

Hamilton County Commissioner's Court
Special Session
Wednesday, September 29, 2010
9:00 A.M.

Hamilton County Commissioner's Court met in Special Session on Wednesday, September 29, 2010 at 9:00 A.M. with the following members present: County Judge Randy Mills, Commissioners Jim Boatwright, Mike Lewis, Jon Bonner and Dickie Clary.

The meeting was called to order and Judge Mills stated that the County Treasurer and County Auditor were not quite ready that the court would take a recess until that time. David Gustafson asked if he could make a public comment and Judge Mills stated that there were no public comments during a Special Session of the Hamilton County Commissioner's Court. The court recessed.

Reconvening when County Auditor Marliessa Clark arrived (9:15 A.M.) Commissioner Lewis stated to the court, "that currently the county's indebtedness against the First Security State Bank (County Annex Building) was \$179,805.32. He proposed to take \$44,951.33 from the unencumbered funds from each precinct to retire the debt on the annex building. By doing this Lewis stated that it would free up \$70,892.00 in the 2011 budget year. It will also free up another \$115,139.00 in budget years 2012-2014. Lewis added that the savings in principle only; interest savings in 2011-\$6,031.08, 2012-\$3,051.44 and 2013-\$359.69. This will free up funds to put toward the courthouse project, Phase II. We can also put some money back into the precincts which we will need."

Clary asked, "When do you contemplate doing this? How can we change the budget without it being an emergency?"

Lewis said, "Today, this is not changing the budget. It's not changing the budget. It's not adding to the budget. This is the only time of the year we can do it because this is the final bill paying day. We know exactly how much money we have left and it is money that we have not budgeted for next year and therefore cannot be spent for next year."

Boatwright added, "I have a problem with it and I will tell you what that problem is. All precincts have indebtedness except for Precinct 2 right now. I am down to about the lowest part that I need to be as for as having my funding. If I am going to pay any indebtedness it will be in my precinct before I pay out anything for the general fund."

Mills added, "This is not the general fund."

Boatwright continued, "But it is coming out of the general fund to the First State Bank and that is an indebtedness to the General Fund. I've got indebtedness in my precinct. Commissioner Clary and Bonner also do. What is the difference? You just have that much more paid down. It has nothing to do, these were taxes that were taxed in the precincts and it shouldn't be. The indebtedness in the precincts should be taken care of first before any money goes to the general fund."

Lewis added, "That we had opportunity to budget unencumbered funds; you had the opportunity to put those funds over to your indebtedness and you chose not to do so. I chose not to. This is the first year in thirteen years that I chose not to budget my entire unencumbered funds. Bonner had the same opportunity to budget his unencumbered funds on his debt and so did Mr. Clary. It will sit there for one year and I think it is time to spend it."

Bonner stated, "The money is there to service the debt."

Boatwright said, "if you're paying debt off I'm saying it doesn't matter if you are paying the debt off at the First State Bank or pay it off to Capital City Leasing you are eliminating the debt all the way around."

Mills agreed with Boatwright on this point, “but the point is the court as a whole gets hammered about the tax rate. That is what I am looking at is next years tax rate.”

Boatwright asked, “Then what does it matter where the indebtedness comes from?”

Lewis said, “I will go back. You had the opportunity to put that money on your indebtedness and you chose not to do so. Therefore the money is just laying there. We need to put it on our indebtedness now; pay that building off and then next year’s budget time then we can work on your indebtedness.”

Boatwright continued I’ll tell you what I will do and that is pay my own indebtedness and precinct off.”

Mills stated, “it’s a little bit different but the closest analogy that I can come to in any department I’ve got; if there is any monies left over in courthouse, the county judge’s budget; it goes right into general fund. It is a little bit different for you guys.”

Boatwright said “we have a tax rate.”

Mills-“these monies are idle in my mind.”

