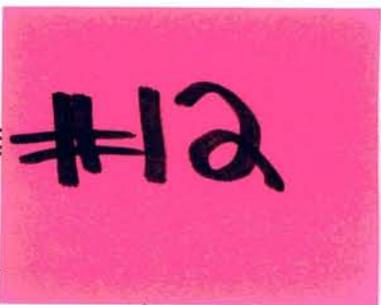


WOODBURY COUNTY BOARD OF SUPERVISORS AGENDA ITEM(S) REQUEST



Date: 6/16/16

Weekly Agenda Date: 6/21/16

ELECTED OFFICIAL / DEPARTMENT HEAD / CITIZEN: Supervisor Matthew Ung

WORDING FOR AGENDA ITEM:

Woodbury County legal counsel letter to Sioux Rivers Region

ACTION REQUIRED:

Approve Ordinance

Approve Resolution

Approve Motion

Give Direction

Other: Informational

Attachments

EXECUTIVE SUMMARY:

The latest unresolved issue between Woodbury County and Sioux Rivers Region is addressed in the attached letter from Heidman Law Firm to the attorney representing Sioux Rivers Region.

If this issue could be resolved "at the Region level," it would have been. However, after about six months of politely asking, the Region still refuses to even hold a proper vote on a legal contract, instead signing it outside of a public meeting without notifying other board members. This agenda item is the inevitable result of Woodbury County being denied a request for the Regional board to operate with a modicum of transparency. Rather than place a legally binding contract on the agenda, the Region would prefer to employ legal counsel to explain why they don't have to.

BACKGROUND:

Supervisors Monson and Ung reviewed the attached communication and endorse its message.

I (Ung) asked for this issue to be resolved both via email before the last Region meeting and at the last Region meeting to no avail. It is as simple as putting an item properly on the agenda and voting on it, but the Board refuses to do so. Even when expressing Woodbury County expects to "lose" the vote in question, the Regional board still refuses to officially act on a contract. Minutes and recordings of the meetings in question prove that no action was ever taken on this contract. Again, minutes and recordings of the meetings in question prove that no motion, no second, and no vote ever occurred on the personnel contract that is claimed to be in effect.

The reason for not providing the appropriate public notice and the opportunity for a vote on something as important as a contract is baffling—the Region's legal counsel claims two representatives of the 6-member board are able to "execute" a contract that has never been noted on an agenda nor provided in the backup material for a public meeting.

To view the contract supposedly "executed" in February 2016, I had to specifically ask for it. Mark Monson and I had never been provided it before and were not aware of its existence as late as April 25, 2016. It was indeed signed in February. However, when the Region's legal counsel responded to a public complaint, they did not provide the February 2016 document, but instead a vastly different June 30, 2015 document that they claim was the document being executed in February 2016... by signing a totally different document. Clearly, Regional board members and their legal counsel are confused as to which contract was "executed" by signing it outside a public meeting.

FINANCIAL IMPACT:

It is presently unknown how much needlessly expended taxpayer money on legal fees has been expended by both the county and the Region, but it is at least in the thousands. Beyond the simple fix Woodbury County has advocated, the financial impact upon Sioux County of operating out of a legal contract with the Region would logically mean Sioux County owes the Region for those funds received without a personnel contract.

It is clear that Sioux County employment began January 1, 2016. What is not clear is when the contract with the Region is claimed to be effective. One document says February 2016, which was provided to Woodbury County representatives in April 2016. Another document says June 2015. The motion supposedly "executing" the June 2015 contract was in December 2015.

Simply putting this issue on the agenda and properly voting on it would clear this all up. And it would be free.

IF THERE IS A CONTRACT INVOLVED IN THE AGENDA ITEM, HAS THE CONTRACT BEEN SUBMITTED AT LEAST ONE WEEK PRIOR AND ANSWERED WITH A REVIEW BY THE COUNTY ATTORNEY'S OFFICE?

Yes No

RECOMMENDATION:

Read the attached letter from Heidman Law Firm.

Remembering all those times Woodbury County places contracts on the agenda for approval--even in cases of declared public safety emergencies--question why the Region would for six months refuse to do so for a contract that expends Woodbury County taxpayer dollars.

ACTION REQUIRED / PROPOSED MOTION:

N/A

JAMES W. REDMOND**
DANIEL D. DYKSTRA†
LANCE D. EHMCKE*
CYNTHIA C. MOSER†
JOHN C. GRAY**
PATRICK L. SEALEY**
JEFF W. WRIGHT**†
ROSALYND J. KOOB*
JOEL D. VOS†
SARAH K. KLEBER**
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June 14, 2016

SENT VIA EMAIL: paul@lundberglawfirm.com

Paul D. Lundberg

Re: Sioux Rivers Regional Mental Health and Disability Services ("the Region") Governance Board

C
Dear Paul:

O
Our office serves as outside counsel to Woodbury County, Iowa. We have been asked to respond on behalf of Woodbury County's representatives on the Region's Governance Board regarding the proper procedure for executing Service Delivery Personnel Contracts. We are in receipt of your May 9, 2016 letter to Shane Walter with your analysis of this issue. We also have reviewed your related May 27, 2016 letter to Margaret Johnson, Deputy Director of the Iowa Public Information Board, in response to the Iowa Public Information Board Formal Complaint 16FC:0051.

