

**COMMISSIONERS' MINUTES
KITITAS COUNTY, WASHINGTON
COMMISSIONERS CONFERENCE ROOM
SPECIAL MEETING**

MONDAY

1:00 P.M.

MARCH 29, 2010

Board members present: Vice-Chairman Paul Jewell and Commissioner Alan Crankovich. Chairman Mark McClain absent.

Others: Catherine Dunn, Deputy Clerk of the Board; Greg Zempel, Prosecutor; Joseph Whalen, Human Resources Director.

SPECIAL MEETING

STAFFING DISCUSSION

COMMISSIONERS

At 1:20 p.m. **Vice-Chairman Jewell** opened a special meeting to discuss staffing concerns in the Prosecutor's office.

Vice-Chairman Jewell said he understood that Deputy Prosecutor Zera Lowe didn't wish to perform the Coroner duties and was paying Greg Zempel by personal check to perform the duties for her. He asked if this was correct.

Prosecutor Greg Zempel said that it was partially correct, as she was also paying other Deputy Prosecutor's to cover her Coroner duties. He said when she went to the Coroner training, she expressed reservation about those duties. She went on a Coroner call with another Deputy and still felt the reservations. He said she wished to pay someone to cover this part of her responsibilities and she suggested \$500. He said this comes up about three times a year, per Deputy Prosecutor. He said he had hired her for her legal mind and not to do Coroner calls.

Vice-Chairman Jewell said he had concerns with her paying the Prosecutor with a personal check. He said it was similar to the Clerk's office returning a portion of their checks to the County to keep their budget in line. He said that both Rocky Jackson, the County's labor attorney and Zera Lowe gave the opinion that this action put the County at risk of the Clerk's asking for their money back. He asked if Mr. Zempel could explain how opinions would not apply directly to this case. He asked about the Anti-Kickback Statute, RCW 48.52.50, as it applied.

Prosecutor Greg Zempel said the Anti-Kickback statute is intended to protect employees in labor negotiations. The employees expect to be paid what is owed. The books of the County regarding time worked are accurate and it protects against coercion - the forcing of an

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employee to give back money in a different way. He said case law shows it is illegal to withhold wages from employees. Those who receive a wage can do with it what they will. They cannot be forced to work to support a political party or person. He said that in this case, the facts are different. He said there is no willful withholding of funds nor are the books wrong. The question is whether an employee is being forced to rebate a portion of their salary. The request came from Ms. Lowe and she has been reimbursing senior staff.

Commissioner Crankovich asked if there was an internal policy covering this action. He recommended a policy be established, but he didn't think there was a problem with this action.

Prosecutor Zempel asked if the Board was worried about employees paying someone to do their work? He said it often happens that Deputy Prosecutors cover for each other and swap weeks, etc., and it's negotiated between themselves.

Vice-Chairman Jewell asked how many times he had done the Coroner duties for Ms. Lowe? **Prosecutor Zempel** replied he had done them 3 to 5 times.

Vice-Chairman Jewell discussed his concerns that Prosecutor Greg Zempel, as her employer, was getting paid by her to do her work. His biggest concern was that she might get angry and sue the County for the funds. **Mr. Zempel** said the County is not withholding any money from her, she is writing a check for something that is not an obligation. **Prosecutor Zempel** said Ms. Lowe is still responsible for her coroner calls and if no one else is available, she has to do it.

After further discussion, **Prosecutor Zempel** said he would no longer be taking Ms. Lowe's Coroner weeks and if the County is sued over this, he would personally take responsibility and pay for it.

Vice-Chairman Jewell asked Joseph Whalen if he was aware that this involved other employees, as well as the Prosecutor. He said he wasn't aware of that. **Vice-Chairman Jewell** asked Mr. Whalen if he recommended that a policy be formalized. **Joseph Whalen** replied that in any other organization, employees can cover each other's shifts. If the Prosecutor is not involved, it becomes more casual, but a long term policy would be good

The meeting was adjourned at 2:10 p.m.

DEPUTY CLERK OF THE BOARD

KITTITAS COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON



Catherine Dunn



Mark McClain, Chairman