

WARREN COUNTY BOARD OF SUPERVISORS

COMMITTEE: SUPPORT SERVICES

DATE: MAY 3, 2007

Committee Members Present:

Supervisors Monroe
Mason
Gabriels
Girard

Committee Members Absent:

Supervisors Sheehan
VanNess
Geraghty

Others Present:

Representing Board of Elections:
Mary Beth Casey, Commissioner
William Montfort, Commissioner
Paul Dusek, County Attorney
Todd Lunt, Director, Human Resources
Judith Harris, County Auditor
Joan Sady, Clerk, Board of Supervisors
JoAnn McKinstry, Deputy Commissioner,
Administrative & Fiscal Services
Supervisor Sokol
Supervisor Kenny
Katy Goodman, Secretary to the Clerk

In the absence of Mr. Sheehan, Committee Chairman, Mr. Monroe, Committee Vice-chairman, called the Support Services Committee meeting to order at 9:35 a.m.

Mr. Monroe stated in the absence of a quorum for the meeting informational discussion would be held.

Privilege of the floor was extended to Paul Dusek, County Attorney, who stated he had a request for the Committee's approval for a travel request for members of his Office staff. He stated the request was for First Assistant County Attorney, Amy Bartlett and Second Assistant County Attorney, Trish Nenner to attend the County Attorneys' Association of the State of New York (CAASNY) 2007 annual meeting in Cooperstown, New York on May 16th through May 17th. Mr. Dusek noted the Conference would cover such topics as tax foreclosure actions and many other legal issues. He emphasized the Conference was a very valuable training experience for attorneys. Mr. Dusek mentioned that the Committee members might recall that last year they had approved his participation in the Association as a member of the Board of Directors.

Mr. Monroe stated the request could not be approved until there was a quorum for the meeting. Joan Sady, Clerk, Board of Supervisors, advised that Mr. Girard was on his way to the meeting.

Mr. Dusek apprised he would have to do a transfer of funds because there was no money in the Office's budget code for Conference expenses. He stated Ms. Bartlett and Ms. Nenner would cover the costs of their own mileage; therefore, the only costs would be for the hotel rooms which would be at the GSA standard rates. Mr. Dusek stated the attorneys would stay only one night at the Conference.

Dialogue ensued between Mr. Dusek and Mr. Mason on the status of the Office's budget. Mr. Dusek apprised the budget was being affected because they were short on funds for postage due to the mailings that were required as part of the foreclosure action. He stated funds had already been transferred within the budget to cover those costs. Mr. Dusek noted he could keep moving funds around but he was concerned that might catch up to him at the end of the year. He advised he did not like to ever expend the funds in the Contractual Legal Expense line item so they would be available if needed. However, Mr. Dusek stated, he hoped if those funds were available at the end of the year they would cover all the losses the Office might have.

Mrs. Sady stated there was an issue that concerned the County Board of Elections and that Mary Beth Casey and William Montfort, the Commissioners of the Board of Elections, were present to discuss and to have Mr. Dusek's input on.

Privilege of the floor was extended to Ms. Casey, who stated the issue was how the election inspectors would be identified and paid and whether they should be made County employees. Mr. Dusek responded he did not know enough about the issue at this point to discuss it. He acknowledged he had received some information from Ms. Casey on the matter. Ms. Casey advised they had received a determination on the Law on this issue from the State Board of Elections and she had forwarded a copy of the information to Mr. Dusek.

Ms. Casey noted the issue was a major topic of discussion at their Winter Conference because some counties were handling the inspectors as vouchered employees and other Counties were handling them as County employees. She stated the breaking point on the question seemed to be who instructed the inspectors. Ms. Casey explained when they worked for the Towns, the Towns vouchered them because the County Board of Elections had provided the training classes for free. However, she stated, now the County Board of Elections provided the instructions and paid the inspectors so many of the Counties were asking if they now had to treat them as County employees. She stated they had provided Todd Lunt, Human Resources Director, with a lot of the correspondence on the issue they had received from many other Counties and it was split evenly statewide. Ms. Casey stated they wanted to handle the situation the right way and if that was as County employees they wanted to begin to obtain employee numbers for them. She explained the inspectors already had vendor numbers because that was how they were paid last year.

