

The Allen County Board of Commissioners met in regular session at 8:30 a.m. with Chairperson Jerry Daniels, Commissioner Jim Talkington, Commissioner Thomas R. Williams and Sherrie L. Riebel, Allen County Clerk.

Bob Johnson, Iola Register, Heather Bosler, Humboldt Union, Larry Walden, citizen, Ronald Ballard II, candidate for Commission District #2, Jacob Eads, High Tech Relief Center, was present to observe the meeting.

Commissioners approved the minutes of the July 12, 2016 meeting.

Sherrie discussed the proposed 2017 budget. Rodney Burns, Rodney M. Burns, CPA, LLC, had sent up the proposed budget requests from all the departments for the first draft. Commissioners will review and make changes.

Mitchell Garner, Public Works Director, reported the light post on the Northwest corner of Oregon Road and US Hwy #169 is scheduled to be fixed this week. They will be straightening and moving back off the road.

Commissioner Williams asked Mitch if his first airport budget proposal which was \$400,000 higher than the seconded proposal was to build another hangar. Discussion followed on the needs with the building of a new aero plant in Chanute and the traffic coming into Allen County Regional Airport.

Mitch reported they are still applying dust abatement.

Commissioner Talkington discussed removing debris at the Humboldt River Bridge. Mitch stated he didn't think that was the County's responsibility, but would do some checking.

Mitch stated he would be gone next week to a class, but will have the 5 year plan done.

Sherrie discussed that Tom Nevans will be in the commission meeting next week to discuss proposed work at the Veteran's Wall. Commissioner Talkington stated one of the alumni classes want to put a memorial bench in front of the wall. Commissioners discussed working with Alana Kinzle and Ron on their project.

Bob Johnson, Iola Register asked about carry over for the 2017 budget.

Carla Nemecek, K-State Research and Extension Southwind executive director, Kaitlyn Dreher, intern, and Larry Crawford, joined the meeting. Carla presented an updated Fiscal Conditions & Trends for Allen County population and per capita income pages in the annual K-State report.

Carla discussed Fair buildings. She presented a suggested funding amount of \$30,000 - \$35,000 per year for 5 years or lump sum of \$150,000 to complete projects; Beef Barn and Show Arena, Pig Barn and Scale area, the Horse Barn and Sheep Barn, and Cook Shack, each of these need a new roof; on the grounds – drainage northeast of the sheep barn, gate north end of the pig barn, add outlets, LOTS of painting everywhere (inside and out), fence behind north arena bleachers, concrete slab and bleacher rework on the north side of arena, electric updates in all barns, lighting converted to LED, plan storage building, bathroom updates and lighting all need attention. Friends of the Fair suggest funds housed in Allen County 4-H Fair Account with the Extension Office (4-H Council account that is 501C3); Friends of

the Fair special committee appointed by County Commissioners; purpose will be to handle county funds for Allen County Fairgrounds improvements; all receipts/expenses shown to the County Commissioners annually or twice a year, commission decides what they would like to see, all funds left over from commission returned to county at completion of projects. They are also pursuing other opportunities for finances. They have received a Grant awarded of \$2,000 and MWA would do an event to raise matching monies. Discussion followed.

Larry discussed the pedal pull would be around October for Farm City Days and asked if that would qualify as a possible event.

Carla suggested the committee do this project for the 5 year improvement plan. Discussion followed. Commissioner Daniels stated it is a good plan and Commissioners will take under consideration. Carla will suggest a 5 member board.

David Toland, Thrive Executive Director, joined the meeting.

Alan Weber, Allen County Counselor, reported he had presented the letter requested.

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July 18, 2016

Jerry Daniels
Jim Talkington
Thomas R. Williams
Allen County Commissioners

Re: Incompatibility of Offices

Dear Commissioners,

As per your request, I have examined the legal precedents regarding public officials holding multiple offices and submit the analysis and opinions below for your consideration.

