

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

MINUTES
TRANSYLVANIA COUNTY BOARD OF COMMISSIONERS
October 25, 2021 – CLOSED SESSION

Per N.C.G.S § 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body, the seconded closed session was entered. Present were Chairman Chappell, Commissioners Chapman, Dalton, Guice, and McCall, County Attorney Jaime Laughter, County Attorney Bill Bulfer, and Clerk to the Board Trisha Hogan.

Closed Session #2 – Consult with Attorney on Legal Options for OSHA’s COVID-19 Mandate

The Board of Commissioners consulted with the County Attorney on the potential legal options or remedies to address the concerns over OSHA’s pending COVID-19 mandates.

The Manager reported there are several departments with low employee vaccination rates, and she was concerned that many of these employees will not be willing to vaccinate or participate in the weekly testing and be forced to leave employment, thus causing a direct impact to service levels. She was concerned that federal officials have not thoroughly considered the impact this mandate will have on local governments to provide services.

County Attorney Bill Bulfer advised there are no viable legal options for the Board to pursue nor any that would represent a good expenditure of funds. The Legislature gave OSHA the authority to legally enforce the mandate. Comparing this to the 1905 case that dealt with vaccine mandates, there appears to be no viable chance for the County to succeed in a lawsuit.

Transylvania County is not the first jurisdiction to have these concerns. The cases filed by Arizona and New York, for example, are much bigger lawsuits and more relevant in making these issues known from a federal government standpoint, but they are not making progress. There is no expectation that Transylvania County would have any sort of impact and filing a lawsuit would be a losing cause.

Mr. Bulfer was not confident the mandate would be overturned, which will likely cause the County to lose staff and thus impact services. He agreed with the Manager that the federal government did not thoroughly vet the consequences and as a result, local governments will suffer the consequences.

Mr. Bulfer pointed out that the federal government created OSHA with a specific set of rules to protect workers from harm and it is fairly easy to demonstrate the potential harm that can befall employees who are working in close quarters together. Some states have taken a position against the federal government, but North Carolina has not.

The Manager shared that she has been consulting with department heads about the potential impacts to their departments and asking them to determine the services the County can reduce, cut or reallocate if they were to lose staffing. While this is concerning for all departments, it is particularly so for law enforcement. The NC Sheriff’s Association is concerned about the impact of recruitment efforts in an already difficult climate. The Sheriff’s Association has not yet taken a position on action or advocacy.

Mr. Bulfer pointed out that legally the Sheriff is not an agent of the County and since he has less than 100 employees, he could argue this point to demonstrate his office is not subject to the mandate. However, if the mandate were in effect, it is the County that would be responsible for paying the \$14,000 per violation

penalty which establishes a connection between the Sheriff's Office and County government from an employment standpoint.

Mr. Bulfer stated it is likely that the County will continue receiving threats of employees quitting, but it remains to be seen whether they actually will. Those who can retire will.

Management has been trying to determine the best way to communicate the components of the mandate to employees. The Manager has directed department heads to have conversations with their employees with the message that they have a choice between the vaccination or weekly testing and that the County will pay for the tests. She is trying to do what is necessary for employees to understand they have a choice and one that does not involve losing their jobs.

Mr. Bulfer pointed out that it will not be sustainable to maintain the mandate across the nation if large percentages of law enforcement and emergency medical services personnel walk off the job. This is unfortunate but could be the pressure point to end the mandate. While it is not a legal remedy, it could be how the County and other local governments weather the issue.

While Mr. Bulfer did not have a legal remedy for the Board to consider, he advised the Board on the importance of understanding the mandate so that they can be consistent when informing and educating employees or advocating on their behalf. While it is not popular, he emphasized that the federal government is offering an alternative to the vaccine with weekly testing which makes challenging the mandate more difficult.

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

ATTEST:

Jason R. Chappell, Chairman
Transylvania County Board of Commissioners

Trisha M. Hogan, Clerk to the Board