

THE VALUE OF TRANSPARENCY IN THE NEVADA COUNTY BOARD OF SUPERVISORS

SUMMARY

The Nevada County Board of Supervisors is the legislative and executive body of Nevada County government. Legislative and executive activities of the Nevada County Board of Supervisors are performed at public meetings with certain personnel and legal matters discussed in closed session. Meetings are conducted in accordance with the Ralph M. Brown Act (California Government Code sections 54950 et seq.) and the *Order and Decorum* adopted by the Nevada County Board of Supervisors each year.

The Nevada County Civil Grand Jury interviewed four current members of the Nevada County Board of Supervisors and one past member. Additionally, the Nevada County Civil Grand Jury interviewed Nevada County staff and reviewed documentation from the California Government Code, the Nevada County Board of Supervisors and the California Fair Political Practices Commission.

The Nevada County Civil Grand Jury noted variances in personal decisions by Supervisors as to their recusal from discussion or voting on various issues before the Nevada County Board of Supervisors.

Annually, the Supervisors adopt the *Order and Decorum* which defines their roles and how business should be conducted by the Nevada County Board of Supervisors and its appointed committees.

The *Order and Decorum* allows for any Supervisor to abstain or recuse from discussing and voting on any matter if the Supervisor has a **legal** conflict on any matter. Any Supervisor disqualifying him/herself must state the reason, shall completely abstain from participating in discussion on the matter and shall leave the room until the Nevada County Board of Supervisors has completed its discussion and acted on that matter.

However, the *Order and Decorum* does not specify conditions for which abstention and/or disqualification should occur.

Section 84308(b) of the California Government Code states, in summary, that an officer of an agency shall not accept a contribution of more than two hundred fifty dollars (\$250) from any party, nor from any participant, while an issue is pending before the agency and for three months following the date a final decision is rendered in the proceeding. But California Government Code section 84308(b) **does not** apply to elected officials, including elected members of the Nevada County Board of Supervisors.

The Nevada County Civil Grand Jury then asked the question, “Is there a difference between a legal conflict and an ethical conflict?”

The California Fair Political Practices Commission requires Supervisors receive ethics training every two years. In their training materials, the following comments are made:

*California has a complex array of laws relating to ethics in public service. The law, however, only sets a **minimum** [emphasis added] standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical or that it reflects the elected official's values or the public's values.*

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. Public servants must maintain a high standard of ethical conduct that promotes public confidence that public officials' actions are motivated solely by the public's interests.

The Nevada County Civil Grand Jury finds the citizens of Nevada County expect and deserve that its elected officials serve the public's interests, not private or political interests. Values are very important to the public. The public is strongly supportive of public officials following their sense of what is the right thing to do in making government decisions.

The Nevada County Civil Grand Jury finds that while a lack of a recusal by a Supervisor on an issue pending before the Nevada County Board of Supervisors may be legal, in the strict sense of law, it may give the public the perception of unethical behavior.

The Nevada County Civil Grand Jury recommends that the Nevada County Board of Supervisors augment and improve the existing *Order and Decorum*, particularly in the area of public transparency of relationships between a Supervisor and parties with business before the Nevada County Board of Supervisors.

The Nevada County Civil Grand Jury also recommends that members of the Nevada County Board of Supervisors raise their awareness of the importance of public transparency in making the public aware of relationships between the Supervisor and parties with business before them.

GLOSSARY

Board – Nevada County Board of Supervisors

Brown Act – Ralph M. Brown Act, California Government Code 54950-54963

Jury – Nevada County Civil Grand Jury

County – Nevada County

GC – California Government Code

FPPC – California Fair Political Practices Commission

BACKGROUND

California Penal Code section 925 states, in part: “The grand jury shall investigate and report on the operations, accounts, and records of the officers, departments, or functions of the county ... “

The Nevada County Board of Supervisors (Board) is the legislative and executive body of Nevada County (County) government. In addition, members of the Board represent the County on numerous intergovernmental bodies.

In its legislative duties the Board adopts ordinances, resolutions and rules within the limits prescribed by State law and is responsible for seeing that all Federal- and State-mandated functions are properly discharged.

As an executive body, the Board:

- determines annual budget allocation;
- approves contracts for public improvement projects and other specialized services;
- conducts public hearings on matters such as zoning appeals and planning issues;
- provides for the compensation of all County officials and employees;
- creates offices, boards and commissions as needed, appointing members and fixing the terms of office;
- directs an annual audit of all County accounts, books and records;
- provides policy direction to the County Executive Officer for the operation and administration of County departments; and
- exercises executive authority for the provision of local government services to County residents including:
 - roads,
 - Health and Welfare programs,
 - Public Defender, and
 - jail facilities/law enforcement.

Legislative and executive activities of the Board are performed at public meetings. Meeting conduct is to be in accordance with the Ralph M. Brown Act (Brown Act), California Government Code (GC) sections 54950 et seq., and the Board’s *Order and Decorum*. Certain personnel and legal matters are discussed in closed sessions as provided by the Brown Act.

The five members of the Board are elected on a non-partisan basis to serve four-year terms. Each is elected from one of the five Supervisorial districts of the County. Supervisors from District 3 and 4 are elected in gubernatorial election years (2014, 2018, etc.) while Supervisors from Districts 1, 2 and 5 are elected in presidential years (2012, 2016, etc.). Supervisorial district boundaries are adjusted after each federal census to equalize district population as closely as possible.

