are appropriately paid by the Library. The total of this portion of the A-87 costs (i.e. excluding equipment and building use charges) in FY2014-15 is \$129,423.<sup>7</sup>

The A-87 Handbook establishes the principle that when the County pays costs on behalf of an agency, the County is entitled to a recovery of those payments. The Handbook also establishes the principle that the County cannot charge the Federal Government for the cost of assets purchased by the Federal Government.

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<sup>5</sup> See FY 2014-2015 Final Budget, Page E-266

<sup>6</sup> See *Handbook of Cost Plan Procedures for California Counties*, published by California State Controller

<sup>7</sup> See Appendix A, page 3

The County's assumption underlying its A-87 Cost Plan is that the County has spent its General Fund money for the pertinent services, equipment, and buildings used. However, this assumption does not hold true for the Library's buildings and equipment.

The County bases the A-87 charges for building use on the total cost, excluding land, of the Willits Library (\$832,719) and the Fort Bragg Library (\$1,220,794).<sup>8</sup> No distinction is made between costs paid from the General Fund and costs supplied by other sources. The County Free Library has to pay the General Fund two percent (2%) of the total cost each year even though the General Fund did not pay all the costs for either the Fort Bragg Library or the Willits Library.

On June 1, 1966, the Fort Bragg Library merged with the County Free Library. The city continued to own and maintain the building. On September 20, 1987, the library was totally destroyed by an arson fire. In 1988, a former mortuary was purchased and remodeling was completed in May 1989. The Grand Jury has been told that \$300,000 of the insurance settlement for the old library was spent on this project, including land. The Grand Jury was unable to verify the accuracy of this statement through the interview process. However, the County, if anyone, should have the records.

By the advent of the new millennium, it was apparent that the Library needed modernization. In 2003, the Friends of the Fort Bragg Library, an IRC §501(c)(3) organization, entered into an alliance with the County to do just that. (Appendix B) The Friends paid \$22,150 for an architect, selected in cooperation with the County, to draw up plans. (Appendix C) Because the bids cost more money than the Friends had available, the project was put on hold, in accord with their agreement with the County.

In 2006, several bequests to the Friends enabled the project to go forward. Updated plans were put out to bid and a local company completed the remodeling in June 2007. The Friends paid \$450,000 of the construction costs.

The County does not currently acknowledge the generosity of the community; instead, each year it requires the Library to pay two percent (2%) on those gifts, or \$9,443, to the General Fund. Under the Auditor's interpretation, this charge would continue as long as the library was used. It is difficult to believe that these benefactors imagined that they were putting the Library into debt to the County.

The Willits Library building construction in 1987-88 was funded in part (\$407,000 - approximately 50%) by a Federal grant. The source of the remaining funding for the Willits Library is unclear. The building use charge under A-87 costs for the Willits Library is \$16,654 annually, about half of which is "re- paying" the General Fund for dollars spent by the Federal government, **not the County**.

Computing A-87 costs (use fees) based on insurance proceeds, Federal grants and private donations uses a tool developed for different purposes, applied in a different circumstance, and leads to the County being reimbursed for money it never spent.

The Auditor said that, for the purposes of A-87 calculations, the source of the funds didn't matter. The Grand Jury could not find any legal or regulatory source as supporting this statement.

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<sup>8</sup> The Ukiah Library building is owned by the City of Ukiah; the Coast Community Library building in Point Arena and the Round Valley Library building are owned by their respective Friends of the Library groups.

However, the State Handbook on A-87 charges clearly states in §3220:

“The following costs are unallowable under cost principles and must be excluded from acquisition costs:

“...Acquisition costs must be reduced by:

1. any cost, or any portion of cost, of a facility borne directly or indirectly by the federal or state government;...
3. Amounts recovered through surrender of liability and casualty insurance.”

The logic of A-87 is to reimburse the County. If the County didn't spend it, why should it be reimbursed?

The Handbook also states that once the acquisition cost has been recovered, no further A-87 charges may be levied. For buildings that is 2% of the total cost each year or 50 years; for equipment it is 6.67% of the total cost each year or 15 years.<sup>9</sup> The charges are not for as long as the asset is in use. There are limits.

The Handbook states in §2530:

**“...Depreciation or use allowance may not be claimed for a fixed asset after the total acquisition cost and the cost of any capitalized additions to the fixed asset have been fully recovered, either through depreciation or use allowance.”** (Emphasis added)

The Auditor, in the response to last year's Grand Jury report, said that as long as the equipment was in use, it could be charged. Wooden library card files, purchased 43 years ago, are the basis for use charges requiring the Library to pay the County money. Further, equipment such as the Tattle Tape sensing unit are no longer even in use.

The 6.67% charge provides that the cost will be paid off in 15 years.<sup>10</sup> In fact, the County is charging A-87 costs to the Library for equipment that the County Auditor acknowledges were acquired prior to 1996.<sup>11</sup> The total of these charges is \$10,542 per year. Again, once the cost has been recovered, that should be the end of any charges. All of these charges should have expired in 2011, if not earlier.

No Federal, State, or County laws require the County to charge the Library A-87 costs. The Board of Supervisors waived the charges prior to the passage of Measure A in 2011 as a subsidy to the Library, as stated by the Chair of the Board of Supervisors in a letter to the Library Advisory Board, dated November 4, 2013.

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<sup>9</sup> Handbook §2520

<sup>10</sup> Handbook §2520

<sup>11</sup> Appendix D

Ultimately, it is within the discretion of the Board of Supervisors. They could adopt a budget that only charges for support services, waiving all the charges for equipment and building use cost. They could require that equipment and building use charges be limited to circumstances where it is definitively established that the County spent General Fund money and was not fully reimbursed.

