

MINUTES
Town of Crested Butte
Special Town Council Meeting
Tuesday, July 28, 2015
Meeting Room Jr, Crested Butte Town Hall

Mayor Huckstep called the meeting to order at 6:15PM.

Council Members Present: Jim Schmidt, Glenn Michel, Roland Mason, and Shaun Matusewicz

Chris Ladoulis attended via phone. He did not vote.

Staff Present: Town Manager Todd Crossett, Town Attorney John Belkin, and Deputy Town Clerk Betty Warren

DISCUSSION AND DIRECTION OF TOWN STAFF RELATIVE TO MATTERS INVOLVING THE 2015 ELECTION.

Huckstep stated that Belkin wanted to request the addition of an Executive Session to the agenda. Belkin confirmed he requested an Executive Session for the purposes of conferencing the Town Attorney for receiving legal advice on specific questions under C.R.S. Section 24-6-402(4)(b). It had to do with the election issue. It was not a substantive issue, but it was an administrative process issue he wanted to discuss.

Editor of the Crested Butte News, Mark Reaman, questioned that the Executive Session was not included in the meeting notice. Huckstep confirmed with Belkin it was legal to add it to the agenda.

Schmidt moved and Mason seconded a motion to go into Executive Session for the reason stated above. A roll call vote was taken with Matusewicz and Huckstep voting, "No," and Mason, Michel, and Schmidt voting, "Yes." **Motion failed.**

Huckstep then began the discussion on the election. There was no packet for the meeting, but he referred to a memo from Belkin dated July 28, 2015 concerning related Town matters for the 2015 election. Belkin explained that the reason for the meeting was the timeframe for the coordinated election with the need to meet state requirements. Several items could be required on the agenda for next Tuesday's Regular Meeting of the Town Council.

Belkin explained that County Attorney, David Baumgarten, shared through the clerks that he wanted an ordinance that would dictate that Town would follow Title 1 for the coordinated election. Baumgarten also said the County would require an indemnity. There were two IGAs affected: the first is the one typically used for a coordinated election, and the second IGA was for the postcard process. Baumgarten would require a blanket indemnification that covered "everything under the sun." Belkin spoke with

Jerry Dahl and Kendra Carberry, both deal with election law specifically. He found that counties requesting indemnities were becoming more commonplace. Town did not have indemnities with previous IGAs; therefore, it was a new provision and needed to be presented to Council to make a decision on the risk profile. The IGA for the coordinated election had to be approved by resolution on the next agenda, if Council decided to go through with the coordinated election. It included the indemnity and exculpatory language where the County would not guarantee results for the postcard piece. Baumgarten spoke with Crossett and Belkin, and though there were differing opinions, Baumgarten did not believe the postcard mailing would be effective. They were unsure there was a voter issue. Belkin's biggest concern was that Baumgarten raised the issue of the ordinance. Belkin discussed with Baumgarten the way to make Town synch with the County's operation under Title 1. Baumgarten wanted his client to operate under Title 1, and what the Town did was separate and apart from them. Baumgarten said that Town had to figure out the Election Commission, come up with a procedure to establish proof of residency, and coordinate that with the Title 1 process.

Belkin referred to a second memo in which he shared with the Council the indemnity for the postcard IGA. There was an exculpatory provision which released the County of blatant and willful actions. Belkin further explained that the indemnity covered everything. It was broad enough that it covered the County's conduct, so if they were sued, Town would be paying for it. There could be circumstances where municipal lawyers make carve-outs to the indemnity. Belkin had not asked Baumgarten if he would grant carve-outs, but based on their conversations, he did not feel Baumgarten would budge.

Belkin explained that when Town had a coordinated election, it adopted Title 1. Town still used the Municipal Election Code in the Charter, but Town adopted Title 1, and that allowed Town the carve-outs. The County ran the election process like a vendor for the Town. Schmidt wondered what the State required in Title 1 as far as registration and proof of residency. Belkin said that Title 1 dealt with registration, and there was a residency requirement as well. The County was the registration process. Belkin said that with his understanding of the Charter, if there was a question of residency, it had to go to the Election Commission. Schmidt did not recall the Election Commission being mentioned since Town had gone to coordinated elections. Crossett explained that under the system as it existed now, the Election Commission could not call people out, especially with mail-in ballots. Title 1 allowed for the postcard method but not outreach to avoid disenfranchisement of anyone. Based on Belkin's reading related to the Election Commission provision, he felt the Town must utilize the Election Commission to establish proof of residency knowing that the election roll issue could exist and may not be corrected before the next election.

Huckstep focused the Council on the upcoming decisions:

- 1) What type of election did the Council want to have this November? Did the Council want a coordinated election or a local election?

- 2) If they were going toward the coordinated election, were they willing to embrace the indemnification?
- 3) Not to be addressed at this meeting: How did the Election Commission mesh with a coordinated election?

Crossett said that Staff recommended the coordinated election and following through with the postcard exercise. Related to the issue of indemnity, the first question was answered by Belkin addressing the idea that other counties have accepted these indemnifications. But, it struck Crossett as an odd request that the County was asking for indemnification on what was within their job description. Secondly, there was the issue of the Election Commission. If the Charter was in conflict with Title 1, then there was no choice. It had been sitting there like a ticking time bomb, and no one noticed until this conflict arose. However, Crossett was not convinced that it was in conflict. A local election would require that Town hire an outside person to implement the election. He indicated the Council would have to be prepared to spend upwards of \$30,000 to make sure it was done correctly. Unless there was a compelling legal reason to go away from the coordinated election, Staff did not recommend doing so.

