

August 4, 2011

LEGISLATIVE COMMITTEE REPORT

A Legislative Committee meeting was held on Thursday, August 4, 2011 at 6:00 p.m. in the County Administration Building, Quorum Court Meeting Room, 215 East Central, Bentonville, Arkansas

Committee Members Present: Douglas, *Moore, Allen, J. Harrison, Sandlin, Blaty

Others Present: JP Hawkins, County Judge Bob Clinard, County Attorney George Spence, Comptroller Richard McComas, Administrator of General Services Elizabeth Bowen

Media: Tom Sissom – Daily Record

JP Douglas called the meeting to order at 6:00 p.m.

1. Presentation: Legislative Items – County Attorney George Spence

County Attorney George Spence stated that during the last legislative session, two items of legislation were presented by the counties to the Legislature, and one of them was adopted, in part. He said the item had to do with providing a new exception to competitive bidding requirements. He said as a result of that new state law, he has prepared a resolution for the court to consider, approving the purchase of goods and services through an alternative method of competitive bidding. He added that he has drafted a bill to present at the next legislative session which would add the portion of the bill which was not adopted during the last session.

County Attorney George Spence gave a brief review of the drafts he has prepared of proposed 2013 legislation.

a) An Act to Amend § 14-16-105 of the Arkansas Code to Allow Counties an Additional Method of Selling County Property

He stated this is to clarify the ability of the Quorum Court to authorize the sale of county property, without going through the current statutory requirements. He said it adds a provision that if the Quorum Court adopts a resolution approving the sale of any county property, and makes clear that the proceeds of any sale would go into the General Fund, to then be allocated as the court sees fit, not necessarily to the department which disposed of the property.

Various examples of the difficulties and waste encountered while complying with current regulations dealing with the sale of county property, such as the steps that had to be taken to accomplish the sale of the county's residual interest in the American Legion Building, and selling firewood from trees cut down during construction of the West Side Road Yard.

JP Sandlin asked if the proceeds would revert to County General even if the property came from one of the commissioned account funds. George Spence stated that he would confer with the Legislative Audit to clarify that. He added that the bill requires specific information to be included in the resolution, such as a description of the property; the court could not simply pass a resolution giving the County Judge broad authority to sell anything he wants to.

*JP Moore entered the meeting.

JP Douglas stated that the committee can either send the bill forward to be included in our Legislative packet, or refer the bill for refinement and more study. He said that once the legislative packet is complete, they will ask all of the members of our Congressional Delegation to attend a meeting to discuss the items, and then have a joint meeting with Washington County.

JP Allen made motion to voice support of the draft version of the proposed amendment and to forward to the August 9, 2011 Committee of Thirteen agenda, and then to the Legislative Packet, seconded by JP Sandlin.

Motion passed by show of hands vote.

5 in favor: Douglas, Allen, Harrison, Sandlin, Blaty
1 abstain: Moore

JP Moore noted that he would abstain since he was not present for the discussion.

b) An Act to Amend § 14-22-106 of the Arkansas Code to Allow an Additional Exemption from the County Bidding Requirements

County Attorney George Spence stated that he has drafted an amendment to A.C.A. 14-22-106 adding language which would give counties, through their Quorum Courts, the same authority that cities have, through their City Councils, to waive competitive bidding.

He said this issue frequently comes up when dealing with a single-source item, such as a truck leased for some period of time and a special deal is offered to buy out the lease. He said that type of purchase would be allowed if approved by a quorum court resolution waiving the competitive bidding process.

George Spence stated that this amendment was submitted during the last session, but it was not adopted, although he cannot see why it would be controversial.

JP Moore noted that simply adding some language to the existing law rather than changing what has already been enacted increases the chances of its being adopted. JP Allen agreed.

JP Allen made motion to forward to the August 9, 2011 Committee of Thirteen for discussion and then to the Legislative packet, seconded by JP J. Harrison.

Motion passed by unanimous show of hands vote.

c) An Act to Amend § 20-13-305 of the Arkansas Code to Allow For an Alternate Method of Disbursement of Service Charges for Emergency Medical Service Districts

County Attorney George Spence stated that this is a result of discussions with members of VAS, which is now a part of NEBCO, and with Comptroller Richard McComas, and is adding language in subparagraph (d) (2).