Despite two years of controversy, the County administration gave no evidence of understanding of A-87 costs: not origin, purpose, limitations, or applicability to the factual circumstances of the County Free Library. The major consideration seemed to be revenue to the County, not the impact on the Library.

In interviews with the CEO, administrative staff preparing Library budgets, and other staff, the common answer when asked about A-87 costs was “I don’t know--ask the Auditor”. The A-87 numbers supplied by the Auditor, derived for State purposes, were taken at face value by the Board of Supervisors and the CEO without investigating the validity of their use in the Library budget. When asked about specific charges, a common response was “that must be for maintenance.” The Library, either through direct billing or service-based A-87 charges, pays for all maintenance of its buildings and equipment.

This year, following the recommendation of the 2013-14 Grand Jury, the Board of Supervisors held a workshop with the Library Advisory Board. Despite a tense atmosphere (because any discussion about A-87 was clearly ‘off the table’ and ‘the elephant in the room’), there was a welcome willingness from some members of the Board of Supervisors to explore and better understand the issues. The Grand Jury applauds and encourages respectful dialogue. However, the Board of Supervisors refused to accept the Library Advisory Board 2014-15 annual report.

There may be legitimate County costs for building and equipment use if the County paid for it and the County has not been fully reimbursed. If so, these costs have not been clearly identified. The County should have these records, if they exist. The Grand Jury was unable to obtain these records.

### **The Library is a Special District**

The Grand Jury 2013-14 report on the Library recommended that the County recognize the County Free Library as a Special District. In response, the CEO stated that, “This recommendation will not be implemented as it is not warranted. The designation of the Library as a Special District would not be factually or legally accurate and the Office of the CEO declines to support such an action.”<sup>12</sup>

The response by the Board of Supervisors to the same recommendation was, “This recommendation will not be implemented, because it is not deemed reasonable – as it is contrary to law. It was formed under Education Code Section 19100 et. seq. and is a County Free Library system. It is treated as a separate district under the Revenue and Taxation Code, Sections 2215 and 2216 for tax and revenue purposes only.”<sup>13</sup>

These citations are not informative as to the issue. The Grand Jury found no support for the County’s stance.

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<sup>12</sup> See the Response to Recommendation 1 of the CEO to the Grand Jury 2013-14 Report

<sup>13</sup> See the Response to Recommendation 1 of the Board of Supervisors to the Grand Jury 2013-14 Report

The State Legislature, several current and past State officials, former County officers, and the clear language of the laws governing the County Free Library systems contradict the assertion that the Library is not a special district.

After the failure of a June 1992 ballot measure to provide independent funding for the Library (it got a substantial majority but fell short of the required 2/3), the Board of Supervisors decided to give no more money to the County Free Library. All libraries would be closed. On October 30, 1992, after failed negotiations, the Ukiah Valley Friends of the Library filed suit, alleging that the County Free Library system was entitled, by law, to a set portion of the property taxes.

That lawsuit, Barbara Oldenburg, Ukiah Valley Friends of the Library, a California corporation vs. County of Mendocino, Mendocino County Board of Supervisors, Mendocino County Auditor-Controller and Dennis Huey, Norman DeVall, Liz Henry, Jim Eddie, Marilyn Butcher, Nelson Redding in their official capacities, stated that the Board of Supervisors, "...submitted an ordinance establishing the Mendocino County Free Library to the voters at the June 2, 1964, election. The vote was 7615 to 6580 in favor of establishing the library and funding it through property taxes which were set by the Board of Supervisors at a rate of 12 cents."<sup>14</sup>

In the Memorandum of Points and Authorities in support of Petition for Writ of Mandate, there are two exhibits which give the opinion of two State Officials as to the issue of the County Free Library as a special District.<sup>15</sup>

The Chief of the Property Tax Audit Bureau in the Division of Local Government Fiscal Affairs of the State Controller stated in a letter dated July 8, 1992<sup>16</sup>,

"The Library system was listed as a taxing entity prior to the passage of Proposition 13 and received a 1978/79 fiscal year property tax revenue amount under the provisions of Proposition 13. The Library also received state assistance (SB 154 bailout revenue) in the 1978/79 fiscal year and has been contributing to the Special District Augmentation Fund (SDAF) in Mendocino County as if it were a special district. In light of the above noted treatment, it would seem that the Library has been regarded as a special district with its own property tax revenue base and not simply a line item within the County General Fund."

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<sup>14</sup> Newspaper articles about negotiations between the City of Ukiah and the County in re: tax rate are available at Held-Poage Research Library

<sup>15</sup> Case number 69533 filed October 30, 1992 in Mendocino Superior Court

<sup>16</sup> Exhibit 2 to case number 65933

On June 4, 1992, the State Librarian, entrusted by law<sup>17</sup>, as is the Board of Supervisors, with “general supervision” over County Free Libraries, stated:

“Those County libraries that prior to Proposition 13 were funded, in whole or in part, by a dedicated property tax rate, must, under state law, receive their pro rata share of the property tax raised in the County libraries service area.”

On November 10, 1992 (twelve days after the lawsuit was filed, but not served to give the County breathing room before it sustained significant legal cost), the County Administrative Officer (CAO) issued a memorandum. In agreement with the County Auditor, County Counsel, and County Librarian, the CAO acknowledged that the County Free Library was entitled to a set percentage of the property tax revenues. Also, the memorandum acknowledged the Library was a special district stating that:

“The passage of Assembly Bill 3027 in October of this year essentially put the issue of establishing the Library’s organizational identity to rest. The Library was, and remains, a Special District.”

