

**SEPTEMBER 23, 2008 49TH DAY OF
THE JULY ADJOURN TERM**

The County Commission met in the Commission Office at 10:30 a.m. pursuant to adjourn with Chuck Pennel, Presiding and Danny Strahan, Eastern Commissioner present and the following proceedings were had and made a matter of record.

**GARY MORGAN
SNAPP SERVER**

Gary Morgan, IS Administrator and Recorder Dixon met with the Commission to continue the discussion regarding a failed server as previously discussed on Monday. Mr. Morgan presented the Commission with the costs for replacing the server with a HP at \$13,968.00. Mr. Morgan noted that the HP was by far a better quote.

Commissioner Strahan made a motion that due to the emergency situation with the amount of documents that could be lost and the time to replace that data, that the quote from HP for \$13,968.00 be approved. Commissioner Pennel seconded the motion. The motion passed by vote: Pennel (yes), Herschend (absent), Strahan (yes).

A discussion regarding placing a mirrored server to be located at the Underground ensued.

EMAIL REQUEST

Commissioner Pennel noted that he had received a request from an employee to send a group email advertising a CD for sale. Counselor Paulson commented that he had answered the same email and commented that the county has a policy for email and either it is enforced or not.

Mr. Morgan expressed his concern with the amount of band width the county will be paying for all of those "group" emails but how do you enforce it.

Commissioner Herschend entered the meeting at 10:42 a.m.

A suggestion of getting all the department heads and elected officials together to discuss the issue was briefly discussed.

**OUTSIDE COUNSEL
CLERK NEELEY – SALARY COMMISSION**

Clerk Neeley commented that until Auditor Findley came into her office and noted that there may be an alternative way to interpret the statutes it was her intension to certify the salaries of the incoming Commissioner at \$49,000.00. Commissioner Herschend stated that it was Commissioner's, there are two. Clerk Neeley added that

according to Auditor Findley counties are doing it different and if you Commissioners are alright with it, she would certify at \$49,000.00 and if the incoming has a problem with it then we will go out for a legal opinion. Commissioner Strahan stated that it is not fair, it's a salary commission issue, what your doing is putting it on our shoulders, and for us to think it's fair for us to have a raise, I don't think that is right Ms. Neeley. Clerk Neeley then commented that she felt the issue did need to go outside.

Counselor Paulson asked what the assessed evaluation was for the county to determine what the Commission's salary would be set at. Clerk Neeley noted that she thought it was at least \$51,000.00 but hadn't checked to see if it was \$53,000.00. Counselor Paulson asked if it was at least \$51,000.00 then why would you set it at \$49,000.00. Clerk Neeley noted that the Presiding Commissioner has to be \$2,000.00 more than the Associates. Counselor Paulson noted that it also says that they will be set at the same percentage and based on the assessed valuation. Counselor Paulson added that the first thing you have to do is look at all the statutes, if they are conflicting then you have to harmonize, if you can't then you have to take the latest over the oldest and the more specific over the more general. Clerk Neeley again stated that the county needed to go out for an opinion.

Commissioner Herschend stated that for that last few years there has been a discrepancy in the salary of the Associates versus the Presiding and the Clerk never brought up the issue that there was a problem. Commissioner Herschend further added that if they stand on the fact that the Presiding makes \$2,000.00 more than the Associates, then this county owes both Commissioner Strahan and myself some money. Clerk Neeley added that you also have to add in the fact that there is no midterm raises.

Commissioner Herschend stated that the Presiding was making more than \$2,000.00. Clerk Neeley pointed out that they were harmonizing the statutes. Counselor Paulson commented that not all the statutes were being harmonized.

Counselor Paulson added that quite frankly he didn't care if Clerk Neeley took the question to an outside Attorney but he didn't see how another Attorney wouldn't agree with the point of view that I just described. That you harmonize the statutes the best you can and that this Presiding shall receive \$2,000.00 more than an Associate is a problem when you have a change in the assessed valuation. As long as the change in assessed valuation is constant then it's real easy, but when the assessed valuation is not constant then it creates a problem and you have to harmonize the statutes. And salaries go up with other peoples salaries and when you don't change those you are changing the schedules and the percentages of increases and then violating other statutes. Commissioner Herschend added that you are then changing the decision of the salary commission to be at 100% of the schedule.