He said that currently, the Quorum Court is required to appropriate the funds through the normal county accounting rules regarding expenditure of the funds. He said that would make sense, but all of the EMSD funds are already spoken for, and the money is raised by the EMSD. He said currently, the county reimburses NEBCO every two weeks for their payroll, and has to pay NEBCO for their other expenses so they can pay their bills. He said the amendment would allow the county to allocate the funds for the EMSD in the same way it currently pays funds out to the volunteer fire departments in

the county, meaning that the Collector would pay them directly according to the fees that are received with tax payments.

JP Sandlin made motion to forward to the August 9, 2011 Committee of Thirteen for discussion and then to the Legislative packet, seconded by JP J. Harrison.

Motion passed by unanimous show of hands vote.

County Attorney George Spence stated that he is working on three other items for which he does not yet have bills drafted:

- 1) Regarding the succession of the County Judge and the Sheriff, he said he would like to see a provision allowing all Elected Officials to appoint someone to temporarily take over their offices upon their death, until the Quorum Court can appoint someone. He added that he also feels there should be a provision for succession under any circumstance, not just in the event that the Governor has declared an emergency.
- 2) He said that he would like to see the current state law concerning dilapidated structures expanded, to allow the county to not only place a lien on the property involved, but also to be allowed to place a lien on the tax bill in order to recoup its costs for the cleanup. He said that the current statute applies only to things which would prevent disease, and he would like to see clear language regarding the authority to go out and deal with structures. He said it would probably involve a broad state law, allowing counties to choose the method of enforcement. JP Moore stated that when the county's current ordinance was being discussed, it was decided that adopting a model of the state statute was the most feasible option. George Spence stated that the amendment would change the state law, but they do need to be respectful of peoples' property, and of individuals who may be seen as different. He said he is very conscious of the fact that what one person sees as a trash dump may be another person's treasure; nevertheless, there may be some opportunities to improve the provisions of the state statute so that the county may make better use of them. JP Blaty asked if a provision for some appeals process would be included. George Spence stated that he is looking at that, whether it would be through the Quorum Court, or certain things listed that would require an automatic appeal. Various methods of appeal processes were discussed.
- 3) George Spence stated that legislation eliminating or allowing an alternative method of publication for adopted ordinances was proposed at the last session, but it was referred for further study. He noted that Benton County spent \$9,000 in 2010 on publication costs, and the legislation could potentially save counties and cities in Arkansas \$1 million annually. He said it would allow for publications to be posted on the entity's website, with periodic publication of the website in the newspaper. He said the laws date back to the 1800's, and the internet is very prevalent now. JP Blaty stated that this is a slippery slope, because not everyone has access to the internet, and stated that newspapers should not charge for information that the public is entitled to.

JP Sandlin made motion to request the County Attorney to continue working on drafts for the three items discussed, seconded by JP J. Harrison.

JP Moore suggested coordinating with other counties of similar size who have websites in order to have a better chance of getting the amendment adopted. George Spence stated that part of this process is to send all of the legislation to the Arkansas Association of Counties to insure their support. JP Sandlin stated that all of the Elected Officials need to take the proposed legislation to their individual associations.

Motion passed by unanimous show of hands vote.

George Spence stated that he will have the drafts prepared for September's meeting.

2. Resolution Waiving Bidding Requirements

County Attorney George Spence stated that one of the items sponsored by the county during the last legislative session was adopted, and resulted in a procedure by which the county can waive certain bidding requirements. He said that the Department of Emergency Management frequently desires to make purchases from an out-of-state bidding consortium, or the General Services Administration, but unless their bidding procedures are the same as those outlined in Arkansas law, we cannot use them to make purchases.

George Spence stated that Arkansas law now allows for the use of any bidding procedure that is used by the state or federal government, or association of governments, to also be used for purchases in Arkansas if approved by Quorum Court resolution, which is what the resolution he has prepared addresses.

JP Hawkins asked if this will be done on a case-by-case basis, or an at-large resolution. George Spence stated that this will be done on an ongoing basis, and purchases may be made from cooperatives using bid procedures other than those prescribed by Arkansas law.

