

MONDAY, MARCH 18, 2019

Pursuant to adjournment comes now the Starke County Council and meet in a regular session at 5:30PM in the Annex Building Meeting Room, Knox, Indiana, with Kay Gudeman, Freddie Baker, Brad Hazelton, Robert Sims, Dave Pearman and Howard Bailey present, and the following proceedings were held to wit:

The meeting was called to order by Council President, Dave Pearman at 5:32PM. Councilman Hazelton made a motion to approve the minutes of the February 18, 2019 meeting. Councilwoman Gudeman seconded the motion, the motion passed with all ayes.

AGREEMENT ABOUT TABLETS

Council President Pearman asked for an agreement about the tablets that were assigned to council members. He asked Auditor Oesterreich to contact IT to see if IT could have the tablets ready for the meetings. He would also like IT to verify the Internet Connections are working properly on the days of the meetings. The tablets were purchased for the council members so they could reduce the paper documents needed for every meeting for all the members.

NOTICE OF CLAIM - MR. DECOLA

Council President Pearman advised about the notice of claim that was filed by former Councilmember Thomas DeCola. He asked the audience if Mr. DeCola was present, he was not present. Councilman Pearman stated that because Mr. DeCola was not present he asked Attorney Lucas if the Notice of Claim needed to be read into the record. Attorney Lucas stated it can be submitted into record but does not have to be read into the record as the press has access to this document if they would like it. Councilman Pearman then asked the other members of the council if they have had a chance to review the claim. All council members stated they have reviewed the claim filed by Thomas DeCola. Pearman advised that in a review of minutes Attorney Lucas did state in the meeting that in 20 days Mr. DeCola should respond to the allegations. He stated is also reflects in the minutes that he personally said we would deal with the issue at the next meeting. Councilman Pearman stated the minutes also confirm that the council asked Mr. DeCola several times if he would like a hearing on this matter and he declined. He also stated that the third thing was that we also stated during the meeting he could file a claim, he did file a claim through the Auditor's Office but Mr. DeCola was specifically told he needed to file his claim through the Court.

Councilman Pearman stated that because Mr. Decola is not present to represent himself he will personally make the assumption that he may be filing something through the court. At this time Councilman Pearman directed to the council in asking if they would like to make a different type of motion regarding Mr. DeCola from the last meeting or would someone like to make a motion to have the previous decision stand. Councilman Baker made a motion to have the previous decision stand. Councilman Sims seconded the motion. Councilman Bailey advised that before they vote he would like to bring to everyone's attention that Mr. DeCola had been sworn into office on December 7, 2018, the allegations that were made against him happened before he took office but he was representing the Starke County Council as Councilman elect. Councilman Bailey stated that by a sworn affidavit of Councilman DeCola, in this document he stated he had been elected even with numerous convictions and one criminal offense involving a handgun. He also stated he had ties to the Chicago mafia, he then goes into further discussion about being in the military and how he has tortured people. Councilman Bailey explained how in the affidavit Mr. Decola stated he hated certain classes of people and these certain classes of people were not safe in Starke County

Councilman Bailey also referred to the resolution that the county made on December 17, 2018, regarding the Code of Conduct item number 5, it states: Council members shall not engage in or threaten unlawful acts of violence to persons or properties engaged or in sights of speech contrary to the lawful operation of the Constitution of the United States of America or the State of Indiana. Councilman Bailey believes there is a confliction of what he said in the sworn affidavit to item number 5 in the resolution of the Code of Ethics (Conduct). Councilman Pearman sited for the record the authority that the Starke County Council has under I.C. 36-2-3-9, this is filled under council, they were advised appropriately, and they did have the authority to make that decision. Councilman Pearman also advised that there is other information that comes to their attention regarding this decision, constitutionally this is something

that is accepted under certain boards with federal level and all the way down the county council level. Councilman Pearman stated the board feels that they have researched this issue appropriately and that they have evidence as well as a motion and second to sustain the previous decision of the removal of Mr. DeCola.

