

Unsealed by the Board of Commissioners on 2/12/2024.

**SEALED MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
March 8, 2010 – CLOSED SESSION**

Closed Session #2 Potential Litigation

Pursuant to NCGS 143-318.11 (a) (3) to consult with an attorney reference potential litigation. Present were Chairman Chappell, Commissioners Bullock, Hawkins, Hogsed and Phillips, County Manager Artie Wilson, County Attorney Curtis Potter, and Clerk to the Board Trisha Hogan.

Commissioner Hogsed recently asked Chairman Chappell to consider introducing a resolution in support of the Board's Invocation Policy. At the request of Chairman Chappell, the Alliance Defense Fund (ADF) reviewed the resolution and offered their legal opinion on the resolution. The County Attorney's office provided their legal opinion as well. This closed session is the first discussion by the full Board regarding Commissioner Hogsed's proposal. Commissioners are discussing this issue in closed session because passing the resolution could bring about potential litigation matters and the Board cannot discuss the merits of the resolution without violating attorney-client privilege.

Commissioner Hogsed drafted the resolution for the purposes of informing Transylvania County residents that the Board of Commissioners is upholding the North Carolina and United States Constitutions for which they took an oath. His intent also was to forward to other Boards of Commissioners in the State of North Carolina who may be under pressure by the ACLU and other organizations regarding prayer at their meetings and to give them an understanding of how the laws should be applied. Commissioner Hogsed pointed out that his proposed resolution in no way changes the current Invocation Policy.

County Attorney Curtis Potter said the legal opinion by Neumann Law Firm was provided from a risk prevention standpoint. He said he can not be sure if passing the proposed resolution would cause any real liability, but it could certainly draw attention to Transylvania County by the ACLU.

Commissioner Bullock noted that the County's Invocation Policy was drafted by the ADF and by the Board of Commissioners passing it; the ADF would agree to defend the County if the policy were challenged. He also noted that when the County passed its current Invocation Policy, the ACLU backed off a case against the County. The Board's Invocation Policy provides a rotation schedule for prayer before the start of Board meetings and gives all Commissioners an opportunity to pray according to his or her faith.

Discussion ensued about the ongoing legal case the ACLU has filed against Forsyth County regarding their invocation policy. Mr. Potter pointed out that the ADF would rather pour their resources into defending that one case instead of opening multiple fronts on the same issues.

Commissioner Hawkins inquired about the possibility of forwarding the resolution to the ADF and asking them to share it with other counties. Mr. Potter said the County could forward it to the ADF for the purpose of showing the County's support of their efforts, but without getting into the issue of whether the resolution's contents are right or wrong.

The Manager said there have been no repercussions since the Board passed its Invocation Policy and with the current budget woes, he is concerned about having to fight a potential legal battle. Chairman Chappell said the fact that the ADF is against the County passing this resolution carries a lot of weight with him. While he supports Commissioner Hogsed's resolution, he believes the County's current Invocation Policy is very thorough and therefore he does not recommend moving forward with the proposed resolution.

Commissioner Phillips agreed with Chairman Chappell saying it was the ADF that helped the Board with the Invocation Policy it practices today. He recommended following the advice of the ADF and not moving forward with the proposed resolution.

Commissioners asked staff to inform them of the outcome of the Forsyth County case.

Chairman Chappell moved to leave closed session, seconded by Commissioner Phillips and unanimously carried.

Jason R. Chappell, Chairman
Board of County Commissioners

ATTEST:

Trisha M. Hogan
Clerk to the Board