

Committee of Thirteen Report

July 14, 2009

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, July 14, 2009 at 6:00 p.m. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

Present: Wozniak, Sandlin, Brown, Lewis, Hubbard, Allen, Douglas,
Blaty, Wincott, Harrison, Stephenson

Absent: Wolf, Moore

Others Present: County Judge David Bisbee, Comptroller Richard
McComas, Director of Public Services Chris Glass, Public
Defender Jay Saxton, 9-1-1 Administration Coordinator
May Kay Sullivan

Media: Tabatha Hunter – Daily Record; Ryan McGeeney –
Morning News

JP Bob Stephenson called the meeting to order at 6:07 p.m.

PUBLIC COMMENTS:

None

1. Update-Disposition of American Legion Building

JP Frank Wincott reported that the Long Range Planning/Real Estate & Buildings Committee had discussed the American Legion building at its meeting last month, and that numerous and different options were proposed, looked at, and investigated by the committee, the County Judge, and the County Attorney. He stated that the committee unanimously supported the County Judge's decision to declare the building surplus property and put it up for auction. He added that the major concern of the committee was that the American Legion should be treated properly.

County Judge David Bisbee stated that he has met with the American Legion several times, they are comfortable with the decision, and are encouraging us to sell the building as surplus property. He said they will have a court order prepared very soon to declare the building surplus property, then it will be advertised and sold at public auction.

JP Wozniak asked if there would be a minimum bid so that we could at least get something out of it. Judge Bisbee stated that it could be sold for a bid of one dollar because it is being declared surplus property, adding that the building is of no benefit and a lot of liability to the county, and stays that way until the year 2052. He said that we could literally give the building away, and by 2052 would be money ahead. He emphasized that the American Legion is the likely buyer, and it will be advertised as surplus property with an existing valid lease that would remain in effect, and that the sub-lease is subject to the primary lease.

JP Stephenson asked if an ordinance is necessary.

Judge Bisbee stated that he has the authority to declare the property surplus property and that once the County Attorney has prepared the court order and it has been filed, County Properties Coordinator Marsha Graham will begin the advertising, and the auction date will be set. He said they will allow plenty of time to let everyone know what they are doing in case there are any problems.

2. Re-appointment of James Cole to the Benton County Planning Board

Director of Public Services Chris Glass stated that three months ago, James Cole was appointed to the Benton County Planning Board to fill an unexpired term, and the County Judge is re-appointing him to that position.

JP Allen made motion to forward the re-appointment of James Cole to the Planning Board to the July 23, 2009 Quorum Court agenda, seconded by JP Sandlin.

Motion passed by unanimous voice vote.

3. Appropriation Ordinance Request: 9-1-1 Administration – PSAP Equipment Upgrade

JP Wozniak stated that this appropriation ordinance was forwarded from the Finance Committee, and it is to appropriate funds to pay for the PSAP (Public Safety Answering Point) equipment upgrade for 9-1-1, and involves no county funds.

JP Harrison made motion to forward the proposed appropriation ordinance to the July 23, 2009 Quorum Court agenda, seconded by JP Sandlin.

Motion passed by unanimous voice vote.

4. Appropriation Ordinance Request: Department of Emergency Management Grant Funds

JP Wozniak stated that this appropriation ordinance was forwarded from the Finance Committee, and the purpose is for the development of a plan for standardized interoperable communication operation procedures, and that there would be no expense to the county. JP Wozniak stated that in the event of an emergency, there will be a plan in place so that all of the agencies can communicate with each other.

JP Douglas stated that there is no county money being spent here, but there is \$11,000 of government money, our tax dollars, being spent for a consultant to come in and tell us how to write a plan to tell us what channel of a radio to get on, and how to talk to each other and communicate. He said he feels that we have department heads and every organization involved has people in charge of that department, and could they not get together without spending \$11,000 of taxpayer money and figure out their own plan.

Chris Glass stated that while Marshall Watson is very technically proficient and could possibly create such a plan, he is not at the level of orchestrating or developing a plan that would deal with the interoperability from that many different perspectives coming on board, like the National Guard, because they are talking about a very significant event in Benton County. He said the idea would be to have a plan that addresses all aspects at various levels of a state of emergency. He said while they could make an effort at it, they certainly do not have the expertise, but that Marshall Watson will be working hand in hand with these people when they come in. He added that based on 9/11 and other

security type of events that have occurred over time, the Government has recognized some inherent weaknesses, and that one of them is the communication systems, and how they function, and who steps up and leads. He added that there is a plan in place to deal with a local emergency, where the first person on site takes control, and then as a significant other player comes on board the responsibility is elevated to them.

