

Unsealed by the Board of Commissioners on 02/12/2024.

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
March 31, 2020 – CLOSED SESSION

Pursuant to NC General Statute § 143-318.11 (a) (3) to consult with an attorney in order to preserve the attorney-client privilege between the attorney and the public body, which privilege is hereby acknowledged, closed session was entered into.

Present were Chairman Hawkins, Commissioners Cathey, Chappell, Guice and Lemel, County Manager Jaime Laughter, Sheriff David Mahoney, Public Health Director Elaine Russell, and Clerk to the Board Trisha Hogan. The County Attorney advised the Board via conference call. The closed session was held in the Arthur C. Wilson, Jr. Conference Room.

During the open session today, the Board will be considering an emergency resolution with specific measures intended to protect the citizens of Transylvania County by slowing the spread of the COVID-19 virus. While State and local governments must do what is necessary to protect their citizens and prevent the spread of infectious disease, they are required to act within their authority and consistent with the protections afforded by the US and State Constitutions. Thus, the Board sought legal counsel prior to pursuing any action on the proposed measures.

Prior to the closed session, the County Attorney prepared a comprehensive memo for the Board with the goal of providing Commissioners with the necessary tools to evaluate any potential action, along with the pros and cons of any action being considered. Any measures taken by the Board will be weighed against the harm the measures are attempting to prevent. Actions taken by the emergency resolution may create the potential for litigation.

The Board should expect that any decisions they make are going to be met with some sort of response. The County Attorney provided guidance to the Board to aid in the decisions and help craft a response to those who may challenge the Board's actions. In the memo, the County Attorney cited the laws that allow them the authority to enact certain measures and that provide the protection for the County to defend itself. Any measures taken will be reviewed to determine if less discriminatory or less restrictive alternatives were available at the time the measures were passed.

The Board's actions will be judged by whether there is a legitimate purpose that is being furthered by the actual restrictions and whether the measures were the most or least restrictive. If the Board can demonstrate the measures were necessary due to the unique needs of the County and they enacted the least restrictive measures, there should be no obvious challenges to contend with. The County Attorney incorporated the guidance into the draft resolution to be considered by the Board in open session.

The County Attorney advised the Board that the Sheriff has the statutory authority to enforce the emergency resolution. The same statutory authority makes a violation of the order a Class 2 misdemeanor. The County Attorney's memo offered legal guidance to the Sheriff on enforcing the order.

The County Attorney further advised that adding a statement from the Health Director regarding the need for preventative measures should be considered due to this being a public health crisis. Any such statement would provide the public with information as to the status of the outbreak in the community and ways they can prevent the spread of it. This statement would support the rational basis for the County's decision.

Chairman Hawkins moved to leave closed session, seconded by Commissioner Chappell, and unanimously approved.

Mike Hawkins, Chair
Transylvania County Board of Commissioners

ATTEST:

Trisha M. Hogan, Clerk to the Board