

The Board of County Commissioners, in and for the County of Otero, State of New Mexico, met in a Regular Meeting at the Otero County Courthouse in Alamogordo, County and State aforesaid. Meeting called to order by the Chairman at 6:00 p.m., December 17, 2009; and he announced that reasonable notice for this meeting was given to the Alamogordo Daily News, and to Radio Stations, KPSA, KINN and KYEE.

**Present:**

- |                 |                    |
|-----------------|--------------------|
| Ronny Rardin    | Chairman           |
| Doug Moore      | Vice-Chairman      |
| Clarissa McGinn | Member             |
| Ray Backstrom   | County Manager     |
| Dan Bryant      | County Attorney    |
| Pamela Heltner  | Commission Liaison |
| Lynn Estrada    | Deputy Clerk       |

**DRAFT**

Commissioner Rardin gave the invocation. Commissioner Moore led the Pledge of Allegiance and the Salute to the Flag of the State of New Mexico.

**1. Consent Agenda:**

a. Commissioner McGinn made a motion to approve the consent agenda items 6 through 17, pulling items 3, 4, and 5 for discussion. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See pages

b. Request approval of the 2010 Holiday Schedule.

Commissioner McGinn made a motion to approve the 2010 Holiday Schedule. The motion was seconded by Commissioner Moore for discussion. Commissioner Moore asked if staff has reviewed this schedule and everyone is satisfied. Ms. Heltner, Commission Liaison, stated that staff had reviewed the schedule and everyone is satisfied with it. A vote was taken and the motion passed unanimously. See pages

c. Dale Palkki, County Assessor, stated that he wanted to give the Commission a progress report on acquiring the new software for the Assessor's Office. Commissioner Rardin thanked Dale for his report.

## **2. Public Hearing:**

a. Discuss, hear public comments and consider amendments to the Otero County Personnel Policy 07-01.

Commissioner Moore made a motion to convene the Public Hearing to discuss comments and make considerations of proposed amendments to the Otero County Personnel Policy 07-01. The motion was seconded by Commissioner McGinn.

Lisa Hall, Human Resource Director, stated that she is here to discuss and consider the amendments that were proposed for the Otero County Personnel Policy 07-01. The following spoke on the proposed amendments:

1. Judge James Waylon Counts, Chief Judge of the 12<sup>th</sup> Judicial District, stated that he was made aware this afternoon of the changes to the Personnel code. He would like to address those changes that purport to affect District Court, specifically section 10.7 a weapons policy for County employees. In reading that over it looks like it allows open carry of firearms in the Courthouse

and concealed carry of firearms in the Courthouse subject so Section 29.19.11 of the New Mexico statutes. That particular section is one that if you have a concealed carry license, it's still not effective in the Courthouse unless approved by the Chief Judge of the Court. Today, Judge Counts hasn't approved any concealed carry. Judge Counts doesn't think it's a good idea to encourage open carry of firearms to public offices and the language that equates ones work space to ones home, may create unattended consequences for search and seizure issues. So long as this policy only applies to those areas of the Courthouse that are under the exclusive control of the County, Judge Counts takes no position on the Counties ability to set policies for employees working in those areas isolated from court functions. However, any attempt of the County Commission to set policies for weapons possession in court areas of the Courthouse contrary to the weapons policy that Judge Counts issued back in April of 2008, he believes would violate the separation of powers articulated in the New Mexico Constitution in article 3. Further, it is clear under New Mexico law, the courts have the inherent power to issue orders to facilitate the orderly administration of justice. He firmly believes his order as relates to the Courts part of the Courthouse are within those inherent powers. He feels that the proposed County rules to the extent that they are in conflict with the Courts articulated inherent powers would fail. At the time that Judge Counts issued his order back in April of last year, the configuration of the Courthouse was different than it is today. There was no way of controlling the flow of people who were coming to the Courthouse to visit elected officials versus coming for Court functions. At that time his order placed a weapons ban on the entire Courthouse. Now the County offices are separated physically from the Court functions. Judge Counts is willing to modify his order to exclude out those parts of the Courthouse that are under the exclusive control of the County and do not allow traffic flow into the Court areas of the

Courthouse, but to the extent that this policy seems to endorse the idea of County employees coming into the Court areas of the Courthouse. He believes that it is within the province of the Court to control that and we have spoken to that issue. Judge Counts encourages the Commission not to enact a provision that is in conflict with the Courts power to control the Courthouse.

