

ACTION ITEMS

(1) ACTION ITEMS.

(A) APPROVAL OF CLAIMS.

Ms. Martha Galarza, County Auditor-"Judge, Commissioners I have Warrants No. 00222329 thru 00222592, check register dated 07/10/09. I have Warrants No. 00222593 thru 00222934 dated 7/17/09 and that particular register I would request that number, the voided Claims be number 00222724 and 00222884; those two would be voided. I also put a register in front of you all for payroll. We had two additional checks that needed to be run and we voided from the prior run that was approved last week. We voided payroll check number 389327 for \$520.65 and that particular void was replaced with these two checks that are listed in the register I put before you. I would recommend their approval. I also ran copies and I put them in front of you all regarding six checks that were run for the civil process servers that were tabled at last week's Meeting. I would request that those-advise the Court that those would be voided as per information that we have received and as per Legal's recommendation as well."

Judge Cascos-"Martha on those, those are the ones that Commissioner Garza wanted you to..."

Ms. Galarza-"To table."

Judge Cascos-"...to table and to look if there was any legal way that we could pay these individuals for the services already provided?"

Ms. Galarza-"That is correct."

Judge Cascos-"And Legal, have you all looked at that already and there's no way that we can pay them?"

Mr. Richard Burst, Legal Counsel-"No. I don't find any way that they could be paid the way they're currently structured and..."

Judge Cascos-"What do you mean the way they're currently structured?"

Mr. Burst-"Well, they would had to have been, the way it would had to have happened would be that the party who filed the suit themselves would have had to-the Court give them back the citation and the party themselves contract with a process server and then pay them direct . When that fee is collected it is the County's fee and it is for service by the Constable."

Judge Cascos-"Or the Sheriff."

Mr. Burst-"Or the Sheriff and that's it and it would be a gift to pay that money to a process server; which would not be recognized by the Constitution because it would be paid on behalf of the party not the County. We've gotten since then, we've even gotten literature backing that up and both the Auditor and I met with the JPs (Justice

of the Peace) and pretty much all the JPs, save two of them, agreed and understood that they couldn't do that. The two that were doing it have agreed to discontinue doing it and since then I've even received communications from one of the JPs from their training board and it verifies that."

Judge Cascos-"Ok, alright."

Commissioner Wood-"I'd like to ask, if I understand it correctly, these folks who had these papers served paid to the JP Court so much money to have the paper served..."

Mr. Burst-"Yes."

Commissioner Wood-"...and then that was really money that would have normally gone to having our Sheriff or Constables serve the papers..."

Mr. Burst-"That's correct."

Commissioner Wood-"...but the Sheriff or Constable didn't serve the papers so then we collected money from someone and not provided a service for it?"

Mr. Burst-"That's correct."

Commissioner Wood-"So do we reimburse that money to these people that this service was provided to?"

Mr. Burst-"I didn't go that far."

Commissioner Wood-"We need to figure out what we're going to do because we've got about \$4,000 worth hanging out there?"

Ms. Galarza-"Approximately."

Commissioner Wood-"And so if that money is to be reimbursed back to the individuals that the papers were being served for then they could, I guess, take that money and pay the people who actually did the service themselves, but they've got to get that money back in order to be able to do that and if we didn't provide the service that we charged for, why should we keep the money? What I'm trying to figure out is how we can get these people paid for the work they've done."

Ms. Galarza-"I understand that but the case in point is that when these monies were collected by the JP Offices, apparently the Sheriff and the Constable's Office was not given the option of serving these documents and at the point that these funds were received by or collected by the JP Office, they became County revenue."

Commissioner Wood-"Yeah, but they were paid for the service for the JPs and the Sheriffs to do the service..."

Ms. Galarza-"I understand that."

Commissioner Wood-“...whether they were given the option to or not. They didn’t get the option, they didn’t do the service, they didn’t provide the work; someone else did. Why should we be holding someone else’s money and keeping it for a service we didn’t provide which we charged for?”