Schmidt asked about policy for purging voter rolls. Huckstep's understanding from last year, being the 1st year of mail-in ballots, was that for anyone who was an inactive or disqualified voter, there was a presumption made to leave the voter as active, so as not to disenfranchise. If someone did not vote for two consecutive elections, they were placed on the inactive list. Crossett said the postcard was counting on people doing the right thing if they had moved and had not yet updated their physical address. No one would know until the process was implemented, but Crossett's thought was that it would help.

Schmidt asked if voters could be lying when they signed mail-in ballots with an incorrect address. Belkin thought that voters were less inclined to lie in person. Schmidt agreed, but he asked about the responsibility of those tasked to pursue voters for addresses. Belkin reiterated that the Election Commission could ask where voters live. Huckstep reaffirmed that the Commission would provide procedures to establish proof of residency where residency is in question. He added that this might not apply to every voter and indicated that with good cause, the Commission may require proof of residency by any person until reasonable proof had been presented. Michel asked if everyone would go to Town Hall to vote and how the Commission would work with the mail-in ballot. Belkin said when they came to vote they would be asked for their address.

Huckstep said that Council needed to decide about going with a local or coordinated election, and if the decision was for the coordinated election, there needed to be discussion regarding the indemnification. Mason questioned the costs for the postcard mailing and for the coordinated election. Michel said Council was working on an IGA with the County who had given their best effort related to voter rolls, but it may not be the best service that Town was getting. In addition, they were not guaranteeing that it was going to work, and they were also asking for an indemnity. Additionally, it would take five years to impact the voter rolls. Michel said that the coordinated election seemed problematic, and that the local election would be best for constituents. Schmidt

understood that Belkin was concerned that there was a problem. Schmidt was not sure there was a problem. He thought about the fact that some people in Town mis-voted in the last election. He asked if the Council was contemplating State statute in purging voter rolls. It was each voter's responsibility to be honest. He wondered what would be gained with a local election. He agreed that coming face to face with an Election Commission member made it more difficult to cheat, unlike the mail-in ballot. The thought was that mail-in ballots made voting easier, but they also made cheating easier and created cause for extra effort required to change one's address. Crossett said if Town invested in a person to run the election, that person would gain institutional knowledge, but he said that Staff estimated it would take a lot of boots on the ground. Matuszewicz said that the incorrect voter rolls was an issue that was documented in previous meetings. Huckstep suggested they take reasonable action with the complexity of the vote in November. He understood the need for an accurate election, but he wanted to move forward with the coordinated election. Schmidt thought the postcard mailing could be as effective as anything. Mason asked Schmidt where he was on the coordinated election. Schmidt said the coordinated election covered all aspects. Crossett said the standing decision last week was to have a coordinated election. Huckstep pointed out a 4-1 vote to go with the coordinated election. Matuszewicz cited the indemnification issue. Schmidt said the postcard mailing was a major step, and he had not heard of other towns doing more. Anyone could sue for any reason. Michel recalled Town spending \$40,000 on a bike race which required a high level of staff involvement. They were determining the right to vote in Town elections and needed to act as legitimate representatives of the people.

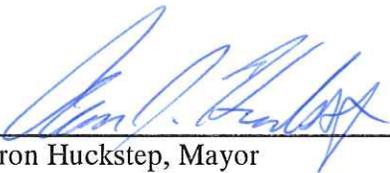
Michel moved and Matuszewicz seconded a motion to go with the local election. A roll call vote was taken with Matuszewicz and Michel voting, "Yes," and Mason, Huckstep, and Schmidt voting, "No." **Motion failed.**

The Council discussed the indemnification issue. Huckstep said the Council could instruct Belkin and Crossett to limit the indemnification proposed by the County. Belkin did not think the terms of the indemnification would change. Matuszewicz said the people in the Elections Office were very capable. Michel thought the County was saying take it or leave it. Huckstep said there was not much room for negotiation. Belkin said it all originated from Baumgarten yesterday and today. When Belkin questioned the scope of the indemnification, Baumgarten described it as covering "everything under the sun." The County was asking for broad indemnity. Crossett recognized that Belkin was expressing concern with how much leverage there was with the County. Mason said if Town rejected the indemnity, they might have to do a local election. Belkin voiced concern about all the flags, and it was conceivable Town may not be covered. Matuszewicz saw the sales tax issue as a piece that affected a broad group of people. Belkin asked how Town cooperated. Operating under Title 1 was the County's responsibility. Schmidt pointed out there currently were no claims. Belkin agreed it was a potential issue that may never happen. Huckstep again said they could direct Belkin and Crossett to negotiate with Baumgarten. Mason questioned the timeline for the Town to have a local election, if they could not agree on the indemnity. Belkin said they were at the brink of being able to do a local election. Matuszewicz said they were here now,

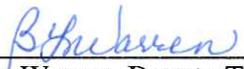
and he wondered why they would kick the decision down the road. Schmidt thought the risk was equal either way. Matuszewicz saw less risk with a local election. Mason said Town would be sending out postcards, but he was not comfortable with the “everything under the sun” indemnity. Michel said the postcard mailing and the local election were not one and the same. Schmidt said if the County didn’t want to accept the terms, they could go to someone to adjudicate. Belkin said it was explained the County’s indemnity was not unreasonable; they had to stay within the State statute. Schmidt confirmed with Belkin that the postcard mailing was within State statutes. The Council directed Belkin and Crossett to report back at the next Regular Town Council Meeting on their negotiations concerning the limit on the indemnification with County Attorney Baumgarten.

ADJOURNMENT

Mayor Huckstep adjourned the meeting at 8:17PM.



Aaron Huckstep, Mayor



Betty Warren, Deputy Town Clerk (SEAL)

