

**GRAND COUNTY CHANGE IN FORM OF GOVERNMENT
STUDY COMMITTEE
REGULAR MEETING**

**Grand County Council Chambers
125 East Center Street, Moab, Utah**

**MINUTES
September 6, 2019**

Call to Order

The Grand County Change in Form of Government Study Committee ("Study Committee") met in Regular Session on the above date in the County Council Chambers. The meeting was called to order by Chairperson Protem Marcy Till at 12:01 p.m. with a quorum present. In attendance at the call to order were Study Committee Members Judy Carmichael, Walt Dabney, Cricket Green, Bob Greenberg and Stephen Stocks (by phone). Absent at the Call to Order was Committee Member Jeramy Day. Also in attendance was County Council Administrator Ruth Dillon to take minutes, County Clerk Chris Baird, and Attorney Gavin Anderson.

Motion by Bob to elect Marcy Till as Chair Protem for this meeting, seconded by Walt carried 6-0.

Pledge of Allegiance

The Pledge of Allegiance to the Flag was led by Cricket.

It was announced that County Attorney Christina Sloan could not be present due to family member major surgery.

Jeramy Day arrived at 12:05 p.m.

Approval of Minutes

A. August 23, 2019 (Study Committee Regular Meeting)

Chair Protem Till requested any changes or corrections to the minutes. County Council Administrator Ruth Dillon reported that corrected draft minutes were on the dais to replace the draft minutes in the packet.

MOTION:

Motion by Bob to approve the replacement minutes of the August 23, 2019, seconded by Cricket carried 7-0.

B. Review of County Attorney Report as to compliance of the draft Optional Plan with the State Constitution and State Code

MOTION:

Motion by Stephen to table this matter of review of the County Attorney Report, to return to it later in the agenda, seconded by Bob.

Discussion ensued. Attorney Gavin Anderson stated that the Study Committee will need to sit down and review corrections with the County Attorney for her final review.

Jeramy asked if the County Attorney's opinion is the final say on whether the Study Committee work goes forward. Attorney Anderson answered yes, that the County Attorney determines whether the Optional Plan recommended by the Study Committee is contrary to state and/or constitutional law and, if so, the County Attorney's review must state the problems and make suggestions for changes. He stated that there is no way to appeal her decision other than to take it to court, and that timeliness then becomes the question.

County Clerk/Auditor Baird read from State Code, Section 17-52a-501, regarding what triggers an election.

Attorney Anderson read from State Code, Section 17-52a-406, provided on the dais. He stated that there will be no election on the Optional Plan in 2019, but the Study Committee can make corrections and file a new report as an amended Optional Plan.

Chair Protem Till said the County Attorney was not involved in the creation of the document, yet she is completely responsible for it. She commended the County Attorney for her attention to detail and thoughtfulness, noting that the County Attorney found easily correctable mistakes in the draft Optional Plan.

Chair Protem Till called for the vote. Motion approved 7-0. Chair Protem Till tabled the matter of review of the County Attorney Report until later in the agenda.

- C. Approving proposed "Argument in Favor" statement for a Voter Information Pamphlet for delivery to the County Clerk no later than September 6, 2019 for the 2019 general election, in the event that the Optional Plan is found by the County Attorney to be legally compliant

MOTION:

Motion by Bob to approve the proposed "Argument in Favor" statement, seconded by Judy.

Stephen stated that the need for a Voter Information Pamphlet depends on the final outcome of the Optional Plan, particularly regarding districts, and that the Voter Information Pamphlet is a moot point.

Motion failed 7-0.

- D. Developing a new campaign to educate the public on the status and contents of the draft Optional Plan and process, whether or not the Plan is found by the County Attorney to be legally compliant in time for the 2019 general election

Walt stated his opinion that developing a new educational campaign is moot for now. Bob suggested one public meeting to explain the amended Optional Plan after the County Attorney has reviewed it – in order to close out the Study Committee work on the final product.

MOTION:

Motion by Judy to postpone this matter of an educational campaign indefinitely, seconded by Jeramy carried 7-0.

- E. Suggestions for additional public service announcement(s) and/or flyer update, postponed from August 23, 2019

Chair Protem Till asked if it would be a legitimate budgetary expense to have advertising in early 2020, closer to the November 2020 election. Clerk/Auditor Baird answered that he will figure out a way.