JP Douglas noted that the Quorum Court still has to appropriate funds for the purchase, so they would not be giving up all control. JP Sandlin stated that is not the case if there is already money in the budget for the item to be purchased. George Spence suggested adding a sunset clause which would require action to be taken if they want to continue the policy past December 31, 2012, which would give the various departments the opportunity to use the policy to make purchases and report the cost savings to the court. He reminded the committee that the purchases may be made only from government associations, not private businesses.

JP Allen asked if they would not still have to come to the Quorum Court for approval to go out to bid, and questioned the practice of allowing department heads to make purchases without Quorum Court approval, adding that he is not comfortable with it.

County Judge Bob Clinard was recognized, and stated that the only purpose of this resolution is to save the county money, adding that he could not imagine an elected official paying more for something than they had to. He said that the Department of Emergency Management discovered that the same equipment priced at \$3,000 each from the state bid could be purchased in Houston for \$2,200 each. He added that he does not see how this could be misused.

The committee discussed the bid process in general.

JP Sandlin stated that she supported the resolution.

Comptroller Richard McComas stated that this is not doing away with the bid process; the items have already been approved in the budget, and if they have not, they will be brought to the Quorum Court for approval.

County Attorney George Spence reminded the committee that this is merely an exception to the bidding requirements; it does not avoid competitive bidding.

JP Sandlin made motion to forward to the August 9, 2011 Committee of Thirteen agenda, seconded by JP Moore.

Further discussion was held regarding the bid process. Richard McComas stated that the court can receive a full report of anything purchased through the policy authorized in this resolution.

Motion passed by unanimous show of hands vote.

3. Discussion: Items for Consideration for Legislative Action

a) Wet/Dry Issue

A brief discussion was held regarding the difficulties involved in getting a wet/dry issue to the ballot, and the possibility that the requirements might someday be relaxed.

JP Douglas stated that they might want to consider a resolution asking that the requirements for getting the issue to the ballot simply be made more reasonable so that the voice of the people may be heard on this issue. JP Allen stated that he favored the position taken by previous courts to stay out of it.

b) Federal and State Wage Scale

JP Douglas stated that because the county is using federal grant money to build the West Side Road Department Facility, it must abide by the federal wage scale, and the contractor who bid the concrete work pays his re-bar installer \$13 to \$15 per hour. He said due to the federal wage scale that must be followed on this job, the installer must be paid \$34 per hour, which brought the "Labor" portion of the bid to \$30,000. He said without that federal wage requirement, the total labor would have cost \$20,000, or a 50% increase in the cost.

c) Property Tax Assessment of Flag Poles

JP Douglas stated that he was assessed for the flag pole on which he flies the flag of this country; he thinks that is wrong, and they need to get that changed in Little Rock. He said it was listed as a \$1,200 improvement on his tax assessment.

Former County Assessor JP Sandlin explained that it depends on the pole, adding that there is rarely an assessment on a residential flag pole unless it is commercial grade, which is a very substantial size.

JP Douglas stated that he does have a commercial grade flag pole. He said it would make sense if it was a multiple-pole display with the U.S. flag, the state flag, and then a company flag being used as advertisement.

JP Sandlin stated that the pole does not decide what type of flag is being flown on it. The assessment is made based on the size of the pole; therefore it is added value to the land, based on the Arkansas laws that the appraisers must follow.

County Attorney George Spence stated that they need to be cautious, because they could be getting into a First Amendment issue if flag poles flying the American flag are exempt from the assessment, but other flag poles are not.

JP Allen stated that he does not think flag poles add value to a residential structure, so perhaps that is where the change needs to be made.

JP Hawkins suggested that JP Douglas appeal the assessment to the Equalization Board.

The committee agreed to request a resolution requesting legislation exempting one flag pole per residence from property tax assessment.

Discussion then resumed regarding the federal and state wage scales.