Furthermore, the CAO stated:

“If we are to meet the letter of the law and thus avoid protracted litigation, which I am told we are certain to lose, the funding for the Library must be increased...”<sup>18</sup>

Neither the law nor the historical facts supporting the conclusion that the Library is a Special District entitled to its pro rata share of the property tax have changed. These facts are immutable.

State officials still maintain this conclusion. In the current edition of California Public Library Organization 2013, a pamphlet published on the State Librarian’s website, the publication states:

“County Dedicated Property Tax Libraries. Twenty-three counties imposed a separate property tax for libraries prior to voter approval of Proposition 13 in 1978. Post-Proposition 13, these libraries initially received the same percentage of the 1% property tax rate as they received prior to 1978. However, these percentages were further reduced by the State when it established the “Educational Revenue Augmentation Fund” (“ERAF”) in 1992, which shifts a portion of city, county and special district property taxes, including County dedicated property tax libraries property taxes, to schools. The property tax rate still generates revenues, which are dedicated to county library services. Because a substantial portion of their revenues are guaranteed and cannot be spent on other county activities, county dedicated property tax libraries enjoy a somewhat greater degree of financial independence and certainty.”<sup>19</sup>,”

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<sup>17</sup> Education Code §19167

<sup>18</sup> Copy of memorandum from CAO Appendix E

<sup>19</sup> Page 5 of Pamphlet.



Included in the pamphlet is a list of all county libraries showing sources of revenue and Mendocino County Library appears on the list as supported by dedicated property tax in Appendix B of the pamphlet.

The State Revenue and Taxation Code states:

“...any special district authorized to levy a property tax by the statute under which the district was formed shall be considered a special district. Additionally, a county free library established pursuant to Article 1 (Commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code and for which a property tax was levied in the 1977-78 fiscal year, shall be considered a special district.”<sup>20</sup>

Prior to the enactment of Prop 13, the Mendocino County Free Library was supported by a property tax levy in the 1977-78 fiscal year. Therefore, after Prop 13, the Library in Mendocino County is still a special district entitled to its pro rata share of the property tax.

Current County officials take exception to this conclusion. They have not supplied the Grand Jury with any facts or documentation supporting their assertions. For some reason, which the Grand Jury was unable to ascertain, despite previous Board of Supervisor actions, voting results, and State law, County officials contend that the County Free Library is not an “official” special district.

The County Auditor could not establish the precise pro-rata share of the property tax due the County Free Library. According to the County Auditor, in the current calculation of the property tax due, the formula uses as a base amount, the funding shown in the 1992 year following the agreement among County officials shown in the memo from the CAO. It is, and has been, annually increased or decreased by the percentage change in assessed values. However, the actual pro-rata share could not be definitively determined.

This is a nearly unique accounting methodology. Most, if not all, counties give their County Free Libraries the property tax share outright; it does not go through the county general fund.<sup>21</sup>

The Board of Supervisors is the governing board for the Library, which makes the Library a dependent special district.<sup>22</sup> The County is familiar with this organizational form. The Agenda for the Board of Supervisors always has a section entitled “Board of Directors Matters.” The Library always used to be listed as one of the organizations in that section. After the publication of the Grand Jury 2013-14 Final Report, the Board of Supervisors Agenda of July 22, 2014, no longer listed the Library in that section, and it has not appeared there since.

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<sup>20</sup> Revenue and Taxation Code Article 1 §95. This section is under the heading of Implementation of Article XIII of the California Constitution – otherwise known as Prop 13.

<sup>21</sup> Analysis of County budgets from online resources

<sup>22</sup> Government Code §§56032.5 and 56036

## Librarian's salary

The Grand Jury examined the funding of the Librarian's salary. In researching this issue, the Grand Jury looked closely at the statutes governing the pay of the Librarian<sup>23</sup>. The first code section, Education Code §19147, provides that the Librarian **shall** be paid from the **same** fund as other county officers.<sup>24</sup>

Our County interprets the unambiguous law by changing the legislative language from “**same**” to “**same kind of**” and ignoring the companion section. The County uses this interpretation to pay the salary of the County Librarian from the Library Fund.

The companion section, Education Code §19148, provides that this use of Library funds to pay the County Librarian is permitted only in counties of a population of at least 400,000 in 1960. The minimum funding, at that time, for a County Free Library was three mil (3¢ per \$100) of the property tax. Only San Diego, Sacramento, Los Angeles area and Bay area counties could derive sufficient revenue from the library's property tax portion to pay the county librarian's salary on top of having adequate funds for a functional library.

This fiscal reality played out in Mendocino County, where for years there was no money in the Library budget for books and periodicals. The Friends of the Library organizations and donations backfilled to the extent they were able. The result today is an antiquated collection that the County Librarian is updating using Measure A funds. Measure A funds also help in providing access to electronic information and books, adding hours of operation, staff, and other programs. Paying the Librarian from the General Fund, as required by the Education Code, would increase the money available to provide current services to the public.

According to information provided to the Grand Jury, the only officers of Mendocino County not paid wholly out of the General Fund are the School Superintendent, the Director of Transportation, and the County Librarian.<sup>25</sup>

In the responses to the Grand Jury 2013-14 report and in testimony to the Grand Jury this year, various interviewees cited the Air Pollution Control Officer as a County Officer. This is not correct as the Air Quality Management Control District is a State Agency.

