

COMMISSION MEETING MINUTES

August 18, 2009

The Board of Davis County Commissioners met in room 236 of the Davis County Courthouse, Farmington, Utah on August 18, 2009 at 10:00 a.m. Members present were Chairman P. Bret Millburn, Commissioner John Petroff Jr., Commissioner Louenda H. Downs, Clerk/Auditor Steve S. Rawlings, Chief Deputy Civil Attorney Gerald E. Hess, and Deputy Clerk/Auditor Linda May.

Brian McKenzie, Deputy Clerk/Election Technician, led the Pledge of Allegiance. All were invited to stand and join in.

CERA
Recognition for
Brian
McKenzie and
CERA
Designation for
Brian
McKenzie and
Pat Beckstead

Chairman Millburn asked Steve Rawlings, Davis County Clerk/Auditor, to introduce his people and tell about the CERA recognition. Steve Rawlings invited Brian McKenzie, Deputy Clerk/Election Technician, and Pat Beckstead, Davis County Election Director, of the Clerk/Auditor's Office. On August 14, 2009, in a ceremony held in San Diego, Brian was designated as a Certified Elections/Registration Administrator (CERA), the highest professional achievement. CERA designation is achieved only through a multi-year course of study conducted by the Election Center's Professional Education Program and completion of twelve core courses. The program is to professionalize the management of voter registration and elections administration in promoting and preserving public trust in the democratic process. Pat Beckstead in 2002 also accomplished the CERA designation. Pat and Brian will be two of only four CERA designated officials in the state. This takes the number now to 529 throughout the United States. Pat Beckstead also was a National Participant in the 2009 Professional Practices Program sponsored by the Election Center of Houston Texas. Professional Practice Papers are submitted to a panel of judges, the papers are then highlighted at the National Convention of the Election Center. The commissioners thanked both Pat and Brian and gave them each a Davis County Coin for Recognition of Outstanding Service. Appreciation was expressed to Steve Rawlings for this encouragement and support to staff.

Announcement
for Davis Gala
and "Heart of
Davis Award"
Recognition for
Deb Tanzi

Chairman Millburn announced that the Davis Gala will be held on September 10, 2009. This year's charity will benefit the Davis Community Learning Center located at Wasatch Elementary in Clearfield. It is part of United Way of Salt Lake's Community Learning Centers Initiative and is in partnership with Davis School District. A new component for the Davis Gala will be the recognition of a group, organization, or individual to whom the "Heart of Davis Award" will be presented. The award is being instituted by the three Davis County Commissioners and will be awarded annually. In the coming years, this prestigious award will continue to publicly celebrate the valuable contributions made by individuals or organizations to our community. The first Heart of Davis Award will be presented posthumously to Debra Tanzi. Major Gen. David Tanzi, USAF (Ret.) will receive the award recognizing his wife's efforts and her selfless dedication toward making Davis County a better place. Chairman Millburn said, "For many years, Mrs. Tanzi volunteered in numerous organizations and worked tirelessly to make a difference in our county. She clearly was an excellent example of a volunteer who has made significant contributions to non-profit groups, military, and social services organizations, exhibiting a sincere commitment to the community."

Commissioner Downs said, "It is time we institute an award that begins to identify and recognize those in the community for making a difference. There are many people and organizations that make a difference. Deb Tanzi has made such a difference. She was like the energizer bunny as she worked previously on a gala and many other things in the community. This award will continue on for other good people. We are excited to make this announcement. All are invited to attend the gala."

Commissioner Petroff said, "As a Mayor he recognized how one night can change the rest of a person's live. We want this award to stand as a legacy. It is a great idea."

Delay of
CDBG
Entitlement
Status for
Davis County

Scott Hess, Davis County Planning, stated notification has been received that due to the population of Davis County the County can receive entitlement status through the Federal HUD program for CDBG. The notification came too late, July 10, 2009, from the federal government for the necessary paperwork to be filed. The request is for approval of a letter to be sent to Region VIII, Denver, Colorado to inform them due to the limited time left for collecting information and putting together qualification materials, the County has decided to push back entitlement status to Fiscal Year 2011. This will provide Davis County time to consult with cities and get cooperation agreements in place. Commissioner Downs made a motion to approve the letter. Commissioner Petroff seconded the motion. All voted aye.

