

COUNTY OF VENTURA
civil service commission
BOARD OF REVIEW AND APPEALS



**MINUTES OF
SPECIAL MEETING
MONDAY, MARCH 14, 2016
10:00 a.m.
VENTURA COUNTY GOVERNMENT CENTER
LOWER PLAZA ASSEMBLY ROOM**

Chair Becker called the meeting to order at 10:00 a.m.

Commissioners present: Chair Becker, Vice-Chair Lazar, Commissioners Vandenberg and Merricks. Staff present: Cheryl Shaw, Commission Assistant and Roberto Orellana, Law Advisor to the Commission and Mike Curnow (IR).

- A. Discussion regarding request from the Human Resources Director and County Executive Officer that the Ventura County Board of Supervisors adopt an ordinance to amend the Ventura County Ordinance Code, Division 1, Chapter 3, Article 4, Civil Service System, Regarding Appointment by Transfer, Including Transfer to the County from a Public Agency other than the County.
(Board of Supervisors meeting agenda item #24, March 15, 2016)

Christina Vanarelli, appeared on behalf of the Criminal Justice Attorneys' Association of Ventura County (CJAAVC). Matthew Smith, Assistant County Counsel, appeared on behalf of the County.

Shawn Atin, Director of Human Resources addressed the Commission and stated that the proposed amendment to the Civil Service Ordinance is not a substantial change, but is merely an opportunity for the Board of Supervisors to clarify the meaning of the Ordinance. Mr. Atin further stated that it has been the practice of the County for many years to provide for transfers from other county agencies. Mr. Atin acknowledged the pending lawsuit brought by the Criminal Justice Attorneys Association of Ventura County (CJAAVC) and also the Commission's pending investigation regarding the lateral transfer issue, but reiterated that the proposed amendment was merely being brought to the Board of Supervisors to clarify how the County has traditionally applied the Ordinance provisions with respect to transfers.

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Mr. Smith stated that the reason for the proposed amendment was to clarify the legislative intent of the Ordinance. He acknowledged that questions have been raised by CJAAVC as to the meaning of the term “transfers” as contained in the Ordinance and stated that it is the County’s position that the amendment is necessary to clarify that the definition of the term includes transfers from other public agencies outside of Ventura County. He also confirmed that the Superior Court has set a trial date of March 28, 2016, in the civil case brought by CJAAVC.

Commissioner Vandenberg commented that, after CJAAVC brought this matter to the Commission and the Commission agreed to conduct an investigation, the Commission decided to suspend its investigation due to CJAAVC’s filing of the lawsuit. He inquired as to whether or not the County was asking the Commission to formally support the proposed amendment. Mr. Smith stated that the County did not believe any Commission action is warranted but that it was within the jurisdiction of the Commission to conduct investigations and reviews of the Civil Service Ordinance, just as it is also the role of the Board of Supervisors to review and amend Ordinances that it adopts.

Vice-Chair Lazar expressed concern regarding the timing of the matter and felt there was a lack of exigent circumstances to require an amendment to the Ordinance at this time. She further stated that it appears the County desires the amendment for use in the civil suit for purposes of clarifying the legislative intent behind the specific provision of the Ordinance. She further stated that it was her understanding that in order to clarify legislative intent, one would conduct a review only of the documents and writings in existence at the time any specific action was taken. Mr. Smith stated he would not comment on the County’s litigation strategy in the pending suit but stated that if the Board of Supervisors did adopt the amendment, it would be brought to the court’s attention.

Vice-Chair Lazar questioned what harm would ensue by waiting to request the amendment until after the court case is concluded and the Commission has had an opportunity to conduct the investigation. She further stated she did not know why the matter was put on the agenda for the Board of Supervisor’s meeting next week without being brought to the Commission’s attention first and expressed her concern about the motivation for having this matter brought to the Board on an expedited basis.

In response to a question from Chair Becker, Mr. Smith stated that the trial date for the CJAAVC case was set for March 28th and, with respect to the Ordinance, the County was requesting a first reading before the Board of Supervisors on March 15th with a second reading and adoption scheduled for March 22nd. Chair Becker stated that as any action taken by the Board with respect to the amendment would potentially be completed prior to the commencement of the trial, it seemed a legitimate concern as to why the County Executive Office and Human Resources are attempting to expedite the amendment without the Commission’s input.

