

**THE BOARD OF COUNTY COMMISSIONERS  
DURHAM, NORTH CAROLINA**

Friday, January 23, 2009

8:00 A.M. Legislative Breakfast with Durham Delegation

**MINUTES**

- Place: Main Library Conference Room, second floor, Durham County Government Administrative Complex, 200 E. Main Street, Durham, NC
- Present: Commission Chairman Michael D. Page, Commission Vice-Chairman Ellen W. Reckhow, and Commissioner Brenda A. Howerton
- Senators Bob Atwater and Floyd B. McKissick Jr.  
Representatives Larry D. Hall, Paul Luebke, and Henry M. Michaux
- Staff: Mike Ruffin, County Manager; Chuck Kitchen, County Attorney; Carolyn Titus, Deputy County Manager; Deborah Craig-Ray, Assistant County Manager; and Yvonne R. Gordon, Deputy Clerk to the Board
- Absent: Commissioners Joe Bowser and Becky M. Heron, and Representative W.A. Wilkins
- Presider: Chairman Page

**Welcome and Introductions**

Chairman Page welcomed everyone to the January 23, 2009 Special Breakfast Meeting with the Durham Legislative Delegation. He asked persons present to introduce themselves to the group.

**Overview of General Assembly Session**

Representative Hall provided an overview of the General Assembly Session. He briefly discussed the deficit and cost of programs within the state.

Representative Luebke elaborated on the deficit. He mentioned the possibility of imposing a cigarette tax to assist with salary increases.

The Delegation and Commissioners spoke to the deficit and how President Obama's stimulus plan may offset the deficit and be distributed amongst the states.

Representative Michaux mentioned the lack of accountability for monies disbursed as part of the bank bailouts.

## **Discussion of Issues in 2008 Agenda Package**

The Delegation and Commissioners held a discussion pertaining to the following priority goals to include in the legislative agenda for the General Assembly:

1. Support legislation to allow public schools systems to regain access to sales tax refunds.

Rationale: Legislation would restore public schools' access to sales tax refunds in the same manner as for private schools. Durham County, like many other counties, currently acts as project manager for Durham Public Schools construction projects to reduce the costs to DPS.

The County Attorney's staff routinely spends an average of ten hours per project providing contract management for DPS projects. Approximately 180 hours of services have been provided in the last year. This is cumbersome and expensive and takes funding away from students. In addition, substantial time is added to the completion time of each project due to this practice of counties acting as project managers.

### Comments

- Tax refunds
- Other counties' perspectives
- Gains for Durham County

2. Support legislation to allow greater sharing of information between the juvenile justice system and the adult criminal system.

Rationale: After the highly publicized murders of two college students this year, it is imperative that legislative action be taken to allow greater sharing of information between the juvenile justice system and the adult criminal system. Probation officers, district attorneys, judges, and law enforcement must have available juvenile delinquency information when a 16, 17, or 18 year old is charged with a felony offense.

Juveniles who are under juvenile court supervision are currently protected by confidentiality laws. While that is appropriate, if that juvenile is later charged with a felony offense on or after his/her 16<sup>th</sup> birthday, juvenile delinquency records should be made available to prosecutors and judges so appropriate decisions are made in setting bonds and plea negotiations. And, as it often happens, if teenagers are on juvenile court supervision and criminal probation, court counselors and probation officers must be able to share appropriate information.

The problem that exists in this current loophole is enormous, adversely affecting public safety. Criminal prosecutors do not have delinquency information. Judges do not know if a 17 year old has just been released from a training school. Probation officers do not know if a court counselor is also supervising a 16 year old for armed robbery.

Keep juvenile records confidential, but, if that juvenile crosses over the line after the 16<sup>th</sup> birthday, his/her juvenile record must be made known.

Comments

- A resolution is being discussed and considered; await outcome.
- Software issues.
- Consider mimicking Pennsylvania's information system.
- Consider money and time that would be invested to fix this issue.

3. Jordan Lake Rules—The County requests that a bill be introduced within the first 30 days of the Legislature to disapprove three of the rules which pertain to the City and County of Durham.

