

Minutes of the Legislative Subcommittee

The Legislative Subcommittee of the Executive Committee of the McLean County Board met on Thursday, April 24, 2008 at 4:30 p.m. in Room 400, Government Center, 115 E. Washington Street, Bloomington, Illinois.

Members Present: Chairman Bob Nuckolls, Members Dean, Gordon, and Hoselton

Members Absent: Member Owens

Staff Present: Mr. John Zeunik, County Administrator; Mr. Terry Lindberg, Assistant County Administrator; Ms. Judith A. LaCasse, County Administrator's Assistant

Department Heads/
Elected Officials

Present: Mr. Jerry Vogler, Director, Veterans Assistance Commission

Others Present: Mr. Dale Hillard, LeRoy; Mr. Francis Smith, LeRoy; Mr. Ron Darnall, Bloomington; Ms. Susan J. Darnall, Bloomington; Mr. Phil Rever, Normal; Mr. John Weaver, Bloomington; Ms. Dixie Weaver, Bloomington; Retired Judge Ron Dozier, Downs; Mr. Bob Bradley, Normal; Mr. Denny Rogers, Bloomington; Mr. Walter Biesiada, Normal; Mr. Phil Boulds, Bloomington; Mr. Jonathon Stachura, Normal

Chairman Nuckolls called the meeting to order at 4:35 p.m.

Chairman Nuckolls presented a request for approval of a Resolution of the McLean County Board supporting full Federal funding for Veteran's Health Care. He noted that this Resolution was presented by Mr. Jerry Vogler, Veterans Assistance Commission, at the Tuesday, November 13, 2007 Executive Committee Meeting. Chairman Nuckolls invited Mr. Vogler to speak to the Committee.

Mr. Jerry Vogler, Director, Veterans Assistance Commission, thanked the Committee for the opportunity to speak to them regarding this Resolution. He pointed out that the intent of the Resolution is to notify representatives in the U.S. Congress that you want them to draft, sponsor, campaign for, and support such legislation so that the Federal Government adopts full funding for veterans health care as a mandatory budget item. He noted that the words were changed from "demands" in the original resolution to "respectfully requests" in the Resolution as presented in the Packet.

Mr. Vogler read a statement regarding the VA Mandatory Funding, as follows:

“Thank you for the opportunity to address the Legislative Committee of the McLean County Board. Last November, John Zeunik gave me the opportunity to review a letter and proposed resolution from Lt. Governor Patrick Quinn’s office concerning placing a non-binding referendum on the election ballot in February 2008. This non-binding referendum was a request of the Federal Government to make mandatory the funding for the Veteran’s Administration Health Care programs. Currently, the VA funding is discretionary and subject to the whims and pork barrel tactics of the politicians in Washington, D.C.

The effort to make VA spending mandatory has been a battle that has been fought for many years by the Veteran’s organizations representing the approximately 20 million American Veterans.

After discussions with other VAC Superintendents and with leaders of the Veteran’s organizations in Central Illinois, it was the consensus that the non-binding referendum was an insult to the intelligence of the Veterans and citizens in the State of Illinois because it did nothing substantive, cost additional tax dollars to implement and only gave political cover to those who do not really want to make VA Health Care funding mandatory. It was our recommendation, at that time, that the Lt. Governor’s Resolution be rejected.

We, at the VAC, fully understand that it was difficult for our elected County officials to reject requests from the Lt. Governor, and especially it could make some believe that they do not care about the issues of Veteran’s Health Care. It is for that reason that I drafted the alternate Resolution that you are considering and hopefully approving today.

