

STATE OF WEST VIRGINIA
RANDOLPH COUNTY COMMISSION SS:

At a regular session of the Randolph County Commission in and for the aforesaid County and State, at the James F. Cain Court House Annex, on the 8th day of October, 2015 at 1:30 P.M.

PRESENT: Michael Taylor, President of the Randolph County Commission and Chris See and Joyce Johns, Randolph County Commissioners thereof.

Meeting called to order by Commissioner Taylor

PUBLIC COMMENT: None

MINUTES:

Commissioner Johns moved to approve the minutes from the last meeting that was held on September 17, 2015, as submitted.
All yes – Motion passed unanimously

REPORTS:

Kurt Gainer, Director of the Randolph County Emergency Squad, said they received the F150 pickup truck today and they will be taking it to Charleston next week to have all the decals put on.

CORRESPONDENCE: None

ANNOUNCEMENTS:

Commissioner See announced that Courthouse will be closed on Monday October 12, 2015 in observance of Columbus Day. He also announced that on Saturday October 17, 2015 at Walmart the Randolph County Solid Waste Authority is going to have electronic recycling drop off. It will start at 8:00 a.m. and go until the trailer is full. Commissioner Taylor announced that the next county commission meeting will be held on October 22, 2015 at 1:30 p.m.

ITEMS FOR DISCUSSION/ACTION:

CONSIDER PETITION FOR APPOINTMENT OF SHERIFF AS COMMITTEE FOR INCARCERATED INMATE DAVID HANCHER PALMER (SEE COPY ATTACHED)
Donald Tennant appeared before the Commission. He said he was the part time county solicitor for Ohio County and has represented the County Commission in Doddridge County in the past. He said he was there today as an independent attorney out of Wheeling, WV. He said he was appointed by the Circuit Court of Ohio County, Honorable Ronald E. Wilson to serve as the Guardian Ad Litem for an incarcerated person who is a resident of Randolph County being located at the Huttonsville Correctional Center. Mr. Hancher Palmer at the time of the crime, that he was convicted of, was a resident of the State of Ohio. Mr. Tennant said to his knowledge he has never

resided in the State of West Virginia other than his incarcerated time. This particular incident involved persons who were being treated at the Wheeling Treatment Center which is a heroin based addiction program up near Dallas Pike. Mr. Hancher Palmer and a couple other folks who were at the treatment center got into an ongoing dispute amongst their family members, etc. which led to them leaving the treatment center at one point and going down two mile hill down into the City of Wheeling where there was an automobile accident. Mr. Tennant said he believes there were two or three deaths and at least one seriously injured person. Mr. Hancher Palmer was convicted of a crime out of that incident which placed him in his incarcerated status. There has now been a wrongful death lawsuit filed by two of the families. That lawsuit has been filed in the Circuit Court of Ohio County. The Judge has come to the point now where he has told the plaintiff's attorneys that they have to serve the incarcerated person with paperwork. By law the incarcerated person is considered incompetent. The court then has to appoint a competent person to serve as the Guardian Ad Litem to receive the suit papers and whatever else is required under the rules of civil procedure. He said he has been appointed and has been served the suit papers and he believes his minimum duties is to meet with the incarcerated person and answer the complaint or at least respond by a motion to the complaint. He said it has always been an issue as to how the Guardian Ad Litem is compensated. He said if he were to defend this person like he would do as a normal defense attorney it could take hours and hours of time and it literally could be tens of thousands of dollars. He said the West Virginia Supreme Court recently issued a memorandum decision that laid out two ways to do it. One was to petition the County Commission that the Sheriff of the County be appointed as committee for the incarcerated person to determine if the incarcerated person has any assets that could be utilized to hire an attorney to represent the incarcerated person or to determine if the incarcerated person is indigent. Mr. Tennant said he could tell them today that Mr. Hancher Palmer is indigent. He said he has nothing but the orange suit that they gave him at the institution. He said then the County would have an obligation to provide at least the minimal constitutional rights to the incarcerated person by the Sheriff even if the incarcerated person is indigent then the County should bear the cost of providing at least the minimum constitutional requirements to afford this incarcerated person his rights. The second way is trial court rules that the supreme court has that can be utilized and is primarily utilized in juvenile cases where Guardian Ad Litem are appointed to represent the minors involved in a juvenile matter where they protected the juvenile's interest and then the supreme court has a process to petition the supreme court for payment of that Guardian Ad Litem fee. He said he felt he had to seek both avenues to see which government pocket the fees would come from. He said the County Commission could reject his petition and then he would take it to the supreme court to see if the fees could be paid by the supreme court. Commissioner Taylor said when the Commission received the petition they sought the advice of the prosecuting attorney Michael Parker. Michael Parker said in reviewing the petition there were several things that they found to be applicable. He said first and foremost is the statute requiring the appointment of a committee requires that the County in which the person's estate lies is where the committee would be appointed. The defendant has no estate in Randolph County so on that basis alone he does not believe there is sufficient basis for this Commission to appoint the Sheriff as committee. As is relates to hiring counsel, even if a committee was

