Cherokee County Board of Commissioners
Meeting Minutes
November 12, 2024

Board members present: Randy Phillips, Chairman; Dr. Dan Eichenbaum, Vice-Chairman; Cal Stiles, member; Jan Griggs, member; Ben Adams, member.

Others present: Randy Wiggins, County Manager; Candy Anderson, Chief Financial Officer; Maria Hass, Assistant County Manager/Clerk to Board; and, Darryl Brown, County Attorney.

Time: 6:30 p.m.

Location: Cherokee County Courthouse, Room 342.

Call to Order by Chairman Phillips

Invocation

Pledge

Ethics Statement – Ethics Statement read by the Clerk to the Board.

Modification of Agenda
Motion made by Commissioner Eichenbaum and seconded by Commissioner Griggs to add a Public Comment Period to the agenda. Motion passed unanimously.

Motion made by Commissioner Stiles and seconded by Commissioner Adams to add a budget revision to the agenda for upgrades to the sound system in the commissioner's boardroom. Motion passed unanimously.

Adoption of Agenda
Motion made by Commissioner Stiles and seconded by Commissioner Eichenbaum to adopt the agenda, as modified. Motion passed unanimously.

Public Hearing on Road Names
Motion made by Commissioner Adams and seconded by Commissioner Griggs to open the public hearing. Motion passed unanimously.

During the public hearing, Gail and Tony Hall opposed the Garnie Lane road name and suggested it be named Dora Lee Nix Lane. Lynn Michaels opposed Cook Holler Drive.

Motion made by Commissioner Griggs and seconded by Commissioner Stiles to close public hearing. Motion passed unanimously.

Adopt Road Names
After discussion, a Motion was made by Commissioner Griggs and seconded by Commissioner Adams to remove Garnie Lane and Cook Holler Drive from the proposed road names at this time, and to approve the following road names, as submitted: Brasstown Country Lane; Charles Hogsed Drive; Cook Mountain Road; Cranberry Lane; Denison Ridge Road; Double Oaks Pass;

Faith Creek Trail; Glennwood Estates Drive; Glennwood Estates Ridge Lane; Grimms Mountain Trail; Hickory Spring Drive; Highland Grace Lane; Kirkland Ridge; Lakeside View Trail; Little Cove Road; Lost Hollow Drive; Lost Trail; Mountain Sky Drive; Pittman Trail; Ranger Trail Way; and Riverside Lane. Motion passed unanimously.

Meeting Minutes
Motion made by Commissioner Adams and seconded by Commissioner Griggs to approve the Meeting Minutes of October 28, 2024. Motion passed unanimously.

Public Comment Period

Budget and Finance

Jeff Sherer, of Architecture Unlimited, came before the Board to present construction drawings and specs for the following proposed projects: 1) EMS Station 2; 2) New VA/Senior Center; and 3) Alternate design for future planning of a Public Health facility.
- After the presentation, a Motion was made by Commissioner Griggs and seconded by Commissioner Phillips to approve the VA/Senior Facility design for bid, with 3rd floor finish, revising the plan to create two additional office spaces from within the 3rd floor public waiting area. Motion passed unanimously.
- Motion made by Commissioner Griggs and seconded by Commissioner Phillips to approve the EMS Station 2 design for bid. Motion passed unanimously.
- Motion made by Commissioner Eichenbaum and seconded by Commissioner Griggs to approve planning for a future two-story Public Health facility. Motion passed unanimously.

Motion made by Commissioner Eichenbaum and seconded by Commissioner Griggs to approve a Budget Revision in the amount of $63,052.00 for Use of CDC Grant Funds for retention of Public Health staff. Motion passed unanimously. *Note: No county match required.*

Motion made by Commissioner Griggs and seconded by Commissioner Adams to approve a Budget Revision in the amount of $7,905.00 for use of contingency for a full-time maintenance position. Motion passed unanimously.

Motion made by Commissioner Stiles and seconded by Commissioner Eichenbaum to approve a Budget Revision in the amount of $18,870 for use of Article 46 sales tax funds for State-Mandated Employee Raises and Security Contract Adjustment for Tri-County Community College. Motion passed unanimously.

Motion made by Commissioner Stiles and seconded by Commissioner Eichenbaum to approve a Budget Revision in the amount of $8,000.00 for use of contingency to replace the roof at Konehete Veterans Park Pavilion #4. Motion passed unanimously. *Note: The Town of Murphy will reimburse the county 50% of this cost.*

Motion made by Commissioner Adams and seconded by Commissioner Griggs to approve a Budget Revision in the amount of $4,500.00 to repair the flooring at 911 Dispatch Center. Motion passed unanimously.

