

TO RECUSE OR NOT TO RECUSE? That Is the Question Shasta County Board of Supervisors

2023-2024 Shasta County Grand Jury
May 7, 2024

SUMMARY

The Shasta County Grand Jury received two complaints alleging wrongdoing by a supervisor of the Shasta County Board of Supervisors. When the grand jury investigates into wrongdoing and no wrongdoing is found, the grand jury need not write a report. However, in the case of the following complaints, because the perception of wrongdoing led to public discord and community distrust, the grand jury felt it was important to clarify any lingering misconceptions within the community.

The grand jury received two complaints alleging violations of rules and regulations pertaining to a Shasta County Board of Supervisors member's recusal. One complaint alleged a supervisor did not leave the board chambers after recusing from a matter in which the supervisor had a financial interest. Another complaint alleged the supervisor did not recuse on a matter that could financially benefit the supervisor.

The grand jury investigated both allegations as to the appropriateness of the supervisor's actions. After careful study of the Shasta County Administrative Manual, the California Code of Regulations, and the Fair Political Practices Commission's Political Reform Act, the grand jury determined there were no violations by the board, and the supervisor appropriately followed the above-mentioned rules and regulations.

METHODOLOGY

As it pertained to the above complaints, the grand jury reviewed:

- The Shasta County Board of Supervisors meeting agenda, minutes, and video of October 24, 2023, and January 9, 2024
- The California Code of Regulations and Fair Political Practices Commission's Political Reform Act section 18707. Disqualification Requirements (a)(3)(9b)
- The County of Shasta Administrative Manual Rule 11(B) Voting. Abstentions and Disqualifications (1)

DISCUSSION

Among some members of the public, a perception of impropriety regarding recusal procedures of a supervisor in board meetings caused discord and fueled distrust of the supervisor's actions. The grand jury investigated the two complaints by reviewing board meeting records and researching pertinent recusal rules and regulations.

The first complaint alleged that on October 24, 2023, a supervisor did not follow proper recusal procedures regarding an agenda item in which the supervisor had a financial interest. The supervisor left the dais and sat in the audience during public comment period. After the public comment period, the supervisor left the room. The complainant and some members of the public perceived the fact that because the supervisor did not immediately leave the room after leaving the dais, the supervisor violated recusal rules.

The County of Shasta Administrative Manual states:

“If the reason for a Board member's abstention is an actual or perceived conflict of interest, that Board member shall disqualify himself or herself from taking part in the discussion and voting on the item and, in the case of a financial conflict of interest, leave the board chambers until after the discussion, vote, and any other disposition of the item is concluded. However, in the case of a financial conflict of interest, if the matter before the Board is on (and remains on) the consent agenda, the Board member with the financial conflict of interest is not required to leave the board chambers so long as the minutes reflect that the Board member has disqualified himself or herself from discussing and voting on the particular agenda item. Nevertheless, when a Board member has a financial conflict of interest and has disqualified himself or herself, he or she may speak on the issue during the time that the general public speaks on the issue.” County of Shasta Administrative Manual, Operation and Conduct of Business Before the Board of Supervisors, Rule 11(B) Voting, Abstentions and Disqualifications (1)

In reviewing the minutes of the October 24, 2023, meeting, at 6:35 PM, the supervisor recused himself due to his personal interest in the agenda item and left the dais. The supervisor sat in the audience during public comment period and then gave a video presentation regarding the agenda item. This action was in accordance with the County of Shasta Administrative Manual and also the California Code of Regulations covering recusal requirements, which states:

“If an official has a personal interest in the agenda item as defined in regulation 18704(d)(2) and wishes to speak or appear as a member of the general public, following the public identification of the financial interest and recusal the official may leave the dais and speak or observe from the area reserved for members of the public.” California Code of Regulations, section 18707 Disqualification Requirements subdivision (a)(3)(b)

After an extensive public comment period of 49 speakers, the board meeting recessed at 9:22 PM. At 9:45 PM the board meeting reconvened. The recused supervisor, now acting as a member of the general public, responded to public comments to clarify points of his proposed development project. After the board closed public comments and prior to the discussion period, the supervisor exited the chambers at 9:47 PM, as the meeting minutes reflect.

