

**FILED**

JUL - 1 2004

SUPERIOR COURT OF CALIFORNIA  
COUNTY OF TRINITY  
BY: DONNA REGNANI, DEPUTY CLERK

*DR*

**TRINITY COUNTY GRAND JURY**

**2003-2004**

**FINANCE AND ADMINISTRATION COMMITTEE  
FINAL REPORT**

**REVIEW OF CITIZEN COMPLAINT REGARDING BRIAN MUIR, AUDITOR**

**This report was approved  
on June 14, 2004**

**2003-2004 Trinity County Grand Jury  
Finance and Administration Committee  
Final Report**

**Citizen Complaint against Brian Muir, Auditor**

**Purpose:**

The Grand Jury is responsible for investigating and responding to citizen complaints regarding the operation of county governmental entities.

**Background:**

The Grand Jury received complaints from three citizens who were concerned that Brian Muir simultaneously held the positions of county Auditor/ Controller, interim County Administrative Officer and Director of Behavioral Health Services. Mr. Muir also serves as the current Director of Personnel. The Grand Jury received a fourth complaint that Mr. Muir was misrepresenting information regarding the financial status of the hospital.

This report should not be construed as a criticism of Mr. Muir's job performance. Mr. Muir deserves credit for the job he is performing under difficult conditions. Our review focused on the inherent potential for conflict, when one person holds multiple supervisory positions that are responsible for the same issues, and the difficulty of combining numerous job duties in an effective manner.

**Method of Investigation:**

The Grand Jury conducted interviews with Brian Muir, Auditor, and a member of the Board of Supervisors. Information was obtained from the County Counsel and the District Attorney. The relevant portions of the Attorney General's publication entitled "Conflicts of Interests" were reviewed. Copies of the job descriptions for Auditor, County Administrative Officer and Director of Behavioral Health Services were obtained and reviewed. The Grand Jury reviewed additional documents, such as Mr. Muir's time sheets. Other counties in Northern California were polled regarding the position and duties of County Administrative Officer.

**Finding #1:**

In California, the activities of public officials are guided by the Common Law Doctrine of Incompatible Offices. This doctrine addresses the potentially overlapping duties and conflicts when two public offices are held by a single official. **The offices are considered incompatible if there 1) is a significant clash of duties or loyalties between the offices, 2) if public policy considerations make it improper for one**

**person to hold both offices and 3) if either officer exercises a supervisory, auditory, appointive, or removal power over the other.**

The Common Law Doctrine of Incompatible Offices only applies to someone who holds two public offices simultaneously. It does not preclude an official from simultaneously holding an office and an "employment", based on case law and Attorney General opinions. The Attorney General's office has concluded that City Administrators and Managers are "officers" in several legal opinions (51 Ops.Cal. Atty.Gen. 183 (1968), 80 Ops.Cal.Atty.Gen. 74, 75-76 (1997), 82 Ops.Cal .Atty.Gen. 201). In an opinion on whether a person could serve simultaneously as the City Administrator and Fire Chief of the City of Oroville, the Attorney General's office stated "Prospective as well as present clashes of duties and loyalties give rise to the prohibition. Only one significant clash is required to make offices incompatible."

Mr. Muir currently serves as a public official (Auditor) and an employee (Director of Behavioral Health Services). The Board of Supervisors specifically chose not to name Mr. Muir as County Administrative Officer (CAO) or interim CAO. According to a member of the Board of Supervisors, the CAO position is now shared between the Auditor/Controller, County Counsel, and Board of Supervisors, with several Department Heads "pitching in".

Mr. Muir performs most of the CAO's duties although he does not technically hold that title. In a brief survey, the Grand Jury found several instances where Mr. Muir was cited as the CAO by other Department heads. Even though the CAO position has not been filled, it is still cited by County staff, such as the legal advertisement for Community Development Block Grants.

Legal arguments can be made both "for" and "against" the conclusions that 1) Mr. Muir should be considered to be the CAO even though he does not hold that specific title and 2) that the CAO is a public official and therefore subject to the Common Law Doctrine of Incompatible Offices. The Grand Jury believes that the most appropriate method to settle this discussion is to 1) obtain an opinion from the Attorney General, and 2) comply with the opinion. It is possible that the County may chose not to comply with the opinion, since Attorney General opinions are not binding. In that case, the District Attorney should pursue the issue in court.