A welcome was extended to Joan Hellstrom from the office of Senator Robert F. Bennett.

Appointment
for Davis
County
Planning
Commission

Barry Burton, Davis County Planning Director, presented the name of Dave Hilliard for reappointment to the Davis County Planning Commission. He originally began serving on the Planning Commission to fill an un-expired term on October 23, 2007. The term expired on June 30th, 2009. His re-appointment would be for a 4-year term ending on June 30th, 2013. The ordinance that regulates the Planning Commission stipulates staggered terms. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye.

Agreement
#2009-261 UT
Dept of Health
& Human
Services for
Funding for
Voluntary
National Retail
Food
Regulatory
Program
Standards

Diane Reich, Davis County Health Office, presented agreement #2009-261 with the Utah Department of Health and Human Services. It is for funding to evaluate the "Voluntary National Retail Food Regulatory Program Standards" and to recommend revisions. It is a receivable of \$2,500.00. Consumers can call into the office with inquiries. A budget change to increase line item 15-3460-080 Env. Misc. Fees by \$2,500.00 and increase line item 15-4313-610 Misc. Supplies by \$2,500.00. Commissioner Petroff made a motion to approve the agreement and budget change. Commissioner Downs seconded the motion. All voted aye. Documents on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-262
Jones &
Associates for
Management
Assistance &
Engineering
Services for
Public Works
Projects

Kirk Schmalz, Davis County Public Works Director, presented agreement #2009-262 with Jones & Associates. The company will provide the management assistance and engineering services on projects and assignments associated with the bond revenue flood control program and track funds expended for the new Flood Control Program Management and Design. It is a one-year contract for a payable of \$150,000.00. A budget change to decrease line item 24-4254-757 Barton Creek by \$150,000.00 and increase line item 24-4254-755 Flood Control Program by \$150,000.00 was also presented. Commissioner Petroff stated that they had 15 very qualified applicants submit proposals. A committee narrowed it down to five. The five companies made a presentation to the committee. All were very good and it was a difficult choice. This firm selected is a great firm and has the interest of the county at heart. Kirk stated they have a great handle on the projects and will provide an extra set of eyes for the projects. Commissioner Downs made a motion to approve the agreement and budget change. Commissioner Petroff seconded the motion. All voted aye. Documents on file in the office of the Davis County Clerk/Auditor. Chairman Millburn comments that there are many projects to do in a short time as well as the ongoing projects.

Change Order
#2008-82A
Kilgore Paving
& Maintenance
for 3600 So Rd
Improvements

Kirk Schmalz presented a change order #2008-82A with Kilgore Paving & Maintenance. It is for the 3600 South road improvement project. There were soft points discovered and it required additional work and material to correct. It is a payable of \$3,080.00. Kirk stated that he had received comments from residents

that they are very pleased with the project. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document filed in the office of the Davis County Clerk/Auditor.

Agreement
#2009-263
Salmon
Electrical
Contractors to
Change Out
Light Fixtures

Keith Major, Davis County Sheriff's Office, presented agreement #2009-263 with Salmon Electrical Contractors. There were three companies who bid the project. Salmon was \$10,000.00 under the other two companies. They will change existing T-12 light fixtures to new low watt ballasts in the Justice Complex. The intent is to save on electrical use. Rocky Mountain Power is providing an incentive for the project. It is a payable of \$69,911.00. A budget change will be presented at a future meeting. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-264
Clinton City
for County
Sheriff's Office
to provide
Animal Control

Keith Major presented agreement #2009-264 with Clinton City. The Davis County Sheriff's Office will provide animal control service for Clinton City. It is a receivable of \$41,499.98. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-265 City
Haul for
Delivery &
Retrieval of
Voting
Equipment

Pat Beckstead, Davis County Election Director of the Clerk/Auditor's Office, presented agreement #2009-265 with City Haul. The company will deliver and retrieve voting equipment to the polls for the municipal primary and general elections. The cost is a payable of \$100 per polling location not to exceed \$5,800.00 per election. There are 20 locations for primary election and 22 locations for the general election. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreements
#2009-266 thru
#2009-268 for
Certified
Assessors as
Board of
Equalization
Hearing
Officers

Ross Bartholomew, Davis County Tax Administration Director presented the following three agreements for Board of Equalization Hearing Officers who are certified assessors. The contract period will be August 1 – December 31, 2009.

