

NOTICE OF REGULAR MEETING

BOARD OF COUNTY COMMISSIONER'S FOR ROGERS COUNTY, OKLAHOMA

PLACE: Rogers County Courthouse, 219 South Missouri, Room 1-109, Claremore, Oklahoma

DATE & TIME: Monday, November 16, 2009, at 9:00 O'clock A.M.

MINUTES

ITEM 1: CALL TO ORDER:

Chairman Mike Helm called the meeting to order at 9:00 A.M.

ITEM 2: ROLL CALL TO ESTABLISH QUORUM:

Determine that Notice of Meeting and Agenda were properly posted in accordance with the Oklahoma Open Meeting Act.

Chairman Mike Helm, Commissioner Kirt Thacker and Commissioner Dan DeLozier were present and quorum established.

ITEM 3: FLAG SALUTE:

Commissioner DeLozier led the salute and Pledge of Allegiance to the American Flag.

ITEM 4: PRAYER:

Commissioner Thacker said a prayer.

ITEM 5: APPROVAL OF MINUTES: November 9, 2009

Commissioner Thacker made a motion to approve the minutes from November 9, 2009, as presented with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 6: UNFINISHED BUSINESS:

1. Award Bid #524 – Pad-foot Roller – District #1 - \*\*\*NOTE\*\*\*this item was tabled from November 2, 2009, meeting and November 9, 2009, meeting\*\*\*

Commissioner DeLozier stated he had reviewed all bids submitted and tried to determine which bid would be the best for his particular situation at District #1. Commissioner DeLozier made a motion to award the bid to Kirby-Smith on 2007 Ingersoll Rand Model #SD-116DX with 687 hours for \$83,150.00 to be lease-purchased and the reason he was not accepting the low bid was because of centrifugal force on the 2007 Ingersoll Rand Model #SD-116DX. Commissioner Thacker seconded the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 7: ZONING: None presented.

ITEM 8: PLATS: None presented.

ITEM 9: ROADS AND BRIDGES:

1. Discussion with possible action on Approval/Disapproval of signing of Resolution #2009-86, whereas, the Board of County Commissioners of Rogers County do hereby agree to rotate the available funds between the three (3) districts on the Memorandum of Agreement entered into on the 26<sup>th</sup> day of October, 2009, by and between the Cherokee Nation and the Board of County Commissioners of Rogers County, as follows: for 2009 District #3; for 2010 District #2; and for 2011 District #1, with rotation to continue in sequence from this date forward – (D#2)

Chairman Helm explained that there is not a resolution on file explaining the way in which we disburse the funds from the Cherokee Nation. Commissioner DeLozier asked, “do we need a resolution saying how we disburse the funds”, because if the money is setting there and nobody is using it, what difference does it make. That would be up to the Board every year if they want to change it, I see no reason to do a resolution. Commissioner Thacker inquired which fund is this? Chairman Helm replied it is money from the Cherokee Nation that for years has been moved around from each district and they are questioning us from their Memorandum of Agreement that this money is available from the Cherokee Nation and how do we disburse it? Commissioner DeLozier asked, who did you talk to at the Nation that asked that? I asked them last week and they said they don't care how it is disbursed, they don't care, the money is to be given to the county and the county disburses how they feel it is necessary. Chairman Helm replied, that is what this resolution is about. Commissioner DeLozier stated he felt the county does not need a resolution, because it should be up to us to decide every year how to disburse the money. If somebody doesn't apply for the money and the money is just setting there, then it should be able to be used by who ever needs to apply for it and I think it is pretty well understood with us that it goes to each district, which district gets it every year, but if there is money setting there and that particular district doesn't apply for it and it is setting there available, it should be open for who ever needs it. Commissioner Thacker asked, has it every not been applied for? Commissioner DeLozier replied, the bridge money, the road money has been applied for every year. Commissioner Thacker inquired, so we are talking about road money, not the bridge money. Commissioner DeLozier replied, it both the road and bridge money. Commissioner