Motion made by Commissioner Griggs and seconded by Commissioner Adams to approve a Budget Revision in the amount of $500 for upgrades to the sound system in the commissioner's boardroom. Motion passed unanimously.

Old Business

There was no Board member opposition to the 2024 NCACC Legislative Goals.

New Business

Terence Faries, of Cherokee/Clay Senior Games and Silver Arts came before the Board to request an increase in annual funding for the Senior Games and Silver Arts Event. Motion made by Commissioner Stiles and seconded by Commissioner Eichenbaum to increase the FY 25 annual appropriation from $1,000.00 to $2,000.00. Motion passed unanimously.

Solid Waste Director Rob Ward came before the Board to discuss convenience site hours and share data related to green box usage. After discussion and debate, a Motion was made by Commissioner Phillips and seconded by Commissioner Adams to open the Caney Creek convenience site 24/7. Voting in favor of the Motion was Commissioners Phillips, Adams and Eichenbaum. Voting against the Motion was Commissioner Stiles and Commissioner Griggs. Motion passed 3-2.

- Motion made by Commissioner Stiles and seconded by Commissioner Adams to approve the Tax Releases Report, Tax Refund Report and NCVTS Report, as submitted. Motion passed unanimously.

- Motion made by Commissioner Adams and seconded by Commissioner Eichenbaum to approve the Tax Releases and Tax Refund Policy Resolution. Motion passed unanimously.

- Motion made by Commissioner Stiles and seconded by Commissioner Adams to approve Preston Mashburn's request to use the Mountain Folk Center sale barn for the annual Town of Bethlehem Event, contingent upon Mr. Mashburn providing proof of Special Event insurance. Motion passed unanimously.

- Motion made by Commissioner Stiles and seconded by Commissioner Griggs to approve a request from Valleytown Fire Chief, Justin Hyde, for use of rescue funds to purchase low pressure air bags in the amount of $10,945.03. Motion passed unanimously.

- The Assistant County Manager gave an update on hangar leases, explaining many leases have expired, or hangars are occupied with no lease of record. After discussion, a Motion was made by Commissioner Eichenbaum and seconded by Commissioner Griggs to post 30-day notices on hangars requesting occupant and aircraft ownership information. Motion passed unanimously.

- After considering potential N.C.G.S. §14-234 violations and learned conflicts, Justin Hyde, Cherokee County EMT-Basic and District 2 Commissioner-Elect, stated he would not be seeking a small jurisdiction exception and announced his resignation as Commissioner-Elect. All board members encouraged him to find a way to resolve the conflicts and reconsider. Statements were

read by the County Attorney and Chief Financial Officer are attached to these minutes as Attachment A and Attachment B.

County Manager
Announced the archaeological survey is done for the Marble Industrial Park and has been submitted to the State Historic Preservation Office for review.

Commissioner Comment Period
- Commissioner Griggs parting statements are attached as Attachment C.

Adjournment
Motion made by Commissioner Stiles and seconded by Commissioner Adams to adjourn. Motion passed unanimously.

THESE MINUTES WERE APPROVED AT A REGULAR MEETING OF THE CHEROKEE COUNTY BOARD OF COMMISSIONERS ON JANUARY 6, 2025.

ATTACHMENT A

STATEMENT OF THE COUNTY ATTORNEY NOVEMBER 12, 2024

In mid-March, as the budget hearing season approached, I began to look into the formation of a policy for the Board to deal with any possible conflicts of interest that may arise in voting on the budget and other issues. The research was prompted by the election of County Employee Justin Hyde, and his status as the Chief of the Valleytown Volunteer Fire Department and as a county employee. I found more issues than expected.

On March 5, 2024 Justin Hyde won the Republican Primary, and, having no opposition in the general election, became a commissioner-elect to take office in December of this year. He was subsequently elected on November 5, 2024.

It is not the duty of Cherokee County Government to examine the qualifications of any candidate for office.

I reached out to the UNC-Chapel Hill School of Government for assistance and analysis.

I explained the situation to Professor Kristina Wilson, who specializes in the area of local government officials' ethics and qualifications.

I then reached out to Amy Bason and Adam Pridemore, who serve as counsel to the North Carolina Association of County Commissioners.

They referred me to Bob Hagemann, who is the long-time attorney for Chatham County. He has 38 years of experience in local government representation from a practitioner's point of view.

