



LINCOLN COUNTY BOARD OF COMMISSIONERS

July 28, 2014
Commission Chambers
Lincoln County Courthouse
181 Main Street
Pioche, Nevada

Commissioners

Paul Mathews
Kevin Phillips, Vice Chair
Adam Katschke
Paul Donohue
Ed Higbee, Chair

#1-CALL TO ORDER/ROLL CALL/INVOCATION/PLEDGE OF ALLEGIANCE

Ed called the meeting to order at 8:09.m. Clerk Lisa Lloyd called the roll.

PRESENT: PAUL DONOHUE LISA LLOYD, Clerk
ED HIGBEE DANIEL HOOGE, District Attorney (joined the meeting at 8:24 a.m.)
KEVIN PHILLIPS
PAUL MATHEWS

ABSENT: ADAM KATSCHKE

There is a quorum present and the agenda was posted on 7-22-14.

#2-PUBLIC COMMENT

Ed called for public comment. Ed offered his appreciation to Rachel Williford for the article she wrote as well as thanked all of those who helped with the activities last week in Panaca for Pioneer Day and the Sesquicentennial.

#3-LAWSUIT RE: LINCOLN COUNTY VS. STATE OF NEVADA, ET AL #CV 0515014

Treasurer Shawn Frehner addressed the Board and asked the Commissioners to consider the dismissal of the declaratory action; she doesn't believe this is the right course of action to take. Shawn believes the taxes should be apportioned for prior year taxes. Kevin asked why this isn't the proper action to take. Shawn stated this lawsuit is very adversarial; she believed that the case was only to seek a ruling from the courts. However, this is being considered a lawsuit and that was never her intent. Shawn truly believed we were simply seeking a third party opinion to resolve the issue of how to treat the monies. Shawn reviewed the history of this case; she asked for a legal opinion from the DA but, when received, she didn't agree with it. Shawn didn't want to go directly against her legal counsel on that and this is why she hasn't just apportioned it herself. The other reason that it hasn't been apportioned is because Shawn didn't have a bill or figures associated with prior taxes, the Assessor's Office hadn't billed it. At this point, Shawn can't do anything with the money as it is tied up; she won't do anything with the funds until the roadblocks are cleared. Kevin responded that we all have the same questions. Kevin went with Daniel to Carson City to meet with the AG's Office. Kevin explained his perspective to the deputy AG. There are several ways to have a friend lawsuit. Kevin stated he's been involved in a quiet title action, which is considered friendly. Kevin still has questions he'd like answered. DA Daniel Hooge feels that this lawsuit is the only way to get answers to the many questions. The AG's Office feels that this is an adversarial lawsuit, but the Board simply wants answers. Kevin feels the questions yet need to be answered. Shawn stated that she doesn't feel that proceeding with the lawsuit is what's best for the county at this time. If Shawn had initiated the lawsuit on her own, she would've already had it dropped. Kevin commented that Shawn isn't alone; the Board was surprised that this is so adversarial as well. The intent was only to get answers, not sue the whole world. Paul D. commented that he agrees with Shawn; the perception that LC has given is that of wanting to fight. Paul D. was told by a member of the Tax Commission (TC) that their goal is to help and give LC an opinion but, before that could even take place, LC sued the state. Paul M. advised there are several issues on the table, including whether or not the money should all be apportioned or if there are certain monies designated for fees that wouldn't fit into that category. If the county doesn't go to a judge to decide this could the Tax Commission help LC work this out? It is unknown. The county is aware that taxes can't be collected from the government; hence, the approach of obtaining monies from the contractors for possessory use tax. The federal government then gave the county what they assume is possessory use. Paul D. doesn't believe

that the Board ever discussed fines and forfeitures; the goal was always to get possessory use tax. LC has referred to this money as possessory use tax for a very long time, then it became fines and forfeitures. Daniel has advised that the state can only go back one year; the Board's idea was to go the TC and give them one year. Then, the funds older than that would be called fines and forfeitures. The county has filed a motion for temporary injunction. Shawn stated she was surprised by the paperwork that was filed; what prompted this? This filing wasn't an action taken or approved by this Board; no one seemed to understand why Daniel filed the document. Nikki Holton stated the only reason the School District (SD) is represented is due to the filing of declaratory action. Nikki doesn't believe when the action was filed that the Board knew it would become so adversarial.

