

# Response to Grand Jury Report

Report Title: **THE LIBRARY**

Report Date: May 27, 2015

Response by: Mendocino County Board of Supervisors

## Findings

I (we) agree with the findings numbered: 1, 2, 3, 4, 5, 6, 13, 14

I (we) disagree wholly or partially with the findings numbered: 7, 8, 9, 10, 11, 12

*Please see the attached statement specifying the findings or portions of the findings that are disputed including an explanation of the reasons therefore.*

## Recommendations

Recommendations numbered 1, 2, 3, 5 have been implemented.

*Please see the attached statement describing the implementation actions.*

Recommendations numbered 4 has not yet been implemented, but will be implemented in the future.

*Please see the attached statement with the schedule for implementation.*

Recommendations numbered 6, 7, 8 will not be implemented because they are not warranted or are not reasonable.

*Please see the attached statement with an explanation of the reasons why the above recommendations will not be implemented.*

Signature: \_\_\_\_\_

Carre Brown, Chair, Mendocino County Board of Supervisors

Date: 10-20-15

Number of pages attached: 7

# MENDOCINO COUNTY BOARD OF SUPERVISORS' RESPONSE

## TO GRAND JURY REPORT TITLED:

### LIBRARY

#### INTRODUCTION

The Mendocino County Board of Supervisors welcomes this opportunity to respond to the most recent Grand Jury report concerning the Library. For the second year in a row the Grand Jury has reviewed certain aspects of Library administration and funding. The current report focuses on three main areas of concern: A-87 Cost Plan charges; whether or not the Library is a Special District; and whether or not the Librarian's salary should be paid from the County General Fund instead of the Library fund.

The Board of Supervisors appointed an ad hoc committee to meet with county staff and other interested parties in an effort to resolve these issues and restore public confidence that library funds are being used for library purposes. In addition to responding to the Grand Jury Findings and Recommendations, the Board of Supervisors offers the following general comments and recommendations for future actions on the three main areas of concern identified by the Grand Jury.

#### A-87 COST PLAN CHARGES

The Board of Supervisors agrees that A-87 Cost Plan charges for buildings and equipment use have been incorrectly calculated. The Board of Supervisors agrees that building and equipment use charges should not apply to costs that were paid for with donations, grants or insurance proceeds. Equipment use charges should also not apply to equipment that is no longer in service or for which the cost has been fully reimbursed. The Board of Supervisors is committed to updating, verifying, and correcting A-87 charges and crediting the Library for all incorrect charges.

The Federal Office of Management and Budget publishes Circular A-87 which is used to establish allowable costs incurred by state and local governments that administer federal grants. The State Controller issues a Handbook of Cost Plan Procedures for California Counties to insure the consistent application of cost plan principles. Every California county is required to submit an A-87 Cost Plan to the State Controller for approval. An approved cost plan also allows state and local departments and agencies to bill individuals, other agencies, and departments for the cost of providing services.

A-87 cost plans are applied on a fiscal year basis and must be submitted to the State Controller's Office by December 31 of each year. In Mendocino County the practice has been that the General Services Administration sends a fixed asset certification letter to each department (including the Library) requiring that the department submit an updated listing of their current fixed assets. The fixed asset list is then sent to the Assessor/Clerk/Recorder's Office to be certified. The certified fixed asset list is then updated in the Munis finance system. The Auditor/Controller then prints a copy of the certified fixed asset list to calculate each department's equipment use charge for the cost plan. The A-87 cost plan charges are then included in each department's budget.

The Board of Supervisors believes that the incorrect application of A-87 charges to donations, grants and insurance proceeds, and to equipment that was paid off or was no longer in service was not intentional but resulted from incomplete reporting, tracking and accounting among departments.

The Board of Supervisors wishes to commend Auditor/Controller Lloyd Weer for his commitment to conducting a comprehensive review of past A-87 cost plan charges and to verifying the accuracy of any charges going forward. Thus far, it has been verified that the Library was incorrectly charged for A-87 fees on \$257,638 in insurance proceeds paid to the County following the 1987 arson fire that destroyed the Fort Bragg Library. The Library was also incorrectly charged for A-87 fees on \$472,150 generously donated by Fort Bragg Friends of the Library to assist in modernizing the Fort Bragg Library. A charge, set by formula, was incorrectly applied to the above insurance proceeds and donations. The Auditor/Controller, Executive Office, and Board of Supervisors are in agreement that the library fund must be reimbursed in an equal amount for all previous incorrect charges.

