

The Honorable Board of Lander County Commissioners met in special session in the Commission Chambers of the Lander County Courthouse in Battle Mountain, Nevada, on January 20, 2011 at 10:00 A.M.

**PRESENT: STEVEN STIENMETZ, COMMISSIONER
RAY H. WILLIAMS, JR., COMMISSIONER - via telephone conference
DEAN BULLOCK, COMMISSIONER
BRIAN GARNER, COMMISSIONER
DAVID MASON, COMMISSIONER
SADIE SULLIVAN, COUNTY CLERK
ANGIE ELQUIST, DISTRICT ATTORNEY
JAMES BARNES, DEPUTY DISTRICT ATTORNEY
ROGENE HILL, FINANCE DIRECTOR
SOVEIDA ROBINSON, HUMAN RESOURCE DIRECTOR
DONNA J. BOHALL, DEPUTY CLERK**

Chairman Steven Stienmetz called the meeting to order.

Let the record reflect the presence of a quorum of five Commissioners.

Dean Bullock led the Pledge of Allegiance.

APPROVAL OF AGENDA NOTICE

The Notice of Posting was reviewed and found to be in order. Commissioner Garner moved to approve the Agenda Notice, as posted. Seconded by Commissioner Bullock, the motion was voted and carried unanimously. Approved.

PUBLIC COMMENT

There was no one present for public comment.

DISTRICT ATTORNEY

- 1) **Discuss & Approve/Disapprove Resolution Requesting Assistance Of Attorney General In Prosecution Of County Employee; & Other Matters Properly Related Thereto:** Let the record reflect the presence of Austin, via telephone conference; Treasurer Grace Powrie; Assessor Lura Duvall; Recorder Idonna Trevino; Attorney Hy T. Forgeron; and Elizabeth Barela, Lander County employee, for this discussion. District Attorney Angie Elquist provided the following update to the Board:

"I'm presenting a resolution today for approval due to a conflict of interest I'd have in prosecuting this case because it involves a county employee. This is a formality. The Attorney General's Office needs you to approve this and then they'll take the case and prosecute it from there."

Commissioner Williams made the following comment for the record:

"I have a problem with the way this is agendized. I don't have a copy of the resolution with me, but when you read the statutes it explains how this process goes forward. The problem I have is there's reference to a county employee and this was put out in the public. A lot of people didn't know the background on this, including myself as a commissioner. The purpose of this is to forward a process to the Attorney General's Office. The background information I had yesterday is that there hasn't been any charges filed. Something doesn't seem right with me."

Mr. Forgeron noted the following for the record:

"I'm an attorney in private practice in Battle Mountain. My client is Elizabeth Barela. Elizabeth is currently an employee of the Lander County District Attorney's Office. She's on administrative leave with pay pending resolution of certain allegations that have been made against her.

I'd like to start by telling you that I really don't want to be here today. When I retired from 35 years of service in public life, the last thing on my mind was that two days after I retired and left office I'd be representing my former office manager and friend against felony criminal charges. None of us should be here today. Perhaps I can ease your mind a little by telling you that none of this has anything whatsoever to do with Lander County. There's no allegation that Elizabeth took any money, used any county property improperly, or did anything within the circumstances of her job or within the District Attorney's Office that gave rise to these allegations. Having said that, there are two issues I'd like to address with you. Although Ms. Elquist categorizes this as a formality, it's far more than a formality. You have to say yes or no. This is not a rubber stamp. Merely because it's requested doesn't mean it should be granted. I would indicate to you, and I will touch on this a little later, that if you say yes it's going to cost you money.

As Commissioner Williams indicated, there's no criminal charge pending. This matter was presented to the Sixth Judicial District Judge, Richard Wagner, who reviewed it and issued an order discharging Elizabeth the same day he heard it - two days ago. There is no criminal case pending and, therefore, no need for the involvement of the Attorney General at this time. That's not the crux of the issue, however. There are facts and circumstances surrounding this matter that we feel is important for you to know. You have to know the facts before you can decide which way to vote.

