

Commissioner Minutes

April 8, 2024 – 11:00 a.m. to 11:21 a.m.

**MEETING WITH PA TAYLOR FOR LEGAL COUNSEL DISCUSSION AND TO CONSIDER AN ACTION ITEM**

Commissioners Leslie Van Beek, Brad Holton and Zach Brooks

Prosecutor Bryan Taylor

Chief Deputy P.A. Carl Ericson

Deputy P.A. Alex Klempel

Assessor Brian Stender

COO Greg Rast

David Leroy with Leroy Law Offices

Deputy Clerk Jenen Ross \_\_\_\_\_

**MEETING WITH PA TAYLOR FOR LEGAL COUNSEL DISCUSSION AND TO CONSIDER AN ACTION ITEM**

The Board met today at 11:00 a.m. with PA Taylor for a legal counsel discussion. Present were: Commissioners Leslie Van Beek, Brad Holton and Zach Brooks, Prosecutor Bryan Taylor, Chief Deputy P.A. Carl Ericson, Deputy P.A. Alex Klempel, Assessor Brian Stender, COO Greg Rast, David Leroy with Leroy Law Offices and Deputy Clerk Jenen Ross. The action item was considered as follows:

***Consider Legal Services agreement with Leroy Law Offices:*** Mr. Rast explained that the Board has the latest version from Mr. Leroy and that the changes suggested by Mr. Ericson have been made by Mr. Leroy. There were four changes, the first was in regard to civil legal services to ensure it's very specific and case-by-case. This is the third letter of engagement with a third firm for case-by-case situations; the three engagements are with MSBT Law, Moore, Elia and Kraft, and now Leroy Law. This agreement will be for any future work needed by Mr. Leroy. Commissioner Van Beek made a motion to sign to sign the legal services agreement with Leroy Law Offices. The motion was seconded by Commissioner Brooks and carried unanimously (agreement no. 24-031). Commissioner Van Beek commented that the Board has considered, and as conflict counsel, this includes references to article 18, section 6 of the Idaho Constitution and Idaho Code section 31-813 which she believes legal counsel has provided guidelines which have been complied with by the Board. Ms. Klempel noted that in reference to the process of hiring outside counsel, that is for specific instances, this is a generalized agreement so if a specific issue arises that Mr. Leroy needed to work on for the Board there would need to be a further record at that time.

Commissioner Brooks asked about a rumor he's heard that the Canyon County Board of Commissioners was investigated by the PA in another county. On Friday, he and Mr. Rast spoke with Mr. Ericson who confirmed the information but did not elaborate, instead referred them to speak with PA Taylor who was not in the office at the time. With the presence of Mr. Taylor and Mr. Ericson today, Commissioner Brooks would like to know how the Board was investigated by

another county's prosecutor's office without the board's prior knowledge but instead finding out secondhand. In addressing PA Taylor's question about where he heard the rumor, Commissioner Brooks chose not to disclose that information. Prosecutor Taylor explained it is a very typical process, with the most recent one being an open meeting law allegation against the board. Since the PA's Office is legal counsel to the Board, per Idaho Code 74-208 (5), states that the PA shall refer this out to a special prosecutor; another PA needs to review the matter as CCPA cannot since they are legal counsel to the board. Information was received from the outside PA, there is no further action necessary so the matter is closed. He explained that generally the party being investigated is not notified in an effort to not disrupt the record. Commissioner Brooks further clarified his question to ask how the outside PA would be able to make any determination on whether to move forward without contacting the subject (the BOCC in this case) about the matter. Ms. Klempel explained that initial determination to move forward can be done by simply reviewing brief information, there is not always going to be a conversation with the subject of the investigation in the early phases. There may only be contact with the subject of the investigation if the PA isn't able to fully determine if the matter should move forward or not. Specifically, in regard to this situation, the outside PA was able to determine (without speaking to the Board) that no action should be taken. In response to Commissioner Brooks' question, the legal team does not know why the matter is not being pursued further. Mr. Taylor spoke about how they work to keep separation between the case and his office providing legal counsel to the Board. Additionally, he confirmed that a copy of the findings was sent to his office but since it was not going to be pursued further he just files them away; at the Board's request, a copy will be report will be forwarded to the them. Commissioner Holton expressed his frustration about Prosecutor Taylor forwarding the allegations without notifying the Board and wondered why that was done. Mr. Taylor explained that he was following Idaho Code 74-208(5) which states that if there is an open meeting violation allegation committed by a board of commissioners the prosecuting attorney or board of commissioners may seek to have a special prosecutor appointed as noted in section 31-2603 of Idaho Code. He has a responsibility to separate one function from another function which is why he had Mr. Ericson trying to provide legal counsel to make sure the board was protected while he had to follow the statute. Mr. Ericson confirmed that there was a complete separation between his advisement to the Board and the actions of the prosecutor so there was no carryover. Mr. Ericson stated he was not even aware Mr. Taylor had referred this to outside counsel until recently. He recalls advising the Board that the matter may need to be referred out but didn't know what Prosecutor Taylor's plans were. Mr. Taylor said that Mr. Ericson notified the Board of the matter and how to rectify it and that if it was rectified it would never have had to be referred on, however the board did not take any action. Commissioner Van Beek expressed her frustration with how this situation has been handled.

The meeting concluded at 11:21 a.m. and an audio recording is on file in the Commissioners' Office.