

CLEVELAND COUNTY BUDGET BOARD

MINUTES

JULY 14, 2014

The regularly scheduled meeting of the Cleveland County Budget Board was called to order this 14th day of July 2014 in the Law Library of the Cleveland County Courthouse located on 3rd Floor by Chairman Darry Stacy. Tammy Belinson, County Clerk/Secretary, called roll and those present were as follows:

Darry Stacy, Chairman
Jim Reynolds, Vice Chairman
Tammy Belinson, Secretary
Rod Cleveland, Member
Rhett Burnett, representing Sheriff Joseph Lester, Member
Rhonda Hall, Member
David Tinsley, Member

Member Rusty Sullivan was absent at roll call but entered the meeting at 10:35 am.

Sheriff Joseph Lester, Member, was absent.

Others present were: Assistant District Attorney Jim Robertson, Assistant District Attorney Heather Darby, Melinda Duke, Bryan Jenkins, Susan Moffat, Linda Atkins, Christine Cartmell, Christy Morren, Mona Nelson, Shelley Raney and Susan Moffat.

After the reading of the minutes of the regular meeting of June 09, 2014 and there being no additions or corrections, David Tinsley moved that the minutes be approved.

Rhett Burnett seconded the motion.

The vote was: Darry Stacy, yes; Jim Reynolds, yes; Tammy Belinson, yes; Rhett Burnett, yes; Rod Cleveland, abstain; Rhonda Hall, abstain; David Tinsley, yes.

Motion carried.

A. Items of Business:

1. Darry Stacy moved, seconded by David Tinsley, to **elect** Jim Reynolds as **Vice-Chairman** for FY 2014-2015.
The vote was: Darry Stacy, yes; Jim Reynolds, yes; Tammy Belinson, yes; Rhett Burnett, yes; Rod Cleveland, abstain; Rhonda Hall, yes; Rusty Sullivan, yes; David Tinsley, yes.
Motion carried.
2. Rhonda Hall moved, seconded by Rhett Burnett, to approve the **Transfer of Appropriations** as follows:
 - a. From **Sheriff**, CFB2, Service Fee Maintenance & Operations, \$20,000.00 to **Sheriff**, CFB1C, Service Fee Travel, \$20,000.00; and

- b. From **Sheriff**, CFBRE2, Revolving Materials & Operations, \$20,000.00 to **Sheriff**, CFBRE1C-300, Revolving Travel-Detention, \$20,000.00.

The vote was: Darry Stacy, yes; Jim Reynolds, yes; Tammy Belinson, yes; Rhett Burnett, yes; Rod Cleveland, yes; Rhonda Hall, yes; David Tinsley, yes. Motion carried.

- 3. Chairman Darry Stacy called for discussion and/or possible action regarding the County's policy with **ACCO-SIG**.
He said that the Board discussed this last month but action could not be taken since it was not an agenda item and asked Assistant District Attorney Jim Robertson to give the Board an update.
Assistant District Attorney Jim Robertson said that on July 1, 2014, the Board of Cleveland County Commissioners approved the contract with ACCO-SIG and the very next day, July 2, 2014, ACCO-SIG's council authored a letter in which drastically changed the coverage that had been in place prior to, which is now opening the County to some exposure in the event the County becomes involved with a sex case with the Sheriff's deputies or jailers.
Rod Cleveland said that it hasn't drastically changed. He said the County received clarification by making the County aware of it.
Assistant District Attorney Jim Robertson said that one of the significant things that he disagrees with and is not certain that the County can agree to it is their attempt to limit the County's access to the Court in the event of a disagreement. Mr. Robertson said that, based on a previous Attorney General's opinion, he is not sure that can be done. He understands what Commissioner Cleveland is saying, but there is a disagreement as to the scope of liability for certain acts that could occur at the jail. In this day and time, the plaintiff lawyers are not stupid; they know that if they can pursue the County for any theory such as negligent training, negligent hiring, negligent supervision or policy and procedures, they are going to do that simply because the financial resources are there via the taxpayers to satisfy any judgment that is rendered. At this point, ACCO is not covering for that type of loss and recommended that the County shop for insurance because there is a significant amount of exposure. He sent an email to the Budget Board members outlining his concerns and has delivered to each Board member a copy of the ACCO-SIG letter dated July 2, 2014. He has spoken with their Attorney, Larry Derryberry, for more than an hour expressing his concerns. Mr. Robertson is in the process of arranging a meeting between Mr. Derryberry and others to get some discussion going. No scheduling of a meeting has taken place at this time.
Chairman Stacy asked, "Are you saying that there never was any kind of coverage for those kinds of claims?"
Rod Cleveland said, "No, there never was." He explained that anytime there is a lawsuit a letter called "reservation of rights" informs the County that its indemnification is within the scope of the employee's work; not on an act of misconduct by the employee. Where the issue comes up on a lot of this is like in Delaware County they exhausted the million dollar cap, \$500,000.00 from the insurance pool and \$500,000.00 from the re-insurance. They exhausted that in their defense and they are not going to indemnify anyways. If it is

