

# MONTEREY COUNTY



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## OFFICE OF THE COUNTY COUNSEL

CHARLES J. MCKEE, COUNTY COUNSEL

**DATE:** December 6, 2016

**TO:** Board of Supervisors

**FROM:** Kathryn Reimann, Sr. Deputy County Counsel

**SUBJECT:** Referral No. 2016.03 – Tax Reporting Requirements Related to Appointees of County Board, Committees and Commissions

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### INTRODUCTION

Supervisor Potter submitted a Referral requesting an opinion from County Counsel and Auditor-Controller on the issue of whether individuals appointed by the Board of Supervisors to serve on a Committee or Commission are employees, and whether or not a policy on the classification of Commissioners and Committee members should be brought forward for consideration by the Board of Supervisors.

The issue apparently arose as the result of a memo made over the signature of the Office of the Auditor-Controller, and distributed by various departments, requesting certain information<sup>1/</sup> from appointees of various County Boards, Committees and Commissions to be included in the County's HRM/Payroll System.<sup>2/</sup> This has raised the question of whether or not private individuals appointed to County Boards, Committees and Commissions are actual employees of the County; whether the County can or should be reporting "income" provided these individuals to the appropriate taxing authorities; and what kind of policy, if any, is appropriate to minimize privacy concerns while complying with applicable law.

### QUESTIONS PRESENTED

1. Must the County report to the Federal and State government payments provided to appointed members of a County Board, Committee or Commission?

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<sup>1/</sup> A copy of one such request is included hereto as Attachment 1. This request, and a statement in the request to the effect that "individuals appointed by an Elected Official shall be deemed an employee," was issued without the concurrence of the Office of the County Counsel.

<sup>2/</sup> The HRM/Payroll System is an Enterprise System for Human Resource Management, a portion of which is controlled by the Human Resources Department and a portion of which is controlled by the Office of the Auditor-Controller.

2. If so, are these individuals considered “employees” of the County, entitled to the same type of benefits, such as workers’ compensation or other insurance, as other employees?
3. Is there a reporting difference between those who receive only “mileage” and those who receive a “stipend?”
4. If the County wishes to minimize or avoid any reporting requirements for individuals appointed as members of County Boards, Committees or Commissions, what can it do?

### **SHORT ANSWERS**

1. Yes. The County must report payments made to non-incorporated vendors which reach or exceed \$600 per year, pursuant to Internal Revenue Code section 6041(a). Payments made to persons considered by the IRS as “employees” must be reported regardless of the amount. Appointees to County Boards, Committees or Commissions receive payments for meeting attendance, although some payments are only based on mileage; such payments are considered “income” to the individuals.
2. No. The fact that appointed members of County Boards, Committees and Commissions receive payments, and are subject to reporting requirements, does not make them “employees” of the County. However, it should be noted that under Internal Revenue Service guidance, individuals appointed to boards, committees or commissions by governmental bodies are considered “public officials,” and “public officials” are generally considered “employees” by the Internal Revenue Service for tax purposes.
3. No. There is no reporting difference between appointees who receive only “mileage” and those who receive a “per meeting” payment. Because County appointees are not employees of the County, they receive compensation for “commuting” to and from their respective board, committee, or commission meetings. This compensation is reportable and subject to withholding.
4. If the County wishes to avoid reporting and withholding requirements related to individuals appointed to County Boards, Committees and Commissions, it can adopt a policy that provides that any appointee serve without compensation, including any form of payment, including mileage. Whether such a policy will promote or hinder public participation, in light of the relatively minimal impositions of providing Payroll System information, is a policy matter for the Board to consider. Alternatively, if the County wanted to make the process easier, it could modify existing policies so that all appointees get some form of “per meeting” payment, and eliminate payments based on commuting mileage for all appointees. This would not eliminate withholding and reporting requirements, but would eliminate the need to track mileage. There would likely be some additional

costs, however, to the departments hosting such boards, committees and commissions, were such a policy established.

### **BACKGROUND:**

The Board has solicited community input and participation in various forms for all of its history. Currently, it has in excess of 100 members of the public acting as members of County Boards, Committees and Commissions (hereinafter "County BCC"). Certain County BCCs, such as the County's Planning Commission and the Assessment Appeals Board, are authorized to make certain decisions subject only to appeal to the Board of Supervisors or directly subject to judicial review. Members of these types of boards, committees and commission appear to receive a periodic payment, or stipend, for each meeting attended.<sup>3/</sup>

Other County BCCs act as advisory bodies, including but not limited to, the Agricultural Advisory Committee, Area Agency on Aging Advisory Council, Children and Families First Commission, Commission on the Status of Women, Economic Opportunity Committee, Equal Opportunity Advisory Committee, Historic Resources Review Board and the Military & Veterans Affairs Advisory Commission. Some, if not all of these appointees appear to receive compensation in the form of mileage and or meal reimbursements, but not necessarily formal "per meeting" stipends.<sup>4/</sup>

In 2015, the Auditor-Controller's Office requested that certain information be provided from all these appointed members, in order to add them to the County's HRM/Payroll System as a means of processing payments. By way of explanation, it was stated in that request that:

. . . your compensation for serving as a member of the [Name of Committee or Commission] will be processed through the County Payroll system per Internal Revenue Code (IRC) Regulation 1.1402(c)-2(b) which defines that individuals appointed by an Elected Official shall be deemed an employee and subject to the appropriate Federal & State withholding. Reimbursable employee business expenses such as mileage are not taxable.

