

TERM OF COMMISSION: February Session of the February Adjourned Term

PLACE OF MEETING: Boone County Government Center Commission Chambers

PRESENT WERE: Presiding Commissioner Don Stamper  
District I Commissioner Karen M. Miller  
District II Commissioner Linda Vogt  
County Counselor John Patton  
Deputy County Clerk Ashley Williams

The regular meeting of the County Commission was called to order at 2:37 p.m.

**SUBJECT: Variance Request from the Road Advisory Committee**

Public Works Director Frank Abart explained that the County currently maintains 3/10 of a mile on R.A. Nursery Road and the variance request is to add 1/10 of a mile to the roadway currently maintained. The issue was brought before the Road and Bridge Advisory Committee who approved it, citing three reasons for their approval: the road dead ends and is not likely to support through traffic, it is currently a County right-of-way and is used by school buses. The Public Works department, he said, opposes the request for the variance due to the precedent that might be set.

Commissioner Stamper asked for public comment from the handful of folks who live on R.A. Nursery Road.

Richard Basnett, Nursery Road, said they were available to answer any questions the Commissioners might have.

Commissioner Miller said her biggest concern was the precedent they might set. She said there were a lot of roads traveled by school buses that were not currently maintained by the County.

Commissioner Stamper said that each variance would have to be taken one at a time and evaluated on their own merit.

Commissioner Vogt moved that the County Commission of the County of Boone approve a variance request on RA Nursery Road to extend County maintenance 1/10 of a mile.

Commissioner Stamper seconded.

Commissioner Miller asked if the County currently had a right-of-way there.

Mr. Abart replied yes.

Motion passed unanimously. **Order 49-98.**

**SUBJECT: Agreement for Purchase of Homemaker and Personal Care Services**

Commissioner Vogt moved that the County Commission of the County of Boone approve the agreement for the purchase of Homemaker and Personal Care Services and authorize the Presiding Commissioner to sign that agreement.

Commissioner Miller seconded. Motion passed unanimously. **Order 50-98.**

**SUBJECT: Date Change for Permit for Use of Courthouse Grounds**

Commissioner Vogt moved that the County Commission of the County of Boone revise Commission Order 43-98 changing the dates of the RAIN Walk to April 19, 1998.

Commissioner Miller seconded. Motion passed unanimously. **Order 51-98.**

**SUBJECT: Legislation Consultation Service Agreement**

Commissioner Stamper moved that the County Commission of the County of Boone approve the Legislation Consultation Service Agreement with Donna Simmons.

Commissioner Miller seconded. Motion passed unanimously. **Order 52-98.**

**SUBJECT: Agreement to Promote Economic Development and Activity**

Commissioner Stamper explained that the Commission had authorized an expenditure of \$7,500 in 1998 to the Columbia Special Business District as a payment in lieu of assessment of property owned by the County.

Commissioner Stamper moved that the County Commission of the County of Boone approve the Agreement to Promote Economic Development and Activity for \$7,500 with the City of Columbia Special Business District.

Commissioner Vogt seconded. Motion passed unanimously. **Order 53-98.**

**SUBJECT: Discussion of Commission Order Dated April 15, 1966**

Commissioner Stamper explained that Mr. Abart and Mr. Patton had brought to the Commission's attention, their concern for the wording of a commission order dated April 15, 1966. He said that the idea of vacating the order had been introduced last week and he had asked that it be brought back for discussion today.

County Counselor John Patton said that the intent in 1966 was to grant permission to water district's allowing them to run water lines in county rights-of-way. Mr. Patton said that Boone County is currently in the process of adopting a comprehensive set of regulations regarding the use of rights-of-ways that will make the 1966 order obsolete. He explained that whether the order is vacated today or concurrently with the adoption of the new regulations was not important. This issue, he said, has been a point of discussion with Water District #9.

Commissioner Vogt asked which part of the order is the problem.

