

Closed Session -- July 9, 2004

At 8:32 a.m. the Board adjourned to closed session to consult with the County Attorney to consider and give instructions concerning a judicial action titled "State of North Carolina, on Relation of, County of Randolph vs Clarence Ray Jernigan individually and d/b/a Heath Amusement; Heath Cigarette and Music Service, Inc. d/b/a Heath Amusement; and James Worth Heath individually and d/b/a Heath Amusement." Commissioners Holmes, Davis, Mason, and Frye were present. Commissioner Kemp was absent. Also present were Frank Willis, County Manager; Aimee Scotton, County Attorney; Alice Dawson, Clerk to the Board; Litchard Hurley, Sheriff; and Rodney Johnson, Alcohol and Law Enforcement (ALE) Agent.

Ms. Scotton explained the reason for this meeting. She stated that a preliminary hearing for this civil lawsuit is scheduled for Monday morning, July 12, 2004. Jon Megerian, one of the defendants' attorneys, may argue that the County Attorney did not have the authority to file this lawsuit. In actuality, she did have that authority, but the judge may be confused about this issue. Therefore, she said, she will ask the Board to ratify her actions to this point.

Sheriff Hurley said that this investigation began January 2003. He requested assistance from ALE at that time to investigate illegal gambling in Randolph County because he had received many complaints from citizens about family members spending so much money on video poker machines.

Mr. Johnson explained that video poker is organized crime, with large amounts of money involved. He said the problem couldn't be remedied through the criminal statutes because it is the employees where the video poker machines are located that are arrested and charged with the illegal activity. The business owners pay the employees' attorney fees if the employees don't reveal the owners' knowledge of the activity. The owners tell the judge they weren't aware of the activity. Then the judge gives the machines back to the owners, and the illegal activity starts up again.

Ms. Scotton reported that, on behalf of the County, she had engaged Mr. Randy Reavis, an attorney from Greensboro who has very specialized expertise in handling cases such as this one. She hired him, for a set amount of money within her authority (up to \$5,000), to file the lawsuit, and that is all he has done. She said she would need the Board's approval before proceeding with the lawsuit. The County would have to enter into a formal agreement with this attorney. He has proposed a contingency basis; his fee would be a certain percentage of money recovered in the case. Attorney Jon Megerian is alleging that Ms. Scotton has already entered into this formal agreement with Mr. Reavis and that it is null and void because she didn't have Board approval to do so. There is no formal agreement at this point. She said she would get into that during the closed session scheduled for July 12, 2004, during the Board's regular meeting.

Commissioner Davis asked why the County Commissioners are involved and not the District Attorney.

Mr. Johnson explained that state statutes specifically give counties and cities, as well as district attorneys, the authority to bring civil actions against public nuisance cases involving alcohol, drugs, prostitution, gambling, and breeches of peace.

Mr. Willis stated that the Board is being asked to ratify Ms. Scotton's actions in engaging Mr. Reavis, just to make sure that it is clear to the judge that she had the authority to do so. On Monday, when all Commissioners are present, they will talk about the facts of the case, and the Board must decide whether to enter into a contingency fee agreement with Mr. Reavis to complete the case.

Commissioner Frye stated that Jon Megerian had called him to discuss the case. Ms. Scotton stated that this action constitutes a violation of professional ethics.

On motion of Davis, seconded by Mason, the Board unanimously voted at 9:18 a.m. to end the closed session and return to open session.

J. Harold Holmes, Chairman

Darrell L. Frye

Robert B. Davis

Robert O. Mason

Alice D. Dawson, Clerk to the Board

Approved: August 2, 2004

Unsealed: June 6, 2005