Bonner said, “I am a big supporter of getting that annex building. I am a big supporter. I don’t think you can go wrong when you are paying off debt. We all have funds there it is not going to kill any of us. I’m sure I will be more than glad to chip in my share of it and go ahead and knock that debt off and be done with it. It will make our budgeting a whole lot cleaner and simpler next year.”

Clary questioned, “This maybe a legal opinion and maybe someone here can answer it; if not then maybe we need to research it a little farther. There is tax money in the precinct reserve accounts that comes from what I consider as dedicated sources (funds) like the road and bridge fee. Every time someone comes in and buys a tag for their vehicle we charge a \$10.00 per tag which amounts to about \$90,000.00 a year per precinct. If those funds go into one pot who’s to say what money is there and what is not? Since that money does go in there I’m not sure it can be spent anywhere else except for that. How do we determine what portion of our reserves are residual money left over from that dedicated funding?”

Mills clarified, “so you are concerned about commingled funds?”

Clary added, “Of knowing what is there and spending money that we have collected for certain purpose.”

Judge replied, “Commingling other tax money and you think that protects the tax money from being spent except for road and bridge.”

Clary responded, “Basically yea.”

Mills stated, “I have an AG Opinion that I have given to Mark I am certainly willing to hear Mark’s opinion on this.”

County Attorney Mark Henkes stated, “I have a series of AG opinions that to the extent that it can be shown that it is not designated fees for a purpose or a special tax for a purpose that it is simply general property tax then it can be swept into the general fund. Now the manner to determine this dollar came from here or there I didn’t find anything in my short search to be able to give me an answer one way or another. I wonder if possibly Marliessa might have some experience or some general rule that is used in accounting to make that determination as to if its simply property tax dollars it can be swept into the general fund; if it is something else no it can’t. Determining what is what I haven’t been able to find any guidance on that. He deferred to County Auditor Marliessa Clark.”

Clark added, "There is sufficient history to show through the road and bridge reports that I do annually that the money has been spent in each case, each year I've filed it on the road and bridge. Therefore there is enough of the excess funds that there is excess funds that have been tax dollars in each one of the precincts each year that is supplemented the payment of expenses toward road and bridge. It would be my opinion that since I have reported that those funds have been spent every year on road and bridge that all excess funds could be attributed to tax dollars as far as the tax rate and a portion of Hamilton County's tax rate."

Clary said, "I don't see how you can make that claim when the money goes into one pot..."

Lewis stated, "I don't know how you can dispute it."

Clark said, "I have to report annually on the road and bridge report that shows that we have spent those funds on road and bridge materials. I can't go back and say kings x we didn't spend that money, we are still holding onto it."

Clary asked, "So the ORCA money that was spent on those particular road and bridge materials and supplies that particular year it is a possibility that is exactly what happened?"

Clark added, "Then Dickie I am going to have to go back and tell the state that we have not spent lateral road and bridge fees, and other fees on road materials and supplies. Then we are going to be in violation of the law and what the statute says."

Clary says, "We spent the money but I don't think anybody can say which dollar amount is spent where when they are commingled."

County Attorney Henkes stated, "That the Attorney Generals clearly contemplated that the distinction can be made though not of the opinions I have read none of them indicates how it is met. The distinction is clearly taken to be quite possible or doable or else they wouldn't have issued the opinions. They would never say it is possible to sweep tax dollars out in the general fund if you couldn't sweep commingle funds because they all contemplated they are kept in the same account. Now the mechanism for that, the opinions are silent on as to determine what dollars are which and that is why I have to defer to Marliessa's opinion on it. It sounds like a fairly concise opinion."

Mills added, "I looked at the AG's Opinion and it addressed every issue -concern that I had."

Bonner stated, "we have different philosophies, different opinions just like we have seen over the last month, over the last fourteen years that I've been here. I'm just tickled to death to go ahead and get that debt out of the way. This is one less thing that we have to look at."

