

REGULAR SESSION

THURSDAY

JUNE 11, 2009

The Board of Huron County Commissioners met this date in Regular Session. Roll being called found the following members present: Mike Adelman, Gary W. Bauer, Larry J. Silcox.

Pursuant to Ohio Revised Code Section 305.14 the Record of the Proceedings of the June 9, 2009 meeting(s) were presented to the Board. Larry J. Silcox made the motion to waive the reading of the minutes of the June 9, 2009 meeting(s) and approve as presented. Mike Adelman seconded the motion. Voting was as follows:

Aye – Mike Adelman
Aye – Gary W. Bauer
Aye –Larry J. Silcox

09-187

IN THE MATTER OF AWARDING BIDS FOR PRESTRESSED CONCRETE BRIDGE BEAMS FOR USE BY THE HURON COUNTY ENGINEER/HIGHWAY DEPARTMENT

Mike Adelman moved the adoption of the following resolution:

WHEREAS, after notice was given pursuant to Section 307.87 of the Ohio Revised Code, Huron County sought bids for prestressed concrete bridge beams; and

WHEREAS, a bid was received and opened on Monday, June 8th, 2009 at 10:15 a.m. from United Precast (United) of Mt. Vernon, Ohio as follows;

UNITED PRECAST:

BEAM WIDE TYPE	FOR SPANS C/C BRDG. FT.	@ 24'0" WIDE W/6 BEAMS	@ 28'0" WIDE W/7 BEAMS	@ 32' 0" W/8 BEAMS
B12-48	20 Foot through 30 Foot	\$ 812.00 p/lf	\$ 918.34 p/lf	\$ 998.58 p/lf
B17-48	30 Foot through 45 Foot	\$ 753.64 p/lf	\$ 875.35 p/lf	\$ 959.44 p/lf
B21-48	40 Foot through 55 Foot	\$ 815.91 p/lf	\$ 927.53 p/lf	\$1081.05 p/lf
B27-48	50 Foot through 70 Foot	\$ 593.63 p/lf	\$1023.89 p/lf	\$1127.55 p/lf
B33-48	60 Foot through 70 Foot	\$ 967.23 p/lf	\$1108.02 p/lf	\$1243.86 p/lf
B33-48	71 Foot through 80 Foot	\$1023.29 p/lf	\$1187.59 p/lf	\$1308.20 p/lf
B42-48	80 Foot through 90 Foot	\$1153.28 p/lf	\$1354.59 p/lf	\$1522.26 p/lf
B42-48	91 Foot through 100 Foot	\$1204.59 p/lf	\$1412.16 p/lf	\$1587.31 p/lf
B42-48	101 Foot through 110 Foot	\$1230.16 p/lf	\$1433.29 p/lf	\$1598.35 p/lf
B42-48	111 Foot through 120 Foot	\$1230.16 p/lf	\$1433.29 p/lf	\$1598.35 p/lf

**BEAM
TYPE**

COST DIFFERENTIAL ALLOWANCE FOR EACH 5° OF SKEW:

B12-48	\$ 0.50 Additional cost <u>per foot</u> for each ° (degree) of skew required
B17-48	\$ 0.90
B21-48	\$ 1.00
B27-48	\$ 1.00
B33-48	\$ 1.20
B42-48	\$ 1.30

WHEREAS, these bids have been reviewed by the County Engineer as to their compliance with applicable terms and conditions of the bid with a recommendation from the Engineer that such bid be awarded to United Precast, Inc., Roundhouse Lane, Mount Vernon, Ohio; now therefore

BE IT RESOLVED, that the Board of Huron County Commissioners does hereby award the bid for prestressed concrete bridge beams to United Precast, Inc. until the end of said bid term on December 31st, 2009; and further

BE IT RESOLVED, that all further matters relative to the award of this bid is to be coordinated through and with the Huron County Engineer; and further

