

**BOARD OF COUNTY COMMISSIONERS
WASHOE COUNTY, NEVADA**

TUESDAY

2:00 P.M.

MAY 27, 2014

PRESENT:

David Humke, Chairman
Bonnie Weber, Vice Chairperson
Marsha Berkbigler, Commissioner
Vaughn Hartung, Commissioner

Nancy Parent, County Clerk
John Slaughter, County Manager
Paul Lipparelli, Legal Counsel

ABSENT:

Kitty Jung, Commissioner

The Washoe County Board of Commissioners convened at 2:00 p.m. in special session in the Commission Chambers of the Washoe County Administration Complex, 1001 East Ninth Street, Reno, Nevada. Following the Pledge of Allegiance to the flag of our Country, the Clerk called the roll and the Board conducted the following business:

14-459 AGENDA ITEM 3 – PUBLIC COMMENT

Agenda Subject: “Public Comment. Comment heard under this item will be limited to three minutes per person and may pertain to matters both on and off the Commission agenda. The Commission will also hear public comment during individual action items, with comment limited to three minutes per person. Comments are to be made to the Commission as a whole.”

Sam Dehne spoke on the upcoming election. He stated Guy Felton passed away over the weekend.

14-460 AGENDA ITEM 4

Agenda Subject: “Commissioners’/Manager’s Announcements, Requests for Information, Topics for Future Agendas, Statements Relating to Items Not on the Agenda and any ideas and suggestions for greater efficiency, cost effectiveness and innovation in County government. (No discussion among Commissioners will take place on this item.)”

Commissioner Hartung reported the District Board of Health voted on the Franchise Agreement for Reno Emergency Medical Services Authority (REMSA), but he felt there were still some issues that needed to be dealt with. He requested an item be placed on a future agenda to discuss possible options for reconsideration.

Commissioner Berkgigler thought she remembered the Board discussing a possible tour of the Somers Loop property and the Lake access property, and she wanted to know if anyone was interested. She was planning to take the tour and suggested working with staff to schedule that. She thanked Commissioner Hartung for bringing up the REMSA issue as she also had concerns.

Commissioner Weber said she liked the idea of a tour and wanted to make sure Commissioner Jung was made aware of it. She reported she returned from a National Association of Counties (NACo) conference in Alaska and they got a lot of work done, which she would bring forward. She asked if it would be possible to have a workshop with the District Board of Health.

Chairman Humke stated he agreed with Commissioner Hartung to possibly seek a motion from the Health District to reconsider their vote on REMSA, because Commissioner Jung was not present during that meeting and she was Washoe County's only elected representative. He reported he attended the Honor Flight fundraising breakfast at the Garden Shop & Nursery. He said he listened to the radio and heard a local radio figure describe his service accompanying an Honor Flight last fall in which 38 Veterans went to Washington D.C. to see the Monument. The impressions of those Veterans depicted Memorial Day to him.

Commissioner Weber stated she was present at the Sierra Memorial Gardens ceremony and was able to speak. She noted Barbara Vucanovich spoke at that ceremony in the past.

Chairman Humke stated on May 23rd he, Commissioner Hartung and County Manager John Slaughter attended a graduation ceremony of the Northern Nevada Law Enforcement Academy in which eight new deputies of the Washoe County Sheriff's Office were given a badge and a total of 18 graduated for the Sheriff's Office, Reno Police Department, Sparks Police Department and the University of Nevada, Reno Police. Chairman Humke said he was at the William N. Pennington Boys and Girls Club facility dedication. He thought that facility would be a wonderful addition to serve the needs of thousands of young boys and girls. He noted the Boys and Girls Club reported they served 105,000 meals annually.

14-461 AGENDA ITEM 5

Agenda Subject: "Possible action to suspend the Board of County Commissioners' rules of reconsideration. (Requested by Commissioner Hartung.)"

Commissioner Hartung stated under the advice of counsel and to potentially fulfill the obligations of the Secretary of State (SOS), the Board's rules of reconsideration would need to be suspended.

Commissioner Hartung made a motion to suspend the Board's rules of reconsideration. Commissioner Weber seconded the motion.

