

THE STATE OF TEXAS §

COUNTY OF CAMERON §

BE IT REMEMBERED on the 5th day of March 2015, there was conducted a SPECIAL Meeting of the Honorable Commissioners' Court of Cameron County, Texas, at the Courthouse thereof, in the City of Brownsville, Texas, for the purpose of transacting any and all business that may lawfully be brought before the same.

THE COURT MET AT:

PRESENT:

9:00 A.M.

CARLOS H. CASCOS, CPA
COUNTY JUDGE

SOFIA C. BENAVIDES
COMMISSIONER PRECINCT NO. 1

ALEX DOMINGUEZ
COMMISSIONER PRECINCT NO. 2

DAVID A. GARZA
COMMISSIONER PRECINCT NO. 3

DAN SANCHEZ
COMMISSIONER PRECINCT NO. 4

SYLVIA GARZA-PEREZ
COUNTY CLERK

Aide A. Trejo Deputy Clerk

ABSENT:

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The meeting was called to order by Judge Cascos at 9:04 A.M. He then asked for a moment of silence.

The Court then led the Court and audience in reciting the Pledge of Allegiance and the Pledge of Allegiance to the State Flag.

The Court considered the following matters as posted and filed for Record in the Office of the County Clerk on March 2, 2015 at 8:40 a.m.:

(1) **PUBLIC COMMENTS.**

Ms. Leticia Perez-Garzoria commented on the importance of taking voting privileges seriously and keeping the trust of the public. She noted that the County Judge won reelection and now things have changed. She wished Judge Cascos well as Secretary of State and expressed her discontent with the appointment of a new County Judge.

ACTION ITEMS

(2) **ACTION ITEMS.**

(A) **BUDGET AMENDMENTS, LINE ITEM TRANSFERS AND/OR SALARY SCHEDULES.**

Commissioner Garza motioned to approve the budget amendments, line item transfers and/or salary schedules.

The motion was seconded by Commissioner Sanchez and carried unanimously.

The Budget Amendments, Line Item Transfers and/or Salary Schedules are as follows:

(B) APPROVAL OF CLAIMS.

Ms. Martha Galarza, County Auditor, asked the Court to approve the Claims as follows: Warrant No. 00337287 thru 00337554 and Warrant No. 00337556 thru 00337559; and to VOID Warrants No. 00336745, Warrant No. 00333209 and Warrant No. 00336493.

Commissioner Benavides motioned to approve the Claims as presented.

The motion was seconded by Commissioner Garza and carried as follows:

AYE: Commissioner Benavides, Commissioner Dominguez, Commissioner Garza, Commissioner Sanchez

NAY: None

ABSTAIN: Judge Cascos to all claims

The Claims are as follows:

(C) CONSIDERATION AND AUTHORIZATION TO SUBMIT A REQUEST TO THE UNITED STATES DEPARTMENT OF STATE TO TRANSFER THE PRESIDENTIAL PERMIT FOR THE WEST RAIL RELOCATION PROJECT FROM CAMERON COUNTY TO THE UNION PACIFIC RAILROAD.

Commissioner Garza motioned to approve to submit a request to the United States Department of State to transfer the Presidential Permit for the West Rail Relocation Project from Cameron County to the Union Pacific Railroad.

The motion was seconded by Commissioner Benavides and carried unanimously.

The Documentation is as follows:

EXECUTIVE SESSION

Commissioner Dominguez: "Motion to go into Executive Session."

Commissioner Garza: "I have a question."

Judge Cascos: "Yes, sir."

Commissioner Garza: "I don't have a problem with Executive Session Item B, which is confer with Commissioners Court concerning the United States of America vs. 0.1130 acre of land or whatever, but how can we go into Executive Session to discuss with Legal Counsel the resignation of our County Judge in the appointment of a Successor? Where is the legality of that? I mean, I think that type of discussion should be held in Open Session, not Executive Session."

Judge Cascos: "Hold on, let me do this. I have a motion to go into Executive Session. Do I have a second?"

Commissioner Garza: "I'll second it for discussion."

Judge Cascos: "Okay, second by Commissioner Garza. All in favor signify ..."

