

Committee of Thirteen Report

December 13, 2005

The Committee of Thirteen of the Benton County Quorum Court met Tuesday, December 13, 2005 at 5:00 P.M. in the Quorum Court Room, County Administration Building, Third Floor, 215 East Central, Bentonville, Arkansas.

13 JPs Present: Adams, Allen, Harrison, Hill, Moore, Sampier, Schindler, Sheridan
Stephenson, Summers, Tharp, Wolf, Wozniak

Others Present: State Representative Shirley Borhauer, Comptroller Richard McComas,
County Judge Gary Black, Jim Ecker

Media: Jennifer Turner – Daily Record, Joe Askins – Morning News

JP Tim Summers called the meeting to order at 5:00 p.m.

Public Comments:

Mike Wishon, of Lookout Tower Road in Siloam Springs, stated that he came to ask the Quorum Court to provide some oversight of the Benton County Planning Board. He listed several complaints about the manner in which a Public Hearing on a gravel quarry request was held.

1. Discussion: American Legion/Old Jail Building Leases

County Attorney Ed Gartin stated that the State Auditor has questioned the legality of the leases on the Old Jail Building. He said that since a county employee is involved in the matter, former County Attorney and current Prosecuting Attorney Robin Green felt it would be a conflict of interest for the County Attorney to represent Benton County in the discussions. He said he has asked Jack Butt, an attorney from Fayetteville to give the history of the situation to the Committee, and to explain the County's options.

Jack Butt stated that the problem began in 1934 when the county originally leased the old jail building to the American Legion, and has continued through a series of subsequent leases, subleases, and county court orders amending the leases. He said that since Benton County is receiving no income from the property, and is in fact paying the insurance and maintenance on the building, a private citizen is benefiting from the use of taxpayer funds and the State Auditor has said that is unconstitutional. He said the occupants have made improvements to the building, which would support the argument that there has been some benefit to the public because the value of the building has increased. Jack Butt said that one legal solution would be to bring suit against both the occupants and the American Legion to nullify the leases on the grounds that they do not conform to state law. Jack Butt said that another option would be for the county to invoke its right of eminent domain, and he did not think the county would have any difficulty in justifying that action given the shortage of county office space. He said that the county could condemn the building, but they would have to pay fair market value to anyone who has rights in it, and property on the square in downtown Bentonville will probably appraise at a considerable price. He said that if a court finds that the leases are invalid, then no one has any legal right to be there, and the county would not have to pay for the building. If the leases are determined to be valid, then the county would have to pay both the occupants and the American Legion for the value of their leases for the years remaining on them. He said that either way, a court will most likely determine how much the county will have to pay to get the building back free and clear.

Jack Butt summarized by saying that the county basically had three choices, to ignore the Legislative Audit for the next 40 years, initiate a lawsuit to nullify the leases, which will probably end up in the

Arkansas Supreme Court at a cost of roughly \$10,000, or condemn the building and be prepared to pay fair market value for it.

JP Summers asked if negotiations were not an option. Jack Butt stated that negotiations were almost always an option, and a time period allowing for negotiating could be set before a lawsuit is to be filed. He said it was also possible that a new lease could be agreed upon, in which the county would receive fair market value for the lease, and the Legislative Auditors would be satisfied. He said that the American Legion did not have to pay property taxes as a charitable organization, but when they subleased the building for private use property taxes became due on it. He said that since property taxes were not negotiated in the lease the county is responsible for them, and that is causing the Legislative Audit problem. He said that another possibility would be to simply stop paying taxes, let it go to public auction, and buy it back. JP Wozniak asked if the problem would be solved if the occupants began paying the taxes. Jack Butt said one solution would be for either the occupants or the American Legion to start paying the taxes and insurance, just as long as the county is not paying for them. He said that unless they pay something in addition to the taxes and insurance, the argument could still be made that they are receiving a benefit at taxpayer expense, because they are still occupying a building free of charge.