P
Y
Woodbury County and its Governance Board representatives remain perplexed and troubled by the manner in which two former Woodbury County employees were assigned to full time positions with the Region as the "Administrative Assistant Office Manager" and a "Sioux Rivers MHDS Social Worker" under the auspices of Sioux County. Setting aside the fact that the Region allowed these individuals to be simultaneously employed by both Woodbury County and Sioux County for some period of time, Woodbury County questions why the Region refuses to follow required contracting procedures consistent with past practice and the 28E Agreement. In order to comply with the 28E Agreement, Iowa's open meetings law, and past practice, the Service Delivery Personnel Contract for Sioux County's assignment of these two positions to the Region must be presented to the Governance Board at an open meeting, followed by a motion to contract with Sioux County for such services, and a public vote on the motion.

Instead, as evidenced by your correspondence, the Region has undertaken a misguided effort to reach the same point by cobbling together a series of actions and/or has taken action to approve a contract in violation of open meetings laws. Despite this, the fact remains that at no time has the Governance Board approved the decision to enter into a Service Delivery Personnel Contract for Sioux County to provide the Region with the services of these two employees on a full time basis. The only motion related to this issue was submitted at the December 22, 2015



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Governance Board meeting. It provided that Sioux County would become the employer of record of these two employees "if necessary." (Minutes of Governance Board Meeting December 22, 2015, p. 3.) There was no motion to approve a Service Delivery Personnel Contract with Sioux County. Indeed, no Service Delivery Personnel Contract was presented or discussed because the need for such would only arise pursuant to the motion "if necessary."

Your letter to Ms. Johnson is confusing. You state with regard to your Attachment A as follows:

Attachment A: Service Delivery Personnel Contract. This is a copy of the contract executed by Chairman Dennis Wright and CEO Shane Walter after the formal Board meeting had adjourned on February 23, 2016. The contract had previously been executed by the Chairman of the Sioux County Board of Supervisors.

Attachment A is a Service Delivery Personnel Contract dated June 30, 2015 calling for a Sioux Rivers Regional MHDS Administrative Assistant at a 05% FTE level. It clearly is not a contract for the Region to receive services at a 100% FTE level from two full time Sioux County employees.

Similarly, the Governance Board's vote at its October, 2015 Governance Meeting to approve the "Amended" Service Delivery Personnel Contract for Woodbury County, raising these two positions to the 100% FTE level, does not equate to approval of a contract for Sioux County employees to provide the services.

None of the steps taken by the Governance Board, either alone or in combination, can alter the fact that a Service Delivery Personnel Contract with Sioux County for the provision of a 100% FTE Administrative Assistant Office Manager or a 100% FTE Sioux Rivers MHDS Social Worker has never been properly approved by the Governance Board. Further, pursuant to Woodbury County's current Service Delivery Personnel Contract, these services are still being provided to the Region by Woodbury County employees. The Governance Board has taken no action to amend, terminate or cancel Woodbury County's contract for these two positions.

Your May 9, 2016 opinion letter to Mr. Walter misstates the issue. The critical question is not whether a board chair can execute a contract that was previously approved because in this case the reality is that the Governance Board never approved the contract in question.

Please be assured that Woodbury County and its representatives on the Region's Governance Board have no desire to obstruct this or any other legitimate process undertaken by the Region. However, Woodbury County continues to ask and will insist that all applicable laws,

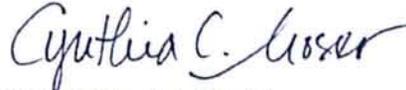
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contracts, and proper procedures be followed. To that end, we hereby renew the request that a Service Delivery Personnel Contract for Sioux County to employ these positions be added to the next Governance Board meeting agenda as an action item and that formal action be taken to cancel the predecessor contract with Woodbury County.

Please don't hesitate to contact me if you have any questions or would like to discuss this issue further.

Very truly yours,



CYNTHIA C. MOSER
For the Firm

CCM/bsp

cc: Jeremy Taylor (sent via email to JTaylor@woodburycountyiowa.gov)
Mark Monson (sent via email to mark@mudflap.com)
Matthew Ung (sent via email to matthewung@woodburycountyiowa.gov)
Patrick Jennings (sent via email to pjennings@woodburycountyiowa.gov)
Joshua Widman (sent via email to jwidman@woodburycountyiowa.gov)