Thacker asked, so is there bridge money setting there this year? Commissioner DeLozier replied there was \$60,000.00 setting there when I called the Cherokee Nation and asked them about needing money to help do cable guardrail on Winganon Crossing, Cara Cowan Watts told me there was \$60,000.00 setting there in bridge money. It is \$20,000.00 a year and District #2 did not apply for it, District #1 did not apply for it and in 2007 District #3 did not apply for it. The last day the application was due for this year, I put in an application and was awarded the \$60,000.00 to do Winganon Crossing. And it replenishes every year. Commissioner Thacker stated he was not aware of that. Commissioner DeLozier continued, now everybody will be aware that there is a bridge account with the Cherokee Nation also. And if we do a resolution and some district does not draw it that year, does that mean the money is going to set there or if somebody else needs it, it's available, why does the Cherokee Nation need to know who is going to get the money, I don't believe they do. Chairman Helm stated he could not answer that, the resolution is for they will know the funds will be disbursed in rotation and it has been a practice in the past. Discussion only, no action taken.

2. Discussion with possible action on Approval/Disapproval of ODOT Claim form 324a in the amount of \$15,710.18 on engineering contract for the North 193<sup>rd</sup> Street, beginning at SH-266 and extending north approximately 2.2 miles to East 76<sup>th</sup> Street North – Project Number: STP-166C(244)CO; State Job Number: 26988(04); (400) Account: CBRI Funds – Payment #1b – (D#2)

Chairman Helm stated that this is our STP funds that we have been awarded for North 193<sup>rd</sup> East Avenue and the award is a \$1 million dollar program and this is the engineering costs. Commissioner Thacker stated these funds are coming out of CBRI funds? Chairman Helm said CBRI funds or it can come out of District #2 road funds, it just has to be brought before the Board. Commissioner Thacker inquired as to how much was the engineering costs? Commissioner DeLozier replied the invoice is for \$15,710.18. Commissioner Thacker made a motion to disapprove ODOT Claim form 324A and have Chairman Helm to pay for out of local funds from District #2. Commissioner DeLozier seconded the motion, and stated on the 5-year plan didn't we agree that you get the BR bridge and not all the CBRI funds. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

3. Discussion with possible action on Approval/Disapproval of reviewing and approve drawings and signing of Utility Relocation Agreement by and between the Board of County Commissioners of Rogers County and Verdigris Valley Electric Cooperative, Inc., on Project No.: STP-166C(210)CO; State Job No.: 25427(04); Elm Creek Bridge #98 in Rogers County, Oklahoma – (D#2)

Chairman Helm stated these are utility right-of-ways that we have to secure before we can continue the program and have ODOT let the program. These funds will be local funds and made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

4. Discussion with possible action on Utility line relocation estimate for Dog Creek Bridge on NS 4220 Road State Job #26305 (04) Fed. Aid # CB-116B(3234) CO Rogers County, with Verdigris Valley Electric Cooperative. – (D#1)

Commissioner DeLozier stated this is utility line relocation on electrical portion with Verdigris Valley Electric and DeLozier is trying to negotiate on summary of costs for engineering, but the documents need to be signed today. Commissioner DeLozier made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 10: CASH FUND ESTIMATE OF NEEDS AND REQUEST FOR APPROPRIATIONS:  
None presented.

ITEM 11: TRANSFER OF FUNDS: None presented.

ITEM 12: UTILITY PERMITS:

1. Rural Water District #8, Rogers County – boring county road NS/4180 at the East School Road location in Section 12, Township 21 North, Range 16 East of the I.B.&M., Rogers County, Oklahoma, in District #3 –

Commissioner Thacker made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

2. A T & T – boring county road NS/4220 lying between Sections 28 & 27 of Township 23 North, Range 17 East of the I.B.&M., Rogers County and north of county road EW/400 in District #1 – (D#1)

Commissioner DeLozier made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 13: CLAIMS:

1. Salaries – None presented.
2. Attendant Care – None presented.

ITEM 14: BLANKET PURCHASE ORDERS:

