

Floyd County Board of Supervisors Meeting  
June 8, 2021, 1:00 PM

UNAPPROVED MINUTES

The Floyd County Board of Supervisors met at Floyd County Courthouse Assembly Room with the following in attendance: Supv Linda Tjaden, Supv Doug Kamm and Supv Roy Schwickerath.

Kamm/Schwickerath moved to approve the agenda as presented. Motion carried 3-0.

Public comment: Scott Heinz commented that he would like to congratulate Gloria on being wrong saying that the coalition did not do any good because they found weakness at State which may not mean much to her but it does to the coalition and he would like to know if the supervisor's consider their job as a full time or part time position as most parttime people do not get fulltime benefits and if you work fulltime, most people have to work 8 to 4 or 5 per day. Lorraine Winterink asked 1) how much a special election would cost the county; 2) what is the cost if you are to broaden the number of supervisors; would the three salaries be divided by five or would there be extra cost for two more salaries, benefits, and mileage as it would seem to add more expense to the county; 3) hopefully if there are openings on county boards those would be filled up. Gordon Boge commented that several people have complained about not hearing what is going on with the system to call in for meetings.

Schwickerath/Kamm moved to approve the May 24 and 25, 2021 meeting minutes. Motion carried 3-0.

Kamm/Schwickerath moved to approve the claims presented: County #2792-2902 and Secondary Roads #21527-21556. Motion carried 3-0.

Supv Tjaden presented the agenda item regarding the Petition for Special Election for electing supervisor plan and direction if any to the Commissioner of Elections. Tjaden's comments included that the Coalition for Better County Government worked to develop the petition to hold a special election in August 2021 for the purpose of submitting to the voters a choice of supervisor representation plan based on Iowa Code 331.207; the options defined within this plan are not relevant to this agenda item but rather the relevance of the petition itself as to whether the petition is valid to be approved or rejected; the petition needed 809 signatures, 10% of the voters from the last election; regardless with what the election is about, Floyd County has had other special elections and each followed specific requirements in order to be certified and filed and worked with the auditor's office to make sure the requirements were met; Tjaden feels strongly that those who are creating petitions and obtaining signatures owe the citizens assurances that they have met those requirements. Tjaden asked for comments Auditor Carr.

Carr read a statement regarding the June 1 event when the petition was presented and her conversation with the Iowa Secretary of State's staff regarding three issues: 1) the standards for petition signatures should be the same for all elections; 2) advised to mark each page that did not have petition language; and 3) the decision to count or not count pages without the petition language was up to the board of supervisors. An e-mail to Mr. Byrne, attorney for the coalition clearly stated that if only pages with header information counted, 652 of 809 required signatures were received. On June 2, the SOS staff deferred to the county attorney as to whether the auditor or board are the final authority to accept petitions and whether or not the pages with no petition language should be counted; whatever the county decides to do would have no bearing to the SOS and they would not conclude a position to the county's decision as right or wrong. With respect to who accepts the petitions as final, Iowa Code 331.207(1), 331.207(2), and 331.306(2) were referenced; from what was provided by the SOS and unless other guidance is provided by the county attorney, Carr suggested that the filing with the commissioner is in respect to a due date of June 1 only and the ultimate acceptance is determined by the board. With respect to signatures on pages with no petition language, Iowa Code 331.306(1) and (3) and 45.5(1) and (2)(a) were referenced; Carr commented that she was very clear with Mr Boge, Mr Andrews and Mr Byrne that they could have the petitions back, gather additional signatures on the petition language pages and return by 4:30 p.m. to guarantee signatures but they chose to leave the papers with the final acceptance decision being that of the board. Carr mentioned the 472 signatures would be rejected for any other election purposes but the board may choose to defer to the county attorney's office for advise on whether the petition is acceptable under County Home Rule.

Randy Tilton, Assistant County Attorney, responded that the Iowa Code sections are far from clear. Iowa Code 331.207 is clear on supervisor district plans with one requirement that the petition must be signed by the required number of eligible electors and then refers to 331.306 where the 10% of the votes cast from the preceding general election in regard to the petition body. There is a reference in 331.207 that the petition is filed with the commissioner of elections by June 1 in an odd numbered year. Iowa Code 331.306 references any petition filed

under 331, not for just a special election. The real question would be whether Iowa Code 45.5 would apply to this special election; this code refers to nomination papers, includes other requirements, general provisions in that a signature would not be counted unless on the same page, information required, and more.

Tilton presented a case of *Berent v. City of Iowa City*, involving a petition regarding amendments to the city's charter which was objected to by the city; the Iowa Supreme Court ruled the only requirements for the petition were the eligible elector's signatures, residence and date and the city could not add any additional requirements. In this case, the city argued that the petition was not valid because it bypassed the structure set up in regard to objections to the petition, unlike our situation regarding the petition language not being included on each page. Iowa Code 45.5 was enacted in 2002 and the *Berent* case was decided in 2007.