The County School Superintendent is paid from the Mendocino County Office of Education budget. The Highway Director is paid in part by the highway fund and in part by the General Fund. The County Librarian is paid solely from the library's dedicated funds, i.e., property tax and Measure A sales tax.

There are no code sections or regulations that require the School Superintendent or the Highway Director salaries be paid from the General Fund. For the County Librarian there are two statutory

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<sup>23</sup> Appendix C, Education Code §§19147 and 19148

<sup>24</sup> Appendix D, Definition of county officers Government Code §24000

<sup>25</sup> Appendix E

provisions, one immediately following the other, that together require that the Librarian salary be paid from the General Fund.<sup>26</sup>

## **Responses to Grand Jury Findings and Recommendations**

In the response to Finding 5 of the Grand Jury report for 2013-14, the County Executive Officer stated:

“...has no knowledge to support the Grand Jury’s finding of computing errors and underfunding affecting the Library’s budget.”

In the response to Finding 6, the County Executive Officer also stated:

“The CEO does not have the knowledge that supports the finding that there is a breach in following the intent or language of the law.”

These responses do not seem to be in line with the language of the Mendocino County Code §2.28.050.

The County Executive Officer is in charge of the budget process, which includes the Library budget. The ordinance governing the operations in the CEO’s office states:

“The primary duties and responsibilities of the CEO shall be to plan, organize, control and direct the overall operation of the County; prepare, present and monitor the County budget...The CEO shall have the authority to require and receive any and all information from any County department that the CEO may deem necessary to fulfill the above-enumerated duties and responsibilities.”<sup>27</sup>

Further, responding to Recommendations 4, 5, 6, 8, 10, 11, 12, and 13, the CEO stated, “The CEO incorporates by reference the Auditor’s response to this recommendation.” However, the Auditor was not requested to respond and did not respond to Recommendations 4, 5, and 8.

When reviewing the Board of Supervisors’ responses to the Library report, some of the responses were unresponsive. For example, in response to Recommendation 9 of the 2013-14 report the Board stated:

“This Recommendation will not be implemented because it is not warranted. The Board of Supervisors adopts the response to this recommendation by the County Auditor-Controller.”

The County Auditor-Controller was neither required to respond nor made a response to Recommendation 9.

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<sup>26</sup> Education Code §§19147 and 19148

<sup>27</sup> Mendocino County Code §2.28.050(A)

The CEO response to Recommendation 9 was, “This recommendation will not be implemented because it is not warranted.”

Responses without the adequate explanation of why recommendations will not be implemented because they are not warranted, are not in compliance with the standard established in the Penal Code §933.05(b)(4):

“The recommendation will not be implemented because it is not warranted or is not reasonable, with an **explanation therefor.**” (Emphasis added)

The response to Findings 6, 9, and 12 by the Board of Supervisors were identical, even though the subject matter for each finding was different.

These responses do not further the public’s knowledge.

## **FINDINGS**

- F1. The County is not required by any law or regulation to charge the Library A-87 costs. The decision to charge A-87 costs is solely within the authority of the Board of Supervisors. The County Auditor develops and supplies to the County Executive Office the A-87 State Cost Plan. The CEO prepares and recommends the budget to the Board of Supervisors.
- F2. The application of the State Cost Plan to the County budget is the decision of the Board of Supervisors. The staff preparing the budget for the Supervisors’ consideration, and the Board of Supervisors itself, has an obligation to fully understand the difference between direct billing and the purpose and applicability of A-87 costs when charged to the Library budget.
- F3. The County charges the Library for A-87 use costs for buildings and building improvements even if the County did not spend a dime of the County General Fund. These are charges the Grand Jury finds are inappropriate and unacceptable.
- F4. The donations from the public for the Fort Bragg Library building and the Federal grant for the Willits Library are used by the County as a basis for computing A-87 costs. The Grand Jury specifically finds these charges as inappropriate and unacceptable.
- F5. Inappropriate and unacceptable A-87 charges for equipment and buildings divert the Library’s dedicated funds to the General Fund, reducing the amount the Library has to spend for services to the public.
- F6. The Grand Jury concludes from the County Auditor’s answers to interview questions and the Grand Jury report from 2013-14, that as far as the acquisitions prior to 1996 are concerned, the County has been and is still collecting A-87 charges for equipment use that are not permitted per the A-87 Handbook.

- F7. The A-87 charges for fixed and other assets not paid for by the General Fund should be waived. Doing otherwise constitutes a tax levied on all grants, donations, and the Library's dedicated funds until the County General Fund receives the full amount of all external sources of money. The essential characteristics of a tax are defined by Black's Law Dictionary as:
- "A charge, usually Monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue."
- The statutory authority of the Board of Supervisors over the Library is "general supervision"; it does not include the power to tax without voter approval.
- F8. The State Legislature has passed laws providing that the County Free Libraries are special districts. The State Librarian has consistently maintained that the County Free Libraries are special districts. The Grand Jury finds that the Mendocino County Free Library is a dependent special district.
- F9. By law, the Mendocino County Free Library, a special district, is entitled to a pro-rata share of the property taxes.
- F10. Absent adequate explanation of the position taken by some County Officials that the Library is not a special district, the Grand Jury does not see a valid reason for the current Board of Supervisors supporting this position.
- F11. The County Officials' interpretation of the Education Code §19147, accomplished by changing the statutory language, has resulted in paying the County Librarian from the Library's dedicated funds rather than the General Fund. Further, County Officials also ignore the companion section, §19148.
- F12. Paying the County Librarian from the Library funds improperly limits the money available for the Library and is contrary to statutory interpretation principles.
- F13. Measure A sales taxes are being appropriately used to update the library collections, services, providing new programs, and hiring needed staff.
- F14. Some responses to Findings and Recommendations of the Grand Jury 2013-14 report **do not** conform to the standards in the Penal Code §933.05. By conforming to the standards of the Penal Code, public officials would actually inform the public as to the issues at hand.

