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March 29, 2024

Bryan Taylor
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RE: Request for Special Prosecutor

I have reviewed the materials sent as well as your factual background and analysis which I am adopting in large part. As I am sure this opinion will receive public attention, I will give a brief background on myself and this process. I am a four-term elected prosecutor in Bonner County (Sandpoint). Prior to being elected I acted as a civil deputy prosecutor. Additionally, I am currently the president of the Idaho Prosecuting Attorney's Association. One of the greatest strengths of our state is the vast geographic area. Bonner County is over 400 miles from Canyon County and I am unaware of any of the individuals involved nor do I believe I have ever met anyone involved. This allows for a truly unbiased look at issues without the threat of political fall out.

While local county prosecutors generally prosecute violations of the Open Meetings Act concerning governing bodies within their counties, when the allegations are against the Board of Commissioners, prosecutors must seek out assistance from a special prosecutor. It is in this context that I am filling this role.

FACTUAL BACKGROUND

The following constitutes the facts as supported by the documentary evidence:

1. On January 24, 2024, Canyon County Clerk Chris Yamamoto submitted a letter to the Board of Commissioners announcing his resignation from office effective February 2, 2024. Yamamoto did not express a reason for his resignation.
2. Because the resignation specified an effective date, the vacancy was eligible to be filled pursuant to Idaho Code § 59-906(2). Under that provision, the county central committee of the resigning officer may submit three nominations for the board of county commissioners to consider prior to the date of the resignation.

The Board shall then fill the vacancy by appointment from the list to be effective on the day following the date the office is vacated. This allows for a continuance in governance.

3. Chris Yamamoto was elected as a member of the Idaho Republican Party. So, the Canyon County Republican Committee ("CCRC") had the statutory duty to nominate three individuals to replace Yamamoto.
4. Canyon County Commissioners Holton and Brooks are both CCRC committeemen.
5. On January 31, 2024, the CCRC conducted a special meeting to select three nominees for appointment ("CCRC Meeting"). This is according to the letter dated February 1, 2024, from the CCRC chair to the Board, which was placed in the BOCC public record.
6. The letter provided three names, ranked in order of preference (which is not a requirement of the statute): (1) Rick Hogaboam; (2) Steve Almer; (3) Jo Dee Arnold.
7. The letter, as it appears in the public record, does not communicate any rationale for the selection or ranking of the three nominations. Nor does it include any indication that the CCRC provided any application, resume, background materials, or any other documentation for the Board to consider in selecting a nominee. In fact, the CCRC chairman specifically states in the letter, "If you require further information or documentation regarding the nominees, please do not hesitate to contact me"
8. The Board placed the following action item on its agenda for February 2, 2024, at 1 pm.: "Consider recommendations of Canyon County Republican Central Committee on a new Clerk appointment." ("Feb 2 Board Meeting"). In order for the agenda to be timely noticed under the Open Meetings Law for the February 2, 2024, Board Meeting, the agenda had to be in place no later than January 31, 2024, at 1 pm, which was 48 hours prior to the meeting. An audio recording of the entire meeting, except the executive session, was made and published on the official county website.
9. During the February 2, 2024, Board Meeting, the Board selected Rick Hogaboam to act as county clerk until the next general election. *See Canyon County Commissioner Minutes - 2024 02 02.*
10. There was no substantive discussion during the February 2, 2024, Board Meeting regarding what information the individual commissioners considered to arrive at their decision.
 - o Commissioner Holton provided no comment or insight on the record regarding how he decided to vote.

- Commissioner Brooks seems to have based his decision on his personal experience and interactions with Hogaboam, and the ranking by the CCRC.
- Commissioner Van Beek provided the most information on what informed her decision. Commissioner Van Beek started the meeting with the following statement:

“[T]he Board of County Commissioners was privileged to attend the Republican Central Committee where candidates presented themselves and there was a 5-minute question and answer and presentation of their qualifications for the duty in the office of Clerk. We appreciate the qualifications and the people willing to come forward with that. We felt like there was one clear recommendation and candidate that was head and shoulders above the rest in that selection process and that’s not a discount to the candidates that ran, but this is a huge office that’s multifaceted and will need strong leadership and tenure and expertise to lead Canyon County to the next level. So we are thankful for those that applied and we are excited at the new adventure for Canyon County in this critical office.” See Transcript of 2024 02 02 BOCC Meeting RE Clerk.

- It was not until after this statement, Commissioner Brooks then identified the nominees and immediately indicated his support for Hogaboam. At which point Commissioner Van Beek interjected:

“So I do want to provide support for Commissioner Brooks’ recommendation of Rick Hogaboam. If you’ve read his bio and his resume. If you’ve talked to him at all he’s a man of integrity who seeks to build relationships. His tenure with the City of Nampa, his experience with non-profit organizations, his ability to build teams and work together will serve Canyon County well. . . . With his background in public administration, his attention to detail, his relationships with the Idaho legislature, and his involvement with that kind of interaction, is sorely needed and will be a great asset to the Board of County Commissioners in addition to the other offices in Canyon County.” See Transcript of 2024 02 02 BOCC Meeting RE Clerk.

11. The Board then voted unanimously to select Rick Hogaboam to serve as the Canyon County Clerk until the next general election.
12. The portion of the February 2, 2024, Board Meeting to select Hogaboam lasted just over nine minutes. The actual “deliberation” and “decision” was completed six and half minutes into the hearing. Two of those minutes prior to the vote were an explanation by Commissioner Holton regarding the term of the appointment.