Agreement #2009-266	Douglas G. Miller	\$37.50/Hrly
Agreement #2009-267	A. Bruce Christensen	\$45.00/Hrly
Agreement #2009-268	L. Robert Dilley	\$37.50/Hrly

Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Summary List
#2009-269
Rental
Agreements for
the Legacy
Events Center
Facilities

A summary list #2009-269 for rental of the Legacy Events Center facilities was presented for the following:

4-H English Riding Club	4-H Saddle Up
Armando Vasquez	Australian Shepherd Club
Bay Area Chapter: Ducks Unlimited	Deanna Morris
Geovany Huerta	Girls Scouts of Utah
Golden Spike Dog Obedience Club	Intermountain Miniature Horse Club
Jed Jacobs	Jesus Paderes
Jill Atkinson	Jose Nolazco
Lisa Brubaker	Maria Magana
Martin Shelburne	Rocky Mtn. Morgan Horse Club
Silvia Stevens	USU Ext. 4-H
ZD Roping	

Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Summary List
#2009-270 for
Internet
Connection
Users

A summary list #2009-270 for internet connection users at a rate of \$15.00 monthly and \$0.10 per transaction for the following:

Visionet Systems Inc.	Heritage Title Insurance Agency
Mountain High Real Estate Advisors	Civil Science Inc.

Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Resolution
#2009-271 for
Issuance &
Sale of not
more than
\$6,250,000 of
Sales Tax
Revenue
Refunding
Bonds

Jonathan Ward, Zions Bank Public Finance, presented resolution #2009-271. A resolution authorizing the issuance and sale of not more than \$6,250,000, aggregate principal amount of sales tax revenue refunding bonds, series 2009, of Davis County, Utah (to be issued in one or more series and with such other series or title as may be determined); fixing the maximum aggregate principal amount of the bonds, the maximum number of years over which the bonds may mature, the maximum interest rate which the bonds may bear, and the maximum discount from par at which the bonds may be sold; providing for the publication of a notice of bonds to issued; providing for the running of a contest period; and related matters. The Board desires to issue the Bonds to (i) refund all or a portion of its outstanding Sales Tax Revenue Bonds, Series 2003B, (II) fund any required debt service reserve fund and (iii) pay all costs of issuance. It is important to watch the (1) Rates of interest, and (2) reinvestment security over the next 30 days. Steve Rawlings, Davis County Clerk/Auditor expressed appreciation to Zions Bank for their efforts. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Resolution
#2009-272
Proclaiming
9/28/09 "A Day
to Eat Dinner
with Your
Children"

Chairman Millburn presented resolution #2009-272 proclaiming September 28th, 2009 to be "Family Day – A Day to Eat Dinner with Your Children." It is a national movement that promotes the parental engagement fostered during frequent family dinners. Commissioner Downs said, "I hope everyone is practicing this at least 3 or 4 time a week." Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye. Document on file in the office of the Davis County Clerk/Auditor.

Agreement
#2009-273
Settlement of
Law Suit of
Utahns for
Better Dental
Health

Chairman Millburn stated that we have an agreement before us today that had previously been tabled. This is an agreement to settle the issue of attorneys' fees in the matter of Utahns for Better Dental Health. The attorneys are David Irvine and Janet Jensen. Perhaps the best place to begin is to lay out the history. Chairman Millburn invited Troy Rawlings, Davis County Attorney, to come forward.

