

MINUTES
LINCOLN COUNTY BOARD OF COMMISSIONERS
WEDNESDAY, OCTOBER 14, 2009

The Lincoln County Board of County Commissioners met on October 14, 2009 at the Citizens Center, Board of Commissioners Room, 115 West Main Street, Lincolnton, North Carolina at 6:30 PM.

Commissioners Present:

Alex E. Patton, Chairman
Bruce Carlton, Vice Chair
George Arena
James A. Klein
Carrol Mitchem

Call to Order: Chairman Patton called the October 14, 2009 meeting of the Lincoln County Board of Commissioners to order.

Invocation: Commissioner Carlton gave the Invocation and led in the Pledge of Allegiance.

Adoption of Agenda: Chairman Patton presented the agenda for the Board's approval.

UPON MOTION by Commissioner Mitchem, the Board voted unanimously to adopt the agenda.

AGENDA

LINCOLN COUNTY BOARD OF COMMISSIONERS

OCTOBER 14, 2009

Special Called Meeting

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| | 6:30 PM | Call to Order |
| | | Invocation - Commissioner Bruce Carlton |
| | | Pledge of Allegiance |
| 1. | 6:32 PM | Adoption of Agenda |
| 2. | 6:33 PM | Motion to authorize the County Attorney to begin legal proceedings for the suspension and removal from office of Sheriff Tim Daugherty, pursuant to Article 2 of Chapter 128 of the NC General Statutes |

Adjourn

Motion to authorize the County Attorney to begin legal proceedings for the suspension and removal from office of Sheriff Tim Daugherty, pursuant to Article 2 of Chapter 128 of the NC General Statutes: Jeff Taylor presented the following information to the Board:

PROCESS FOR SUSPENSION AND REMOVAL OF SHERIFF
SUMMARY

Step 1: Prepare petition setting forth legal grounds for suspension and removal. Prepare affidavits to support the allegations in the petition. Affidavits would be from witnesses who would be called to testify to the allegations.

With respect to the pending criminal charges, details will be in DA's files.

Grounds (for example):

"Willful or habitual neglect or refusal to perform the duties of his office"

[G.S. 128-16(1)]

"Willful misconduct or maladministration in office"

[G.S. 128-16(2)]

There is very little case precedent interpreting these terms, and they are obviously very subjective.

Step 2: File petition with the Clerk of Superior Court.

Step 3: Present petition and supporting affidavits to Superior Court judge to request **suspension** from office pending full hearing on the petition.

--can be either a judge "resident in" the district (Bridges or Morgan), or

--a judge "holding the courts of the district" (Superior Court judges rotate from county to county).

Judge can either suspend pending hearing or not.

--If he suspends, Sheriff is still technically sheriff, but chief deputy carries out Sheriff's responsibilities. Judge would

set a date for hearing on the removal issue. Takes priority over all other matters on the calendar and would NOT have to wait until criminal trial is over.

--If he does NOT suspend, Sheriff continues in office until hearing.

Step 4: Hearing on **removal**.

Is a non-jury trial before the Superior Court judge.

Would need to call witnesses, present evidence, etc.

Sheriff has right to cross-examine, present own evidence, etc.

Step 5: Decision by Superior Court judge: remove or not?

--remove: permanent. If removed, outcome of criminal trial would not matter to status as sheriff, because removal is permanent.

--if not: probably would have to wait until criminal trial is over to see if "conviction of a felony" [G.S. 128-16(5)] occurs. Felony conviction is specific ground for removal (not subjective like other grounds).

Step 6: (If Sheriff removed after hearing) Selection of new Sheriff

Per G.S. 162-5.1, Democratic Party Executive Committee would have 30 days from "date vacancy occurs" to nominate a replacement; commissioners "shall elect the person recommended by the county executive committee."

If 30 days pass without nomination from Democratic Executive Committee, BOC could make its own choice.

Commissioner Mitchem asked if the Board will instruct the Attorney to present to a judge for suspension or removal from office and it will be a Judge's decision whether he is removed or suspended. Mr. Taylor stated that this is correct. He said this is a process that has different stages.

Commissioner Mitchem how long it would take to prepare and file the paperwork. Mr. Taylor stated that he would need to see the District Attorney's file and would estimate a week to 10 days would be a reasonable length of time to aim to get the petition filed. He said this can be amended after it's filed if necessary.

A MOTION by Commissioner Carlton to authorize the County Attorney to begin legal proceedings for the suspension and removal from office of Sheriff Tim Daugherty, pursuant to Article 2 of Chapter 128 of the NC General Statutes and to authorize the County Manager and County Attorney to seek outside counsel if necessary.

VOTE: Unanimously approved.

Commissioner Klein read the following statement:

The case of Chief Deputy Barry Taylor having been adjudicated, Lincoln County now faces the daunting reality of indictments handed down this week concerning its sheriff. Indeed, this state of affairs casts a pall over the county, its citizens and its law enforcement community in particular. Those who have followed the news accounts from afar can, rightly or wrongly, surmise that chaos reigns and our county's reputation tarnished for years to come. I would respectfully ask you to step back, catch your breath and view the controversy in its totality. Lincoln County will learn the painful lessons and emerge strong, vibrant and more closely knit due in large measure to the professionalism of its local media and law enforcement community.

The media has covered the continuing story with professionalism and acumen. It (media) has done so despite the refusal by the sheriff to meet with you to answer the

litany of questions that remain unanswered today. Editors' Ken Fortenberry, News @ Norman, and Frank Taylor, Lincoln Times News, could have succumbed to the emotions in this case but chose not to; could have thrown our law enforcement community under the bus but did not; or, could have chastised the electorate for having made the fateful choice to place Mr. Daugherty in office but resisted. The citizens of Lincoln County and this Board of Commissioners genuinely appreciate your tact in this regard.

Clearly the most scrutinized, most anguished and most pained organization is, - through no fault of its own – law enforcement. Despite the cameras, the print media and the shameful blogs, you have executed your responsibilities with the unwavering sense of duty we citizens have come to expect and admire of you. To the officers, administrators and staff of our proud sheriff's department, please know we respect what you do, admire you for it and support your resolve to protect the citizens of Lincoln County.

Adjourn: UPON MOTION by Commissioner Carlton, the Board voted unanimously to adjourn.

Amy S. Atkins, Clerk
Board of Commissioners

Alex Patton, Chairman
Board of Commissioners