Tilton also presented an Iowa County Attorney General's opinion for Black Hawk County in regard to a petition that had signatures dated prior to the preceding general election, whereby the number of required signatures is determined, would be eligible to count as the signors may no longer be interested in that issue. The opinion read that the petition requirements are the eligible elector's signature, residence, and date and that a specified window of time could not be added as a requirement to determine eligible signatures.

Tilton commented these two cases are different but the requirements for the petition to include a signature, residence, and date are the same. Tilton's position is that it is the board's decision to accept or reject the petition and stressed that the board could not reject the merit of the petition, such as not thinking the plan is a good idea, but that it is a valid petition. The only thing he has heard that would make it potentially not a valid petition is that the required number of signatures are not contained on the signature page which the statement of the issue going up for election is included.

Public comments include: Dennis Shollenbarger questioned what the board is afraid of and if the board is afraid that neighbors aren't going to vote for them. Scott Heinz commented that it was stated that voters may or may not understand what they were voting on in comparison to people being misled like being misled on the cost of the project to not to exceed \$13.5 million. Doug Lindaman commented that Iowa Code 45 talks about petitions to nominate people and Iowa Code 331 talks about petitions to change government, apples and oranges, and when the legislature includes language in one place and excludes it in another, it intends a different result, meaning under 331, the legislature intended it to be a looser framework to get these issues voted on and thinks the form should include the heading but the law does not require it. Gordy Boge commented that 1,228 people, 12%, who votes yes out of 10,198 registered voters who passed the law enforcement center special election on May 1, 2018 in comparison to 1,100 people who signed this petition feel they do not have adequate representation and Plan 3 would be a better representation of citizens of the whole county and questioned how the board could deny this when the county has spent more than \$13.5 million that was on the ballot. Boge continued that the people who signed the petition and those who presented it deserve equal respect and to have law enforcement called shows the level of disrespect this organization has seen and encountered during this whole process; the supervisors need to do the right thing by accepting this petition and it needs to be followed through.

Tjaden asked Carr to respond to Winterink's question of the cost of the election; Carr responded that the last special election cost was over \$9,000. Tjaden started to address the cost of three versus five supervisors; Boge interrupted that this issue is not to go to five supervisors. Schwickerath commented to Boge about not interrupting; Tjaden informed attendees that the public is allowed to speak based on the chair allow conversation and wants to make sure information is pertinent. Tjaden has heard from some people that they were not told what the issue was about. Kamm said he had three people tell him that someone drove up in a white pickup, had a white piece of paper with no information on it, were asked to sign it, the person wouldn't take no for an answer, and drove off in a huff; attendees asked who the people were which Kamm would not provide names.

Brandi Schmidt, Deputy Assessor, expressed her experience that when the petition regarding the budget came around, the office received multiple calls and comments because the assessment notices went out around the same time and a large group of people thought the petition they were signing was in regard to their property value; she has concerns that people who signed the petition are not aware completely of what they were signing. Shollenbarger commented that obviously we didn't know what we were voting for when we voted for the jail either. Yvonne Kisch has asked several people if they were aware that the ballot question was in regard to debt, not cost of the project; whether or not it was intentionally misled, the public did not understand it was for debt. Tjaden commented regarding filing requirements as a board candidate, if the information is not at the top of the form, the signatures on that page would be rejected. Shollenbarger commented that out of common courtesy they should have been told that; Tjaden commented that if they would have worked with the auditor/commissioner of

elections, they would have known that, the same as how it was worked with the hospital petition. Scott Heinz said this could have been avoided if the board would have put this on the ballot themselves instead of weaseling their way out of this; Schwickerath commented if the meeting Heinz is referring to was in August 2020 in the courtroom, the question was to put five supervisors on the ballot, not to district the county and supervisor districts is not a choice of the county but rather has to be done by petition.

Schwickerath asked Tilton if the petition was turned down if the county attorney's office is prepared to support whatever the board does. Tilton said he could support the decision but cannot make the commitment to represent it in litigation since he is not the county attorney and does not know how much additional workload it would involve. Tilton is not going to give his opinion as to what you should do but did give an opinion that he will take it either way; if the board would accept the petition and call for a special election, he does not see much likelihood that decision would be contested but if the board rejects the petition, there is a very good likelihood that legal action would be filed and although there is not case law or legal support on the issue, what was provided is in favor of accepting signatures.