Commissioner Garza: "Discussion."

Judge Cascos: "Yeah, you discussion; then you make a motion on it."

Commissioner Garza: "I know but can we have a discussion now, can I have an answer from Legal publicly."

Judge Cascos: "Okay, sure."

Commissioner Garza: "Okay, I would like that, I think that's still appropriate in parliamentary procedures. I would like to know how this Commissioners Court can go into Executive Session under section 551.071(2) to discuss the resignation and appointment of a successor when that should be a public item."

Mr. Bruce Hodge, Chief Legal Counsel: "Well that's, you know, that's maybe your feeling Commissioner, but there may be ..."

Commissioner Garza: "No, that's not my feeling. I like to know legally why we can do that."

Mr. Hodge: "Well because you're entitled should you choose to go into Executive Session and talk with your attorney on a matter pertaining to legal issues and procedure if you have questions."

Commissioner Garza: "What are the legal issues in regards to Section 551.071(2)?"

Judge Cascos: "I think ..."

Mr. Hodge: "I think it's up to you all to ask"

Judge Cascos: "Hold on Bruce, hold on. I think it's more appropriate to ask Alex to answer those questions since he's the one that's asking to go into Executive Session. Maybe he got some legal issues he would like to address."

Commissioner Dominguez: "I think if we go into Executive Session and you don't have any questions while we are there, it's not as if we are going to vote for the County Judge Appointee back there. It's about discussion legal issues of the procedures. We are not there to discuss who is going to be the next County Judge."

Commissioner Garza: "Yeah, but the legal issues and procedures are items that are of public nature. Unless we already have potential litigation that will arise out of that and if that's the case that should be identified on the item that we are going to discuss."

Commissioner Dominguez: "I understand that, but any time we're going into a contract, say with a SpaceX-type company, we go into Executive Session so we can discuss this issues for the first time collectively as a group to see what questions arise. Whether it's a County Judge or if it's going to be the Director of Public Health or the Parks, whoever. I mean, these are the items sometimes we discuss the legality of it. Which issues might arise? Commissioner Sanchez may have a perspective on things I don't have that may be useful to learn that perspective."

Commissioner Sanchez: "I have a lot of perspectives."

Commissioner Dominguez: "That's all. If we go into Executive Session, no one has any legal questions or things that we need to discuss in Executive Session, then we close Executive Session and we return to Open Session. It could take two minutes."

Commissioner Garza: "Well it's not a matter of how long it takes. It's a matter of making sure that we are transparent. Evidently there's a lot of interested folks here today, and it's a matter of, you know, we go into Executive Session to discuss contracts, to discuss personnel that is hired by the County, to have real estate transactions that we do, to have discussions on litigations that are on the table and we are discussing, but I have never - I've been a public servant, going on thirty years now, and I have never in my thirty years, that's not to say it can't happen, but I've never seen in my almost thirty years seen this item discussed in Executive Session."

Commissioner Dominguez: "I guess I put forward my perspective like this. I didn't draft this Agenda, I had no part in creating it, but when I see an item in Executive Session that relates to an item to be discussed. It would be a moot point to have the Executive Session after we already have voted. This is my perspective. I would rather hear from legal what the procedures should be, what it can be and what we can't do. I think it's important for us as Commissioners to be educated as to what the law is."

Commissioner Garza: “Yeah, but I want to be educated publically, so that instead of me having to answer legal questions to the public, the public can hear it from legal. I mean this is not, you know, we are not going to be suing somebody, you know.”

Commissioner Dominguez: “I understand, I mean, I guess we could have legal discuss this with everyone here, but the Agenda wasn’t drafted that way. I’m just saying that it makes more sense going into Executive Session to see if anyone of us have any questions, if we don’t then we come back out and we take up (Action) Items ‘D’ and ‘E’ after that.”

Judge Cascos: “Any further discussion? I had a motion and a second.”

Commissioner Benavides: “Excuse me, Judge. I believe that we have the option to choose to into Executive Session, individually and those of us that may not want to, then we should stay out here.”

Judge Cascos: “Well I’m going to call for a vote to go into Executive Session. I remind you this has never happened before, I don’t think, but I had a motion and a second for discussion.”