## RECOMMENDATIONS

The Grand Jury recommends that:

- R1. all respondents conform to Penal Code §933.05. (F14)
- R2. the Board of Supervisors and all staff responsible for budget planning and implementation be trained in the difference between direct billing and A-87 costs, including the difference between overhead and use costs, for the Library. (F2)
- R3. the Board of Supervisors with the CEO remove all A-87 charges for equipment from the Library Budget. (F1, F5, F6, F7)

- R4. A-87 costs for building use be based only on those amounts that are documented as actually paid from the County General Fund. (F1, F3, F4, F5, F7)
- R5. the Board of Supervisors, the County Auditor, and the CEO recognize that insurance proceeds, grants, and donations are not General Fund monies for the purposes of A-87 costs charged to the Library. (F1, F2, F3, F4, F5, F7)
- R6. the Board of Supervisors with the County Auditor establish a specific tax rate for the Library as a dependent Special District. (F8, F9, F10)
- R7. the Board of Supervisors with the County Auditor revise the procedures to require the budget to show the Library revenues as a pro-rata share of the property tax. (F8, F9, F10)
- R8. the Board of Supervisors pay the Librarian's salary from the General Fund. (F11, F12)

## RESPONSES

Pursuant to Penal Code §933.05, responses are *required* from the following individuals:

- Auditor-Controller, Mendocino County (Findings 1 through 6, 8 through 14 and Recommendations 1, 2, 4 through 7)
- County Executive Officer, Mendocino County (All Findings and All Recommendations)
- Librarian, Mendocino County (Findings 2, 8, 9, 11, 12, 13 and Recommendations 2, 8)

Pursuant to Penal Code §933.05, responses are *required* from the following governing body:

- Board of Supervisors, Mendocino County (All Findings and All Recommendations)

The governing body indicated above should be aware that the comment or response of the governing body must be conducted subject to the notice, agenda and open meeting requirements of the Brown Act.

Pursuant to Penal Code §933.05, responses are *requested* from the following Advisory Board:

- Library Advisory Board, Mendocino County (All Findings and All Recommendations)

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code §929 requires that reports of the Grand Jury not contain the name of any person or facts leading to the identity of any person who provides information to the Civil Grand Jury.

# APPENDIX A, page 1 of 3

County of Mendocino  
A-87 Cost Allocation Plan

Fiscal 2012/13	5510 Veterans Services	6210 Farm Advisor	7110 Museum	3010 Trans- portation	3030 Storm Damage	3041 Roads & Bridges	4511 Landfill Closure	County Airports	6110 Library	2840 Fish & Game
Building Use	0	6,569	56,059	23,411	0	0	0	36,133	41,070	40
Equipment Use	0	941	1,325	0	0	0	0	7,792	10,542	2,864
Executive Office	0	361	347	12,108	0	0	0	0	1,890	0
Auditor-Controller	0	1,900	1,645	51,466	294	0	721	0	8,770	184
Treasurer-Tax Collector	0	164	143	4,053	47	0	116	0	558	30
General Services	0	778	331	44,388	439	589	0	2,037	2,510	871
County Counsel	0	0	304	15,647	0	0	0	0	12,565	208
Human Resources	0	1,338	1,029	37,349	0	0	0	0	16,282	0
Buildings & Grounds	6,205	21,397	41,056	93,439	0	0	0	1,509	24,233	0
Garage	0	3,300	0	5,599	0	0	0	0	113	0
Retirement	0	270	323	11,047	0	0	0	0	2,210	0
Information Services	0	4,245	4,038	85,347	924	0	2,130	0	20,336	579
Actual 2009/10 Costs	6,205	41,263	106,600	383,855	1,704	589	2,967	47,471	141,079	4,776
Roll Forward	(4,339)	(12,340)	(19,914)	14,204	(6)	457	1,323	(23,962)	(4,050)	2,106
Total Plan Allocation	1,866	28,924	86,685	398,059	1,698	1,045	4,290	23,508	137,029	6,881

# APPENDIX A, page 2

County of Mendocino  
A-87 Cost Allocation Plan

Fiscal 2013/14	5510 Veterans Services	6210 Farm Advisor	7110 Museum	3010 Trans- portation	3030 Storm Damage	3041 Roads & Bridges	4511 Landfill Closure	County Airports	6110 Library	2840 Fish & Game
Building Use	0	6,197	56,119	25,391	0	0	0	36,133	41,070	40
Equipment Use	0	941	1,325	0	0	0	0	9,789	10,542	2,864
Other Operating Expense	0	0	0	0	0	0	0	0	0	0
Executive Office	0	390	364	12,277	0	0	0	0	1,772	0
Auditor-Controller	0	1,747	2,125	46,701	706	0	693	0	9,941	151
Treasurer-Tax Collector	0	175	221	4,709	132	0	129	0	870	28
General Services	0	(443)	(1,134)	36,747	171	0	0	3,906	(712)	402
County Counsel	0	0	105	3,954	0	0	0	0	4,907	35
Human Resources	0	2,723	4,449	52,178	0	0	0	0	16,247	0
Buildings & Grounds	189	20,920	19,461	72,353	0	0	0	740	28,561	0
Garage	0	3,292	0	(59)	0	0	0	0	(1,693)	(954)
Retirement	0	288	384	9,740	0	0	0	0	2,400	0
Information Services	0	3,786	4,894	80,125	2,102	0	1,879	0	25,446	452
Actual 2011/12 Costs	189	40,016	88,313	344,116	3,111	0	2,701	50,568	139,352	3,019
Roll Forward	(8,721)	(1,984)	(36,033)	(77,897)	65	0	29	5,025	(24,706)	(3,395)
Total Plan Allocation	(8,532)	38,032	52,279	266,219	3,175	0	2,730	55,594	114,646	(377)