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<sup>3/</sup> Members of the Planning Commission receive compensation pursuant to Monterey County Code section 2.48.030; members of the Assessment Appeals Board receive compensation pursuant to MCC section 2.40.070. Other entities related to the County, such as the Monterey County Water Resources Agency, also appoint members to boards, committees or commissions. Members of the Board of Directors of the Water Resources Agency also receive "per meeting" stipends.

<sup>4/</sup> A copy of Board Resolution No. 80-12, establishing a policy on the establishment of County boards, committees and commissions, is included as Attachment 2.



This represented a change in procedure for how the County processed payments to appointees; previously the County had processed such payments through its Account Payable or "AP" process, as if appointees were vendors or independent contractors. It may have been that some appointees had never received any kind of tax reporting information from the County previously. Some appointees questioned or objected to the provision of Social Security and other tax related documentation to the County. Some appointees questioned whether or not this explanation, and the fact that "compensation" was to be processed through the County's "payroll system," meant that appointees were now to be considered full employees of the County.

## **ANALYSIS**

### **I. THE COUNTY IS REQUIRED TO REPORT "TAXABLE INCOME," EVEN OF APPOINTEES**

#### **A. THE COUNTY MUST REPORT PAYMENTS MADE WHICH COULD BE "INCOME" TO ANOTHER**

All income, unless expressly exempted, is subject to taxation under the Internal Revenue Code (hereinafter, "Code"). Section 61 of the Code defines "gross income" as "all income from whatever source derived, including (but not limited to) the following items: (1) compensation for services, including fees, commissions, fringe benefits, and similar items." The Internal Revenue Service ("IRS") has advised that "[g]enerally, the IRS considers all income received in the form of money, property or services to be taxable income, unless the law specifically provides an exemption." FS-2007-26, November, 2007.

The County of Monterey is a "person engaged in a trade or business" for the purposes of the Code. 26 Code of Federal Regulations sec 1.6041-1(b) [person engaged in trade or business includes non-profits]. Pursuant to Section 6041 of the Code, unless otherwise excluded, the County is required to "render a true and accurate return" to the Internal Revenue Service ("IRS") for all "payment . . . to another person, of . . . salaries, wages, . . . compensations, remunerations, emoluments, or other fixed or determinable gains, provides and income . . . of \$600 or more in any taxable year." These returns are to set forth "the amount of such gains, profits, and income, and the name and address of the recipient of such payment."

Thus, the County is obliged to provide information to the IRS regarding vendors to whom it has made payments, if those payments reach \$600 or more. Moreover, the IRS requires the reporting of W-2's for those it considers "employees" for reporting purposes, regardless of amount. (IRS Publication 15, Circular E.) Reporting this information is an obligation of the County; it does not necessarily mean that the recipients of such amounts must pay income tax thereon, although it appears that "per meeting" stipends and other compensation issued to appointees of County BCCs could be considered taxable income.

The question becomes whether that income should be reported as if the appointee is an "employee" or as if the appointee is an "independent contractor."<sup>5/</sup> As discussed below, the manner by which the Auditor-Controller has chosen to report these payments; through the County's HRM/Payroll System, appears to be within the authority of the Auditor-Controller, and even prudent.

**B. GUIDANCE PROVIDED BY THE INTERNAL REVENUE SERVICE  
ENCOURAGES TREATMENT OF APPOINTED PUBLIC OFFICIALS AS  
"EMPLOYEES" FOR REPORTING PURPOSES**

The IRS produces a "Federal-State Reference Guide" ("IRS Guide") for public employers designed to "provid[e] guidelines for social security and Medicare coverage and tax withholding requirements for state, local and Indian tribal government employees and public employers." The Guide starts out by identifying "Key Public Employer Responsibilities." Those responsibilities are to:

- Properly classify workers as independent contractors or employees;
- Solicit and collect valid taxpayer identification numbers from all employees and payees;
- Determine which employees are exempt from social security and/or Medicare taxes;
- Withhold, report and pay appropriate social security and Medicare taxes, or Medicare-only taxes, for each employee; and
- Obtain clarifications of laws, regulations, and other appropriate information from State Social Security Administrators, IRS, and SSA.

Within this Guide are several chapters relating to "Determination of Worker Status" and "Wage Reporting and Employment Taxes," as well as Frequently Asked Questions. One FAQ provides:

- 1) If board members are paid nominal amounts, for example, under \$1,000 per year, must social security and Medicare taxes be withheld?

