

## MINUTES OF BENTON COUNTY QUORUM COURT

August 27, 2009

A regular meeting of the Benton County Quorum Court was held on Thursday, August 27, 2009 at 6:00 p.m. at the Benton County Administration Building, 215 East Central Avenue, Bentonville, Arkansas, pursuant to proper call and notice.

County Judge David Bisbee called the meeting to order.

Deputy County Clerk Betsy Harrell called roll as follows:

12 JP's Present:	Wozniak, Wolf, Sandlin, Brown, Lewis, Moore, Allen, Douglas, Blaty, Winscott, Harrison, Stephenson
*1 Absent:	Hubbard

A legal quorum was present.

The presiding officer led the pledge of allegiance to the flag. Prayer was led by Galen Percy of Radiant Life Church.

A moment of silence was held in support of the men and women serving in the United States Armed Forces.

### **CHANGES TO AGENDA**

County Judge David Bisbee asked if there were any additions, corrections, or deletions to the agenda.

Agenda approved by unanimous voice vote.

### **MINUTES**

County Judge David Bisbee asked if there were any additions or corrections to the Minutes of the July 23, 2009 Quorum Court meeting. Seeing none, Judge Bisbee stated that the minutes would be filed as presented.

\*JP Hubbard entered the meeting.

### **ELECTED OFFICIALS' REPORT:**

None

**COUNTY JUDGE’S REPORT:**

County Judge David Bisbee reported to the Quorum Court that 25 fire extinguishers have been destroyed after being appraised as having zero value by County Assessor Bill Moutray. JP Sandlin asked if all fire extinguishers in the county buildings have been tested. County Judge David Bisbee stated that he has no reason to believe they had not, but he would follow up on that with Director of Public Services Chris Glass.

County Judge David Bisbee recognized Director of Public Safety Greg Hines, who gave an update of the County Road Report, listing the various projects that have been completed and the status of projects currently in progress.

JP Dan Douglas initiated a discussion of bridges in the county. Greg Hines noted that there are currently four bridges closed due to failure of inspections by the Arkansas State Highway Department. He said the bridge on Colonel Myers Road needs to be totally replaced, because it cannot be repaired.

County Judge David Bisbee stated that he has implemented a new policy regarding annexations, requiring that the legal description of the proposed property to be annexed includes the entire road, plus the right of way on the opposite side. He said that annexations to the centerline of a road will no longer be accepted.

**COMMITTEE REPORTS:**

JP Winscott reported that the Long Range Planning/Real Estate and Buildings Committee had met on August 24, 2009 at the former St. Mary’s Hospital building. He said that following a tour of the facility, a question and answer session was held, and the Jones Center For Nonprofits hopes to have a proposal ready for the committee within the next 10 days.

**PUBLIC COMMENTS:**

Mayor Fred Jack of Bethel Heights stated that as mayor, he would like to request that the Quorum Court delay implementation of an increase in fees charged to cities for housing prisoners in the county jail until January 1, 2010, so that cities will have an opportunity to include the increase in their 2010 budgets. He added that he is aware that the amount of the increase will still not cover the current cost per prisoner, so as a taxpaying citizen, he would like to see the fee increased to a level that will cover the expenses.

JP Wolf made motion to suspend the rules and read all ordinances and resolutions by title only, seconded by JP Douglas.

Motion passed by unanimous voice vote.

**OLD BUSINESS:**

- (A) Second Reading of Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2008-33 (2009 Benton County Budget) to Amend *Schedule 4 Personnel and Compensation Authorization* By Adding Positions and Deleting Positions in Various Funds and Departments; Sponsor:

JP Marge Wolf

Deputy County Clerk Betsy Harrell read the proposed appropriation ordinance by title only. JP Marge Wolf stated that this is the second reading of the appropriation ordinance, and that it recognizes the reorganizations in the County Judge's office and Human Resources; adds part-time clerical funding for the Election Commission; and adds one position and recognizes some job title changes in the Public Defender's Office.

JP Wolf said that additional information concerning the Deputy Public Defender position has been made available since the August 11, 2009 Committee of Thirteen meeting, and explains that while the state does provide compensation for the Public Defender, counties may also provide additional funding. She explained that several years ago the county's cost for appointed attorneys was more than the cost of an additional position. She said she is also concerned that the backlog of prisoners awaiting trial could cause more overcrowding in the County Jail. She said they might be able to get more funding from the State at some point, but right now there is definitely a need for an additional Deputy Public Defender.