# APPENDIX A, page 3 of 3

County of Mendocino  
A-87 Cost Allocation Plan

Fiscal 2014/15	3030 Storm Damage	3041 Roads & Bridges	4511 Landfill Closure	County Airports	6110 Library	2840 Fish & Game	2313 Sheriff COPS	2511 Jail COPS	2561 Probation COPS	2314 AB443 Sheriff	2861 Mobile Spay/Neuter
Building Use	0	0	0	36,133	41,070	40	0	0	0	0	0
Equipment Use	0	0	0	9,789	10,542	2,864	0	0	0	0	0
Other Operating Expense	0	0	0	0	0	0	0	0	0	0	0
Executive Office	0	0	0	0	4,415	0	254	0	554	0	0
Auditor-Controller	243	0	713	0	16,014	14	(120)	(136)	308	0	29
Treasurer-Tax Collector	13	0	39	0	502	1	5	1	0	0	2
General Services	(419)	(72)	0	382	4,030	0	0	0	0	0	(28)
County Counsel	0	0	0	0	5,867	0	0	0	0	0	0
Human Resources	0	0	0	0	35,750	0	464	0	0	0	0
Buildings & Grounds	0	0	0	859	29,016	0	0	0	0	0	0
Garage	0	0	0	0	(5,121)	0	0	0	0	0	0
Retirement	0	0	0	0	3,072	0	57	0	0	0	0
Information Services	2,088	0	2,049	0	15,900	449	195	39	0	0	605
Actual 2012/13 Costs	1,925	(72)	2,801	47,163	161,067	3,368	855	(96)	862	0	608
Roll Forward	221	(681)	(166)	(308)	19,978	(1,408)	340	0	66	0	(782)
Total Plan Allocation	2,147	(734)	2,635	46,854	181,035	1,960	1,195	(96)	928	0	(174)

BOS Agreement No. 03019

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding entered into on the 4<sup>th</sup> day of Feb, 2003, by and between the County of Mendocino (hereinafter referred to as "the County") and the Friends of the Fort Bragg Library (hereinafter referred to as "the Friends"):

WHEREAS, the Friends have long supported their local library, located at 499 East Laurel Street, Fort Bragg, by volunteer labor and donations; and

WHEREAS, the Fort Bragg Branch Library requires interior remodeling; and

WHEREAS, the Friends desire to pay for the cost of the remodeling of the Fort Bragg Branch Library; and

WHEREAS, such support of the Library remodeling project would serve as a positive model of private and public cooperation;

THEREFORE, the County and the Friends agree as follows:

1. The Friends shall deposit the sum of one hundred fifty thousand dollars (\$150,000.00) to an account to be maintained by the County Auditor-Controller and managed by the County General Services Director, in consultation with the County Library Director.
2. Funds deposited by the Friends shall be exclusively used for the Fort Bragg Branch Library Interior Remodeling Project ("the Project").
3. The total cost of the Project is estimated to be one hundred fifty thousand dollars (\$150,000.00). The entire cost of the Project shall be paid from monies deposited to the Project fund by the Friends.
4. The Project shall be supervised by the County General Services Department, in consultation with the County Library Director and the Friends.
5. The Project shall be subject to the requirements of the State of California Public Contracts Code.
6. The County shall endeavor to complete the Project no later than December 31, 2004.
7. Initially, the Friends shall deposit sufficient funds for architectural services through the bidding phase of the Project. The architect shall be paid for its services through the bidding phase. The remaining Project cost, including the balance of the architect's fees, and a seven percent (7%) contingency sufficient to pay the contract cost based on the lowest responsive and responsible bid, shall be deposited prior to the County entering into a construction contract.

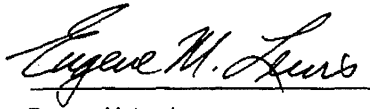
**APPENDIX B**, page 2 of 2

8. In the event that the lowest responsive and responsible bid received for the Project exceeds the monies available in the Project fund, the Project will be held in abeyance until sufficient funds have been deposited to complete the Project. If sufficient funds are not available, the Project will be canceled by mutual agreement and remaining funds shall be returned to the Friends.
9. In the event that the funds deposited to the County by the Friends exceed the total Project cost, the balance of the funds shall be returned to the Friends.

IN WITNESS WHEREOF, the parties hereto have executed these presents in duplicate original the day and year first above written.