Generally, yes. Elected and most appointed officials are employees of the public entity they serve, and are generally subject to the withholding rules that apply to other workers. Withhold social security and Medicare taxes for any official who is either 1) covered under a Section 218 Agreement or 2) not a qualified participant in a public retirement system . . . , and

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<sup>5/</sup> It also appears fairly clear that the IRS has a binary view of the world, and that volunteers, such as these appointees, do not fit well in either view, if they receive any form of payment.

therefore subject to mandatory coverage. Any official elected or appointed after March 31, 1986, is subject to Medicare. See Chapter 4 for more information on who is an employee.

It should be noted that this response to the FAQ does not state that all "appointed officials" are "employees of the entity they serve." Instead, the IRS contend that "most" appointed officials are employees, which makes sense in the context as federal and state departments (such as Secretary of Defense or State Department of Finance) and even some local officials, such as Agricultural Commissioner or city Director of Public Works. These officials are all appointed to salaried positions.

The IRS Guide also discusses the term "public official," as "someone who has authority to exercise the power of the government and does so as an agent and employee of the government." The Guide also indicates that under Treasury Regulation section 1.1402(c)-2(b), addressing whether or not public officials are subject to self-employment tax, the performance of the functions of a public office does not constitute a trade or business and therefore public officials are not subject to self-employment taxes.<sup>6/</sup> The Guide goes on to state "if self-employment tax is not applicable to the services, the individuals who perform them are presumed to be employees" [emphasis added].

Thus, according to official guidance provided by the IRS, public officials who are appointed members of board, committees and/or commissions are "generally" considered "employees" for purposes of tax reporting and withholding. See also 26 U.S.C. section 3401(a) [defining "wages"] and section 3401(c) [defining "employee"] "for purposes of this chapter" [Chapter 24, Collection of Income Tax at Source]. The importance of this limitation, that they are "presumed" employees for purposes of tax withholding and reporting, is discussed below.

Arguably, because County BCC appointees are only "presumed" employees by the IRS, the County could maintain its past practices of reporting amounts paid to appointees by issuing 1099 forms. However, continuing that practice could subject the County to IRS investigations and/or audits which would result in the expenditure of County resources, and potentially expose the County to liability. In assessing the potential exposure of this activity, moreover, it should be noted that the County's past practice is contrary to the guidance provided by the very body that would be auditing the County.

The penalties to the County for misclassifying recipients of payments as "independent contractors" and using the IRS 1099 Form for "Miscellaneous Income" if the IRS determines that these payments are "wages" to "employees" (again, for purposes of tax

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<sup>6/</sup> There are certain very limited exceptions, such as justices of the peace, who receive fees from the public for services. These are considered "fee basis public officials" and they are subject to self-employment taxes. 26 Code of Federal Regulations, Chapter 1, section 1.1402(c)-2. None of the appointees which are discussed in this memorandum are "fee basis public officials."

withholding) include both civil and criminal penalties, including not only back payments but between a 15 – 75 % penalty on amounts not reported. As such, for an appointee receiving a stipend, IRS guidance suggests that such income be reported as if that appointee were an employee. Because individuals can be appointed to more than one board, committee or commission, and because the Office of the Auditor-Controller may not be made aware of whether or not a given individual appointee is receiving a stipend at any given time, it may well be considered prudent for all payments to appointees to be processed through the County's Payroll System.<sup>7/</sup>

## **II. APPOINTEES TO COUNTY BOARDS, COMMITTEES AND COMMISSIONS ARE NOT "COUNTY EMPLOYEES," REGARDLESS OF TAX REPORTING OR WITHHOLDING REQUIREMENTS**

Although the IRS may presume that persons appointed to boards, committees or commissions by governmental bodies, such as the County, are "employees" for purposes of tax withholding, that factor alone is not determinative to classify such appointees as "employees" for common law benefit and liability purposes.

There appears to be a long and rather tortured history of decisions attempting to define "employee" for various purposes, however, courts have generally now settled on application of "common law agency doctrine" to determine whether or not an individual is an "employee" of another. See, e.g., *Nationwide Mutual Insurance Company v. Darden* (1992) 503 U.S. 318, 112 S. Ct. 1344, 117 L.Ed.2d 581; *Marie et al. v. American Red Cross, et al.*, 771 F.3d 344 (6th Cir. 2014). Even IRS regulations and the Guide reference use of "the usual common law rules applicable in determining the employer-employee relationship," thus recognizing these overarching rules.

One of the more recent statements of "the usual common law rules" for determining employee status is found in *Marie et al. v. American Red Cross et al.*, *supra*, which considered whether or not volunteers for the Red Cross were "employees" for purposes of the Civil Rights Act:

In determining whether a hired party is an employee under the general common law of agency, we consider [1] the hiring party's right to control the manner and means by which the product is accomplished. Among the other factors relevant to this inquiry are [2] the skill required; [3] the source of the instrumentalities and tools; [4] the location of the work; [5] the duration of the relationship between the parties; [6] whether the hiring party has the right to assign additional projects to the hired party; [7] the extent of the hired party's discretion

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<sup>7/</sup> The Office of the Auditor-Controller has certain authority to determine appropriate procedures for internal controls and the methods of keeping the accounts of the County. Government Code section 26881.



over when and how long to work; [8] the method of payment; [9] the hired party's role in hiring and paying assistants; [10] whether the work is part of the regular business of the hiring party; [11] whether the hiring party is in a business; [12] the provision of employee benefits; [13] and the tax treatment of the hired party.