Mr. Patton said that the water district, if he was reading them right, wants the County to contractually agree to allow them to continue the use of rights-of-way for the installation of waterlines. With the new regulations, he said, there is no obligation to do that. He said that the use of rights-of-way might be appropriate as long as the County has assurances from the water district that there will be prior planning and that the district will cover the cost of repairs. He also said it was important that if the County expanded roads, the water districts would relocate water lines at their own expense. That issue is not in this contract now, he said.

Commissioner Vogt asked Mr. Patton if he thought they could get the water districts to relocate water lines at their own expense.

Mr. Patton explained that any utility runs a line within a roadway and the governmental entity that maintains the roads needs to improve the road, it is the utility's obligation to make the relocations at their own expense. He said the County currently pays for relocation because they are expanding into private easements.

Commissioner Vogt said that they were working toward the joint resolution of right-of-way issues.

Mr. Patton said he hoped so. He said it was kind of a murky area and that districts want to stay out of the roads and the County wants them out of the roads, but that that might not be possible. He said the County did not want to obligate itself to have to move lines at County expense, should moving them become necessary.

Mr. Abart said the districts are currently using roadways because they can't acquire an easement.

Mr. Patton said if the County should contractually agree to allow utilities to use County rights-of-way, then the County can't kick them out or ask them to relocate at their own expense.

Commissioner Miller said that the 1966 commission order would be an irresponsible document to agree to. She said that today rights-of-way are getting tighter, there are more utilities and one entity cannot have blanket authority. She said she supported voiding the commission order.

Commissioner Stamper pointed out that the order was made when he was 12 years old.

Mr. Patton said that vacation of the order does not mean that the water district would have to move their lines out of rights-of-way today. He said his preference would be to vacate the order when the Commission was at a point to replace it. Mr. Patton said they would be ready to do that shortly. He also said that the order would not be a hindrance in reaching an agreement with the water district.

Commissioner Stamper asked to table the issue for further consideration until Mr. Abart returned with a ratified and agreed to policies and procedures.

**SUBJECT: Court Personnel Participation in CERF**

Commissioner Stamper explained that the Commission had engaged in informal discussions with the Circuit Court regarding court personnel currently not participating in the County Employee Retirement Fund. He said he thought the number of employees was 39 or less.

Assistant Court Administrator Mary Mueller said the number of employees not included in CERF was closer to 22.

Commissioner Stamper said the employees have been excluded from the program at the choice of CERF. He said there had been formal discussions with CERF, one made by the Circuit Court and one made by himself on behalf of the County Commission requesting the employee's inclusion in CERF. He said that an inquiry had been made as to whether or not the County Commission would litigate the matter on behalf of the employees. Commissioner Stamper said that they had asked Mr. Patton to research the matter and Mr. Patton's opinion was rendered on January 16 in a document that addresses issues related to the request. He said it was Mr. Patton's impression that the employees are entitled to participation and that a good case could be made for their inclusion.

Mr. Patton said that lawyers seldom agree and that in his opinion the position taken by CERF is not substantiated under the law. These employees, he said, are controlled by the Circuit Court and are paid by the County and receive County benefits. The courts have wrangled with the issue of whose employees are they. Usually, he said, they look at the employees in the context of who pays a particular bill. Court bailiffs, he said, are paid by the County and are considered County employees, but because Workers Compensation defines the employer as the person or entity that exercises control and because the court exercises control, the bailiffs fall under the state's Worker's Compensation program.

In this instance, Mr. Patton said, CERF says it provides coverage to all elected and appointed County officials and employees, except for the Prosecuting Attorney, Sheriff and deputy circuit clerks who are all covered by MOSERS. The CERF board of directors, on which two Boone County officers sit, he said, has decided to take a line in the sand position that they will not permit circuit court, or what they consider to be circuit clerk employees to participate in the CERF fund. Mr. Patton said the County was now in a situation where 20 some odd people were paid by the County, were offered medical and dental health benefits by the County, but were not included in the County retirement plan because the board won't let them participate. Mr. Patton said he had not attended any board meetings, but his impression was that the underlying problem was the solvency of the fund. He said he thought that CERF was worried about a flood gate phenomenon that might allow too many participants in the fund. When the legislation passed in 1994, he said, it showed that CERF was not adequately funded then.

