

**JUSTICE COMMITTEE MEETING
MARCH 29, 2012
3:00 P.M.**

MEMBERS PRESENT

Vice Chair Tim Dudley
Keith Ashby
Dave Drobisch
Merv Jacobs
Bill Oliver
Mark Wicklund

MEMBERS ABSENT

Chair Jon Baxter

COUNTY PERSONNEL PRESENT

Rodney Forbes, Public Defender
Jack Ahola, State's Attorney
Randy Waks, Asst. State's Attorney
Mike Day, Coroner
Judge A. G. Webber, IV
Jim Root, EMA
Max Austin, Sheriff's Office
Sheriff Tom Schneider
Jerry Lord, Public Building Commission
Jay Dunn, Board Chair
Lois Durbin, Circuit Clerk
Amy Stockwell, Auditor
Linda Koger, County Board Office

This meeting was called to order by Vice Chair Dudley at the Macon County Office Building.

APPROVAL OF MINUTES

Motion to approve the minutes of prior meeting made by Dave Drobisch, seconded by Mark Wicklund, and motion carried 5-0.

CLAIMS

Motion to approve the claims made by Mark Wicklund, seconded by Merv Jacobs, and motion carried 5-0.

REPORTS

Circuit Clerk

Lois Durbin distributed an information handout which is from the beginning when she took office, what the office has made or brought in vouchered total wise; first page has from December 1 to yesterday, and it compares it to each prior year. The red on the right hand side means they were behind from the prior year, but so far this year they are \$306,000 ahead of last year on their vouchers in the first quarter which is including child support payments they take. On the bottom, she took out the child support payments, and it still shows they are \$302,000 ahead of last year. Second page is the \$36 admin fee they have been collecting since she started, it shows the same as the first page does and is from the different years, and second part of that is what she has brought in each year. The last page is the full year, December 1 through November 30, for each year that she has been in plus the prior year before she came in. The bottom with their new collection agency, page 3, shows the monies collected for Pioneer was \$18,669.86 which is what they have actually collected at their office; at her office, they have collected \$15,665.67 so that is a grand total of \$34,335.53 collected since February 22 of this year.

(Bill Oliver came into the meeting.)

Keith Ashby asked if the \$18,669 is our share of what they collected, and what percent they take. Lois replied that is what it paid off, they take 30% but we get 5% back of that, so they are taking 25%. Keith Ashby commented so the total for her office is less than the \$34,000, 75% of \$18,000 plus \$15,000. Lois said right, and her office because of the letters going out, they have taken in the \$15,665, so it is moving right along. They have turned over all the traffic, started turning over the misdemeanor files last week, the first couple years and are working on getting the rest of the years turned over, and once those are all turned over they will then turn over the felony cases to collect.

Circuit Court

Judge Webber reported that Judge Coryell has been out with hip replacement surgery, he spoke with him today, he is doing very well, and expects to be back the week of April 9. They are a judge short for the next couple weeks, but everybody is covering for him so no problems.

Coroner

Mike Day had no report.

Court Services/Probation

No one was present.

EMA

Resolution Approving Increased Funds in Law Enforcement Safety Tax for Moving Radio Equipment in Macon, IL

Jim Root distributed copies of resolution, title of resolution is different on the agenda, but the actual resolution is in front of committee. Over the last couple months, he has explained at Justice that the village of Macon is getting a new water tower so any radio equipment that is attached to the old tower will need to be removed, actually replaced onto the new tower, and the old equipment is going to be moved over to the new tower. He does not have monies in his budget to cover this cost, initial estimated cost from Barbeck who provides the communication service for our office is \$6,029, this would be out of the LEST fund, and the line item it will be added to will be the radio equipment maintenance.

In response to a question from Bill Oliver, Jim said it will be moved from the water tower in Macon which is 301 Front Street down to 390 which is about half a block, and it is going to go on the new tower; it will require a licensing change for the location which he does have money appropriated to use for the licensing change which is about \$1500, and he will make a request with the FCC to make that modification to our license.

Vice Chair Dudley asked Randy Waks if he has any problem with the resolution title change on this or if it is something he is okay with. Randy Waks commented the purpose of putting a topic on the agenda is to give everyone public notice that there is a topic to be discussed, he thinks this is close enough to give public notice that there was something to be discussed about radios, and he thinks it is probably okay.