JP Moore stated that it was a wacky world when you have to condemn then pay fair market value for your own building. Jack Butt stated that this was like many legal problems, that the series of decisions seems ridiculous when looked at as a whole but seemed reasonable at the time they were made. JP Adams asked if the original lease allowed for subleasing. Jack Butt stated that since it is not specifically addressed it is allowed. JP Schindler stated that he would hate to see use of the building lost to either the county or the American Legion, and asked if the occupants had ever expressed any interest in purchasing the building. Jack Butt stated that he had only been asked to analyze the problem, not find a solution. JP Schindler suggested a conversation between the county, the occupants, and the American Legion as a place to start. JP Allen agreed, and offered his assistance. JP Tharp asked if Arkansas law prohibited a government body from obligating future government bodies. Jack Butt stated that as a general rule, government bodies cannot oblige themselves into the future, but in this case an 85-year lease was entered into and a County Judge and Quorum Court have since endorsed it and ratified it. He said that even if a deal is made illegally, a court will uphold it if it has continued to be honored for years. He added that in this case, the occupants have borrowed money to make improvements on the building in anticipation of being there another 20 years.

JP Stephenson stated that this is not the first year that this has come up in the Legislative Audit Report, and cited the two sections of law that the arrangement is in conflict with. He said that he was in favor of negotiations and discussions, but he was concerned that we could negotiate ourselves into something that could cost us hundreds of thousands of dollars and still not be legally valid. He said he felt they needed to take a stand and get the issue resolved, even if it involved going to the Arkansas Supreme Court. JP Stephenson made motion to direct County Attorney Ed Gartin to proceed with filing the necessary litigation to get this matter resolved, and to direct the County Judge to continue with negotiations in the meantime, seconded by JP Sampier. County Attorney Ed Gartin asked that the motion be amended to direct the County Attorney and the County Judge to hire outside council to handle the matter, since there may appear to be a conflict of interest for the County Attorney. JP Stephenson agreed to amend the motion, seconded by JP Sampier. JP Sheridan stated that he was all for negotiations, but wanted to know if the leases would still be valid if the county let the building go to a tax auction. He stated that if a tax sale invalidates the leases, then it might be to the county's advantage to stop paying the taxes and purchase the building at auction, because we would be paying ourselves and get the building back for nothing. Jack Butt said that there might still be a question as to whether the occupants would get part of the sale proceeds as consideration for the value of their lease. JP Wolf asked how it was possible to obtain a mortgage on something you do not own. Jack Butt said you can mortgage your lease hold interest, which is commonly done in commercial real estate. JP

Wolf stated that she did not personally feel that the county needed to be in the real estate business, and agreed with JPs Stephenson and Sampier. JP Summers asked if the county still had an insurable interest in the building. Jack Butt stated that they did, because they own the building. JP Adams stated that he supported the motion, because the county's intent in donating the building was for the American Legion to use it, and they are obviously not doing so. JP Summers stated that he was against the motion, because he would like to see JP Allen and Judge Black attempt some negotiation before a suit is filed. JP Sampier stated that he was concerned with the county employee issue, and that is not something that can be negotiated. JP Allen stated he agreed with JP Sampier, because that seemed like a clear cut issue that needs to be resolved. JP Summers asked for the motion to be read again. Deputy Clerk Betsy Deaton read the motion. Motion passed (9 yeas, 4 nays). JP Summers reminded the Committee that the motion had included provision for negotiations to continue, and said they would appreciate JP Allen's input. JP Stephenson stated that he did not think a final settlement should be agreed to before a determination is made by the courts. County Attorney Ed Gartin stated that since the motion has been passed it is now a legal matter for the attorneys to handle, and if Jack Butt wants input from JP Allen it is up to his discretion. County Judge Gary Black was recognized and stated that he wanted to thank the Quorum Court for taking action to move forward on the matter. He said that he felt it was in the best interest of the County not to continue to ignore the Legislative Audit's request.

2. Resolution—Keep America Beautiful

JP Summers recognized State Representative Shirley Borhauer, who introduced the Keep Benton County Beautiful Committee. She then read the Resolution establishing the Keep Benton County Beautiful affiliate program. JP Wozniak made motion to forward the Resolution to the December 22, 2005 Quorum Court meeting, seconded by JP Adams. JP Stephenson asked if there would be any cost incurred by the County. State Representative Borhauer stated that it would not cost any additional money, and might even reduce some clean up costs throughout the county. Environmental Services Director Jim Ecker stated that misdemeanor fine money from environmental violations is received through the State of Arkansas, and Wal-Mart donated the fee for joining the program. Motion passed by unanimous show of hands vote.

