

**December 1, 2016**

The Lincoln County Board of Commissioners met for a special session on December 1, 2016, in the Lincoln County Courthouse, Libby, Montana. Present were Commissioner Cole, Commissioner Larson, Commissioner Peck and Clerk and Recorder Robin Benson. Also present were Jerry Bennett, Mike Cuffe, Bob Henline, Charlotte Woods, Rhoda Cargill, Betty J. Ward, Valerie Crabtree, Lee Kibler, Bonnie Larson, Jim Johnson, Steve Gunderson and Alan Gerstenecker. Present via telephone conference were Chas Vincent and Rita Windom. Present from Eureka via VisionNet were Steve Curtiss, Bobbie Stoken, John Stoken, Nikki Meyer, Jennifer Curtiss, Richard T. Avery, Gregg Johnson, Bert H. Hall, Darrell Babb, Linda Babb, Dave Guild, Linda Guild, Madelon Martin, WM Boucher, and Josh Letcher.

**2:30 PM Partisan/Nonpartisan Issue Continued Discussion:**

Commissioner Cole explained the purpose of this meeting is to continue the discussion about the partisan/nonpartisan issue and come up with a plan moving forward.

Commissioner Peck said he has spent last week in conversation with MACo, Dan Clark, two District Judges, County Attorney Bernard Cassidy and Steve Curtiss. His conclusion from speaking with the judges and MACo attorneys is that there is no dispute the 2009 election is wrong and Lincoln County is outside Montana Code; it is very clear we must hold partisan elections. Commissioner Peck stated that nobody has given any argument to that. The issue is how do we fix it and get it back to where it is supposed to be. The first thing to consider is who has authority to bring us back into compliance. As a county commissioner we do not have authority to overturn the vote of the people. The very form of government and statutes that restrict what has already happened to be incorrect, the very reason we are here today, are the same statutes that restrict the commission from doing what the Study Commission has requested. A resolution would mean nothing; it is only an internal statement of policy with no legal binding. The only authority as county commissioners is what is granted through M.C.A. Lincoln County is not a charter form of government, all research and conversations confirms we (county commission) do not have the authority to do what has been requested. What is the best legal way to move forward and put us back in the law are two options...judicial or legislative. Only a judge has the authority to overturn a certified election. A judicial fix could mean an Attorney General opinion, the other option is that it goes to Helena. Mike Cuffe stated that it would be very complicated at the legislative level and thinks the process has already been set out by the study commission. Mr. Cuffe said he admires the study commission for wading into this and is amazed at how we got here. The Commissioners have to make a decision. The legislative route would be July 1 at the very least and Mr. Curffe did not recommend going this way. Mr. Cuffe recommended the county commission go ahead and do the resolution; it is the county commissioners' decision to make. Mr. Cuffe said that if it is ignored, something is going to happen. The quicker the resolution is signed, the better. It is very clear a wrong thing was done. Mr. Cuffe stated he thought it can be done at the commissioner level, but he has not looked at the statutes.

Rita Windom said it is her understanding that other counties are also encumbered with this mess and those counties would have representatives in the legislature willing to help as well as MACo; we should look at the overarching needs of other counties.

Commissioner Larson requested the District Judge look at this and determine if it can be reversed or what it would take to be reversed.

County Attorney Bernard Cassidy said that having been involved, he may have conflict of interest. Mr. Cassidy stated that since there are 13 other counties in the same fix, if it comes before a court, who has standing to raise this issue? Maybe there could be some sort of interim resolution to put this on the ballot so the people can vote. He stated he believes we would have to take a look at all these questions.

Commissioner Larson commented that we cannot offer an election on this topic under the elected official form of government. Mike Cuffe said that if what we are dealing with now is that an election was held based on improper decisions, why hold another election?

Commissioner Larson stated that if a resolution was passed and the county would go back to partisan elections, having someone object and take it to court, would be a way to get it in front of a judge sooner than later.

Steve Gunderson said he feels a resolution would set the tone. Commissioner Cole expressed that passing a resolution only changes the litigants if it does go to court. Commissioner Larson said the current commission is already involved because it falls on us now. Commissioner Larson said a resolution would not be a fix, but a step in the right direction.

Jerry Bennett asked Chas Vincent what his thoughts were on a legislative fix since 13 other counties are in the same situation. Chas Vincent said that it is apparent something has been missed and not just by Lincoln County. He would be interested to see what the background is with other counties before getting involved in this further. A question would be if the legislature could do something for Lincoln County and not the other counties. Chas continued stating that Lincoln County has twice voted to not change the form of government and he does not believe they want to change it in the future. The voters were very clear on this more than once.

Bernard Cassidy said the commissioners could set up a study committee that would include MACo, attorneys and possibly the attorney general

Commissioner Larson clarified that he does not care what the other counties do, more interested in Lincoln County becoming compliant with statutes and the Montana Constitution. Commissioner Larson brought up the fact that a resolution was never signed by the commissioners back in 2009 to bring the issue originally to the voters.

Mr. Cassidy expressed that he felt strongly this issue needs to have a more formal look at how we got here in the first place.

Mr. Cuffe explained the study commission spent over a year studying this and held public meetings and questioned if the study commission could present this to a judge.

Commissioner Peck said we could take a two pronged approach and questioned if the issue can move forward judicially and take it to the legislature now and proceed down both paths simultaneously?

Mr. Cuffe asked Mr. Cassidy how long it take with the judicial route? Mr. Cassidy stated that anytime an issue goes to court you are depending on and are subject to appellate process; years if appealed to the Supreme Court. Mr. Cassidy

said he does not necessarily disagree with the two pronged approach, but cannot speculate on timeline. Mr. Cassidy said it would be wise to get independent outside counsel.

