

December 19, 2018

1. The Ottawa County Board of Commissioners held a special combined meeting with the Ottawa County Excise Board at 1:00 P.M. on December 19, 2018, with the following members present: County Commission's Chairman Chad Masterson, Commissioner Russell Earls and John Clarke. Kenny Wright, District Attorney, was also in attendance.

Notice of the meeting was posted at the south door of the Ottawa County Courthouse at 11:26 A.M., December 17, 2018. Commissioners' Meeting Agendas and Minutes can also be found online at [ottawa.okcounties.org](http://ottawa.okcounties.org).

2. Discussion with Excise Board to approve and lift the restriction that was imposed on November 30, 2018 on the Sheriff's access to his unencumbered funds, allow him to draw upon those funds to make the November December payroll, then reapply the restriction December 20, 2018, and at that time the remaining unencumbered general fund account balance divided by 6 and the Sheriff would have access on a monthly basis to the 1/6<sup>th</sup> for the remainder of the fiscal year." Wright stated that one or both Boards will be required to take action so we do need some degree of consensus among the two Board's as to how to proceed here. One option is to help the Sheriff cover payroll for the November 20th to December 19th period by transferring from the General Fund the amount of \$47,000. Conditions that can be placed on that could be the Sheriff's office transferring the money back to the General Fund back at a later time. The Sheriff has started taking personnel actions in reference to the oncoming pay period. A second option would be if the Excise Board would be willing to lift the restriction, then the Sheriff would have access from its own general fund, go ahead and make payroll, then place the restriction back on. That would mean some recalculating. There is also some concern that if the BOCC decided to go ahead and transfer from general that, because of the restriction the Excise Board has, you would need an acknowledgement from the Excise Board that working in the frame work of that restriction it would be ok for the Sheriff to use that additional \$50,000 that was just transferred for that payroll. A third option was presented by Sheriff Floyd. "I am trying to get some more details on TPO product to put on the roof. With a handful of inmates, I could probably end up doing the roof repairs." The Sheriff stated that he has the knowledge to repair the roof and indicated that some of the labor done by trustees we might be able to do that roof with a reduced amount of cost. We probably wouldn't address this until July to wait for it to dry it out really well. Therefore, if you want to take \$150,000 that was set aside from the tax appropriation for the roof, we can revisit this in July. I am trying to get a better idea as far as how much TPO and see what it would cost to bid that out. Wright said the liability for the inmates themselves, using inmates for labor is pretty normal, they would sign a waiver, they are volunteering, we are not forcing them. Kathy Bowling, County Treasurer, said it is her understanding that we are supposed to be talking about personnel and payroll. What does the roof have to do with that? Wright replied that it is just another idea where the Commissioners could transfer from as opposed to the general funding. Earls stated he appreciates the idea but he needs to have a better understanding. "I believe the \$150,000 was lumped into the general which is what we have already divided up for 7 months so there is not an additional account where a pot of money might be." Mays stated, "There is no account with \$150,000 setting in it available to be spent." Earls said it is a great idea, probably still going to have to do it since there is no money, but it doesn't help our situation. Weece asked how long it takes to do the roof. Floyd said, "It might be 10 to 14 days." Clarke asked, "Are the inmates capable of accomplishing this?" Floyd said it is just like building a bridge. We offer inmates to build bridges and you give them an order or direction of what to do and tell them how to do it. Leonard said at their last meeting they were told \$150,000 that was put into the Sheriff's M&O account, how

