

SHANNON COUNTY MINUTES OF SEPTEMBER 3RD, 2010

The Shannon Board of County Commissioners met in regular session in Hot Springs, SD, on September 3rd, 2010. Present were Chairwoman Connie Whirlwind Horse, Lyla Hutchison, Deloris Hagman, Wendell Yellow Bull and Sue Ganje, County Auditor. Present by teleconference was Francis Pumpkin Seed. Also in attendance were Julie Graham, Clerk and State's Attorney Jim Sword. An attendance roll call was done for the record.

Meeting was called to order by Chairwoman Whirlwind Horse at 11:20 a.m.

The Pledge of Allegiance was given. The agenda was reviewed for conflicts, in which none were found.

Motion by Hagman, seconded by Hutchison to approve the agenda as written. With no further discussion, and all voting yes, the motion carried.

Motion by Hutchison, seconded by Pumpkin Seed to approve the minutes of the August 6th, 2010; August 11th, 2010; August 19th, 2010 and August 25th, 2010 meetings. With no further discussion and all voting yes, the motion carried.

Motion by Pumpkin Seed, seconded by Hagman to table the monthly report from Archie Hopkins, County Veterans Services Officer, until the next meeting. With no further discussion and all voting yes, the motion carried.

Discussion was held on amending the motion of the August 25, 2010 meeting which approved hiring attorney Terry Pechota for Stanley Star Comes Out to cap the total amount of allowable hours billed. Discussion was tabled until later in the meeting.

Motion by Pumpkin Seed, seconded by Hagman to reinstate Lynn Bettelyoun as Highway Superintendent and reinstate her previous wage. With no further discussion and all voting yes, the motion carried.

Motion by Pumpkin Seed, seconded by Hutchison to approve the fuel transfers from the Sheriff Office in the amount of \$33.15 and Weed Department in the amount of \$45.90 to the Highway Department. With no further discussion and all voting yes, the motion carried.

A request from Joe R. American Horse for a road from his residence to the main road, for a total of 1 and ¼ miles was reviewed. American Horse had provided receipts along with his request. The Board and Highway Superintendent Bettelyoun discussed that this would need to be a private road contract. Bettelyoun will visit the property and provide an estimate to American Horse along with a report back to the Board.

Motion by Hagman, seconded by Yellow Bull to enter into Executive Session for personnel issues, time being 11:37 a.m. With no further discussion and all voting yes, the motion carried.

The Board came out of Executive Session at 11:43 a.m.

Bettelyoun presented certificates of completion for hours worked for Leon Zimelman and David Whiteface. The certificates will be presented to the employees.

An update was given on a water line break and other road issues. Bettelyoun gave thanks to the Board for the purchase of a water truck.

Motion by Hagman, seconded by Yellow Bull to approve the report of Highway Superintendent Bettelyoun. With no further discussion and all voting yes, the motion carried.

Public comment was held with Jane Colhoff asking to reserve the right to comment during agenda items as they are discussed.

A proposed contract with attorney Steven Sandven was discussed. Motion by Pumpkin Seed, seconded by Yellow Bull to table discussion as Sandven was not in attendance. With no further discussion and all voting yes, the motion carried.

Pumpkin Seed noted for the record that he has not spoken with Sandven or Deb Rooks-Cook outside of Commission meetings. A bill Rooks-Cook submitted to the Board was discussed. Hagman questioned whether the Home Rule Charter allowed a contract with Rooks-Cook as a liaison officer and that it has not been authorized by the Board at a Commission meeting. Pumpkin Seed stated that hiring laws were not followed which included advertising for positions. Whirlwind Horse spoke that Rooks-Cook offered to help the Board, and some Board members felt the work done was on a voluntary basis.

Motion by Pumpkin Seed, seconded by Hutchison to deny payment of the bill submitted by Rooks-Cook and to table contracting with her as a liaison until such time as she can be present at a Commission meeting with a proposed contract. Pumpkin Seed noted that the Home Rule Charter defines the hiring process which is to include criteria such as advertising for the position, and also questioned whether an appointment for the Lakota Coordinator, as required by the M.O.A. with the United States Government was authorized by the Home Rule. State's Attorney Jim Sword will research the requirements of the Board to enter into such a contract with Rooks-Cook. With no further discussion and all voting yes, the motion to deny payment carried.