County Judge Bob Clinard stated that there is no rhyme or reason regarding the federal and state wage scales, and explained that while unionized labor makes up only 8% of the workforce in the state, the unions are experts at sending in the wage rates, which then get into the average as if they are making up 80% of the workforce, which is why the wage scales are so inflated. He cited several examples encountered in the construction of the West Side Road Facility, where the federal hourly wage listed for a carpenter was \$14.91, which is less than the \$14 to \$17 average wage in this area, while the state wage rate listed for a carpenter was \$26 per hour on the remodeling of the Public Services Building, which went out to bid today. He said that in addition to increased costs, it causes contractors to not want to bid on the jobs, because one of their jobs in progress will be paying \$26 per hour, while their other jobs will be paying \$17. He said this affects all public construction projects, including schools, and is costing the taxpayers millions of dollars, because the architect on any public entity construction project has to send in a "Wage Determination Form" and the State Department of Labor assigns the wages for that particular job.

Judge Clinard stated that an additional frustration was that Federal wage scale workers cannot be on the job at the same time as state wage scale workers, so they were forced to use the Federal wage scale on the West Side Road Yard, because it was too impractical to separate the two during the process of construction. He added that electricians are actually paid less on the federal wage scale than they are on the state scale, but still higher than the private market rate.

JP Moore stated that it sounds like any change would be met with a great deal of opposition, and that they would definitely need to coordinate with other entities. He added that they might get it changed at the state level, but he did not see much chance of change at the federal level. JP Douglas added that they rarely use federal funds, but that the state wage scale affects all projects. JP Sandlin asked if there is a maximum cap on the total construction cost before the requirement kicks in. JP Allen suggested compiling figures on past projects showing the difference in cost had we been able to pay market rates rather than state wage scale rates. He said that would give them more significant numbers to take to the other counties, as well as the Municipal League, but he did not expect much assistance from the Arkansas Association of Counties.

County Attorney George Spence asked if the committee is requesting a bill to be drafted which would repeal the state wage scale requirements. JP Douglas stated that they are.

d) Proposed Legislation Carried Over From 2010

JP Douglas mentioned several items that were sent to the legislative session last year but failed to gain any traction, including distribution of the County Road Tax, distribution of the countywide sales and use tax. A brief discussion was held regarding sales and use taxes, and internet sales taxes.

In response to a question asked earlier by JP Sandlin, George Spence reported that the wage scale applies to any project with a total cost over \$75,000. JP Moore stated that it might be easier to get that cap raised than to eliminate the requirement altogether.

4. Master Plan Draft: Elizabeth Bowen

Administrator of Public Services Elizabeth Bowen stated that this plan was developed by the Master Plan Committee, which is made up a variety of community leaders from the University of Arkansas, Farm Bureau, the Northwest Arkansas Planning Commission, local mayors, and other public officials. She stated that this is a guide for policy makers and does contain any requirements that anyone must follow. She listed the subjects covered in the plan, including Residential Land Use Considerations, Industrial Land Use Considerations, Roads, and Septic Systems. She said it does not do anything to change any of the county's ordinances, but is intended as a guide for policy makers to use when considering any changes to existing ordinances.

She said the document has been reviewed by the Planning Board, which had forwarded it to this committee for consideration, and then to be forwarded to the Committee of Thirteen. She added that it has been posted on the county's website for three months, and they have received a few phone calls, and have met with a few citizens regarding the plan. She said that it has also been reviewed by the County Attorney.

JP Moore made motion to forward to the August 9, 2011 Committee of Thirteen agenda, seconded by JP Sandlin.

JP Moore stated that any guidance that can be provided for the Planning Board to help make their rulings more consistent will be beneficial to the county, and reduce the number of appeals.

Master Plan Committee member James Gately was recognized, and stated that this is a significant document, and is a culmination of four versions of the committee which spanned over a number of years. He stated that his one concern is that they should have received another document listing all of the goals and concerns of the committees over the years in order to understand the committee's vision for the county in 30 to 50 years. He said that he would like for the Master Plan Committee to make a presentation to the Committee of Thirteen, because a lot of hours have been put into this document by citizens who have been frustrated in the past because it never seemed to get anywhere.

JP Moore stated that he would like to devote an entire Legislative Committee meeting to this one issue. JP Allen agreed, adding that he has several questions, as he is sure others will have.

JP Allen made motion to amend the main motion, to postpone further discussion until the next Legislative Committee meeting, seconded by JP Sandlin.

JP Douglas stated that he will call a meeting in September to discuss this issue along with other Planning Board matters.

Public Comments:

None

After motion and second, meeting adjourned at 7:53 p.m.