

YUMA COUNTY COMMISSIONERS
June 11, 2018
Special Meeting Minutes¹

On June 11, 2018 at 10:02 a.m., the Yuma County Board of Commissioners met for a special meeting. Chairman Trent Bushner, Commissioner Robin Wiley, Commissioner Dean Wingfield, and Administrator Andrea Calhoon were present throughout the meeting. Commissioners' Attorney Ken Fellman, Esq. was present via teleconference.

Also in attendance were Sheriff's Office Manager Shannon Mooney, Undersheriff Adam Wills, Clerk & Recorder Beverly Wenger, Treasurer Dee Ann Stults, and Deputy Treasurer Chrystal Hammond. Numerous community members attended in observance of the meeting.

Sheriff's Office Procedural Updates – Following an introduction of all attendees and participants, Chairman Bushner opened the floor for Yuma County Sheriff Chad Day to respond to a request for informational presentation to the Board of County Commissioners regarding the Sheriff's Office Non-Tax Account as well as the Yuma County Sheriff's Posse.

Sheriff Day shared that the presentation that he created would be primarily read from the document presented to the Commissioners to help ensure the proper balance between professional presentation of information and the political and emotional nature of some recent public commentary.

Non-Tax Account

Sheriff Day's presentation began with an informational report on the non-tax accounts held by the Yuma County Sheriff's Office, their establishment, oversight, and use. Day reported that three accounts fall within the considered guidelines of non-tax, including an Inmate Commissary account, a Non-Tax Account, and an account called the Non-Tax 2 account. Day reported and Treasurer Stults was able to confirm that all three accounts have been continuously included on the Yuma County Audit. Day and the Commissioners discussed and confirmed that the Commissioners were aware of only two accounts until recently.

The historical progression and presence of accounts was outlined by Day's office as having started with one Inmate Welfare Account and one Inmate Special Account. The Inmate Welfare Account was renamed the Non-Tax Account and the Inmate Special Account was renamed the Commissary Account following Day's original election. In 2016, the Sheriff's Office changed vendors for management of their inmate commissary funds and the vendor required the initiation of a new account for their services. At this time, the Commissary Account, originally the Inmate Special Account, was replaced by the new Commissary Account and was renamed by the bank as the Non-Tax 2 Account. At this time Day reports the Non-Tax 2 Account was closed out but for balance to cover outstanding inmate checks and was deemed dormant by the Sheriff's Office.

Day reported, and Stults was able to confirm, that in the most recent audit report the recommendation of the audit firm was to have Stults added as a signer on all non-tax accounts and approve account reconciliations due to the statutory responsibility of County Treasurers. Chairman Bushner inquired as to Day's decision not to add Stults to the Non-Tax 2 account and share those reconciliations for approval. Day reported that his Office complied with the request for the Inmate Commissary and Non-Tax Accounts but did not add Stults to the Non-Tax 2 account nor send reconciliations for approval as the account was considered dormant by the Sheriff's Office and was left open for purposes of ensuring the clearance of outstanding checks. Attorney Ken Fellman recommended that Day, Stults, and a representative of the Board

¹ Minutes prepared by Andrea Calhoon are a summary of discussions, not a verbatim account.



of County Commissioners review the transaction history in the Non-Tax 2 Account from it's 2016 dormancy declaration to current to ensure no unknown transactions occurred.

All parties discussed the need for improved communication at time of audit as the accounts have all been included in the audit but all Elected Officials have not been aware of the accounts. Stults reported having had a conversation with the auditor regarding this and the Elected Officials will continue to discuss communication resolution moving forward. Sheriff Day referenced Resolution 09-31-2011 C as recognizing the non-tax accounts, their purpose, and their funding. Commissioner Wingfield responded with historical perspective on the recognition of the accounts under the previous Sheriff and the Commissioner's understanding of the existence of two accounts. Commissioner Wiley posed the expectation by the Board of County Commissioners that all three accounts would have been revealed at the time the resolution was drafted. Sheriff Day confirmed the validity of the question but expressed that the timeline on which it was asked was not reasonable in his opinion.