outside the scope of work and the County is found guilty it goes on the tax rolls, they will pull it out of the general revenue or put on the tax rolls. The whole issue with the coverage, the coverage statement has not been updated in years. The purpose in doing the update was to act as a deterrent in the number of frivolous lawsuits filed.

Assistant District Attorney Jim Robertson said that the problem with that is they know that there is no cap. No matter what the judgment is against the County, it can ultimately be put on the tax roll. ACCO's decision to not indemnify the County does not deter litigation. He finds it interesting that when ACCO says they are not an insurance company, while it is still being decided by the Supreme Court, that it is their way of trying to make certain that this County can't pursue them for bad faith like Delaware County is doing. Mr. Robertson warned that there is a possible element of exposure for the County and affirmed that it is his goal to protect the County.

Rod Cleveland repeated that the County is not covered if it is deemed outside the scope of the work.

Chairman Stacy said they are saying if the County gets sued for failure to train on the sex case they are not going to cover us; on the excessive use of force case they are going to cover us for failure to train.

Assistant District Attorney Jim Robertson said that is his take on it.

He said it doesn't seem right that a deputy or jailor can basically kill a guy and there is coverage, but if there is something minor and the word sex comes up it is not covered. The biggest concern of all is their statement that they are not an insurance company and cannot be sued for bad faith. The County has no access to the Courts and no appellant rights.

Rusty Sullivan said that it says in their stuff that the Board actually makes the call. If the Board says they are not going to cover this one does not have a way to go in and object to this. The ACCO-SIG Board simply makes a ruling they are not covering and that is it.

Chairman Darry Stacy asked if there are other insurance companies that will cover us.

Assistant District Attorney Jim Robertson said that the Board may want to see what other companies are offering but his intention in bringing this up is to make the Board aware of the potential liabilities for the County.

Chairman Darry Stacy asked if they will cover the County even if they don't cover the employee that does something outside the scope of their employment.

Rusty Sullivan said that he would have to get a copy of the policy to read it.

Assistant District Attorney Jim Robertson said that insurance companies will never cover for intentional acts.

Rusty Sullivan said that ACCO doesn't have to abide by the rules set forth by the Oklahoma Insurance Commissioner. The ACCO Board determines if the County is covered.

Assistant District Attorney Jim Robertson said that is the way he reads it.

After a brief discussion, Chairman Stacy asked, "Which is better for us as Cleveland County, not for ACCO, but for us, that they are or not an Insurance Company?"

Rod Cleveland said that it doesn't make any difference because the County still has the same coverage.

Rusty Sullivan said that the Insurance Commissioner's website lists the self-insurance groups and has all kinds of information about them but SIG is not among those listed.

Assistant District Attorney Jim Robertson said a Resolution comes through like it does every year for the Board of County Commissioner's approval. SIG never went out of their way before to state, "We are not an insurance company and we are not subject to the laws of the State of Oklahoma". Now they are starting to stick this in the Resolutions and in his opinion the changes are due to their reaction to the Delaware County case.

Rusty Sullivan said there is an increase of 17% in cost even though Cleveland County did not have a law suit. He did not understand the reason behind the massive increase. He asked if the County is shouldering all the stuff for the smaller counties.

Rod Cleveland said that part of that is for refunding our deductible.

He said that since ACCO SIG is self-insured there is a built-in deductible so the County doesn't have to budget for the deductible.

Rusty Sullivan said that he wants the figures on how much of our dollars go to support smaller counties and how much goes to Cleveland County. He needs the straight up numbers, because the tax payers of Cleveland County expect fiduciary responsibility from each officer.

Jim Reynolds asked, "What was their response?"

Rusty Sullivan said that they ignored his request because he made it as an individual not as a Board.

Rhonda Hall said, "Okay, we have beaten this horse to death, what are we supposed to do?"

