

CUMBERLAND COUNTY POLICY COMMITTEE
NEW COURTHOUSE, 117 DICK STREET, 5TH FLOOR, ROOM 564
NOVEMBER 4, 2010 – 9:30 AM
MNUTES

MEMBERS PRESENT: Commissioner Phillip Gilfus, Chair
Commissioner Kenneth Edge

MEMBERS ABSENT: Commissioner Ed Melvin

OTHER COMMISSIONERS

PRESENT: Commissioner Jimmy Keefe
Commissioner Marshall Faircloth

OTHERS PRESENT: James Martin, County Manager
Juanita Pilgrim, Deputy County Manager
James Lawson, Assistant County Manager
Rick Moorefield, County Attorney
Howard Abner, Assistant Finance Director
Sally Shutt, Communications and Strategic Initiatives
Manager
Candice White, Deputy Clerk to the Board
Press

Commissioner Phillip Gilfus called the meeting to order.

1. APPROVAL OF MINUTES: OCTOBER 7, 2010 MEETING

MOTION: Commissioner Edge moved to approve the minutes as presented.
SECOND: Commissioner Gilfus
VOTE: UNANIMOUS

2. PROPOSED CODE OF ETHICS

James Martin, County Manager, called on Rick Moorefield, County Attorney. Mr. Moorefield advised the North Carolina General Assembly passed legislation that required governing bodies to adopt a code of ethics by the end of 2010. Mr. Moorefield stated the UNC School of Government developed a model code and he made substantial modifications to the language contained therein in order to address specific issues that have arisen within the county.

Mr. Moorefield called attention to Section 5 as an example and stated he added language as a reminder or guide for board members that they should always be aware that their

individual written and electronic communications about matters within the purview of the Board should be regarded as the conduct of the public's business.

Mr. Moorefield stated language in the draft code addressed the statutory requirements; however, he added the section "Additional Legal Restrictions Applicable to Certain Conduct", which relates to criminal and non-criminal statutes. Mr. Moorefield briefly reviewed the section and advised it is important to remember that under the context of NCGS § 14-234, direct benefit from a contract extends to board members' spouses.

Mr. Moorefield briefly reviewed statutory obligations that Board members have without criminal consequences or penalties and advised under NCGS § 153A-345(e1), should a board member's participation in any quasi-judicial hearing violate the affected party's constitutional right to an impartial decision-maker, and should the aggrieved party appeal to the court, the impact would be that the whole decision of the Board would be stricken.

Mr. Moorefield also called attention to NCGS § 160A-87, which requires each board member to receive two clock hours of ethics education within twelve months of each of his or her election or appointment to a term on the board.

Mr. Moorefield stated although the model code offered a censure provision as an option, he did not include censure procedures that could be used to enforce the code against individual board members. Mr. Moorefield explained he did not recommend the process because it had no legal impact. Mr. Moorefield reviewed what a censure process would entail and a brief discussion followed.

Mr. Moorefield advised the general principles and the code of ethics apply to board members and further advised criminal and non-criminal violations cited under the section "Additional Legal Restrictions Applicable to Certain Conduct", although not required by legislation, are state statutes applicable to both board members and some employees.

Commissioner Faircloth suggested that the word "infers" on page 4 be changed to "implies". Mr. Moorefield stated under Section 1 on page 2, the word "that" should be changed to "than".

MOTION: Commissioner Edge moved to approve the code of ethics with the modifications as presented.

SECOND: Commissioner Gilfus

VOTE: UNANIMOUS

Commissioner Edge stated it should be made clear that the Board has been operating under a code of ethics and that the draft code as approved by the committee is a modified code of ethics. Mr. Moorefield explained the modified code attempts to incorporate the criminal statutory prohibitions and does not change the current personnel ordinance. Mr. Moorefield stated proposed changes to the personnel ordinance may come before the Policy Committee at their December meeting.