Pumpkin Seed informed the Board that he had received legal advice from his personal attorney that he should not act on any issues concerning the Sheriff due to the impropriety of such actions when petitions have been filed against him.

Motion by Pumpkin Seed to move the appointment of Sheriff to the next meeting. Hutchison spoke that she asked for the agenda item in hopes of resolving the Sheriff issue, eliminating attorney fees, the need for the hearing on September 27, 2010 and to be able to move forward. Pumpkin Seed expressed concern over being sued by petitioners, officially and personally, and that he would not act on the Sheriff issue unless petitions are withdrawn in writing. Pumpkin Seed also spoke of an open meeting complaint against him for meeting with Whirlwind Horse and Yellow Bull. Deputy State's Attorney Pat Ginsbach stated that Hutchison was not addressing the issues of the lawsuit filed by Jim Daggett nor the petitions for recall of Commissioners Pumpkin Seed, Whirlwind Horse and Yellow Bull, but of the issue of appointing a Sheriff. Ginsbach also explained the process of how Commissioners could be sued personally. State's Attorney Sword asked for confirmation that if issues regarding the recall petitions and open meeting violation were cleared up, Pumpkin Seed could then act on the appointment of a Sheriff. Motion was made by Yellow Bull to table the appointment of a Sheriff, which he then withdrew, and further discussion continued. Ken Orrock, attorney for Jim Daggett, expressed that moving the appointment to the next meeting will not prevent damages and expenses which will be incurred by the

September 27, 2010 court hearing. Pumpkin Seed again spoke on his inability to act on the Sheriff appointment while the petitions to recall him and other Commissioners and the open meetings complaint were still on file.

A roll call vote was called with Whirlwind Horse, Yellow Bull and Hagman voting in favor of the motion, Hutchison and Pumpkin Seed voting against the motion. With a majority voting yes, the motion carried.

Motion by Yellow Bull, seconded by Hutchison to amend the prior motion to attempt to resolve the concerns during an upcoming break and move the question to the end of the meeting. With no further discussion and all voting yes, the amendment to the motion carried.

The issue of hiring Harry Martinez as Deputy was discussed and that since the Board has no documentation from former Sheriff Stanley Star Comes Out, the Board was reluctant to take action in paying Martinez.

Motion by Pumpkin Seed, seconded by Yellow Bull to table payment to Harry Martinez until such documentation on the appointment can be provided by Star Comes Out. With no further discussion and all voting yes, the motion carried.

State's Attorney Sword informed the Board that he will not take any action on the petitions for recall or the open meeting violation until after the review of the County's contract with him to serve as State's Attorney. Sword stated that should the contract not be renewed, he would turn the petitions and violation over to his succeeding State's Attorney.

Pumpkin Seed expressed concern about Sword's his professional manner. Pumpkin Seed stated that he had concerns over Sword overturning decisions of the Board but that he didn't want to lose the contract and that he was upset when he put the review of the State's Attorney contract on the agenda. Pumpkin Seed noted that Jane Colhoff is leading efforts regarding the petitions against Board members, and that Colhoff should have approached him about her concerns and that as Commissioners, they should not have to watch what they say. Pumpkin Seed again spoke of the report received by the State's Attorney regarding the Sheriff situation.

Colhoff stated that although she has not attended all the meetings but has a sense of what the law is, she considers it small-minded to consider terminating the contract for the State's Attorney.

Fall River Commission Chairman Mike Ortner noted that the duty of the State's Attorney, by State law, is to not only represent the Commission but also to represent the County Officials. Pumpkin Seed stated that he had a different point of view regarding democracy and the Board needed to move forward.

Motion by Pumpkin Seed to terminate the contract of State's Attorney Jim Sword, and take applications. Ken Orrock commented to clarify the law and his position that the Board must adhere to it in entirety. Deputy State's Attorney Ginsbach noted that State codified laws require the State's Attorney to turn illegal actions taken by the Commission over to the Circuit Court, which agreed with the State's Attorney. Sword was only advising the Board of the law; their illegal action was required to be referred to the Circuit Court. Sword expressed his displeasure with what he deemed to be racist comments at recent previous meetings of the Board and that none of the Commissioners took a stance against such politics. Ken Orrock

reminded the Board that the State's Attorney only interprets the law. He also stated that should they terminate the contract, it is possible the Commission will not be appointing a replacement, but that Judge Davis, as head of the Circuit Court, may fill the vacancy. Pumpkin Seed said he was waiting for someone to tell them they could not hire a State's Attorney. Sword indicated that whatever the result with his contract, he would make the transition a smooth one.