Counselor Paulson asked what the statute number was for the certification that the Clerk had to give. Clerk Neeley stated that she doesn't necessarily have one, that Auditor Findley said as the secretary of the Salary Commission, I have to certify the salaries. Counselor Paulson asked what Clerk Neeley thought her duties as secretary were. Clerk

Neeley stated that she was to report to the Auditor and the Chairperson the results of the Salary Commission meeting. Counselor Paulson commented that he still didn't understand, do you just report what happened or do you have to set the actual numbers. Clerk Neeley noted that Auditor Findley has stated I am to certify the actual salaries of the individuals.

Counselor Paulson asked if this was something that a special Salary Commission meeting would need to be called adding that he still didn't understand what it was that she was to certify. Clerk Neeley pointed out that by the argument that is going on here there are two different ways this should go. Commissioner Herschend noted that there was the Clerk's and then there was everyone else's and you are saying that you need a legal opinion. Clerk Neeley stated that she wouldn't certify it without a legal opinion. Commissioner Herschend added that she was not required to do that by statute. Clerk Neeley noted then that she was done, she was not going to have to worry about it and asked Counselor Paulson to confirm that she didn't have to certify.

Counselor Paulson again commented that he was asking under what statute did the Clerk have to certify, and you are telling me that there is no statute. Commissioner Strahan stated that he didn't want to discuss the issue but did have an opinion. Commissioner Herschend noted that for eight years the assessed value has gone up and he hadn't had a raise, we are working for the salary, but he didn't think that this was right. And now here we are going to handicap Commissioner Strahan and the new Associate to not get 100% of the table as the Salary Commission voted. Counselor Paulson read aloud the statutes. Commissioner Strahan noted that the interpretation of the statute is that the Presiding makes \$2,000 more than the Associates no matter what the Associates salaries are at.

Counselor Paulson noted that the only problem is that you can't give mid term raises. Commissioner Pennel pointed out that over and over we have picked out the statute where the Presiding Commissioner makes \$2,000.00, but what hasn't been mentioned is that the Presiding is to make the same as other elected officials like the Auditor, the Clerk and the Recorder. Commissioner Pennel asked why don't we call a special meeting of the Salary Commission, keeping Commissioner Strahan out of it since it affects him, and look at the issue. Commissioner Pennel pointed out that we all know that the Associates put in just as much work as the Presiding or the Clerk.

Counselor Paulson read statute 50.333.8 "The report of compensation shall be certified to the clerk of the county commission for the county and shall be in substantially the following form: The salary commission for Taney County hereby certifies that it has met pursuant to law to establish compensation for county officers to be paid to such officers during the next term of office for the officers affected. The salary commission reports that there shall be (no increase in compensation) (an increase of ___ percent) (a decrease of ___ percent) (county officer's salaries set at ___ percent of the maximum allowable compensation). Salaries shall be adjusted each year on the official's year of incumbency for any change in the last completed assessment that would affect the maximum allowable compensation for that office."

Clerk Neeley commented that 50.343.1 states the Presiding Commission shall be compensated the same as the Recorder, Clerk, Auditor, Collector, Treasurer, Assessor and salaried Public Administrator and what I currently believe our assessed valuation would put him at \$53,000 but it is not at his term of office so he has to stay at \$51,000. And then you have subsection 2 that states the Presiding Commissioner shall receive a salary of \$2,000 more than the salary received by the Associate Commissioners. So it's the same statute that says the Presiding shall make the same as the Clerk also says that the Presiding has to make \$2,000 more than the Associates.

Counselor Paulson asked what the statutes state the Associate's make. Clerk Neeley commented that they are not on the schedule. Counselor Paulson added that if they are not on the schedule, and the Presiding is to receive the same as the other officials and the Associates are to make \$2,000 less, then it would beg the question. Commissioner Strahan commented that it might as well say \$4,000 difference because you are never going to match. Clerk Neeley pointed out unless the assessed valuation stayed the same then it would catch up.

Counselor Paulson noted that what they are doing by statute is setting the Associate Commissioners \$2,000 less than what is scheduled to set others at. Auditor Findley commented then you are going to have to look at whether those that will take office. Counselor Paulson commented that the Presiding would go up to \$53,000 but he is not eligible to take it, which means that those coming in would be at \$51,000 which is a possible interpretation.

Commissioner Pennel asked Counselor Paulson to write an opinion and that that is what we hang our hat on and not spend any money on it, and we will be done with it. Clerk Neeley further asked that it be determined if she was responsible, because if she is not responsible she is done.

Commissioner Herschend added that when we jumped from a third class to a first class we were at \$27,000.

Commissioner Herschend made a motion to adjourn for lunch. Commissioner Strahan seconded the motion. The motion passed by vote: Pennel (yes), Herschend (yes), Strahan (yes).