Keith Ashby questioned Jim stating that he does not have money in his budget for this. Jim replied he doesn't have any appropriated for this, he can squeeze money out, but it is going to come out of somewhere else where he is not going to be able to cover it. Keith Ashby asked amount of his ending fund balance or how much money does he have in the bank. Jim was not sure at this point. Amy Stockwell said what she reported the end of February is the ending fund balance in the LEST Fund, \$510,000. Keith Ashby asked for any reason why he can't take this \$6000 out of his ending fund balance, and Amy Stockwell commented that is what the resolution is.

Merv Jacobs asked if it is the county's cost to move this equipment or should that be the city of Macon, he asks because they are giving consideration to moving their equipment in South Wheatland Township, and he was never aware there would be funds to help with that. Jim asked what equipment he is referring to, the water tower. Merv said in Macon, yes. Jim said the village is actually going to incorporate some cost into it when they actually designed, they're going to put some conduit and stuff like that in there that will actually be part of their cost, but as far as the radio equipment etc. that goes along with it, all that equipment belongs to the county so it is our responsibility to move it.

Motion to approve and send to full board made by Dave Drobisch and seconded by Bill Oliver. Keith Ashby asked if this goes to Finance before the full board, and Vice Chair Dudley said it goes to Finance. Motion carried 6-0.

Public Building Commission

Jerry Lord reported the phase one portion of the chiller replacement project is going to begin start up next week, everything is on schedule, and under budget.

Public Defender

Resolution Approving Increase in Appropriations in the Public Defender's Budget

Rodney Forbes distributed copies of resolution which concerns the loss of the Defense Services Program Grant. They have received this grant from the state for approximately six years, before the office became a full time office when all the attorneys had contracts with the county to do public defender work; this grant is \$81,000 that the state gives to them, it is a matching grant, the county provides additional \$27,000 and benefits to hire two attorneys to represent persons charged with class X felonies and murders which are the most serious crimes in Macon County, and most persons charged with these crimes are Macon County defendants.

This grant does not operate on our fiscal year, it has been renewed mid-year, and every year the grant has been renewed in the past a new resolution would have to be made to account for the additional revenue and expenditures for the grant. He included today a copy of the grant which lays out exactly the purposes of the grant, and why it was given to us; grant was provided so that we could cut down the jail cost, number of defendants who are in jail awaiting trial could be cut down, and the cost per day associated with that; it would also save the county money in that the county would not have to hire private practice attorneys to represent these defendants, and our office simply does not have enough attorneys to spread around.

The cost of hiring a private practice attorney to represent these defendants according to administrative order signed by Judge Shonkwiler that is included in the packet is a cost of \$100 per hour with a maximum of \$5000 per felony case unless there are circumstances that warrant a higher fee. He has done research trying to determine what the average fee for a case like this is. He talked to Jeff Justice who has done capital litigation in similar type crimes, his fees are typically over \$5000 for a class X felony, and he will not take a murder case for less than \$20,000. He talked to Judge Griffith who also has done this type of cases as a private practice attorney, and he told Rodney to inform the Board that his private practice fee was \$5000 for a class X felony, and \$25,000 for a murder case; depending on the class X felony, he would charge up to \$10,000.

Currently he has two attorneys, Karen Root and Randy Baker, Karen Root is assigned to Judge White's courtroom, and Randy Baker is assigned to Judge Steadman's courtroom. He asked them to provide their caseload numbers, the number of defendants they are currently representing right now, both of them are representing approximately 40 defendants charged with class X crimes, so that is a total of 80 class X felonies. There are approximately 12 murders pending right now, so that is what the money from this grant pays for, it pays for their salaries to provide that type of work.

Since the decision not to renew this grant has come at mid-year, he would not be short the entire \$81,000 for this budget year but would only be short \$40,500, and that is what he is asking the board to make up for that shortcoming. Rodney explained the reason we lost the grant is for no reason of our own, it is nothing they have done, but it is simply that the time has expired. Original grant was to be for four years pursuant to a law that was passed, the law was later repealed and amended about midway into our four year grant period, so we ended up getting an additional two years added onto the grant. When the county received this grant, they had a higher number of attorneys in their office, they did not have a full-time office at that time, they had attorneys in private practice working contracts, and the theory to move to a full-time office was to limit those number of attorneys. They did that with the notion they would be receiving this grant, that there would be two attorneys paid under this grant, now if we lose this grant he is going to lose those two attorneys so they will be at numbers lower than they have been in recent memory, or at least within the last ten years we would have fewer attorneys in the office.