MOTION:

Motion by Cricket to postpone additional public service announcements or flyer updates until the Study Committee has a plan, seconded by Bob carried 7-0.

MOTION:

Motion by Jeramy to add the inadvertently missing "Citizens to Be Heard" standing agenda item at the same time as "Presentations," seconded by Bob carried 7-0.

Charlotte Mates, citizen, commended the Study Committee, stating that she feels firmly that the Study Committee should go forward this election year. She stated her opinion that the County Attorney should have left someone in charge for this meeting in the personal absence of the County Attorney.

- F. Discussion on the Study Committee's role for the transition plan if the Optional Plan is on the 2019 ballot and voted down, thus defaulting by law to a three-member Commission form of government and requiring a new transition plan by December 31, 2020.

Study Committee Members agreed to skip discussing this matter of a transition plan since it is moot at this time.

- G. Next steps, if required by the County Attorney, for correcting the draft Optional Plan for compliance with the State Constitution and State Code in time for the 2020 general election

Chair Protem Till removed from the table Item B, Review of County Attorney Report as to compliance of the draft Optional Plan with the State Constitution and State Code.

Chair Protem Till asked Study Committee Members and Attorney Anderson to review the Item B County Attorney Report document alongside the Item G corrections document. Stephen requested to have Attorney Anderson review the larger issues of the County Attorney Report first, and thus in reverse order of the Report.

Attorney Anderson reviewed page 9, Item 4 of the County Attorney Report, "Removal of Officers". He acknowledged his mistake, stating that he "overdid" the language. Attorney Anderson said his argument is that removal for mental disability is not state constitutional. He said it is "clearly unconstitutional," and that State statute is contradictory. He said that the State Constitution allows removal for high crimes, misdemeanors, and malfeasance in office. Attorney Anderson stated that the cure, as shown on the last line of page 3 of Attorney Anderson's corrections document, is to remove the word "judicial".

Stephen inquired of Attorney Anderson: Does this element alone trigger the Optional Plan being unconstitutional? Attorney Anderson said no, that makes it contradictory with existing State Statute, that it is not a constitutional statute, that the related law is only one or two years old, and that the law has not yet been tested in court.

Regarding page 7 of the County Attorney Report, "Special Election" section, and page 2 of Attorney Anderson's corrections document: A question arose as to the Clerk's authority. Attorney Anderson stated that the County Attorney states that the Plan attempts to establish a 2019 election, but she argues in the Report that such authority is vested by the governing body. Attorney Anderson said regarding his corrections document, on the bottom of page 2: The Plan only makes reference to the election date; it does not establish the election date. The cure, he said, is to eliminate the date. Attorney Anderson said the special election date was not set in the Optional Plan. Instead, it was set by operation of law by House Bill (HB) 224, and the Plan only acknowledges it.

Clerk/Auditor Baird said, in his opinion, that the Optional Plan referred to in HB 224 would not be considered for a special election, and he said that State Elections Code Title 20A and the Lieutenant Governor backed him up on this opinion. He stated that the Plan would have been on this year's ballot if there had been no violations. He read: "A county shall hold . . . at the next regular or general municipal election" if all the circumstances are in place. He also recommended leaving the date out. Attorney Anderson said the county governing body would not have a role in setting an election date for this matter.

Stephen asked Attorney Anderson which items in the County Attorney's Report have merit, and which ones do not? Attorney Anderson referred to page 6 of the County Attorney's Report, "Council Interference with Executive Branch", stating it is "flat wrong" in his opinion. He referred to page 2 of the corrections document, saying that the County Attorney states it is internally inconsistent to remove the County Manager by vote of the Council. He stated that the Plan has a place for removing the County Manager and that he added clarifying language as a correction. Bob remarked that this is not covered in State Statute or State Constitution.

Clerk/Auditor Baird said that it is a statutory issue regarding what the Council can and cannot do on directing executive personnel. He suggested that the Study Committee should review this such that the language is exactly the same as it appears in statute if it is to be included in the Plan.

Attorney Anderson proposed a correction of "appointing or" to the word "removing" to be added such that it reads, "appointing or removing." He said that the change is unimportant because the prohibitions do not apply in an open meeting. Attorney Anderson distinguished a separation of powers form of government versus an elected commission form with commissioners who are used to directing employees. He stated that there are checks and balances: All communications between the legislative and executive branch are "over the counter" with transparency in a Council-Manager form of government.