1. Materials, Supplies, Parts, Groceries & Prescriptions –  
Sheriff's vehicle maintenance: Speedy Lube, \$500.00 –

Commissioner Thacker stated he thought the Sheriff's Office had signed a contract on vehicle maintenance with the City of Claremore. Sheriff Scott Walton replied the oil changes were taking

over an hour to do and with Speedy Lube we are ten minutes, in and out. We are back to pretty much the same maintenance program. Chairman Helm made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

2. Orders Exceeding Amount of Issuance – None presented.

ITEM 15: AGENDA ITEMS:

1. Discussion with possible action on Approval/Disapproval of Rogers County paying ½ of premium cost on cancer and accidental death benefits offered by Liberty National Life Insurance and the employee paying the other ½ of the premium cost - (D#2) -

Chairman Helm stated he placed this item on the agenda for discussion and there is other companies out there that can provide the same services and Commissioner Thacker, who handles our insurance, could check with the other companies and see if they want to provide the same service. Commissioner Thacker stated he had been made aware Friday, after the open enrollment insurance meetings about this item on the agenda, because some employees did not want to enroll until they found out whether the county was going to pay ½ of the cancer and AD&D premium with Liberty National. Commissioner Thacker stated he feels the county is paying for as much on the employees as the county can afford at this time. Commissioner Thacker made a motion to disapprove with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

2. Discussion with possible action on Proclamation issued by Governor Brad Henry proclaiming November 14-21, 2009, as "*Tobacco-Free Oklahoma Week*"

Chairman Helm made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

3. Discussion with possible action on Approval/Disapproval of Acceptance of REAP Grant through Grand Gateway Economic Development Association in the amount of \$50,000 on Contract #042-RP-2010 for District #2 Commissioner Mike Helm, contingent upon the ability to obtain approval for your project from the Oklahoma Department of Commerce - (D#2)

Chairman Helm explained this is a REAP Grant that was available to the county and the county and the City of Claremore have an issue on Highway 20 at the stoplight. Commissioner DeLozier informed at that corner it is in all three Commissioner's district. Chairman Helm made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

4. Discussion with possible action on Approval/Disapproval of Reimbursement form as per Resolution #2009-76 directing County Treasurer to deposit funds from the Rogers County Sheriff's Office for fuel reimbursement in the amount of \$4980.98 into the one-cent sales tax fund for distribution for District #3 –

Commissioner Thacker made a motion to approve with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

5. Discussion with possible action on Approval/Disapproval of Resolutions for Disposing of Equipment for District #3 as follows: 430D Caterpillar Backhoe, sn# BNK 4459 and 430D Caterpillar Backhoe, sn# BNK 4458, to be declared as surplus property and sold at public auction – (D#3)

Commissioner Thacker explained these are backhoes that District #3 has had for several years, but my question to legal counsel is they are on lease-purchase with Welch State Bank, doesn't there need to be a pay-off first? Barry Farbro, Assistant District Attorney, answered, technically the county does not own the backhoes yet, and in order to declare them surplus property the county has to own them first and suggested the county pay-off the balance to Welch State Bank, before they are taken and disposed of. Commissioner Thacker made a motion to table this item for one week (November 23<sup>rd</sup>) with Commissioner DeLozier seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

6. Discussion with possible action on Approval/Disapproval of signing letters to Delta Dental of Oklahoma, Rogers County (8336) Policy Amendment; The Standard Insurance Company, Rogers County (140282-A) Policy Amendment; and VSP, Rogers County (12277814) Policy Amendment, effective January 1, 2010, amending their respective contracts/policy to state the following: "*coverage will terminate the last day of employment*" – (D#1)