3. 2005 Budget Clean Up Ordinances – Richard McComas

A. Clean Up Ordinances

Comptroller Richard McComas asked if the committee would like to go over each budget adjustment proposed for the clean up ordinances. JP Sampier stated that he had no questions, and made motion to forward the ordinances to the December 22, 2005 Quorum Court meeting, seconded by JP Stephenson. JP Summers stated that the Finance Committee unanimously recommended approval to the Committee of Thirteen, and suggested that they take a few minutes to look over them to see if anyone had any questions. JP Adams called for the vote, seconded by JP Stephenson. Motion passed by unanimous show of hands.

B. Road Department Excavator

Richard McComas said that they needed to approve the purchase of an excavator in the Road Department. JP Sampier made motion to approve the trade-in of equipment and the transfer of moneys in the County Road Fund to purchase an excavator, seconded by JP Stephenson. Richard McComas stated that they would include the appropriation in a clean up ordinance in March. Motion passed by unanimous show of hands.

C. Game and Fish Fine Disbursement

Richard McComas stated that the Finance Committee had unanimously recommended Option 3 of the options presented by Treasurer Deanna Ratcliffe. He said the option will fund start up costs for programs in Decatur and Gentry schools, and continue funding for existing programs in Rogers and

Gravette. JP Allen made motion to forward Option 3 to the December 22, 2005 Quorum Court meeting, seconded by JP Adams. JP Stephenson stated that it was brought up that Conservation Districts are also eligible to receive the funds, and will be invited to participate next year. Motion passed by unanimous show of hands vote.

Other Business:

JP Sheridan stated that he was disappointed that they would not be discussing the voting equipment, since he understood that they needed to approve something at the Quorum Court meeting in order to get the machines in place. He stated that he still did not have enough information regarding the cost factors to make a decision. JP Summers stated that Election Coordinator Jim McCarthy had called him just before the meeting and said that they were not ready to make a presentation. He said that they would come to the December 22, 2005 Quorum Court meeting and present some information at that time. He added that the County Clerk is concerned that they may be moving too quickly on this, and although there is no money in the 2006 Budget, she feels that we may be making a mistake by not considering the other options. He added that it not only comes down to dollars, but also technology and what works best, and he is certainly does not understand all of it. JP Summers stated that they did need to make a decision, but that Jim McCarthy had told him that it was not mandatory to pass the Resolution before the end of the year. JP Sheridan stated that it would be nice if they had the cost factors to look at, because the County Clerk is recommending one option, and the Election Commission is recommending another, so they need to look at it very closely. He said they need to do what is best, but they also have to look at the cost. He also said that he understood there was a time factor, because the new equipment has to be ordered and installed. JP Summers stated that it was a very important issue, and they would need to spend some serious time on it. JP Sheridan stated that the ES&S representative had stated at the demonstration that they needed to place the order soon so it could be delivered and in place by the May primaries. He added that our current punch card system cannot be used next year, so the court will have to move quickly to have something in place. JP Schindler agreed that time was a critical issue because they will have to order the machines, get them in place, and provide training for the workers before May. He said he thought that the Election Commission and the County Clerk both favored two machines, the electronic machine and the paper ballot counter. JP Summers said he did not think that was the case, and they needed to keep in mind that the Election Commission would make the recommendation. JP Wolf stated that she was not impressed by the ES&S presentation, because they had no idea how much the machines cost, there was no really good detail about the voting itself, and it all seemed to run together. She said that everyone she has talked to has a different idea, whether it's the Election Commission or the County Clerk's office, and no one has stood up in front of the Court and said what we should be using and given a good reason why. JP Summers stated that he was putting the Committee on notice that they would need to spend quite a bit of time on this issue, if not in the next few weeks, then certainly in January because they need to consider the full issue and not make a quick decision. He added that he was in favor of not spending anymore money on it than is necessary, but that could cost more money in the long run.

Announcements:

JP Summers announced that the Finance Committee would be meeting on Tuesday, January 10, 2006 at 2:30 p.m., and the Committee of Thirteen will meet at 5:30 the same day.

JP Summers announced that the next Quorum Court meeting would be December 22, 2005 at 5:00 p.m.

The meeting was adjourned at 6:05 p.m.