Research continues regarding an additional \$295,130 in insurance proceeds for the library in Fort Bragg, but preliminary indications are that these funds were paid from the County's self-insurance fund and not an outside source. Research also continues regarding \$407,500 in state grant funds that may have been used to assist in funding construction of the Willits Library. Verification of grant funding for the library in Willits will also result in a credit to the Library. Auditor/Controller Weer has also verified that all the items on the Library fixed asset list used to develop the current A-87 cost plan are no longer subject to equipment use charges, either because they have been fully paid for or because they are no longer in use. This will result in an additional credit to the library.

*The Board of Supervisors recommends that the Auditor/Controller and Executive Office work collaboratively to insure that appropriate methods of reporting, tracking, and accounting are developed to insure the accuracy of A-87 cost plan charges for buildings and equipment use.*

*The Board of Supervisors recommends that within sixty days the Auditor/Controller, Executive Office, and Board of Supervisors complete the verification of previous A-87 charges; determine the total credit due the Library for previous incorrect charges; and recommend an appropriate method and timeframe for reimbursement of the Library.*

### IS THE LIBRARY A SPECIAL DISTRICT?

The County maintains that the Library is not a special district, but has been treated as such for revenue and taxation purposes. The Grand Jury maintains that the Library is a dependent special district which is entitled to a pro rata share of property tax but the Grand Jury has not articulated what difference this would make for the Library.

As a dependent special district, the Library would continue to be governed by the Board of Supervisors. Provided the Library receives the same amount of property tax revenue (transferred from the County) that it would receive if it were a dependent special district, the difference between being "a special district" or being "considered a special district" is not clear.

State Revenue and Taxation Code (Chapter 6, Article 1, Section 95, (m)) provides: "...a county free library...for which a property tax was levied in the 1977-78 fiscal year, shall be considered a special district." The Board of Supervisors has verified that a tax rate of .12 cents per \$100.00 in assessed valuation was levied on behalf of the County Library in Fiscal Year 1977-78 and therefore the Library shall be *considered* a special district.

Pages i. – v. from the 1977-78 budget are included as an attachment. The Mendocino County Library is listed on page ii. as a County department. The Library is not listed on page iii. as a district governed through the Board of Supervisors (dependent special districts). Nor is the Library listed on page iv. as a district governed through local boards (special districts). Page v. lists the Library under service and miscellaneous, but with a specific tax rate.

Beginning in 1978-79 the County no longer adopted a separate tax rate for the Library, but transferred a portion of County property tax to the Library Fund. In 1992 County officials, including the County Librarian, agreed that the Library was entitled to a pro rata share of the property tax. The memorandum that memorializes that agreement expresses the pro rata share as a fixed dollar amount, not a percentage. It ought to be a matter of simple mathematics to translate the fixed dollar amount into a percentage. In any case, the portion of property tax transferred to the library has adjusted every year based on changes in the assessed valuation. In this regard, it seems clear that the Library does receive the dollar equivalent of a pro rata share of property tax.

The Board of Supervisors understands that the Local Agency Formation Commission (LAFCO), which maintains records on all special districts in the county, has no record of the County Library ever being recognized or organized as a special district.

*The Board of Supervisors recommends that County officials seek to determine the practical difference to the Library, if any, between being designated a dependent special district or being "considered a special district" for revenue and taxation purposes.*

***The Board of Supervisors recommends that County officials seek to determine the agreed upon equivalent pro rata share of property tax due the Library, expressed as a percentage, that was agreed upon in 1992.***

**FROM WHICH FUND SHOULD THE LIBRARIAN BE PAID?**

Education Code Section 19147 states that the Librarian shall be paid from the *same fund* as other county officers. The Grand Jury interprets "same fund" to mean the County General Fund. The only problem with this interpretation is that not all county officers are paid from the County General Fund. The Mendocino County Superintendent of Schools, an elected official, is defined by law as a county officer, but is paid by the Mendocino County Office of Education, an agency that is administratively and financially independent from the County.

The Board of Supervisors believes that the above referenced Education Code Section is ambiguous and open to interpretation. If the legislature had intended that the librarian's salary be paid from the County General Fund, they could easily have said so.

