

**BOARD OF COUNTY COMMISSIONERS
MONTGOMERY COUNTY, KANSAS
OFFICIAL MINUTES**

June 24, 2009

The Board of County Commissioners, three members, County Counselor, Human Resources Director and the Deputy County Clerk present, met in special session for a Grievance Meeting at 9:00 AM.

CALL TO ORDER: Commissioner Fowler.

INVOCATION: Commissioner Brown.

PLEDGE OF ALLEGIANCE: Commissioner McManus

AGENDA APPROVAL:

ACTION: *A motion was made by Commissioner Brown to approve the agenda for the special meeting. The motion was seconded by Commissioner McManus.*

*ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes*

GRIEVANCE MEETING:

Those present representing Wilbur Schwatken III and speaking in support were: Attorney Terry Unruh, Larry Felts, Randy Haymaker, Marty Smith, and Jerry Hall. In addition, those present in support of Mr. Schwatken were: Richard Catron, Richard Wells, Adolph Wildgrube and Liz Schwatken. Letters of support were introduced from the following: Jerry Hall, Jack Wishall and reinstatement requests dated June 6, 2009 from Montgomery County Rural Fire District No. 1 firefighters totaling 59 signatures.

The Chairman recognized Mr. Schwatken and Mr. Schwatken deferred to his attorney, Mr. Terry Unruh.

Mr. Kritz stated this is the third step in the grievance procedure for Mr. Schwatken. He also stated he had spoken with Mr. Schwatken's attorney previously and it was decided to begin the grievance meeting as an open meeting.

Mr. Kritz said this meeting is for the purpose of those in support of Mr. Schwatken and the Board would not be making statements.

Commissioner Fowler said he "would work as far as we can in open session and when it becomes a personnel matter he would request going into Executive Session".

Mr. Unruh began by saying he wanted to thank the Board for allowing them to have this meeting here and for all those who came in support.

Commissioner Fowler asked Mr. Unruh to identify himself.

Mr. Unruh presented documents of statements of those who could not be at the meeting and told the Board there were also individuals present to speak at this meeting on his behalf. He said there were certain issues, and he would address those issues: Mr. Schwatken has a contract issue. They believe there should be a reason stated for the dismissal. They also feel the people with the knowledge, such as the fire board, should be able to appoint the director of their choosing. He addressed the power of the fire boards by state statute and these are the people who are the most important because they have had the contact with Mr. Schwatken and his work. He then called on Mr. Randy Haymaker, President of the Rural Fire Board to speak.

Mr. Haymaker said he had taken the position of Dearing Fire Chief soon after Mr. Schwatken had been appointed coordinator and he has done a good job and most of the fireboard supports him. He also stated you can't make everybody happy. He also feels the reason was "not good enough to terminate but should have been only a reprimand".

Mr. Unruh stated Mr. Schwatken needs to know the real reason for the termination. The situation has caused the firefighters and individuals to “shadow box” for months and only speculate reasons for the termination because no reason had come from this Board that he is aware of. This should not be the way it is done. The whole county grievance procedure is not set up this way. The firefighters and the general public in the rural areas support him and the work he has done. “I’m not hearing any issue addressed with Mr. Schwatken or attempt to resolve any issue.” According to county policy, he should know what the problem is so it can be addressed. The whole grievance procedure is set up to address the problem and try to solve it.

Mr. Unruh addressed the support for Mr. Schwatken not only by the people in supervisory roles and the boards evaluating him with the highest evaluation being this year but the “down the line” in the communities residents and the support for him and his job performance. He also addressed the personality issues by the example of “no one can make everyone happy” as personalities and circumstances vary as he has found out in his 34 years as an attorney.

Mr. Unruh said he wanted to give a complete picture of Wilbur both past and present and how past job performance was. He then read a letter from Jack Wishall, Coffeyville Refinery supervisor, and Mr. Schwatken’s supervisor at the refinery while employed there. He commended him on the job he had while an employee of the refinery, the position he held before becoming rural fire coordinator. Mr. Unruh said the letter is an example of Mr. Schwatken’s work ethics and ability and a long history of these qualities is demonstrated by the letter from Mr. Wishall.

Mr. Larry Felts stated he had been fire chief at Liberty for 30 plus years and was relieved when the last rural fire coordinator retired. The fireboard felt the best candidate was hired for the job and were glad when Wilbur was appointed and said he has done a fine job and he feels it was wrong to “let him go”. Since he was appointed things “turned around for the fire district” and good things started happening.