771 F.3d at 352, citing *Nationwide Mutual Insurance Co. v. Darden*, *supra*, 503 U.S. at 323-324.

Using these factors, it does not appear that County BCC appointees meet the common law definition of employees. While it is beyond the scope of this memorandum to analyze the roles and functions of each board, committee and commission, it is fair to say that – with the exception of those few boards and commissions that have some level of actual decision making authority (e.g., the County Planning Commission and the Assessment Appeals Board), the function of all other boards, committees and commissions is limited to the provision of advice to the Board of Supervisors. Even including those boards and commissions with decision making authority, the Board of Supervisors has no control over the conduct of any meetings of these boards, committees or commissions,<sup>8/</sup> nor has it any control over the recommendations made thereby. While some appointees may get small, “per meeting,” stipends, it stretches credulity to think that the amounts provided actually reflect payment of “wages.” Moreover, most appointees only receive stipends in the form of meal or mileage reimbursements.

The *Marie v. Red Cross* case is especially pertinent to the current inquiry because the issue there was whether or not volunteers for community organizations could qualify as “employees” under the Civil Rights Act. Appointees to County boards, committees and commissions are arguably closer to “volunteers” than to either employees or independent contractors. After weighing all 13 of the factors, the Court in *Marie et al. v. American Red Cross et al.* found that the volunteers were not employees for purposes of the Civil Rights Act.<sup>9/</sup> 771 F.3d at 356-359.

It is beyond the scope of this Referral to prepare a detailed analysis of each of the County BCCs for the purposes of determining whether any individual appointee is a County “employee.” However, as a general matter, it would appear that key factors of the “common law rule” are not met when the County appoints individuals to boards, committees or commissions. The County does not provide appointees with the indicia of a normal employee, such as employee orientation or identification/access cards. The

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<sup>8/</sup> Although the Board has no effective control over meetings, California law in the form of the Ralph M. Brown Act imposes certain controls.

<sup>9/</sup> It must be noted that one factor in this analysis was the “tax treatment” of the parties and the Red Cross had not provided any W-2 forms for the volunteers. This was only one of several factors, however.



County has not, and does not, provide any form of benefits to any appointees of its boards, committees or commissions by virtue of such appointment.<sup>10/</sup> Appointees have no say in the "hiring and paying assistants," and appointees may leave their respective board, committee or commission without notice. The County does not in any common sense of the word "pay" appointees for "services," nor, as noted above, does it "control" how any appointee exercises his or her judgment in providing advice or making a decision on a matter brought before that appointee.

In short, the only indication of "employment" that might be raised is that of the proposed entry into the HRM/Payroll System for the purposes of reporting and withholding income. However, holding that information in something called a "Payroll System" alone should not in and of itself determine whether someone is an employee or not, any more than holding that information in something called "Accounts Payable."

### **III. ALL APPOINTEES WHO RECEIVE PAYMENT FROM THE COUNTY BECAUSE OF THEIR SERVICE, EVEN IF LIMITED TO COMPENSATION BASED ON MILEAGE, ARE SUBJECT TO IRS TAX REPORTING AND WITHHOLDING**

It appears fairly clear that appointees who are paid "per meeting" stipends for their service on designated boards, committees or commissions have received taxable income which must be reported by the County. The question of whether or not appointees who receive only "mileage reimbursement" also receive a "stipend" has apparently caused some confusion. This is perfectly understandable, given the arcane and seemingly arbitrary language in IRS regulations and guidance.<sup>11/</sup>

As previously noted, the IRS considers all income received in the form of money, property or services to be taxable income, unless the law specifically provides an exemption. Payments made to appointees, even to cover the costs of transportation (and based upon established mileage rates), is not specifically exempted from "gross income" under the Internal Revenue Code. County employees do not receive reimbursement for the cost of "commuting" from home to the County.<sup>12/</sup> Providing

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<sup>10/</sup> To the extent that some appointees may also be regular employees of the County, they do receive employee benefits.

<sup>11/</sup> The unfortunate reference to "[r]eimbursable employee business expenses such as mileage are not taxable" in the request for information to appointees also adds to confusion.

<sup>12/</sup> Discussions with the Office of the Auditor-Controller made clear that this reference to "reimbursable employee business expenses" was meant to indicate that if appointees had expenses related to attending a conference, or other expense that was covered under the County's Travel and Business Expense Reimbursement Policy, the appointee would also be entitled to reimbursement and that *those* expenses would not

compensation to appointees (based upon mileage to and from home) for the purposes of rendering volunteer services as an appointee, is really just another form of stipend and is legally indistinguishable from the “per meeting” stipend provided certain other appointees.