Judge Jay Finch stated that the legislature has designated the Public Defender Commission as the payment source for public defenders. He said that when a judge appoints a private attorney, an order for payment is submitted to the Public Defender Commission, which can either authorize payment if money is available, or decline it. He said the fund also has to be maintained for other professional services in all the counties in the state, so it cannot be depleted just for one county's indigent attorneys' fees.

JP Moore asked if the court decides to go ahead with funding a Deputy Public Defender, at what point in the future could they anticipate the state taking over the funding. Judge Finch stated that every time the legislature is in session, the Public Defender's Commission asks for more funding, but it is very easy for them to be ignored, because they do not have a strong group of voters. He said it is not like the Prosecuting Attorneys' office, for which the state provides all of the attorneys at a current ratio of approximately two or three prosecutors to one Public Defender. He said it could be one to three years, but he is aware that if the county is providing an attorney, the Public Defender's Commission will move those people to the top of the list when funding becomes available to replace an attorney. He noted that they are dealing with the entire state, and there are places in the state that are much worse in terms of representation.

JP Allen stated that no matter whose tax money is being used, when a private attorney is appointed, they are receiving a much higher rate of pay than a an attorney in a full time county position. Public Defender Jay Saxton stated that for the year 2008, the Public Defender's cost averaged approximately \$350 per person represented, and that included a three-week long capital murder trial involving four full-time attorneys and an investigator. He said if private attorneys were appointed for a similar trial, it could cost up to \$100,000. County Judge David Bisbee stated that Benton County is participating in a pilot program which moved small claims and misdemeanor cases to district courts, and this is an unintended consequence of that change. He said the Public Defender has to defend people in district court who are being prosecuted by city attorneys. He said that a statute separate from the pilot program simply says that the state supplies Public Defenders for the district courts, so

this is an issue that needs to go back to the legislature. He said the entity that is prosecuting the case should also pay for the Public Defender, but that is not an option at this time.

Public Defender Jay Saxton stated that the pilot program started in January of 2009, and they saw an immediate increase in the caseload of about 150 cases, but their overall caseload has also steadily increased over the last few years.

Judge Jay Finch noted that when the pilot program was being developed, it was proposed that there be four district courts, which one attorney could probably handle, but the cities were concerned about receiving the same amount of money as they had under the previous system, so the solution was for the cities to serve as venues for each district court. He said the result of that compromise is that district court is now being held in 12 different locations, so it is not only the number of cases causing the difficulty for the Public Defenders, but the number of locations.

JP Allen stated that it is going to hit the taxpayers' pocketbooks whether they squabble with the state or not. He asked Jay Saxton about the position that the state is currently reimbursing the county for. Jay Saxton explained that several years ago, Judge Finch had frequently needed to appoint attorneys to represent parents involved in custody cases with the state, so the decision was made to hire a full time attorney under the supervision of the Public Defender's office. He said that Judge Finch was later able to find a funding source through the Administrative Office of the Courts, so the county is now being reimbursed for that attorney's hours.

JP Wolf made motion to pass the second reading of the proposed appropriation ordinance, seconded by JP Stephenson.

JP Wolf stated that she believed they needed to continue working with the state to move this to have a more fair and equitable funding method, but at this time, funding one Public Defender position will be less costly than paying for appointed attorneys.

There being no further discussion, a roll call vote was recorded as follows:

11 yeas: Wozniak, Wolf, Sandlin, Hubbard, Moore, Allen, Douglas, Blaty,  
Winscott, Harrison, Stephenson  
2 nays: Brown, Lewis

County Judge David Bisbee noted that since the appropriation ordinance received more than the nine votes required for adoption, a third reading will not be necessary.

Appropriation ordinance duly adopted and assigned **No. O-2009-27**.

JP Winscott asked who would have the responsibility to carry this issue to the state. JP Wolf stated that it would be the Public Defender's Commission, along with the resolution from the Quorum Court. County Judge David Bisbee stated that he would also be staying involved, because it is costing the county money that someone else should be paying. JP Allen stated

that everyone should call their own state legislators. Judge Jay Finch stated that Didi Stallings, Director of the Public Defender's Commission, has urged everyone to call their legislators to explain to them why it is important to fund the Public Defender positions.

**NEW BUSINESS:**

- (A) Proposed Resolution in Support of Efforts to Obtain Funding for the Bella Vista Bypass Segment of Future Interstate 49; Sponsor: JP Jim Wozniak

Deputy County Clerk Betsy Harrell read the proposed resolution by title only. JP Wozniak stated that the bypass has been discussed for a long time, and Benton County should show its support.

There being no further discussion a roll call vote was recorded as follows.