JP Hubbard asked if they are coming in and tweaking a plan that we already have in place.

Chris Glass stated not at this level, but we do have a plan in place to deal with local emergencies, called the NEMS system. He added that the way it operates at a local level, is that if some event occurs in the county, the first person on the scene is in charge of that scene until someone of higher authority or someone with more related experience to the event arrives, then ownership or responsibility for that scene would be transferred. He said this plan will have the potential for reaching beyond Benton County's assets and extend our ability to communicate across other borders to other counties and perhaps other states, and that Benton County does not have this type of plan.

JP Allen stated that the question was asked in the Finance Committee if this is a one-time deal which will not require any other funds at any other time, and he said they were assured that it would not.

JP Wozniak explained the NEMS (National Emergency Management System) and how everyone has a pre-assigned job and function during an incident, and added that a lot of it is federally mandated, especially for law enforcement.

County Judge David Bisbee was recognized and stated that the type of thing they are trying to avoid is the situation on 9/11 when hundreds of firefighters were lost because they had the wrong kind of radios for the job they were doing and could not communicate with their commanders. He cited the various frequencies and how different ones work under different conditions. He said that Arkansas has a communications system called AWIN, which Benton County is a part of, and it is a statewide central command radio system. He added that Benton County is not very well prepared to use that system in an emergency, because most of the radios are downstairs in the basement and he does not even have one to use. He said the system is in place, where if it was being used properly, he could pick up a radio and communicate directly with Little Rock. He said they need to dovetail their system so that it can work with AWIN in Little Rock, and that has never been done in Benton County, and part of what this study will do is coordinate those two things together.

JP Hubbard asked if there will be any training requirements with this new system. Judge Bisbee stated that it is just a plan outlining which frequencies the various entities will use under different scenarios, such as an airliner crash at NWA Regional Airport, a major structure fire, a chemical spill, or a natural disaster.

Appropriation Ordinance forwarded to the July 23, 2009 Quorum Court agenda by unanimous consent.

5. Appropriation Ordinance Request: NEBCO Fire Department – Rural Fire Services Grant

Comptroller Richard McComas stated that this is a pass-through grant for the NEBCO Fire Department which requires no county funds at all.

JP Sandlin made motion to forward an appropriation ordinance to the July 23, 2009 Quorum Court agenda, seconded by JP Harrison.

Motion passed by unanimous voice vote.

6. Appropriation Ordinance Request: Amend Schedule 4 – Various Departments

Comptroller Richard McComas stated that these are changes to Schedule 4 which came from the Personnel Committee, and one change to add a Deputy Public Defender position which was forwarded from the Finance Committee.

County Judge David Bisbee was recognized, and stated that although it is not his place to voice an opinion, he would like to give the committee some facts which might stimulate some questions that they might want to ask the Public Defender. He said that after this went through the Personnel Committee and was reported in the newspaper, he received a call from one of the small town mayors, who told him the history of the situation. He said that before the District Courts were formed, there were city or municipal courts, and the cities contracted with and funded private attorneys for public defense, with city attorneys acting as prosecutors, noting that if there is a possibility of jail time, a public defender must be provided. He said that when the District Courts were formed, it did away with the city courts, and the legislation failed to address who was going to provide public defense, although the law states that the State will pay for public defenders in District Courts and Circuit Courts. He said the cities ended up with a windfall, because they no longer have to pay for public defenders, and the state does not have enough money to pay for public defenders, so the county is being asked to pay for them. He said Benton County currently funds 3½ positions, and they are not obligated to do so, nor are they obligated to pay for the additional position being requested. He said that they never know when a Judge might issue a contempt of court citation, so he does not want to tell them not to fund the position, but he can tell them that state law does not require the county to do so. He said he has talked with people in Little Rock, with the Administration of Justice people, the Public Defender's Commission, and has met twice with Jay Saxton. He said they are not at odds over the issue, they are just perplexed as to what to do, because as long as the county funds it, why should the state fund it? He said he does not know what happens if the county does not pay for it either. He added that the county is not obligated to pay for staff in the Prosecuting Attorney's office either, but if we do not, then the criminals do not get prosecuted.

Judge Bisbee stated that they are in a real catch-22, but he felt as the county's administrative officer, he should give them all of the information.