It is beyond the scope of this referral to present a more detailed analysis of the difference between “employee” and “independent contractor,” for purposes of tax reporting and tax withholding, than appears earlier in this memo. There do appear to be advantages to both the County and the appointee, however, in being treated as an “employee” for this limited purpose.

As stated earlier, the IRS has indicated that a key responsibility of public entities that pay individuals is the proper classification of that individual as “employee” or “independent contractor” and determinations of which “employees” may be exempt from social security and/or Medicare taxes. The IRS has also recognized (for its purposes) the concept of a “statutory employee,” which is defined as someone who “may not be common law employees, [but] are considered employees by statute for social security, Medicare and FUTA<sup>13/</sup> tax.” (IRS Publication 15.) If an individual is considered a “statutory employee,” the County does not have to withhold federal income tax, but is still required to withhold Medicare and Social Security taxes. (Id.) However, the County is also required to match any contribution to Medicare and Social Security, thus reducing the amount otherwise payable by the appointee. If an individual is considered an independent contractor, that individual is subject to paying the full amount of self-employment taxes, including Social Security and Medicare.

As a result, by treating County BCC appointees as essentially “statutory employees” for purposes of tax reporting and withholding, the County contributes a portion of the amounts otherwise payable by appointees. Accordingly, whether or not an appointee receives only a stipend for mileage or a stipend based on both mileage and a “per meeting” amount, such payments are reportable to the IRS. By treating appointees as “statutory employees” only for purposes of withholding and reporting, the County reduces the amount of Medicare and Social Security taxes otherwise payable by the appointee on such amounts. Given the potential penalties to the County – and appointees – if the IRS determined that the County had “misclassified” appointees (given the IRS guidance positions described above), it is prudent to have payments to appointees tracked through the County’s HRM/Payroll System.

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be considered taxable or reportable.

<sup>13/</sup> Federal Unemployment Tax Act.

**IV. SHOULD THE BOARD WISH TO AVOID ANY QUESTION ABOUT TAX REPORTING OR POSSIBLE WITHHOLDING INVOLVING APPOINTEES TO ITS BOARDS, COMMITTEES OR COMMISSIONS, IT CAN DECIDE TO WITHDRAW ANY PAYMENTS OF STIPENDS OR MILEAGE REIMBURSEMENTS**

The question of what, if any, policy may be considered by the Board affecting the reporting and/or withholding of payments made to appointees is not a matter of attempting to "define" or otherwise determine whether or not an appointee is an employee. These are decisions that are made by laws and regulations, including IRS regulations when it comes to reporting and withholding requirements.

The burden placed on appointees to boards, committees and commissions comes mostly in the form of time given up to undertake public service. This burden should be acknowledged, and thanks provided. While, on the one hand, adding any more to an appointee's "burden" should be avoided if possible, the additional burden of providing the information requested so that the Office of the Auditor-Controller can process payments does not appear to be consequential in light of the potential IRS penalties for misclassification. This information need only be provided once, and will be maintained in a manner that respects the privacy of appointees, as the Office does with all tax-related information.<sup>14/</sup> Moreover, to the extent possible appointee concerns relate to the provision of taxpayer identification (here, a Social Security number<sup>15/</sup>), that identification is required whether or not an appointee is ultimately issued a W2 or a 1099 form – in order to properly report payments, the County needs taxpayer identification.

If, however, the Board determines that it wishes to avoid the necessity of any reporting or withholding for its volunteer appointees, it can consider a policy that preclude the payment of any form of remuneration. The impact of withdrawing this minor consideration upon the willingness of people to serve on boards, committees and commissions is something that needs to be considered by the Board. It may be legally required to report payments made to appointee volunteers, but it is unlikely that such payments will trigger disadvantageous taxable events. That kind of determination, however, is one that any individual wishing to serve on a board, committee or commission needs to make for themselves.

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<sup>14/</sup> It is worth noting that, although appointed by the Courts, members of the Civil Grand Jury provide the same type of information to the County, which is responsible for paying their expenses.

<sup>15/</sup> It should also be noted that IRS Publication 15 (Circular E, Employer's Tax Guide) specifically directs employers to "[r]ecord each new employee's name and SSN from his or her social security card. Any employee without a social security card should apply for one." This point is emphasized because questions have arisen over the necessity of showing an actual card. Review of the card by the County also makes sense in light of the existence of common names and the need to be accurate.

**CONCLUSION:**

While it appears that the Auditor-Controller's change of procedures for the processing of remuneration to appointee or County Boards, Committees and Commissions is legal and even prudent, it is not correct to consider such appointees "employees" for any purpose other than income reporting under IRS regulations. It was an unfortunate error to suggest that appointees are "deemed" County employees by virtue of the appointee's participation on a County board, committee or commission. Rather, it is suggested that such appointees be characterized as "public officials," which means the County would track their reportable remuneration through the County's HRM/Payroll System in a manner that comports with IRS guidance, but only for reporting/withholding purposes.