DA Daniel Hooge joined the meeting at this time.

Nikki stated that the reason this has become so adversarial is because it costs money. The SD has had to hire outside legal counsel. This is where it becomes an issue for the SD. Nikki respectfully asked that the declaratory action be withdrawn; this is something that we should be able to work out locally and between all parties involved. Nikki believes we can figure this out without all the additional costs. Kevin responded that the questions revolve around NRS 361.157, section 1 and 2. Nikki asked if there is a way that Daniel can get answers to the questions without it costing everyone else money. Daniel sought an AG's opinion early on, but there were issues with it. The AG's Office currently will not give an opinion at this time due to the declaratory action. The state wants to treat the money like 2013 taxes; it's the easiest way for them to handle it but it isn't accurate. Legally, the opinion that we have doesn't address the issues. Daniel reviewed the assessment process. The Assessor must have the tax rolls completed and closed by January 1; by July 1 of the same year, the tax roll is basically closed forever. There is a statute that says within 3 years you can go back and reassess anything that wasn't assessed, after the fact. With that, if you have personal property, a 20% fine must be added as well as regular fines and fees. The Tax Commission wants to put it on 2013 because they don't want to pay any fines or penalties. The county pays for all collections, including the Assessor's Office and Treasurer's Office. If there is ever difficulty in collection, the statute says that the county gets all fines and fees. If this actually went back to 2011, there would be the additional 20% in penalties and interest to consider as well as the penalties and interest for the three years that have past that weren't paid. The contract itself says it's for the alleged underreporting of taxes for 2000-2012. The state simply doesn't want to pay fines/fees/penalties/interest, even though they can't go back to 2000, Daniel said. If an opinion is proffered, the state will completely ignore those sections of the statute. Daniel doesn't believe the state is being unbiased in their opinions. Daniel has asked about those sections of the statute concerning penalties, fines, and fees; the state has said no, they don't want to give this to the county. Daniel thinks the state is being extremely unfair. Even if the funds are treated as taxes, the bigger issue of how the funds are divided up remains. Daniel commented the state is completely biased and they're not following statutes at all. In the tax meetings, they focused on the county paying a consultant and that we don't have the right to assess; these are nonissues. The state is trying to win the war in the media or the war of sentimental arguments but they're not actually addressing the statutes the county has asked them to address. Daniel recommends that the county obtain an unbiased opinion from the judge, or work out something with the entities involved, that addresses the real issues of the fines fees and the fact that this is a settlement for the alleged underreporting. The county was able to go back to 2000 because it is done through a contract. The Commissioners took the initiative to get a signed contract. In the threatened litigation was a settlement. Daniel understands that this is based on taxes, but you still have to address the fact that there has to be some sort addressing for fines, fees, and penalties and the years that those came in. Nikki asked Daniel if it is okay with him that the other districts have to pay for legal counsel because the county has issues with what the state has to say. Nikki stated that the SD must put together a brief because they have the potential lose tax dollars. Daniel responded that the suit says we have to find out how much of the money is tax dollars. Nikki stated that the SD wasn't included in the initial proceedings concerning the money. Daniel responded that the Treasurer and Assessor are ex-officio officers, they represent the SD. The County Commissioners are not ex-officio officers; they represent the County Commission. When they are negotiating, they are negotiating a contract for themselves, not for all other entities. The Commissioners send it to the Assessor once the values are negotiated. The Commissioners weren't assessing the Area, they were simply negotiating a contract because no one could, or was, assessing the Area. By law, the state is supposed to assess the Area but they wouldn't. The state approached the county and advised that we can't assess for them. The disconnect is that it is perceived that the Board is acting as the Assessor; that