The Resolution I have provided you reflects the comments and sentiments of the Lt. Governor’s Resolution as far as support to move VA funding from discretionary to mandatory. However, the Resolution I offer does not request an expensive do-nothing, non-binding referendum. Instead, and I refer you to Section 1, at the bottom of the first page of the Resolution, the Resolution requests that the McLean County Board take a moral stand with the Veterans of McLean County and respectfully request, as our elected County officials, that our U.S. Senators and our local U.S. Representatives make mandatory the funding for VA Health Care which our Veterans so greatly need. I also want to clear up any confusion about what Mandatory Funding really is and is not. Mandatory Funding is not full

funding. Full funding is a term that has been misused and refers to Congress having to provide all of the funds requested by the VA. Mandatory Funding is simply taking the politics out of the funding process and putting VA Health Care funding on the same level of consideration as is Social Security and the Federal Entitlement programs.

The substantive parts of this Resolution are Sections 1 and Sections 2, which I would like to read, and then I would be glad to answer any questions before consideration of this Resolution.”

Mr. Vogler read Section 1 and Section 2, as follows:

“NOW, THEREFORE, BE IT RESOLVED THAT:

Section 1: The McLean County Board respectfully requests that the Honorable United States Senators Richard Durbin and Barack Obama, and United States Congressmen Timothy Johnson and Jerry Weller, should create, sponsor, campaign for, and support such legislation as is necessary to result in the Federal Government adopting funding for Veteran’s Health Care, as a mandatory funding budget item in the most expeditious manner possible.

Section 2: This resolution shall be in full force and effect upon its passage and approval, and shall remain in full force and effect until a subsequent lawful action by the Federal Government results in the enactment of the aforementioned legislation, or until a subsequent lawful action by the McLean County Board to rescind this Resolution occurs. “

Mr. Dean commented that a lot of thought and effort was put into this Resolution. Mr. Vogler replied that veteran’s health care is a significant issue right now with the number of Iraq area veterans returning, many with unseen traumatic brain injuries (“TBI”).

Motion by Hoselton/Dean to Recommend approval of
a Resolution of the McLean County Board Supporting
full Federal Funding for Veteran’s Health Care.
Motion carried.

Chairman Nuckolls asked if there were any questions or comments. Hearing none, he thanked Mr. Vogler.

Chairman Nuckolls presented a request for approval of a Resolution of the McLean County Board Approving and Adopting Additional 2008 Legislative Subcommittee Recommendations – Second Amendment Rights.

Mr. John Weaver, Bloomington, advised that 77 Counties in Illinois have passed a Resolution supporting the Second Amendment. He noted that surveys he has conducted show that 50 Counties passed the Resolution without changing the wording of the proposed Resolution that was submitted at the March 25th Legislative Sub-Committee meeting as an informational item. Mr. Weaver indicated that he would like to see the same wording in the Resolution under consideration. He commented that he feels that American freedoms are being eroded. Mr. Weaver stated that it has not been proven that controlling guns will reduce crime, but it would burden legal citizens and take away their rights. Mr. Weaver asked that the Resolution be passed with its original wording.

Mr. Hoselton stated that he felt the material provided to the Committee by Mr. Weaver has been exceptional.

Mr. Gordon pointed out that the Resolution under consideration today was prepared by the Administrator's Office and is not the original Resolution that was discussed at the March 25th meeting.

Mr. Hoselton asked if the people who are present are aware of this revision. Mr. Lindberg replied that the original Resolution is included on page 14 of the packet. He noted that on pages 12-13 is the "boiler-plate" form by which most Resolutions are developed. Mr. Lindberg indicated that, from the third "Whereas" down to the first "Be it Resolved" is the meat of the Resolution. He stated that the wording is different than the original Resolution presented by the proponents of this issue. Mr. Lindberg noted that the revised Resolution was included in the Committee Packet and is available on the County website, but it was not passed out prior to the meeting.