Mr. Lipparelli stated the Board's rules permit reconsideration of an item only within a 25-day time period. The Board was now outside that 25-day time period for an item that was voted on during May 13, 2014 Board meeting. The item on today's agenda would require the Board to vote on suspending Rule #6, which would then permit the Board to take another action.

Commissioner Hartung withdrew his motion and the seconder agreed.

On the call for public comment, Sam Dehne asked if this had anything to do with Item 6 or Item 7 on today's agenda. If it did not he would speak under Items 6 and 7 later. It was determined he would return for public comment under Item #6.

On motion by Commissioner Hartung, seconded by Commissioner Weber, which motion duly carried with Commissioner Jung absent, it was ordered to suspend Rule #6 under the Board of County Commissioner's Rules.

14-462 AGENDA ITEM 6

Agenda Subject: "Discussion and possible motion to reconsider the May 13, 2014 (item #40) action on vacancy on the Reno Justice Court, Department 3. (Requested by Chairman Humke.)"

Commissioner Hartung made a motion to reconsider the action the Board took on May 13, 2014 (item #40). Commissioner Berkbigler seconded the motion.

On the call for public comment, Sam Dehne said he thought the Board could leave the position vacant until November, put it down for election, or leave it vacant for three more years. He said that would save money, but the court would be short a judge. He requested the Board support an election for this position in November. He stated he did not like the concept of appointing a person to any position unless it was an emergency or for a short period of time.

Chairman Humke asked Paul Lipparelli, Deputy District Attorney, for assistance. Mr. Lipparelli stated the Board had a motion on the floor to reconsider their previous action and once the Board finalized that motion, the Board could discuss options available under item #7.

On call for the vote, the motion passed 4 to 0 with Commissioner Jung absent.

14-463 AGENDA ITEM 7 - RESOLUTION

Agenda Subject: "Discussion regarding the vacancy on the Reno Justice Court (Department 3) with possible action of setting an election for the November 4, 2014 general election under NRS 293.165, including possible adoption of a Resolution setting the election for November 4, 2014 or establishing a process to appoint a person to serve until January of 2017--Manager."

Mr. Lipparelli stated the Board was now back to zero regarding the vacancy on the Reno Justice Court (RJC). He said one option would be to not fill the vacancy. There was no

statute under the Nevada Revised Statutes (NRS) that commanded the Board as to a timeframe to fill the vacancy; it only stated the Board could appoint or arrange for an election. He noted the Board could take no action and let the seat expire and come up for election in 2016. He cautioned there were concerns with that option and he had some inquiries from the Secretary of State's (SOS) Office and from private citizens who believed the Board had a duty to act sooner than 2016. He advised that while the option was there, some folks did not favor it and the result could be legal action taken to try to order the Board to take action. He said the action the Board took on May 13, 2014 to arrange for an election was a perfectly legal avenue to pursue. If the Board was interested in that option, there was a resolution in the packet which would declare the Board's intent to use the election option and would give notice to all citizens as to the process, including a specific filing period. He noted that because there was a statute in NRS under Elections that provided if the vacancy occurred after the Primary Election filing period, then all candidates could run in the General Election. The question was, with the possibility of multiple candidates running in the General Election, would the best result happen. He said the third option was clearly defined in NRS which would allow the Board to make an appointment. He noted the Board was familiar with some of those possibilities with their recent experience with the Sparks Justice Court vacancy; the statutes did not specify the process that had to be used. The Board could set up subcommittees to do screenings; appoint a staff person to conduct screenings; invite all applicants to come to a meeting and interview them, but it was a wide-open process. If the Board determined to make an appointment, it would benefit the County Manager and other staff members to know what kind of process the Board wanted to follow and an agenda item could be brought back to get the process started. He suggested possibly soliciting applicants, set deadlines for submittal, and outline the process and timeframe the Board envisioned.