Commissioners Hutchison and Hagman expressed their votes to retain the contract with State's Attorney Sword. Yellow Bull indicated that he expects those contracted with Fall River County to provide services to the best of their ability and be accountable, the need for policies and that he is working toward making all offices elected by residents of Shannon County. Yellow Bull also brought up a letter he received recently that was defamatory in nature and that he had yet to receive an apology for those comments. He further expressed that any reconciliation must be in writing and as there was nothing so presented, he suggested the Commission take a break. Pumpkin Seed withdrew his motion to terminate the State's Attorney contract with James Sword. He agreed with Yellow Bull that a break in the meeting was needed.

Chairwoman Whirlwind Horse noted that she was on the Commission before and that they didn't fire Daggett as Sheriff before, but rather had not renewed his contract. She further stated that she had received a hate letter and had no resolution with regards to who might have sent it, and that the letter received by Yellow Bull should have been turned over for investigation. Deputy Ginsbach spoke to the post office in Scenic and they said no letter had been sent from there. Virgil Rust expressed his desire to have Yellow Bull pursue an investigation of the letter and Larry Kehn suggested the letter be turned over to the FBI.

Pumpkin Seed asked for a break and at 1:10 p.m., Chairwoman Whirlwind Horse called for the break.

The meeting resumed at 1:35 p.m. with Pumpkin Seed being absent from participating by teleconference at that time.

Jane Colhoff commented that her attendance at the meeting was with an open mind and with the hope of resolving issues. Colhoff had thought to remove an open meeting complaint and petitions to remove Commissioners to facilitate resolution, but that after the discussion thus far, was not prepared to do so at that time and will pursue legal options as she is tired of issues with the Commissioners.

Hagman asked if the lawsuits would be laid to rest and Colhoff indicated that she couldn't speak to that. Ken Orrock indicated that Daggett would withdraw his legal action and present the Commissioners with a hold-harmless agreement should he be reinstated.

Yellow Bull asked for a decision on a second request for payment of expenses for an indigent's funeral bill. The State's Attorney reviewed the codified law and advised the Board.

Motion by Hutchison, seconded by Yellow Bull to again deny the request for burial assistance. With no further discussion and all voting yes, the motion carried.

A request by OST President Two Bulls was presented by O.J. Semans of Four Directions, a 501-©4 organization, who was present to discuss the request with the

Board and asked for their approval for early voting. Upon discussion of the request, State's Attorney Sword presented the Board with a 30-day Notice of Intent to terminate his contract and other Officials with Shannon County, which was drawn up and signed during the break, so this could be taken into consideration for any future actions taken by the Board.

Hutchison asked to back up, as this Notice would essentially halt County Government. Semans suggested that the Tribe could take over the functions of the Auditor's Office and Deputize a Tribal office for early voting. Discussion was held on whether this would need pre-clearance by the U.S. Department of Justice, and this process should have been started earlier. Pumpkin Seed rejoined the meeting via teleconference at 2:04 p.m. and expressed his endorsement of the effort to provide early voting in Shannon County. Pumpkin Seed's connection was terminated at 2:13 p.m. and he therefore exited the meeting. Commissioners continued the discussion of the motion on early voting. Pumpkin Seed rejoined the meeting via teleconference at 2:15 p.m.

Semans suggested Four Directions could provide the support for early voting and offered a compromise of narrowing services down to one location, open from 10:00 a.m. until 3:00 p.m., to commence the week of September 27, 2010. Pumpkin Seed questioned Semans with regards to hours of service and if it would be offered every day. Yellow Bull discussed requirements of the Memorandum of Agreement.

Hutchison advised Pumpkin Seed that the 30 day Notice had been received by the Board, and urged caution in moving toward Shannon County conducting county business in Shannon County as there is no funding to accomplish such a move and no reason another entity would want to take over providing services.

After some discussion, Semans again asked the Board to allow early voting access in Shannon County. Auditor Sue Ganje offered to provide staff and services to make early voting available three days a week in Shannon County for the month of October.

Motion by Pumpkin Seed, seconded by Yellow Bull to tentatively approve early voting in Shannon County with details to be determined at a special meeting of the Commission on September 9th, 2010. With Whirlwind Horse, Yellow Bull and Pumpkin Seed voting yes on the motion and Hutchison and Hagman abstaining from the vote, the motion carried.