Mr. Lindberg read the significant sections of the Resolution, as follows:

WHEREAS, the Second Amendment to the United States Constitution states, "A well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed" and;

WHEREAS, many residents of McLean County, Illinois, derive economic benefit from safe forms of firearms recreation, hunting, and shooting conducted within McLean County using firearms allowable under federal and state law, and;

WHEREAS, the McLean County Board, being elected to represent the citizens of McLean County and being duly sworn by their Oath of Office to uphold the United States Constitution and the Constitution of the State of Illinois, now, therefore;

BE IT RESOLVED that the McLean County Board, opposes any legislation that is found by a court of competent jurisdiction to be in violation of the Second Amendment to the United States Constitution.

Mr. Weaver responded that he would prefer the wording that was in the original Resolution, as the current wording dilutes the legal impact he wishes to convey. He noted that the changes also dilute the message that 77 Counties have passed this Resolution rather than a Resolution. Chairman Nuckolls pointed out that there have been modifications made on several of the Resolutions approved by those 77 Counties. Mr. Weaver replied that at least 50 Counties have maintained the original Resolution. He agreed that the intent in the modified Resolution is the same as the original Resolution, which he would still prefer, but he would support the Resolution in the packet.

Mr. Lindberg pointed out that the last paragraph of the original Resolution stated "Now, therefore, it be and is hereby resolved that the People of McLean County, Illinois, do hereby oppose the enactment..." He advised that a County Board Resolution can only be approved by the County Board and not the people of McLean County.

Ms. Susan J. Darnall, Bloomington, distributed a packet containing copies of the Resolutions passed by other Counties, as well as an updated map and the original Resolution.

Mr. Jonathon Stachura, Normal, indicated that he understands that minor changes needed to be made to the Resolution. However, he took exception to the phrase "be it resolved that the McLean County Board opposes any legislation that is found by a court of competent jurisdiction to be in violation of the Second Amendment..." Mr. Stachura noted that there have not been very many court rulings on gun control. He pointed out that the D.C. vs. Heller case, which the Supreme Court should rule on in June, will likely strike down certain bans on firearms.

The question presented by 07-290 District of Columbia vs. Heller is whether the Second Amendment forbids the District of Columbia from banning private possession of handguns while allowing possession of rifles and shotguns.

Mr. Stachura indicated that, until the Supreme Court decision is made, the legislature is hearing bills that would ban firearms. He noted that it could take years for the Court to strike down these laws.

Mr. Stachura advised that the economic impact of gun control in Illinois is detrimental to the State. He pointed out that, last year, Illinois Anglers and Hunters contributed \$2.1 billion to the Illinois economy. Mr. Stachura suggested that the Illinois legislature should be passing laws to encourage these activities, not restrict them. Mr. Stachura also noted that some of the finest firearm manufacturers are located in Illinois who may move their plants to other states if gun control laws are passed.

Retired Judge Ron Dozier reminded the Committee that he had made some suggested revisions to the Resolution at the Committee meeting last month. He pointed out that he felt the last part of the Resolution, which stated "...and consider such laws to be unconstitutional and beyond lawful Legislative Authority," was unnecessarily inflammatory and should be deleted from the Resolution. Retired Judge Dozier noted that, later, there was some discussion that perhaps the Resolution should have been left the way it was presented. He recognized that some legal changes to the language in the current Resolution were necessary. However, Retired Judge Dozier indicated that the language regarding "...a court of competent jurisdiction to be in violation..." in the current Resolution is a surprise to him. He stated that the biggest case on the Second Amendment in 100 years will be decided by the Supreme Court in June. Retired Judge Dozier noted that those people who are pro gun rights took heart from the arguments in front of the Supreme Court and some of the comments from some of the justices, and believe that something for gun rights will come out. He acknowledged that no rights, including the right of free speech and the right to bear arms, are totally unfettered. Retired judge Dozier indicated that people in the judiciary prefer to get their guidance from the public and not have the public waiting to be told what their rights are. He stated that he would prefer his above suggested change be incorporated into the current Resolution and the statement regarding "...a court of competent jurisdiction..." be removed.

Mr. Lindberg advised that Retired Judge Dozier's proposal was to change the last paragraph to say "...do hereby oppose the enactment of any legislation that would unreasonably infringe upon the Right of the People to keep and bear arms."