Troy Rawlings, Davis County Attorney, presented the following:

It is a wise decision on the commissioners' part to deal with this proposed agreement with David Irvine and Utahns for Better Dental Health in a public meeting setting so people can appreciate the horns of dilemma the commissioners really are on here. The matter is in litigation and is currently pending. The Davis County Attorney's Office was asked by the commission to render an assessment as to where this case is at this time, the options to move forward and to give an opinion. We have discussed this a bit in closed session and now is the time for a decision. It is wise to discuss this issue in public so that the people may be able to understand the parameters the commissioners are dealing with as they make a decision. There really are basically only two options the commissioners have at this point based on the communications that have taken place with David Irvine and his counsel who was recently retained and Craig Bott of the Davis County Attorney's Office. Option 1 is to litigate the position of attorney's fees and have the judicial determination as to what the appropriate amount would be. Option 2 is to accept the settlement agreement proposed by David Irvine and Utahn's for Better Dental Health which is pending before you in the amount of \$214,000 plus change to settle the case. I am going to allow Craig Bott to provide to you our information and assessment of the detail of the case. Before he does his presentation, I am going to briefly outline for you our advice so people can know exactly where this matter stands.

Option #1: If the commission decides to pursue litigation in behalf of Davis County our office would aggressively pursue the litigation and we would do a few things that we feel in litigation may bear fruit. When it comes to litigation there are multiple phases of litigation. There would be the trial court phase and the potential appeal phases in the Utah Court of Appeals and the Utah Supreme Court. Option #2: Accept the settlement agreement.

One of the points made by David Irvine is that as long as the case is open and the litigation is pending the meter is running. Mr. Bott has advised that in conversation with Mr. Irvine, Mr. Irvine rejected mediation. There was a wise proposal and I thought a prudent proposal made by the commission within this last month to engage in mediation or arbitration but Mr. Irvine said that he would not and that left the county with the option of litigation or settlement. I am confident in the ability of the Davis County Attorney's Office to litigate this matter at the trial court level and persuade the court to significantly reduce the bill. If we go to trial on this, the county will point out inexplicable and disturbing discrepancies between what Mr. Irvine billed for the two appeals and what Davis County paid our council for the same appeals at the Court of Appeals and Utah Supreme Court. Craig will give some of those numbers today. It is astounding the difference between what the county paid out to our two appeals council (the Utah Appeals Court and Utah Supreme Court) and what David Irvine is billing Davis County. Our office will give you example of billings that we feel are unreasonable and ridiculous.

If we go to trial we are confident in our ability to persuade the judge that this is exactly what Mr. Irvine's bills are, ridiculous and unreasonable. We have these two attorneys as expert witnesses that are built in witnesses that will be of great benefit to the county. Normally as litigators you have to go out and get expert witnesses, get them up to speed on the case and have them study and review to render an opinion. In this case, we have two experts that we have discussed this scenario with, the two attorneys that handled the appeals for the county. The attorneys are Kevin Murphy and David Thompson who handled the appeals for the county. We are confident in what they both have to say and what they would testify at trial about their billing statements. The case has a lack of complexity. This was not a difficult case. There are unique legal issues but they are not that complex. Is it a petition or a referendum and was it filed in a timely manner or not? Our office deals with issues far more complex than this all the time. We would also have interest in testimony from David Thompson on his perception of Mr. Irvine's lack of need to do much between the two court appeals when the issues remained the same. If it goes to trial we like what our expert witness are likely to say. We like our mitigation position and the ability at the trial court level to significantly reduce the billing that Mr. Irvine has sent to the County.

Along this line also it is also important for the commission to know that Davis County from the inception of this case pursued a legitimately legal position. First on the substantive issue of why this went on the ballot to begin with some years ago. It was the considered opinion of the Davis County Attorney, Mel Wilson and particularly Chief Deputy Civil Attorney, Gerald Hess, that the Commission and Clerk/Auditor take the issue to the ballot. It was a legitimate position taken by the County. Mr. Irvine disagreed. David Irvine challenged that and successfully challenged it and by successfully I mean, Mr. Irvine took a different legal opinion than the Davis County Attorney's Office. Both legal decisions were legitimate. Judge Dawson had to struggle with the opinion. Mr. Irvine prevailed at the trial court level and basically what he did was successfully delay a revote for a couple of years. Legislation was passed after that to allow the County to put the issue back on the ballot again. The great victory here achieved upon the citizens of Davis County by Mr. Irvine and Utahns for Better Dental Health was to delay a vote for two years and now the County is presented with a bill. Quite frankly I must add the bill for \$214,000 (plus) that he has proposed for settlement is significantly less than the bill he had submitted to our office for consideration so negotiations have born fruit