Steve Gunderson asked if a legislative fix would be proper for just Lincoln County or would it be something necessary to include all counties. Mr. Gunderson said he thinks it would be more expedient with a judicial fix. The legislature may give more options on ways to approach this, but feels we need to know if we have common ground with other counties.

Jerry Bennett said he is not opposed to a resolution stating what was done improperly, but need to find a path moving forward to correct it and put Lincoln County back into compliance. Commissioner Peck said a resolution could be an official proclamation the county is committed to fixing this.

Mr. Vincent said he could visit with Harold Blattie to get an idea or example of what a statutory fix could mean; possibly a road map on how to clear this up and he would like to find out what other counties may want to be involved in this and research the legislative process. Mr. Vincent expressed the importance that we proceed cautiously and he is willing to do some homework to find what the legislative fix would look like for Lincoln County and then proceed about a coalition of other county involvement.

Steve Curtiss stated that the study commission came to the county representing the people and he is very opposed to the legislative fix, saying that we do not care what other counties do. The desire is for a resolution that represents the voice of the people with a focus on what we can do for our county. People do not want to change our form of government, which has been very clear. Bringing this issue to the vote of the people would have the same problem already existing. The Study Commission chose not to put this on the ballot, but the law still needs to apply. The law clearly states Lincoln County's form of government must have partisan elections. We have done all the study, research, spoke with attorneys and judges. Steve warned to be careful what you wish for; a legislative fix may not end with the result of what the people of Lincoln County want. The outcome needs to remain as the elected official form of government.

Mr. Vincent said there is possibility to put triggers in legislature to craft this in a way to protect the form of government.

Mr. Vincent said he is willing to look into this, but we are only weeks away; there may not be enough time. Commissioner Larson said the governor may veto this because it is precedence setting.

Rita commented that we need to keep in mind that the law is pretty specific. The county can create a resolution that questions the validity of the partisan/ nonpartisan election in 2009 and that the county wishes to move forward in accordance with the form of government to be in harmony with the type of elections held in Lincoln County.

Bonnie said this is a hard issue and thanked the commission for their involvement stating there are wonderful heads here to find a solution. Bonnie continued saying a resolution by itself will bring Lincoln County back to compliance whether it has teeth or not and at the same time to continue to move ahead with the district court process. Going with legislature may create unfavorable results.

Jerry said he does not think it would be harmful to get a basis of understanding from other counties, but at the same time believes the fix should be judicial. Jerry said he agrees with Bonnie.

Commissioner Peck said his preference would be to see a bill that gave the commissioners authority to revert back to our form of government and put back in partisan and become compliant. One concern with legislature is that I disagree with any approach that does not protect our form of government.

Rita reminded everyone this only came forward since this study commission brought the issue to light which is why it has not been fixed or discussed in prior years.

Mr. Vincent said he will be in touch with any concepts or ideas before moving forward.

Commissioner Peck thanked the study commission for bringing this issue forward, putting in the research and thanked everyone in attendance stating the issue is ours to fix, but we do it within the law, within the statutes, whatever right is. Commissioner Peck said he appreciates the citizens showing up and participating and applauds the citizens for their participation. This is a mess, but we (county commissioners) will get it fixed.

Jim Johnson said he has 50 years of service and experience with resolutions and negotiations. Jim agrees to a two pronged approach, but feels the two prongs stated by Commissioner Peck is the wrong direction. Jim said nobody can trust the legislation and strongly expressed this is not a way to go. Jim said judicial and judges are also a big problem clarifying the two prongs are resolution to become compliant and return to partisan elections subject to approval from the attorney general.

Rhoda Cargill asked if a resolution can correct procedural error. Commissioner Peck said yes under normal circumstances, but the minute the election was certified and not challenged makes it a whole different ballgame. Rhoda feels a resolution is good to show intent and would be very interested in the county attorney's opinion vs. a legislative fix. Rhoda said she favors a resolution to be put forth with verbiage to contain the elected official form of government.

Bonnie commented the certification for the election in 2009 was incorrectly stated by inaccurate dates and feels the certification was wrongfully certified also. Rhoda said there are enough procedural errors for a resolution act by the county commission.

Richard Avery said the fact that the vote was to retain our form of government; there should not be any recourse on the commission for the county trying to be compliant with the law. Richard said he agrees the county should pass a resolution and get approval from the Attorney General.

John Stoken commented the 2009 election was in conjunction with a school election and the statutes stated it should have been a general election, why give credence to the results?

Rita said we need to use caution that we do not study this issue to death; the paper trail is very clear and we should come to a fairly quick timely solution to this issue. We do not need a committee to do what the study commission has already spent a year doing.

Commissioner Larson said he would support a resolution with teeth subject to attorney general or district judge approval.

Commissioner Peck said he feels that is well worth exploring.

Alan Gerstenecker questioned if the 2009 election could be declared moot since there were so many procedural errors?

Commissioner Peck said the only way to do that is through a judge?

Commissioner Cole again thanked the public and study commission. The county commission will take this under advisement and will continue this conversation. Steve Curtiss asked if the December 15 timeline is still effective.

Commissioner Peck answered yes we are still shooting for a solution by December 15.

**4:30 PM Meeting Adjourned**

**LINCOLN COUNTY BOARD OF COMMISSIONERS**

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Mike Cole, Chairman

**ATTEST:** \_\_\_\_\_  
Robin Benson, Clerk of the Board