Mr. Gordon advised that if the proposed Resolution, including any changes, is approved by the Legislative Sub-Committee, it must then go to the Executive Committee for approval and then to the full Board for approval.

After a continued discussion, wording in the proposed Resolution was changed, as follows:

- Paragraph seven (the first “Be it Resolved”) be changed to read: “BE IT RESOLVED that the McLean County Board, opposes any legislation that unreasonably infringes on the right of the people to keep and bear arms;”

Motion by Hoselton/Dean to Recommend Approval of a Resolution of the McLean County Board Approving and Adopting Additional 2008 Legislative Subcommittee Recommendations – Second Amendment Rights as amended.

Mr. Gordon reported that he opposes the deletion of the wording “...by a court of competent jurisdiction...” He indicated that nothing has been changed by taking out the wording as far as the role of the courts. What is reasonable is often a matter of the judgment of the people involved in passing legislation. Mr. Gordon stated that it is also very frequently challenged in court. He acknowledged that the Second Amendment has not been brought up in the courts very often.

Mr. Gordon called attention to a series of considerations regarding the Second Amendment prepared by a colleague of his at Illinois State University that makes a couple of points. He read the following:

“That the U.S. Supreme Court, most importantly, has never ruled that the Second Amendment grants an individual the right to keep and bear arms that is separate from the maintenance and effectiveness of the State’s militia.”

Mr. Gordon pointed out that the meaning of the Second Amendment is very significant. He noted that there are disagreements on what the Second Amendment means. Mr. Gordon stated that the language in the original Resolution does not reflect what he feels is the meaning of the Second Amendment. He indicated that he cannot define what is an “unreasonable infringement” any more than someone else can determine what is an unreasonable infringement on the right of the people to keep and bear arms. Mr. Gordon made the following statements regarding the Second Amendment:

- It was linked centrally to the role of the State Militia.
- It is related to the language of the time in which the Amendment was proposed.
- It was an assertion of State authority in the face of a new National Government that was not trusted.
- It was an affirmation of the role of the States under the new Federal system.

Mr. Gordon expressed his belief that the language of the Second Amendment means that:

- State Governments weren't going to hang on to the firearms;
- They were not going to stockpile the firearms needed in the event the State Militia's services were needed to protect the security of a free state;
- Individuals were going to be able to keep their firearms;
- Private ownership of muskets and other firearms of that period were well within bounds;
- When the service to the militia is completed, the people who were part of the militia can take their muskets home with them. That way there is no question about who owned the guns that would be put to the use of the State Militia.

Mr. Gordon stated that he believes it is premature for the County Board to enact any Resolution, no matter where it came from and in any language. He indicated that, since the Supreme Court has ruled infrequently on the meaning of the Second Amendment and because we are little more than two months away from what might be a landmark ruling by the U.S. Supreme Court, this Resolution should not be acted upon at this time. Mr. Gordon noted that the Court is always free to make a ruling that is applicable across the board and would become part of judicial precedent and the law of the land. He stated that the Court is free to make a decision on the District of Columbia versus Heller that applies only to the District of Columbia gun ban and the Court is absolutely free to say that this does not apply to anything else, it does not define any other meaning, and it has no further applicability other than the case at hand. He repeated that this Resolution is premature due to its timing. Mr. Gordon noted that the most definitive ruling by the Supreme Court in 1939 was that the Second Amendment did not protect the right of someone to keep and use shotguns.

Mr. Gordon stated that he would be more comfortable with the language in the proposed Resolution that was included in the packet. He would like to wait to see what the Supreme Court has to say about the District of Columbia vs. Heller before this Resolution is enacted.