Mr. Smith responded by stating that the amendment was only meant to clarify the original intent and that there is no contemplated change to the current transfer practices of the County. He also stated that if the Commission feels it necessary to conduct an investigation, it is certainly entitled

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to do so and make any recommendations to the Board regardless of whether the Ordinance is amended or not. Chair Becker responded that although the County is asserting that there is a practice which supports its interpretation of the Ordinance, the original transfer language is also susceptible to another reasonable interpretation, and that a long standing practice does not require a rule bend to a more recent practice of permitting transfers from other counties. Chair Becker also commented that there is the question of whether or not the past practice should have occurred at all.

Mr. Atin addressed the Commission and apologized with respect to the perceived circumvention of the Commission's input and stated that, although the County is obviously aware of the pending litigation, the discussion regarding the proposed amendment to the Ordinance has been a topic of conversation for some time. He further stated that the County does not believe the amendment is a substantive change to the Ordinance and welcomes all comments on the topic; he expressed hope that the Board of Supervisors will have a lively debate on the topic.

Chair Becker responded by stating that if that was the County's position then there should be no harm in simply requesting that the Board of Supervisors delay any action until completion of the litigation and the Commission's investigation. He further stated that neither the Personnel Rules, Civil Service Ordinance nor the CJAAVC's MOA define the word "agency" and that given that the County of Ventura is made up of at least four public agencies, there is ambiguity with respect to that term.

Mr. Atin stated that in his public work experience the term "agency" is commonly used in practice to refer to agencies outside the jurisdiction of the County. Chair Becker responded by noting that he has worked in the public sector for many years and the use of the term "department/agency" is not a common practice. He further stated that references to "department head" is also ambiguous as used the County of Ventura has no ability to require or force any action of a department head in another county or agency. Chair Becker then stated that the manner in which the County requested the amendment to the Ordinance did appear to be a purposeful circumvention of the Commission and it is clear that staff has already spoken to Board members and expressed their position. Mr. Atin denied that staff had done so.

Vice-Chair Lazar inquired whether notice of the requested Board action had been properly given and whether or not the Board had been advised about the Commission's pending investigation. Mr. Smith stated that the Board had conducted closed sessions regarding the pending litigation.

Commissioner Vandenberg clarified that when the matter was first brought to the Commission by CJAAVC, it was due to a certain employee being hired by the District Attorney's Office, and at the time the Commission considered the request for investigation, it was made clear to the parties that the Commission did not have the authority to reverse a hiring decision. He also stated that it was the filing of the civil suit that prompted the Commission to suspend the investigation.

CJAAVC's counsel, Christina Vanarelli, then addressed the Commission. She argued that the County is trying to re-write history. She stated that during discovery in the civil case, CJAAVC

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did an intensive investigation, reviewed thousands of documents and took numerous depositions. Ms. Vanarelli stated, as an example, that one deponent, Ronald Kommers, a former County of Ventura Personnel Director, testified that the use of the lateral transfer provision was to recruit and hire law enforcement personnel less expensively than by conducting an open hiring process. Ms. Vanarelli further stated that the lack of notice regarding the current request before the Board of Supervisors violates the Brown Act. She pointed out that, in a letter to Mr. Smith, dated March 12th, her client has also demanded the County meet and confer with CJAAVC pursuant to the terms of their MOA prior to consideration of the promised Ordinance amendment. She also stated that the requested amendment was not for clarification but was a substantive change to the Ordinance. In response to Chair Becker's question, Ms. Vanarelli stated that the driving reason behind the filing the civil lawsuit was that her client was unable to obtain documents as the County would not comply with the subpoenas issued during the Commission investigation and refused to produce any witnesses for depositions.

