

February 26, 2020
Guthrie, Oklahoma
9:00 A.M.

The Board of Logan County Commissioners met in Special Session with Chairman Marven Goodman present, Member Michael Pearson present and Member Monty Pearcy present and transacted the following:

The Agenda was posted at 10:07 A.M. on February 21, 2020 at the Courthouse and Courthouse Annex.

The meeting was called to order by the Chairman.

The flag salute was given.

Other County Officers present: Cheryl Smith, Tisha Hampton, Troy Cole. Sheleen Winscott, Election Board Secretary, also present. Damon Devereaux and Sherri Longnecker were unable to attend.

Discussion was held with county officers pertaining to the need to designate safety-sensitive positions pursuant to The Oklahoma Medical Marijuana and Patient Protection Act, Title 63 O.S. 427.8 K and The Standards for Workplace Drug and Alcohol Testing Act, Title 40 O.S. 554, which allows for an employer to designate safety-sensitive positions that the employer reasonably believes could affect the safety and health of the employee or others.

Troy Cole said that she has spoken with Dale Frech, ACCO, who stated that clerical staff cannot be deemed safety-safe. She said the positions would include all employees who regularly drive vehicles, operate equipment, power tools, carry a firearm or have direct contact in safety or health of people such as jailers and dispatchers.

Commissioner Pearson asked if an employee who carries a firearm must be tested. Troy Cole said that the law allows for anyone who carries a firearm to be deemed safety-sensitive.

Commissioner Goodman said that a position cannot just be declared exempt. He said it would depend on what the duties of that position entail. He said his admin is responsible for oversight of the underground fuel storage system which would qualify as safety-sensitive.

Commissioner Goodman said that he also believes that elected officials qualify as employees. He said this would not pertain to municipal elected officers as it is usually a city manager who directs policy. He said at the county level elected officials create policy the county official must also enforce the policy. He said he believes that county commissioners should be included as safety-sensitive as they are responsible for the oversight of critical infrastructure. He said he believes all elected county officials should be included as safety-sensitive.

Commissioner Pearson stated if constitutional carry should not apply. Clerk Cole said that she believes that the majority of county employees will qualify as safety-sensitive.

Commissioner Pearcy said the he will be on the list as he often carries a firearm and possess a CDL.

Commissioner Pearcy said any elected officials on the list receive the test results. His concern is if only one person receives the results they could be hidden and not addressed. Commissioner Goodman said perhaps the county elected officials should come together as a board to ensure that proper procedures are followed in the event of a positive test. He said a single elected official should not have the ability to put the county at risk by failing to follow proper procedures in the event of positive drug tests.

Commissioner Pearcy said that he currently sends all of his random drug tests to the County Clerk to place in personal files. Clerk Cole said that CDL drivers have elevated requirements.

Commissioner Goodman said though he does not have a CDL or operate heavy equipment since he directs the work he should be deemed safety-sensitive. Commissioner Pearcy said he agrees. Clerk Cole said that if an elected official regularly drives a county vehicle they would qualify as safety-sensitive.

Clerk Cole said that Dale Frech did advise that custodial staff may be included due to the use of chemicals and tools.

Clerk Cole said that she discussed this with Sheriff Devereaux who indicated that all of his staff with the exception of administrative assistant and records clerks would be deemed safety-sensitive.

Tisha Hampton asked if she would need to provide a list of her employees who would qualify as safety-sensitive. Her field appraiser regularly drive county vehicles. She was told yes. Clerk Cole said that all departments will submit the names of employees who are safety-sensitive.

Clerk Cole said that Commissioner Pearcy has obtained a quote from A&J Services to provide drug testing services.

Commissioner Goodman said that the types of testing would be random, new hire, for cause and post-accident. Clerk Cole said that all departments for any position in the county may be give a "conditional offer of employment" and could not be worked until the drug test is received. She explained that a for-cause test is for the event that a supervisor or elected officials suspects an employee to be impaired on the job. She said that officers should document what led them to the suspicion and request for the drug test. She stated that random drug tests will apply to all CDL drives and any deemed safety-sensitive.

Commissioner Pearcy said that he has had difficulty obtaining drug testing results from the current drug testing provider. He said when he inquired as to the delay he did not receive adequate response. He said he used A&J Services for a test and had response in two days.

Court Clerk Cheryl Smith said since most all of the safety-sensitive positions involve the county commissioners and assessor, they should be the ones on the review board. She also said that the county clerk as the department who keeps the files should be included as well. Commissioner Goodman said he believes all county officers should be involved in assessing and managing risk to the county.

Commissioner Pearcy said that he believes Commissioner Goodman's intent is for the review board to oversight that any required procedures are followed by all departments. He said that he has recently had an employee test positive. He said that employee is now in rehab and once cleared he will send paperwork to county clerk and then proceed with working him. Commissioner Goodman said that an inebriated employee regardless of what they are on should not be operating heavy equipment. Commissioner Pearson commented that you don't know if they are inebriated. Commissioner Goodman replied that is where the random test comes in.