FRIENDS OF THE FORT BRAGG LIBRARY

COUNTY OF MENDOCINO



Eugene M. Lewis  
President, Friends of the Fort Bragg Library



Chairman, Board of Supervisors

ATTEST:  
Kristi Furman, Clerk of the Board

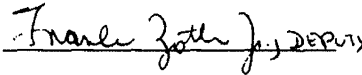


RECOMMENDED BY:



Erika DeMille, Director, Library

APPROVED AS TO FORM:  
H. Peter Klein, County Counsel



RECOMMENDED BY:



Pete Malstad, Director, General Services

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

KRISTI FURMAN  
Clerk of the Board

By: 

**APPENDIX C**, page 1 of 2

Library Expenses Paid by Friends of the Fort Bragg Library

1993	\$16,444	County subvention/staff to keep Library open
	272	Security system
	7,833	Computer acquisition
	7,683	Library expense
	<b>\$32,232</b>	<b>Total</b>
1994	\$49,600	Automation of Library catalog
	15,450	County subvention/staff to keep Library open
	10,699	Library expense
	<b>\$75,749</b>	<b>Total</b>
1995	\$16,444	County subvention/staff to keep Library open
	11,095	Library expense
	7,833	Computer acquisition
	<b>\$35,372</b>	<b>Total</b>
1996	\$18,107	County subvention/staff to keep Library open
	11,471	Library expense
	4,805	Computer acquisition
	<b>\$34,383</b>	<b>Total</b>
1997	\$25,272	County subvention/staff to keep Library open
	18,734	Library expense
	8,915	Automation/internet
	<b>\$52,921</b>	<b>Total</b>
1998	\$26,294	County subvention/staff to keep Library open
	11,000	Library expense
	12,244	Automation/internet
	<b>\$49,538</b>	<b>Total</b>
1999	\$20,000	County subvention/staff to keep Library open
	8,100	Automation
	9,079	Library expense
	1,900	Security system
	<b>\$39,079</b>	<b>Total</b>
2000	\$23,499	County subvention/staff to keep Library open
	16,843	Library expense
	<b>\$40,342</b>	<b>Total</b>
2001	\$11,811	County subvention/staff to keep Library open
	12,656	Library expense
	<b>\$24,467</b>	<b>Total</b>

**APPENDIX C**, page 2 of 2

Library Expenses Paid by Friends of the Fort Bragg Library

2002	\$21,179	Library expense (Total)
2003	\$22,150	Architect for renovation
	15,387	Library expense
	\$37,537	Total
2004	\$16,667	Library expense (Total)
2005	\$15,306	Library expense (Total)
2006	\$450,000	Check to County for renovation
	2,268	Rental trailers for books
	8,828	Library expense
	\$461,096	Total
2007	\$15,366	Library expense (Total)
2008	\$14,994	Library expense (Total)
2009	\$19,647	Library expense (Total)
2010	\$26,578	Library expense (Total)
2011	\$27,011	Library expense
	2,993	Furnishings/shelving
	\$30,004	Total
2012	\$24,587	Library expense (Total)
2013	\$31,777	Library expense
	2,276	Furniture
	\$34,053	Total as of 30 November 2013

Library expense includes book/media purchase, janitorial maintenance, landscape upkeep, repairs and replacements, supplies, subscriptions, and internet connectivity.

## APPENDIX D

Per the Auditor, the list of fixed assets used to calculate the A-87 costs for the Library and the Auditor's interpretation of how long the use charges may be applied:

- 1.) **"For Building Use:** the County uses the "Use Allowance" method. When a County claims a use allowance for a category of fixed assets (in this case buildings), a standard percentage (2%) of the total cost of each building may be claimed each year that the asset is in use."

**"2014/15 Building Use for the Library is being calculated as follows:**

Bldg #	Description	SqFt	Cost	2 %Allow
21	Willits Library	7000	\$832,719	\$16,654
8	Ft. Bragg	5500	\$1,220,794	\$24,416
			Total	\$41,070"

- 2.) **"For Equipment Use:** the County uses the "Use Allowance" method. When a County claims a use allowance for a category of fixed assets (in this case equipment), a standard percentage (6.67%) of the total cost of each piece of equipment may be claimed each year that the asset is in use. Below is the current equipment listing for the Library."


**"2014/15 Equipment Use for the Library is being calculated as follows:**

Asset	Description	Class	Loc. Descr	Fiscal Yr	Acquis Cost
02134	FILE 120DRW CARD WALNUT	FE	MAIN LIBRARY	1973	2,500.00
02135	FILE 120DRW CARD WALNUT	FE	MAIN LIBRARY	1973	2,500.00
02297	SHELVING METAL	FE	MAIN LIBRARY	1975	2,253.00
11355	TATTLE TAPE SENSING UNIT	CO	MAIN LIBRARY	1986	8,576.00
15211	MICROFILM READER/PRINTER	FE	FORT BRAGG	1990	2,725.00
20182	CANON MICROPRINTER 90	CO	MAIN LIBRARY	1995	4,494.00
27109	1995 BOOKMOBILE GILLIG	OT	MAIN LIBRARY	1996	135,000.00
				TOTAL	158,048.00
				6.67% ALLOW	10,542.00"

MENDOCINO COUNTY

MEMORANDUM

TO: Members of the Board of Supervisors November 10, 1992

FROM:  Michael K. Scannell, County Administrative Officer

SUBJECT: Litigation Relative to the Level of Funding Made Available to the Mendocino County Library System

Background

Over the last number of years, the level of discretionary funding which has been made available to the Mendocino County Library system has been reduced. The condition existed, and still exists, because of the harsh economic conditions which seem to plague our County.

In the spring of this year, the Friends of the Library approached the Board with a request that the issue of financing the Library be brought before the electorate. The specific request was that a ballot measure be placed before the electorate in June which called for the imposition of a parcel tax on certain types of parcels within Mendocino County.