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen, Douglas, Blaty, Winscott, Harrison, Stephenson

Resolution duly adopted and assigned **No. R-2009-17.**

- (B) Proposed Ordinance Amending Ordinance No. O-2008-26 Which Repealed Chapter 2, Article VII, et seq. of *The Code Of Ordinances of Benton County, Arkansas* Regarding Benton County Employment and Salary Administration Policy; Sponsor: JP Marge Wolf

Deputy County Clerk Betsy Harrell read the proposed ordinance by title only. JP Wolf stated that the requested change in language addresses the hiring of a person who does not meet the minimum requirements of the job description.

JP Wolf made motion for approval, seconded by JP Sandlin.

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen, Douglas, Blaty, Winscott, Harrison, Stephenson

Proposed ordinance passed first reading.

- (C) Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2008-33 (2009 Benton County Budget) to Appropriate Additional Monies and Authorize Additional Expenditures in Department 01, Gallatin Fire Department Rural Services Grant Fund, Fund 482; Sponsor: JP Kurt Moore

Deputy County Clerk Betsy Harrell read the proposed appropriation ordinance by title only. JP Moore stated that this is a pass-through grant to the Gallatin Fire Department.

JP Moore made motion for approval, seconded by JP Sandlin.

There being no discussion, a roll call vote was recorded as follows:

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen,  
Douglas, Blaty, Winscott, Harrison, Stephenson

Appropriation Ordinance duly adopted and assigned No. **O-2009-28**.

- (D) Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2008-33 (2009 Benton County Budget) to Appropriate Additional Monies and Authorize Additional Expenditures in Department 30, State Homeland Security Grant Fund, Fund 284; Sponsor: JP Kurt Moore

Deputy County Clerk Betsy Harrell read the proposed appropriation ordinance by title only. JP Moore stated that this is a grant that the county receives from the Arkansas Department of Emergency Management for equipment that is then disbursed to various public safety entities throughout the county.

JP Moore made motion for approval, seconded by JP Wolf.

There being no further discussion, a roll call vote was recorded as follows:

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen,  
Douglas, Blaty, Winscott, Harrison, Stephenson

Appropriation Ordinance duly adopted and assigned No. **O-2009-29**.

- (E) Proposed Appropriation Ordinance Amending Appropriation Ordinance No. O-2008-33 (2009 Benton County Budget) Authorizing a Transfer of Funds Between Categories and Line Items in Department 06, Collector, Funds 060 and 065; Sponsor: JP Kurt Moore

Deputy County Clerk Betsy Harrell read the proposed appropriation ordinance by title only. JP Moore stated that this is a transfer of funds in order to replace countertops, a security switch, and a printer in the Collector's offices.

JP Moore made motion for approval, seconded by JP Wolf.

There being no further discussion, a roll call vote was recorded as follows:

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen,  
Douglas, Blaty, Winscott, Harrison, Stephenson

Appropriation Ordinance duly adopted and assigned **No. O-2009-30**.

- (F) Proposed Ordinance Amending Section 82 of Chapter 42 of *The Code of Ordinances of Benton County, Arkansas* to Increase the Daily Fee Charged to Municipalities for Housing Prisoners in the County Jail; And for Other Purposes; Sponsor: JP Bobby Hubbard

Deputy County Clerk Betsy Harrell read the proposed ordinance by title only. JP Hubbard stated that this was forwarded from the Committee of Thirteen, and although the proposed \$40 fee is less than the current cost per prisoner, in recent years they have seen a trend of the costs decreasing during the last quarter of the year, and they do not want to charge the cities anymore than the actual cost to the county for housing a prisoner.

Lengthy discussion was held on when the ordinance should go into effect and how to accomplish an effective date of January 1, 2010.

JP Blaty noted that they should be lobbying the legislature to increase the State's current prisoner fee of \$28.00. JP Hubbard stated that JP Wozniak has been working with the Association of Arkansas Counties on that issue. JP Winscott spoke in favor of adopting the ordinance as presented, because the effect on cities would be minimal since it would not go into effect until the beginning of December.

JP Douglas made a substitute motion to amend the proposed ordinance, seconded by JP Harrison.

JP Douglas stated that the cities should have adequate notice in order to prepare for the fee increase, even if it will require only a minor budget adjustment.

Motion passed by voice vote.

JP Douglas made motion to table the proposed ordinance to the September 24, 2009 Quorum Court agenda, seconded by JP Moore.

Motion passed by voice vote.