isn't the case. The Board saw that nothing was getting done so they went out and negotiated for themselves. Nikki reiterated her request to the Board to rescind the declaratory action. Daniel asked Nikki as to how the funds should be split up. Nikki agrees with Shawn that the funds need to be apportioned. Daniel would be willing to sit down and work out some of the issue, but he said the state is absolutely deaf to it. Paul M. commented that his intent is to represent the school district, fire district, and all the taxpayers. There is no hidden agenda or advantage that the county is trying to work out in this deal. The Board started and negotiated with good intent; the funds were received and now the Board is doing the best they can to work through the legal issues that stem from the situation and the receipt of the funds. Frank Hulse asked about the contract with Ashley Hall; how did it come to be? Daniel reviewed the history of how the contract came to be in place. Carol White stated she has a hard time understanding how a private contractor can walk into this room and walk out with a signed contract that gave him a great deal of money. Carol commented that if the agenda included that the Board was going to pay Ashley Hall a 25% recovery fee it would've been more hotly debated. Paul M. responded that, at that point, recovering the amount of money that we did was pretty "far out there"; we didn't have the time, money, or resources. The contract was risk free; if Ashley Hall failed to get the money the county wouldn't owe him anything. Paul M. stated that without contracting with Ashley Hall, the funds simply would never have been obtained. At the time, the Board couldn't see any other options. In the long run, we got a \$750,000 tax increase and the Board now has to figure out how to disburse the \$1.8 million. Carol responded that it sounds like the county doesn't want to disperse the funds. The action in the beginning was to have the law defined by the judge to ensure that the county was handling the money legally and appropriately. Paul M. said the Board isn't trying to take the SD's or Hospital District's (HD) money. The county has now filed an injunction. Daniel stated the Tax Commission has no authority to investigate the county's expenditures, issue an audit unless uniformly applied. Why doesn't the state want to go to court? Why do they want to take administrative action without authority? Daniel commented that it is 100% to intimidate in order for the lawsuit to be dropped. The state has abused their authority and the injunction is absolutely proper. Mark Holt commented that he attended the meeting in Las Vegas; the AG told the Tax Commission they have no authority to subpoena anything and they aren't part of the lawsuit. Mark's perception is that the TC is trying to browbeat the county. Carol stated that she understands that the issues she has with this need to be addressed with either the Ethics Commission or the Tax Commission. Jason Bleak, HD Administrator, and his counsel, Dylan Frehner, addressed the Board. The HD has had to hire outside counsel as well. Jason reiterated the concerns stated by Shawn and Nikki. Jason suggested that the declaratory action be dropped and the funds be apportioned. Jason further suggested that a friendly partnership with the TC be sought as we move forward. Jason stated this isn't the time to fight; we need to find high ground and be understanding. Jason questions what the goal of this whole thing is and whether or not we are doing what's best for the county. HD could use the funds and Jason asked that the money be apportioned so that the county's health care needs can be taken care of. Dylan thanked the Board for getting the funds and discussed the \$1.8 million. Dylan has read the contract and brief submitted by Daniel. There is no information that states how the \$1.8 was established; there is no discussion concerning what those negotiations were. It isn't known what the amount is for the last ten years it was owed or whether or not it was for penalties. If this was known, the other entities involved could assist in determining what portion are taxes or penalties. Dylan believes it is beyond the authority of the Board to negotiate the 25% of the total of portions that should be allowed to go to the hospital, school, and other entities. That's why this should've been spelled out in negotiations with the Air Force. Those numbers have to be shared with everyone so that input can be offered. Dylan believes the county can negotiate 25% of the penalties incurred. Dylan agrees that proceeding with the declaratory relief action will become nasty. The HD and SD provide services to all who live in the county. Even if residents never use the hospital, they pay taxes to support the functions of the hospital. Dylan prefers that the local entities get together to determine the breakdown; once that's done, the state can be approached and it would end in a better result. Shawn commented that Daniel has stated many times that the Commission has no authority over the Treasurer's Office about how the funding is disbursed. Paul D. asked if that is the case, why are we even doing this. Daniel responded that the first question is what part of this is taxes and for what years. The Air Force provided no assessment whatsoever for this money. They gave us \$1.8 million and asked us to drop the claims. It is unknown how much of it is taxes and for which years. If the Commission wanted to call it taxes, Daniel believes Shawn would be alright. Again, the core issue is what amount is taxes and for what years. The amount is a lump sum that was never discussed. Shawn stated that she doesn't believe the Commission can make this determination neither. Dylan responded that the judge can't make this determination either; he won't have enough information to say which portion is tax. Paul D. believes that these funds have always been considered a tax. The Area is of a very secret nature. Once the spotlight is