Commissioner Garza: “You can’t leave, just like leave...”

Judge Cascos: “I know, I have a motion and a second to go into Executive Session. At this point we can vote to go in or stay out. All in favor of going into Executive Session say ‘aye’.”

Commissioner Benavides and Commissioner Dominguez: “Aye.”

Judge Cascos: “Any opposed?”

Commissioner Garza: “Nay.”

Judge Cascos: “From your perspective...”

Commissioner Sanchez: “From my perspective the purpose to go under Executive Session would be to get legal questions answered and if there are members of this Court that want to get legal questions answered, then I believe they should have that opportunity to get their legal questions answered. A decision will not be made back there and I believe the same as Commissioner Benavides just said, if someone does have questions, they can go back there. If they don’t want to go back there, there is no obligation to, but I would not want to stand in the way of any member of this Court getting legal advice before they make such an important decision, so I vote ‘aye’.”

Judge Cascos: “So on a vote of (3) to (2), we go into Executive Session.

Commissioner Garza: “Three to two? You voted against?”

Judge Cascos: “Yes, sir, I agree with you. I think everything should be discussed in public. Okay, I said ‘nay’, correct.”

Upon motion by Commissioner Dominguez, seconded by Commissioner Garza and carried unanimously, the Court met in Executive Session at 9:23 A.M. to discuss the following matters:

AYE: Commissioner Benavides, Commissioner Dominguez, and Commissioner Sanchez

NAY: Commissioner Garza and Judge Cascos

(3) EXECUTIVE SESSION:

- (A) CONFER WITH COMMISSIONERS COURT LEGAL COUNSEL ON LEGAL ISSUES ARISING IN CONNECTION WITH THE COUNTY JUDGE'S RESIGNATION, POSSIBLE APPOINTMENT OF HIS SUCCESSOR AND PROCEDURE USED TO DO SO, PURSUANT TO V.T.C.A. GOVERNMENT CODE, SECTION 551.071 (2).**
- (B) CONFER WITH COMMISSIONERS' COURT LEGAL COUNSEL CONCERNING UNITED STATES OF AMERICA VS. 0.1130 ACRES OF LAND, MORE OR LESS, SITUATED IN CAMERON COUNTY, TEXAS AND RAMON CISNEROS, ET. AL., CASE NO. 1:15-CV-16; PURSUANT TO V.T.C.A. GOVERNMENT CODE, SECTION 551.071 (1) (a) & (2) Tabled**

Upon motion by Commissioner Dominguez, seconded by Commissioner Benavides and carried unanimously, the Court reconvened into Regular Session at 9:36 A.M. to discuss the following matters:

(4) ACTION RELATIVE TO EXECUTIVE SESSION:

- (A) CONFER WITH COMMISSIONERS COURT LEGAL COUNSEL ON LEGAL ISSUES ARISING IN CONNECTION WITH THE COUNTY JUDGE'S RESIGNATION, POSSIBLE APPOINTMENT OF HIS SUCCESSOR AND PROCEDURE USED TO DO SO, PURSUANT TO V.T.C.A. GOVERNMENT CODE, SECTION 551.071 (2).**

Commissioner Dominguez motioned to acknowledge the report of Legal Counsel and to proceed as discussed in Executive Session.

The motion was seconded by Commissioner Benavides and carried unanimously.

NOTE: Commissioner Garza and Judge Cascos did not participate in Executive Session.

- (B) CONFER WITH COMMISSIONERS' COURT LEGAL COUNSEL CONCERNING UNITED STATES OF AMERICA VS. 0.1130 ACRES OF LAND, MORE OR LESS, SITUATED IN CAMERON COUNTY, TEXAS AND RAMON CISNEROS, ET. AL., CASE NO. 1:15-CV-16; PURSUANT TO V.T.C.A. GOVERNMENT CODE, SECTION 551.071 (1) (a) & (2) (TABLED)**

Commissioner Benavides motioned to TABLE this item.

The motion was seconded by Commissioner Dominguez and carried unanimously.

ACTION ITEMS

(2) ACTION ITEMS.