This involves a long-term county employee. Elizabeth has faithfully served Lander County for more than 12 years. It's important she receive the same consideration we'd give any Lander County employee. About three and a half years ago, Elizabeth and her husband Brandon were scheduled to go on vacation with the children. Shortly before that vacation started, Brandon was given the opportunity to work overtime. He chose to work the overtime and told Liz and the kids to go on without him. They went to Idaho and her intention was to look at vehicles. She found a Tahoe she liked. She talked to the dealership. She called her husband and told him what she was doing. She was looking to make a deal on this particular vehicle but the dealership needed his signature too. Brandon told her to go ahead and do whatever it takes to get the vehicle. The dealership wanted a power of attorney with Brandon's signature. Elizabeth signed Brandon's signature to that power of attorney. You can see that had nothing to do with Lander County or her job here. While if that is in fact a technical forgery, and we don't grant that for one second, it's not a crime because there's no criminal intent. She had her husband's permission.

She bought the car; she brought it home. Brandon was thrilled. He drove the wheels off of it for two

years; showed it to everybody he knew and bragged about his new car. Then a couple of years later the marriage ended in divorce. Elizabeth got the car in the divorce and is making payments on it. She also got primary custody of the children; Brandon is required to pay child support. All of a sudden he discovers money is being taken out of his check for child support. He's one po'd Jose. The next day he marches into the Lander County Sheriff's Office and says she signed his name to a power of attorney. He apparently forgot about giving her permission and driving the vehicle that was bought not even using that power of attorney because it turns out the dealership didn't use it anyway. But, he's going to make trouble for his ex-wife because he can and she's messing with his money.

The Sheriff's Office, without getting in touch with the District Attorney, began an investigation and then decided they'd turn it over to NDI, a State agency. They conducted some kind of investigation which ended up with an investigator coming here and talking with Liz. She told him exactly what I've already told you. She makes no denials about that whatsoever. When I attempted to get information about this, I was told by the State to buzz off. You don't do that to the local prosecutor. Two days after the office was turned over to Ms. Elquist, a State detective shows up in the District Attorney's Office and has Elizabeth arrested, cuffed, stuffed, transported to the jail and booked on a charge of forgery relating to that power of attorney.

It's been the practice in this community, long before I was District Attorney, that a criminal complaint in a case like this is filed and the Justice of the Peace issues a summons. The person who's summoned shows up in court; if they don't, then you issue an arrest warrant. That's something we'd do for a laborer, a truck driver, the County Treasurer, or anybody who works for this County who was accused of an offense we thought was prosecutable. You don't go to their workplace, arrest them, handcuff them in front of their friends and co-employees and cart them off to jail for a victimless crime. But that's what happens when the State gets involved, not local prosecutors. If she were 100% guilty of criminal acts, that's not the way you handle these cases.

So, what happens then? There's no criminal complaint. There's no charge filed against her. There's simply a warrant of arrest this officer obtained without the authority of anyone within Lander County. To this date there's been no criminal complaint filed. This matter was presented to Judge Wagner a couple of weeks later as soon as it could be before him on a Writ of Habeas Corpus. He reviewed it and says there's no probable cause to hold this woman. There's no criminal charge here. There is no criminal case pending against Elizabeth Barela. There may be some documents on file in justice court - there is no criminal case pending against her. There's no reason to refer it to the Attorney General's Office. This is a civil dispute between two spouses. It has no business being in the criminal courts, but that's not my decision.

What's before you today is a formal request to pay the Attorney General's Office to come in and prosecute a case that doesn't exist. You don't have to do that. There are alternatives in this case. One alternative is outlined in a letter I gave the District Attorney yesterday in which to resolve this whole matter Elizabeth has offered to resign her position and waive her right to sue Deputy Campbell, Sheriff Unger and Lander County for the illegal arrest and detention that is detailed in Judge Wagner's order. Done - walk away. Nobody does anything to anybody and you don't lose a penny. It doesn't cost you a thing. Why should it? You guys didn't do anything wrong. The State is the evil doer here and it's the State that's seeking to be brought in to cover up the mess they've made. That's what it really boils down to. Lander County didn't do anything wrong except what the State told them to do. But that doesn't mean you can't get your tush sued off for it. She's willing to put it behind her. She gave you 12 years of good, faithful service and she's willing to walk away on that basis because she's not mad at you.