Mr. Unruh said the procedure back in 2004 to appoint the coordinator was through a committee with a recommendation for the best candidate for the job and Mr. Schwatken was selected as the best person through this procedure resulting in his appointment. He has been evaluated every year and answers to a lot of people. In spite of the procedure, it has been overlooked in the process. This is an important and fundamental process and to take the decision out of the hands of the people working with him and evaluating him is very frustrating.

Mr. Unruh told the Board Mr. Schwatken wished to make a statement at this time.

Mr. Schwatken: “It is very unfortunate that the injustice of my dismissal of April 20, 2009 has caused pain to this community. Upon the restoration of my position as Rural Fire Director, I would work for restoring working relationships to this county.”

Mr. Unruh: That is what this is about, lets remedy this. Wilbur is ready to do this with you all and everybody. It is the best thing for the fire district and what should be done.

Mr. Unruh stated from a legal point of view, Mr. Schwatken deserves a reason for the dismissal, identify issues or problems because he has a right to know and the grievance procedure specifically says it is to “identify problems, identify issues and deal with them in so many words”. Nothing has been identified and they have the right to know. “If you do not want to tell it to the community, I am not here representing the community, so it is however you want to handle it.” This was referring to an Executive Session.

Commissioner Fowler: “In answer, I can only go to Executive Session, and be glad to Mr. Schwatken’s, but you know my statement on this is ‘I have no comment’ on the decision and ensure that we go to anything that you are talking about here and only throughout this process. There is a lot of questions out there and I think that I would be safe in saying that what we was doing, what I was doing was simply renewing the contract that which I couldn’t vote yes for it and so that’s my fellow commissioners wait then to take that but the reason and I just go there for the public and the public wants to know and I just hope I’m not going out of bounds on but to say that it was just being here in this seat for 2 years and 3 months that I have been and being on the front page in the paper several times and former commission, we would go to the woodshed, we had asked to be brought into this seat, the director and had begged for cooperation and I had been to the director one-on-one and had asked for cooperation and so simply between our county offices, the commission and I’m talking for Tony Fowler now, this commissioner, and have that many discussions, in public and the last one was, why are we being called upon and asked about these problems. But it’s with the county and our cooperation with all offices, I just, I just simply have a problem with voting yes for the renewal of that and it was the Board, the question that comes out of the Board and is a political one and for what you bring up, how we vote against former commissions, and I hope I’m not criticizing their decisions, and I’m not, but it was a political and we had made announcements from here and former commissioners said we will never vote against our boards. But that was their statement, not mine and I’m not sure why this commissioner if I had to abide by past commissioners decisions at all times no matter what, especially when it comes to taking recommendations of our boards and we have numerous boards throughout the county and

it's not easy sometimes when we have that, but there was many problems presented here and so I just have my new direction upon cooperation and in our new direction there will be cooperation and other than that, that's my, that's what the public wants to hear and if it was a dismissal which in my mind I didn't have elusions or any pre-meetings or influence anybody, I did it from right here and had these two seats both voted yes then it would have just been a political thing that I had no sense to see was coming, I had no sense to see that, I did not sense that, that's why we act here at this board, so that's it, it's just about cooperation."

Mr. Unruh: "If I can respond by asking a couple questions, your comments for me anyway, maybe not the rest of the people, are pretty general and I'm not exactly sure what you are referring to. If I read between the lines, and you correct me if I'm wrong, what I interpret you're saying is that you disagree with the prior administration and your disagreement with the prior administration is affecting Mr. Schwatken's job."

Commissioner Fowler: "No, no, you misinterpreted that wrong ."

Mr. Unruh: "I guess I don't, I'm not hearing anything specific."

Commissioner Fowler: "The specific part of that was, that was, and I'm certainly not criticizing for their policy, they said it out loud and if the press wanted it they could take it, that they would not go against any, any board that they had in place on what they come back and recommend..."

Mr. Unruh: "And by referring to 'board' , you are referring to like fire and Board of Trustees?"

Commissioner Fowler: "Well, we have several boards."

Mr. Unruh: "By that I mean, that's, I'm just trying to follow, that's what the prior administration said, they wouldn't go against board recommendations and you're saying that's not your policy."

Commissioner Fowler: "No, no, I wouldn't....my policy would be to listen to each case as it comes here and work with that and then make a fair and impartial decision on what I'm elected for. I was elected and some of these that are in this room and some of these not in this room, such as former commissioners were not re-elected and the people spoke on that and that's when they do speak."