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BE IT RESOLVED, that the foregoing resolution was adopted and all actions and deliberations of the Board of Commissioners of the County of Huron, Ohio relating thereto were conducted in meetings open to the public, in compliance with all applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Larry J. Silcox seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman
Aye – Gary W. Bauer
Aye – Larry J. Silcox

09-188

IN THE MATTER OF APPROPRIATING UNAPPROPRIATED FUNDS IN THE LANDFILL SOLID WASTE FUND #525

Larry J. Silcox moved the adoption of the following resolution:

WHEREAS, there are unappropriated funds in the Landfill Solid Waste Fund #525 that need to be appropriated for expenses; now therefore

BE IT RESOLVED, that the Board of Huron County Commissioners hereby approves of appropriating \$17,000.00 of unappropriated funds as follows:

TO: 525-00250-525 Recycling Programs \$17,000.00 and further

BE IT RESOLVED, that the foregoing resolution was adopted and all actions and deliberations of the Board of Commissioners of the County of Huron, Ohio, relating thereto were conducted in meetings open to the public, in compliance with all applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

Mike Adelman seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman
Aye – Gary W. Bauer
Aye – Larry J. Silcox

09-189

IN THE MATTER OF TRANSFERRING FUNDS FROM ACCOUNT #040 IN THE GENERAL FUND TO FUND # 030

Mike Adelman moved the adoption of the following resolution:

WHEREAS, the health and vital statistics fund is in need of funding; now therefore

BE IT RESOLVED, that the Board of Huron County Commissioners hereby approves of the transfer of moneys from 040-00569-001 misc. other expenses in the amount of \$395.20 to the health and vital statistics fund #030-00563-001 fees; and further

BE IT RESOLVED, that a certified copy of this resolution be sent to the Department requesting transfer, and the Huron County Auditor, and the Auditor's office will make the journal entry to the # 030 account; and further

BE IT RESOLVED, that the foregoing resolution was adopted and all actions and deliberations of the Board of Commissioners of the County of Huron, Ohio, relating thereto were conducted in meetings open to the public, in compliance with all applicable legal requirements, including Section 121.22 of the Ohio Revised Code.

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Larry J. Silcox seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman
Aye – Gary W. Bauer
Aye – Larry J. Silcox

IN THE MATTER OF PROCLAMATION

In Honor of the Huron County Public Service Employees

WHEREAS, the Board of Huron County Commissioners desires to recognize Huron County Public Service Employees for their years of dedicated service to the residents of Huron County; and

WHEREAS, Huron County Public Service Employees take not only jobs, but oaths to serve the public; and

WHEREAS, Huron County Public Service Employees, include countless occupations that provide diverse services to each and every citizen of Huron County with efficiency and integrity;

NOW THEREFORE BE IT RESOLVED, that the Board of Huron County Commissioners on behalf of all residents of Huron County, do commend Huron County Public Service Employees for their commitment to our community for the many years of service, and bestow upon them the gratitude and respect Huron County Public Service Employees so richly deserve.

IN WITNESS WHEREOF

We have hereunto subscribed our names this 15th day of June in the year of our Lord, Two Thousand Nine.

HURON COUNTY COMMISSIONERS

Mike Adelman, Gary W. Bauer, Larry J. Silcox

PROCLAMATION

WHEREAS, high school athletic programs throughout the Huron County Schools do much to promote our youth; and

WHEREAS, such programs have produced championship teams and individuals in which all residents of the county may take much pride; and

WHEREAS, these teams and individual achievements shall not go unheralded in the public eye; and

WHEREAS, the Huron County Commissioners do desire to recognize several area student athletes for their achievements at the state track & field level of competition:

NOW THEREFORE BE IT RESOLVED; that the Board of Huron County Commissioners hereby honors and commends the state track & field participants listed below:

DIVISION II		
Bellevue	Julia Walters	Pole Vault – Qualifier
Norwalk	Whitney Roth	Shot Put – Qualifier
		Discus - Qualifier
Willard	Alysun Daniel	High Jump – 3rd Place
DIVISION III		
Plymouth	Jerrica Stephens	Shot Put – 2nd Place

