

**PASQUOTANK COUNTY, NORTH CAROLINA
MARCH 3, 2014**

The Pasquotank County Board of Commissioners met today in a work session on Monday, March 3, 2014 in the Community Room at the W.C. Witherspoon Memorial Library.

MEMBERS PRESENT:

Jeff Dixon, Chairman
Joseph S. Winslow, Jr., Vice-Chairman
Lloyd E. Griffin, III
Cecil Perry
Dr. William R. Sterritt
Gary G. White
Frankie Meads

MEMBERS ABSENT: None

OTHERS PRESENT:

Rodney Bunch, Interim County Manager
R. Michael Cox, County Attorney
Margaret Simpson, Personnel Director
Karen Jennings, Clerk to the Board
Attorney John Leidy, Hornthal, Riley, Ellis & Maland

The meeting was called to order at 2:40 PM by Chairman Jeff Dixon. Chairman Dixon stated that over a year ago the Personnel Committee determined that it was time to update the county's Personnel Policy. He said the committee and staff have been meeting regularly and drafted amendments to the policy. The amended policy was sent to Attorney John Leidy who specializes in employment law to review and make recommendations. He asked Mr. Leidy to review the policy and his recommendations with the Board.

Mr. Leidy stated that it is important for the county to put the policy manual in the perspective of what is the law that applies to the situation as an employer and what rights employees have. He explained that the applicable law in North Carolina is that with a few exceptions most employers including the county, for most of its employees, has the right to be an at-will employer which means that it can terminate employees at any time, for any reason, without reason, and without notice. He said there is an exception in Pasquotank County's case for Social Services employees since they are covered by the State Personnel Act. He stated that these employees have rights to employment, have rights to be terminated only for certain causes, and have certain procedures available to them by statute. The rest of the county employees do not have those rights unless the county wants to extend those rights to them. Mr. Leidy said most other counties and governmental employers have not extended those rights and have taken the approach of making sure that employees are treated fairly, but at the same time, not jeopardizing the administration's ability to take whatever actions it needs to take from a personnel standpoint, and not granting additional rights to employees beyond what they already have. He said with that in mind he believes it is important that the personnel policies be consistent with state law, be consistent with the county as an at-will employer, and extend no greater rights to employees than they have under the law.

Mr. Leidy said when the Board adopts its personnel policies, it should do so through a resolution as opposed to an ordinance because when it adopts an ordinance it is establishing a law and a legally binding process that applies to employees who would then have the right to sue the county if any part of that ordinance is not followed. When it is adopted through a resolution, it does not have the same effect.

Mr. Leidy explained that there are good reasons for having a policy manual, even though it is not advisable in his opinion to make it legally binding like a law. He said it is a good management tool and is invaluable for helping guide management in making personnel decisions and taking personnel actions. He stated that another good reason is so employees will know what they can expect from the employer. Another thing is that a policy manual that has good policies that are well thought out and consistent with the law can help avoid discrimination claims. Mr. Leidy explained that although an at-will employee could be terminated without cause, he still has the right to be protected from discrimination with regard to employment decisions made on the basis

of race, sex, religion, national origin, disability, age, or veteran status. He said Pasquotank County's policy continues to provide those protections. He stated that all employees of the county are protected from retaliation on the basis of the exercise of their first amendment rights.

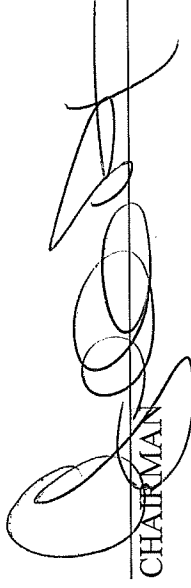
Mr. Leidy said the next fundamental change in the policy he would like to discuss is that it is important that the county adhere to the County Manager form of government. This is the form by which the manager hires and fires employees except for certain appointments, such as the Manager, the Attorney, the Clerk, and a couple of other exceptions. Everyone else is an employee who serves the manager, and the manager's decisions on those things are what counts. Mr. Leidy stated that this is the law in North Carolina and by law the Board has no role in personnel matters and has no authority for taking any personnel action except for the Manager, the Attorney, and the Clerk. Typical department heads and general employees are employees at-will and the Board has no authority to require that they be terminated, nor to protect them from termination. Mr. Leidy said as a result of this it is important that the Board of Commissioners stay out of personnel administration. He stated that the Board's Personnel Committee should not participate in the grievance process because it has no authority to require the Manager to take a different action. He said it is not legally required to have a committee to hear grievances by county employees if they do not agree with the County Manager's decision. He stated that it is however a good idea to have such a committee, but it should be an independent type of committee appointed by the Board to hear those appeals or grievances. Mr. Leidy pointed out that the city has a personnel appeals committee made up of people appointed by the city. He said the way the appeals process works is that an employee has the right to appeal to their supervisor; if not satisfied with the result, they appeal to the department head; if not satisfied with that result, they can appeal to the Manager; alternatively they can request a hearing before the personnel appeals committee. The appeals committee makes a recommendation to the Manager who can decide whether to follow that, whether to change it, or whether to do something completely different than what the committee has recommended. Mr. Leidy stated that he would recommend that the Board appoint a personnel appeals committee outside of the Board.

Mr. Leidy explained that another issue he would like to address with the Board is affirmative action. He stated that affirmative action is actually a form of discrimination and is reverse discrimination. He said it is a process by which an employer can take action to give preferential treatment to people based on their protected characteristics, which are race, sex, national origin, religion, age, or disability. He explained that in order to have an affirmative action program, the employer must first establish that it has a history of discriminatory treatment in its employment practices. It then has to establish that there is a need to have an affirmative action policy and program in order to rectify the effects of the history of discrimination. Mr. Leidy stated that most employers do not want to take the time and expense of investigating or doing a study to determine whether there is a history of discriminatory practices in order to have an affirmative action policy. He pointed out that Pasquotank County is not required to have one of these policies because it does not have the evidence it needs in order to have an affirmative action policy, and he would recommend that the Board not have such a policy. He explained that this is completely separate from the non-discrimination policy which the county does have that should be enforced. The non-discrimination policy prohibits discrimination on the basis of race, sex, national origin, religion, age, or disability.

Mr. Leidy highlighted the major changes in the Personnel Policy with the Board. He explained that he has a little more work to do and once complete he will provide the Board a proposed resolution to adopt the amended Personnel Policy.

The work session was adjourned at 4:08 PM.


CLERK TO THE BOARD


CHAIRMAN