Mills emphasized, "Each precinct has a fresh new budget. We are not coming in at the end of the year and taking your money from your precinct. Each precinct has prepared a budget it is a fresh budget. It is just whether or not it all got voted on by each particular member I can promise you that regardless of how they voted on the overall budget that each commissioner approved their own budget or they wouldn't have put it in there. They wouldn't have prepared their budget that away. It's not like we are taking money or requesting that this tax money be taken away from the precincts. There is a fresh budget and if you live within that budget you won't have a problem. Each elected official just set my own budget, treasurer, clerk everybody else. These are unencumbered funds. It is just a matter of how to expend them and that is what we are talking about. We are not talking about revisiting everybody's budget as it was prepared by that particular official or commissioner's court as a whole. Some of these budgets, these departments are kind of under the county judge but also under the commissioner's court and with that being said we are not taking anything away from anybody's budget. All we

are doing is spending or requesting to spend unencumbered funds for the purpose of taking down debt.”

Boatwright added, “If we are talking about paying down debt what is the difference in going in and paying down debt in the precinct? I would rather pay down debt in my precinct in my precinct that put it in on that annex over there because we have a plan to pay it out.”

Mills said, “I realize that.”

Boatwright said, “I still think that is tax money going in even though it is in reserve right now that if it is going to be spent it needs to be spent to payoff debt in the precincts and it doesn’t matter whether it is in the precincts or the general fund if your paying off debt, your paying off debt. You guys know that my budget is down about as low as it can go right now, you have all said that. I think that this may be a little ploy to get back at me because I didn’t vote for the budget.”

Mills, “Jim.”

Boatwright added, “I wasn’t born yesterday. I understand what goes on.”

Mills said, “I have a question for you. Can you live within your budget?”

Boatwright continued, “I sure can.”

Mills asked, “Can you pay your debts within your budget?”

Boatwright said, “I sure can.”

Mills said, “That is all I needed to know.”

Boatwright responded, “I want to pay my debt off before I pay anything on that over there.”

Mills stated, “I know that you budgeted that way, to pay your debt off with the budget you prepared.”

Boatwright: “I have multiple years of indebtedness.”

Clary clarifying, “we are talking about retiring debt?”

Mills said, “Yes we are talking about retiring courthouse annex debt, which will put each precinct in a better position next year. If you have to increase your budget next year which I don’t think you will have to do. I fully intend to ask every elected official to not raise their budget a penny. If we don’t see a significant tax rate drop next year it isn’t because we didn’t try.”

Bonner reiterated again, “it is a matter of philosophy. We still have a democracy.”

Clary said, “my biggest concern is the impression that the taxpayers that we are going to have on us taking money out of the precinct funds which has traditionally always been used and dedicated for improving the county roads. How are they going to perceive us removing \$180,000.00 out of that to retire some of the debt? The debt retirement everybody is going to agree with but it is the robbing Peter to pay Paul situation that I think that unless every precinct has 100%, their road are in 100% perfect condition which I don’t believe that they are. I think that we have bridges that could be built more low water crossings that could be poured, more gravel to be hauled, and more brush that can be cut. All of our budgets can be bigger and maybe probably should be bigger but we choose to operate conservatively; and those funds are always there in case we have another monstrous flood and we don’t get FEMA or ORCA funds and those

funds will already be there taxed and collected will be there to help us repair some roads that we may not have any other funding for.”

Mills said, “I remember the FEMA funding and do you know where you got your money?”

Lewis replied, “The general fund.”

Mills stated, “There is money in the general fund. We have too many savings accounts as far as I am concerned.”

Bonner said, “That is why we keep the general fund the way it is.”

Mills said, “It may be and I don’t want to drive this point home but I am weary, tuckered out.”

Bonner said, “My opinion is run your business right this isn’t any money at all to chunk in. I am proud to put it there.”

Mills continued, “Budgets were prepared on the basis to maintain your roads this year. I have been remised at looking that the precinct budgets. These funds were not part of it.”

Boatwright added, “If I had known this issue was going to come up right now on the last day I would have paid my debt off. I would have put every penny in there to pay my debt off. If I had known that I was going to be held hostage like this.”