Commissioner Hartung stated if the Board appointed someone now, would we potentially open ourselves to litigation similar to what happened in Las Vegas when a judge was appointed, but there was an upcoming election they could have used, and then the appointment was determined to be invalid. Mr. Lipparelli said the case in Clark County involved a district judge and vacancies for district court judges were covered differently under NRS and the facts in that case were different. When the Governor gave the appointed judge his commission, the commission was extended past the time for the next election. There was a legal challenge made by a citizen and the Supreme Court decided that if an election was available it should have been used and the commission that was given to the appointed judge was given for too long a period of time. There could be some chance that someone could find fault with using an appointment when an election was theoretically available. He said the NRS that authorized the use of the wide-open General Election was passed by the Legislature in 2013; but it had never been used in Washoe County or any other county. He thought it would create an unusual situation of splitting the number of votes between several candidates, which could potentially result in a strange outcome. He thought if the Board felt an appointment would be a more traditional and safer approach that could be distinguished from the Clark County case by the fact that this was a justice court seat and not a district court seat. He said in the past it had taken some time to arrange for an appointment and it may take several weeks to solicit applications, give people time to apply, time to screen applications, time to interview them and then hold public meetings to make a decision. It was conceivable that the process could take several months and even go past the General Election. The statute in Chapter 4 of the NRS that applied specifically to

vacancies on the justice court clearly gave the Board two choices; appoint or elect and the NRS did not mandate the use of an available election.

Commissioner Weber asked if there was anything in NRS that defined a timeframe for an appointment. Mr. Lipparelli said there was not. Commissioner Weber said the County would not have to start working on this tomorrow and Mr. Lipparelli stated that was correct.

Chairman Humke asked if there was a possibility of holding a Primary Election to whittle down the number of candidates for the General Election. Mr. Lipparelli said the Board could try to arrange that but it would be a special Primary Election and the cost would be a factor. He thought that would be a fairly large undertaking for the Registrar of Voters who was currently in the middle of conducting an election. He noted that Chapter 4 regarding vacancies for justice courts gave broad power to the Board to set up the process. The provision about a wide-open General Election was triggered if the vacancy occurred after the passage of the filing period for the Primary. If that occurred, there would be no Primary and everyone would go to the General Election ballot.

Chairman Humke said the County could mandate a special election but that had costs of more than \$100,000 and it would be hard to determine if the public would be well-served in that case. He thought it appeared it was the intent of the RJC to leave the seat open until the 2016 election to save funds, which he thought was noble and wise.

Mr. Lipparelli said the Legislature saw fit recently to move the filing period for judicial offices to January when everyone else filed in April. The idea behind that was because raising money and organizing campaigns in judicial races presented challenges. He thought it would be against the stream of thought to condense a judicial election into a short period of time. He said it takes time to organize a campaign, to raise money, to get out and meet the voters and, to hold an election this late in the game, was probably arguable.

Commissioner Berkbigler stated she failed to see the difference for the short timeframe for the Primary that she was currently dealing with and the much longer timeframe the judges would be dealing with for the General. She thought the Board should not make an appointment and let the people have a say and she was trying to figure out what the downside would be if there were several candidates for the vacancy. Mr. Lipparelli stated it had not been done before and that process may cause some concern. He said, however, some of the races in the Primary were pretty robust and people survived it.

Commissioner Hartung said Chairman Humke pointed out that the reason the Board left the seat open was for cost savings and to hold a special election would crush that. He was not concerned about putting this on the next ballot because the ballots had not printed, but a candidate could win the seat with a relatively small percentage. He was concerned that if the vacancy was not put on the ballot, there could be a question as to why not. He thought the Board could come to the conclusion that it would not be an equitable election and the court could justify their position by saying they do not need to fill the vacancy until 2016. He said the best

alternative would be an appointment and he would like to take the necessary time to contemplate it and go through the process in a fair and public manner.

