

**Virginia:**

AT A SPECIAL CALLED MEETING of the Nelson County Board of Supervisors at 4:00 p.m. in the Old Board of Supervisors Room located on the fourth floor of the Nelson County Courthouse, in Lovingston Virginia.

Present: Thomas D. Harvey, North District Supervisor  
Jesse N. Rutherford, East District Supervisor  
Ernie Q. Reed, Central District Supervisor  
Thomas H. Bruguere, Jr. West District Supervisor – Chair  
Larry D. Saunders, South District Supervisor – Vice Chair  
Stephen A. Carter, County Administrator  
Candice W. McGarry, Administrative Assistant/Deputy Clerk  
Phillip D. Payne, IV County Attorney

Absent: None

**I. Call to Order**

Mr. Bruguere called the meeting to order at 4:03 PM, with all Supervisors present to establish a quorum.

**II. Closed Meeting Pursuant to §2.2-3711.A.7 of the Code of Virginia (Discussion with Legal Counsel Regarding the Lawsuit Filed in the United States District Court, Western District of Virginia, Atlantic Coast Pipeline, LLC versus Nelson County Board of Supervisors, et al)**

Mr. Reed moved that the Nelson County Board of Supervisors convene in closed session to discuss the following as permitted by Virginia Code § 2.2-3711(A) (7): Consultation with legal counsel and briefing by staff members pertaining to actual litigation: Atlantic Coast Pipeline LLC vs. Nelson County Board of Supervisors. Mr. Harvey seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Supervisors conducted the closed session and upon its conclusion, Mr. Harvey moved to come out of executive session and Mr. Reed seconded the motion. There being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion and the Board reconvened in public session.

Upon reconvening in public session, Mr. Reed moved that the Nelson County Board of Supervisors certify that, in the closed session just concluded, nothing was discussed except the matter or matters specifically identified in the motion to convene in closed session and lawfully permitted to be discussed under the provisions of the Virginia Freedom of Information act cited in that motion. Mr. Rutherford seconded the motion and there being no further discussion, Supervisors voted unanimously (5-0) by roll call vote to approve the motion.

Mr. Saunders then moved to authorize the County Administrator to hire an attorney to respond to the lawsuit. Mr. Harvey seconded the motion and there being no further discussion, Supervisors voted (4-1) by roll call vote to approve the motion with Mr. Bruguere voting No.

## **II. Other Business (With the Consent of the Entire Board of Supervisors)**

*Introduced: Clarification on Non-Disclosure Agreement for County Attorney Legal Services Related to the Broadband Network Transfer to CVEC*

Mr. Rutherford stated he would like clarification from the County Attorney on some email questions sent with no ill intent, but for his understanding of the disclosures made and to be sure they were doing things properly; that disclosures either were not necessary or if they were made, when they were.

Mr. Rutherford then asked if the disclosures were needed and if it was done, when it was done for Mr. Payne's participation with CVEC.

Mr. Payne then noted that conflict resolution worked in the following manner: whenever there were two or more parties involved in a transaction, there was a conflict of interest. He noted that the conflict could be waived by the parties so that dual representation was permissible. He added that at any time, either party could revoke the waiver for any, or no reason or the representing attorney would cease representing any of the parties in the transaction, unless there was another waiver. Mr. Payne then advised that the potential for dual representation was discussed with Mr. Carter and staff early on as he had been intimately involved with the NCBA and its many Federal requirements, contracts, documents etc. since its inception. He noted that in this instance, once the general transfer concept was formulated by the County and CVEC, he perceived no conflicting issues. He further noted that what was being transferred, was being ironed out among the staffs of the County and CVEC and his role had been putting together the documents to secure Federal approval of the transfer and to effect the transfer and ensure that what was being transferred was accurately documented. He added that this had been covered with Mr. Gary Wood of CVEC and Mr. Carter.

Mr. Payne then noted that in the general transfer concept formulation, initially there was some discussion of money changing hands and he had advised that if there was a dispute about that, he would be out on both sides and he had to wait to see if any conflicts would arise. He noted that once he concluded that his dual representation should present no conflict, he reported and discussed it with Mr. Carter, Ms. McCann, and Ms. McGarry of County staff and pointed out that in the event that a conflict arose, he would have to withdraw. Mr. Payne then noted that sometime later Mr. Carter had noted that he had reported this to the Board and there had been no questions. He then noted that his work was starting slowly due to the technical things that both staffs were doing and when he finally became more involved, he had drafted a confidentiality agreement to protect the parties' confidential information that might be exchanged and the waiver of conflict disclosure which stated what he had just reported.

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Mr. Payne then noted that Mr. Carter had asked him if the Board needed to review the document, and he thought it unnecessary since the waiver had been addressed in a Board meeting without question and confidentiality language stated the procedural obligations for sensitive material. He then noted it was probably his oversight not to advise Mr. Carter to take the agreement to the Board; however he did not think at the time it was on the radar.