Mr. Unruh: "And you as a political figure have a different set of problems as all political figures have and issues, but the distinction I want to make is that Mr. Schwatken, in his job, wasn't a political appointment, wasn't in a serve at the pleasure job like the Board of Trustees, he was an employee and as an employee under the grievance procedure, my view is he has certain rights so I can understand what you are saying 'I've got a different political view' as far as issues, as far as how the administration operates and maybe with the people who serve at the pleasure of me and other commissioners, but I'm saying that it is crucial here from a people point of view, where this thing goes, wherever this thing goes, that we are not talking about a political appointment at the pleasure...."

Commissioner Fowler: "And I'm not, I'm just back grounding this, this commissioner's"

Mr. Unruh: "And another thing is I don't think we know or appreciate or understand the specifics of what you just said a little while ago about meetings being called or, are there minutes of those meetings that we can see on what we can do as far as what we are talking about specifically."

Commissioner Fowler: "I'm sure there is."

Mr. Unruh: "Can you get....."

Commissioner Fowler: "I mean you can take most of what I said to you and is where I get about as much without going back through and seeing exactly what was approved in the minutes off the front page of the paper and they got that from our meetings, so everything I've said has been said in the paper."

Mr. Unruh: "But is there criticism you have made, in this room, about or to Wilbur Schwatken about how he has performed his job? Did I misunderstand that? I guess that's what I understood you to say, you had him in here or you had a specific issue you tried to deal with, with him, did I misunderstand that?"

Commissioner Fowler: "No, it was about cooperation. But I don't recall now about some issues when the former chairman said, 'You boys behave or we'll take you to the woodshed', but and you know that wasn't my language, I wouldn't have used that language but it was because the problem was cooperation, I just don't recall."

Mr. Unruh: "So at some point you would say Wilbur Schwatken did not cooperate with the Board of Commissioners or with you."

Commissioner Fowler ahh.....

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Mr. Unruh: “See understand this is our frustration, I refer to it as shadow boxing, we don’t know, we look for and think we are entitled, it’s not just at the mercy here and we don’t know but it’s very frustrating and it’s also the kind of stuff that causes legal problems.”

Mr. Kritz: “Let me make a comment. You all are free to answer his questions, you are free not to answer his questions. I think one of the dilemmas you all are in is the discussion on personnel matters in open session. If you want to answer these particular questions in Executive Session, you are welcome to do so. With all due respect to Terry, I don’t think it is the purpose of this hearing to be an inquisition of the commissioners but it is to hear their position and let them present whatever they want to present. You are welcome to have the dialog but you are not required to have the dialog, it’s your choice.”

Mr. Unruh: “I understand that and I appreciate that. Our fundamental part of our presentation is just this, that you haven’t followed your procedure, you don’t have a reason and we are entitled to one and that is the basic part of the grievance. The other side of it, not trying to be negative or aggressive, it is the positive side of it and on the other side when we look at the evidence, when we look at the community, and when we look at the people who supervise him, we see good stuff so we’re frustrated. So if you want to give us more in Executive session or by letter or through counsel or something like that, we will take it. That’s where we are. That pretty well concludes what we have to say.”

Commissioner Fowler: “I have nothing other than this reason and it was before the public on cooperation and not to the whole determination of the whole Board on how that would be and that was just my take as commissioner and is why I acted as I have acted and I just, you know, that’s going to be on the front page of the paper. If there is anything else and if you want to ask for and Executive Session, Wilbur, I will be glad to make the motion and see if it gets seconded. Other than that, I have nothing else.”

Mr. Unruh: “Well, we’ll go through that motion and see where it goes. We request an Executive Session.”

The following motion was made to go into Executive Session:

ACTION: *A motion was made by Commissioner Fowler to recess to Executive Session at 9:40 AM to return at 10:10 AM not to exceed 30 minutes, with the Board, County Counselor Paul Krtiz, Wilbur Schwatken and Mr. Schwatken’s attorney, Terry Unruh to discuss non-elected personnel. Motion was seconded by Commissioner McManus.*

*ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes*

Returned to session at 10:10 AM with a motion by Commissioner Fowler to extend the present Executive Session for ten minutes to return at 10:20 AM. Motion was seconded by Commissioner Brown.

*ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes*

Returned to session at 10:20 AM stating no action taken and no decisions made.

Reporter Allen Smith asked Mr. Kritz how they could go into Executive Session for non-elected personnel when Mr. Schwatken was no longer an employee.

