

Minutes of the Special Meeting
of Wednesday, May 13, 2009

The Union County Board of Commissioners met in a special meeting on Wednesday, May 13, 2009, at 10:30 a.m. in the Board of Commissioners' Conference Room, First Floor, Union County Government Center, 500 North Main Street, Monroe, North Carolina. The purposes of the special meeting were: 1) to discuss special legislation (Senate Bill 468) regarding health benefits for former commissioners; and 2) to discuss issues relative to the hospital. The following were

PRESENT: Chairman Lanny Openshaw, Vice Chair Kim Rogers, Commissioner Allan Baucom, Commissioner Tracy Kuehler, and Commissioner A. Parker Mills, Jr.

ABSENT: None

ALSO PRESENT: Al Greene, County Manager; Matthew Delk, Assistant County Manager; Lynn G. West, Clerk to the Board of Commissioners; Jeff Crook, Senior Staff Attorney; Keith Merritt, County Attorney; Kai Nelson, Finance Director; members of the press, and interested citizens

At approximately 10:30 a.m., Chairman Openshaw convened the special meeting and moved to recess the meeting to reconvene immediately in the Personnel Training Room, Room 131, First Floor, Union County Government Center. The motion was passed unanimously.

The Board members and others moved to the Personnel Training Room and, at approximately 10:35 a.m., Chairman Openshaw reconvened the special meeting.

1. **Discuss Special Legislation (Senate Bill 468) Regarding Health Benefits for Former Commissioners**

Commissioner Baucom moved that Union County request to be included on Senate Bill 468 - "A Bill to Be Entitled An Act to Authorize Counties to Provide Health Insurance Benefits to Former Employees Who are not Receiving Retirement Benefits."

Commissioner Kuehler asked if the bill has been reintroduced as a local bill. She said that the last time she had checked it was still a public bill. Jeff Crook, Senior Staff Attorney, responded that he had checked yesterday, and it had not been introduced as a local bill. He said that the bill had been delayed last week in Committee because so many local governments wanted to be added to the bill.

There was discussion regarding the bill and Commissioner Baucom stated that the motion allows the County to continue to make the decision locally to provide health insurance benefits to former employees who are not receiving retirement benefits. The motion was passed unanimously.

Mr. Crook asked the Board to instruct staff to report this vote to the Senate today, because they will be acting on it tomorrow.

Commissioner Baucom agreed that instruction to staff was to be a part of his original motion.

2. **Discuss Matters Related to the Hospital:**

Mr. Crook stated that John Crill, Attorney with Parker Poe Adams & Bernstein, who would be addressing the matters related to the hospital, had been delayed in traffic and was expected to arrive around 11:00 a.m.

At approximately 10:45 a.m., Chairman Openshaw moved to recess the meeting until such time as Mr. Crill arrived. The motion was passed unanimously.

At approximately 11:20 a.m., John Crill arrived at the meeting, and Chairman Openshaw reconvened the special meeting. Mr. Crill apologized for being late and introduced himself. He stated he was an attorney from Raleigh who represents hospitals and works in the area of hospital affiliations.

Mr. Crill stated that he has reviewed the existing lease as well as the proposed revised lease. He asked at this time if the Board were in closed session. Mr. Crook responded that the Board was not in closed session. Mr. Crill said that his plan was to discuss the existing lease, and it could be done in either open or closed session. However, he said he wanted to have a closed session to discuss some legal issues with the Board.

Chairman Openshaw asked that Mr. Crill proceed with his PowerPoint presentation in open session up until the point where he thought a closed session was needed. Attorney Crill provided printed copies of his Power Point presentation.