Day reviewed Colorado State Statute 30.10.102 cited by the auditor as the need for Stults' oversight of all three non-tax accounts. Commissioner Wiley added that his understanding holds that any accounts that are opened under the County Federal Tax ID should have County Treasurer oversight. Day expressed his disagreement with this interpretation of the statute and reported that, to his knowledge, all jails have similar accounts and many do not have oversight by the County Treasurer. Attorney Fellman recited the statute for reference as including the statement "or other monies whatsoever" and provided his opinion that, by this statement, the statute would apply to the situation. Day reported that he has elicited legal opinions from several sources and Fellman confirmed he would be interested in reviewing the opinions and providing his interpretation. Commissioner Wingfield expressed his opinion that even funds that are non-tax funds fall under the accountability of the County if the County is in possession of them and our practices should reflect the same fiduciary responsibility regardless of funding source. Sheriff Day expressed his agreement that accountability is important and that his Office has established multiple levels of accountability, but that he is not opposed to adding additional oversight.

Day expressed displeasure with the timing of these inquiries following discovery of the third account nineteen days prior. The Commissioners and Stults clarified the need for conversation with the County Attorney as well as the addition of information as the conversation progressed that delayed the ability to properly and professionally initiate the conversation. Day also expressed concern regarding the timing of the questioning as related to the current political race for Sheriff. Commissioner Wiley confirmed that the intent of the Commissioners has been to address the questions in such a way that political perception of the information is limited and that the inquires of the Commissioners would have been made in the same manner regardless of political climate.

Wire Transfer

Sheriff Day provided information in regards to a wire transfer that was made from the Non-Tax 2 account in June of 2017 in the amount of \$36,728. Day reported that, at the time the Sheriff's Office was investigating claims of sexual exploitation of children that involved numerous mobile devices. The forensic investigation of these mobile devices requires specific software that is not owned by most law enforcement agencies in the County. Day reported options were to borrow the software from another agency in the area with an estimated turn-around of a few months or to have the Colorado Bureau of Investigation complete the analysis, which would take approximately a year. In response to this lack of resources, Sheriff Day contacted a friend and requested philanthropic support for the purchase of the equipment on behalf of Yuma County.



The donated funds were intended to be paid to the Yuma County Sheriff's Posse but were mistakenly wired to the Yuma County Sheriff's Office due to clerical error. The error was immediately recognized that the funds were transferred from the Non-Tax 2 Account to the Yuma County Sheriff's Posse, following which the Posse purchased the software for use by the Yuma County Sheriff's Office. Commissioner Wiley inquired as to who owns the software and Day responded that the Posse is the owner.

Discussion as to the Posse's relationship to Yuma County Government was held and Day was able to confirm that the Yuma County Sheriff's Posse is a separate 501(c)(3) organization not under the managerial oversight of Yuma County Government. In light of this information, Chairman Bushner inquired as to how a County bank account may have been involved in a clerical error with a separate entity. In response, Day confirmed that a member of his office staff is also a board member for the Posse.

Yuma County Sheriff's Posse

Sheriff Day then moved into a discussion regarding the Yuma County Sheriff's Posse organization. Day reported that the intention was to revive the Posse as it has existed prior in Yuma County and that the Posse just received 501(c)(3) status in February of 2018. Day provided that "posse" is not a term formally recognized by the State of Colorado but was chosen as the name of the organization for its historical value and that in 1992 state statutes changed regarding training requirements that caused most Sheriff's Posse to either become reserve/volunteer split departments or to dissolve entirely.

Day referenced state statute 16-2.5-101 as the foundational guidance on his authority to define the roles and responsibilities of Posse officers.

In reference to inquiry on the liability coverage of Posse members in acting on behalf of the Sheriff's Office, Day shared case law and expressed his understanding that Posse members acting with the "color of authority" would be covered and those acting outside of it would not. Attorney Fellman offered that federal law is highly impactful on the concept of "color of authority" and that it is often a circumstantial evaluation of what was impacted based on what a reasonable person would perceive. Fellman expressed that the issue of "color of authority" liability is quite grey from a legal perspective.