Ms. Galarza-“Richard?”

Mr. Burst-“Commissioner, I understand what you’re saying and the way the Order the Court has drafted-remember the statute that authorizes this particular fee, the \$60 fee we’re talking about, is enabled-the statute itself doesn’t set the fee it enables the Commissioners’ Court to set fees and there’s a long list of fees that we set in 2006. There is a notation on the Order that if a Sheriff or Constable attempts service twice and is unsuccessful that the fee is earned. That would leave room certainly to reimburse to the individuals those fees. Now you’re talking only about the ones that have not been paid correct?”

Commissioner Wood-“Yes.”

Mr. Burst-“Ok. There is-I don’t know what the process would be I mean it would be a process that we would have to go through to have to be placed on the Agenda to reimburse the fee, but it’d have to go to the parties it would not go to the individuals.”

Commissioner Wood-“That’s what I’m saying. It would go back to the parties that paid the fee.”

Mr. Burst-“Yes.”

Commissioner Wood-“And then if, you know, out of their own receiving the money back they may be willing to pay the people who actually did the service for them and I understand if, you know, if the Constable or Sheriff attempts service twice, you know, we don’t reimburse the fee because we were out the expense of attempting to do the service, but I think that’s a totally different issue than this because these were served. People served them. It wasn’t the Constable, it wasn’t the Sheriff. They weren’t notified to serve them; individuals were that do the service. Now we’ve got this almost \$4,000 in County bank accounts somewhere for a service we’ve not provided and we took it in to provide the service so if we didn’t provide it then it needs to go back to the people who paid it; then it’s up to them to pay the people who did provide the service.”

Mr. Burst-“Commissioner there is one other point I would like to make and that is initially when the Auditor, when she asked me to look at this was to she asked me to look at it from the point of view of a conflict of interest and in looking at that I didn’t initially resolve the conflict issue, but I looked at the issue from the funding and determined that it couldn’t be done the way the JPs were accomplishing it. I have had a chance to look at that further and as to the process servers who are employees for the County, there is a conflict and that conflict is this. You have a JP who collect a fee and is paid to a process server. The JP has to remain neutral because there’s always

a challenge that can be made by the opposing party that the service was not proper. You would then-the JP has then placed himself in a position of sitting over a case in which there is a challenge, either possible or absolute, a challenge to the service and the service has been rendered by their, by his own staff. There is, in my opinion, absolutely a conflict between a member of the JPs' staff serving between or their ability to serve a citation issued by the JP or Justice Courts. So I think to the extent, I agree with you, that yes the Auditor could put on the Agenda to refund the \$60 that is currently held to the parties, but there would be a conflict from them even paying service to the individuals who served them if they're staff members."

Commissioner Wood-"Well and I understand what you're saying Richard and I guess it's a good idea that we found this out after all these many years that this has been going on."

Mr. Burst-"That's correct."

Commissioner Wood-"My concern is people have provided a service. They've gone out and done the work. I feel like they need to get paid for it and the only way I see that they possibly could get paid for it would be if we refund the \$60 fees to the different persons who paid them and then it would be up to them to pay whomever served the papers for them, but I realize and I understand that you have been in contact with the JPs and perhaps they're changing their method of handling these types of things. I hope they are."

Mr. Burst-"Yeah there were only two, there were only two there who-one of them that was present said that as soon as she had gotten the letter from the Auditor to discontinue the practice, she discontinued it."

Commissioner Wood-"Ok."

Mr. Burst-"So that's been taken care of."

Commissioner Wood-"So why are we leaving six people hanging for not-and we can't assure them that they're going to get reimbursed even if we do return the money to whomever paid it."

Ms. Galarza-"That's correct."

Commissioner Wood-"But that's the most likely scenario to possibly get the money to those folks. So I guess, you know, Judge I don't want to vote to cancel these if it's all on the same deal I'll just vote 'nay' on the whole thing.; otherwise..."