Mr. Crill reviewed the following points regarding the existing lease:

- Technically there are only two parties to the lease: County of Union, Lessor, and Union Memorial Regional Medical Center, Inc., Lessee ("Corporation"). He stated that Charlotte-Mecklenburg Hospital Authority (CMHA) is named in the lease but it is made clear in Section 4.10 of the Lease that its only purpose of joining in the lease is to guarantee the rent and also to enter into some indemnification. He said that Charlotte-Mecklenburg controls the Corporation.
- Lease term is 25 years - expires in 2020. Mr. Crill said that originally the lease was a nine-year term, but in 2000, the lease was amended to change the term.
- Leased Property is described as "land, buildings, facilities, fixtures, equipment and other tangible property."
 - Cash and receivables are not included in the definition. He said that whatever cash and receivables were on hand at the time the lease was implemented, he thought the assumption was they were owned by the Corporation, would continue to be used by the Corporation to operate the hospital, and today the Corporation is the owner of the cash and receivables. He stated that the Corporation is required to provide equipment, inventory, supplies, and other personal property.
 - He stated that the rent is basically \$1.4 million but varies because it is tied to the Network Development Fee that Carolinas Medical Center receives.
 - Mr. Crill stated that there is a provision in the lease that no revenues or assets of the Corporation may be used for the benefit of CMHA, except for the Network Development fee in the operation of the Hospital. He said that essentially what the hospital earns stays in Union County.
 - He stated that he did not want to spend a lot of time discussing the requirements placed on the Corporation with respect to the operation and maintenance of the hospital. He said he wanted to make sure it was understood that it is the Corporation that is responsible for the operation of the hospital. He stated that whether or not new services are developed and implemented is up to the Corporation.
 - He noted that under the lease all operating surplus must be invested into the hospital or in the provision of healthcare in Union County. The term Net Operating Surplus is defined to mean the excess of Revenues over Outlays.

- He said that the hospital does have some accountability to the County as follows:
 - To provide the County monthly financial statements and annual audits
 - County must approve capital expenditures of \$500,000 or more
 - County approval is required for issuing bonds for capital improvements

- He stated that the Governing board of the Corporation consists of two persons appointed by the Board of Commissioners and three persons appointed by Charlotte-Mecklenburg Hospital Authority.

- Mr. Crill stated that upon dissolution of the Corporation or upon termination of the Lease for any reason, all of the assets of the Corporation go to the County.

- He reviewed the events of default and remedies and stated that those contained in the lease are fairly standard. He said that the remedies include the County taking control of the Corporation and control and ownership of the assets.

- Mr. Crill reviewed that there are provisions in the lease that medical staff privilege decisions will be made by the Corporation.

- He said that in 2000, there were revisions to Section 8.1 that addresses what happens if there is default under the lease or if the lease terminates. He stated that the Corporation borrowed approximately \$40,000,000 for a major expansion of the hospital. He said the Medical Care Commission provided the funds by issuing tax-exempt bonds, but the Corporation was the borrower of the money. He stated that they had requested the County to agree that if the Corporation was dissolved or the lease was terminated while the bonds were outstanding, then the County would do one of the following to try to ensure that the bondholders would be paid:
 - The County would agree to pay or defease the bonds; or
 - The County would lease the hospital to another entity with an agreement that the other entity would pay or defease the bonds; or
 - The County would sell the hospital and use the proceeds to pay or defease the bonds or the buyer would agree to assume liability of the bonds; or
 - The County would operate the hospital and use the revenues to pay the bonds.

- He said that this was the time the lease was extended to 2020 which at that time was still earlier than some of the bonds would be paid.
- Mr. Crill said there is nothing in the lease that prevents the County from selling the hospital, subject to the lease, and assigning the lease.

At the conclusion of the presentation, Mr. Crill said that he would ask for the Board to go into closed session at this time.

Commissioner Mills asked if it is known what amount is still outstanding on the bonds. Mr. Crill responded that he did not have that amount. He said since these are not county bonds, it is not something that the County would track.

At approximately, 11:40 a.m., Chairman Openshaw moved that the Board go into closed session to consult with an attorney in order to preserve the attorney-client privilege in accordance with G.S. 143-318.11(a)(3). The motion was passed unanimously.

The Board members remained in the Personnel Training Room where Chairman Openshaw convened the closed session.

At the conclusion of the closed session at approximately 12:55 p.m., Commissioner Baucom moved that the Board go out of closed session. The motion was passed unanimously.

The Board members remained in the Personnel Training Room, and at approximately 12:55 p.m., Chairman Openshaw reconvened the open session and moved to adjourn the special meeting. The motion was passed unanimously.