Motion by Hutchison, seconded by Hagman to table the review and approval of the 2011 Annual Budget until the special meeting on September 9th, 2010. With no further discussion and all voting yes, the motion carried.

Motion by Hutchison, seconded by Hagman to approve the Auditor's account with the County Treasurer. With no further discussion and all voting yes, the motion carried.

TO THE HONORABLE BOARD OF SHANNON COUNTY COMMISSIONERS.

I Hereby submit the following report of my examination of the cash and cash items in the hands of the County Treasurer of this County on this 31st day of August ,2010.

American Family Insurance	Sept. Insurance	\$24.60
Daggett, Jim	Sept. Blue Cross Prem	\$385.65
Farrell, Farrell & Ginsbach	Aug. Dep. State's Atty	\$833.33
GoldenWest	Telephone	\$308.69
Hagman, Deloris	Travel	\$55.50
Pumpkin Seed, Francis	Travel	\$66.60
South Dakota Retirement	Aug. Retirement	\$2,273.84
State Treasurer	M. I.	\$180.00
US Postal Service	Postage	\$277.64
Wells Fargo Bank	Aug. Payroll Taxes	\$3,579.33
Whirlwind Horse, Connie	Travel	\$83.63
Yellow Bull, Wendell	Travel	\$47.36
Hutchison, Lyla	Travel	\$71.04
	General Fund Total	\$27,377.85

Road and Bridge

Road and Bridge	Aug. Salaries	\$10,205.22
And Additional Overtime for		
Lynx Bettelyoun (security guard)	Overtime	\$265.48
David White Face	Overtime	\$234.00
Leon Zimbelman	Overtime	\$252.00
Blue Cross / Blue Shield	Sept. Health Ins.	\$1,278.84
GoldenWest	Telephone	\$00.84
Nebraska Child Support	Child Support	\$245.00
Louie Nollett	Supervisor Wage	\$500.00
South Dakota Retirement	Aug. Retirement	\$1,314.80
Wells Fargo Bank	Aug. Payroll Taxes	\$2,526.68
	Road and Bridge Total	\$16,822.86

Grand Total \$44,200.71

Discussion on the appointment of a Sheriff resumed. As Jane Colhoff was unable to insure that petitions for removal of Commissioners and an open meeting violation would be withdrawn should Daggett be reinstated, Pumpkin Seed declined to vote on advice of his attorney.

Hagman asked Pumpkin Seed if he would be agreeable to appointing a Sheriff if Daggett agreed to drop his suit, as she was anxious to have the issue resolved.

Hutchison moved to reinstate Daggett by appointing him as Sheriff through December 31, 2014. Deputy State's Attorney Ginsbach advised the Board to keep in mind binding future Commission decisions, and this term would be affected by a favorable vote to change the Home Rule Charter and the resulting election of Sheriff by the voters. Hutchison withdrew her motion.

Motion by Hutchison, seconded by Yellow Bull to reappoint Jim Daggett as Sheriff of Shannon County through December 31, 2010. With no further discussion and all voting yes, the motion carried.

Motion by Yellow Bull, seconded by Hagman to pay Stanley Star Comes Out for five days owed for services rendered. With no further discussion and all voting yes, the motion carried.

Motion by Hagman, seconded by Yellow Bull to pay back wages for Jim Daggett. With no further discussion and all voting yes, the motion carried. Commissioners asked that Terry Pechota be notified of the decision and that any legal actions regarding Daggett's dismissal be withdrawn.

Special meeting was set for 11:00 a.m. on September 9th, 2010 at the Fall River County Courthouse, Hot Springs, South Dakota.

Motion by Pumpkin Seed, seconded by Yellow Bull to accept the 30-day notice of intent to cease providing services for Shannon County from Fall River County State's Attorney Jim Sword, Auditor Sue Ganje, Treasurer Lori Bachand, Register of Deeds Melody Engebretson and Director of Equalization Terri Halls. With no further discussion and all voting yes, the motion carried.

Motion by Pumpkin Seed, seconded by Yellow Bull to adjourn meeting, time being 3:16 p.m. With no further discussion, the motion carried.

Connie Whirlwind Horse, Chairwoman
Board of County Commissioners
Shannon County

Attest:

Sue Ganje, County Auditor
Shannon County