Chairman Bushner expressed the Commissioners' concern about training and use of volunteers as information in reference to that matter is closely held by the Sheriff's Office and inquired as to how the Commissioners may be assured that Posse volunteers have adequate training and skills. Commissioner Wiley expressed that the current understanding of Posse use is that they assist with tasks such as traffic direction. Day responded with confirmation that he has been creative in his use of Posse volunteers and that they may find assurance by coming and talking with him. Chairman Bushner expressed specific concern for the recent information that Posse volunteers may be being used for undercover drug work. Day offered that he is equally concerned with liability and that he assessed that he must take some risk to address the presence of cartel in our community without the necessary staffing resources, so he employed Posse volunteers. Day also expressed that the term "undercover" has a more complex definition than buying drugs. Commissioner Wingfield inquired as to whether confidential informants are considered Posse members and as to how many Posse members reside outside of Yuma County. Day reported that confidential informants may or may not be Posse members and that about 1/2 of members are not Yuma County Residents. Commissioner Wingfield also asked how many Posse members have been granted HR218 status to which Day emphatically replied that none do.

CORA Requests

Day also discussed his frustration at the handling of a recent Colorado Open Records Act request that was submitted to the Yuma County Treasurer's Office requesting information regarding the Non-Tax Accounts.



Day expressed that the request should have been shared with him as his office is the holder of the information. Stults responded that the request was received by her office and, after seeking legal advice, she responded to the request as she deemed appropriate based on her statutory responsibility. The group of Elected Officials agreed that improved communication and process is necessary and that work will be done to establish a County-wide process for the handling of Open Records Act requests.

Public Comment

Following Day's Informational presentation, Chairman Bushner invited public inquiry and comment regarding the meeting materials. Mrs. Peggy McDaniel expressed a concern at a public perception that one or more of the Commissioners may have actively recruited a challenger to Sheriff Day's reelection and asked the Commissioners such. Each Commissioner, in turn, shared an explanation of their relationship if any with the challenger and confirmed they had not encouraged him to seek the elected seat. Mrs. Linda Doke inquired as to the path of communication of audit information and access to account information, which was clarified by Day and the Commissioners. Mrs. Doke expressed the need for culpability for accounts and audit information.

Mrs. McDaniel was heard again to express that inferences have been made with some of the information that has gone public on social media that needs factual clarification. Chairman Bushner responded that the Board of County Commissioners is interested in facts and are trying to wade through the information openly so that votes know what is factual and that Elected Officials are doing what is best for Yuma County. Commissioner Wiley expressed that, in the absence of the recent social media conversation, the same conversations and processes would be being undertaken. Attorney Fellman confirmed that all actions that have been taken are being purposefully taken in the interest of appropriateness, respect, and transparency.

Ms. Shannon Mooney confirmed that no action has been taken with ill-intent and that that the Sheriff's Office has made every effort to communicate openly with the Treasurer's Office.

Ms. Shanda McAllister was heard to clarify how the Non-Tax 2 Account had been missed and whether the Posse Account was now under the oversight of the Treasurer. Stults explained that the Non-Tax 2 Account had originally be opened under the County's sales tax exemption number through a clerical error at the bank, so it did not show up when inquiries were made for listings of bank accounts held by the County. Through improved processes based on the recommendations by the auditor, that was caught this year. Stults also clarified that the Posse was not a component of Yuma County, so the Treasurer had no oversight of that account.

Mrs. Jodi Clapper was then heard and expressed her opinion that faith and trust in officers and Elected Officials is important for the community. Mrs. Clapper expressed that she wants to understand the truth and that, while the Commissioners don't control the messages on social media, they could have reduced the impact by communicating with the Sheriff directly. Commissioner Wingfield noted to that end that open communication at the time of the Non-Tax resolution in 2011 and the mistaken transaction could have assisted in earlier resolution. Mrs. Clapper requested the Elected Officials seek a path to better communication.