much of that has been transferred out to go to his payroll? Mays replied "That the money wasn't transferred out of payroll. The Sheriff used it earlier in the year to pay bills and utilities so the funds were depleted. There is \$4,000 left in his M&O account. But none of it has not been transferred out." Earls said there are 4 items in the estimate of needs that is going to come out of that M&O. That money in essence is still in there but the Excise Board has already divided up the entirety of it. Leonard said that she is saying there is \$4,000 left in that M&O at this point. Of the \$4,000 it is divided into the 1/7<sup>th</sup>. Mays replied it is. Earls said it looks like the option would be 1 or 2, transferring from County general \$47,000 with option to pay back or the Excise Board lifting the restrictions and allowing the Sheriff to make payroll and then putting the restrictions back on for 1/6<sup>th</sup> of what is left. Leonard asked the Sheriff if he could budget that and make it work? Floyd said, "Probably not. We let 8 go today and we're getting down to the nitty gritty as far as what we can do". Leonard said we are all looking for a long-term solution that satisfies all of our needs. Passing something quick to get out of the door is no going to solve his problem or our problem, we are going to be revisiting this 30 or 60 days from now. What we can all live with and come out of this and have an understanding to work together is what we are supposed to be doing. Masterson asked Floyd, "You said you let eight go today, is there a total number, is there another few to leave tomorrow?" Floyd said we let eight go today and we reduced part time hours. We are still looking at every avenue imaginable, this is the bare bones. There is no other direction as far as staff we have to have to continue for operations. Comp time is going to start eating us up. Masterson asked if it would be an option to sell back some vehicles. Earls said, "The problem with that is we've paid our annual premium or annual payment for the year. You can let them have every one of them back but they've got our money, they aren't going to give our money back. If we were at the end of the fiscal year it would certainly was an option or was an option when we set the budget. But at this point in time the payment has been made." Bowling asked, "If the eight employees that were hired were some of the new ones?" Floyd replied it was some folks that has been there for a period of time and some of the new ones? Kathy asked, "Who are the new ones?" Floyd replied, "Lane Carroll". Leonard asked what do you think your monthly payroll will be after the steps you took in future months? Floyd said "We've got it down to about roughly \$113,000 right now, again we are looking at different avenues to try and see how much more we can cut. When we are operating 24-7, and then we are mandated so many per inmate, it makes it real tough to, when you are including benefits on top of that as well, benefits are about 1/3 of their salary. On \$97,000, I mean, it's almost impossible. You get to a point, I mean, there are going to be times when we are not going to have a deputy on duty." Becky Smith, County Assessor, asked, "How many personnel do you have?" Floyd asked, "Full time or part time?" Smith replied "Both". Floyd said "We have roughly five part time and again I don't have that list with me, counting myself as far as law enforcement there was fourteen of us and then about that many in the jail as well, which includes dispatchers." Bowling said "I thought you had about 50, 51 employees according to payroll." Floyd said there are fourteen of us, I didn't have the staff up front, there are four girls up front, so closer to 40. Smith said that is 37. Mays said 51 is how many we paid on payroll this month. Robyn Mitchell, County Clerk, asked the Sheriff if he had an amount on comp time we need to pay exciting employees? Floyd said, as far as who we let go there is one individual that has 300 hours but, everyone is going to have some comp time. "We are going to have to try to get through that by paying it out in time, which he is in agreement with whatever we work out." Earls asked what he is in agreement of. Floyd said "As far as paying out the comp time like a normal check he would get." Gatewood said, "And not in a lump sum." Floyd said, "Either way." Bowling asked, "If it would make more sense to let go the new ones that don't have comp time?" Floyd said everyone is going to have some comp time because of the 28 day payroll cycle. Bowling said, "She thought the 12 hour shifts was