Regarding "Council Districts", page 1 of the County Attorney Report and page 1 of the corrections document: Attorney Anderson reported that he had told the County Attorney he has never heard of a County Council or Commission setting the districts in a change of form of government. He reported that eight governing bodies have gone through a change in government in Utah, and all except for Morgan County's current proposed plan have a district created by the Study Committee and set out in their Optional Plan. He referred to the limitations in the County Attorney Report, page 2 regarding legislative body powers. Attorney Anderson explained his correction that HB 224 empowers the Study Committee to do the same. He stated that the County Attorney felt that the best the Study Committee can do is recommend districts to the current County Council and it could be that the County Council comes up with their own districts. He explained that in HB 224 and its predecessor are express in that the current government has nothing to do with the Optional Plan. He stated that the legislative intent is that the Study Committee makes the decision as to districts. Attorney Anderson referred Study Committee Members to his corrections document in which the Study Committee could recommend to the County Council that these be the districts. Walt questioned whether it is in the Study Committee's purview at this point to recommend that the districts be based on the 2020 Census. Attorney Anderson stated yes.

Stephen inquired as to where in the Statute does the Study Committee go to the County Council regarding forming district and he inquired as to the mechanism. Attorney Anderson stated that the existing county governing body has nothing to do with the Optional Plan. He stated that there are Study Committee procedures that do not carry through to the County Council. Jeremy said HB 224 is clear on this point, that the current county government is to stay out of the process. Attorney Anderson said that the County Attorney feels fairly strongly on this point about the legislative body's authority to form districts with his understanding of her belief of the "black letter of the law" on her side. He stated that in court he would emphasize that the current County Council stays out of it.

Bob said the County Attorney argues that districting is a legislative function. He continued that the State legislature maintains their districting authority despite a statewide referendum to give authority to the people. Further, the existing Council has the authority to district at any time.

Walt said the Study Committee is "advisory" per the County Attorney, yet the Study Committee is an entity with certain powers when voters initiate the change in form of government. He stated that the Study Committee recommends a Plan, and the Study Committee is authorized by the voters.

The question was raised as to whether the Study Committee is "advisory" to the County Council or "a committee with legislative authority. Jeremy stated that the Study Committee is empowered by the state legislature, not by the county. He asserted that it appears from the County Attorney Report that the sitting governance, the County Council, wants control.

Attorney Anderson stated that the County Attorney sent an initial draft of her Report to Clerk/Auditor Baird and to himself, and it originally had eight problems rather than four.

Attorney Anderson stated that the Study Committee is a government entity created by State Statute with significant powers and legislative authority to be essentially framers of the constitution of the new government. Further, he stated that it is incorrect to suggest that the Study Committee is an advisory body.

Bob stated that HB 224 does not remove any authority of the legislative body. He continued that the County Attorney is vested with making a determination, not a legal opinion, and the Study Committee has an opportunity to dissuade her.

Clerk/Auditor Baird said he "totally disagrees" with the County Attorney on the Council districting issue. He continued, the Legislature gave power to the Study Committee to draft all the implementing provisions. He stated that the County Attorney Report calls out that the legislative body "may" redistrict. He suggested that the Study Committee should recommend to the current County Council that they adopt the new districts. He continued, the Legislature in HB 224 empowered the Study Committee to draft the districts as a necessary component in enacting the Plan, but the County Council could change it.

Clerk/Auditor Baird stated that voters actually enact the districts and that it is possible to pass this by a ballot initiative. He continued, stating it is necessary that districts be established. He stated that it is contained in the Optional Plan, and that approval by voters is the only guarantee of it.

Chair Protem Till said the districting recommendation was extremely well thought out and made by the Study Committee with support from the expert consultant. She inquired about what happens if the Study Committee does not agree with the County Attorney. Attorney Anderson responded that December 31, 2020 is the drop-dead date to change the form of government, and the point at which a three-person commission would go into effect if the Plan were voted down. He continued, no optional plan is required because a three-person commission is a standardized form of government. The Optional Plan will not be on this November election, so an agreement between the County Attorney and the Study Committee to change it will be necessary in time for the November 2020 election.