As a general rule in Kansas, one person may hold dual offices unless the offices are determined to be incompatible. Court cases have held that:

"Offices are incompatible when the performance of the duties of one in some way interferes with the performance of the duties of the other. This is something more than a physical impossibility to discharge the duties of both offices at the same time, it is an inconsistency in the function of the two offices." Dyche v. Davis

Incompatibility exists when one office supervises the other or provides checks on the authority of the other. Sometimes incompatibility is specified in the statutes but most often it is determined by the courts analyzing the attributes of each office held. The Court has also held that:

"if a person holds two offices, the performance of the duties of either of which does not in any way interfere with the duties of the other, he is entitled to the compensation for both." Congdon v. Knapp

The current issue of concern to the board arises from the fact that commissioner Daniels has accepted a position as a city police officer with the city of Humboldt police department. K.S.A. 19-205 provides: "Except as provided by K.S.A. 12-344, 12-345, K.S.A. 2007 Supp. 12-353 and 12-365 and amendments thereto (which are not relevant here), no person holding any state, county, township or city office shall be eligible to the

office of county commissioner in any county in this state.” The question then becomes whether serving as a city police officer constitutes a “city office” which is incompatible with the office of county commissioner. There is an advisory opinion by the Kansas Attorney General dated January 13, 1982 which opines that a city police officer is a city officer and that serving as such would be incompatible with the office of County Commissioner. It should be noted that the A.G.’s opinion concerned a commissioner serving as a city officer for the city of Rose Hill and that all officers of that city were appointed by the mayor whereas here, city police officers are hired by the Humboldt chief of police. The A.G., relying on older Kansas law, opined that the position of city police officer is a “city office” regardless of whether the officer is appointed or hired.

The A.G.’s opinion referenced above used the case of Haney v. Cofran which dealt with a police officer’s eligibility for civil service coverage and did not deal with the issue of incompatibility and is strictly based on defining what constitutes a “city office” without any analysis of whether or not the offices are truly incompatible. Whether this is how the matter would be analyzed by a court, I cannot say. It would seem most logical to do a full incompatibility analysis to see if the two offices truly are incompatible but there are no court cases which settle the issue at this time. A more detailed discussion of Dual Officeholding is provided in Chapter 22 of the KAC County Deskbook-2013 edition.

While I personally do not see any actual incompatibility between the two offices, I cannot offer an opinion on how a court might rule on this matter. Until such a ruling is obtained, Commissioner Daniels remains a county commissioner until he either resigns or a court orders his office vacated because of his acceptance of the city position.

Sincerely,



Alan D. Weber
County Counselor
Allen County, Kansas

Commissioner Williams moved to go into executive session for 10 minutes to discuss Confidential Data. Commissioner Talkington seconded, motion passed 3-0-0. Those in the room will be Chairman Daniels, Commissioner Talkington, Commissioner Williams, David Toland, Thrive Executive Director, Alan Weber, Allen County Counselor and Sherrie L. Riebel, Allen County Clerk. The time is now 9:15 a.m. Commissioners reconvened at 9:25 a.m. No action was taken.

Commissioner Williams moved to go into executive session for 5 minutes to discuss Confidential Data. Commissioner Talkington seconded, motion passed 3-0-0. Those in the room will be Chairman Daniels, Commissioner Talkington, Commissioner Williams, David Toland, Thrive Executive Director, Alan Weber, Allen County Counselor and Sherrie L. Riebel, Allen County Clerk. The time is now 9:25 a.m. Commissioners reconvened at 9:30 a.m. No action was taken.

Cole Herder, City of Humboldt Administrator, joined the meeting.

Jacob Eads, High Tech Relief Center, explained to the commission what High Tech Relief Center does; IT work, security camera, and other computer work. He explained he could put up cameras at a fraction of the cost. They are doing the sporting complex at USD 258. Discussion followed.

Jacob left the meeting.

Larry Walden asked about the county counselor’s opinion on compatibility. Discussion followed.

Cole stated he appreciates the dust abatement on Hawaii Road due to the rerouting of the damaged bridge. Commissioner Talkington asked about the bus route for USD#258, Hawaii Road or Tank Farm Road for rerouting, but doesn’t know what the district will do. Cole stated not just the school is displaced. Discussion followed.

Commissioners approved the following documents:

- a) Clerk’s Vouchers – \$160,519.73

- b) Payroll changes
- d) Abatements: PP Value 617, \$110.66, Year 2015
TR Value 176, \$26.40, Year 2015

With no further business to come before the board, the meeting was adjourned until July 26, 2016 at 8:30 a.m. in the Commission room of the courthouse.

Jerry Daniels, Chairperson

Thomas R. Williams, Commissioner

Sherrie L. Riebel, County Clerk

Jim Talkington, Commissioner