Chairman Stacy asked, "Other than waiting for the Supreme Court's decision is there any other action to take on the part of this Budget Board?"

Rhett Burnett said that the Board can ask Jim Robertson to continue meeting with Larry Derryberry.

Assistant District Attorney Jim Robertson said that as far as the situation in Delaware County there is no good outcome. There is no decision that will benefit Cleveland County. If they are not an insurance company, then the County doesn't have insurance coverage. Again, there are all these limitations such as no access to the courts, no rights to an appeal, one can't do anything.

Rod Cleveland said that the advantage of going before their Board is that it consists of nine Commissioners from other counties. They are all elected and they all represent the counties first and they sit on the ACCO SIG Board second.

Assistant District Attorney Jim Robertson said that as a Board can they legally take tax dollars and say they are going to give money to a company at the same time deny all legal rights to appeal in the process.

Rod Cleveland said that they are reviewing that and are checking into it.

Assistant District Attorney Jim Robertson said that is not where we sit today.

Rusty Sullivan explained that ACCO SIG is ignoring him as a County Commissioner in the State of Oklahoma and are unwilling to give him any information. He asked that the Budget Board become involved by requesting that the Board of County Commissioners send in a request to ACCO SIG for the information.

Rod Cleveland asked, “Rusty, what is your motivation on all this?”

Rusty Sullivan answered, “To get us covered.”

Rod Cleveland said, “We are covered. We don’t have an issue.”

Rusty Sullivan said that he has asked for this since walking through the door in 2007. In his opinion the County is not adequately covered. His concern is that SIG can turn their back and walk away from the County and wants to get this done before something happens.

Jim Reynolds asked Rod Cleveland what his motivation is in this, since he asked Rusty Sullivan that same question.

Rod Cleveland said he has to do his duties as an ACCO-SIG member and as a County Commissioner and it is hard. In speaking with other County Commissioners he finds a multitude of cases come through and seeing ACCO payout on a multitude of judgments. Now there is a case which is an anomaly all of sudden there is this shopping sexual cases and trying to find it does put the insurance pool at risk where it would put every County at risk as to either being able to fund privately or to refund the self-insured pool. The self-insured pool has been consistent on the rates and we as a County are all in this together.

Jim Reynolds proposed a motion to commission the Board of County Commissioners to act on the behalf of the Budget Board to acquire and to seek to get every document that they can get in regards to ACCO and that the work that Rusty Sullivan has done will now be supported by the Budget Board and in addition we shop coverage extensively so we can have the answer to those questions.

The motion was seconded by Rhonda Hall.

Chairman Darry Stacy called for discussion. He asked does the Budget Board pay the insurance.

Rod Cleveland said that the BOCC oversees the payment.

Tammy Belinson said that it is in the General Fund.

Rod Cleveland said that BOCC is the administrator of the County, not the Budget Board.

Rusty Sullivan said that ACCO would not respond to his request as a County Commissioner which they consider an individual and was not going to give him anything. That is why he is requesting this Board to ask the BOCC to make the request so that the information will be forthcoming.

Jim Reynolds said that he is writing a revised version of his motion and will have Tammy Belinson read it into the minutes and withdrew his original motion. Rhonda Hall withdrew her second.

Jim Reynolds moved that the BOCC under the direction of Commissioner Rusty Sullivan move forward with the shopping of insurance for Cleveland County and procuring all documents from ACCO pertaining to Cleveland County. Rhonda Hall seconded the motion.

The vote was: Darry Stacy, yes; Jim Reynolds, yes; Tammy Belinson, yes; Rhett Burnett, yes; Rod Cleveland, abstain; Rhonda Hall, yes; Rusty Sullivan, yes; David Tinsley, yes.

Motion carried.

B. No **new business** to discuss at this time.

C. **Budget Board** members did not have discussions regarding **County Business**.

D. There were no **comments** from the **Public**.

E. There being no further business to come before the Board, Rhonda Hall moved that the meeting be **adjourned** at 11:29 am. Rusty Sullivan seconded the motion.

The vote was: Darry Stacy, yes; Jim Reynolds, yes; Tammy Belinson, yes; Rhett Burnett, yes; Rod Cleveland, yes; Rhonda Hall, yes; Rusty Sullivan, yes; David Tinsley, yes.

Motion carried.

(Clerk's Note: Agenda was posted on July 10, 2014 at 1:09 pm.)