Mr. Dusek stated he had not reviewed all the information Ms. Casey had sent him on the issue. However, he advised, his initial reaction was that the County would be much better off to keep the inspectors as independent contractors. If, he said, other Counties were doing that, he would be comfortable with the County doing so. Mr. Dusek stated in view of what an election inspector did and the fact they were being trained did not necessarily make them County employees. He noted he could understand if a concerned person might make that argument about the training because the idea of an independent contractor was that they were told what the job would be and then they would carry it out. Mr. Dusek noted the more instruction and precision there was used to guide a person's activities, the more they could be deemed as County employees for purposes of

Workers' Compensation, overtime, tax deductions, etc. He stated that could become a problem for the County if the Internal Revenue Service (IRS) disagreed with their interpretation.

Ms. Casey noted Mr. Lunt had been reviewing the determination on the Law. Privilege of the floor was extended to Mr. Lunt. He stated in his non-legal opinion it was a good point that several Counties had chosen not to make the election inspectors County employees. Mr. Lunt related that one County had said there were too many inspectors and they were just not going to make them employees. He noted he had asked them what they would do if that caused them problems and they had said they would have to deal with the situation then.

Mr. Gabriels entered the meeting at 9:43 a.m.

Mr. Lunt stated the interpretation Ms. Casey was looking for was where did the County want to define a contract employee. Mr. Dusek responded he felt it was a judgement call and the answer would not be known until somebody took them up on the issue and then they would have a final decision. He stated he was familiar with the overall Law that applied to independent contractors or employees. Mr. Dusek explained the factual issue was whether or not they would fall under this category or that category. He acknowledged in view of the work that election inspectors did, he could see both sides of the argument. Mr. Dusek advised since the County had treated the inspectors as independent contractors in the past and now other Counties were also doing that he would be inclined to continue that way unless he saw something significant that would make him feel otherwise.

Mr. Monroe asked what the risk would be to continue in that way. Mr. Dusek replied such things could occur as a Workers' Compensation claim being made and issues relative to the Fair Labor Standards Act if they worked over the number of hours they should. Mr. Lunt advised the issue of Homeland Security was also cited in the determination on the Law and the County was asked to have the inspectors fill out I-9 forms. Mr. Mason asked if the County could require the inspectors to sign a form to the effect that they were taking the job as it was. Mr. Dusek replied in the end the problems could be with the IRS and a lawsuit would disregard a form like that.

Ms. Casey noted there might be something in the Treasurer's Office that would apply to such a situation. She said she thought at one time an inspector either tried to apply for unemployment benefits or they had to identify the earnings as income because they were on unemployment. She stated the Treasurer's Office did handle that situation in some way and anytime since then they have referred such requests to the Treasurer's Office.

Mr. Monroe asked if there was a procedure where they could obtain a declaratory ruling like many agencies, such as the IRS had. Mr. Dusek explained the problem with that was that one agency's ruling would not be binding on another agency. Mr. Monroe noted many times conflicting rulings were made, i.e., by the Attorney General and the Comptroller.

Mr. Dusek reiterated his support for the inspectors to be considered as independent contractors.

He said he should have time over the next couple of weeks to review the situation again to confirm that. Ms. Casey advised time would be an issue for them because the training classes for the inspectors would be starting and they were already a month behind with them. The classes have to be held before the election petition process starts on June 5th, she said. Ms. Casey noted that was why they had asked for information on the matter in January. Mr. Dusek asked if it was correct that nothing would change for them, whether the inspectors were independent contractors or employees. William Montfort, Commissioner, Board of Elections, explained if they were going to be County employees they would have to fill out 426 forms for each of them. Ms. Casey explained that process would have to start in May when the classes began and almost 400 people would be involved because there were also alternate inspectors. She stated they were willing to do whatever anybody wanted them to and they were looking for the County's opinion on how to handle the situation.