Mr. Burst-"Those are two different issues, that's two different issues Commissioner. One is what would be on the Agenda would be payment of the Claims to the individuals. She would, the Auditor would..."

Commissioner Wood-"So that's going to appear on the Agenda Thursday or the next Agenda or something else to cancel this because they haven't been canceled they've just been tabled."

Ms. Galarza-“It would have to be on the next Agenda to work out the particular issue that you’re referring to as far as payment to the people that paid the initial citation fee. These payments are payments to private civil process servers which constitutionally we cannot authorize.”

Commissioner Wood-“And we all understand that that we’ve recently learned that we can’t do it because we’ve been doing it...”

Ms. Galarza-“That’s correct, yes.”

Commissioner Wood-“for a while; probably years I don’t know.”

Ms. Galarza-“The Agenda item that you’re requesting to refund the \$60 citation fee to the plaintiffs that filed it originally would have to be a separate Agenda item.”

Commissioner Wood-“Yes and I understand that but what I’m saying is I’m not going to vote in favor of canceling these check at this time.”

Judge Cascos-“You know at the last Meeting we talked about that and I agree. I think it’s fundamentally wrong to not pay these individuals for a service they provided and I think that point about trying to give it back, I don’t know, I think you guys need to look and see if you give it back to the individual that paid it. I don’t know if there’s a constitutional way we can do that, refund the money, to do that. I don’t know maybe look at it, but also it brings to light was all the indigent monies that we couldn’t pay and that was in the millions and not a few thousand bucks because, you know, we didn’t have an obligation. People provided a service yet we were told we couldn’t do it.”

Commissioner Wood-“Those people were notified that if they provide the service then they may not get paid.”

Judge Cascos-“Yeah, but the point is that they provided a service and they weren’t paid. Maybe it’s a little bit different. I mean, I agree that these people that provided a service should be paid. I don’t know how we can do it. So I’m going to look to you all to maybe not take action on these checks and then by Thursday come back if there’s a way to do it. I think what you’re going to have to look for Richard is can we legally reimburse the people that provided those \$60 the money back. After that we don’t have any say so, so you know ultimately a service would have been provided and if these people say, ‘You know what I’ve already done my thing. I’ve got my money back but the service has been provided. That’s it. I’m done’. So we’re relying on the honesty of the people that paid the \$60 to reimburse. Some might, some might not but I think you need to look at it and see if there’s a legal way to get the money back to the people that paid it. Now in terms of money being provided for a service; every single tax payer can claim that when they pay taxes they’re not getting services provided so let’s reimburse them that, so you may want to look at that angle. I agree with Commissioner Wood. I think that there’s a way that we can reimburse

them. I think we should, but again I'm going to defer to the Auditor and to Legal. If you come back and say, 'No we cannot do it' then a 'nay' vote would be not wise. I mean legally if we cannot do it, but we're going to vote 'nay' anyway, and what does that mean? So try to find a way to do it legally and then come back to us on Thursday."

Mr. Burst-"Judge, I can already address both those issues, I've looked at them."

Judge Cascos-"You already have that..."

Mr. Burst-"Yes."

Judge Cascos-"So we're spinning our wheels here."

Mr. Burst-"Unequivocally you cannot constitutionally, in my opinion, approve the Claims that are submitted currently because they are to pay private process servers."

Judge Cascos-"And we know that."

Mr. Burst-"Ok."

Judge Cascos-"What about giving it back?"

Mr. Burst-"But you can-you certainly, if the Auditor can place on the Agenda a different item to reimburse to those six parties the \$60 fee..."

Judge Cascos-"It's a lot more than six parties. We're talking quite a few."

Mr. Burst-"Well whatever number it is now to reimburse to those parties; otherwise if the party is 'Mr. Jones' then the check would be cut to 'Mr. Jones' and sent to him."

Judge Cascos-"That's correct."

Mr. Burst-"It's totally up to him what he does with that, it's his money..."