The Board accepted the request of the Friends of the Library and placed the issue on the June ballot for consideration by the electorate. In a follow-up action, one which was apparently designed to demonstrate that the County was indeed in dire straights, the Board indicated that the funding from the County's general fund for Library operations would be limited to a level which insured the operations of the Library through September 30, 1992.

That action had the effect of putting the citizenry on notice that should the June Library funding ballot measure fail, Library operations in Mendocino County would, for all practical purposes, cease to exist.

We now know that the ballot measure failed and that funding for the Library in the Proposed Budget was limited to an amount which would carry the Library's operations through September 30, 1992.

Once it became clear that the future of the County Library system past October 1st was questionable, the Friends of the Library mounted a concerted legal effort to document legally that the Library was a Special District by operation of law and that as such, it (the Library) was entitled to a quantifiable piece of the property taxes collected in the County, just like all other

Special Districts. Legal arguments ensued and the Director, as well as legislative staff, took positions. The Friends of the Library took the position of advocacy for the contention of the Friends of the Library that the Library was indeed a Special District.

The passage of Assembly Bill 3027 in October of this year essentially put the issue of establishing the Library's organizational identity to rest. The Library was, and remains a Special District. As such, we are compelled by law to provide a level of funding to the Library which equals, at a minimum, its pro rata share of the property tax dollar.

#### Funding Requirement

The Auditor-Controller and I have reviewed the tax rate which has been established for the Library and together, we have concluded that in order to meet the letter of the law, we must make available to the Library system no less than \$471,000 during the current fiscal year. This amount can legally be reduced by charging out to the Library those indirect costs which the County incurs in providing administrative support services to the Library. These expenses, A-87 costs, are estimated to be \$80,700 in the current fiscal year. The net required funding then which we must make available to the Library is \$390,300.

During the Final Budget process, the Board appropriated \$225,000 to the Library. This falls short of the amount required by law by some \$165,300. If we are to meet the letter of the law and thus avoid protracted litigation, which I am told we are certain to lose, the funding for the Library must be increased by some \$165,300.

#### The Issue Before Us

The issue before us is to identify a source of funding which can be used in meeting the requirement outlined above.

Over the last number of months, I have been working with the State Board of Corrections on the goal of freeing up, for general fund purposes, some two hundred fifty thousand dollars in funding which has been made available to Mendocino County to fund jail construction projects. The funding which I had requested was considered by me to be our overmatch on previously funded jail construction projects.

The State Board of Corrections has agreed with my contention that the funds I requested are discretionary funds and thus are not restricted to capital projects. The net effect of this is that the County of Mendocino will receive two hundred fifty thousand dollars in unanticipated revenue from the State Board of Corrections prior to the close of the fiscal year. A formal notification of this action has been sent to me by the Board of Corrections. A copy of same is attached for your review.



**APPENDIX E**, page 3 of 3

Recommendation:

1. Direct that the Auditor-Controller increase the appropriation for the Library by \$165,300.
2. Appropriate the funding which we receive from the State Board of Corrections in the contingency fund and take the follow-up action of diverting the amount described in #1 above to the Library.

Taking the actions outlined above will bring us into compliance with the law as it relates to funding our Library system.

I will be happy to respond to any questions or concerns you may have relative to this issue.

Thank you.

MKS:tb

cc: Dennis Huey, Auditor-Controller  
H. Peter Klein, County Counsel  
Henry Bates, Library Director

## **APPENDIX F**

### California Education Code §19147 **Payment of salary**

The salary of the County librarians shall be paid by each of the counties in equal monthly installments, at the same time and in the same manner and out of the same fund as the salaries of other County officers are paid.

### California Education Code §19148 **Payment of salary in County with more than 400,000 population**

The board of supervisors of a County over 400,000 population, as determined by the 1960 decennial census, maintaining a County free library may provide that the salary of the County librarian be paid from the same fund used for maintaining and operating the County free library.

Nothing in this section shall be construed as modifying the status of the County librarian as a County official pursuant to Section 24000 of the Government Code.

## APPENDIX G

The definition of a County officer can be found in Section 24000 of the Government Code which states:

“The officers of a County are:

- (a) A district attorney.
- (b) A sheriff.
- (c) A County clerk.
- (d) A controller.
- (e) An auditor, who shall be ex officio controller.
- (f) A treasurer.
- (g) A recorder.
- (h) A license collector.
- (i) A tax collector, who shall be ex officio license collector.
- (j) An assessor.
- (k) A superintendent of schools.
- (l) A public administrator.
- (m) A coroner.
- (n) A surveyor.
- (o) Members of the board of supervisors.
- (p) A County veterinarian.
- (q) A fish and game warden.
- (r) A County librarian.
- (s) A County health officer.
- (t) An administrative officer.
- (u) A director of finance.
- (v) A road commissioner.
- (w) A public guardian.
- (x) Such other officers as are provided by law.”

*(Amended by Stats. 1993, Ch. 1195, Sec. 6. Effective January 1, 1994.)*

## APPENDIX H

Source of Salaries for All Officers of Mendocino County as defined by the California Government Code §24000

Source of Salaries	General Fund 1100	Road Fund 1200	Library Fund 1205	Air Quality Fund 3270	Schools Fund 5000	General Liability 7130	Workers Comp Fund 7140	Health Ins. Fund 7150
Mendocino County Officers								
District Attorney	100%							
Sheriff-Coroner	100%							
Assessor Clerk-Recorder	100%							
Auditor-Controller	100%							
Treasurer-Tax Collector	100%							
Superintendent of Schools					100%			
Board of Supervisors	100%							
Librarian			100%					
CEO	100%							
Transportation Director	42%	58%						