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South Central	Lauren West	400 Meter Dash- 5th Place
St Paul	Matt Wilde	400 Meter Relay – 3rd Place
	Eric Schwieterman	
	Justin Wilde	
	Brian Griffin	
	Brian Griffin	Long Jump – 8th Place
Western Reserve	Ashten Robson	400 Meter Dash – Qualifier
	Marissa Jackson	300 Meter Hurdles - Qualifier

for their achievements and wish them the very best of luck in all their future endeavors;

IN WITNESS WHEREOF

We have hereunto subscribed our names this 11th day of June in the year of our Lord, Two Thousand Nine.

HURON COUNTY COMMISSIONERS

Mike Adelman, Gary W. Bauer, Larry J. Silcox

IN THE MATTER OF TRAVEL

Larry J. Silcox moved to approve the following travel requests this day. Mike Adelman seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman

Aye – Gary W. Bauer

Aye –Larry J. Silcox

Bill Duncan, Dog Warden, on June 10, 2009, to Seneca County, for Dog Warden meeting.

Pete Welch, Sue Bommer, Jerry Huffman, Jeff Deeble corrected travel dates from June 10, 2009 to June 11, 2009. Pete Welch corrected travel dates from June 11, 2009 to June 12, 2009.

IN THE MATTER OF REQUEST FOR LEAVE

Lon Burton/Mechanic/sick/12:30 p.m. – 3:30 p.m. June 12, 2009.

Cheryl Nolan/Commissioners/vacation/12:00 noon June 23, 2009 – 4:30 p.m. June 26, 2009.

At 9:30 a.m. Public Comment**OTHER BUSINESS**

Gary Bauer reported on a phone call from Joe Kovach, County Engineer and Lt Bryan from the Norwalk Post of the State Highway Patrol has requested Mr. Kovach to help him as he wants to make the traffic on State Route 18 one way from the by pass to the parking lots at Summit Raceway Park and he has asked Mr. Kovach to provide a couple of barricades and a sign that states that traffic must turn right or left at the barricades. Mr. Kovach is good with this but has asked for the board support on this. The board agreed to support this process. Mr. Bauer also had a conversation with Mr. Kovach in regards to the highway department cooperating with the driver license's check and Mr. Kovach stated that some had been done but that Carl Essex has a problem with it and did not say yes we will get that done right now. Mr. Kovach stated though that he would check into this and Mr. Bauer stated that he would give Mr. Kovach a call back after he had spoken to the board about the barricades and would talk to him further about these driver license's checks.

Mike Adelman stated that he needed a brief executive session under ORC 121.22 (G) (4).

At 9:33 a.m. Larry J. Silcox moved to enter into **Executive Session ORC 121.22 (G) (4)** preparation for, conducting, or reviewing negotiations or bargaining sessions for public employees, concerning employee compensation or other terms and conditions of employment. Mike Adelman seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman

Aye – Gary W. Bauer

Aye –Larry J. Silcox

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At 9:45 a.m. Larry J. Silcox moved to end Executive Session ORC 121.22 (G) (4). Mike Adelman seconded the motion. The roll being called upon its adoption, the vote resulted as follows:

Aye – Mike Adelman
Aye – Gary W. Bauer
Aye – Larry J. Silcox

* No action taken.

Assistant Prosecutor's Report

Daivia Kasper, Assistant Prosecutor presented the out come of the State ex rel Renwand v Huron County Commissioners et al Huron County Common Pleas Court Case No. CVH 2008-0689.

RUSSELL V. LEFFLER
Huron County Prosecutor
 12 East Main Street, 4th Floor
 Norwalk, Ohio 44857
 Phone: (419) 668-8215
 Fax: (419) 663-3844

June 10, 2009

Huron County Board of Commissioners
 Attn: Cheryl Nolan, Clerk
 180 Milan Ave
 Norwalk OH 44857

Huron County Engineer
 Attn: Joe Kovach
 150 Jefferson St
 Norwalk OH 44857

RE: State ex rel Renwand v Huron County Commissioners et al
 Huron County Common Pleas Court Case No CVH 2008-0689


Dear Commissioners and Engineer:

Enclosed please find copy of the Court's decision in the above referenced litigation regarding force account projects and the Huron County Engineer.