Mr. Payne then noted things got a little sticky when Mr. Rutherford raised his questions about conflict; he did not call and ask him, but rather began an email exchange with Mr. Carter which called into question his professional integrity and ethics such as: double billing, hesitation in providing disclosure, accusations that he had violated the Conflict of Interest Act, which did not cover him as a privately practicing attorney retained by the County, he was not an employee, and was not under contract. He added that the innuendo about him having a conflict was upsetting as he felt it was an attack on his integrity. He noted that he hoped he misinterpreted the statements made. He noted he then decided that this should be a Board issue and it be laid on the table without a lot of back and forth. Mr. Payne noted that he represented the Board and not its members individually and was available anytime to answer the Board's questions, provide guidance, advice, information and they could and would disagree with him at times; which was healthy. He added the Board could decide at any time for reason or no reason to change general counsel or counsel selected matters. He noted he was always available for questions by individual members but in the collegial spirit that had been in place for decades.

Mr. Rutherford noted he appreciated Mr. Payne's response and noted it was exactly what he was hoping to get from him. He then noted he was trying to understand the process of when it came to the limitations of the County Administrator and the County Attorney. He asked if Mr. Carter had the authority to engage in the non-disclosure agreement and if so, where he could find that authority.

Mr. Harvey took exception to Mr. Rutherford's question, noting that he was still trying to disparage Mr. Payne and Mr. Carter. Mr. Rutherford noted he was asking the questions, as they were important questions, that were asked of him and he was going to continue to ask them. He then reiterated his question of where he could find the authority held by Mr. Carter as he did not understand. Mr. Harvey suggested that Mr. Rutherford, being technologically savvy, should do some research.

Mr. Payne then noted that when it came to who could sign what documents, he could not point to that authority. He noted that there were dozens of contracts that Mr. Carter signed; however there were some that were decided should be taken to the Board. He reiterated that he could not point to a rule, statute, or ordinance that said when the Board Chair should sign and when the County Administrator should sign. He added that in his representation of other entities, the same rules applied; sometimes the CEO signed, sometimes the Chair of the Board signed, and sometimes those signatures were attested by the secretary. He noted further that he could not give specific guidance and that it was usually just discussed and it was decided that the Board had better see something, otherwise it was a matter of having been authorized to do it and documents were signed.

Mr. Rutherford stated he understood and had no interest in knowing when Mr. Carter signed documents to buy paper etc.

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Mr. Carter noted that when he and Mr. Payne had discussed the matter, he thought extensively about whether or not it should be taken to the Board even after Mr. Payne had advised he did not think it was necessary. He noted that perhaps in his enthusiasm to move forward with trying to get the network transferred he should have thought more about it. He added that he hoped the Board knew that neither he nor Mr. Payne would ever work against the interests of the Board or the County or do anything that would just benefit one of them to the exclusion of the County. He emphatically added that they were just not going to do that. Mr. Payne concurred and noted he would not mislead his biggest client over one little transaction.

Mr. Bruguiere stated that because Mr. Payne was working for CVEC and the Board, he was working for the taxpayers of the County to move forward with the Board's objective to transfer the network to CVEC and provide Broadband to the county. He noted that Mr. Payne was the most honest lawyer that could be found in town and he would stand by him any day. He added he did not know who had approached Mr. Rutherford with these concerns and that if their questions were not answered, they could call him. Mr. Rutherford noted that these were his questions that he had raised and wanted to address and he appreciated the Board giving him the opportunity to ask these important questions and at that point he had nothing else to ask.

Mr. Saunders stated that generally, people should be trusted until they had shown that they could not be.

Mr. Harvey noted that CVEC was doing the NCBA a favor as they did not need the County's fiber system and the last thing he wanted to see was something get messed up and the County retain ownership of the system. Mr. Rutherford noted he was not disputing the transaction, just when the disclosure was made and he was curious as to when that happened. He added that if it was not done and that was fine, then so be it; he was not going to question it any further. Mr. Harvey suggested that it was not something he should have even concerned himself with and Mr. Rutherford noted it was his right to ask as an elected official and he would do so. Mr. Payne then recommended that Mr. Rutherford just call him and if the answers were not satisfactory then they would deal with it. Mr. Harvey suggested that email was used because it provide a tracking mechanism and he noted that every email they sent or received was open to the public. Mr. Payne noted that to be true and Mr. Rutherford said that was a good thing. Mr. Payne commented that younger people tended to do a lot more emailing than older people.

#### **IV. Adjournment**

At 5:07 PM, Mr. Rutherford moved to adjourn and Mr. Saunders seconded the motion. There being no further discussion, Supervisors voted unanimously by voice vote to approve the motion and the meeting adjourned.