JP Allen stated that this has been discussed in both the Personnel and Finance Committees, and his recollection is that they felt it was warranted from a "need" standpoint, and the Finance Committee felt that it is a serious issue due to the caseload, which is currently at about 700 cases. Public Defender Jay Saxton stated that one Deputy Public Defender is currently handling 700 misdemeanor cases, and the national

recommendation is 400 cases. He said the biggest problem is that one year ago, the attorney had to handle cases in four District Courts, and now has to handle cases in 12 District Courts. He said each District Judge has one of four main courts in Rogers, Bentonville, Benton County - West, and Siloam Springs, but have agreed to come to other cities to hear cases in an extension of their District Courts, such as the Benton County – West Judge who hears cases in Centerton. He said the Public Defender has to be in each one of those courts. He said that one day last week the attorney had to be in court in Bethel Heights, Bentonville, and Centerton, with Bentonville being what they call a big docket court.

JP Allen stated that one of the points brought out in the Finance Committee meeting was that if the caseload is too great, then ethically the Public Defender's office will have to refuse to take them, which may cause a judge to appoint a private attorney, and the county will have to pay for that. Jay Saxton stated that the county could potentially end up paying for the private attorneys, because although the state is supposed to pay for them, when the money is exhausted, the judge could order the county to pay for them.

JP Allen asked if this position has been requested before. Jay Saxton stated that two years ago, when this pilot program was being proposed, the Director of the Public Defender Commission requested information on the effect it would have on Public Defenders. Jay Saxton said the legislators did not address funding for additional Public Defenders when they passed the legislation forming the District Courts, although they provided money for the Judges, prosecutors, and clerks. He said he began asking for an additional attorney at that time, but it has not been approved.

Jay Saxton stated that he thinks the District Court system will be a good one once it gets all of the kinks out, but another factor in the caseload is that every time the state legislature meets, they enact new laws, which become misdemeanors, and those people have to be defended.

JP Stephenson asked why the Executive Director of the Public Defender Commission will not provide more Deputy Public Defenders for the county. Jay Saxton said that the Director goes to the legislature every session and asks for more funding to hire more attorneys; this past year she asked for nine, and was given three. Jay Saxton stated that believe it or not, there are areas in worse shape than Benton County, so the positions went to those places.

JP Stephenson stated that if the state can excuse itself from its obligations, what would happen if the county simply says they do not want to fund it either. Jay Saxton said that it is not clear, but in the past, he has seen Judges order counties to pay the costs, and noted that a Judge can order anything, although the county could appeal it.

JP Stephenson said that he is also not aware of any place in the constitution that requires the public to provide defense for someone accused of a crime. Jay Saxton stated that it is United States Supreme Court case law.

JP Hubbard stated that if the question of whether or not the state can force the county to pay for public defense has never been tested, then maybe it is time to test it. Jay Saxton stated that is one way it could be done. Jay Saxton stated that all his office can do is determine how many people they can ethically represent. He said they have currently estimated that the attorney has an average of 15 to 20 minutes per case to meet with the defendant, advise them, and potentially keep them out of jail. He said there is the possibility of a domino effect, because if the positions are not funded and they have so

many cases that they have to ask for continuances in felony cases, the number of people in the Benton County Jail will start stacking up. Jay Saxton stated that the best-case scenario would be for the state to fund a Public Defender for each county that has a District Court system.

JP Hubbard asked why they would do that as long as the counties are paying for them.

Jay Saxton stated that the way he understands it, the state, cities and the county all agreed to share the costs of certain positions, and the county pays for half of one court clerk, and the city pays for the other half. He said the amount of money that comes back to the county from the District Courts is roughly \$700,000, and the cost to the county is about \$250,000 to \$300,000 per year.

JP Hubbard stated that if they decide they cannot ethically handle any more cases, and they turn them back to the state, time will tell if they will pay for them or not.

Jay Saxton stated that what the Public Defender laws say is that the counties are responsible for paying the operating budget of any Public Defender, and the state is required to pay for the salaries. He said there has always been some crossover, because the county has paid for 3½ attorneys in his office, as well as some staff for the Prosecuting Attorney. He said that the state not only funds attorneys for his office; they have also paid for experts who have to be hired for trials, in the amount of \$50,000 this year alone, and that is technically the county's responsibility. He said there is another attorney in his office that is funded by the Quorum Court who represents families involved in Department of Human Services cases. He said if the county decides not to fund that position, the Public Defender Commission does not have to pay for it. He said at one point, Judge Jay Finch was paying over \$100,000 per year in private attorneys' fees. He said the point he is trying to make is that there are savings both ways, and costs both ways.