**Recommendation #1:**

The District Attorney should obtain a legal opinion from the Attorney General's Office (AG) as to whether Mr. Muir's multiple duties violate the Common Law Doctrine of Incompatible Offices. If the Attorney General concludes that Mr. Muir should divest himself of incompatible duties, the Board of Supervisors should take steps to implement the AG opinion. In the event that the Board of Supervisors chose to ignore the AG opinion, the District Attorney should pursue the issue in court.

## **Finding #2:**

It is poor public policy to have the Auditor and County Administrative Officer positions combined. The result is a concentration of power with no checks and balances. It compromises the jurisdictional independence of various positions. The Grand Jury believes that the rationale expressed in the Common Law Doctrine of Incompatible Offices should be considered.

It is easy to conceive of situations where incompatible offices may arise. The following are examples of situations where there is a significant clash of duties or loyalties between the offices, where public policy considerations make it improper for one person to hold both offices and where either officer may exercise a supervisory, auditory, appointive, or removal power over the other.

### **Example 1:**

In 2002-2003, the Grand Jury received a complaint concerning an application for a housing rehabilitation grant. Mr. Muir served on the Loan committee that selected recipients of the grant. The applicant was denied a grant and the appeal was submitted to the acting CAO – also Mr. Muir. The Grand Jury report stated “This situation underscores the need to hire a full time County Administration Officer”. The County has had to resolve this conflict by appointing a different Department head to review appeals.

### **Example 2:**

In 2003-2004 The Grand Jury received a complaint from an applicant for the position of Personnel Manager. Mr. Muir served on the committee interviewing job applicants. The applicant was not selected for the position. An appeal of the decision was submitted to the County Administrative Officer - also Mr. Muir. Mr. Muir is currently serving as the Personnel Manager, following the resignation of the selected candidate. County employees and job applicants should have someone to go to, to hear, explore and perhaps find a remedy if they feel the Personnel Department has erred. By being both the Personnel Manager and CAO, Mr. Muir has eliminated these options for county staff and applicants.

The current County Council is retiring. He is very involved in personnel matters. His replacement may not have the inclination or the time as a new employee to assist the Department heads and the Personnel Department employees to the current extent. The Personnel Department should have a dedicated head, one who only deals with personnel matters.

### **Example 3:**

Mr. Muir currently serves as the Director of Behavioral Health, which is a county Department head. Department heads are responsible for recommending budgets and

staffing levels and serving as an advocate for their Department. The Grand Jury found no evidence that this exists, but there is the possibility that a combined Department Head/Auditor/Administrative Officer may favor their own department. In contrast, there is the likelihood that a part-time Department head may not be able to devote sufficient time to Behavioral Health Services. The 2001-2002 Grand Jury stated "We recognize that the Mental Health Director is also the County Auditor and the interim CAO, in addition to other duties that he has been assigned. Overall, he can only devote about 30% of his time overseeing the TCBHS Department operations".

#### **Example #4:**

Numerous questions have been raised regarding the finances of Trinity Hospital, particularly which hospital services operate at a financial deficit. The Auditor has presented various sets of figures, some of which have been questioned by hospital staff. The hospital's Chief Financial Officer developed an alternate set of figures, in part because the hospital and county use different auditing procedures. The role of a Chief Administrative Officer would have been to resolve the difference of opinion between these two financial officials. A full-time CAO would have been more likely to have the time to dedicate to resolving the hospital funding issues.

#### **Conclusion:**

The Grand Jury recognizes that there is some efficiency in combining multiple part-time positions into one. However, the positions selected for combination should not have a significant clash of loyalties or exercise a supervisory power over the other.

The Auditor/Controller has the duty to advise the Department heads of the availability of funds and maintain an ongoing tally to assure that the various arms of County government stay within budgetary limitations. The CAO may be expected and requested by the Board of Supervisors to explore visionary ideas to improve the functions of County government that may not fit into the budgetary guidelines. It seems that the County would benefit from the checks and balances of a separate CAO and County Auditor/Controller.

One of the CAO duties, according to the job description, is "oversees and maintains the economic efficiency of County government, coordinating studies, analyzing resources, and developing recommendations to assist the County in better meeting the changing needs and requirements of County government". The Grand Jury wonders if serious issues facing the County, such as operation of Trinity Hospital, would have been better served if there were a full-time person dedicated to this task.

#### **Recommendation #2:**

The Grand Jury strongly recommends that the County have a separate Chief Administrative Officer, Auditor/Controller and Personnel Manager.

