

Clarke County Board of Supervisors
November 7, 2022

November 7, 2022 - The Clarke County Board of Supervisors met in regular session on November 7, 2022, at the Clarke County Courthouse with the following members present: Dean Robins, Larry Keller and Austin Taylor. Also present, Auditor Janice White and Osceola Sentinel Editor Candra Brooks. Chairman Dean Robins called the meeting to order at 9:00 a.m. Larry Keller made a motion to approve the agenda, seconded by Austin Taylor. All Ayes.

Public Hearing 22-165 - The Board of Supervisors met on November 7, 2022, at 9:00 A.M. in the Clarke County Courthouse, Board of Supervisor's room, for the purpose of holding a public hearing to vacate a section of Clarke County Secondary Roads in Hopeville, Iowa, described as follows: All of the North/South and East/West Alleys in Block 1 and Block 6 of Original Hopeville. All of the East/West Road adjacent to Block 1 and Block 6 in the Original Town of Hopeville. All of the North/South Road between Blocks 1, 2, 5 and 6 from the North line of Block 1 and Block 2 to the East/West Alley running through Block 5 and Block 6 in the Original Town of Hopeville.

Members present were Dean Robins, Larry Keller and Austin Taylor. Also present, were County Auditor Janice White, Engineer Christian Boehmer, Secondary Road Office Manager Cindy West and Jill Curnes, Osceola Sentinel Editor Candra Brooks, Mary Borrall, Tom Borrall and Don Reasoner.

Moved by Austin Taylor to open the hearing at 9:00 a.m., seconded by Larry Keller. Motion carried.

Discussion was held regarding the closing of the alleys and streets.

There were no written or oral objections.

Moved by Larry Keller to close the hearing, seconded by Austin Taylor. Motion carried. Hearing closed at 9:05 a.m.

Motion was made by Larry Keller, seconded by Austin Taylor to close the above-described streets and alleys. Vote was: "Ayes": Dean Robins, Larry Keller and Austin Taylor. "Nays": None.

Signed this 7th day of November, 2022.

Res 22-166 - Moved by Austin Taylor, seconded by Dean Robins, to approve Southern Iowa Trolley's request for county support for fiscal year 2023, in the amount of \$11,345.

Vote was: "Ayes": Dean Robins and Austin Taylor. "Nays": None. Larry Keller abstained.

Signed this 7th day of November, 2022.

Res 22-167 - Moved by Austin Taylor, seconded by Larry Keller to approve the following resolution:

WHEREAS, the Iowa Legislature has passed and Governor Kim Reynolds has signed, on March 8, 2021, an Act entitled the "Election Misconduct and Penalties Act", which is now found in Iowa Code Chapter 39A, Sections 39A.1 through 39A.7, addressed to "election officials", in Section 39A.1, which include the "County Commissioner" of elections and those in the county auditor's office, under Iowa Code Section 331.505, "who are responsible for carrying out functions or duties under chapters 39 through 53" relating to elections; and

WHEREAS, Iowa Code Section 39A.2 through 39A.5, define Election Misconduct in four degrees of criminal offense for acts and omissions of county auditors and the designated deputies and employees acting in the scope of their official duties for claimed election related misconduct; and

WHEREAS, Iowa Code Section 39A.1(2) declares that "the general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction" but Iowa Code Section 39A.6(3)(a) empowers the Iowa Secretary of State to issue a "technical infraction" notice to the county auditor, (which the Legislature had not defined and about which the Secretary of State has not promulgated implementing rules), for which "the state commissioner shall also impose a fine not to exceed ten thousand dollars to be deposited in the general fund" with a removal from office if such amount is not challenged or paid after unsuccessful challenge; and

WHEREAS, the County Home Rule power is vested in the County Board of Supervisors, Iowa Code Section 331.301(2), under which the Board may "exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county and its

residents”...”except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly”, Section 331.301(1), “subject only to limitations expressly imposed by a state law”, Section 331.301(3)”; and