The request for appointee information could have been processed in a clearer manner, respecting the concerns of volunteer appointees. It is recommended that all departments, including Human Resources and the Office of the Auditor-Controller, work more closely with County Counsel and other departments if and when a determination is made that new or revised procedures are appropriate, because of the legal complexity of issues that can arise, and in order to guard against confusion.

CHARLES J. MCKEE, County Counsel

By 

Kay Reimann

Senior Deputy County Counsel

KR:cbm  
Enclosures (2)



## Attachment 1

# MONTEREY COUNTY



## AUDITOR - CONTROLLER

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**MICHAEL J. MILLER, CPA, CISA**  
AUDITOR-CONTROLLER

**ALFRED R. FRIEDRICH, CGFM**  
ASSISTANT AUDITOR-CONTROLLER

**To:** Members of the Equal Opportunity Advisory Commission  
**From:** Michael J. Miller, Auditor-Controller  
**Subject:** Equal Opportunity Advisory Commission Member Payments  
**Date:** June 23, 2015

This memorandum is to inform you that effective January 1, 2015 your compensation for serving as a member of the Equal Opportunity Advisory Commission will be processed through the County Payroll system per Internal Revenue Code (IRC) Regulation 1.1402(c)-2(b) which defines that individuals appointed by an Elected Official shall be deemed an employee and subject to the appropriate Federal & State withholding. Reimbursable employee business expenses such as mileage are not taxable.

To become compliant with the IRC regulations and in order to begin processing payments you will need to complete the following forms and provide the appropriate documentation in order to add you to the Payroll System:

Social Security Card  
W-4  
I-9 w/supporting documentation  
Oath of Allegiance

Please contact Cynthia Juarez, Equal Opportunity Analyst at (831) 755-6619 to schedule a time to complete the required paperwork.

You may contact Gary Giboney, Chief Deputy Auditor-Controller at (831)755-5439 should you have any questions regarding the IRC Regulations.

## Attachment 2

Defa. the Board of Supervisors in and or the  
County of Monterey, State of California

RESOLUTION NO. 80-12

ESTABLISHING A POLICY RELATIVE )  
TO COMMITTEES AND COMMISSIONS. )

1. POLICY.

- (a) Short Title. This resolution shall be known as the Commission Policy Resolution of Monterey County.
- (b) Declaration of Policy. The public's trust in their government may be sustained only as long as the public remains involved in the deliberations essential to responsible decision making by that government. The Board of Supervisors of Monterey County wishes to preserve this public trust by openly seeking advice, ideas, and recommendations from the residents of this County. Accordingly, the Board of Supervisors wishes to provide equal opportunities for public service and encourages residents regardless of their race, color, religion, age, sex, physical handicaps, national origin, or creed to serve on commissions appointed by the Board of Supervisors. Furthermore, the Board of Supervisors believes the performance of these commissions can be enhanced by creating and administering them according to a consistent policy.

2. DEFINITIONS. The following words, whenever used in this resolution, shall have the meaning set forth in this section:

- (a) "Commission" shall mean any advisory board, governing board, committee, commission, or other body created by the Board of Supervisors or over which the Board of Supervisors has jurisdiction. "Commission" shall not mean any group composed solely of County staff persons, ad hoc committees or task forces appointed by the Board. Ad hoc committees or task forces are temporary groups appointed by the Board to deal with or advise on a specific project or problem during a limited period of time.

3. APPLICATION OF RESOLUTION.

- (a) Scope of Resolution. This resolution shall apply to any commission over which the County has appointed authority or jurisdiction. Nothing in this resolution shall be interpreted or applied so as to create, modify or terminate any power, duty, or condition to conflict with any federal or state statute or applicable guideline, or any county ordinance.



- (b) Effect. Except as otherwise provided in Section 3(a) above, each existing commission shall be deemed abolished by June 30, 1980, unless the commission has been reorganized and reestablished by resolution in conformity with this resolution before June 30, 1980.
- (c) Severability. If any part, provision, or clause of this resolution is held invalid or if the application thereof to any person or circumstance is held invalid, the remainder of this resolution, including the application of such part, provision, or clause to other persons, or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this resolution are severable.
- (d) Conflicts. Any resolution, order, or part of any resolution which was adopted prior to the adoption of this resolution and which conflicts with the provisions of this resolution is hereby repealed to the extent of such conflict and superseded by this resolution. Future resolutions shall follow the format in Section 4 of this resolution.

- (1) In the absence of specific conflicting provisions in the resolution or resolutions hereafter adopted which create or amend a commission, the provisions of this resolution shall apply and control.

#### 4. CREATION OF COMMISSIONS.

- (a) Each commission created by the Board of Supervisors after January 8, 1980 shall be created by resolution and such resolution shall specify:
  - (1) the commission's statutory authority, if any;
  - (2) the commission's purpose;
  - (3) the commission's membership consistent with Section 6 of this resolution;
  - (4) ~~the commissioners' terms of office consistent with~~  
Section 7 of this resolution;
  - (5) the commission's organization and procedures consistent with Section 8 of this resolution;
  - (6) any necessary exceptions consistent with Section 8 (1) of this resolution;
  - (7) the identification of any County legislation in conflict with said resolution.