Their official reason, said Mr. Patton, is that the employees are controlled by the Circuit Court and therefore they are state and not County employees. The state pension fund, MOSERS, defines state employees as those employed by the state, but MOSERS is not providing coverage for these

employees, either. Mr. Patton reiterated that these employees do not have a retirement plan. He told the Commissioners they could try to cure the problem legislatively, which is often a tenuous and unpredictable solution, or they could go to the court to get a declaration or directive of the statutes that would say, yes the employees are covered, or no they are not. Mr. Patton said that the Circuit Court has not made progress with CERF on any front and that Mr. Perry feels that the employees need a definition. They need, he said, to be covered by one plan or another, not to be not covered by both.

Commissioner Stamper said that when he met with CERF in October, his approach was that the employees were considered County employees under the supervision of the Circuit Court. CERF had, at that time, received a brief letter from Judge Conley, and Commissioner Stamper asked their representative Sarah Maxwell, for the specific wording CERF needed in order to include these employees. He said that three other Circuit Clerks had written similar letters and had a small number of employees accepted. He said he expected to work out the details to satisfy CERF's needs and then everything would go away.

Commissioner Stamper said that instead of the positions getting clarified, they got tighter. CERF has since removed other court employees from participation and created a whole new dilemma. He said he didn't want the County to litigate the issue and that he had felt it was the responsibility of the employees. However, he said, this is a whole new development. He asked that the Commissioners do some soul searching as to how to pursue the problem and then to come back to the court with a position at a later date.

Commissioner Vogt said she accepted that they were County employees, but said that a distinction had been drawn by the Circuit Court by their opting to not have their employees come through the Human Resources Department. She said the Court had drawn a line as to how the County deals with employees as an organization. Commissioner Vogt said that while she didn't understand the CERF board's determination, she also did not understand the Circuit Court's determination that their employees are not a part of the whole organization. Those are questions, she said, that she had when it comes to solving these problems. She said if we're an organization then we're an organization, if we are separated, then there will be points where we separate and this may be one where we have to separate.

Commissioner Stamper said there needed to be an understanding as to where public responsibility begins and ends and to litigate on behalf of a group of employees is a little bit of a dilemma. He said he felt strongly that they had no role in this case and based a lot of his opinion on a group of juvenile employees who are jointly suing the state retirement system. He said he had expected the issue to be resolved by now.

Commissioner Vogt said that off the top of her head, she would think that the people of Boone county would not want to play a role in the litigation of CERF for the resolution of this issue. She said there had been so much discussion about state employees and who pays for them. If the County is expected to litigate the issue, she said, then someone needed to tell her how and why the County should do that.

Commissioner Stamper said that they have it worked out to where Mr. Patton would litigate.

Mr. Patton explained that the justification comes from the law making a distinction between actions in an official capacity and those as a private individual. For example, he said, if an elected official is sued in their official capacity, tax dollars can be expended; when sued personally, tax dollars cannot be used.

Commissioner Stamper asked what kind of precedent might be set if the County addresses and litigates the issue on behalf of those employees. He said, as a poor example, what if deputies want to sue to get into the Sheriff's retirement system, what kind of ground would the County have to decline that request after having pursued this one.

Mr. Patton said that only elected sheriff's can participate in that program.

Commissioner Miller said that juvenile employees face the same issue.

Commissioner Stamper said the point was, would a precedent be set if House Bill 971 is not approved and juvenile employees are not included in the State retirement program, would the County then have to litigate for their inclusion in CERF.

Mr. Patton said he did not know how they were handling this issue in Cole County and that he did not have enough statutory background to know where they stand. He said he knew that some juvenile employees were suing MOSERS for inclusion into the system, but he didn't know who was paying for it.