going to change that.” Floyd replied “It doesn’t matter if it was 10, 12, or 8 hour shifts, it’s the way if falls.” Bowling said “So that was not correct.” Floyd said regardless of what hours, you are still working over that amount of time, that any extra that they get called out on, whatever, to assist, or stay over for reports or whatever the situation may be, that just an addition. Bowling said “So basically what you reported before that that was going to lower the comp time, that did not work.” Floyd said it helped us but at the same time it’s not taking off of the 28 day payroll. But as far as the comp time spending time over of the 8 hours, that helps us. Wright asked, “So on the approximately 300 hours comp time, and I don’t know what that employee made, are you anticipating that being around \$5,000 maybe?” Floyd said that sounds about right. Wright said, “So where you are sitting today with the 8 you let go, your payroll, without looking at comp time or anything, your payroll is still going to be \$17,000 over?” Floyd replied, “\$13,000 is what we figured out.” Earls said, we were doing \$96,000 is what the Excise Board put in place, per month, you said you were down to about \$113,000. Floyd said we were up to about \$150,000 approximately. Smith asked if the \$113,000 include the benefits and everything? Mitchell said if he does the 1/6<sup>th</sup> that takes it down to \$90,000. Earls said, “So that’s \$23,000 to try to make up. Do you know approximately what the pay is with benefits, in other words, 2 more people, 5 more people, 6 more people, to make up that difference? Floyd replied, about \$3,000 to \$3,500 with benefits per person, roughly. Mays said that will be about 6 ½ people, if his numbers are correct. Earls asked the Sheriff if he had any other names? Bowling asked if the status forms have been sent over yet. Floyd replied, “They are actually paid up through today. Their status forms will come over tomorrow.” Bowling said that today would be another deadline for 6 more, since it’s the 19<sup>th</sup>. Earls told the Sheriff that we are in a jam. “I know in the past, different counties just had to let folks go, especially out in the field. I know that jail has got to run. We’ll just have to let go of the folks out in the field until we can get through this. It may be a tough six months. You’ve got a lot of issues over there. Obviously, the roof is the biggest thing. I don’t see the rest of that stuff being huge. I see it being very manageable. Especially with the right plan and I’m working on that. I’ll get with you and see what you think about it. But until we can get through this next six months, we’re just going to have to cut deeper. You’ve obviously been thinking a lot about it, you’ve already picked eight. I suggest you pick six more. If we don’t have any coverage in the field, we will just have to suffer through it.” Gatewood asked if there could be any working agreement with the tribes? Earls said “There is and they are cross deputized, so they can patrol any part of the County, is that correct?” Floyd said “They patrol in their Indian country area. The Quapaw’s don’t have a lot of resources, in addition, they don’t have the staff. They have restructured their staffing to be more at the casinos. They are allotted basically one to two officers that are on a shift there so a lot of that time is at the casino. The Eastern Shawnee has some resources if we need it on that part, up there. And the Miami Nation, of course, they run one or two a shift as well so we try to utilize what we got.” Earls asked if he had a good relationship with them, everything working well? The Sheriff said, “Yes.” Clarke asked, “What a tribal officer can do outside his tribal jurisdiction?” Floyd replied, “It all depends, and again, when we are talking about cross deputization, not everyone with each tribe is cross deputized. In order for them to follow the statutes, the guidelines, they have to at least have an SLEC (Special Law Enforcement Commission) clearance from the Bureau of Indian Affairs in order to be considered a state officer by statute.” Unless they have the SLEC I can’t legally cross deputize with them because they aren’t considered a state officer. But once they get the SLEC, then I can cross deputize with them. But it allows them to enforce crime on tribal land and fee land. Fee land is kind of the questionable area. Clarke asked if the tribe could detain him until the County deputies can get somebody to arrest him? The Sheriff replied if they had the cross deputization and under mutual aid as well, they can, if the emergency shall arise, we request or ask them to go, they can detain you until we

can get there. Wright asked, "So they can't act of their own volition in that situation, they can only act under the Sheriff's request?" Earls asked "So you are saying that if they are cross deputized all they can do is detain John, they can't bring him into jail?" Sheriff replied, "It all depends if whatever their tribe, if they have SLEC and it depends on who is on duty cause like I said not all of them have SLEC. And that is where it gets a little sticky. They can detain them until we get there to take over the scene." Earls continued "So is there a situation where tribal police can basically do everything you can do if they are all but stamps and approvals?" Sheriff said "As long as they have the cross deputization." Wright said "And as long as the Sheriff agrees to allow them to do that." The Sheriff said "They try to use all of the resources they can that we have to offer." Leonard asked the Sheriff, "Do you foresee any changes in income coming in?" The Sheriff said, "Our population is coming down which is a good thing because we save money on the back side as far as cost per day but DOC is pulling pretty quick and we have 2 more pulls coming up but they are going to be taking another 20 and that is going to hit us pretty hard too." Earls said it looked like the last time they visited this DOC thing a month ago it looked like it was well on track to what it was last year. The Sheriff said "No, it's below quite a bit." Wright asked "So last year was about \$60,000 a month and now it's about \$20,000?" Mays said, "That is very incorrect and I have the reports that I have given to the BOCC that say otherwise." Wright asked what it was last year. Mays said, "\$40,000 was his average last year and it's \$40,000 this year. I have the deposits." The Sheriff asked, "If that was the DOC check or is that everything going into it?" Mays replied "That is DOC checks only in your BOP account." The Sheriff said he will get his numbers. Bowling asked, "Did the tribe handle Friday evening when you were having your party? Is that who was in charge?" The Sheriff said they had a deputy on patrol. Masterson asked, "The cash money from the Kiosks, how does that come into play here?" The Sheriff said "It goes in the Commissary, money is coming in and out of the commissary, because we purchase Commissary, it all comes to play on that. Plus, we pay Vicki Brede out of the Commissary as well." Bowling mentioned our courthouse security being part of the lay off and that being an issue that we need to address. The Sheriff said they are pulling a deputy from their payroll as part of that eight. So that comes off of a different payroll. Earls asked how that helps since that money can only be used for courthouse security. The Sheriff said "We transferred a deputy from our 04A payroll to this payroll so it's coming off of this payroll and added onto the court security." James White will be replacing Kevin Dunkel. Masterson asked, "So he will be courthouse security?" Bowling asked, "So you are just exchanging deputies?" Earls replied, "You can't use that money that is generated here for any other reason. As long as there is a deputy here that is being paid with the courthouse security money." Leonard asked, "Taking the steps he's made and dividing it by 12, how close are we getting to him being where he should have been at the first of the year? If his budget would have been adjusted 6 months ago, are we even getting close to where we need to be?" Earls asked, "What the payroll was last month?" Mitchell replied, "\$149,000." Mays stated that his payroll comes to \$1.8 million for the year, but he was allotted \$1.3 million at the beginning of the year, which is \$108,000 per month. Earls said, "So even with the \$113,000 we are still not where we should be." Weece asked Wright, "Of the two options, which one do you feel is better?" Wright replied, "I think the transfer by the BOCC from the general fund is probably better because of this. He would have to further shrink his department beyond the eight that he let go today and the potentially six to seven he may have to be let go as a part of this deal. So that would be another 2 or 3 people on top of that, if we went the Excise Board route. I think for him to get by on \$96,000 is hard enough, to get by on \$90,000 is probably pushing it." Masterson asked, "With the option of a payback?" Wright said, "If we can come up with a solution that would work for the remainder of the year and we don't have to get together and tinker with it over and over that would be great. You can place a condition on the \$50,000 that at the end of the fiscal year, if for