**Finding #3:**

The Grand Jury polled 8 rural counties in northern California (Del Norte, Mendocino, Siskiyou, Tehama, Modoc, Lake and Colusa). Colusa County has eliminated their CAO and delegated those duties to the County Clerk. Alpine County, which has a population of less than 2000 people, has an assistant to the Board of Supervisors. The remaining 6 counties have a CAO which is not combined with an elected position. The Grand Jury contacted the California State Association of Counties (CSAC). CSAC considers Brian Muir to be the interim Chief Administrative Officer.

**Recommendation #3:**

The Grand Jury strongly recommends that the County have a separate County Administrative Officer and Auditor/Controller.

**Finding #4:**

The County Administrative Officer position is described as a "single-position management classification". According to the CAO job description, the CAO supervises the appointed Department heads, Personnel Manager, Personnel Analyst I & II, Director of Information Technology, Grants Coordinator, Clerk to the Board of Supervisors, Deputy Risk Manager and other administrative staff.

The CAO serves as the Purchasing Agent and Employee Relations Officer, directly oversees Information and Technology Services, Human Resources, Grants Administration, and Risk Management. The CAO duties include development and administration of the budget, approving the filling of vacant positions, direction of central services (including building management, use of office equipment and maintenance of County equipment), reviews and coordinates applications for State and Federal grants, oversees the performance of appointed Department heads, present the County's Annual report to the Board of Supervisors, etc.

Mr. Muir performs the bulk of these duties in addition to serving as the Auditor and Director of Behavioral Health Services. It would seem difficult to perform all these duties in an effective and efficient manner.

**Recommendation #4:**

The Grand Jury strongly recommends that the County have a separate County Administrative Officer and Auditor/Controller.

**Finding #5:**

Mr. Muir was elected as Auditor/Controller, with the assumption that was a full-time position. In actuality, 65.5% of his salary is from Auditor/Controller, 10.3% from the Director of Behavioral Health Service, and 24.2% from the CAO position.

**Recommendation #5:**

The salary for Auditor/Controller should be reduced proportionately if it is not a full-time position.

**Conclusion:**

The Grand Jury recognizes that having a separate Auditor and County Administrative Officer increases the cost to the County during a time of tight budgets. However, the lack of a full-time CAO may cost more to the County in the long run. Distribution of the CAO duties to existing staff may result in lower efficiencies due to a higher workload. We have become “penny wise and pound foolish” without a full-time person to evaluate efficiencies in County government, to seek outside funding through grants or legislative appropriation or to “think outside the box” to resolve thorny issues such as the operation of Trinity Hospital.

**Responses Required:**

All of the recommendations listed above are directed to the Board of Supervisors or their designated staff. Under Penal Code 933, the following entities are required to respond to the listed findings within the time period indicated:

Entity	Finding	Recommendation	Respond In:
Auditor	1,2	1,2	60 days
County Administrative Officer	1,2	1,2	60 days
Trinity County Board of Supervisors	1,2	1,2	90 days

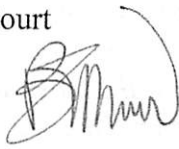


RECEIVED  
JUL 29 2004  
TRINITY COUNTY  
SUPERIOR COURT

## TRINITY COUNTY

BRIAN E. MUIR, COUNTY AUDITOR-CONTROLLER  
DAVID NELSON, CHIEF DEPUTY AUDITOR-CONTROLLER  
P.O. BOX 1230, WEAVERVILLE, CALIFORNIA 96093  
PHONE (530) 623-1317 FAX (530) 623-1323

TO: The Honorable Anthony Edwards,  
Presiding Judge of the Superior Court

FROM: Brian Muir, Auditor /Controller 

CC: Kelly Frost, Deputy Clerk to the Board of Supervisors

SUBJECT: Response to Recommendations of 2003-04  
Grand Jury Finance and Administration Committee  
Report re: Review of Citizen Complaint Regarding Brian Muir, Auditor

DATE: July 2, 2004

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The Grand Jury Finance and Administration Committee has requested a written response to their final report on Review of Citizen Complaint Regarding Brian Muir, Auditor. In my capacity as Auditor/Controller performing the duties of County Administrative Officer my response is as follows:

***Finding #1:*** *In California, the activities of public officials are guided by the Common Law Doctrine of Incompatible Offices. This doctrine addresses the potentially overlapping duties and conflicts when two public offices are held by a single official. The offices are considered incompatible if there 1) is a significant clash of duties or loyalties between the offices, 2) if public policy considerations make it improper for one person to hold both offices and 3) if either officer exercises a supervisory, auditory, appointive, or removal power over the other.*

