

Closed Session from Regular Meeting – August 2, 2004

At 5:40 p.m. the Board adjourned to closed session to (1) 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.” and (2) consider the qualifications, competence, performance, or condition of appointment of a public officer or employee or prospective public officer or employee, pursuant to N.C.G.S. 143-318.11(a)(6). Commissioners Holmes, Davis, Mason, Kemp, and Frye were present. Also present were Frank Willis, County Manager; Aimee Scotton, County Attorney; Alice Dawson, Clerk to the Board; Cheryl Ivey, Deputy Clerk to the Board; Litchard Hurley, Sheriff; and Rodney Johnson, Alcohol and Law Enforcement (ALE) Agent; and Attorney Randy Reavis of Nexsen Pruet Adams Kleemeier.

Randy Reavis told the Board that at the injunction hearing, the judge granted the motion for a preliminary injunction against the defendants and found evidence of illegal cash payouts and illegal poker machines. Reavis said that technically the State of North Carolina is the plaintiff but that the County had to file the lawsuit. He said that he had met with Mr. Jernigan’s new attorneys, Jim Exum and Mike Barber, and had heard from Mr. Heath’s attorney, Joe Williams. He said that he surmised that the defendants would like to reach a settlement rather than go to court. He said that Jernigan’s attorneys had admitted their client’s guilt.

Mr. Reavis said that the County was in a fantastic position to prevail in this case. The County needs to decide if it wants to recover money obtained illegally only in Randolph County or to try to recover illegal money obtained in other counties as well. Of course, the money from the other counties would have to be given to those respective counties. Randolph County also needs to decide what to do about the illegal machines. Mr. Jernigan claims that at least some of the machines could be reprogrammed so that they would comply with legal requirements. So the County is faced with several issues—Should the County require that all of the machines be destroyed, or just those machines that cannot be reprogrammed, or just those machines that are directly linked by the evidence to illegal cash payoffs, or should the County come up with some other way to determine which machines should be destroyed and which, if any, should be allowed to stay?

Mr. Reavis said that Mr. Jernigan reported to the IRS that only \$4.6 million in profits had been received from these machines since 2001, although the County has proof that the actual money received was substantially more. Just using the figures that Mr. Jernigan reported to the IRS, Mr. Jernigan stands to forfeit about \$2.3-\$2.4 million to Randolph County alone since about half of the machines were operated in Randolph County.

Mr. Reavis said that the Board needs to decide how far the County “pushes” on behalf of the State. This lawsuit will set a precedent because when this case is settled it will be used as a tool in dealing with other vendors operating illegally. Mr. Reavis said that the consent judgment could be worded such that the recovered money would be only for Randolph County if the County so chooses and would therefore not preclude other counties from taking similar action against Mr. Jernigan in the future.

Sheriff Litchard Hurley said that currently video poker vendors who have been arrested for illegal operations have been fined in district court and then they immediately go back to their illegal operations because the fines are minimal compared to the huge profits the vendors are making off these machines. He said that he would like all of these machines banished from Randolph County forever. Perhaps the Commissioners could adopt an ordinance prohibiting the operation of these machines in Randolph County.

The Board directed Mr. Reavis to word the settlement offer such that all illegal machines would be forfeited and that all the money obtained illegally in Randolph County (which at the minimum would be \$2.3-\$2.4 million) be forfeited to Randolph County and that the defendants pay all law enforcement expenses and legal fees associated with this action.

At 6:40 p.m., the Board recessed this closed session until after the rezoning public hearing.

At 9:25 p.m., the Board resumed closed session.

The Board discussed the hiring of Carolyn Langley as the new Randolph County Cooperative Extension Director. Ms. Langley's resume was distributed.

Upon consensus, the Board agreed to offer the position to Carolyn Langley and directed the County Manager to notify Bob Edwards, Northwest District Extension Director, of this Board's decision.

Next, the Board discussed reappointing Alan Pugh as County Attorney. It was the consensus of the Board to appoint Mr. Pugh as County Attorney and to appoint Aimee Scotton as Associate County Attorney. Mr. Pugh shall attend all Commissioners meetings as well as all Planning Board meetings. The Board decided to pay Mr. Pugh a retainer of \$17,500 per year.

On motion of Mason, seconded by Frye, the Board voted unanimously at 9:45 p.m. to end the closed session and return to open session.

J. Harold Holmes

Darrell L. Frye

Phil Kemp

Robert B. Davis

Robert O. Mason

Cheryl Ivey, Deputy Clerk to the Board

Approved: September 7, 2004

Unsealed: June 6, 2005