Commissioner Rardin stated that the Judge is exactly right, that it does exclude the Courts. In section 29-19-11 it states that you are not allowed to carry any weapon into a Courthouse. Judge Counts stated that is under the Concealed Carry Act. Commissioner Rardin stated that under the Concealed Carry Act, it does give the right to a person to take an unloaded gun into the Courthouse. There is no intent here to exercise authority over the Courthouse and to include them in our Personnel Policy.

Commissioner Moore stated that there are a set of laws that rule the land in the State of New Mexico. There are County laws and court orders that govern all its citizens. This is a Personnel Policy that would only apply to County employees. We are not trying to break new ground here on the Constitution, or challenge any court order that exists. We're trying to clarify, within our own policy what the rights of the County personnel are and clear that. We don't want to create any issues in the Court environment. We know that New Mexico is an open carry state, carry of any kind is prohibited by the law and we understand that. What we are trying to direct here is craft a policy that would govern Otero County personnel to give them some direction. Our previous policy was vague and we aren't sure it was even legal. We are going through the whole document to bring it up to current language. Many folks have been calling Commissioner Moore concerned with the language in 10.7. We will have 2 or 3 Public Hearings to hash the language out.

b. John Blansett, Otero County Sheriff, stated that he just would like to iterate what the Judge

was saying. The Courthouse is no place for a firearm. Mr. Blansett stated that he would not allow any of his civilian employees to carry firearms in the buildings. This will be his stance and he will not allow it. Our insurance authority will probably have something to say about the Commissioners allowing the employees to be armed. Risk Management will have a great concern also. If in the event that you do allow employees to carry firearms into this building, we will have to come up with an emergency plan for evacuations in case something does occur with one of those firearms.

c. Virginia Blansett, Correctional Service Director, stated that she is a little embarrassed that this item was put for public meeting the way it was written by Commissioner Rardin. To put this item in our County Policy with no exclusions considered. On page 37 of the policy under 10.7, Weapons in the Workplace, there is no exclusion there for the jail. Ms. Blansett can not have any weapons inside the jail other than those certified to carry one for transport. Commissioner Rardin stated that the statute stated in this section make it illegal to carry a gun in a jail. That's why they are in there. The intent of this is not to let guns into our courts, jails or let them walk into the offices with a gun strapped to their sides. Commissioner Rardin stated that we need to hash this out and get this information in the policy. Ms. Blansett stated that she has a problem with any County employee having weapons in their desks. Ms. Blansett would like to move to 10.8, Work Place violence. This paragraph contradicts 10.7 of having a weapon in the workplace. Commissioner Rardin stated that 10.7, the purpose of having an unloaded firearm, that whole paragraph is wrong.

~~Ms. Blansett will put the rest of her comments in writing for the Board.~~ Commissioner Rardin assured Ms. Blansett that guns in the jail will be addressed.

Commissioner Moore stated that he doesn't agree with all the language. He doesn't want to carry an

unloaded gun because that defeats the purpose. Having a gun in a locked box at your desk is to him having the weapon concealed. We need to make some kind of statement and clarify what was an unconstitutional policy. We have had legal opinion that we have latitude with our employees as county managers and managers of those personnel to say what is allowed in the workplace. We are struggling back and forth of what the appropriate language is. We are counting on the employees to help us out with their comments.

Commissioner Rardin stated that we will have several Public Hearings on this draft and will take all comments into consideration.

The Chairman adjourned the Public Hearing and returned to Regular Session.

3. Grace McMillin, Co-Coordinator with the Otero County Community Health Council is here today to request approval for the Community Health Improvement Plan for FY 2010-2014 and Community Health Profile.

Commissioner McGinn made a motion to approve the Community Health Improvement Plan for FY 2010-2014 and the Community Health Profile. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See pages

**4. Unscheduled Citizen Communications:**

a. Janet White stated that she had a source document from the Environmental Protection Agency that the Commission might be interested in. It's the annual emissions rates in millions of tons per state.

The second issue is about man made global warming. Ms. White has a proposed Otero County Ordinance prohibiting carbon trading schemes and anthropogenic global warming, not based on independent and verifiable science. It is a document that a group of us have generated for the

Commission to consider. Commissioner Rardin stated that he is very interested in reading this proposed ordinance and thanked Ms. White for her information.

b. Morgan Hay, Chief Financial Officer at Gerald Champion Hospital, apologized for his oversight on not getting the request in for the Sole Community Provider funding. He did get the request submitted on Dec. 10<sup>th</sup> to Ray Backstrom and asked if he needs to file an extension. Commissioner Moore stated that we try to get this accomplished by January 15<sup>th</sup>. He would like to have a discussion with our staff and hospital staff before the Commission meeting in January.