*The Common Law Doctrine of Incompatible Offices only applies to someone who holds two public offices simultaneously. It does not preclude an official from simultaneously holding an office and an "employment," based on case law and Attorney General opinions. The Attorney General's office has concluded that City Administrators and managers are "officers" in several legal opinions (51 Ops.Cal.Atty.Gen. 183 (1968), 80 Ops.Cal.Atty.Gen. 74, 75-76 1997), 82 Ops.Cal.Atty.Gen. 201). In an opinion on whether a person could serve simultaneously as the City Administrator and Fire Chief of the City of Oroville, the Attorney General's office stated "Prospective as well as present clashes of duties and loyalties give rise to the prohibition. Only one significant clash is required to make offices incompatible."*

*Mr. Muir currently serves as a public official (Auditor) and an employee (Director of Behavioral Health Services). The Board of Supervisors specifically chose not to name Mr. Muir*



as County Administrative Officer (CAO) or interim CAO. According to a member of the Board of Supervisors, the CAO position is now shared between the Auditor/Controller, County Counsel, and Board of Supervisors, with several Department heads "pitching in."

Mr. Muir performs most of the CAO's duties although he does not technically hold that title. In a brief survey, the Grand Jury found several instances where Mr. Muir was cited as the CAO by other Department heads. Even though the CAO position has not been filled, it is still cited by County staff, such as the legal advertisement for Community Development Block Grants.

Legal arguments can be made both "for" and "against" the conclusions that 1) Mr. Muir should be considered to be the CAO even though he does not hold that specific title and 2) that the CAO is a public official and therefore subject to the Common law Doctrine of Incompatible Offices. The grand Jury believes that the most appropriate method to settle this discussion is to 1) obtain an opinion from the Attorney General, and 2) comply with the opinion. It is possible that the County may chose not to comply with the opinion, since Attorney General opinions are not binding. In that case, the District Attorney should pursue the issue in court.

Response: I disagree. The duties I perform are not incompatible. Throughout the Country it is not uncommon for the auditor to perform the duties of county administrative officer in small counties.

Recommendation #1: Implementation of the recommendation is up to the District Attorney and the Board of Supervisors.

Finding #2: *It is poor public policy to have the Auditor and County Administrative Officer positions combined. The result is a concentration of power with no checks and balances. It compromises the jurisdictional independence of various positions. The Grand Jury believes that the rationale expressed in the Common Law Doctrine of Incompatible Offices should be considered.*

Response: The duties I perform are not incompatible. There is no question that four separate individuals performing the duties of County Administrative Officer, Auditor/Controller, Personnel Officer, and Director of Behavioral Health Services could do a better job than I can do by myself, and I would welcome the assistance. However, the reason the Board of Supervisors chose to combine the duties is not efficiency but cost. I earn a salary equivalent to that of the County Administrative Officer, and I perform the other job duties at no additional cost to the County. To fill the other three positions would cost in excess of \$200,000 or, put in relative terms, the salaries of four deputy sheriffs.

Recommendation #2: Implementation of the recommendation is up to the Board of Supervisors

Finding #3: *The Grand Jury polled 8 rural counties in northern California (Del Norte, Mendocino, Siskiyou, Tehama, Modoc, Lake and Colusa). Colusa County has eliminated their CAO and delegated those duties to the County Clerk. Alpine County, which has a population of less than 2000 people, has an Assistant to the Board of Supervisors. The remaining 6 counties have a CAO which is not combined with an elected position. The Grand Jury contacted the California State Association of Counties (CSAC). CSAC considers Brian Muir to be the interim*

*Chief Administrative Officer.*

Response: I agree.

Recommendation #3: Implementation of the recommendation is up to the Board of Supervisors.

*Finding #4: The County Administrative Officer position is described as a "single-position management classification". According to the CAO job description, the CAO supervises the appointed Department heads, Personnel manager, Personnel Analyst I & II, Director of Information Technology, Grants Coordinator, Clerk to the Board of Supervisors, Deputy Risk manager and other administrative staff.*

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*Mr. Muir performs the bulk of these duties in addition to serving as the Auditor and Director of Behavioral Health Services. It would seem difficult to perform all these duties in an effective and efficient manner.*

Response: I agree.