turned on the Air Force, the funds will go away. Ronda Hornbeck commented that there are no facts or figures as to how the amount was derived; without that information, how will a judge or the state make judgment as to how the funds should be divided? Shawn reviewed the process for how fines and penalties are assessed. Daniel referred to NRS 361.767. If property is not assessed, or under-assessed, because the owner submitted an incorrect or written statement, "there must be added to the taxes due a penalty in the amount of 20% of the tax for each year the property was not assessed or was under-assessed". Paul D. is concerned that the talk of penalties and forfeiture came too late in the game. Daniel said he has a different mindset because he was involved; he provided the history of when Ashley Hall first came to the county to discuss this. When Ashley first brought up the issue of back taxes Daniel told him there's no way to do that, there's a statute of limitations and you can't go back 12 years. Based on the contract, Ashley responded that the Air Force would pay. That's exactly what happened. Through contract law you can litigate. By not treating this like an assessment and using a contract, Ashley prevailed and we got the money. As far as future taxes are concerned, there is no question. We received \$750,000 that was treated exactly like taxes; it was put on the tax roll and apportioned. The current \$1.8 was never discussed as taxes. It was simply said that if we drop all of our claims they would pay. Penalties, taxes, and forfeiture were never discussed. Kevin advised that the contract spoken of isn't just the one that the current Board put in place. LC has had a contract for quite some time and many Commissioners have been involved through the years. LC has had a contract for quite some time concerning payments from the Air Force. The \$95,000 that the county has received historically for contract payments has been apportioned. Referring to the minutes of 2000, it says if anything increases it was their responsibility to come back to the county. The contract wasn't very clear at that time. The 2000 contract was approved by the Commissioners but signed by DA Phil Dunleavy and the Air Force. Paul M. stated the Commission's position has been to have a determination and judgment for clarification. **Paul M. made a motion to dismiss the lawsuit, subject to the DA's ability to negotiate with the local entities involved and then to collectively take that to the State of Nevada Tax Commission for review and agreement; seconded by Paul D.** Paul D. said that he feels Shawn needs to be involved in the negotiations as she will be required to disperse the funds. Paul M. commented that the apportionment of the taxes isn't being negotiated; the other points of conflict that prevent the apportionment of the taxes are to be negotiated with the local entities. Once agreement between the local entities is reached, it will be taken to the TC. The ultimate goal is to have the TC agree with the county and say that it is reasonable. Kevin doesn't support this decision because the basic questions still haven't been answered. This ends up being strategy, but the whole thing is avoiding the real substance of the issues relative to this unique situation. No other county has a situation wherein you can't assess or find out who the contractors are. Kevin cited NRS 366.1157(2)(b) and stated this whole section forms the basis of possessory use tax. Subsection 1, talks about beneficial possessory use and doesn't apply to part b, federal property for which payments are made in lieu of taxes in amounts equal to taxes which might otherwise be lawfully assessed. That's what this issue is about. The county has never treated those funds that are coming to LC as payment in lieu of taxes. If the suit is withdrawn, when will the county find an answer to these questions? Kevin feels the county is "throwing the towel in" too soon. Kevin commented he is at fault for initiating this process the second time. The whole purpose that motivated Kevin is to increase the net revenues for the citizenry of the county without increasing the tax burden. Kevin reiterated that he simply doesn't know how in the world clarity to these sections of statutes will be received if a judge isn't called in to render a decision. **Ed, Paul D., and Paul M. voted in favor. Kevin was opposed. Motion carried.**

#4-PUBLIC COMMENT

Ed called for public comment. Vaughn Higbee advised that he originally recommended Ashley Hall and Associates. No good deed goes unpunished; that's where we're at in LC. Vaughn recommends that the lawsuit be allowed to play out. The only way to receive clarification is to get the issue before a judge. It would most likely go on to the Legislature and force them to deal with it. There is no way that this could be a tax; there is no way to tax it. Ashley Hall was never doing assessment work for the county. The agreement was negotiated full and well, and if Vaughn could explain how it happened then everyone would understand why it was negotiated. However, he simply can't tell people that. Vaughn will not make any money on this. Vaughn reiterated that the only way to get clarification is to let it play out through the legal process. Kevin stated that most of the comments that have shown up in the newspaper are disgustingly false, other than Rachel Williford's article. Paul D. commented that Ed showed that he was a man of his word at the meeting with the Tax Commission. Ed did his very best not to say anything that he shouldn't have.

#5-ADJOURN

There being no further business for the Board to attend to, Ed adjourned the meeting at 9:57 a.m.

Attest: _____ Approve: _____

DRAFT