Judge Cascos-"That's correct."

Mr. Burst-"...at that point and that can be done. She'll have to put that on the Agenda; Claims to reimburse."

Commissioner Wood-"That's what I'm asking."

Mr. Burst-"That can be done."

Judge Cascos-"But after that it's out of our hands."

Mr. Burst-"It's out of our hands."

Judge Cascos-"We're out the money and it's got to be up to them to reimburse whether they want to or not. The other issue comes up; what do you do with the conflict where you've got County employees being civil processors while on the County payroll?"

Commissioner Tamayo-“And that’s another issue.”

Judge Cascos-“That’s another issue but...”

Commissioner Tamayo-“And I think that’s, all issues are important, but I think that issue is one of the most important. That’s the one I’m very concerned about.”

Judge Cascos-“Yeah because then you’ve got an issue where you’ve got somebody probably serving during County working hours, I don’t know. I don’t know when they’re serving. You’ve got somebody there basically getting paid by the County while at the same time getting \$60 to go serve. That’s another issue. It’s got nothing to do with this one so I guess discuss it; put it on the Agenda again for-well it’s not on. We can discuss it during the Claims on Thursday or is that a separate Agenda item?”

Ms. Galarza-“I don’t know. Richard, would it have to be a separate Agenda item?”

Judge Cascos-“I think it has to be a separate Agenda item.”

Mr. Burst-“It would be better to place it on as a separate item given the amount of discussion it’s going to get.”

Judge Cascos-“Ok, let’s do that for the week after whenever it comes back.”

Ms. Galarza-“Ok.”

Commissioner Tamayo-“And what steps have we taken so that this does not continue?”

Ms. Galarza-“All of the JPs were sent a memorandum stating that these particular Claims would no longer be honored and that constitutionally they could not take that stance and arbitrarily assign this function to a private process server.”

Commissioner Tamayo-“Was it explained sufficiently? And I don’t mean to discredit any of the JPs that they might not understand something you’re telling them but I think we need to go the extra mile and make sure they understand what we’re saying.”

Ms. Galarza-“The issue was addressed by Richard and myself at the JP Meeting that they had this past...”

Commissioner Tamayo-“Were they all in attendance?”

Ms. Galarza-“We had, I think there was two that were not in attendance. They were out on vacation, I believe.”

Mr. Burst-“The JPs who had been doing this, the two primarily who had been doing this, were present and we did discuss it at length and in fact, the other Justices discussed it quite a bit and explained why they could not do it and explained to them that the-explained to those two JPs why they could not do it. So I-we’ve met with them and explained it. I’d be happy to go one-on-one and do it again. I mean, I can do that. I believe they got the information

now and of course in order to do that they would have to submit a claim to the Auditor for payment and she's let them know in writing that they will not be paid."

Judge Cascos-"Martha, does anybody in your office ever reconcile the amount of serves, services or writs or whatever they get served; do you ever reconcile the number to the dollars that are being turned in?"

Ms. Galarza-"That's a function that we have undertaken this particular year. We're going out and there have been individual field audits at the JP Offices and those reports are being reconciled with what is actually being reported and how the revenue is being credited."

Judge Cascos-"Will that come back to us for some kind of report from you to us?"

Ms. Galarza-"There will be an audit..."

Judge Cascos-"Report."

Ms. Galarza-"...report that will be submitted to Court once we meet with the individual JPs."

Judge Cascos-"Because for every paper served or what are they called, writs?"

Ms. Galarza-"Citations."

Judge Cascos-"Citations, whatever; every one is \$60, right?"

Ms. Galarza-"Yes that's on the fee..."

Judge Cascos-"Minimum."

Ms. Galarza-"...that is adopted by Court. Yes."

Judge Cascos-"Right? Ok. So you should be able to reconcile those totals to the number of dollars that are turned in, right?"

Ms. Galarza-"That's right."

Judge Cascos-"Ok. And you're going to get that report to us?"