Commissioner Weber said she felt the Board would be taking something away from the people if they did not put the vacancy on the ballot. She stated the public had to make a decision on the 18 people in the Mayor's race. Mr. Lipparelli stated the RJC was attempting to provide the Board with information that by using the more efficient measures they had implemented with the other five judges, they could make it a couple of years without the sixth judge. Commissioner Weber said a cost savings would be helpful and beneficial to the department, but it would put more work on the other justices. She said it appeared we could have the best of both worlds and go ahead and talk about an appointment, but maybe not start the process right away. She said the Board could wait until after the first of the year, because then the new Board could make the appointment. Mr. Lipparelli stated he had a conversation with a private individual who may be interested in the vacancy at the RJC and wondered how the Board could leave the position open in the face of the statute that gave the Board an option. His answer was that the statute did not list a timeframe for the Board to act. On top of that, Commissioner Weber pointed to the potential cost savings and if that could be quantified, the Board could wait and say the taxpayers were saving money every day a judge was not there. If the court's business was still getting done and the Board was taking the time to contemplate the best options, that made sense. He did not think the justices would be eager to rush into the decision and substitute their judgment for the political judgment of the Board. Mr. Lipparelli stated the statute from 2013 (NRS 293.165) stated that the period for filing for the wide-open General Election was June 16th through June 27th. He said there was some urgency in making a decision today about the election because people had to have time to file. If the Board wanted to wait and appoint, then they were not under the same time pressure.

Commissioner Weber asked if the cost savings per month had been identified. She felt like she did not have enough information. She liked the idea of putting the decision off for a period of time and wondered if the other justices had any input regarding working with one less judge.

Scott Pearson, Chief Judge Reno Justice Court, stated the cost savings would be between \$16,000 and \$18,000 a month. He stated RJC was like many other multi-judge courts and were not always unanimous on their decisions; however, they were unanimous with regard to their case loads being down. He said it was in 2012 when the 6th judge was elected to RJC. He said RJC historically had been the busiest court but because the caseload was down, even with Judge Schroeder gone, not one case had been continued. He noted they had the ability to use senior judges and pro-tems and if there was a significant number of judges absent, they could bring in retired judges. Commissioner Hartung asked if the reason for the reduction in caseloads was due to fewer officers on the street. Judge Pearson responded it was going down due to fewer officers on the street, which was happening statewide.

Judge Pearson said their civil cases were also down because a lot of collection agencies were unable to sue with the downturn in the economy and there was a substantial reduction with regard to foreclosures. He said they were confident that when the police force was back up to full staff and the economy returned their caseload would increase, but until then they

thought it was within their realm to get the work done. He understood why the Board was concerned with the letter from the SOS. He said he appreciated the Board's willingness to reconsider their original decision.

Commissioner Hartung stated he believed the County was trying to bring back staff to the Sheriff's Office and it was only a matter of time before the court would need more help. Judge Pearson stated the district court process would take two to three months to get the applications and do a criminal history, a credit history, background checks and then an interview process. He thought it would be best to set up a committee to study the appointment process and then adopt what was appropriate for this body. He said if the Board chose to go with the election option, to do it sooner rather than later because judges could not start raising money until they had an opponent, which would be in July. Judge Pearson said they had very little confidence in the election process, because a judge could take the bench with 10 percent to 14 percent of the votes. He said in a nonpartisan race with more than two on the ballot the first name usually received 8.5 percent of the votes. He said he was asking for a fair process and that the person would have to stand for re-election, would have to be evaluated by the attorneys and would have to justify their position on the bench. He stated an election was the preferred method, but only a full election process versus what might happen in this instance.

Commissioner Hartung thanked the judge and noted he brought up some good points. He was concerned if the Board appointed prior to the next election and it was challenged the County would have to defend it and that would eat up the cost savings, even though he thought appointment was the proper route.

Commissioner Berkbigler asked if Commissioner Hartung thought it was better to go with the appointment process, but to delay it. Commissioner Hartung concurred stating to delay it but get it as close to the election as possible. If the Board was able to delay it until after the election, savings would be incurred and it would protect the County from any would-be lawsuits.

Commissioner Berkbigler stated she respected Judge Pearson and had faith in what he had to say, but she disagreed that the position of judge was any more important than the position of mayor for the City of Reno. She said there could also be two people make it through the Primary to the General Election who may not be qualified to be mayor. She thought if the Board took the action to not put the vacancy on the ballot, the Board would be saying they did not care what the public's opinion was.

Commissioner Weber stated she disagreed because the Board was looking at a bunch of different issues and she believed elections were important, but in this case costs savings needed to be looked at because those were considerable. She reiterated an appointment should happen in 2015 and the new Board could discuss the process for appointment. In the mean time, the current Board could work out procedures with counsel and work with the court to ensure the process would be the best for all concerned.