Schwickerath commented that he makes decisions on what is correct and legal and has never made a decision of whether or not someone is going to vote for him; in looking at a page that has ten signatures and to say they knew what they were signing may have been explained well or it may have been handed through the window of a pickup and said sign this, is really difficult to know. Supv Kamm explained that he represents everyone in the county, not by a district, and there are people outside of the group who have opinions and has heard of bullying and intimidation by the coalition which is being done today and if you don't show respect, that's why you call law enforcement; Boge said he didn't disrespect anyone. Kamm also commented that they hear of a lot of supervisor situations and he does think about the money for the cost of the election and supervisors; Boge commented asked if anyone in the room wanted five supervisors and stated they only want three zones. Tjaden commented that this is not about the topic of the special election but rather the principle of whether or not the petition was done legally and done in a way that meets the validity of signatures.

Schwickerath/Kamm moved to deny the petition based on the fact that there are not enough signatures on pages that specifically said what the petition was for. Motion carried 3-0. Boge commented that a \$9,000 election is going to be cheaper than what it will cost to go to court; Tjaden commented that the board does not need threats. Boge denied threatening anyone; Tjaden commented we are here to do our job and that this would not have happened if they would have come to the county auditor and they would have been happy to have accepted the petitions but this is about the validity of the signatures. Doug Lindaman questioned that the validity of signatures was not that someone put someone else's name down but thinks the board is saying whether the party knew what they were signing because it wasn't on the face of the page and that they were somehow misled; Schwickerath reiterated that there were not the required number of signatures on the page that stated what the petition was for.

Law Enforcement Center (LEC)/Courthouse Project: Supv Tjaden mentioned that more information is needed before acting on PCO #73 Emergency Power at Inmate Elevator, Change Order #22 with Dean Snyder to add \$2,775 for Door G188B Lintel as there will be a deduct change order with Sweeper's at a later date for the board to do both at the same time, security grills, and bunk bed ladders. Schwickerath/Kamm moved to approve PCO #75 for Unit Heater in Mechanical Penthouse with a credit of \$271.37. Motion carried 3-0. Kamm/Schwickerath moved to approve the commissioning of the HVAC and lighting control systems for \$16,355 by Denovo Construction Solutions. Motion carried 3-0. Kamm/Schwickerath moved to approve Pay Ap #19 in the amount of \$564,050.56. Motion carried 3-0.

Schwickerath/Kamm moved to approve the First Amendment and Restated 28E Agreement for County Social Services Region. Motion carried 3-0.

Kamm/Schwickerath moved to approve the Amendment to the Bylaws of the Floyd County 911 Joint Service Board, Appendix D. Motion carried 3-0.

Kamm/Schwickerath moved to approve a liquor license renewal for the Floyd County Fair. Motion carried 3-0.

Kamm/Schwickerath moved to reappoint Kalen Schlader and Cheryl Erb to another 4-year term to the Compensation Board with a term ending June 30, 2025, to appoint Jesse Frerichs to the Conservation Board for a 5-year term ending June 30, 2026, and to reappoint Maureen Ruane to another 3-year term on the Veteran Affairs Commission. Motion carried 3-0.

Kamm/Schwickerath moved to approve Rognes Bros Excavating, Inc, Contractor's Application for Payment for Drainage District #1 in the amount of \$32,850. Motion carried 3-0.

Schwickerath/Kamm moved to approve Res #26-21\*: Whereas Floyd County completes an inspection of all bridges and structures on the Secondary Road System of Floyd County; part of this inspection involves the recalculation of the safe load capacity of any structure showing remarkable deterioration of the structural components of that structure; that structural evaluation has resulted in the recommendation to reduce the safe load capacity that can be supported for certain structures; the Board as provided in Iowa Code 321.471, 321.472 and 321.473 to erect and/or maintain weight limit signs in advance of bridge #155311 located at S6-T96-R16 with multiple postings including 10T, 15T and 15T. Motion carried 3-0.

Schwickerath/Kamm moved to give the County Engineer the authority to hire an Administrative Assistant/Secretary position with a rate of pay starting at \$20.42/hour and a potential increase to \$21.81 pending a successful review and approval by the board. Motion carried 3-0.

Engineer's Report: Dusten Rolando, County Engineer, reported that contract rock has not started yet. Crews have been mowing, blading roads, and doing work orders. Rolando commented that he as received notice from a Secondary Roads employee who has provided notice of resignation; Rolando intends to fill the position. Heartland will be doing some asphalt patchwork, replacing concrete on roads.

Schwickerath/Kamm moved to adjourn. Motion carried 3-0.

*\*This is a summary of the resolution; full text of resolutions may be inspected during normal business hours in the Floyd County Auditor's office and at [www.floydcoia.org](http://www.floydcoia.org).*

ATTEST: \_\_\_\_\_  
Gloria A. Carr  
Floyd County Auditor

\_\_\_\_\_  
Linda Tjaden, Chair  
Floyd County Board of Supervisors