When I spoke to Mr. Hagemann, he suggested that I contact Professor Robert Joyce at the School of Government who is “the utmost authority on these matters.” Professor Joyce is currently writing a book on vacancies in office in North Carolina. He was extremely kind in answering the questions I posed to him.

I also reached out to the NC State Board of Elections. They never returned my calls.

On April 15, 2024, I informed the Cherokee County Board of Commissioners of this situation. They instructed that I immediately reach out to Commissioner-elect Hyde regarding this issue. On April 16, 2024 I met with Commissioner-elect Hyde in the office of his Department Supervisor, Robin Caldwell and provided him with information provided by the consulted experts and the relevant statutes.

NCGS 14-234 creates a default rule that would prevent a County employee from holding office as a county commissioner. However, there are several exceptions to this rule. The most relevant one for our situation is the ‘small jurisdiction’ exception.

The small jurisdiction exception allows for service if the county has a municipality within it that does not have a population of over 20,000, and the amount of goods and services the employee receives does not exceed $60,000 during a 12-month period. Justin Hyde has a base salary of $43,000 but with benefits receives $62,077.88. At the time of the primary election, Justin Hyde must choose to either resign as a county employee or not take office as a Cherokee County Commissioner. He cannot do both.

Since that time, Commissioner-elect Hyde has renounced his county health insurance benefits provided by his employment at Cherokee County EMS and is now below the $60,000 limit for goods and services.

He is here tonight, as I understand it, to request that the Cherokee County Board of Commissioners to allow him to exercise the small jurisdiction exception that would allow him to serve as a County Commissioner and keep his job at EMS.

I have drafted the following Board Action document that, IF ADOPTED, would allow Commissioner-elect Hyde to serve on the Board and remain as an emergency medical technician:

RESOLUTION OF EXCEPTION GRANTED TO COMMISSIONER NOMINEE JUSTIN HYDE

WHEREAS, Justin Hyde is an employee of Cherokee County as a Basic EMT with the Emergency Medical Services Division.

WHEREAS, Justin Hyde was elected as the nominee of the Cherokee County Republican Party in the primary election held on 5 March 2024 for the Office of District 2 County Commissioner.

WHEREAS, Justin Hyde was elected as a county commissioner in the general election of 5 November 2024,

WHEREAS, NCGS 14-234 “prohibits public officials from deriving direct benefit from contracts they are involved in making or administering. The definitions in the statute make clear that a Board member’s employment by the unit would violate the statute, even if the Board member doesn’t vote on the appointment.” (Coats Canons Blog: Board Members as Employees by Prof. Frayda Bluestein, UNC School of Government 1/6/2010)

WHEREAS, violation of NCGS 14-234(e) makes violation of this statute a Class 1 misdemeanor crime.

WHEREAS, violation of NCGS 14-234 would void the employment contract (written or unwritten) of Justin Hyde.

WHEREAS, NCGS 14-234(d1) makes an exception to the statute for counties that have no municipalities that exceed 20,000 in population and that the employee does not receive goods or services that exceed $60,000 in a 12-month period.

WHEREAS, Cherokee County and Justin Hyde, respectively, meet the qualifications for the small jurisdiction exception, if and only if, the Cherokee County Board of Commissioners approves the exception.

WHEREAS, Commissioner-elect Justin Hyde has been informed of this exception.

WHEREAS, Justin Hyde seeks now the approval of the Board of Commissioners to remain employed by Cherokee County while serving as a County Commissioner.

WHEREAS, Justin Hyde has been informed and understands that approval of his continued employment while serving as a County Commissioner, does not constitute a new or amended contract, quasi-contract or detrimental reliance on his part. He further is informed and understands that approval of his continued employment with Cherokee County while serving as a Commissioner may be withdrawn and employment nullified by action of the Board of Commissioners at any time.

WHEREFORE, the Cherokee County Board of Commissioners, does hereby grant unto Justin Hyde a license and exception to remain employed by Cherokee County EMS while serving as a County Commissioner under the authority of NCGS 14-234(d1). It shall be the exclusive responsibility of Justin Hyde to monitor his employment goods and services received to ensure that he does not exceed the $60,000 per 12-month period threshold. Should Justin Hyde's goods and services received exceed the $60,000 threshold at any time, his employment with Cherokee County shall be terminated unless he immediately resigns as a County Commissioner. The Chief Financial Officer for Cherokee County shall, in accordance with NCGS 14-234, specifically note the exception in the County's annual financial statement and shall provide to the Clerk to the Board the earnings of Justin Hyde as an EMS Employee on a quarterly basis. The Clerk to the Board of Commissioners shall post this document and quarterly reports on the earned goods and services of Justin Hyde on the County's website and in a conspicuous place within the building in which regular meetings of the Board of Commissioners take place.