(D) CONSIDERATION AND POSSIBLE ACCEPTANCE OF CARLOS H. CASCOS' RESIGNATION AS CAMERON COUNTY JUDGE.

Commissioner Dominguez motioned to accept Carlos H. Cascos' resignation as Cameron County Judge.

The motion was seconded by Commissioner Benavides and carried unanimously.

The Documentation is as follows:

(E) **CONSIDERATION AND POSSIBLE APPOINTMENT TO FILL THE VACANCY OF CAMERON COUNTY JUDGE.**

Jude Cascos motioned to appoint Mr. Pete Sepulveda to fill the vacancy of Cameron County Judge.

The motion was seconded by Commissioner Benavides.

Commissioner Garza: "Judge, I - there's no secret to this Court that I've expressed a concern with that particular issue and I've said it then and I'll say it again, there's no disrespect to the ability of our County Administrator in regards to what he has done, you know, I mean, it's difficult because he is a personal friend and everything else, but at the same time I think fiduciary there is an issue or potential issue. There is very easily a conflict of interest and I will say last week he was here before us as an Administrator proposing that we sell a \$5 million, more than what we already had sold, bond to this Commission. We all agreed that was what we needed to do to continue funding some of the projects that are short fall in the RMA. We allowed it, we passed it, we sold it and now that same individual will be sitting here next to me making policies when he administratively came to me for some issues of that sort; to me that is a total conflict of interest. I think that we have an organization with the RMA, that is a fantastic organization and has over a billion dollars' worth of projects in the works right now, you know. We are one of the most efficient and accountable RMAs in the State of Texas in how lean it operates, you know, they do a fantastic job of operating with minimum staffing and, you know, operationally if you look at the numbers, you know, it is fantastic what they do. The bang for the buck that we get is unbelievable. To politicize it by allowing him to sit here next to me as Judge would be sacrificing potential outcomes of what they are doing now, you know, again I repeat, it's over a billion dollars out there that we do. I think that there's a statutory, and I don't know, this is something I think legal could probably answer for me. If there is or is not a statutory conflict with holding the position of RMA Executive Director and Cameron County Judge."

Mr. Bruce Hodge, Chief Legal Counsel: "That's a very type of question, Commissioner, that I invited Executive Session discussion on."

Commissioner Garza: "Yeah, but that's a type of question that I think it should be discussed in public, so these 200 people can hear."

Mr. Hodge: "I'm not in liberty to discuss that openly having already given the opportunity to do that. Unless the Court wishes to have a vote to waive the confidentiality requirement or the confidential privilege of communication so you may have my thoughts into the public I'm not prepared to go there."

Commissioner Garza: "Bruce, I am asking. I am a Commissioner elected by the people in my Precinct. I am

asking as a Commissioner of Precinct 3 for legal advice. That is not, you know, anything but legal advice. It's no different than any other issues that I asked. There is no, you know, lawsuit issue or potential lawsuit or whatever, you know, in regards to this. All I'm asking is can you legally hold two positions in Cameron County and be County Judge?"

Mr. Hodge: "Yes, I believe you can."

Commissioner Garza: "You can legally do that?"

Mr. Hodge: "Yes."

Commissioner Garza: "Okay. Could you please cite me the statute that allows that to occur?"

Mr. Hodge: "I can't cite you the statute. I can cite you an AG opinion that talks in terms of whether, you know, under what circumstances a single person can hold two offices, only one of which is a civil office and we can discuss that in some length if you wish. I can do a brief and, you know, that's a kind of thing..."

Commissioner Garza: "So you are telling me that, yes, our County Judge can be the Executive Director of the RMA?"

Mr. Hodge: "I am saying that, yes sir."

Commissioner Garza: "Okay with, you know, an AG opinion?"

Mr. Hodge: "Yes, I think so. I mean, unfortunately there's not anything out there precisely on this point, but yes, I believe you can."

Commissioner Garza: "And the County can pay two salaries, or the RMA can pay one salary and the County can pay another salary for that same position?"

Mr. Hodge: "Well you have to understand that Commissioner, I'm not charged with the RMA side of this. I'm charge with the County side of this."