WHEREAS, Iowa Code Section 670.8(1) requires that the Board of Supervisors “shall defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties” for “any breach of duty, whether statutory or other duty” under Section 670.1(4); and

WHEREAS, Iowa Code Section 331.324(4) requires that “the board [of supervisors] shall pay a loss for which the officer or employee is found liable beyond the amount of insurance...if the liability of a county officer or employee in the performance of official duties is not fully indemnified by insurance” and empowers the Board “to compromise and settle any such claim”; and

WHEREAS, the county auditors and their deputies serving within the scope of their employment and duties in connection with the responsibilities they are assigned under the election laws of Iowa are threatened by the increasing animosity, partisanship, and vehemence and vitriol of persons involved in political party politics who can easily make or cause to be made criminal complaint under Sections 39A.2 through 39A.5, or cause action to be brought under Section 39A.6, whether criminal or civil, thus exposing such elected officers and their appointed deputies and employees to criminal proceedings, criminal penalties, attorneys expenses and costs, criminal or civil fines for administrative proceedings, attorneys fees and costs, and removal from office of the Auditor resulting in the loss of income for two years all for undefined “technical infractions”;

NOW, THEREFORE, BE IT HEREBY RESOLVED:

1. That the Clarke County Auditor and any deputy auditor or employee who performs election related responsibilities within the scope of criminal offenses and civil infractions, defined by the Election Misconduct and Penalties Act, Iowa Code Sections 39A.1 through 39A.7 shall be provided at county expense.
 - a. In the cases of criminal charges made under Iowa Code Sections 39A.2 through 39A.4, and any charges brought under Iowa Code Chapter 721, as referred to in Section 39A.7, a defense, meaning a lawyer to represent the auditor, deputy auditor and any employees of the auditor’s office so charged criminally, including any appeals to the Iowa Supreme Court.
 - b. If a conviction results under any of the charges referred to in subparagraph (a), above, the person convicted shall not be indemnified for any fine so levied in the criminal judgment.
 - c. Any person so charged as defined in subparagraph (a) shall immediately notify the Board of Supervisors of the pendency of such charges to invoke this Section.
2. That the Clarke County Auditor and any deputy auditor or employee who performs election related responsibilities within the scope of criminal offenses and civil infractions defined by the Election Misconduct and Penalties Act, Iowa Code Sections 39A.1 through 39A.7 shall be provided, at county expense,
 - a. In the case of technical violations and infractions under Section 39A.6 defined as civil violations under Section 39A.1, an attorney to represent the auditor, deputy auditor and any employees of the auditor’s office cited for any such technical violation or infraction to file an appeal of such allegations or findings pursuant to Chapter 17A as specified by Section 39A.6(3)(b), in lieu of paying the civil fine of not to exceed ten thousand dollars specified by Section 39A.6(3)(a). Such representation shall continue for any of the successive appeals thereafter provided from the findings and conclusions of the Administrative Law Judge with appeals therefrom to the Secretary of State, the Iowa District Court and the Iowa Supreme Court.

Vote was: “Ayes”: Dean Robins, Larry Keller and Austin Taylor. “Nays”: None.

Signed this 7th day of November, 2022.

Res 22-168 - Moved by Larry Keller, seconded by Austin Taylor to appoint Sonya Hicks to replace board member Jan Pack (who has resigned) on the Clarke County Board of Health. She will finish Jan Pack’s three-year term, ending December 31, 2023.

Vote was: “Ayes”: Dean Robins, Larry Keller and Austin Taylor. “Nays”: None.

Signed this 7th day of November, 2022.

Having completed agenda items, Larry Keller made a motion to adjourn, seconded by Austin Taylor. All Ayes. Meeting adjourned at 11:30 a.m.

Signed: Dean Robins, Chairman

Attest: Janice M. White, Auditor