Ms. McAllister was heard again to inquire as to a receipt that indicated an expense for the Posse that was paid through the Non-Tax Account and why, if the entities are separate, the County covered an expense for the Posse. Day reviewed the purpose of the trip and expressed that he determined the expense to be legitimate to run through the Non-Tax Account.



Communication

With public comment resolved, Sheriff Day completed his presentation by directly reading pages 15 and 16 of his presentation to the group. Information related to the timing of the discussions, the nature of conversation, and his perception that the conversations are politically motivated. Commissioner Wingfield responded that the Board of County Commissioners has worked hard to avoid participation in and avoid impact on a pending political race. Commissioner Wiley clarified that the same request was made of both offices and the information should have been the same and that the request made to the Treasurer was hers to respond to. Sheriff Day expressed his opinion that had he been included prior to the release he could have clarified all concerns ahead of time. Chairman Bushner noted that the Commissioners and the Sheriff have separate attorneys and that the Commissioners and Treasurer acted based upon the response of their legal support. Attorney Fellman explained that the Open Records Request that Day is referring to was received mid-week and that he personally spoke with Day regarding the release that same Friday in an attempt to coordinate. At that time, Fellman understood that the same information would be contained in both requests but that subsequent to that conversation he found that additional records were available through the Treasurer's Office and that there was a duty to release those records. Fellman also expressed that all conversations that have been held have been in the interest of what is best for Yuma County even in light of recognized errors in communication. Commissioner Wingfield followed by sharing that it is the responsibility of the Commissioners to seek legal advice when something potentially suspicious is discovered.

With open business resolved, a recess was called at 12:45 for purposes of returning to the Commissioner's meeting room for an executive session. Members of the public were invited to attend the open portion of the meeting.

Executive Session – Commissioner Wiley moved to enter into Executive Session at 1:05 p.m. under CRS 24-6-402(4)(b) for purposes of receiving legal advice on specific legal questions. Commissioner Wingfield seconded the motion, which passed by unanimous vote. Present were Chairman Bushner, Commissioner Wiley, Commissioner Wingfield, Administrator Calhoon, Sheriff Day, and Attorney Fellman via teleconference. The Commissioners exited Executive Session and returned to Open Session at 2:03 p.m.

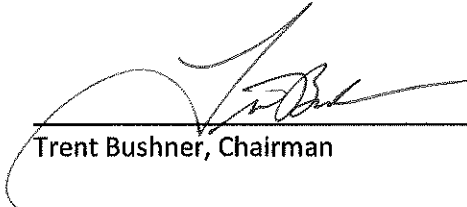
Public Comment – Mrs. Peggy McDaniel, Mrs. Jodi Clapper, and Mrs. Deidre Huwa presented following Executive Session to be heard with additional comment. The group expressed concern over the appearance of Elected Officials actively campaigning for political candidates. The Commissioners reviewed what is and isn't allowed by statute and expressed that they may not impact personal political participation of their colleagues. The group iterated that they would hope that staff work for the good of the County and believe in what they are doing regardless of who the Elected Officials are.


Administrator's Report – County Administrator Andrea Calhoon presented on building maintenance topics including sewer leaks at the Health and Human Services building and Fair window painting selections and presented for signature memorandums of understanding with County long-term care facilities. Calhoon also presented a Land Use Authorization for Phillips County to complete CDL testing at the Yuma County CDL test site. The Commissioners also heard a request from Road & Bridge Supervisor JR Colden to allow a variance to policy allowing an employee to cash out compensatory time as a mid-month payroll instead of at the end of the month. The request was ultimately denied.


Commissioner Wiley moved to approve signature on the Memorandums of Understanding between Yuma County and Hillcrest Care Center, Yuma Life Care, and The Parrish for provision of emergency radios. Commissioner Wingfield seconded the motion and it passed unanimously.



There being no further business, the meeting adjourned at 2:08 p.m. The next regular meetings of the Board of County Commissioners will be on May 31, 2018 and June 15, 2018.


Trent Bushner, Chairman


Andrea Calhoon, Administrator

ATTEST: 
Beverly Wenger, County Clerk