Rationale: The Environmental Management Commission has adopted new rules which apply in the entire Jordan Lake watershed. These rules require a 35% reduction in nitrogen and a 5% reduction in phosphorus for the City and County of Durham. The purpose of the rules is to restore water quality in Jordan Lake. The proposed rules are based on questionable science, and it is unclear if the implementation of the rules would have any noticeable affect on lake quality.

It is estimated that the cost of the rules would be approximately \$210 million for the City and County of Durham. These rules would not only affect new development, but also would require retrofitting existing houses and subdivisions in the County. It is the position of the County that the legislature has not given the Environmental Management Commission the authority to adopt these rules, and further, that the adopted rules violate the Separation of Powers Clause of the North Carolina Constitution.

Comments

- Possibly enforce firmer rules
- Introduce the proposed bill
- Punitive damages

Durham County Local Priority Goals

4. Civil Penalties in Erosion Control Cases

Rationale: It had been the practice of the Sedimentation and Erosion Control (S&E) Division of the County to notify a violator of the County's S&E Ordinance of the amount of the civil penalty being assessed on a daily basis until the violation was corrected. In a recent case, the Superior Court ruled that pursuant to statute, the County could not notify the violator in advance, but instead must wait until the violation was corrected before assessing the amount of the civil penalty. This has resulted in the civil penalty being "a surprise" to the violator and has greatly reduced the deterrent affect of the civil penalty.

Action sought: The County requests that the statute (G.S. § 113A-64) be amended to allow for the assessment of a per diem civil penalty.

Comments

- \$5,000 may be an obsessive fine.
- Question of alerting violators ahead of time.

5. Lis Pendens in Erosion Control Cases

Rationale: In a recent Court of Appeals case, Durham County v. Graham, the Court of Appeals ruled that when a person has violated the provisions of the County's Sedimentation and Erosion Control (S&E) Ordinance, and the County seeks an injunction to have the violation corrected, any new owner of the property, including those persons who purchased during the pendency of the suit, must be named as defendants. This results in at least a two-month delay each time the property changes hands during the litigation. The ability to file a lis pendens with the Clerk of Court would eliminate the requirement to continually add new parties.

Action sought: The County requests that the statute (G.S. § 1-116) be amended to allow for the filing of a lis pendens in an S&E case.

Brief description by the County Attorney; no comments were made.

6. Burden of Proof in Tax Appeals

Rationale: In a recent case, *In Re IBM*, the Supreme Court affirmed the decision of the Court of Appeals which adopted a new standard for the burden of proof for the appeal of tax assessments. The law had been that a tax assessment was presumed to be correct, and the person who disputed the assessment had the burden of proof to show that the assessment was incorrect. The Court of Appeals adopted a new scheme, similar to employment cases, where the burden of proof shifts from the appellant to the County once some evidence is admitted (even if that evidence is not credible) that the value is incorrect. Not only did this case upset the system which has been used for years, it puts an unnecessary burden on the counties to prepare a full appraisal in all property tax appeals.

Action sought: The County would request that the statute (G.S. § 105-290) be amended to restore the law to its pre-IBM state.

Comment

Clarification of the County's request to amend the statute to restore the law to its pre-IBM state.

7. Oppose Local Government Tort Claims Act

Rationale: The County has learned that a study committee is looking at recommending a local government tort claims act. Such an act would deprive the County and its citizens of a right to a jury trial and the right to be heard before an elected judge. Instead, all cases would be heard by an appointed bureaucrat. Without a jury to balance the biases of the decision maker, the citizens or the County would not necessarily get a fair hearing on the merits of the case. Additionally, most counties in North Carolina either have insurance or a

system of paying claims which protects the citizens who are injured by the negligence of county employees.

Action sought: The County requests that the Delegation oppose any bills which would establish a tort claims act for counties.

Comment

The existence of a local government tort claims act in other counties.

Vice-Chairman Reckhow briefly reviewed the County's top priority goals.

**Final Thoughts**

Representative Michaux commented on the numbering of the priority goals.

**Adjournment**

There being no further business, Chairman Page adjourned the meeting at 9:30 a.m.

Respectfully submitted,

Yvonne R. Gordon  
Deputy Clerk to the Board