Ms. Galarza-"Yes."

Judge Cascos-"Ok, alright."

Ms. Galarza-"Other than that, I recommend all the others be approved."

Judge Cascos-"Ok, let me hear a motion to approve all County Claims with the exception of not canceling the ones regarding the civil process (servers). Those will continue to be tabled, I guess until..."

Commissioner Tamayo-"Our next Meeting."

Judge Cascos-"Well, you know what? They are going to be canceled. I think we do cancel them because you're not making these checks payable to these people anymore. They got to be made to the people that submitted the money so I think canceling these at this time would be an appropriate motion because we're not going to issue

these to the individuals; so I guess the motion would be to cancel these, approve all the County Claims as presented, cancel the ones related to the civil processors and along with that motion bring another item to the Agenda to issue these amounts to the individuals that initially provided the civil process fee.”

Commissioner Wood-“As long as we’re going to do that I don’t have a problem.”

Judge Cascos-“That’s what the motion…”

Commissioner Wood-“It’s what we need to accomplish.”

Judge Cascos-“That’s what the motion is going to be. Alright, do I hear a motion?”

Commissioner Tamayo-“So moved.”

Judge Cascos-“Moved by Commissioner Tamayo. Do I have a second?”

Commissioner Wood-“Second.”

Judge Cascos-“Seconded by Commissioner Wood. Any further discussion? Please signify by saying ‘aye’.”

Commissioner Wood and Commissioner Tamayo-“Aye.”

Judge Cascos-“Any opposed? Item carries.”

ABSTAIN: Judge Cascos as to Warrant No. 00222667, made payable to Phillip T. Cowen, in the amount of \$1,771.40 and Warrant No. 00222759, made payable to Laguna Madre Water District, in the amount of \$33,591.22 and Commissioner Tamayo as to Warrant No. 00222823, made payable to Red River Service Corp., in the amount of \$140.10.

The Claims and Affidavits are as follows:

**(B) CONSIDERATION AND APPROVAL OF TEXAS DEPARTMENT OF
TRANSPORTATION – WEST RAIL (0921-06-073) REVISED ADVANCE
FUNDING AGREEMENT AMENDMENT #3. (PSJ-ADMINSTRATOR)
(Contract No. 2009C07257)**

Commissioner Wood motioned to approve the Texas Department of Transportation – West Rail
(0921-06-073) Revised Advance Funding Agreement Amendment #3.

The motion was seconded by Commissioner Tamayo and carried unanimously.

The Agreement is as follows:

(C) **DISCUSSION AND POSSIBLE APPROVAL OF CONTRACT WITH ATTORNEY ROBERT L. COLLINS TO RECOVER DAMAGES CAUSED BY HURRICANE DOLLY AS AUTHORIZED BY COMMISSIONER'S COURT ORDER NO. 2006O08001 EXEMPTING PROFESSIONAL SERVICES FROM THE COUNTY PURCHASING ACT. (RL-ADMINISTRATIVE SERVICES) (Contract No. 2009C07258)**

Commissioner Wood motioned to approve the Contract with Attorney Robert L. Collins to recover damages caused by Hurricane Dolly as authorized by Commissioner's Court Order No. 2006O08001 exempting Professional Services from the County Purchasing Act with the revisions.

The motion was seconded by Judge Cascos and carried as follows:

AYE: Commissioner Wood and Judge Cascos

NAY: Commissioner Tamayo

The Contract is as follows:

There being no further business to come before the Court, upon motion by Commissioner Tamayo, seconded by Commissioner Wood and carried unanimously, the meeting was **ADJOURNED** at 12:50 P.M.

APPROVED this 6th day of **August 2009**

CARLOS H. CASCOS, CPA
COUNTY JUDGE

ATTEST:

JOE G. RIVERA,
COUNTY CLERK AND EX-OFFICIO CLERK
OF THE COMMISSIONERS' COURT OF
CAMERON COUNTY, TEXAS