- (b) Commissions have and may exercise only such powers and engage in such activities as the statute, ordinance, resolution or order creating them expressly authorizes or which are necessary incidents of such powers, essential to permit them to exercise expressly conferred powers or engage in expressly authorized activities. Commissions are not authorized to engage in nor use County resources to achieve other ends or engage in other activities. The use of County resources for purposes not authorized is a violation of law. Commissions which believe they should possess additional powers or which have doubts as to whether they possess a power or are authorized to engage in any activity should obtain legal advice of the County Counsel as whether or not they have such a power, and if they do not, the commission should make such recommendation to the Board as the commission deems appropriate that the Board act to provide additional powers for the commission.
- (c) A resolution creating a commission may be amended, repealed, or superseded only be a resolution of the Board of Supervisors which specifically refers to the original authorizing resolution.
- (d) The Clerk of the Board of Supervisors shall send a copy of this and each resolution, order or ordinance creating a commission to new appointees to a commission and to each County department directly affected by said resolution.

5. APPLICATION FOR APPOINTMENT.

Any person seeking appointment to any commission to which the Board of Supervisors makes appointments may submit to the Board of Supervisors a written application form expressing his/her interest in serving on said commission. ~~The application~~ form shall be made available to the public through the Clerk of the Board.

6. MEMBERSHIP.

- (a) Eligibility. Each member of a commission shall be a resident of Monterey County or, in specified circumstances where non-resident membership is required, own real property in Monterey County.
- (b) Equal Representation. The Board of Supervisors shall make all appointments to all commissions, unless otherwise provided by Statute.

(1) Allocated Nominations. When statutory provisions or special membership requirements do not restrict such a policy, each supervisor shall nominate an equal number of persons and each supervisorial district may have equal representation by persons who may reside within said supervisor's district to serve on each commission. Exceptions may be made, as for example, an advisory board to a county service area.

(2) At-Large Nominations. Equal representation of each supervisorial district may be waived and at-large nomination may be considered for appointment by the Board of Supervisors when, in the opinion of this Board of Supervisors:

- (i) members should represent socio-economic categories; or
- (ii) members should represent categories of expertise; or
- (iii) the number of members required by statute is not a multiple of five; or
- (iv) members should represent specific institutions, public agencies, community organizations, minorities or women in Monterey County.

(c) Alternate Members. No alternate members with voting powers shall be appointed to serve on any commission unless specific provision is made therefore in the Commission's By-laws approved by the Board of Supervisors.

(d) Regular Members. Nominations shall be made and approvals of all appointments shall be acted upon as an item on the regular agenda of the Board of Supervisors.

7. TERMS OF OFFICE.

(a) Definition: Except as provided in (b) below the terms of commissioners shall be three (3) years and shall be staggered so that a simple majority are appointed in one year and the balance the following year. The terms shall run from the date set in each commission's by-laws. Commissioners appointed to fill vacancies which occur during a term shall complete that term.

(b) Vacancies and Replacements.

(1) A vacancy shall exist:

- (i) when a commissioner submits a written resignation to the commission chairperson and the appointing Supervisor;

- (ii) When a commissioner fails to attend such number of regular meetings as are specified in the commission's by-laws;
  - (iii) When a commissioner's death, disability or any other circumstance prevents him/her from completing a term.  
or
  - (iv) when a commissioner no longer resides in the county or otherwise does not meet the qualifications for the appointment.
- (2) Upon majority recommendation of the commission, any commission member may be removed from office by a majority vote of the Board of Supervisors favoring such removal.
- (3) When a prospective commission vacancy is imminent or when a commissioner resigns, the commission chairperson shall forthwith notify the Board of Supervisors in writing.

8. ORGANIZATION AND PROCEDURES.

(a) Brown Act. (Open Public Meetings Act)

Each commission shall be governed by the provisions of the Ralph M. Brown Act (Open Public Meetings Act).

(b) Meetings.

(1) Open and Public. Each commission meeting shall be open and public. All commissions shall hold regular meetings as prescribed in their by-laws. The time and the place of the meetings shall be determined by a quorum of the members and specified in the commission's by-laws. All commission meetings shall be held at locations freely accessible to the public and shall as much as possible, be accessible to any physically handicapped person.

(2) Executive Session. No commission shall hold an executive session or ~~any meeting excluding the public without first advising the County~~ Counsel of the specific purpose or purposes of such meeting and receiving written advice from the County Counsel that it is legal to hold such a session or meeting. The County Counsel will use his/her discretion as to whether he/she will be represented at any executive session held by any commission. Procedures providing for executive sessions shall be set forth in the by-laws.