Assessor Hampton said that she has to use opioid medication due to medical conditions. She asked if this cause a problem for her. She said she does not drive a county vehicle. Commissioner Goodman said that a person with a legal prescription should be ok.

Commissioner Goodman made a motion, without objection, that all county elected officials and department heads be designated as safety-sensitive positions. He explained that under Roberts Rules and motion may be made and considered approved if no objection is made. Commissioner Pearcy asked if he wanted to deal with each item individually. Commissioner Goodman replied that this was the first that he believed should be set for motion. He said a separate issue to decide is how the review committee and deciding of action in the event of a positive test will be handled. He said that he believes that the County Clerk, as the county HR department, should head that. No objections were made. Motion carried.

The positions detailed are elected officials, department heads, employees who regularly drive a county vehicle, all CDL drivers, all jailers/detention deputies, dispatchers, custodian, assessor field appraisers and any employee who carries a firearm regardless of job duties. Clerk Cole suggested that each department be listed as some admin/clerical staff may qualify and others may not.

Commissioners Goodman and Pearcy said that their admin staff handle the fuel tanks and should be deemed safety-sensitive. Commissioner Pearson said that if he believes anyone to be impaired he will have them tested. He said if they are using for medical purposes it fall under the HIPPA and he will not discuss. He said his employees do not come to work stoned; he said if they did he would send them home. Commissioner Goodman asked if he was qualified to make that determination. Commissioner Pearson replied "absolutely". Commissioner Goodman said that should go to the review board. He said that he doesn't believe any one elected official should assume the risk for the entire county. Commissioner Pearson said he does not know what risk is being talked about. He said a case has not been made. Clerk Cole asked why he didn't object, he said it wouldn't have mattered.

Commissioner Pearcy said that he knows Commissioner Pearson is against drug testing. Commissioner Pearson said that he doesn't know the chain of custody etc. Clerk Cole asked if was refusing to have random tests done, he said he was not.

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Clerk Cole said that the officials took an oath to protect the liability to the citizens of the county. She said that no one should be on the job impaired. She said the legislature gave employers the ability to make the safety-sensitive designations to prevent liability.

Commissioner Pearson said that he can tell when someone is impaired by their actions. Commissioner Pearcey said he depends on the drug testing companies to make determinations.

Commissioner Goodman said the discussion is to have a review board to review any positive drug tests and any actions that should be taken. He said he knows requirements change and it is difficult to keep up. He said a review board will help to make sure requirements are followed. He said he believes the review board should be comprised of all elected officials.

Commissioner Pearcey said that Commissioner Pearson is saying that his clerical staff is not performing safety-sensitive duties. Commissioner Goodman said if they are handling fuel they are safety-sensitive positions. Commissioner Pearson said that his admin staff does not handle fuel tanks that is done by his mechanic and road foreman. Commissioner Goodman said that the review should make the decision as to if a position qualifies as safety-sensitive.

Clerk Cole said she feels the only items for the review board would be in the event of a positive test. She said that she has only dealt with two positives during her tenure. She said that she wants to confirm the legality and any impact of privacy laws. Court Clerk Smith asked if there is require positive test results are reported and kept in the personnel file. Commissioner Goodman responded that there is not and that procedure is what is being considered.

Clerk Cole said that it really bears on the CDL drivers, as information must be reported to any future employer. She said that prior to employing a driver a drug test and a three year background check of previous employers for any accidents or positive testing must be received. She said when the information is not reported to the official personnel record it will be impossible to respond to the inquiries in the future. She said that federal law has requirements that we must put into place and comply with. She said while she understands Commissioner Pearson's beliefs we must comply with statute. He said he knows we must uphold the statutes.

Commissioner Goodman said that all elected officials should have input upon a positive drug test. He said CDL is defined by federal law as to how they are handled. He said there needs to be oversight that the law is followed and that no individual risk is being assumed to the county.

Commissioner Pearcey asked if the Board of County Commissioners does not have a right to view any and all information regarding employees. Clerk Cole said that she will have to confirm how drug tests fall under confidential or HIPPA regulations.

Clerk Cole asked if the review board could demand the termination of an employee for a positive result. Commissioner Goodman gave an example of an employee who fell down the stairs and tested positive, the elected official choosing not to take action, he said the elected official should not have the ability to make that decision. He said the elected official could make a case to the board as to what action or inaction based on circumstances. Clerk Cole said that if an employee provides documentation from medical provider explaining the test result, that employee should not be faced embarrassed or exposed to the board. Court Clerk Smith recommended that any report to the review board involving a positive test result for an employee should be handled in an anonymous manner; the employee should not be named to the review board. Commissioner Goodman said he agrees that the employee should not be named to the review board.