Commissioner Garza: "Well the County side is the County Judge?"

Mr. Hodge: "Yes."

Commissioner Garza: "So you are charged with that?"

Mr. Hodge: "Yes."

Commissioner Garza: "Can the County Judge receive a salary from the County that we publicly publicize and agreed to on an annual basis, okay, and also have an arm of Cameron County - which is what it is. We just sold another \$5 million beside the other \$40 million for them. We back stop for them, you know, can that organization pay him a salary too?"

Mr. Hodge: "In my opinion they can, yes."

Commissioner Garza: "Okay, well that to me, you know, from everything that I've seen and heard, you know, it's just not as transparent as it could be."

Mr. Hodge: "What do you mean by that?"

Commissioner Garza: "Well, you know, I mean there's a whole lot - and again this is nothing to do with Mr. Sepulveda and his ethics, ability, legality or anything else - it has to do just with the conflict of interest in regards to how the funding mechanism occurs for this organization."

Mr. Hodge: "Well I can tell you from a Commissioners Court view point, the County's view point, there is no conflict here. I mean if you wish you may appoint him as the County Judge. Now when it comes time to vote on issues having to do with the RMA, at that point it may be prudent for him to abstain or that sort of thing, okay, but there is not a conflict here. There is not dual office-holding, Commissioner, that would disqualify him from being the County Judge here."

Commissioner Garza: "Well it is not dual, it's triple because he's our County Administrator too."

Mr. Hodge: "Well now, his County Administrator ship would have to go. If that's what you are asking me..."

Commissioner Garza: "You know..."

Mr. Hodge: "...because that's within the same body, okay. If you were to have a County Judge and County Administrator, he can't supervise himself. So that's got to go. I can tell you that, but as far as him being a non-public office holding official elsewhere, that's not an issue for the County; or under these circumstances, it's not an issue for the County. In fact, even if it were the law would simply, you know, say that he may hold his position with the County, and the new position, and it's kind of the law takes care of whatever happens on the other side of this. That's not my issue, that's not the County's issue; that would be an RMA issue if any."

Commissioner Garza: "An RMA issue is my issue too."

Mr. Hodge: "Well it may be..."

Commissioner Garza: "Because some of us have been around since the inception of this organization and to potentially compromise an over one billion dollar enterprise, for me it's a little bit difficult to accept."

Mr. Hodge: "Well I think you may want to talk to the RMA, Commissioner, about that and their attorney. But I can tell you from our side of this equation, Pete (Sepulveda) is good to go as a County Judge if you wish to appoint him as such."

Commissioner Garza: "Well I appreciate you for once answering my question."

Commissioner Sanchez: "Bruce, you've done the research on this? I remember, that's a question."

Mr. Hodge: "Say again."

Commissioner Sanchez: "You've done all the research on this?"

Mr. Hodge: "Yes, yeah."

Commissioner Sanchez: "Okay, we had a meeting last year, the end of last year, where the Judge put the item on. I believe Commissioner Dominguez asked you to look into this to see what the legalities would be."

Mr. Hodge: "Right."

Commissioner Sanchez: "The answer you are giving is based on your research?"

Mr. Hodge: "Yes it is. There is, you know, there is no perspective from a dual-office holding analysis, constitutional or otherwise I would say, that he may not be County Judge."

Commissioner Sanchez: "Have you discussed this with Jim Allison or TAC lawyers or anyone else?"

Mr. Hodge: "Well earlier on, yeah. In terms of some procedures and stuff I have. Since then Juan (Gonzalez) and I have been looking at it in detail and we are confident in the advice we are giving you."

Commissioner Sanchez: "So, you are advising that it can be done without conflict?"

Mr. Hodge: "Yes, I mean, when you say 'without conflict', I'm not sure I know what exactly you are talking about."

Commissioner Sanchez: "In other words, if we do this - if we name Pete, you know, two months down the road are we going to be faced with a challenge where Pete has to no longer be County Judge because he's not qualified because potential conflict of interest?"

Mr. Hodge: "No, I do not think so. We have looked at that at length. There's no legal basis to challenge your appointment of Pete Sepulveda as County Judge."