Also included in the packet as well is the budget, or the board agreed the caseloads were overwhelming, that the Public Defender's caseload was such that a new attorney needed to be hired; the board provided that money to them so they could hire that additional attorney. He has done that, that attorney has only been hired for three months, he has only been able to get that done for the last three months, and with the help of the PBC they built another office and now have that person in place. If we are unable to make up for this shortcoming, we are undoing everything that the board did last year. Rodney also pointed out the board knew when it approved this year's budget that this grant may not be renewed this year, it was contemplated when the budget was prepared, so this really wasn't a surprise; it was done this way so that we would not have to present a resolution in the event the grant was renewed, and we had to account for the additional revenue and expenditures, so it was a time saving provision as well.

Keith Ashby guesses he is asking the taxpayers of Macon County to assume the liability created by a state grant. Rodney Forbes replied no, that is not correct, and the reason is because we were not at this level of the number of attorneys or their staff was not at this level at any time before the state grant money was provided, that these additional attorneys were given to the county; at that time we had more attorneys, we had this additional money to hire these additional lawyers to cut the costs of the jail population and the cost that is associated with that; we have never had this situation where we have had this limited number of attorneys in their office. Keith Ashby commented he is asking for \$40,500 right now, and he assumes the next budget period he will be asking for the full \$81,000, and will continue on in that vein. Rodney replied that is correct, right now they have the benefits, they have the additional \$27,000 matching in their current budget, so they are only short \$40,500; that is the only amount they are short, they could continue to operate at this level throughout this fiscal year, but when the new budget comes around he will be asking for additional funds to pay for those attorneys. Keith Ashby's reservation is the federal and state governments are both financially strapped, we are going to see a continued amount of grants cancelled, and we are setting a precedence here by continuing his grant; somebody else from the county will come along with a grant that is being cancelled, and we have a precedence set; he sees going down the road and has no doubt they need the people, but more and more the federal and state government are putting it back on the Macon County taxpayers.

Rodney Forbes stated the county has the duty to provide representation for these clients, this is a cost that is required and is a constitutional right, so this is a cost that cannot be avoided; it is just a matter of what is the most effective, what is the most fiscal and responsible approach to this, and the answer to that is to provide enough attorneys to move these cases throughout the court system, keep the people from clogging up the jails, and having the cost of having private practice attorneys appointed in these cases to represent these defendants; the cost of appointing private practice attorneys is much more expensive than the \$40,000 that he is asking for this year. As far as setting precedence, he can only say the only grant his office receives is this grant, it is not as if he has a bunch of other grants, this is the only grant, there are not a lot of grants out for public defense work, so he doesn't want their office to be compared to other offices in that regard. When he talked to the grant administrator, she indicated that this was federal money that came to the state, the state is no longer sending it to the county, the federal budget is going to be reduced 37% next year and an additional 37% the following year, and at least that is the information she has. That would not affect our office but he understands Keith's concern, he has the same concerns, he feels responsible for what the taxpayers are paying here too, but this is the most responsible approach to the cost that we have in representing these defendants.

Keith Ashby asked about other sources of revenue he could towards for this \$40,500. Rodney has asked and is trying to apply for any grant or any money that might be available, he is stretching out and asking people to volunteer for pro bono type work, every avenue available he is looking at, he has only been in office for just less than two months, so he has not had a whole lot of time to tackle this problem. When he spoke with Maureen Brennan with the IL Criminal Justice Information Authority, she said there is nothing out there; he is going to have to be very inventive, do what he can to find something, but there certainly isn't anything on the horizon.

If this \$40,500 request is denied but we decide he does need the people in the following year, Keith Ashby asked what position that would put him in. Rodney replied he would have to let somebody go, that is the bottom line, in the budgets before you they are as bare bones as they get, and he cannot make up a \$40,500 shortcoming or an \$81,000 shortcoming without letting somebody go.