The Court found in favor of the County.

Renwand may appeal the decision. He has 30 days to appeal to the Court of Appeals - until July 9, 2009.

Let me know if you have any questions or concerns regarding the above.

Sincerely,

 Daivia S. Kasper
 Assistant Prosecutor

cc: file
 Encl

Kasper

COPY

IN THE COURT OF COMMON PLEAS
 HURON COUNTY, OHIO

LARRY RENWAND,
 Ex rel. STATE OF OHIO,

Relator

Case No. CVH 2008-0689

vs.

JUDITH A. CROSS, JUDGE
 Sitting by Assignment

BOARD OF HURON COUNTY
 COMMISSIONERS, et al.,

Respondents

JUDGMENT ENTRY
 06-09-2009
 565-382

FILED
 HURON COUNTY
 COMMON PLEAS COURT
 09 JUN -8 AM 10:49
 SUSAN S. HAZEL
 CLERK OF COURTS

This matter came before the Court upon Motions for Summary Judgment filed respectively by both Relator and Respondents, with briefs from Amicus Curiae filed on behalf of the County Commissioners Association of Ohio and the County Engineers Association of Ohio and on behalf of Ohio Council 8, AFSCME, AFL-CIO. Opposition to the Motions were filed on behalf of Relator and Respondents.

This matter began as a request for an injunction relative to the construction of three bridges. All three bridges have been completed, and therefore Counts I, II, and III of the Complaint of Relator are now moot. The Court therefore grants summary judgment to Respondents as to these three counts.

Count IV of Relator's Complaint requests a declaratory judgment. Since the likelihood of repetition of the issues involved, this is not moot. The dispute is a matter of statutory construction and interpretation and is therefore appropriate for summary judgment.

At issue is the interpretation of Ohio Revised Code Section 5543.19(B):

(B) The county engineer may, when authorized by the board of county commissioners and not required by this section or other law to use competitive bidding, employ such laborers and vehicles, use such county employees and property, lease such implements and tools, and purchase such materials as are necessary in the construction, reconstruction, improvement, maintenance, or repair of bridges and culverts by force account.

In determining whether such construction, reconstruction, improvement, maintenance, or repair of bridges or culverts may be undertaken by force account, the county engineer shall first cause to be made an estimate of the cost of such work using the force account project assessment form. When the total estimated cost of the work exceeds one hundred thousand dollars, the board of county commissioners shall invite and receive competitive bids for furnishing all the labor, materials, and equipment necessary to complete the work, in accordance with sections 307.86 to 307.92 of the Revised Code. The county engineer shall obtain the approval required by section 5543.02 of the Revised Code.

The debate is over the definition of the word "work". Relator believes "work" means the entire project, in this case, everything from demolition of the prior structures to painting the stripes on the new roadway over the bridges. Clearly, the entire project was well in excess of the one hundred thousand dollars set forth as requiring competitive bids. Respondents, on the other hand, believe the "work" is that portion of the job done by the county engineer as general contractor, and is well below the one hundred thousand dollar limit.

Respondents rely in part upon a letter of October 13, 2006 from then Auditor of State Betty Montgomery, wherein the Auditor supports the position that a "force account" does not include the entire project. Her opinion is directly on point, and she points out that the argument that Ohio Revised Code Section 5543.19 requires the estimate of the engineer to encompass the cost of the entire project and not just the cost of the portion that would be done under a force account is not correct.

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Ohio Revised Code Section 5543.19(C) defines "force account" as follows:

"Force account" as used in this section means that the county engineer will act as contractor, using labor employed by the engineer using material and equipment either owned by the county or leased or purchased in compliance with sections 307.86 to 307.92 of the Revised Code and excludes subcontracting any part of such work unless done pursuant to sections 30.86 to 307.92 of the Revised Code.