ANALYSIS

Based on the public record, specifically the statement by Commissioner Leslie Van Beek, I find the Canyon County Commissioners violated the Idaho Open Meetings Law in the process of filling the county clerk vacancy.

The purpose and prime mandate of the Open Meetings Law is to assure that “all meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting except as otherwise provided by this act.” I.C. § 74-203(1). In addition to being open to the public, public notice of meetings subject to the Open Meetings Law must be done no less than five calendar days prior to the meeting date; meeting agendas must be noticed forty-eight hours in advance of the meeting. I.C. § 74-204.

In this case, the Board appears to have deliberated on its choice for a county clerk by attending the CCRC Meeting when the matter of selecting a clerk was already before the Board. There is no dispute that the Board is the governing body of a public agency subject to the Open Meetings Law. Nor is there is not any dispute that a quorum (in fact, all three members) of the commissioners were present at the CCRC Meeting in which the nominees and their respective qualifications were discussed. It is also clear that the Board meeting at the CCRC was not noticed as required by the Open Meetings Law (See I.C. § 74-204). Thus, the only arguable issue, besides strictly political considerations, is whether the attendance of a quorum of the Board at the CCRC Meeting was concurrently a “meeting” of the Board for the purposes of the OML. As explained below, the facts known at this time indicate that it was indeed a meeting that triggered OML compliance and that the Board did not comply with the Open Meetings Law.

A “meeting” for the purposes of the Open Meetings Law, “means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.” I.C. § 74-202(6). “Deliberation,” is also a defined term under the code, which “means the receipt or exchange of information or opinion relating to a decision, but shall not include informal or impromptu discussions of a general nature that do not specifically relate to a matter then pending before the public agency for decision.” I.C. § 74-202(2).

Applying the clear statutory definitions to the narrative provided by Commissioner Van Beek at the February 2, 2024, Board Meeting shows that the Board, at a minimum, participated in “the receipt or exchange of information or opinion relating to a decision” (i.e. “deliberated”) regarding who should be appointed to fill the county clerk vacancy. Commissioner Van Beek’s consistent use of “we” in her narrative could also be construed to mean that the Board discussed and determined its selection prior to the February 2, 2024, Board Meeting. Notably, neither of the other two commissioners rebutted or corrected Commissioner Van Beek’s statement about attending the meeting. Nor, for that matter, did the county chief operating officer who habitually and freely interjects and speaks on behalf of the Board on the record during meetings.

Bryan Taylor
March 29, 2024

The exclusion for informal or impromptu discussions does not apply to the CCRC Meeting. It was a formal meeting of the CCRC ostensibly held in compliance with the CCRC bylaws. It was clear what the purpose of the meeting was for and none of the commissioners were required to attend (in the case of Commissioner Van Beek who is not on the CCRC) or to participate (in the case of Commissioners Holton and Brooks who are members of the CCRC) for the CCRC Meeting to be valid. Further, by the time the CCRC Meeting took place, the Board had already provided public notice that the matter of selecting a county clerk was pending before the Board. The agenda item for the Board for 1 p.m. on February 2, 2024, made the purpose of the meeting clear: "Consider recommendations of Canyon County Republican Central Committee on a new Clerk appointment." In order to comply with the 48-hour agenda notice for the meeting on Friday, February 2, 2024, at 1 p.m., the Board had to publish notice by 1 p.m. on Wednesday, January 31, 2024. The CCRC Meeting took place the evening of January 31. Thus, the Board had itself knowingly placed the matter of selecting a new county clerk on the agenda prior to the CCRC Meeting.

Based on the facts available to me, it appears that the Board engaged in a deliberative meeting by attending the CCRC Meeting regarding a matter that was inarguably already before the Board for a decision. Regardless, the commissioners knew or should have known the decision to appoint the next Clerk would be their decision in very short order. This is not to say two or three commissioners can't attend central committee meetings. Commissioners often and in the case of Canyon County serve as local precinct men and women. However, in this particular case, there should not have been a quorum of commissioners at the central committee meeting. The filling of other elected official slots is unique. Boards of Commissioners may go into executive sessions to discuss filling department head positions and other employees; however, the Idaho State Legislature specifically excluded the use of executive sessions for Boards to discuss filling an empty Clerk seat. The legislature mandated this be done with the bright light of transparency in an open meeting setting. In this case the deliberation occurred prior to the BOCC meeting at the central committee meeting.

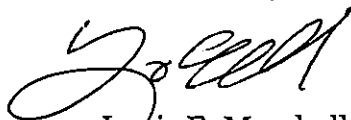
REMEDY

This action took place more than thirty days ago and as such the remedy of voiding this action is not available. Additionally, Mr. Hogaboam has been dually sworn in and has presumably performed hundreds if not thousands of official acts since early February. There is not evidence before me the Commissioners acted contrary to legal advice or somehow had prior knowledge they were violating the open meetings act by attending the particular central committee meeting. Additionally, it is rare for boards of commissioners to be forced to fill other elected offices whose officials have left prior to the end of their terms. Therefore, it is my determination that a civil penalty is not appropriate under these circumstances.

Bryan Taylor
March 29, 2024

If you have any questions or concerns, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Marshall", written in a cursive style.

Louis E. Marshall
Bonner County Prosecuting Attorney

LEM/cm