3. OTHER MATTERS OF BUSINESS

Jail Funding

Commissioner Gilfus asked Mr. Moorefield to provide additional information about “pay to stay” utilized by some jurisdictions for jail funding. Mr. Moorefield advised the Administrative Offices of the Courts set uniform fees that can be charged criminal defendants in the state, one of which is a \$5 pre-conviction jail fee that cannot be charged unless the person is convicted. Mr. Moorefield further advised there is also a \$40 split-sentence provision for defendants that are sentenced to serve up to 120 days in the local jail who serve the remainder of their sentence on probation. Mr. Moorefield stated the judge can remit all or a portion of the fees in any judgment, which frequently happens when persons are unable to pay. Mr. Moorefield stated when collected, the money is remitted to the county’s general fund and were the money to be re-designated for jail purposes, the money in the general fund would have to be replaced. Mr. Moorefield further stated to do anything other than the \$5 a-day pre-conviction fee and the \$40 a-day split-sentence provision would require special legislative action.

Commissioner Gilfus asked how much money was collected. Howard Abner, Assistant Finance Director, stated not a lot of money is collected; in 2010 collections totaled \$21,200 and in 2009 collections totaled \$18,400.

Commissioner Gilfus stated one thought would be to dedicate any monies collected to the jail and another thought would be for a future Chairman of the Board to write a letter or sit down with the Chief District Court Judge and the Chief Resident Superior Court Judge to let them know that they can help fund the jail expansion if they do not remit the fees. Mr. Martin advised there is a regular line item where checks are applied when they are received that is broken down into jail fees, facilities’ fees and officers’ fees. Mr. Moorefield clarified that the fees apply to everyone who is incarcerated. Discussion followed.

Commissioner Keefe inquired about pre-conviction health benefits. Mr. Moorefield stated the county has a system in place in which inmates that have exceptional medical expenses are monitored and attempts are made to get them through the system as quickly as possible. Mr. Moorefield further stated inmates that require hospitalization are taken to the central prison hospital and the county pays the State for the hospitalization. Commissioner Keefe asked if the county’s payment for hospitalization extended to persons on house arrest wearing the bracelet. Mr. Moorefield responded in the negative. Mr. Martin stated the county funds an Assistant District Attorney position whose primary responsibility is to review inmate incarcerations and work with the judicial system to move defendants with exception medical needs through the systems as quickly as possible.

Mr. Moorefield stated because there is no statutory authorization or prohibition, one option could be to charge inmates a \$10 co-pay that would be taken from the trust account that is established for them to cover their incidentals. Mr. Moorefield further stated in jurisdictions where this has been done, it has reduced frivolous medical costs.

Major John McRaney, Detention Center Chief Jailer, stated attempts are made to have another agency pay for medical care before inmates are brought to the jail. Major McRaney further stated for inmates who are already on Medicaid, Medicaid will pay if the inmates are jailed and hospitalized, but after ninety days, Medicaid coverage will cease.

Animal Services Related Matter

Commissioner Edge referenced a letter that had been received regarding an Animal Services related matter. Mr. Moorefield stated under the existing ordinance the dog could be declared potentially dangerous right away and he had advised the Animal Services Department to pick up the animal. Mr. Moorefield further stated under the existing ordinance, the county has the authority to hold the animal for ten days to give the owner time to build a secure enclosure on the property. Mr. Moorefield advised the owner has the right to appeal the decision to the Animal Services Board and if done, the ten days would be extended until the case is heard. Mr. Moorefield responded to questions and clarified that the county does not have the authority to euthanize a dog just because it has been declared dangerous. Mr. Moorefield stated under state law, the charge is elevated to a class one misdemeanor if the dog is taken off the owner's property without being muzzled or leashed. Mr. Moorefield further stated the owner is also civilly liable.

Mr. Moorefield advised he was in the process of rewriting the Animal Services ordinance and spoke to issues/confusion associated with the codification of the ordinance by the city of Fayetteville and the county. Mr. Moorefield stated the best way for the city and county to have efficient enforcement mechanism would be for the city, by interlocal agreement, to consent that the county's ordinance applies within the city limits.

Mental Health Summit Suggestion

Commissioner Gilfus referenced a meeting he had attended with Mental Health Director Hank Debnam and other stakeholders in the community and suggested that the Board of Commissioners may want to consider the idea holding a mental health summit.

There were no further matters of business.

MEETING ADJOURNED AT 10:40 AM.