Preliminary investigation was unable to identify any legislative history or intent for this code section which is believed to be very old. The issue of what fund should the librarian be paid from was first raised by the Grand Jury in its 2013-14 report. Based on a partial survey of other county library systems, paying the librarian from the library fund appears to be common practice.

The Board of Supervisors believes the practice of paying the librarian from the library fund is reasonable since the Library has two dedicated sources of income – a pro rata share of property tax and Measure A sales tax. The Board of Supervisors also believes that the law should be clarified and complied with.

***The Board of Supervisors recommends that clarification of the Education Code as it pertains to payment of the County Librarians salary be included in the 2016 Legislative Platform and that the County seek a speedy resolution of this issue in the State Legislature.***

**RESPONSE TO SPECIFIC FINDINGS AND RECOMMENDATIONS:**

**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.**

Agree with explanation. The Grand Jury has not accurately described the County budget preparation process, but budget adoption, including application of A-87 costs to specific departments, including the County Library, is within the purview of 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.**

Agree with explanation. The Board of Supervisors is not aware of there being any issue with understanding the difference between direct billing and the purpose and applicability of A-87 costs. There was a breakdown in properly reporting and tracking allowable building and equipment use charges.

**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.**

Agree with explanation. Consistent with state law, it is the policy of the Mendocino County Board of Supervisors to charge the County Library (and other departments subject to A-87 costs) only the amount

needed to reimburse the County for actual costs incurred by the County. None of the several departments involved in compiling and maintaining the County's list of fixed assets took responsibility for insuring the accuracy of the list, including properly tracking those assets funded in whole or in part by donations, grants, or insurance proceeds. The Auditor-Controller has made a commitment to review all A-87 building and equipment use charges applied to the Library and to credit the library for any necessary adjustments. The Board of Supervisors fully supports updating, verifying and correcting the A-87 cost plan charges; identifying and crediting the library for any previous incorrect charges; and developing a system to insure the accuracy of any future charges

**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.**

Agree with explanation. The incorrect application of A-87 charges to donations and grant funds was not intentional, but resulted from incomplete reporting, tracking, and accounting among departments. The Board of Supervisors will work with the Auditor-Controller and the Executive Office to insure the accuracy of future A-87 charges and to credit the library for past incorrect charges.

**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.**

Agree with explanation. The incorrect application of A-87 charges for equipment use and building cost was not intentional, but resulted from incomplete reporting, tracking, and accounting among departments. This situation is being corrected and the Board of Supervisors will assure that the County Library be credited in full for all previous incorrect charges.

**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 used that are not permitted per the A-87 Handbook.**

Agree with explanation. The incorrect application of A-87 charges to specific equipment in use for fifteen years or longer was not intentional, but resulted from incomplete reporting, tracking, and accounting among County departments. This situation has been corrected and the Board of Supervisors will assure that the County Library will be credited in full for all previous incorrect charges.

**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.**

Disagree. Charges that were incorrectly assessed for buildings and equipment that were not funded by the General Fund should not be “waived” but should be corrected. The Board of Supervisors will assure that any past overcharges will be credited back to the County Library. Additionally, A-87 is not a tax, but a state approved process for recovery of costs paid by the County General Fund.

**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.**

Disagree in part. State Revenue and Taxation Code states “a county free library ...for which a property tax was levied in the 1977-78 fiscal year, shall be considered a special district.” The Board of Supervisors has verified that a property tax was levied for the County Library in the 1977-78 fiscal year; therefore, the County Library “shall be considered a special district.” The County Library continues to receive the equivalent of a pro rata share of property tax as a transfer from the County General Fund and therefore has been treated the same as if it were a special district for revenue and taxation purposes.

**F9 – By law, the Mendocino County Free Library, a Special District, is entitled to a pro-rata share of the property taxes.**

Disagree in part. Prior to the enactment of Proposition 13, the Board of Supervisors annually levied a property tax to support the County Library. The tax rate to support the library was traditionally set at .12 cents per \$100. of assessed valuation, but could have been increased or decreased subject to approval by the Board of Supervisors. Following the enactment of Proposition 13 a separate tax rate was no longer adopted for the County Library and the County property tax was generally limited to 1% of the assessed valuation. Instead of levying a separate property tax for the Library, the Board of Supervisors transferred a portion of the County property tax to support the Library. In 1992 County officials, including the Librarian agreed to allocate a specific dollar amount that was determined to be the equivalent of a pro rata share of the property tax. Since 1992, that amount has been adjusted based on changes in the assessed valuation. Therefore, the Library is supported by the equivalent of a pro rata share of the property tax.