As previously asked by Keith Ashby, Vice Chair Dudley asked if this was denied and then maybe reinstated for his budget next year but it still being up in the air year to year, is it going to be difficult to find attorneys to take that on. Rodney replied the attorneys he has are very concerned about it, whether or not they are going to be working or losing their jobs, and obviously if it was year to year that would cause concern; it would also cause concern for the way these cases move through court, attorneys are trying to get done what they can get done, but if they have a murder case that requires a lot of discovery and it doesn't look like they are going to have a job the following month, they are probably not going to get a whole lot of work done on it.

Rodney Forbes commented this is also a very realistic situation that could happen where if this money does not come through and we have to let these attorneys go, he is going to ask the court to appoint private practice counsel, and it makes the most sense that those people we are paying right now be appointed private practice counsel since that would be the least disruptive way to do business, keep the same lawyer on the same case so that we don't have a duplicative period where the attorney is new to the case and having to go through piles of documents. Both of the attorneys when he told them this, they said well I might make more money if I was appointed by the county than I am now, everything is up in the air at this point, he doesn't know if they would continue to work or if it would be hard for him to keep staff, or whether they would celebrate as a result of the board not passing this resolution.

Bill Oliver commented he is asking for six months to get him through this year, he doesn't think right now we have to worry about the \$81,000 next year since he hasn't submitted a budget yet, he is six months into this one, and he would like to see it finished up to take care of the cases there because it is needed in our system; every time we look at something and he has been adamant against grants for over 30 years in government and has always asked that question, what do you do next year when the grant runs out; going back to some county people who have retired, they always came back with the good news they got a grant, but the next year they could not do without it. He has talked to the sheriff about this, we have a number of federal prisoners coming in here that are adding to the general fund quite a sum of money, and it is to be disbursed some way or another but he feels this public defender program is one we cannot do away with, it has to be financed some way, and he suggested looking at the funds from the federal prisoners to help augment this. If you get them out of the system, we don't have to feed them, the jail population is down which we are always trying to do, but a lot of what is in the jail depends on how empty it gets as far as being able to take on more prisoners. Most of us feel we don't want to do anything with grants except take them and use them and rehire someone, but tell them you have got a job this year and I don't know what is going to happen next year, and this should be explained to everybody taken on under a grant program in any department. Bill would like to see Rodney finish this year up.

Not knowing the ins and outs with the federal funding of prisoners but if our jail population goes up, Rodney commented there is the possibility we would not be able to house those federal prisoners so we might have a loss of income as well; with someone being hired under a grant, he agrees they should be told that when the grant ends, they are out of a job but remember this was a unique situation in which his office was formed; they were private practice attorneys, all had their own practices going, all had a contract to do work with the county, but then it was decided we would have a full-time office and limit the number of attorneys we would have, the office would be more efficient working out of the courthouse, so it was a cost savings; when we decided what the minimum number of attorneys we needed to have going full time, we came at this number which included those grant attorneys. These were not additional employees added, and now he is asking to retain their jobs; they are people determined to be critical to the functioning of the full-time office which led to the reduction of our attorneys. This is a different situation, and a history of what has happened with the office over the last six years.

Board Chair Dunn asked for an explanation of why two weeks ago he approved in excess of \$15,000 worth of increases including the justification since they are more than the normal 3% given out under union contracts. When he was moved to the Chief Public Defender, Rodney replied that allowed more money when he was hiring for the new felony position that the County Board approved; he interviewed 13 candidates, settled on a person from McLean County who was making \$52,000 as a prosecutor there, he tried to get his salary as close to that but when he was hired, he only had \$42,000 to give him; there was a promise that in February when he became Public Defender that he would try to give him an increase to get him close to what he was making in McLean County, so he is now being paid \$49,000; since he was bringing somebody out of the office at a higher salary than somebody doing the same job for less than \$49,000, he provided an increase there, so both attorneys are now making \$49,000. Also, this is very low pay for a felony attorney, these are people handling in excess of 400 felony cases a year, and he felt very lucky to get the attorneys he has for \$49,000.

Keith Ashby asked if he knew at the time he gave these raises that he was going to lose this grant. Rodney replied he was in the process of trying to get the raises accomplished, he had been talking to Auditor Stockwell, for several weeks she kept giving him proposed budgets for working through trying to determine an exact amount that could be given, so he was in the process; the people took the positions or changed their employment based on the fact they would be getting the salary increase, and a day before actual salary increases went through is when he learned, it was a day or two when he learned we were going to be losing this grant, but he had already promised people and they had taken employment based on his promise; these are lawyers we are talking about, they understand what a promise is and their rights there under, so he fulfilled his promise. If the County Board finds that this money is not to be replenished, he would just have to make a hard cut, but he could not renege on the promises he made.