Mr. Monroe suggested perhaps they should leave the inspectors as independent contractors for this year while they continued to study the issue and looked at what other Counties were doing. Mr. Dusek stated he did not think there had been enough of a change in the positions over the years to warrant a sudden change this year. He acknowledged Ms. Casey's clarification that 2006 was the first year the inspectors had been considered as independent contractors. Mr. Dusek stated their job functions were the same as they had always been and they were election inspectors whether they were operating under the County's rules or under the Towns' rules. He reiterated he would be inclined to have them remain as independent contractors. Ms. Casey asked if that could be put in writing for the Board of Elections.

Discussion ensued on the status of the meeting and it was determined there was still not a quorum for the meeting so no action could be taken on the matter. Mrs. Sady noted Mr. Girard was still expected to come to the meeting.

Mr. Monroe queried if the fact that the inspectors only worked a short amount of time each year had to do with them being independent contractors. Ms. Casey apprised in most election years they would work 20 - 30 hours. However, she stated in 2008 because of the Presidential election they would work a total of 42 hours. Mr. Monroe commented that would seem to be a good argument for the independent contractor status. Ms. Casey concurred. She stated they did not have to be given W2s for income taxes because their earnings for the work would never be enough to require them to file income taxes.

Following discussion, it was decided that due to the lack of a quorum for the meeting that the meeting would be recessed until after the Information Technology Committee meeting that was scheduled next had been held.

Mr. Monroe recessed the meeting at 9:51 a.m.

Recess was declared from 9:51 a.m. to 10:33 a.m.

Committee reconvened.

Ms. Harris left the meeting during the recess.

Mr. Girard entered the meeting at 10:33 a.m. and a quorum was present for the meeting.

Motion was made by Mr. Mason, seconded by Mr. Girard and carried unanimously to approve the minutes of the previous meeting, subject to correction by the Clerk.

Mr. Monroe commenced with review of the various items and issues that were discussed in the informational part of the meeting for Mr. Girard's information.

The first request, he said, was for approval of a travel request by Mr. Dusek for the two Assistant County Attorneys to attend a forthcoming Conference in Cooperstown. He noted there would be costs for the room but no costs for mileage. Mr. Dusek stated there would be costs for meals. Mr. Monroe advised Mr. Dusek would also need to transfer funds to cover the costs. Mr. Dusek clarified that he would transfer the funds internally in his .4s budget and the Committee's approval was not needed to do that.

Motion was made by Mr. Gabriels, seconded by Mr. Mason and carried unanimously to approve the travel request, as presented. Copies of the Authorization To Attend Meeting or Convention for Overnight Travel and an attachment on the Conference are on file with the minutes.

Next, Mr. Monroe stated, the Board of Elections made a presentation on the issue of whether the election inspectors should be considered as independent contractors or County employees. He noted based on the discussion it seemed there were good arguments in favor of the inspectors to continue to be considered as independent contractors. Mr. Monroe commented he thought that should be the case because they worked a very small number of hours a year. Mr. Dusek clarified he did not think that was a very big factor in the issue.

Mr. Dusek stated he thought the important factors were who controlled the work, the nature of the work and whether the work was for a given number of hours. He explained the problem was that County employee status would involve such issues as minimum wage, overtime, unemployment and Workers' Compensation. However, he noted, if at some point they were determined to be County employees, the County could be affected relative to those issues. Mr. Dusek advised if there were some other Counties who were willing to consider them as independent contractors, he would favor going that way for now. He stated at the aforementioned Conference, he would be talking to other County Attorneys on the issue and unless he heard something different, he would support the independent contractor status.