The supervisor's actions complied with The County of Shasta Administrative Manual:

“If the reason for a Board Member's abstention is an actual or perceived conflict of interest, that Board Member shall disqualify himself or herself from taking part of the discussion and voting on the item, in the case of financial conflict of interest, leave the board chambers until after the discussion, vote, and any other disposition of the item is concluded.” County of Shasta Administrative Manual. Rule II, VOTING, B. (1)

The recused supervisor did not reenter the chambers after the discussion or vote. The meeting adjourned immediately after the vote at 10:33 PM.

The second complaint alleged a supervisor should have recused himself from an agenda item that could have financially benefitted him. The board presented an agenda item of suspension of impact fees on January 9, 2024. The complainant believed that a supervisor should have recused himself from the agenda item due to a potential monetary gain from the removal of impact fees for a project of his development.

Not all financial conflicts of interest prevent a public official from lawfully taking part in a government decision. There are limited exceptions to the conflict-of-interest rules as stated in the California Political Reform Act:

“A public official is not disqualified from a decision if the effect on the official’s interests is indistinguishable from the effect on the public.” California Political Reform Act, The Public Generally Exception Govt. Code Section 87103(a)

The rule states:

“A decision’s financial interest on an official’s financial interest is indistinguishable from its effect on the public generally if the official establishes that a ‘significant segment’ of the public is affected, and the effect of the official’s interest is not unique compared to the effect on the significant segment.” California Political Reform Act, The Public Generally Exception. Regulation 18703(a)

The regulation further explains that a significant segment of the public is described as at least 25% of:

- *All businesses, or nonprofits within the jurisdiction*
 - *All real property, commercial real property, or residential real property within the official’s jurisdiction*
 - *All individuals within the official’s jurisdiction”*
- California Political Reform Act, The Public Generally Exception *Regulation 18703(b)(1)*

Since the financial impact of suspending impact fees affects the general public, and not uniquely the supervisor, there was no requirement for the supervisor to recuse from discussion and voting on the agenda item.

FINDINGS

- F1. After reviewing the minutes of the October 24, 2023, Shasta County Board of Supervisors meeting and reviewing the pertinent recusal rules and regulations, the grand jury found there were no violations of laws, rules, or regulations.
- F2. Since removing Impact Fees for Shasta County affects at least 25% of all real property within Shasta County and there is not a unique effect on the supervisor’s financial

interest, the grand jury found the supervisor appropriately took part in the discussion and voting regarding impact fees.

- F3. Although the grand jury found no wrongdoing, perceptions of wrongdoing created discord within Shasta County.

RECOMMENDATIONS

The 2023-2024 Shasta County Grand Jury recommends that:

- R1. The Shasta County Board of Supervisors adopt a procedure by September 1, 2024, to direct county counsel to explain to the public the applicable government codes and rules governing recusals prior to any recusals at board meetings.
- R2. The Shasta County Board of Supervisors adopt a procedure by September 1, 2024, to direct county counsel, when appropriate to an agenda item, to explain to the public any applicable government code sections that allow or disallow a supervisor to take part in any financial decisions that might benefit the supervisor.

REQUEST FOR RESPONSE

Pursuant to Penal Code sections 933 and 933.05, the following responses are required within 90 days:

From the following governing bodies:

- The Shasta County Board of Supervisors as to F1, F2, and F3
- The Shasta County Board of Supervisors as to R1 and R2

DISCLAIMERS

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

When there is a perception of a conflict of interest involving a member of the Grand Jury, that member has been required to recuse from any aspect of the investigation involving such a conflict and from voting on the acceptance of or rejection of that report. One member of the Grand Jury recused from this report.