Mike O'Brien with Employee Benefit Professionals, LLC, was present at the meeting and stated this was the same thing that was done last week with CommunityCare amending the language in the contract to terminate coverage the date of termination of an employee. Standard Life Insurance already has that verbage in their contract, so it is not necessary to send a letter to them. Letters were drafted by Employee Benefit Professionals, LLC, in Oklahoma City, to Delta Dental of Oklahoma, VSP and The Standard Insurance Company for the Board to approve and sign to become effective January 1, 2010. Commissioner DeLozier inquired as to what COBRA covered? Mike O'Brien answered, health, dental and vision; no life insurance on COBRA and what we are discussing today has nothing to do with COBRA. Chairman Helm made a motion to approve with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

7. Discussion with possible action on Approval/Disapproval of County Officer's Monthly Reports for October 2009 –

Commissioner Thacker made a motion to approve with Chairman Helm seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

8. Discussion with possible action on Title 19 § 328 – Duties and Powers of Chairman – (D#3)

Commissioner Thacker stated that last week we had an issue at the courthouse with work being performed and Barry (Farbro) sent a memorandum with a legal opinion originally drafted and delivered on October 13, 2008, regarding the procedures to be followed by the Board of County Commissioners for making improvements and contracting for minor maintenance and minor repairs on county-owned property. Please note the last sentence in Title 61 O.S. Section 103, paragraphs B & C, which provides that: **“No work shall be commenced until a written contract is executed and proof of insurance has been provided by the contractor to the awarding public agency.”**

Commissioner Thacker continued the issue last week was a contractor was here with no Board approval; no contract; no proof of insurance and no purchase order encumbered. How did we get to this point?

Chairman Helm addressed the process as to how we arrived at this point, a bid was done for windows to be replaced. Judge Condren's office was remodeled and we were suppose to replace the windows and the windows were not replaced. This year came along and Arthur (Mathews) came to me and said he still have to replace the windows and I told him to check into it and the prices were too close to the \$10,000 limit, so we bid it. No bids were received and I went down and talked to Gene (Haynes) and asked what do we do from here and he said to get three phone quotes. I told Arthur to get three quotes and get the windows replaced out of maintenance. Commissioner DeLozier inquired as to how come we can get quotes, but we can't get any bids?

Arthur (Mathews) explained that nine bids were mailed out and no one responded.

Farbro discouraged addressing this specific item, because in looking at the agenda it is limited on what the powers and duties of the chairman are and cautioned today from talking about this specific item and if you want to talk about it place it on the agenda for another meeting. In looking at the agenda in plain ordinary language, people expect to hear today whether or not there is an issue with the chairman doing more than what may be authorized by statute. It is very limited in what the chairman does. The chairman of the Board of County Commissioners presides over the meetings of the Board, the chairman signs documents that have been approved by the Board on behalf of the Board and can administer oaths and there is no other official duties of the chairman. It is an administrative title, border line ceremonial title and throughout our presentation of Rogers County and the other two counties in our judicial district, we try to emphasize, not so much what the powers of the chairman are, but what is required for the Board to enter into a valid and binding contract. It does required Board action and no single County Commissioner may bind the county in a contract and no contract may be entered into without the approval of the Board of County Commissioners as authorized in a meeting of the Board of County Commissioners. And any contract entered into in violation of this particular statute is void. Our discussion today is limited to whether one Commissioner, whether he is chairman or not, has the ability to enter into a contract. We are not authorized by today's agenda to go into this specific issue that occurred last week. If you want to talk about it in detail it needs to be placed on the agenda for another meeting.

Commissioner Thacker read statute Title 19 Section 328 - “It shall be the duty of the chairman of the Board of County Commissioners to preside at the meetings of said board, and he shall have the power to administer oaths to any person concerning any matter submitted to the board or connected with their powers and duties; and all orders made by the Board of County Commissioners; and all warrants drawn on the County Treasurer; shall be signed by the chairman and attested by the clerk.” The powers and duties of the chairman is not to enter into contracts on his own and we are not going to do that anymore.