**5. Elected Officials, Department Heads:**

a. Request approval of the 2010 Commission Meeting Schedule.

Commissioner McGinn made a motion to approve the 2010 Commission Meeting Schedule. The motion was seconded by Commissioner Moore. A vote was taken and the motion passed unanimously. See pages

b. Consider implementation of changes to the County Standard Operation Procedure regarding Cell Phone Use While Operating County Equipment/Vehicles.

Commissioner Moore made a motion that we consider making changes to the County Standard Operating Procedure regarding phone cell use while operating County equipment and vehicles. The motion was seconded by Commissioner Rardin for discussion. Commissioner Moore stated that some of the language was proposed to us by New Mexico Association of Counties to be considered for ~~Standard Operating Procedure in an effort to have employees understand that operating a cell phone was~~ a distraction. NMAC is encouraging all Counties to consider said language. There is some discussion at the state level that the Governor and or his legislature may oppose this state wide.

Commissioner Rardin stated that under 10.9, it says "County employees receiving any citation while operating a County vehicle shall be subject to disciplinary action." Should those actions be spelled out, because if you punish one and let one slide then we are in for a lawsuit? There should be something in there that states what the disciplinary action will be. Ray Backstrom stated that it would depend on what the infraction was.

Commissioner Rardin had a question on this statement, "The Pool reserves a right not to provide insurance coverage for any employee's accident arising from failure to comply with terms of any joint policy." Dan Bryant stated that the question you are asking is a coverage agreement question. All insurance policies, whether they are private sector or with the pool have coverage agreements. When we joined NMCIA, we signed off on a coverage agreement. From time to time as issues arise, the Pool Boards develop a joint Pool Policy. If they pass this policy it goes into the coverage agreement. Part of our contract for insurance says we as an entity will abide by that provision of the coverage agreement. This is dealing with use of cell phones and they are saying that is becoming part of the coverage agreement. If we don't adopt a policy about cell phones that meet the minimum requirements that they have, they can write us a letter that says your liability insurance coverage will not cover anybody in a County vehicle whose accident is created because they were using a cell phone and you don't have an appropriate policy in place. If we have an appropriate policy in place and we legitimately manage that policy, in other words we say we passed the policy, but everybody can still use their cell phones. If we have reasonable mechanisms in place to police it and enforce it, take disciplinary action when people violate it, then they will provide coverage whether the employee is violating the rule or not.

A vote was taken and the motion passed 2-1 with Commissioner McGinn voting against.

**6. County Manager Report:**

a. Ray Backstrom reported that the Department of Finance has given us an exemption on a couple of our appropriations. We received back about \$480,000.00 on the Chaparral Clinic, so we have funding to finish this project in its entirety. The Veterans Museum received \$57,000.00 back.

b. We have been notified that on the 5<sup>th</sup> of January, Governor Richardson will be here holding hearings on the replacement for Judge Grisham.

**7. Executive Session:**

Commissioner Moore made a motion to go into Executive Session to discuss items A. Collective Bargaining, B. Pending Threatening Litigation, C. Personnel, D. Land, E. Roads, F. Detention Center, G. Contracts. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

Commissioner McGinn	yes
Commissioner Moore	yes
Commissioner Rardin	yes

Commissioner Moore made a motion to come out of Executive Session have discussed items A. Collective Bargaining, B. Pending Threatening Litigation, C. Personnel, D. Land, E. Roads, F. Detention Center, G. Contracts and having made no decisions. The motion was seconded by Commissioner McGinn. Roll call was taken as follows:

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Commissioner McGinn	yes
Commissioner Moore	yes
Commissioner Rardin	yes

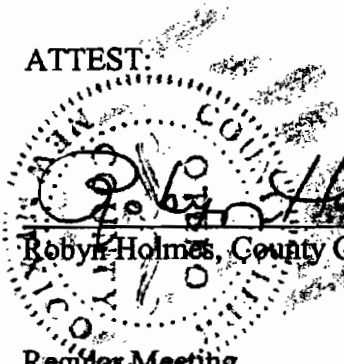

There being no further business before the Board, the Chairman adjourned the meeting at 8:25

p.m.

APPROVED:

  
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Ronny Rardin, Chairman

ATTEST:

  
  
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Robyn Holmes, County Clerk

Regular Meeting  
December 17, 2009