This the 12th day of November, 2024.

_____Randy Phillips

Chairman, Cherokee County Board of Commissioners

Attest:

_____

Maria Hass, Clerk to the Board

~END OF RESOLUTION~

ATTORNEY STATEMENT CONTINUED…

I feel that I must inform the Board that professor Robert Joyce from the School of Government has expressed that in regards to the small jurisdiction exception, he is "very skeptical about trying it. If in the future there is a miscalculation of any sort (or some kind of hidden compensation uptick that gets overlooked), he could trip over the $60,000 cap and bring on a cascade of difficulties."

Violation of NCGS 14-234 is a Class 1 misdemeanor criminal offense for ALL Board members serving at the time.

Before the Board votes on allowing the exception, I feel that I must inform the Board of Commissioners and Commissioner-elect Hyde of the conclusions drawn on subsequent research into possible conflicts of interest and voting restrictions that would apply to Commissioner-elect Hyde should he serve on the Board of Commissioners:

1. The setting of fire services taxes, as with all county taxes, must be included in the yearly County Budget Ordinance.
2. Pay rates, raises and cost of living adjustments that apply to all County employees would apply to Commissioner-elect Hyde.
3. Justin Hyde is the Chief of the Valleytown Volunteer Fire Department and receives direct financial benefits for serving in that capacity.
4. Justin Hyde, as a Cherokee County employee receives direct financial benefit from his employment.
5. Commissioner-elect Hyde CAN vote on the expenditure of designated rescue funds as he does not receive a direct financial benefit from such appropriations.
6. Commissioner-Elect Hyde CANNOT vote on the County Budget Ordinance for as long as he remains as the Chief or a governing Board Member of the Valleytown Volunteer Fire Department OR the County no longer funds the Department.
7. Commissioner-elect Hyde CANNOT vote on any appropriations that involve funding to Valleytown Volunteer Fire Department other than designated rescue funds for rescue equipment or training.
8. Commissioner-elect Hyde CANNOT vote on the County Budget Ordinance, regardless of his position at the Valleytown VFD, if such includes any pay adjustments that apply to all county employees.

I believe that these conclusions support a 1997 North Carolina Attorney General's opinion that states, "the individual is not prohibited from serving in both positions, but should abstain from taking any action as a county commissioner that would have a direct or indirect on his position as" a county employee and, in my opinion as Fire Chief.
At this time, I would ask that this statement be included in the minutes of this meeting.

Darryl R. Brown
County Attorney

ATTACHMENT B
STATEMENT OF CHEROKEE COUNTY CHIEF FINANCIAL OFFICER

In order to bring a heighten awareness to the need to watch the $60,000 CAP closely, I have some figures and factors that it is important for Commissioners and Commissioner-elect Hyde to remain aware of their impacts over the next 4 years.

Commissioner-elect Hyde's current total package is at 94% of the CAP ($56,270.04 or $3,729.96 less the CAP). Any annual increases in the total package would have to be 1.5% or less per year in order to remain under the $60k CAP for all 4 years of his term.

Items that affect the total package cost include but are not limited to the following:

- COLA's/Pay Raises/Pay Plan Adjustments/Bonuses
- Additional overtime
- Additional holiday pay
- LDGERS retirement rate increases (last one was .74% increase; at current rate of pay another increase of that same percentage would increase the total package cost by $335.76 or .6%)
- Workers Compensation Insurance rate increases

It is important to understand these factors and how quickly they can threaten the CAP.

ATTACHMENT C
COMMISSIONER GRIGGS PARTING STATEMENT

I want to thank the residents of Cherokee County that have supported me over the last 4 years. Most of all, I want to thank my husband of 44 years, Joe. He has been my rock during my term as commissioner thru thick and thin. I have truly enjoyed serving this county and I am very proud to say that my morals and ethics have remained totally and completely in tact. I would not change the way I voted on any issues for our county over the last four years as the votes I cast were in the best interest of the residents of this county. My decisions allow me to sleep good at night knowing that I have served with honor, integrity, responsibility and accountability. I have had the courage to do the right thing in the right way and for the right reasons (not for personal gain). I have been 100% committed to this county and the people who reside here. I am very honored to say that I never became a politician, I am now, always have been and will forever be a United States Marine.

Thank you once again for the support over the last 4 years.

Semper Fidelis