Chairman Helm inquired about building maintenance, every person that comes in here, for instance Larry Morrow with Morrow Mechanical, are we to make a contract with him every time he comes in the door? Farbro asked, does he provide service on a regular ongoing basis to the point where the Board could enter into an annual contract? Chairman Helm replied, yes, that is another thing we will have to do. I'm just trying to get a handle on this so everyone of these issues doesn't have to come before the Board. Are we saying the same thing has to be done for the people that have regular maintenance here inside the courthouse? Farbro explained, sort of like our elevator maintenance people, we do have a contract with them. Chairman Helm continued, but with Morrow Mechanical we don't and the people that clean our vents annually, we don't have contracts on them, so what I'm asking is, we need to enter into agreements with them? Farbro replied, yes. Chairman Helm asked, does that become a bid or is it a maintenance agreement? Farbro replied, that is where you have to make the decision, there is different types. If it falls under public improvement and building maintenance does come under public improvement with the memorandum provided about a year ago when the Election Board was being renovated, the memo was e-mailed to all the Commissioners and it was e-mailed again on Friday. Chairman Helm stated we are doing construction over there on a building that we didn't possess and I can't do the maintenance and get the windows done and I can't get Irving Love's injunction done.

Farbro continued, what the law says is, public construction contracts for less than \$2,500.00 for minor maintenance or minor repair work may be negotiated with a qualified contractor, but it still has to come before the Board for approval. Farbro recommends entering into independent contractors agreement and the statute also says in reference to minor maintenance and repair, no work shall commence unless a written contract is executed and proof of insurance (liability and worker's comp) is provided. The county does not want the liability for a worker who comes onto the property and get injured or perhaps injures someone else in the course of their work. And on the

independent contractors agreement, what form of entity are we dealing with, a sole proprietor, corporation, partnership, limited liability company and make sure that entity is legal by having filed proper certification with the Oklahoma Secretary of State having paid their franchise payments and other applicable business taxes. These are things the Board should want to know when they enter into a contract with someone else. If there is any question every, just bring it before the Board and discuss it in an open meeting.

Gene Haynes, District Attorney, addressed getting phone quotes, it's been a common practice in the past when no bids have been received that the individual officers or their deputies would call out and get phone quotes. The purchasing law requires the purchasing agent collect the phone quotes and since this issue has come up, we should address this issue to, the phone quotes by state statute are required to be obtained by the purchasing agent. And this will also to help insure that a purchase order is made and help prevent a situation like this happening from happening again in the future.

Commissioner Thacker stated since we are discussing duties and powers of the chairman, I'm saying follow the procedures and not get the county in a bad situation. No action taken

ITEM 16: PUBLIC COMMENTS AND RESPONSES FROM BOARD MEMBERS: Limited to specific items on the Agenda that are listed and discussed at this meeting and limited in duration at the discretion of the Chairman -

ITEM 17: PAYMENT OF PURCHASE ORDERS FROM ALL DEPARTMENTS:  
(Materials, Supplies, Parts, Groceries & Prescriptions)\*\*\*NOTE\*\*\*see attached list of all claims that were approved for payment on Monday, November 16, 2009\*\*\*Chairman Helm made a motion to approve payment of all purchase orders from all departments as presented with Commissioner Thacker seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried.

ITEM 18: NEW BUSINESS:

1. Consideration and possible action with respect to any other matters not known about or which could not have been reasonably foreseen prior to posting the agenda – None presented.

ITEM 19: RECESS OR ADJOURNMENT:

Commissioner Thacker made a motion to adjourn the meeting with Chairman Helm seconding the motion. Roll Call: Helm-aye, Thacker-aye, DeLozier-aye. Motion carried and the meeting adjourned at 10:40 A.M.

BOARD OF COUNTY COMMISSIONERS  
ROGERS COUNTY, OKLAHOMA

By: \_\_\_\_\_  
Peggy Armstrong, Rogers County Clerk

(SEAL)

*Notice of said meeting was filed in the Office of the County Clerk on Thursday, November 12, 2009, at 3:02 P.M. and posted on the Courthouse Bulletin Board; Outside the Commissioner's Meeting Room; on the Exterior Window at the Southeast Entrance and Front Door Entrances to the Courthouse; on the wheelchair ramp door; and on the county web site.*