**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.**

Disagree. The Board of Supervisors agrees that the County Library “shall be considered a special district” for purposes of revenue and taxation and annually transfers the equivalent of a pro rata share of property tax revenue to the Library. The Board of Supervisors does not believe that the Library has ever been designated or organized as a special district.

**F11 – The County Officials’ interpretation of the California Education Code § 19147, accomplished by changing the statutory language, has resulted in paying the County Librarian from the Library’s dedicated funds that than the General Fund. Further, County Officials also ignore the companion § 19148.**

Disagree. The state code sections cited are ambiguous and open to interpretation. All county officers are not paid from the County General Fund. The Mendocino County Superintendent of Schools is a county officer as defined by state code but is paid by the Mendocino County Office of Education which is administratively and financially independent from the County of Mendocino. Had the legislature intended that the County Librarian be paid from the County General Fund, they could easily have said so.

**F12 – Paying the County Librarian from the Library funds improperly limits the money available for the Library and is contrary to statutory interpretation principles.**

Disagree. As stated in the response to F11, if the legislature intended that the County Librarian be paid from the County General Fund, they could easily have said so.

**F13 – Measure A sales taxes are being appropriately used to update the library collections, services, providing new programs, and hiring needed staff.**

Agree. Measure A has resulted in greatly expanded hours of operation, increased staffing, and has allowed the Library to update and expand its collections and provide new and expanded services and programs to library patrons of all ages and varied interests.

**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.**

Agree with explanation. All responses by the Board of Supervisors to the 2013-2014 Grand Jury report complied with the requirements of Penal Code §933.05 with the exception of one response which inadvertently did not state a reason for not implementing a specific recommendation.

**RECOMMENDATIONS:**

**R1 – All respondents conform to Penal Code § 933.05. (F14)**

This recommendation reflects established practice and has been implemented.

**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)**

This recommendation reflects established practice and has been implemented. Problems arose due to incomplete reporting, tracking and accounting among departments.

**R3 – The Board of Supervisors with the CEO remove all A-87 charges for equipment from the Library Budget. (F1, F5, F6, F7)**

This recommendation has been implemented in the sense that all charges for equipment on the current list are being removed, but appropriate A-87 charges, as determined by the Auditor/Controller, for equipment purchased more recently will be included. All A-87 charges for equipment continue to be reviewed and the Library will be credited for any incorrect charges.

**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)**

This recommendation will be implemented with adoption of the updated A-87 cost plan by the Auditor/Controller and the Board of Supervisors will assure that all A-87 charges included in the County budget are properly documented.

**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)**

This recommendation has been implemented. The Board of Supervisors, Auditor/Controller, and Chief Executive Officer are in agreement, and will assure, that insurance proceeds, grants and donations will not be used to determine A-87 building and equipment use charges and that the Library will be credited for previous incorrect charges.

**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)**

This recommendation will not be implemented as it is not warranted. The library is not a dependent special district, but pursuant to the Revenue and Taxation Code, is treated as if it were a special district for revenue and taxation purposes.

**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)**

This recommendation will not be implemented as it is not warranted. The Library receives the equivalent of a pro rata share of property tax via a transfer from the County General Fund. The Mendocino County Board of Supervisors hereby incorporates the Auditor/Controller's response (included below) to this Recommendation.

*This recommendation will not be implemented because it is not warranted or is not reasonable. The County's accounting procedures are performed in accordance with U.S. Generally Accepted Accounting Principles (GAAP). Since the Library receives their pro-rata share of property tax revenue through an operating transfer from the General Fund, the budget book must show it in line item "827802 Operating Transfer In". It is clearly identified in the Library's budget narrative and is the only amount that appears in this line item.*

**R8 – The Board of Supervisors pay the Librarian's salary from the General Fund. (F11, F12)**

This recommendation will not be implemented because it is not warranted. The Board of Supervisors hereby incorporates by reference our response to Finding #11. The Board of Supervisors believes that an appropriate resolution of this issue is to seek clarification from the state legislature.