Commissioner Berkbigler stated she agreed there was some strong logic to the argument that Commissioner Weber was making for the next Board as the court made it clear

there was no emergency to put this person in place right now. Commissioner Weber stated the Board only held one meeting in November and December, so she thought it was prudent to get this taken care of by September 1st.

Commissioner Hartung stated based on the discussions held and some of the fears and the issues, he would move that the County begin the process to think about appointing a judge for this position and take time to make sure it was being done properly. He did not want to put a timeframe on it. Chairman Humke seconded the motion.

Commissioner Hartung stated he wanted clarification regarding NRS 293.165. Mr. Lipparelli stated the Board did not need to define a timeframe. He said the motion on the floor would be to begin the process of making an appointment to the vacancy, which he took to preclude the use of the upcoming election and the wait-forever option was lifted. He thought Judge Pearson's comment about the district court process was that when there was a vacancy on the district court, there was a process for people to apply, then a judicial selection commission was made up of persons appointed by the Governor, by the Bar Association and by various constituents. That commission would look into the candidate's backgrounds and would forward three names to the Governor for appointment. He said that process may be appropriate for the Board to consider.

Commissioner Weber said the Board should designate whether the appointment would happen this year or next year. She thought the Board could set up the procedures, but also have a subcommittee to work with the court and others.

Nancy Parent, County Clerk, stated the motion contained language to "think" about appointing a judge and take time to make sure it was done properly. Chairman Humke said in his mind the motion was to make an appointment at a time to be selected in the future. Commissioner Hartung said he agreed with that and amended his motion to reflect that. Commissioner Weber stated she would not support the motion, because their first motion was reconsidered and now the Board was not going forward with an election, and for the Board to move forward with no identified timeframes was not doing justice. She asked if the Board could define whether the appointment would be this year, next year, or 2016; she felt they owed that to the public to identify some timeframe and the procedures.

Commissioner Berkgigler stated she had the same concerns as Commissioner Weber had in light of the opinion they received from the SOS and she did not think the Board was in a position to say there would be no election and not do anything else other than look at it. She believed the Board needed to give more direction, which would comply with the SOS and give guidance to the people who wanted to apply. Chairman Humke stated he seconded the motion, not because he did not believe in the election of judges, but it seemed the legislative procedures were hurried. He thought the discussion so far was that there would be an appointment in the fall right after the election, and he thought a process could be set up appropriately and fairly. He said if the process was set, the Board could decide that a judge could be seated in mid-November. He was not interested in pushing the envelope based on the SOS letter and he did not fear a lawsuit. He believed counsel was capable of directing the Board in a productive manner.

Commissioner Hartung asked if there was any peril by assigning a deadline. Mr. Lipparelli stated there was not, but there could be some peril in not setting a deadline, because the SOS letter stated that based on advice from the Attorney General's Office, leaving the position vacant through the end of 2016 was not an option. The SOS felt the position must be filled by election or appointment and not to wait until 2016.

Commissioner Hartung amended his motion to include that by January 2015 the Board would make an appointment, which would give the Board flexibility to make an appointment before then if they wanted to. The seconder agreed.

Commissioner Weber requested the motion be extended to February 2015, because a new Board would not have the time to understand the process. She said she liked the language in the motion that the process "would be completed by" which would give the Board the option to get it done earlier. Chairman Humke stated Commissioner Weber would like a new Board to make the appointment, but five out five commissioners had been through one judicial appointment and two of those five had been through an earlier appointment experience. He noted that 40 percent of the Board seated today would not be on the Board in January 2015 and potentially 80 percent of the current Board would not be seated in January 2015. He wondered if the current seated commission should design the process to be carried out by a new commission and what would happen if they did not want to accept it.

On the call for public comment, Sam Dehne stated when he was in the military and received an order from a General he had to do it. He said the Board received a request from the Chief Judge who stated the judges unanimously requested that the Board leave the position open. He felt if an appointment was made, that person should not be allowed to run and have the power of incumbency.

