



County of Monterey

Board of Supervisors
Chambers
168 W. Alisal St., 1st Floor
Salinas, CA 93901

Board Report

File #: 16-1341, **Version:** 1

Receive a response from the County Counsel's Office with reference to Referral No. 2016.03 - Classification of Commissioners as Employees

RECOMMENDATION:

It is recommended that the Board of Supervisors:

- a. Receive a response from the County Counsel's Office with reference to Referral #2016.03 - Classification of Commissioners as Employees

SUMMARY:

The Board made a referral to request an opinion from County Counsel and Auditor Controller on the issue of whether individuals appointed by the Board to serve on a Committee or Commission are employees, and request that a policy on the classification of commissioners and committee members be brought forward for adoption by the Board of Supervisors.

DISCUSSION:

Several individuals who serve on County Committees and Commissions have asked the Board of Supervisors to adopt a policy addressing the issue of whether volunteers appointed by the Board to serve on Commissions or Committees should be considered employees under the Internal Revenue Code and Regulations and possibly subject to appropriate Federal and State withholding.

After undertaking a legal analysis of the requirements of the Internal Revenue Service, and consulting with the Office of the Auditor-Controller, the essential conclusions found in the attached memorandum are:

- The Internal Revenue Service (IRS) regulations and guidelines presume that appointed public officials should be treated as "statutory employees" for the limited purpose of tax reporting and withholding;
- The remuneration allowed by Board policy for appointees to receive either "per meeting" stipends or "mileage reimbursement" or both, constitutes "income" for the purposes of the IRS, regardless of the classification of an appointee as either "an employee" or "an independent contractor;"
- Notwithstanding the fact that the Office of the Auditor-Controller, following IRS guidance, reports and withholds tax, appointees of County Boards, Committees and Commissions are not "employees" within the common law interpretation of the term; and
- The only sure way to avoid the need to report and withhold money provided by the County to appointees is to provide that appointees serve without any kind of compensation or remuneration.

OTHER AGENCY INVOLVEMENT:

County Counsel and the Office of the Auditor-Controller worked together in providing this analysis.

FINANCING:

The staff costs of this analysis are contained within the respective budgets of the County Counsel and Auditor-Controller.

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Date

Approved by:

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Date

Attachments:

Memorandum-Referral No. 2016-03 - Tax Reporting Requirements