whatever reason, the Sheriff has surplus to carry over, that whatever there is of that surplus up to the \$50,000 gets transferred to that." Wright said, "That is just one of many ways I can envision doing it. Realistically, he may not have additional funds, it just may not be possible. But by tacking that onto the fiscal year, we are not squeezing that budget down any tighter than we are already squeezing it down." Weece asked Wright, "If the Sheriff would transfer it back over the next 7 months if we did option 1, keeping it as is with the Excise Board, would that be monthly or at the end of the 7 months?" Wright said, "The difficulty is you are going to have another \$8,000 or \$9,000 a month bite out of the budget which is already a little bit too small. That's why I've got the preference of having a condition that, at the end of the year, if there is a surplus, then that gets transferred back." Leonard said, "It is up to you, the Commissioners, what you are willing to and what the Excise Board needs to do to facilitate it. Whether you choose to subsidize with the general fund, appropriation or part of it or not, that decision needs to be made before we decide whether we rescind our action of last month and pass a new resolution dividing by 6." Wright said if the County Commissioners decided to transfer an amount of money out of the general fund to the Sheriff, just for purposes of making this payroll work for the November-December payroll, then probably all we would need from the Excise Board is an acknowledgement that it's ok for the Sheriff to spend that additional appropriation to cover this payroll in light of the restriction, then you can just leave the restriction in place, but the County would want to know that you approve of him spending that \$50,000 on this payroll in light of the restriction. If the Board is not willing to transfer any money, then the remaining option is whether or not the Excise Board wants to lift the restriction to allow him access to his funds. If neither Board took any action today, what we would ultimately have is employees that worked for the County that won't be paid. Because you can't pay them if there is no money. What I would then anticipate doing is working with those employees in the future or with their attorneys, if they decide to go that route, to facilitate a friendly suit between those former employees and the County wherein they do get paid. That doesn't happen automatically, it could be a 3 to 6 month process. The money still goes to them, it is just a matter of timing. Clarke said this is a tough time of year to lose your job and not get paid. We tried to deal with this situation for quite some time. I am pretty displeased that it had to come to today for resolution. "I should've been more aggressive about avoiding this." Masterson said, "Let's say we go with option #2 and lift the restriction and let the Sheriff have his budget, then next month we are going to be right back into this same situation, can we borrow from the next month until the Sheriff comes up with the final number on his layoffs? See where we are at?" Wright said, "You could almost do this either way. Whether you went with the general fund transfer or lifting the restriction, either Board could say the condition of that is you would require the Sheriff to lay off enough employees so that you would be under payroll for the next payroll." Masterson said, "Until we see status forms and final numbers, and know what we are really looking at, that is where I am at." Sheriff said they laid off eight today, we are just going to have to regroup and come up with some additional. Clarke asked the Sheriff what kind of assets do you have at the old District 2 barn? The Sheriff asked, "That is all ours." Clarke said we should've thought about getting rid of some of that stuff. Earls said \$20,000 or \$30,000 goes a long way right now. Mays made the suggestion that "Whichever way you decide to go to help the Sheriff, can I recommend that he gets help from the County Clerk's office to get his numbers and reports so he can see actual numbers and not estimates? Somebody that actually sees his accounts like the Treasurer's office that knows his actual numbers and what goes on and not just estimates because we can't do estimates any more. We have got to get factual numbers. He doesn't what their salary is, he doesn't know what their benefits are. And that plays a big factor." Mitchell said, "We have the numbers and we balance with the treasurer's office." Earls asked, "How do you implement that?" Mays said, "The Sheriff has come up with a number