Commissioner Stamper said it was his understanding that the employees were paying for it. He explained that House Bill 971 presumes that the state will take over the juvenile employees; however CERF's concern is that if the bill falls through the cracks again, that by taking the employees in question they will set a precedent that could cause CERF's retirement to become insolvent.

Mr. Patton said that he could research this issue to see if it could be a justified expenditure of tax money.

Court Administrator Bob Perry, said with respect the CERF, if the Commission would remember the history of the program, the employees in question were told they were eligible for CERF and were solicited locally to join. County Clerk Wendy Noren, Treasurer Kay Murray and Recorder of Deeds Bettie Johnson were the three presenters. They met in the courthouse in the jury assembly area where people raised questions about membership and assurances were given and so the employees signed up, he said. About a year later, CERF expelled all of the juvenile employees who had joined. Later this set of employees were expelled. Mr. Perry said CERF allowed some employees back in and now they've turned them all back out, all under the same law. Their own interpretation of the law, he said, has not been consistent.

Mr. Perry said they had tried other remedies and had recently tried again. He said he appreciated the Commission's efforts, but the fact is that these employees remain without that benefit. On the point of public policy, he said, he felt it was good public policy to offer employees basic benefits. Mr. Perry said Boone County gives a lot of emphasis to benefits in order to attract and retain qualified employees and under the law today, some of those employees are being denied equal access to that benefit. There is a state system, a lagers system and a CERF system and these employees don't qualify for any of those. Mr. Perry said there was public policy involved, public interest from an application stand point and not from a legal stand point.

In response to Commissioner Volt's earlier questions, Mr. Perry said the Court's participate to a limited extent, but that even in Jefferson City the personnel policies of the judicial department are not the same as they are for the state executive department. They are two separate personnel systems, he said. Historically, he said, it goes back to the ability of the judicial department to guide, control and direct its own employees, rather than another branch of government doing that. He said they continue to cooperate where they can, but there becomes points where the division becomes evident. The judicial department relies on executive and legislative departments to provide their funding. Mr. Perry said that at times these employees are state funded and at other times they are County employees. They are, he said, judicial department employees. This is all government, Mr. Perry said, and he could not believe that these 22 employees, as a result of government's actions, would have to litigate this issue themselves.

Commissioner Vogt said she found it difficult to believe that the issue could not be resolved without litigation.

Commissioner Stamper asked the Commissioner to take a week to ten days to look at this issue and then to bring it back and render a decision. He also asked Mr. Patton to look at the legality of the issue.

Commissioner Vogt said that maybe it would benefit the Commission to have a work session with the two office holders who serve on the CERF board.

Commissioner Stamper said their preference was to meet with the Commissioners individually because they cannot speak for the CERF board.

Commissioner Vogt asked if there was a chair who would represent CERF in a public meeting. She said she felt they should have a public discussion.

Commissioner Stamper said he ventured to guess their feet were in concrete.

Commissioner Vogt said she would try individual discussions.

**SUBJECT: Discussion of Health Care Profit Share Dollars Projects and Prevailing Wage**

Commissioner Stamper asked that the discussion regarding the Health Care Profit Share Dollars Projects be tabled for another meeting.

**SUBJECT: Reports from Commissioners**

Commissioner Stamper reported that the Columbia Chamber of Commerce would be hosting a discussion with Representative Harlan concerning small businesses and health care.

Commissioner Vogt reported that at the recently held Commissioner’s training, Boone County received a plaque honoring the design of the County Courthouse.

Mr. Abart requested that the contract with the City of Columbia for the Spiva Safety Road Project be scheduled for Thursday, February 24, 1998 regular Commission meeting.

The meeting adjourned at 3:25 p.m.

Attest:

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Don Stamper  
Presiding Commissioner

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Wendy S. Noren  
Clerk of the County Commission

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Karen M. Miller  
District I Commissioner

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Linda Vogt  
District II Commissioner