Recommendation #4: Implementation of the recommendation is up to the Board of Supervisors.

*Finding #5: Mr. Muir was elected as Auditor/Controller, with the assumption that was a full-time position. In actuality, 65.5% of his salary is from Auditor/Controller, 10.3% from the Director of Behavioral Health Services, and 24.2% from the CAO position.*

Response: I agree.

Recommendation #5: Implementation of the recommendation is up to the Board of Supervisors. The recommendation makes no sense given duties that I perform and the salary savings that are achieved as described in my response to recommendation # 2. The cost of my salary is spread among the departments which I supervise, so the cost to the Auditor/Controller Department is proportionally less.

BM:wt



# TRINITY COUNTY

BOARD OF SUPERVISORS  
P.O. BOX 1613, WEAVERVILLE, CALIFORNIA 96093  
PHONE (530) 623-1217 FAX (530) 623-8365

RECEIVED

SEP 24 2004

TRINITY COUNTY  
SUPERIOR COURT

TO: The Honorable Anthony Edwards  
Presiding Judge of the Superior Court

FROM: Trinity County Board of Supervisors

SUBJECT: Response to the 2003/04 Trinity County Grand Jury  
Finance and Administration Committee  
"Review of Citizen Complaint Regarding Brian Muir, Auditor"

DATE: September 21, 2004

H J  
9-23-04

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The Grand Jury Finance and Administration Committee has requested a written response to their final report on Review of Citizen Complaint Regarding Brian Muir, Auditor. The response of the Board of Supervisors is as follows:

***Finding #1:*** *In California, the activities of public officials are guided by the Common Law Doctrine of Incompatible Offices. This doctrine addresses the potentially overlapping duties and conflicts when two public offices are held by a single official. The offices are considered incompatible if there 1) is a significant clash of duties or loyalties between the offices, 2) if public policy considerations make it improper for one person to hold both offices and 3) if either officer exercises a supervisory, auditory, appointive, or removal power over the other.*

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BILL CHAMBERS  
DISTRICT 1

BILLIE MILLER  
DISTRICT 2

RALPH MODINE  
DISTRICT 3

HOWARD FREEMAN  
DISTRICT 4

VACANT  
DISTRICT 5

*as County Administrative Officer (CAO) or interim CAO. According to a member of the Board of Supervisors, the CAO position is now shared between the Auditor/Controller, County Counsel, and Board of Supervisors, with several Department heads "pitching in."*

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*Legal arguments can be made both "for" and "against" the conclusions that 1) Mr. Muir should be considered to be the CAO even though he does not hold that specific title and 2) that the CAO is a public official and therefore subject to the Common law Doctrine of Incompatible Offices. The grand Jury believes that the most appropriate method to settle this discussion is to 1) obtain an opinion from the Attorney General, and 2) comply with the opinion. It is possible that the County may chose not to comply with the opinion, since Attorney General opinions are not binding. In that case, the District Attorney should pursue the issue in court.*

**Finding #1, Response:** The Trinity County Board of Supervisors does not completely agree with this finding. In the past, the Board saw no conflict of interest in having Brian Muir perform some of the duties of the C.A.O. Currently, we are waiting for an opinion from the State Attorney General on whether this arrangement of having the elected Auditor performing some C.A.O. functions is incompatible as defined in the Common Law Doctrine of Incompatible Offices. As a side note, at the regularly scheduled meeting of the Trinity County Board of Supervisors, held on September 7, 2004, the Board voted to advertise the C.A.O. position in hopes of filling the position in the 2004 calendar year.

**Recommendation #1, Response:** The recommendation has been implemented.

*Finding #2: It is poor public policy to have the Auditor and County Administrative Officer positions combined. The result is a concentration of power with no checks and balances. It compromises the jurisdictional independence of various positions. The Grand Jury believes that the rationale expressed in the Common Law Doctrine of Incompatible Offices should be considered.*

**Finding #2, Response:** The Trinity County Board of Supervisors does not completely agree with this finding. In the past, the Board saw no conflict of interest in having Brian Muir perform some of the duties of the Auditor/Controller, Personnel Officer, Director of Behavioral Health Services, and some of the responsibilities of the C.A.O. Obviously, separate individuals performing these duties could do a more efficient job, however, in a cost saving measure the Board has chosen to consolidate these duties. Savings through consolidation have been estimated at close to \$200,000.

**Recommendation #2, Response:** If our recruitment of a C.A.O. is successful, the recommendation will be implemented.