(c) By-Laws. Procedures for the conduct of business by each commission, not specified either in the commission's authorizing statute, ordinance order or resolution, or in this resolution, shall be contained in by-laws adopted by said commission and submitted to the Board of Supervisors for final approval.



- (d) Quorum. A quorum is a majority of the total current appointed membership of a commission. Commission action may be taken by majority of those present and voting, and by no less than a majority of a quorum. A roll call vote shall be taken when requested by any member in attendance.
- (e) Officers. Each commission shall elect its chairperson and vice chairperson. A secretary may be elected if needed. Commission officers shall be elected during the commission's first meeting of the year. Officers shall serve for one year and may run for re-election at the annual election.
- (f) County Staff Support. The Board of Supervisors shall, when feasible, provide that each commission be assisted by the County department most closely related to the function of said commission and may designate as Administrative Secretary to said commission the head of said department. The department head may designate a member of the department staff as his/her representative to be the Administrative Secretary.
- (g) Minutes. Official minutes indicating attendance and recording actions taken at each commission meeting shall be prepared and submitted by each commission to the Board of Supervisors through the Clerk of the Board, prior to the subsequent meeting.
- (h) Annual Report. Each commission except County Service Areas, will submit seven copies of a short, concise fiscal year annual report to the Clerk of the Board of Supervisors by July 30 of each year. The Clerk of the Board shall distribute the six copies to the Board of Supervisors and the County's Administrative Officer. The annual report shall contain a summary of the commission's preceding year's activities and projects, a list of individual commission members and their responsibilities with the commission and any other information requested by the Board of Supervisors. In addition to the annual report, any commission may submit progress reports and recommendations to the Board of Supervisors at any time.
- (i) Notice of Subcommittees. For the purposes of this section only, "subcommittee" shall mean any subsidiary study group appointed by a commission to assist that commission for longer than six months. Subcommittee members need not be commission members (and commission members on a subcommittee may not equal as many as a quorum of the commission), except that the commission chairperson shall designate a commission member to serve on said subcommittee.

The subcommittee shall be authorized to help carry out the duties and functions of the commission. The actions and recommendations of a subcommittee shall not be deemed the action of the commission and shall in no way bind the commission or its members. The establishment and dissolution of all subcommittees not reported in the by-laws shall be reported to the Board of Supervisors in the commission's minutes.

- (j) Additional Provisions. Each commission shall observe any additional provision included by the Board of Supervisors in the resolution creating said commission.
- (k) Expenses. The members of each commission shall be entitled to reimbursement from and to the extent of the budget for each commission for traveling to and from commission meetings and reasonable expenses necessarily incurred to conduct official County Business. Standard rates allowed county personnel shall be paid for reimbursement.

9. MAINTENANCE OF PUBLIC RECORDS.

- (a) The Clerk of the Board shall be responsible for maintaining:
  - (1) Current membership lists recording the name, term of office, nominating supervisors, and expiration of term of each commission member. The appropriate membership list shall appear inside the jacket of each commission file along with a copy of the commission's by-laws and authorizing resolution;
  - (2) All minutes from each commission meeting;
  - (3) All annual reports, progress reports, or recommendations to the Board of Supervisors from each commission; and
  - (4) All other public documents pertaining to the business of any Commission.
- (b) A complete inventory of all commission vacancies shall be conducted by the  
Clerk of the Board each month and a list of said vacancies shall be reported in writing to the Board of Supervisors on the first business day of each month. The Clerk of the Board shall maintain and continuously update on the basis of records in his/her possession in compliance with Government Code Sections 54970-54975, a list of all commissions including, among other required information, the dates of expirations of the terms of commission members.
- (c) Scheduled vacancies on any commission to which the Board of Supervisors makes appointments shall be noticed publicly by the Clerk of the Board on a quarterly basis. All such vacancies occurring during a three-month period

shall be publicly noticed on the first business day of the month immediately preceding said three-month period. Unscheduled vacancies shall be publicly noticed as provided in Government Code 54970-54975. All public notices of vacancies shall be given in newspapers of general circulation printed and published in Monterey County and posted in all County offices and libraries.

(d) California Public Records Act. All public records of each commission shall be accessible to the public in accord with the California Public Records Act.

10. NONCOMPLIANCE. Any willful or knowing failure by any commission to comply with any provision of this resolution may result in the removal of any, or all, of said commission's members.

PASSED AND ADOPTED this 8th day of JANUARY, 1980, upon motion of Supervisor FARR, seconded by Supervisor SHIPNUCK and unanimously carried by the following vote, to-wit:

AYES: Supervisors Bluhm, Shipnuck, Petrovic, Moore and Farr.

NOES: None.

ABSENT: None.

I, ERNEST A. MAGGINI, County Clerk and ex-officio Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof at page ---- of Minute Book 42 on JANUARY 8, 1980.

Dated:  
JANUARY 8, 1980

ERNEST A. MAGGINI, County Clerk and ex-officio  
Clerk of the Board of Supervisors, County of Monterey,  
State of California

By

*Linda Monday*

Deputy.

LINDA MONDAY