Councilman Pearman advised he was in touch with the party this weekend the reason being is that when the last meeting was concluded he asked the party to have an individual available through caucus to take his seat. But in light of receiving the Notice of Claim he wanted to wait until they had this meeting. Therefore, he asked the party to hold off on their decision. All those in favor were called of sustaining the motion that was made by Councilman Baker and Seconded by Councilman Sims, a total of 6 council members were in favor as all ayes. Attorney Lucas advised that historically one of the things he wanted to clarify a little bit because Indiana law can be a little confusing at this point but after doing additional research, this right of a deliberative body to expel a member by a 2/3 vote actually goes all the way back to the 16th century in England in parliament where it was exercised and it was carried over by the founding fathers under the same language into the U. S. Constitution, it was then adopted in Indiana with the same language using the 2/3 majority. He advised the thing about this that is important and he wanted to bring out was that we have a doctrine of separation of powers in the United States and this shows that this is an inherent authority that deliberative bodies have, typically legislative bodies, even though this is a fiscal body. He stated he also stands by the factor that an individual in this situation has the right to file for judicial review, but to make a record of the fact that we retain our right to assert that this is a non-justiciable controversy in the separation of powers doctrine. He advised there is authority for this proposition in Indiana through a recent case when a legislative body makes a decision of authority to regulate its own conduct of its members, this is a non-justiciable controversy that can't be reverse by a court. Attorney Lucas stated he is not saying he can't file for judicial review, he is saying that he anticipates that we could make that argument if he does file for judicial review.

Councilman Pearman asked Attorney Lucas if he agrees that generally the Commissioner's and the Council comprise the legislative body in Starke County. Attorney Lucas stated that if you look up the definition of legislative body what you will find is the Commissioners are listed. However, it then says that the council is the fiscal body. Historically, in older decisions the two were not separated in that way. He believes that there is no logic to the idea that being called the fiscal body does not make you the legislative body because in fact the council acts like a legislative body. Councilman Pearman asked Attorney Lucas if he would agree that there is some case law that states that common council is considered a legislative body which is actually a combination of both the council and commissioners. Attorney Lucas agreed. Councilman Pearman then stated because as a group they set a salary ordinance and a lot of activities that they govern solely themselves they could be considered a legislative body. Attorney Lucas stated he believes the council is a legislative body, he just wanted to explain that if you go and start reading the statute in Indiana you will find some things that are a little confusing. Councilman Pearman asked Attorney Lucas what they could advise the party at this point. Attorney Lucas stated that he would advise the party that the seat is vacant. Councilman Pearman then stated they have the authority to ask the Republican Party to fill that seat for the council and will expect that person to be present for the next meeting.

SHERIFF DULIN – FARM FUND

Sheriff Dulin came before the council to ask for an appropriation for the Farm Fund to be able to deposit up to \$5,000.00. While also being allowed to use the funds that they would deposit into the already approved farm fund number 4110 to purchase items to make more crafts and grow more produce while teaching the inmates different skills from woodworking, growing plants, money counting skills and working with the public. They would present claims to this fund number as bills are presented never exceeding the amount that we have deposited. Councilman Hazelton made a motion to approve the \$5,000.00 appropriation for the farm fund. Councilman Bailey then asked Sheriff Dulin if he is asking if \$5,000.00 are generated from the farm program then he is simply asking to have a separate fund that the money goes into to purchase hoes and rakes and other things regarding the farm. Sheriff Dulin stated it would be for the substance abuse program itself so this could include books or other items. Sheriff Dulin advised they have a welding program that is going to start April 1st, which is in conjunction with SCILL at the Starke County Economic Development Foundation and Saber which is across the street from the jail. He stated they will also have a 4 week class going through Grace College for hospitality and logistics.

Councilman Pearman asked if the county recollects the tuition for these programs as the county contributes to the SCILL program. Sheriff Dulin was not certain about the recoupment of the monies. He stated he would ask and get back with the council about that. Councilman Pearman then revisited the

motions. Councilman Hazelton made the motion to approve the \$5,000.00 appropriation request for the farm fund. Councilman Bailey seconded the motion and the motion passed with all ayes.

PROSECUTOR – PERSONNEL

Deputy Prosecutor Jon Acosta came before the council for a personnel request to reallocate county government fund. He stated they had hired a new employee for the child support office. The pay rate at that level was \$16.79, they are asking that to be reduced by \$1.79 to start her out at \$15.00 an hour and also to use \$1.21 of the \$1.79 for a raise for another employee who made it through the transition and who has been with the office for going on 5 years now. She has also taken on some different roles in their office to include a training and supervisor role of the child support staff. He stated the ultimate goal was not to increase the county budget that was allotted to his department for the 2019 budget, this transition will not do this, and it will actually leave about .58 cents in the general fund per pay period to be reallocated back at the end of the year. There will be no increase in the money from the county, it is a matter of getting their county employees some steps between them. Councilman Pearman stated the only problem is there is no mechanism to accept for taking from one and giving to another.