APPROACH

The Nevada County Civil Grand Jury (Jury), in conducting this inquiry:

- interviewed current and past members of the Board,
- interviewed staff employed by the County, and
- reviewed documents from the following sources:
 - the California Government Code (GC),
 - the Board, and
 - the California Fair Political Practices Commission (FPPC).

DISCUSSION

The Board is the legislative and executive body of County government. In addition, members of the Board represent the County on numerous intergovernmental bodies. The five members of the Board are elected on a non-partisan basis to serve four-year terms.

Legislative and executive activities of the Board are performed at public meetings. Meeting conduct is to be in accordance with the Brown Act and the Board's *Order and Decorum*. Certain personnel and legal matters are discussed in closed sessions as provided by the Brown Act.

In interviews with current and former Supervisors and County staff, the Jury noted differences in personal decisions made by Supervisors as to recusal of themselves from discussion or from voting on various issues before them.

The *Order and Decorum* for the Board defines the roles of the Supervisors and how business should be conducted by the Board and its appointed committees.

Specifically, section 13 of the *Order and Decorum* allows for any Supervisor to abstain or recuse from discussing and voting on any matter if the Supervisor has a *legal* conflict on any matter. Any Supervisor disqualifying him/herself may state the reason, shall completely abstain from participating in discussion on the matter and shall leave the room until the Board has completed its discussion and acted on that matter.

However, the *Order and Decorum* does not specify other conditions for which abstention and/or disqualification should occur.

GC Section 84308(b) states, in summary, that an officer of an agency shall not accept a contribution of more than two hundred fifty dollars (\$250) from any party, or from any participant, while an issue is pending before the agency and for three months following the date a final decision is rendered in the proceeding.

However, GC section 84308(b) specifically *exempts* elected officials, which would include the Board.

In one instance cited by more than one witness, an issue was before the Board regarding land use for a parcel owned by a private party. A Supervisor had previously received a campaign contribution from an involved party.

The Supervisor made a public statement, in an open session of the Board, advising the public of the contribution. The Supervisor also stated he felt that the receiving of the contribution would not affect his vote on the merits of the issue at hand. The Supervisor then participated in discussion on the issue and did vote on the issue in open session.

In a second instance cited by numerous witnesses, an issue was pending before the Board regarding a legal action taken against the County. While this issue was pending, a Supervisor received a campaign contribution from an involved party.

The pending issue was discussed and voted on in closed sessions of the Board. Witnesses told the Jury that the Supervisor did not notify the other Supervisors of the contribution, participated in the discussion and voted on the issue. When the vote was reported out in open session, the Supervisor did not disclose the contribution publicly.

Statements of witnesses were supported by review of the agendas and minutes of the meetings of the Board. There is no record of recusal on the pending issue by any Supervisor.

In interviews with the current and former Supervisors, most believed ethics referred to the Statements of Economic Interests - *Form 700* filings required from elected officials each year by the FPPC.

The FPPC requires certain public officials and all elected officials, including members of the Board, to receive two hours of ethics training every two years. Public officials may take the training course online or in a classroom setting. Also, the Nevada County Local Agency Formation Commission provides ethics training in a classroom setting in January of each year.

The course training is promulgated by the FPPC. In those training materials, the following comments are made:

*California has a complex array of laws relating to ethics in public service. The law, however, only sets a **minimum** [emphasis added] standard for ethical conduct. Just because an action is legal doesn't mean that it is ethical or that it reflects the elected official's values or the public's values.*

In short, public service ethics is not only about doing the right thing, but also about the public's confidence that indeed the right thing has been done. Public servants must maintain a high standard of ethical conduct that promotes confidence that public officials' actions are motivated solely by the public's interests.

The citizens of Nevada County expect and deserve that their elected officials serve the public's interests, not private or political interests. Values are very important to the public. The public is strongly supportive of public officials following their sense of *what is the right thing to do* in making government decisions.

FINDINGS

- F1.** The Supervisors receive two hours of ethics training on a bi-annual basis.
- F2.** The citizens of Nevada County expect and deserve that their elected officials serve the public's interests, not private or political interests.
- F3.** While legal requirements are specific, ethical decisions are personal and have significant influence on perceptions of the public when evaluating Supervisor actions and transparency.
- F4.** The Supervisors are ethical people who conduct their business with good intent.
- F5.** Most of the Supervisors believe ethics refers to the *Form 700* filings required from elected officials each year by the FPPC.
- F6.** While a lack of public recusal by a Supervisor on an issue pending before the Board may be legal in the strict sense of law, it may give the public the perception of unethical behavior.
- F7.** The *Order and Decorum* lacks sufficient guidance to Supervisors in assisting them in their personal decision making on questions of recusal.

RECOMMENDATIONS

- R1.** Seek additional training and information to understand the difference between legal requirements and ethical considerations.
- R2.** Develop and implement guidelines to assist the Nevada County Board of Supervisors in its decisions as to whether recusal is appropriate on a particular issue.
- R3.** Augment the *Order and Decorum* document, particularly in the area of public transparency of relationships between a Supervisor and parties with business before the Nevada County Board of Supervisors.
- R4.** Increase personal awareness of the need for public transparency between the Supervisors and parties with business before the Nevada County Board of Supervisors.

REQUEST FOR RESPONSES

Pursuant to Penal Code section 933.05, the Nevada County Civil Grand Jury requests responses as follows:

From the following:

Nevada County Board of Supervisors, by June 30, 2016.

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