If you spoke to sixteen prosecutors in this State, you'd find that the first thing they do is call their next door neighbor. That's our second alternative and we've offered that to the District Attorney's Office. Call Mark Torvinen in Elko County. Here's a long-time prosecutor from a neighboring county who knows what these cases are worth and whether to prosecute them or not. Let him make the decision. You're out of it; your conflict goes away and we'll negotiate with him. If he wants to take us to trial, that's fine. Why should you pay the State agency that represents the State agency that created this big, stinking mess to try to get themselves out of this. You shouldn't. Don't waste Lander County's money on this. There's no time crunch

here. If you don't authorize this today, people don't just disappear in a cloud of smoke. The DA can still refer it to another District Attorney. She has a number of options. But wasting Lander County's money shouldn't be one of them. You have the right to make that decision. That's why we're here today."

Ms. Elquist responded to Mr. Forgeron's comments, as follows:

"The merits of the legal issues regarding the arrest and all of that are not at issue today. Those issues are for the court to decide. The issue today is that as the prosecutor for the County, I cannot prosecute this case. I cannot make deals because I have a conflict of interest - a clear conflict of interest under the law. That's what's here today. Because I cannot prosecute the case, I feel the resolution and the Attorney General's Office taking this case is the best course of action right now. I spoke with the Attorney General's Office - they said they're ready to file charges as soon as this gets approved. I believe it's the best route to take right now. I actually called Mark Torvinen yesterday to ask him. He said there's no way he can take this case; he's swamped and has murder cases. He won't be able to look at this case for six months to a year. The longer we put this out it is costing the County money. Any charges the Attorney General's Office will charge to the County is only for travel; they don't charge attorney's fees. The cost, in the long run, could be more if we don't approve this today."

There was general discussion regarding the pros and cons of requesting the Attorney General's assistance in this matter. Commissioner Mason asked Ms. Elquist what other options were available to her if the Board denied her request. Ms. Elquist noted the following for the record:

"This is an option - the Attorney General can take it. I can call all the other district attorneys and ask each one if they can or can't. If they all say no, I'm going to have to go before the court. Because of the conflict they'll appoint an attorney. We'll then be paying attorney's fees and costs."

Mr. Forgeron made the following comment for the record:

"There are three alternatives that the Commission has. If a motion is not made and seconded to approve the resolution, it simply dies. If a motion is made and seconded and the vote doesn't approve it, it dies and simply goes nowhere. The third is a motion made, seconded and approved. When Ms. Elquist tells us that the Attorney General's Office is hot to trot in this, yeah they are because they know NDI, who they represent, screwed up. They made an illegal arrest. They're going to do everything they can to cover the State's butt, irrespective of what the equities in this situation are. That's why I kept telling you that when you get a State agency involved in this, be careful what you ask for because they do not have the local community or individual's welfare at heart. They're not supervised out of here and won't be beholding to anybody in this county."

Commissioner Mason stated his opposition to Lander County becoming involved in this issue. Commissioner Garner made the following comment for the record:

"This isn't our case. My problem is that we need to back up our DA 100% because that's what we're here to do."

Ms. Elquist presented testimony regarding the various options available to her should the Board disapprove today's request. Mr. Barnes noted the following for the record:

"Our recommendation is to go with the AG's Office because they're prepared to go forward and it would be cheap for the County."

Commissioner Williams extended his deepest apologies to Ms. Barela for the grave injustice done to her. Commissioner Williams moved that the Lander County Commission disapprove the request for joint resolution to the Attorney General's Office in this matter. Seconded by Commissioner Mason, the motion was voted and carried unanimously. **Disapproved.**

ADJOURNMENT

There being no further business before the Board at this time, Commissioner Bullock moved to adjourn the meeting of January 20, 2011. Seconded by Commissioner Garner, the motion was voted and carried unanimously. **Meeting Adjourned.**

**CHAIRMAN OF THE BOARD OF LANDER
COUNTY COMMISSIONERS AND THE
LANDER COUNTY LIQUOR BOARD**

ATTEST:

LANDER COUNTY CLERK

Note: The Board of Lander County Commissioners serves as the Town Board for the unincorporated towns of Battle Mountain and Austin, Nevada.