Mr. Gabriels suggested a resolution would be appropriate to confirm the Committee's recommendation, pending receipt of additional information on the issue.

Motion was made by Mr. Mason and seconded by Mr. Gabriels that the election inspectors should be identified as independent contractors.

Discussion ensued. In reply to Mr. Gabriels' query on the IRS aspect of the situation, Mr. Dusek replied he had all the information on how the agency made its decisions. He advised he interpreted the information to mean it would be a judgement call. However, Mr. Dusek stated, he would be concerned there might be some other issues they had not considered that could pose problems for the County. He noted he hoped to find out about that when he talked to other County Attorneys at the Conference. Mr. Dusek stated he felt because it was a judgement call everyone was all over the place on the issue and that would be the case until there was a court challenge on it.

Dialogue ensued between Mr. Girard and Mr. Dusek on what some of the problems might be. Relative to the issue of Workers' Compensation claims for injuries, Mr. Dusek explained that would not be a problem because the County was self-insured. He noted the issue of violations of Federal Fair Labor Standards relative to pay rates might be a problem. Mr. Girard asked how close the rates were to those Standards. Mr. Dusek responded that would only come into play if the inspectors were determined to be employees by any other standard, i.e., a court or IRS ruling. He noted the rates would have to be at least minimum wage and there was a daily rate for municipal employees that he thought was 12 hours. Mr. Monroe noted he thought the pay rate was \$15/hour. Mr. Dusek acknowledged in that case there would not be a problem with the minimum wage. Perhaps, he commented, there were not any big issues.

Mr. Monroe asked if this was a national issue because of the HAVA (Help America Vote Act) regulations. Mr. Dusek replied he believed it was more a New York State issue because of the way the inspectors had been treated in the past. He noted that was what Ms. Casey had alluded to in that everyone was more comfortable when the inspectors were paid by the Towns as contractors to the Towns and then the County trained them for free. However, he said, now because the County would pay them for both the training and work it was all County directed and the concern was that the County was now acting like an employer. Mr. Monroe asked if the inspectors would be driving and moving the voting machines around, and Mr. Dusek said he did not believe so, but he would check on that with Ms. Casey. Mr. Dusek acknowledged that would change the situation and it could cause problems. Mr. Gabriels recommended they should find that information out. Mr. Lunt advised he thought the employees who did that work were custodians who were part-time employees and that did not involve the inspectors. Mr. Monroe acknowledged he thought that was correct.

Mr. Monroe called the question and the motion to approve the aforementioned recommendation that the election inspectors be considered as independent contractors was carried unanimously. The necessary resolution was authorized for the next board meeting. A copy of a resolution request form is on file with the minutes.

Mr. Monroe stated there was a Transfer of Funds Request from the Clerk of the Board's Office

Support Services
May 3, 2007
Page 7

in the amount of \$300.00 to cover a shortfall in the Legislative Board's Office Equipment budget code.

Motion was made by Mr. Girard, seconded by Mr. Gabriels and carried unanimously to approve the aforementioned request, as presented, and to refer it to the Finance Committee. A copy of the Transfer of Funds Request is on file with the minutes.

Mr. Monroe stated the County Auditor also had submitted a request for approval of a Transfer of Funds in the amount of \$35.00 to cover the costs to replace a broken numbering machine.

Motion was made by Mr. Girard, seconded by Mr. Mason and carried unanimously to approve the aforementioned request, as presented, and to refer it to the Finance Committee. A copy of the Transfer of Funds Request is on file with the minutes.

A copy of the Auditor's Budget Performance Report for year-to-date through April 20, 2007 was provided to the Committee members, and a copy is on file with the minutes.

There being no further business to come before the Committee, on motion by Mr. Gabriels and seconded by Mr. Mason, Mr. Monroe adjourned the meeting at 10:42 a.m.

Respectfully submitted,

Katy Goodman, Secretary to the Clerk