

Courthouse
Emmetsburg, Iowa
January 30, 2024, 8:00 a.m.

The Palo Alto County Board of Supervisors met in regular session. Members present: Craig Merrill, Chair; Roger Faulstick, Linus Solberg, Keith Wirtz, Ronald Graettinger. Present: Diane Weiland, Reporter/Democrat; Peter Hart, County Attorney; Delray Bredehoeft, Jim & Sharon Neighbors, Ed & Sue Kelly, Amy Zenor.

Unless otherwise indicated, all of the motions offered at this meeting were carried with the following vote: Ayes: Graettinger, Wirtz, Solberg, Faulstick, Merrill. Nays: None. Abstentions: None.

Craig Merrill, Chair, called the meeting to order and led the Pledge of Allegiance.

Motion by Wirtz, 2nd by Graettinger to approve the agenda for January 30, 2024. Motion Carried.

Motion by Graettinger, 2nd by Solberg to approve the minutes for January 23, 2024. Motion Carried.

Motion by Faulstick, 2nd by Wirtz to approve the septic grant completion for Paul Merideth for \$5,000. Motion Carried.

Carmen Moser, Auditor, reviewed the proposed budget and fund balance worksheet.

Motion by Graettinger, 2nd by Wirtz to set the date for the proposed tax hearing for April 2nd, 2024, at 1pm and proposed budget hearing for April 23rd, 2024, at 9 a.m. in the Courthouse Boardroom. Motion Carried.

Delray Bredehoeft was present for public comment & asked about updates on wind farm. Jim Neighbors had questions on met towers.

Ed Kelly was present for public comment. Ed Kelly filed a "legal provisions concerning county attorney appointment" document to be part of the record. For the record:

- 1) The Board of Supervisors Legal Notice is legally binding on the Board of Supervisors under law for details in notice and no election may be petitioned for after 1st notice advising of SET DEADLINE DATES - Jan 20th and Feb 1st. if an eligible candidate applies. Equitable Estoppel and provisions of Iowa Code §§ 69.14A, 2. a. (1) & (2) and § 2. b.
- 2) Iowa Code § 69.14A b. 3 **only allows** The Board of Supervisors to employ a person to perform the duties of the office . . . **in the event of a vacancy for which no eligible candidate residing in the county comes forward for appointment.**

IN THIS CASE, concerning Attorney Edwin F Kelly: there is NO event of such a vacancy - as there is an "**ELIGIBLE CANDIDATE RESIDING IN THE COUNTY**" who has come forward and it is unlawful for the Board of Supervisors to to appoint some other person to perform duties of the County Attorney's office.

TAKING ACTION VIOLATING the law constitutes a tort justifying damages ... as all the board is on notice of the LAW, action contrary to the LAW by the Board Members is an INTENTIONAL TORT -- justifying Punitive Damages to anyone injured.

- 3) The requirement the board must heed is plainly stated in Iowa Code § 331.751 **Office of county attorney**

Iowa Code § 331.751 2. commands: "**A person elected or appointed to the office of county attorney shall be a registered voter of the county . . .**" (emphasis added)

IN THIS CASE, concerning Attorney Edwin F. Kelly, he is **a resident and registered voter of Palo Alto County and meets and exceeds all qualifications of the position** and The Board of Supervisors Legal Posting. A

mandamus lawsuit and possible injunction in addition to a legal action for damages could flow from illegal act of ignoring state law. §§ 661.1 et. seq.

4) If the The Board of Supervisors should refuse to appoint Edwin F Kelly, and later appoint a younger candidate, following acts during hiring for **this 337 day position** that can legally support an Age Discrimination claim, there will be a viable claim for age discrimination under both *Iowa*. *Such indicia are a)* initial discouragement from moving to the county in order to qualify for the position as a resident; b) Questioning 40+ year old candidate about his intent and activity 5 years from now; Commenting about candidate that he was "RETIRED" while attempting to get candidate to apply for a closed hearing by the board. Age Discrimination is prohibited under *Code Chapter 216* and also under the *Federal Age Discrimination in Employment Act*.

IN THIS CASE, an Age Discrimination Complaint can be filed up to 300 days later and remedies, *inter alia* if successful is full restoration including full back pay. Such a case would not be tried before Palo Alto taxpaying citizens, but elsewhere.

NOTE: In event of Edwin F Kelly being employed by Palo Alto County it would constitute a total defense to all possible Age Discrimination actions.

(end of Ed Kelly document.)

Walter Davis-Oeth, County Engineer, met with the Board. Walter requested approval of a temporary salary increase for Office Assistant.

Motion by Solberg, 2nd by Graettinger to approve a temporary salary increase effective January 26, 2024, for Seth Christensen from \$20.27 per hour to \$22.30 per hour for duties of Office Manager until Office Manager returns to full time. Motion Carried.

John Hansen, Midwest Construction, met with the Board. John updated the Board on the progress at the Public Safety Center.

John presented the pay application for February 1, 2024. John discussed the final budget with the Board.

Motion by Wirtz, 2nd by Graettinger to approve a change order for \$5,136.60 for additional fire/smoke detectors & electrical wiring with Winger Companies. Motion Carried.

Motion by Graettinger, 2nd by Faulstick to approve pay application for February 1, 2024. Motion Carried.

The Board discussed sharing the County Attorney position for the short term. Craig Merrill updated the Board on meeting with Travis Johnson, Clay County Attorney, and his assistant to cover the county attorney position.

Peter Hart, County Attorney, claimed that a 28E Agreement for sharing is only available if there are no applications for the position.

The Board of Supervisors has 40 days to make the appointment to fill the county attorney vacancy.

The Board called Mark Sherinian, Labor Law Attorney, for clarification on the county attorney vacancy. The issue could not be resolved at this time and no action was taken.

Committee Reports: Faulstick- new Boardroom door ordered; Wirtz- IDDA, juvenile justice; Graettinger- DECAT, Upper Des Moines.

Motion by Graettinger 2nd by Wirtz to adjourn. Motion Carried.

Craig Merrill, Chairman

Carmen Moser, County Auditor