Commissioner Merricks agreed that he saw no exigent circumstances that would require this matter to be pushed forward to the Board of Supervisors. In response to a question from Vice-Chair Lazar as to whether the Commission would be bound by the language of the revised Ordinance when conducting the investigation, Ms. Vanarelli stated she felt it would be persuasive authority but not binding. Mr. Smith stated that if the Commission were conducting an investigation into the rules and practices under the Ordinance, then the Commission could consider the past practices of the County.

In response to Commission Vandenberg's question, Mr. Orellana stated that the Personnel Rules and Regulations are between the Board of Supervisors and all County employees and also regulate how matters may be resolved for those that come before the Commission. He clarified that, in conducting an investigation, the Commission can only make recommendations to the Board of Supervisors; it cannot provide affirmative relief to any of the parties.

Richard Shimmel, Executive Director of the Ventura County Deputy Sheriff's Association, then addressed the Commission. He stated that the notice he was provided on Friday with respect to the Commission's meeting today led him to understand that the purpose of this meeting was to discuss the merits of the proposed amendment. As he understands the matter, the Commission's role is to safeguard the Personnel Rules and Regulations and the proposed amendment to the Ordinance does not resolve the issue of ambiguity entirely. He acknowledged that both the District Attorneys' Office and the Sheriff's Department have benefited from the use of the lateral transfer process as a mechanism to bring in qualified, trained officers from other agencies from both within and outside of the County of Ventura. Those employees are uniformly part of classified service from other agencies when hired as they have gone through a competitive process. He further expressed that the proposed amendment does not go far enough as it does not mention or acknowledge that transfers would be from a similar civil service process.

Commissioner Vandenberg observed that the Commission had two choices, either leave the issue alone until conclusion of the court case or move to support or not support the amendment as proposed. Chair Becker stated that he was reticent to make a motion simply because of the pending litigation. Vice-Chair Lazar proposed a third action that the Commission could request

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that the Board of Supervisors postpone taking any action on the issue of the amendment to the Ordinance until the matter could be brought before the Commission to thoroughly vet the issues. As the Commission's hands are tied until completion of the civil action, she expressed opposition to the Commission going on record either in support of or against the proposed amendment at this time. Commissioner Vandenberg stated he would support a letter being written to the Board requesting them to postpone taking any action.

Mr. Atin stated that the amendment was meant to clarify and did not set forth all the procedures that would be in practice. The County has only hired staff that has gone through a merit hiring process with another agency and the lateral transfer procedure is only used to augment hiring, and is not meant to replace any existing promotional list. Mr. Smith stated that the lawsuit involves the Civil Service Ordinance and its interpretation. The County system includes not only the Ordinance, but also the Personnel Rules and Regulations and the policies adopted by the County.

Vice-Chair Lazar made a motion that the Commission would draft a letter to the Board of Supervisors advising of the Commission's pending investigation and the fact that the investigation was stayed due to the civil lawsuit brought by CJAAVC and requesting the Board postpone taking any action on the proposed amendment to the Ordinance until such time as the litigation has completed and the Commission has conducted its investigation. Commissioner Merricks seconded the motion which passed by unanimous vote. Ms. Shaw stated that she could draft the letter if the Commission could take a brief recess. Chair Becker directed Ms. Shaw to draft the letter during a brief recess and that the Commission would reconvene at 11:45.

The Commission went into recess at 11:03 a.m. and reconvened at 11:55 a.m.

Ms. Shaw distributed for review the draft letter to the Board of Supervisors. There being no public comments, Commissioner Vandenberg moved to direct the Chair to sign the letter and direct staff to forward the letter to the Clerk of the Board of Supervisors. Commissioner Merricks seconded the motion which passed by unanimous vote.

Chair Becker asked if there were any further comments and indicated that the Commission's regular business meeting for March would most likely be cancelled if no new business was received. Mr. Dembowski represented that the County was currently in negotiations with the California Nurses Association and proposed amendments to the Memorandum of Agreement would be forwarded to the Commission for review once finalized. March meeting most likely to be cancelled if nothing new received.

Commissioner Vandenberg requested that Ms. Shaw contact Supervisor Long's office to inquire about a replacement appointment due to the recent resignation of Commissioner Taylor.

Chair Becker adjourned the meeting at 12:00.