Force account projects therefore, can be a part of a larger project. Here, the Huron County engineer did not perform or act as the contractor for the portion of the project involving the pre-stressed concrete bridge beams. The cost for the material and installation of these beams was included in the cost estimate for the entire bridge project but were not included in the Force Account Project Assessment Form. Properly, the Force Account Project Assessment Form included only that work to be done by the county engineer's employees, or for which the county engineer was to be the contractor.

Huron County properly followed the competitive bid procedure where the costs exceeded the limit for non-bid items. The work done by the county engineer or overseen by him as a contractor properly fell below the one hundred thousand dollar limit for force accounts, under the interpretation of the Auditor as expressed in her letter of October 13, 2006. The Court agrees with the Auditor's interpretation.

The entire project can be compared to the building of a house, which includes many components to the job. There are plumbing, electrical, carpentry and other parts to the whole. A homeowner may decide to do part of the job himself, such as the painting, and may subcontract out parts of the job; for example, the plumbing work. That is what happened in the three bridge jobs. Some of the job was contracted out, and not under the supervision of the county engineer, to wit: the pre-stressed concrete bridge beams and their installation. Some of the job was done under the supervision of the county engineer

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as the contractor, and this was the force account work. While the entire project exceeded the force account limit, the work done under the county engineer as contractor did not. It appears the county followed the procedure for competitive bids throughout the entire project.

Therefore, the Court finds summary judgment should be given to Respondents as to Count IV. In further support of summary judgment for Respondents, the Court finds that the Auditor of State has the jurisdiction for reviewing force account project decisions. Ohio Revised Code Section 117.16(B) sets forth the Auditor as the proper forum for deciding if there needs to be an additional audit, and subsections (C) and (D) set forth the punishments if the requirements of the force account have not been met. Rather than a taxpayer lawsuit, a complaint to the Auditor of State would appear to be the proper method of challenging a force account project decision.

For all of these reasons; the fact that the injunctive relief is moot; the determination by this Court that the statute regarding force accounts allows the account to be used for a portion of an entire project; and the finding that the proper forum is a complaint to the Auditor of State, the Court GRANTS the Motion for Summary Judgment of Respondents, and DENIES the Motion for Summary Judgment of Relator. The Court did not consider the affidavit of Joe Kovach; therefore the Motion to Strike the affidavit is moot, AND IT IS SO ORDERED.

Costs of this action are assessed to Relator. This is a final, appealable order.

COPIES BY REGULAR MAIL TO:
 BASIL MANGANO AND
 JEROME GUARDINO III
 BETHANY SANDERS
 FREDERICK VIERCKW
 JUDGE JUDITH CROSS
 COPY HAND-DELIVERED TO:
 DANVIA KASPER

Judith A. Cross
 JUDITH A. CROSS, JUDGE
 Signing by Assignment

Ms. Kasper also discussed other items that she has been working on such as the vacation of the Wakeman Country Club streets and reported on her conversation with Diane Wolf, Fiscal Officer for Wakeman Township; the agreement with the City of Norwalk for the Dog Warden to address the registration of dangerous and vicious dogs within the city of Norwalk; the law library board appointments by the commissioners for two members.

At 9:55 a.m. Larry J. Silcox moved to adjourn. Mike Adelman seconded the motion. The meeting stood adjourned.

IN THE MATTER OF OPEN SESSION

The Huron County Commissioners hereby attest that all actions and deliberations of the Board legally required to be public were conducted in an open session on this date and that the foregoing minutes represent the official action of the Board.

IN THE MATTER OF CERTIFICATION

The Clerk to the Board does hereby attest that the foregoing is a true and correct record of all actions taken by the Board of Huron County Commissioners on June 11, 2009.

IN THE MATTER OF ADJOURNING

The meeting was called to order at 9:00 a.m. With no further business to come before the Board, the meeting was adjourned at 9:55 a. m.

Signatures on File