Mr. Walter Biesiada, Normal, responded to Mr. Gordon's comments. He stated that the writers of the Constitution were capable individuals. Mr. Biesiada indicated that, based on the language usage at that time, "well regulated" did not mean the same as it means today. He advised that "well regulated" meant being able to do what you are supposed to do, not regulation from the top. Mr. Biesiada stated that "well regulated, in the case of the militia, meant being able to hit what you are aiming at. He noted that "being necessary to the security of a free State" does not mean the States themselves, but to the United States. Mr. Biesiada indicated that, because of the language changes over the years, the meaning of the different words gets misinterpreted.

Mr. Gordon advised that the usage of the phrase "bear arms" is almost always in the context of a collective military setting. Mr. Biesiada responded that the "right of the people to keep and bear arms" was meant specifically for the people to have the right to keep and bear arms, not for the collective state Militia or the collective U.S. Militia to keep and bear arms. Mr. Gordon pointed out that, since 1791 when the Bill of Rights, including the Second Amendment was ratified, the usage of the term "bear arms," has been used predominately with collective military activity in court cases and in statutes.

Mr. Hoselton suggested that it is necessary to define the word Militia. Mr. Biesiada responded that every single person in the United States was a member of the Militia -- if they were male and above the age of 16 and below the age of 45. He noted that any other person could volunteer except for certain officials who were not able to be drafted.

Mr. Stachura stated that he disagrees with Mr. Gordon's interpretation of U.S. vs. Miller in 1939. He indicated that they did not say that Miller could not have a shotgun because he was not part of the militia; they said that he could not have a sawed off shotgun because they found that the shotgun was not purposely used in a militia. Mr. Stachura noted that Mr. Miller passed away before his case came before the court. He advised that they did not say that people who were not in a militia were not allowed to keep guns; they said that people who were are not in a militia are allowed to keep guns if they have use to a militia. Mr. Stachura indicated that the court would not have told Miller that he couldn't have the gun because he was not in a militia; they told him that the sawed off

shotgun had no apparent use for a militia; therefore, it is not protected under the Second Amendment. He stated that, had Mr. Miller been alive to have counsel, they would have been able to prove that shotguns have been used in a militia service since the Revolutionary War. Mr. Stachura indicated that there would have been a much different ruling in favor of Mr. Miller had he not passed away. Mr. Biesiada added that the attorney for Mr. Miller was never there to present evidence that sawed off shotguns were issued in World War I and were called trench guns. He reiterated that there was no judicial notice of a sawed off shotgun being a military or militia weapon because the lawyer was not there to present judicial notice.

Mr. Gordon indicated that the wording found in one part of the decision in the U.S. vs. Miller case in 1939 stated that:

“In the absence of any evidence tending to show that possession or use of a shotgun having a barrel of less than 18 inches in length at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia. We cannot say that the Second Amendment guarantees the right to keep and bear such an instrument.”

Mr. Stachura stated that what was being said is not that Mr. Miller couldn't keep that weapon because he is not in the militia; it is saying that the weapon has no bearing towards the militia so he can't keep it.

After additional discussion, Chairman Nuckolls asked for a vote on the Motion.

Motion carried with Member Gordon voting “no.”

Chairman Nuckolls advised that this Resolution will be reviewed at the Executive Committee on May 13th at 4:30 p.m. He thanked the members of the public for their input.

Chairman Nuckolls presented a request for approval to support Senate Bill 2181, which allows Counties to impose Sales Tax for Probation Services.

Mr. Lindberg explained that this issue was discussed at the March 24th meeting. He reminded the Committee that they asked three questions, which he has answered as follows:

1. Would the tax permitted by SB 2181 apply to all sales, even those that take place within municipalities? Yes, it would. There are no exempt areas under the current proposal. We would expect to see resistance from home rule municipalities on this point.
2. The bill requires that the sales tax be applied in quarter cent increments. Is there a limit on the number of quarter cent increments that can be imposed? The current proposal does not limit the amount of tax that can be imposed, so long as it is done in quarter cent increments.
3. Is a referendum required to implement this tax? The current proposal provides that the tax can be imposed by a majority vote of the County Board, without referendum.