Commissioner Norem stated she has familiarity with this situation. She stated what the Prosecutor is trying to do is create two different positions. The one that they want to give the raise too, they are creating a new position because they are giving her more responsibility. She advised if they provided a job description and a different title that qualifies as a new position and should qualify for the increase. Acosta stated he agrees with Mrs. Norem, the current position that they have, which is Sherri, has been retitled in their office as the Case Worker Supervisor. She is in charge of one support staff plus possibly the other part time they are going to hire and then she is also in charge of training those new people as well as supervising those people. Acosta also explained that the person that was brought in, the new person that they hired, is going to be what they still call the IV-D Case Worker. Councilman Pearman advised, in review, that the IV-D Case Worker title is not going to change other than lowering the pay and then he asked what title they are proposing for the new position. Acosta stated it would be called IV-D Supervisory Case Worker. Councilman Hazelton stated they would have to have a job description for the new position.

After further discussion regarding the range of pay as well as the job descriptions Commissioner Norem advised that she anticipates that Bryan and she will agree to the new job position title. Commissioner Norem made a motion to approve the newly titled position as the prosecutor presented. Commissioner Cavender seconded the motion and the motion carries. Councilman Hazelton made a motion to create a range on the regular case worker (IV-D Case Worker) from \$15.00 to \$16.79 and the Supervisor from \$16.00 to a maximum of \$18.00. Councilman Bailey wanted to verify that no individual would be taking a pay cut who is in either of these position at this time. Acosta verified that no one would be taking a pay cut, he verified that the current IV-D Case Worker was started at \$15.00 per hour. Councilman Bailey then seconded the motion and the motion passed with all ayes.

COMMISSIONERS CREDIT APPROPRIATION

Commissioner Norem came before the council to request a CREDIT appropriation to pay some bills for their radio communication and building maintenance. The Commissioners are requesting a total appropriation of \$36,315.11. She stated the reason they are asking for this is because they are out of their cumulative capital development funds until they receive their next draw. Rather than putting the cumulative capital development fund in the negative territory, they would prefer to take this from CREDIT. Commissioner Norem explain the breakdown as \$2,700.00 for Royal Star Builders, \$3,252.82 for Jackson Refrigeration, when they fixed the Coroner's body cooler, and also \$30,362.29 for the radio communications which is divided between Bartronics, Miner, and J & K Communications. Councilman Hazelton advised that on the J & K Communication billing, as provided by Commissioner Chesak, showed that what they said they actually did was not right. Commissioner Norem recollects speaking with Commissioner Chesak who advised that he believed we did owe that money to J & K Communications. Councilman Pearman suggested clearing up the oldest bill with J & K Communications as it is very overdue. Councilman Hazelton made a motion to approve the appropriation for \$23,185.00 to J & K Communications, table the appropriation for \$5,503.79 bill for J & K Communications, and approve the appropriation for \$2,700.00 building maintenance as well as the \$3,252.82 for Jackson Refrigeration. Councilman Baker seconded the motion and the motion passed with all ayes.

Commissioner Norem also advised the council about the transfer request from Janitor to Part Time Worker. She explained that one employee has been out on Workman's Compensation which left one employee to take care of 3 buildings, during an elevator project, in the maintenance department. The Commissioners have hired part time staff, who was already listed as a current county employee and worked for county highway, to work three days a week in the maintenance department to help take care of everything. Councilman Hazelton made a motion to transfer \$3,000.00 from 1000.10110.000.0028 Janitor to 1000.10218.000.0028 Part Time Worker. Councilman Baker seconded the motion and the motion passed with all ayes. Councilman Hazleton made a motion to add a temporary part time position to the Annex Building maintenance salary ordinance. Councilman Baker seconded the motion and the motion passed with all ayes.

OTHER BUSINESS

With there being no public comments and no further business, Councilman Baker made a motion to adjourn the meeting, seconded by Councilman Bailey. The motion passed with all ayes and the meeting adjourned at 6:15PM.

MARCH 18, 2019

Dave Pearman, President

Brad Hazelton, Vice-President

Kay Gudeman

Howard Bailey

Robert Sims

Freddie Baker

Rachel Oesterreich, Starke County Auditor and
Secretary to the County Council