Mills replied, “You are not being held hostage.”

Boatwright continued, “I am. You are going to take my money. Mark can they take my money?”

Mills inquired, “Whose money?”

Boatwright responded, “The County’s money.”

Mills said, “I just wanted to make sure that it’s not my money.”

Boatwright said, “I represent Precinct One.”

Mills answered, “Yes you do.”

Boatwright said, “It is the tax in my precinct that we have got this funding.”

Mills asked, “Where your precinct members taxed only on this or the county as a whole? Where the people in the city taxed on this?”

Boatwright added, “They sure were. That is part of my precinct.”

Clary once again asked about the encumbered funds. “Mike are you talking about money that was in this year’s budget and not spent?”

Lewis answered, “In this year’s budget not spent and not budgeted in next year’s budget. That is the only unencumbered funds that we have.”

Lewis reiterated, “We don’t have encumbered funds until today because we know the numbers.”

Clary asked, “What does this do to Precinct One when you pull out \$44,000 out of his budget next year at this time?”

Lewis added, "I'll tell you what Boatwright told me years ago, it's going to make you a better commissioner."

Bonner stated, "That Jim is not in any worse position than Lewis was. Lewis started out with nothing. He ought to be at every one of those TAC meetings telling how to start with nothing and ending up with quite a bit. Sit here and watched him come in and his precinct was dead broke, roads are in better shape than they have ever been in, got better machinery and more money. Take a lesson."

Judge Mills called for more discussion, followed by calling for a motion. Lewis said, "I would like to make a motion to take \$44,951.33 of unencumbered funds out of Precincts One, Two, Three and Four to retire our debt on the courthouse annex."

County Auditor stated, "I rounded it up to \$44,952.00." Lewis said, "Give me your figures then." Mills added, "\$44,952.00." Clark confirmed. Bonner seconded.

Clary called for point of discussion.

Mills stated, "That if you think this hasn't been discussed; I'm not going to call for a point of order on this. Go ahead."

Clary says, "I am not opposed to paying down debt and I have excess funds. I would be happy to do so. I think this process severely hampers and penalizes Precinct One. That scenario may have happened before but it doesn't make it right. If you arbitrarily decide to take money out of his fund when he is not in a position to do so without jeopardizing his...what he thinks is important funds for his precinct. I would entertain the ideal for the rest of us since we do have the other three precincts making up his portion and taking out another \$12,000-\$14,000 out of our reserves and basically leave his alone. We will still be in better position than he is after we do that."

Bonner said, "We are running a business here."

Lewis stated, "That's not fair to the taxpayers of Precincts 3, 2 and 4."

Bonner added, "We have a motion, we have a second."

Mills stated we have a motion by Lewis and seconded by Bonner to approve the Order Transferring Surplus Funds from the Road and Bridge Fund into the General Fund in the amount of \$44,952.00 from each of the four precincts. Mills, Lewis and Bonner voted for; Boatwright and Clary voted against. The motion carried by a majority vote. (Recorded in Commissioner's Court Papers Book 37 Page 715)

Commissioner Boatwright left the meeting and was not present for items (1) Budget Amendments and (2) Bills Submitted for Payment.

A motion was made by Lewis and seconded by Bonner to approve the budget amendments. Mills, Lewis and Bonner voted for; Clary voted against. The motion carried by a majority vote. (Recorded in Commissioner's Court Papers Book 37 Page 753)

A motion was made by Bonner and seconded by Lewis to approve \$293,525.51 amount of bills submitted for payment. The total amount is composed of \$66,163.43 amount for RBR Construction and Komatsu Architecture, \$179,805.32 amount to pay off the debt against the annex building, and \$47,556.76 amount of regular courthouse bills. The motion carried by a majority vote with Mills, Lewis and Bonner voting for; Clary voting against. (Recorded in Commissioner's Court Papers Book 37 Page 772)

A motion was made by Lewis and seconded by Clary to adjourn. The motion carried.

County Judge

Attest: _____,
County Clerk