County Judge David Bisbee stated that the proposed ordinance will be placed on the September 24, 2009 Quorum Court agenda for its first reading, and he will refer it to the Finance Committee so it can be amended. JP Wozniak noted that since it will not have its first reading until September, it will not be effective until January of 2010, making any amendment unnecessary.

- (G) Proposed Emergency Ordinance Creating the Benton County Dive Team; Establishing the Benton County Dive Team Board; and Declaring an Emergency; Sponsor: JP Jay Harrison

County Attorney George Spence explained that an emergency ordinance is effective immediately upon passage, and requires nine votes to be adopted. He said that in addition, the emergency clause must be read and voted on separately, and also must receive nine votes. He added that if the court does not desire to adopt the ordinance as an emergency, the clause may be stricken, and the ordinance would then go through the normal procedure of three readings. JP Harrison stated that this ordinance will combine the two dive teams in the county, and they would like to have it in place before the upcoming Labor Day weekend. JP Harrison made motion for approval, seconded by JP Sandlin.

There being no further discussion, a roll call vote was recorded as follows:

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen, Douglas, Blaty, Winscott, Harrison, Stephenson

Deputy County Clerk Betsy Harrell read the proposed Emergency Clause in its entirety. JP Harrison made motion for approval, seconded by JP Sandlin.

There being no further discussion, a roll call vote was recorded as follows:

13 yeas: Wozniak, Wolf, Sandlin, Brown, Lewis, Hubbard, Moore, Allen, Douglas, Blaty, Winscott, Harrison, Stephenson

Emergency clause adopted.

Emergency Ordinance duly adopted and assigned **No. O-2009-31**.

County Judge David Bisbee commended Chief Don Townsend, Director of Public Safety Chris Glass, JP Jay Harrison, and the Long Range Planning/Machinery & Equipment Committee for their work in resolving this situation.

**OTHER BUSINESS:**

In response to a question by JP Stephenson, County Attorney George Spence gave a brief explanation of the bid process. JP Stephenson requested a copy of the statutes. County Attorney George Spence stated that he would provide copies for the court. JP Stephenson expressed concern about recent newspaper articles regarding the bid process at the Siloam Springs Health Department.

County Judge David Bisbee explained how a miscommunication at the pre-bid conference had caused some confusion, so in order to err on the side of fairness, they had accepted bids two hours after the deadline. He said three bids were received, one by mail, one was

delivered personally, and one was accepted by fax, and none were timely. He said all three of those bids were presented to the Quorum Court, and they had ranged from \$60,000 to \$137,000. He added that there is a prescribed legal process available if someone believes they were treated illegally, and to date, no one has complained to him. He said that although the process was conducted fairly and legally, the County Attorney had advised him to issue a court order waiving the bid process for audit purposes. He said the process was open and fair, and the only other option was to start the process over, which would have resulted in another delay of 30 to 45 days in opening the Siloam Springs Health Clinic. He added that the low bidder has performed excellently, they are getting a good building, and getting it opened. He said not one person has called his office to ask questions about it, but he is happy to tell anyone what happened.

JP Stephenson stated that even if it had caused a delay, they should stick to the correct bidding process, so it would not be in the paper. He mentioned other articles regarding a county position that was filled recently, and a grant that was not awarded because the paperwork was not submitted on time.

County Judge David Bisbee stated that the grant application occurred six months before he was elected so he cannot comment on it, or he would be accused of criticizing the previous administration. He stated that there seems to be systematic criticism by one newspaper and he has no control over it. He emphasized that his door is open, and urged the court members to get involved and ask questions, adding that his administration has no secrets.

JP Moore stated that even if they did not follow the letter of the law, they followed the intent. JP Hubbard stated that he has been critical of the current administration, especially the Road Department, but he participates in bid openings almost weekly, and this was not unlike anything that happens out in the community all the time. He added that newspapers are often full of half-truths and things taken out of context.

JP Stephenson stated that it was not his intent to put down the County Judge's administration, but his concern is that they should get control of the situations and stop having to put out these brushfires.

#### **ANNOUNCEMENTS:**

JP Wozniak announced that the Pyro-Meds Safe Pharmaceutical Disposal Program has burned 2,195 pounds of drugs since it began 18 months ago, and anyone who wishes to volunteer is welcome, as it now takes all day to burn what is collected every two weeks.

JP Moore announced that the next Finance Committee meeting will be held Tuesday, September 1, 2009 at 5:30 p.m.

There being no further business to come before the court, upon motion and second the meeting adjourned at 7:33 p.m.

Respectfully submitted,

Tena O'Brien,  
County Clerk

Prepared by: Betsy Harrell