Commissioner Weber thought the Board should consider bringing the item back to hear if there were cost savings or RJC was still doing well, and the Board did not need to make an appointment for another six months. She wondered if the Board would have to make an appointment by January 31, 2015.

Commissioner Hartung asked based on the comments given, what would happen if the Board did not follow the direction from the SOS. Mr. Lipparelli stated the tenor of communication from the SOS was polite and he did not perceive any undertones that they were attempting to insert themselves in County business. He thought the spirit of the letter was to give the County the benefit of knowing what the SOS was thinking as it related to an indefinite vacancy on the justice court.

Commissioner Weber stated the trouble with the motion was the specific date. She wondered if the Board had the ability to not move forward, or to change the timeframe with the current motion.

Commissioner Hartung stated his original motion was to give consideration to the process and the Board would move forward on a timely basis and there was no support because

there was no deadline attached; then he amended the motion to attach a deadline and now it was being challenged. He withdrew his motion in its entirety.

Commissioner Weber made a motion that this Board, during the timeframe, would work through the procedures and maybe the County Manager could set up a subcommittee of two commissioners to work through what the process would be for appointing a judge. Also, at a Board meeting in October, the Chief Judge would return to talk about cost savings and the process and at that time determine when a RJC judge would be appointed. The motion failed for lack of a second.

Commissioner Hartung made a motion to begin the process and look at appointing a judge to this position with no timeframe allotted. Chairman Humke seconded the motion.

Commissioner Berkbigler asked if that would allow this item to come back before a full Board at a later meeting. Commissioner Hartung stated that was the idea. The Board would begin the process and it would have to come back to the Board for more discussion and future consideration. Chairman Humke said the motion to consider the election was out and the Board would consider appointment at some date. Commissioner Weber agreed that would cover all the bases and the Board would not move forward with the election. Chairman Humke said there would not be a special election and the Board would consider a more established process at a future date.

On call for the vote, the motion passed 3 to 1 with Commissioner Berkbigler voting "no" and Commissioner Jung absent.

14-464 AGENDA ITEM 8

Agenda Subject: "Reports/updates from County Commission members concerning various boards/commissions they may be a member of or liaison to."

Commissioner Berkbigler stated the Truckee Regional Planning Agency would meet tomorrow to discuss the latest lawsuit and appeal of that lawsuit. She noted they would also discuss moving forward on area plans.

Commissioner Hartung stated he recently had a Truckee Meadows Water Authority meeting and a Western Regional Water Commission meeting whereby budgets were approved. He noted the Nevada Lands Task Force would meet on Friday, but would be cut short so that members could attend former Sheriff Balaam's funeral.

Chairman Humke stated early voting was underway and would remain open through June 6, 2014, including Sundays.

14-465 AGENDA ITEM 9

Agenda Subject: "Possible Closed Session for the purpose of discussing labor negotiations with Washoe County, Truckee Meadows Fire Protection District and/or Sierra Fire Protection District per NRS 288.220."

There was no closed session.

14-466 AGENDA ITEM 10

Agenda Subject: "Emergency Items."

There were no emergency items to discuss.

14-467 AGENDA ITEM 11 – PUBLIC COMMENT

Agenda Subject: "Public Comment. Comment heard under this item will be limited to three minutes per person and may pertain to matters both on and off the Commission agenda. The Commission will also hear public comment during individual action items, with comment limited to three minutes per person. Comments are to be made to the Commission as a whole."

J. Edward Parker, Government Representative for Washoe County Amateur Radio Relay League, stated Governor Sandoval signed a Proclamation declaring the month of June as Amateur Radio Month. Mr. Parker placed a copy of the Proclamation on file with the Clerk. He requested the Board consider adopting this Proclamation at their next meeting.

Sam Dehne spoke on the process of appointing a judge and items of interest to himself.

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4:02 p.m. There being no further business to discuss, on motion by Commissioner Berkgigler, seconded by Commissioner Weber, which motion duly carried with Commissioner Jung absent, the meeting was adjourned.

DAVID E. HUMKE, Chairman
Washoe County Commission

ATTEST:

NANCY PARENT, County Clerk and
Clerk of the Board of County Commissioners

*Minutes Prepared by:
Jaime Delleria, Deputy County Clerk*