JP Brown stated that any new hires would be contradictory to cutting \$1 million dollars out of next year's budget, and asked why the cities are not helping to pay for Public Defenders. He said the judges should put that in their budgets every year, because they are hearing both city and county cases, so we are paying for them to hear city cases. County Judge David Bisbee stated that when this pilot program was developed, it left the Public Defenders unaddressed, and when the District Courts came into being, and the city courts went away, there was already a state law in place that said that the state is responsible for public defense in District and Circuit Courts. They are assuming that when the state does not do it, the county has to pick up the tab, and they are not sure if that is correct or not. He said that if they looked at the cities' budgets from two to three years ago, there was probably \$100,000 to \$200,000 in budgeted expense for public defense, and when that went away, the cities got a windfall. He said that politics got added to it, because judges are elected and do not want to offend anybody, so instead of staying in their courtrooms, they travel all over the county to the city courts, so the City Attorneys do not have to drive anywhere. He said if the District Court Judges stayed put, the cities might be more interested in helping to pay for the Public Defenders.

Judge Bisbee stated that he would be contacting our local legislators to see if there is any chance they can fix this at the next session, and he is also going to make the Governor's staff keenly aware that this fell through the cracks and that there's a crisis hanging out there. He said that neither the schools nor the jails in Arkansas got fixed without litigation, and this probably will not get fixed without litigation either.

JP Brown stated that the bottom line is that a new hire is contradictory when they have to cut \$1 million from the budget next year.

Jay Saxton stated that he agrees with a lot of what Judge Bisbee is saying, but wanted to point out that the cities do pay a lot of the operating costs for the District Courts, because they pay for the buildings, the equipment, and the staff, such as clerks and bailiffs.

JP Douglas stated that they need to be able to justify the expenditure, and in the last Finance Committee meeting, Sheriff Ferguson pointed out that the fees charged to cities for housing prisoners has been \$32.50 for the last 15 years, and if the cities are no longer paying for Public Defenders, they should be able to afford the increase to \$50.00 that Sheriff Ferguson proposed.

JP Sandlin stated that the reason the county started funding Public Defenders was because the judges were spending more money appointing private attorneys than full time staff would cost. She said that they still have people that need to be defended.

JP Sandlin made motion to forward the appropriation ordinance to the July 23, 2009 Quorum Court agenda, seconded by JP Wozniak.

Richard McComas stated that there are some other reorganizations in the Public Defender's office that are included in the Schedule 4 ordinance, but there were no grade or salary changes.

JP Wincott stated that it seems like the county is always getting painted into a corner by the cities, and since the cities are no longer trying felonies, why could we not just send them the bill for it. He said that if they do not want to pay it, then we just release the defendant, and don't take it to court. Jay Saxton said quite simply that if he did that, he would go to jail. He said if he refuses to take any city cases, the judges will most likely get tired of that and very likely hold him in contempt of court.

JP Wincott stated that one way or another they needed to get this into court and get a decision on it, and maybe that's the way they need to force it.

Jay Saxton stated that he is not a politician, nor does he want to be, because they do have to make unenviable decisions, and he applauds them for it. He said he can only tell them the situation his department is in, and if they decide not to fund a position, his staff will regroup and try to figure something out.

JP Wincott stated that the easy thing to do would be to vote for it, but that will not solve the problem. He said somehow they have to force the issue, and he wants to know how to do that.

Jay Saxton stated that going to the legislators and asking them to fund a Public Defender in addition to the Judge and Court Clerk positions is a very good idea. He said three or four more counties have joined the District Court system, so they are going to be looking at it during this pilot program period.

JP Allen stated that he does not think they can look at it as solving one problem, because there are two problems. He said the funding problem and representation problem are tied together. He noted that not everyone who goes to the Public Defender is guilty, and if any of them found themselves in that position, they would wish that the county had ponied up the \$20,000 to represent their constituents. He said that these are real, live, human beings who are going to be arrested, and who need representation, and to sit here and argue about \$20,000 is mind-boggling to him. He said it went through the Finance Committee, and they found the \$20,000, and have a budget that the County Judge and the committee are happy with. He said they also have a County Judge who has quite a bit of

experience working with the present Governor, and he may have some experience with this issue. He added that the fact that this is a pilot program tells them that this is something that is going to be studied and looked at, and since the legislature is now meeting every year, they will not have to wait two years. He said that he believes in being conservative with the budget, but he thinks everyone was comfortable with the budget numbers for this position, and they need to take care of their constituents and make sure they have the defense they need.