of \$113,000 for payroll, I want to know who these people are so I can give you a true dollar amount of what payroll is going to be. Because when they turn in payroll, they don't turn in what their benefits are, they just do the salary and not with the benefits and that is a big chunk. If he only has \$96,000 to work with, technically he only has around \$65,000 in salary to pay because of the benefits and that is something that needs to be addressed. And don't forget about comp time. That's a big one that always sneaks up on us." Clarke asked Mays how long it takes to liquidate assets. Mays replied "It depends on what he is willing to get rid of, then you are going to have to find an auction, then get the money. If everything goes smoothly it could be a month to 6 weeks before you'd get a check." Earls said we have 6 months in this fiscal year and \$20,000 to \$30,000 is a lot of money right now. Clarke said it would help to save a couple of positions. Mays said if we don't have 13 deputies on patrol, we don't need 13 cars. We can still get rid of those vehicles, because I am paying out fuel for them, the cost of expenses of people out driving them and we don't need them." Gatewood said "We are going to have to have another meeting until we can come down. We are talking about six and a half more, or can we get to 3 once the clerk's office knows the people to be able to figure the benefits? Then we can make good decisions and motions. Sheriff, you need to come up with the other names." Masterson stated that when we come back to this next month or whenever, the Sheriff would come back with another budget number. Masterson said, "We have to decide something so that these people will get paid today." Earls stated the thinks it is a good idea to talk with the clerk's office. Leonard asked "Do we need to do all of that or does the Excise Board need to lift the restriction from last month to let his people get paid and you work this all out, then we all come back in the new year?" Wright said, "For example, you could make a motion to temporarily lift the restriction to allow him access to sufficient funds to make the November-December payroll and in the same motion, once those funds are accessed, the restriction is back in place. Then you would be dividing by 6 with what is left." Earls said, "I see no issue with this Board making those recommendations. It opens it up to allow this Board to implement whatever restrictions and go forward." Leonard said, "We can do that and get the payroll met today. We are 6 months into the fiscal year and the Sheriff is trying to correct his house. It is hard to overcome that. There is still going to be discussion down the road." Masterson said there is no quick fix to this. Earls said we helped it along today and we will look at it again. Wright said "The intention would be to lift the restriction that was proposed by the Excise Board on November 30<sup>th</sup>." Leonard added "To allow him access to unencumbered funds to make payroll for this pay period. Then put the restriction back in place and divide by 6 months remaining." Leonard asked Wright, "If we just totally rescind the whole motion then its going to come back to when he runs out of his appropriated funds, then what are the Commissioners going to do?" Wright said, "Then we are right back where we started and probably bankrupt the County." Excise Board discussed a motion made by Weece to lift the restriction the Excise Board imposed on November 30, 2018, reapply the restriction on December 20, 2018 and take the balance of the Sheriff's unencumbered general fund account, also known as the Sheriff's Sales Tax fund, divide it by 6, allowing access to 1/6<sup>th</sup> for each month for the remainder of the fiscal year. By allowing him to draw upon those funds to make the November-December payroll.

3. Motion by Earls, second by Clarke; to approve the following transfers of appropriations from the Sheriff's travel account to the Sheriff's personal services account and possible actions to include approval or denial in whole or in part in the amounts of \$5,170.69 from 0001-2-0400-1310 to 0001-2-0400-1110; \$11,494.01 from 1222-2-0400-2005 to 1222-2-0400-1110; \$13,000.00 from 1226-2-0400-1110 to \$3,000 1226-2-0400-1130 and \$10,000 1226-2-0400-2005. By vote: Masterson, aye; Clarke aye; Earls, aye.

4. Motion by Earls, second by Clarke, to approve of County payroll claims for December 2018 and approval or denial in whole or in part. By vote: Masterson, aye; Clarke aye; Earls, aye.
5. Motion by Clarke, second by Earls; to adjourn. By vote: Masterson, aye; Clarke aye; Earls, aye.

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Chad Masterson, Chairman

Robyn Mitchell, Ottawa County Clerk  
Miami News-Record