appointed he doesn't think the defendant has a constitutional right to counsel in a civil case. He said in looking as the person's right to counsel they have a right to counsel in a criminal case where they are going to be facing incarceration or lose substantial property interest. Mr. Parker said he does not think this person has any constitutional right to counsel based on what he has heard today. He said he does not think it would be any county government's responsibility to supply him with civil counsel, much less Randolph Counties responsibility because he is solely incarcerated here based upon an Ohio County's order. He thinks the more appropriate jurisdiction would be whatever county in which he has an estate, also Ohio County since he was ordered to be here by Ohio County's sentencing order. Mr. Parker said he also served as Guardian Ad Litem in civil practice and sympathizes with a lot of what Mr. Tennant said because there is some kind of confusion as to what your duties are in serving as Guardian Ad Litem in a civil case. Mr. Parker said he hopes he gets paid but he doesn't think he should be paid from Randolph County. Commissioner See said he understands that he is a resident of Randolph County now, in a State facility, but since Ohio County sent him there he feels it would be the State of West Virginia's place to get legal counsel. Commissioner Taylor said these are some unchartered waters here and it concerns them that they could be responsible for every inmate at Huttonsville Correctional Center and have to pay their bills. Discussion followed. Commissioner See moved to decline the petition as presented by Mr. Tennant to have the Sheriff appointed as Committee for Mr. David Hancher Palmer and that it be returned to him for further investigation.

All yes – Motion passed unanimously

CONSIDER APPROVAL TO SIGN CONTRACT WITH SCALISE INDUSTRY TO MAINTENANCE OF HVAC AT COURTHOUSE, JAMES F. CAIN ANNEX, MAGISTRATES BUILDING AND JAIL

Commissioner Taylor said this item will need to be tabled because we have had some issues with the HVAC system and the Boilers down at the Wees Annex and we are currently in negotiations with Scalise Industries which are the ones that are doing the work on it, so at this time we are not in a position to accept their proposal for continued maintenance on some of our other buildings.

Commissioner Johns moved to table item B to consider approval to sign contract with Scalise Industry for maintenance of HVAC at the Courthouse, James F. Cain Annex, Magistrates Building and the Jail, and to take it up at another meeting.

All yes – Motion passed unanimously

CONSIDER APPROVAL OF SIGNAGE OF CONTRACT WITH JAMES VENDING TO SERVICE COURTHOUSE COMPLEX

John Whitehair from James Vending appeared before the Commission. He said he was contacted by Donna Haddix to come and look at what we currently have. He said he came and looked and saw that what we have is very old. He said their machines are state of the art machines. He said they take debit/credit cards as well as paper money. He said if it was approved today it would take about two to three weeks to install. Commissioner See moved to approve the signing of a one year contract with James Vending, for the vending machines throughout the courthouse campus.

All yes – Motion passed unanimously

CONSIDER FUNDING REQUEST TO PURCHASE ADDITIONAL LAWN MOWER FOR CAMP PIONEER

Commissioner Johns said she is a member of the Randolph County Parks and Recreation Board and Camp Pioneer is a very large area to mow. The riding lawn mower up there has been on the blink for a while and they have tried to fix it and have welded it together a few times. They have received a couple of quotes for a new one. The first one is from Newlon's for \$10,300.00 and the second one is from Mountain View Equipment for \$9,456.00. She said she told them the Commission would take it under consideration to try to help them out with the purchase of the new lawn mower. Commissioner Taylor said it is a considerable amount of grass to take care of. He said the last few years the REC Board has made it a showcase to the County up there. He said Camp Pioneer is owned by the Randolph County Commission. Commissioner Johns moved to approve the funding request for the Randolph County Parks and Recreation Board to purchase a 60 inch gravelly zero turn radius mower from Mountain View Equipment at a cost of \$9,456.00.

All yes – Motion passed unanimously

FINAL SETTLEMENTS/ANNUAL ACCOUNTINGS:

Commissioner Johns moved to approve the sixteen final settlements/annual accountings, as submitted.

Aranna L. Howard
Robert Glenn Smith
Sandra L. Hamrick Osborn
Harel Francis Vandevender
Lawrence W. Rush
Jack Giles
William French Riggleman
Kitty Jean Galford
Edith Gould
Hobert F. Koontz
Joshua Lee Watson
Dorothy Constance Gosnell
Roselee Hyre
Virginia G. Henline
William C. Charters
Aretta Brickles

All yes – Motion passed unanimously

BUDGET REVISIONS: None

ERRONEOUS ASSESSMENTS/DIVISIONS OF PROPERTY:

Commissioner Johns moved to approve the erroneous assessments/divisions of property, as submitted.

All yes - Motion passed unanimously

PAYMENT OF BILLS:

Commissioner Johns moved to pay the bills, as submitted.
All yes - Motion passed unanimously

ADJOURN THE MEETING:

Commissioner Johns moved to adjourn the meeting.
All yes - Motion passed unanimously

Attest: _____