Mr. Lindberg advised that he was informed by the County's Metro Counties lobbyist that there is not a realistic chance of this bill becoming law. He noted that, even if it passed, the governor would likely veto SB 2181.

Chairman Nuckolls advised that there is no need to consider this issue.

Mr. Gordon asked how frequently, under current law, can such incremental sales tax increases occur. Mr. Lindberg replied that the County Board does not have the authority to raise sales taxes without legislation. Mr. Gordon asked how often, if approved, can increases occur. Mr. Zeunik replied that there are only two times during the year when, with legislative authority, sales tax can be increased, namely April 1st and October 1st.

Mr. Lindberg advised that SB 2181 addresses the problem of probation funding from the State. He noted that we still have a problem with probation funding. Mr. Lindberg stated that this fiscal year we will get about 48% of what we should receive.

Mr. Zeunik indicated that Board Chairman Sorensen suggested that Metro Counties support SB 2181. He suggested that the State may be willing to make a trade. Currently the State reimburses Counties at 48%. Mr. Zeunik noted that to do that the State must appropriate a significant amount of money in the State budget every year, which is not enough and does not meet State law. Mr. Zeunik indicated that it was recommended that the State keep that money and use it for whatever purpose it wants, in exchange for giving authority to the County to fund these services by increasing the sales tax.

Chairman Nuckolls reviewed a request for approval of a Resolution requesting that the Local Delegation in Springfield make sure that any Capital Bills include local Government Road and Bridge Funding.

Mr. Lindberg reminded the Committee that, over the last year, there has been discussion in Springfield for a Capital Bill to fund increased roadwork, schools and other infrastructures for the State of Illinois. He indicated that he does not believe this program has been introduced into the Legislature, but there probably will be a bill coming forth to fund a Capital Program.

Mr. Lindberg indicated that, in the past 30 years, when road funding has increased for the State, there is usually an equal increase in the level of road funding for Local Agencies. He expressed concern that this is not being discussed with the current Capital Bill.

Mr. Lindberg reiterated the concerns Mr. Mitchell expressed at the last meeting that County road construction costs have increased dramatically since the last funding increase in 1998.

Mr. Lindberg asked for the Committee's support in lobbying our legislature for increased funding for Local Highways when a Capital Bill emerges in the legislature.

Motion by Dean/Gordon to Recommend Approval of a Resolution requesting that the Local Delegation in Springfield make sure that any Capital Bills include Local Government Road and Bridge Funding.
Motion carried.

Chairman Nuckolls advised that the Resolution of the McLean County Board Approving and Adopting the 2008 Legislative Subcommittee Recommendations as approved at the April 15, 2008 County Board Meeting was included in the packet for informational purposes.

Mr. Lindberg informed the Committee that Mr. Bill Anderson who has been McLean County's lobbyist for more than ten years passed away last Saturday after a long bout with Cancer. He noted that Mr. Anderson was 43 years old and leaves behind a wife and two children.

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Mr. Lindberg advised that the Resolutions included in the packet will be amended from "...this resolution will be forwarded to Mr. William Anderson of Anderson Legislative Consulting..." to "...this Resolution will be forwarded to Anderson Legislative Consulting..."

Mr. Lindberg stated that Mr. Anderson was a true gentleman and he enjoyed a great deal of respect among his peers and among his opponents.

Mr. Gordon recommended that the Board consider a Resolution of Commendation to Mr. Anderson that will be given to his widow. Mr. Zeunik replied that it can be proposed to the Executive Committee.

Chairman Nuckolls presented the Minutes of the March 25, 2008 Legislative Subcommittee for approval.

Motion by Hoselton/Gordon to approve the Minutes of
the March 25, 2008 Sub-Committee Meeting.
Motion carried.

There being no further business to come before the Committee, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Ms. Judith A. LaCasse
Recording Secretary