Commission Goodman motioned, without objection, a review board comprised of the elected officials whose duty is to review any positive test results and to ensure that necessary actions were taken. The employee is to remain anonymous and not be identified to the review board. Test results should only be delivered to the elected official and the county clerk so as to make sure that no results are being suppressed. No objections were noted. Motion carried.

Commissioner Pearson said that he fears this may be an overreach. Commissioner Pearson said that drug testing is not definitive to determine impairment. He said there is an impairment test but has not been accepted by law. He said since the law says a safety-sensitive job will be tested it is now our position to make that determination. He said we are now having to speculate as to liability without proof of impairment.

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Commissioner Pearcy asked Commissioner Pearson if, as county commissioner, his job is safety-sensitive. Commissioner Pearson replied that his job is to direct; if his direction is not correct would he be liable if tested positive, he said the issue is if impaired. He said CBD has minimal THC, he said it could be tested positive would that mean he is impaired and cannot make decisions that affect people's lives and he is now liable and could be sued. Commissioner Goodman said that the law differentiates between use and impairment. He said there are different levels of impairment. He the use of medical marijuana without a license is against the law. He said the use of marijuana violates the law, it isn't just about impairment.

Commissioner Pearcy said the question is the job of a county commissioner safety-sensitive. Commissioner Pearson said that it could be. Commissioner Pearcy asked if a secretary job is safety-sensitive. Commissioner Pearson replied that any job could be considered safety-sensitive. Commissioner Pearcy said that surmised that what if a secretary used marijuana in the morning, came to work stoned, receive a call about a stop sign down and couldn't properly report the call, would that be safety-sensitive. Commissioner Pearson said it could be.

Clerk Cole said that while there is no way to determine impairment, CDL drivers are restricted from use, so why should that standard not apply to all positions that have a potential to cause liability to the county. Commissioner Pearson responded that what if a secretary, in her own vehicle, wrecks on her way to the courthouse, responding law enforcement suspects issue and has tested and it is positive for THC, how do you know the THC caused the accident. Commissioner Pearson said that all jobs could be safety-sensitive. Commissioner Pearcy asked why he is against testing. He said because the test cannot determine impairment. Court Clerk Smith said that an officer will only take for a test if impairment is suspected. Clerk Cole said that we should require all those involved in an accident should be tested. Clerk Cole said that not all accidents involve a vehicle. Commissioner Goodman said that is correct.

Commissioner Goodman said that employees being able to carry a firearm in the courthouse should be placed on the safety-sensitive list. Clerk Cole as of this date only two employees have filed the application to carry in the courthouse. Clerk Cole said that elected officials are authorized by law to carry without being authorized by the Sheriff. Commissioner Goodman said that he completed the waiver to carry. Commissioner Goodman said he believes county officers should complete the county paperwork for carrying a firearm on the job. He said he feels if it is required of the employees it should be required of the officials.

Discussion was held regarding the selection of a drug testing company. Commissioner Pearcy said that the current company has had issues. He said that he has met with A&J Services, they have lowered their price to the same as the current company. Commissioner Goodman that he has had a problem with the current company when he sent for a for-cause test. He said the test they did for alcohol was not for intoxication but whether alcohol had been recently used. He said the it was really an abstinence test. He said he needs to know if an employee was drinking that day. Commissioner Pearson said that a breathalyzer test should be done. Commissioner Goodman agreed that a breathalyzer or blood test should be done for alcohol intoxication.

Commissioner Pearson said that tests are being developed that will test for marijuana intoxication. Clerk Cole said that as things change, tests become available, we will have to change our policies.

Assessor Hampton asked if a urine test is the one that the employer should request. Clerk Cole replied that a urine test will be done for new hires; for-cause or post-accident should be urine and breathalyzer or blood test. Assessor Hampton asked if the employer must sign to have the tests done. Clerk Cole responded that the drug testing policy was updated in 2019. She said she plans to give each employee a copy of the resolution once approved by the Board of County Commissioners.

Commissioner Pearson said he has not heard of any concerns with A&J Services. Commissioner Goodman said that he is in favor of using A&J Services.

Comments by the county officers:

Clerk Cole said that the new phone system and unifying of internet services between the county buildings around the courthouse is still being worked on to determine cost and feasibility. She said the cost will probably be more than we currently pay however the improved services will be worth the cost.

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Commissioner Piearcy said that he has been obtaining quotes for replacement of the flag pole. He said he has a quote of less than \$3000 for a 35' flag pole.

Commissioner Piearcy said that he would like to get the six-story cleaned and the county officers discuss how to renovate the building.

MOTION TO ADJOURN

Marven Goodman made the motion which was duly seconded by Michael Pearson with the voting as follows: Pearson-AYE, Piearcy-AYE and Goodman-AYE;

THAT, there being no further business to come before the board the meeting was adjourned until 9:00 A.M., February 28, 2020.

ATTEST: _____
Logan County Clerk

Chairman, Board of Logan County Commissioners