Commissioner Sanchez: "If that were to happen..."

Mr. Hodge: "If that were to happen, you know - and we are not in a position where we are able to control what might happen otherwise, but I can give you, I believe, very solid legal advice that you are, this body, may majority vote to appoint him County Judge and that any attempt to undo that, you know, your action to appoint him County Judge is very, very likely not to be successful."

Judge Cascos: "Any further..."

Commissioner Garza: "Bruce, did you prepare a brief or anything for us?"

Mr. Hodge: "I don't have a brief, per say, Commissioner but I studied it at length."

Judge Cascos: "Any other discussion?"

Commissioner Dominguez: "I have a brief one, Judge. You first made this suggestion back in January."

Have you spoken with the RMA to see if they were okay with this?"

Judge Cascos: "You know, that wasn't my role to speak to the RMA. I think that's from their perspective and there's are a couple of things that I really don't believe; that the billion dollar projects are going to be jeopardized, number one. Number two, Pete on the RMA is not a voting member of the RMA, he's the Executive Director. He does it at the will of an independent body that we all appoint including the Governor. So I don't see that I think that - that if you were a voting member of the RMA that would be a little bit different. I think you would have some conflicts but at the same time if there is a conflict it comes before this Commission it's not unusual for any member of the Commission to abstain; when it comes to claims, when it comes to other issues that may come up. I feel comfortable that Pete has the common sense to do that. When I recommended Pete sometime back, I mean, I think you said something about transparency and that's probably a fault that I have, I kind of show my cards a lot of times and let people know what I'm thinking so there are no surprises. I checked it out with, you know - I did talk to Pete and I inquired of other people that are friends or political friends or allies from both parties and they both agreed that Pete would be an excellent choice. Thirdly, this Court has been very consistent in terms of appointing people to fill an unexpired term that would run or not run for office in the future. And I had a discussion, you know, with people that 'Yeah, I want to get appointed I also want to run'. I have a philosophical problem with that, you know, and I think Pete is not going to run. He assured me he doesn't want to run, but appoint somebody that would want to run would be an unlevel playing field. It gives somebody an unfair advantage as an incumbent. So, we did it with the County Court at Law position where we appointed somebody else. We did it with the JP position at least maybe once, maybe twice somebody that was not going to run. So that mindset that this Court adopted is a good concept. So Pete, to me, was the logical choice, you know, to keep this thing going for 20 months or so. I don't believe there is any conflict, you know, unless he starts to vote for stuff with the RMA, but I think he has enough common sense to, you know, to abstain on any votes having to do with that and that's why I recommended Pete. I think he brings some consistency. Remember when we first got Pete as a County Administrator there was a little apprehension. Well we made that change, it's worked out very well I think. I have a lot of confidence in this Commission. I have a lot of confidence in Pete as well; that he can work and has worked with all members of this body and that's why I believe that today I think he's the better candidate. So, anyway I had a motion and a second, any further discussion? All those in favor signify by saying 'aye'."

Commissioner Benavides, Commissioner Dominguez, Commissioner Sanchez and Judge Cascos: "Aye."

Judge Cascos: "Any opposed?"

Commissioner Garza: "Nay."

Judge Cascos: "Passes (4) to (1). Congratulations, Mr. Sepulveda."

Jude Cascos motioned to appoint Mr. Pete Sepulveda to fill the vacancy of Cameron County Judge.

The motion was seconded by Commissioner Benavides and carried as follows:

AYE: Commissioner Benavides, Commissioner Dominguez, Commissioner Sanchez and Judge Cascos

NAY: Commissioner Garza

The Documentation is as follows:

There being no further business to come before the Court, upon motion by Commissioner Sanchez seconded by Commissioner Benavides and carried unanimously, the meeting was **ADJOURNED** at 10:09 A.M.

APPROVED this 9th day of **April 2015**

PETE SEPULVEDA, JR.
COUNTY JUDGE

ATTEST:

SYLVIA GARZA-PEREZ,
COUNTY CLERK AND EX-OFFICIO CLERK
OF THE COMMISSIONERS' COURT OF
CAMERON COUNTY, TEXAS