Mark Wicklund commented grant started in 2005 for 48 months trial period, should have ended in 2009, the previous public defender should have been aware of the possibility of this grant expiring, three years they could have been working on something to offset this loss, we have discussed live and die by the grant, and we can't set a precedence on extending grants; we have two months before this grant runs out May 31 to possibly finding the means to allow this to continue, but he is not in favor of this resolution.

Vice Chair Dudley asked committee if they were willing to table this resolution for a month to see if we can find anything for it; motion to table resolution until the next Justice meeting made by Bill Oliver, seconded by Merv Jacobs, and motion carried 6-0. Amy Stockwell added the federal prisoner revenue comes into the general fund via the sheriff's jail budget, and it has its own line called federal prisoners contract and federal prisoners transport; budgeted revenue amount was \$500,000, but she doesn't have the amount of what we have actually received. Sheriff Schneider added that has been 5 – 6 months behind, we are on track now, his projection was based on 20 inmates per day, and today's count is 24. Amy Stockwell commented we book revenue when earned.

Sheriff

Sheriff Schneider reported 286 inmates in the jail today, and of those 24 are federal inmates. The number fluctuates, that number is good for us, and means regular jail population is 262.

State's Attorney

Resolution Approving Increase in FY12 Budget for Adult Redeploy IL Grant

Copies of resolution were distributed, and Jack Ahola said it is an increase of \$100,000 that they need to put into their budget to disperse it. This pays for court services officers and some treatment providers, and instead of sending people to prison, we are trying to rehabilitate them so they don't commit more crimes. Keith Ashby requested Jack to make sure the people they hire are subject to termination when this grant expires. Jack Ahola replied this is for court service officers so they obviously would be aware of that, much of this money is going to treatment providers we contract with for services to the defendant, and they are aware of that too. Jack Ahola pointed out we are the most respected site in the state in this program, they just presented last Monday at the state conference, and we are very well liked by the grant monitors.

Motion to approve made by Dave Drobisch, seconded by Keith Ashby, and motion carried 6-0.

Jack Ahola commented he hopes committee comes to a resolution for Mr. Forbes, we do have murder trials starting in two weeks that the attorneys are doing, if they are in the middle of a trial and the money gets taken out the County is going to have to pay it anyway, and he feels it is cheaper the way that Mr. Forbes proposed today because they cannot ignore class X murder cases.

NEW BUSINESS

Bill Oliver commented on news reports about criminal activity in our community, and a number of the people being incarcerated have records that are outstanding as far as longevity is concerned; people on probation 2 and 3 times, sentenced two years to five years but out on the street committing crimes, and he asked why they aren't incarcerated. Jack Ahola replied with the amount of crime that takes place, we have to approach each case differently and individually, and we only have so many prosecutors so if you want to triple his office, he will be glad to take everybody to trial but that is not going to happen; there are only 9 judges we have, most cases have to be concluded through plea bargain, these are all approved by a judge, most of the time by the victim approving these, and people also go to prison for lengthy amounts of time. Bill Oliver said that is where he is coming from, they are supposed to serve time but get probation and back on the street to commit other crimes, they get probation, and don't serve too much time they have been given.

Jack Ahola asked if he is talking about the Department of Corrections time. Bill replied he is talking about Macon County, we have people who should be serving time based on stories in the news, you can see a case last week of the guy who in the last 5 or 6 years, he should be serving that time since he has been in prison twice and back on the street with two probations; these people have been prosecuted but are still out on the street committing crimes. If okay with Mr. Forbes, Jack Ahola invited Mr. Oliver to a negotiation conference with them that they do every Wednesday and Thursday, he is welcome to sit down with them, you can't shoot them, and they do the best they can.

NEXT MEETING

4-26-12

ADJOURNMENT

Motion to adjourn made by Dave Drobisch, seconded by Mark Wicklund, motion carried 6-0, and meeting adjourned at 3:45 p.m.

Minutes submitted by Linda Koger
Macon County Board Office