Mr. Kritz said it was his recommendation for the session and since Wilbur was asking for his position back, it is allowed.

Mr. Kritz recommended to the Chairman, that if anyone else had anything to say, it should be at this time, but if not, they would need one more executive session not to exceed 15 minutes for non-elected personnel. “Hopefully a decision will be rendered by your next meeting.”

Commissioner Fowler asked if there was any one else wanting to make comments.

Mr. Marty Smith: “My name is Marty Smith, Assistant Fire Chief at Dearing. Been with the fire department 34 years and I have been under Gene Tucker ever since he started and the two part-timers before that. You guys made your decision you wanted to go in a new direction. You’ve heard me say it and you’re probably tired of it but I’m going to say it again. Wilbur has been the best thing for Montgomery County. We have gone in a new direction. The last probably 10 years of Gene Tucker’s tenure, we were going downhill. You can smile, you can do what you want Tony, you can laugh at it, I don’t care, but you’re going to hear what I have to say again. We have been going in a new direction and a great direction; equipment updates, things that have been neglected have been getting fixed; people were starting to get along. You’re talking about people having their disagreements. When the other one was in his position over Montgomery County Rural Fire District No. 1, none of the departments got along, that includes Fire, Sheriff’s Department, Police Department, EMS. We have been going in the right direction not only as far as being able to work through floods, tornados and fires. This man is not afraid to put on bunker gear and

go into a house fire; we are not afraid to go in behind him. We will back him, he backs us up – he is there when he is called upon. I say this last few years Wilbur has been in there, like I've said before, you have your disagreements, so be it, the man was doing his job. Maybe not in your eyes, but you look at the other fire departments, which is our main cause, the fire departments, it was unanimous brought before you to be reinstated as our director of Montgomery County Rural Fire District No. 1 and you threw it out the window. You've got a great man who did a great job and had a great future. We still can if you guys will open your eyes. I wouldn't be in this department for 34 years if I didn't think something good could come out of it. I think it still can. I'm one of the oldest and Larry (Felts) is one of the oldest, there's not very many of us left and we've seen where it started, where we have been and where we are now. Think about it, 140 guys out there that made the request, there's three of you, how can you shoot it down? Three people sitting behind that desk and totally looking away from what the fire departments have brought to you. Let the man have his position, let him do his job. Just like everybody in the county comes to you with their problems, we might have a problem but we can work it out. Open your eyes, you've got a good leader, 7 departments, 140 guys, 40 plus pieces of apparatus, that's a lot for one man, and 7 chiefs but he gets it done. Think about it, that's all I'm asking, think deep, hard and open minded."

Mr. Jerry Hall: "Mr. Chairman, Jerry Hall, Sycamore Rural Fire Department and basically all I really want to say is I stand right behind all Marty said and I think Wilbur was doing his job. I think it would be the best for the county to rehire him. That's my opinion. I've not been in the department that long, I'm not one of the 30 year veterans in it. Happened to be in Sycamore one day when there was a fire, went with one guy, and was told I'm on for life. Glad to serve the people in our community doing it for volunteer basis when I can. I'll stand behind the fact that I think this man was doing his job. You know we are going to have personality issues no matter who we are. Maybe that's part of this problem. I think to put the man back in this position to do the job would be the best thing for Montgomery County."

Commissioner Fowler said, "This concludes this part of the Grievance Hearing in open session." A motion was made by Commissioner Fowler, seconded by Commissioner Brown to conclude the Grievance Hearing at 10:30 AM.

*ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes*

Recessed at 10:30 AM.
Returned at 10:35 AM.

Mr. Krtiz requested an Executive Session. The following action was taken:

ACTION: *A motion was made by Commissioner Fowler to recess to Executive Session at 10:35 AM to return at 10:50 AM not to exceed 15 minutes to discuss non-elected personnel with the Board, County Counselor Paul Kritz and Human Resources Director Shawn Wallis present. Motion was seconded by Commissioner Brown.*

*ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes*

Returned to session at 10:50 AM stating no action taken and no decisions made.

ADJOURNMENT: 10:50 AM

ACTION: *Motion by Commissioner Fowler seconded by Commissioner McManus.*
ROLL CALL VOTE – Commissioner Fowler - Yes
Commissioner Brown - Yes
Commissioner McManus – Yes

BOARD OF COUNTY COMMISSIONERS
MONTGOMERY COUNTY, KANSAS

TONY FOWLER, Chairman

FRED BROWN, Member

LARRY MCMANUS, Member

ATTEST:

County Clerk