Chair Protem Till acknowledged Citizen Charlotte Mates once again. Ms. Mates reiterated the need for the Optional Plan to be on the ballot this year, stating that she is willing to sue to get it on the 2019 ballot, as long as she has county support in the process.

Judy asked whether a three-person Commission could be in effect in January 2021. Attorney Anderson stated that between now and March 8, 2020, the Study Committee must agree with the County Attorney for an Optional Plan, as amended. He stated that an impasse is possible.

Jeremy stated that there are recourses such as a judgment to gain clarity. He stated that County Council interference would be a violation of the law. Walt stated that he is not supportive of a lawsuit. He continued that he hopes to sit down with the County Attorney and Attorney Anderson and talk through the districting authority issue. He stated that he is unaware of anyone on the current County Council inserting themselves into this process.

Cricket stated that the County Council has the legislative authority on districting in that they can change the recommended districts even after voters agree to them, if they do. She asked "What is the threat?"

Stephen requested the Study Committee hold a closed session to discuss the options moving forward. It was explained that closed sessions are reserved for specific matters, per the Open and Public Meetings Act. County Council Administrator Dillon read from the list of reasons for going into closed session.

MOTION:

Motion by Stephen to go into closed session for the purpose of discussing pending or reasonably imminent litigation, seconded by Jeremy.

Marcy said the Study Committee has conducted itself well, and is in a potentially politically explosive situation, and the Study Committee should not change its course of action just yet. She requested that the

Study Committee give the County Attorney the same consideration as has been given to each other, and move forward in a reasonable fashion.

Bob stated that if the Study Committee is not able to persuade the County Attorney regarding districting, there are other solutions to consider. He asked Study Committee Members not to impugn anyone's motives as there is no evidence that the County Council is attempting to meddle.

Stephen said there is a finite period of time—as the Study Committee—to look at how best to resolve this issue and that the Study Committee should speak with Attorney Anderson first, in preparing for litigation.

Attorney Anderson said his responsibility to the Study Committee is per contract and that he is not comfortable with giving advice on litigation or on a closed meeting for “reasonably imminent litigation”.

Chair Protem Till inquired as to where the Study Committee turns for expertise on the Study Committee's authority and the concept of districting. She continued, the County Attorney has publically stated that she does not believe that the Council-Manager form of government is appropriate for Grand County, and this statement creates some bias. She continued that the County Attorney is thorough and professional, and has done her job on this. She expressed gratitude and a desire for a face-to-face conversation with the County Attorney on the issues.

Walt said the County Attorney did not have the full prescribed time that the law allows to review this Plan. He stated that the Study Committee needs specific rebuttals regarding Study Committee authority on redistricting.

Clerk/Auditor Baird said the Study Committee is not necessarily a political subdivision of the State. He said that State Code is silent, not explicit, for the Study Committee. He explained that in Utah, political subdivisions have the power to sue and be sued, but that it is unclear as to whether the Study Committee can even legally bring a lawsuit.

Bob reiterated that the Study Committee could go to the County Council for a resolution to consider support of Study Committee recommendations on districting.

Stephen stated that he stands by his motion to go into closed session, and Chair Protem Till called for the vote. **Motion failed 1-5-1, with Stephen voting in favor; Walt, Marcy, Bob, Cricket, and Judy voting against; and Jeramy abstaining.**

Jeramy requested County Council Administrator Dillon coordinate a meeting with the County Attorney, Attorney Anderson and the Study Committee to discuss the County Attorney's Report and Attorney Anderson's recommended corrections. Jeramy stated his opinion that the County Attorney's Report is “overreach and fundamentally wrong according to the law.”

Attorney Anderson inquired about discussing with the County Council their inclination on setting up the districts. Study Committee Members tentatively agreed, after first talking with the County Attorney.

Future Considerations

Ruth announced that the County Attorney had made it known in an email that she can be available Friday, September 27, 2019 or an earlier date, preferring a Tuesday. Study Committee Members agreed to a regular meeting date of September 27, 2019 as long as this date still works for the County Attorney. They agreed to cancel the next regular meeting of September 20, 2019.

Closed Session(s) (if necessary) - none

Adjournment

The meeting was adjourned at 2:19 p.m. by motion made by Bob and seconded by Jeramy that carried unanimously 7-0.



Stephen Stocks
Chairperson / Committee Member by phone



Marcy Till
Secretary / Chairperson Protem