JP Hubbard asked if not adding the position causes a backlog at the jail, wouldn't the county get to charge the cities for the days that the prisoner is being held. Chief Don Townsend was recognized and stated that only to the point that they have been adjudicated, and then the county picks up the cost. JP Wozniak stated that it usually is only two days for misdemeanors.

JP Hubbard stated that as far as pushing the issue with the state, you don't talk, you have to take action, and that is where he feels they need to go, instead of talking to a representative. He said the way he understands it, every person is going to get defended, because it's their constitutional right that someone has to do it, even if it is not funded through us.

Chief Townsend reminded the committee that the Miranda Warning requires that a person be offered the opportunity for representation before they can even be questioned by law enforcement, and if a Public Defender is not available, they cannot even conduct an investigation.

Motion passed - 8 yeas, (Wozniak, Sandlin, Brown, Lewis, Allen, Douglas, Harrison, Stephenson, and 3 nays, (Hubbard, Blaty, Winscott).

7. Appropriation Ordinance Request: 2009 Budget Adjustments – Various Departments

Comptroller Richard McComas stated that the ordinance that has been prepared contains \$1,064,218 in budget reductions, but when the adjustment for approximately \$94,000 in Unemployment Taxes is added in, the actual reduction is \$970,000. He said that the additional position in the Public Defender's office is included in the ordinance.

JP Allen asked if they might not be able to account for some additional money at the end of the year due to lower fuel costs.

JP Hubbard asked about the cuts in the Education line item. JP Wozniak stated that these are line items that the Elected Officials and Department Heads volunteered, so there was not much discussion. Richard McComas stated that a lot of the reductions are due to the availability of on-line training that they have not had in the past. JP Hubbard stated that the 60% cut in Continuing Education seemed like a large amount, and he assumes that a lot of the savings in travel expenses are due to lower fuel costs, which also contributed to the size of the budget reductions.

County Judge David Bisbee summarized the need for the budget cuts, and stated that he does not want people to think that they are cutting the budget because the sky is falling, but because they are budgeting appropriately for a year and a half in the future. He added that what they are doing is historic in Arkansas, and maybe nationally, because he truly doubts that any other county has ever cut \$1 million out of their operating budget mid-year when they had money in the bank.

Appropriation Ordinance forwarded to the July 23, 2009 Quorum Court agenda by unanimous consent.

OTHER BUSINESS:

JP Stephenson stated that with the Committee of Thirteen's approval, he would like to ask County Judge David Bisbee to request the County Attorney to draft an ordinance increasing the fees charged for housing city prisoners to the \$45.00 suggested by Sheriff Ferguson to the Finance Committee. Judge Bisbee stated that they have been studying those numbers, and that JP Hubbard is working on an ordinance. He said that right now, the Federal Government is paying \$42.50, the state is paying \$28.00, and the cities are paying \$32.50. He said that he spoke with Larry Norris, the Director of the Arkansas Department of Corrections, who suggested lobbying for a small increase every two years, because the state is not going to give them the big increase that the Sheriff's have been lobbying for. He said there is a budget session in January, so they should all be lobbying for it.

JP Hubbard stated that the ordinance will be ready for the Finance Committee agenda in August. He said that a lot of cities are closing their jails, because it is so much cheaper to pay the county, and it will not impact them that much because the average stay in jail that they are responsible for before the county picks up the cost is three days.

JP Douglas asked if it would be helpful for the Quorum Court to pass a resolution asking the legislature to examine the Public Defender situation in the District Courts. Judge Bisbee stated that it couldn't hurt. He said that the fair solution would be for whoever is providing the prosecutor to also provide the public defender, because that's who is receiving the fines.

JP Winscott distributed copies of the Beaver Lake Watershed Protection Strategy, and said that as the document is proposed right now, it is only a suggestion, and is not policy or legislative. He said that if they do everything suggested in every county, it would cost approximately \$15 million. He briefly summarized some of his concerns about the document, and asked that they study it, and have comments ready to discuss at the August 11, 2009 Committee of Thirteen, because the following Friday he has to vote it up or down.

JP Hubbard suggested that the document go to the Environmental Committee. JP Wozniak stated that he would notify the committee of the meeting date.

PUBLIC COMMENTS:

None

ANNOUNCEMENTS:

Upon motion and second the meeting adjourned at 7:40 p.m.