to get the bill reduced. The County had a significant and substantive and legitimate legal position during the course of that litigation and our experts Kevin Murphy and David Thompson would testify to that at trial. Mr. Murphy and Mr. Thompson felt like the County's position was legitimate and the County should not have to pay attorney fees to David Irvine based on the state of the law at that time. We have correspondence to that effect and it was legitimate and in good faith. When it comes to attorney fees, the County position in initially resisting payments was also legitimate and based on the existing law and advice of appellate council. Kevin Murphy, David Thompson, Mel Wilson, Gerald Hess, and the County Commission all believed that the County had a strong legal position in not paying David Irvine his attorney fees based upon the nature of this case and based upon the scenario that the County had litigated in good faith in the current state of the law and in fact the County did prevail at the trial court level and that is part of why their opinion was what it was. What ended up happening unfortunately for the County during the appeal process was that the Utah Supreme Court changed the rules of the game. The Utah Supreme Court basically changed the rule of review. They did not give deference to Judge Dawson's decision as they always had in the past and that was what the County was relying on from council. It was unforeseen, Mr. Irvine did prevail. The Supreme Court established a new standard of review and they determined Mr. Irvine should be awarded his attorney fees and that is the current status of the law at this time. What happened next is curious as the court ruled in his favor. Bear in mind the meter is still running. Instead of coming to the County to present a bill for settlement and resolve the case at that time, Mr. Irvine chose to file further litigation to remove the trial court judge, Judge Dawson. So Mr. Irvine's chosen course of action after the Supreme Court decision was not to enter into a good faith action not but to get the sitting judge kicked off .

This County, based primarily on a request from the Clerk/Auditor, said that the Supreme Court has ruled against us and we need to get it resolved so we can move on so this litigation can end and with permission from the Commission asked this office to have Mr. Bott initiated conversation with David Irvine to try to negotiate and settle the fee agreement. With the very fact that, at this point, the judge can look at if one of the factors is a delay of settlement. Delay was caused by Mr. Irvine. If you (commission) pursue litigation, the meter is still running and Mr. Irvine who has retained new counsel might very well be able to claim and recoup attorney fees for the continued pursuit of the litigation of the case through the trial court. It won't be an easy trial but I think it will be easy in the sense that we know issues but it won't happen in a half-day. There will be dispositions, significant cross-examination as relating to billing records, expert witnesses (for both), preparation and trial. It will take multiple days. Because I am convinced that we will be successful in the unreasonable nature of billings, Mr. Irvine will not like the outcome and will appeal again. There will be the appellate level after the trial court level. Outside expert appellate council will need to be retained and more billing costs. The Supreme Court could add on fees and multipliers. In summary, I do not believe the bills are reasonable and to litigate will be lengthy. Unfortunately, the meter is still running and it could be more significant. If you are making a business decision as a fiduciary you need to remember that the money being expended is not your money not your money and unfortunately it could cost more to litigate. If it were my money, I would litigate. If you had enough of your own money, individual money and on individual principle, you might chose to do the same, but unfortunately these are not unlimited funds. We are in an unfortunate, distasteful position I don't like of advising you if we litigate at the trial court I think you may end up paying more.

Craig Bott, Davis County Deputy Civil Attorney presented the following:

On December 21, 2007, the Utah Supreme Court rendered it decision in Utahns for Better Dental Health v Davis County Clerk, and remanded the issue of attorney's fees back to district court for a

“determination as to the proper amount of attorneys’ fees to be awarded...for the entirety of these proceedings, including both appeals.

On November 4, 2008, having received no communication from Mr. Irvine regarding the amount of Attorneys fees he was seeking, the County in an attempt to facilitate the resolution of” this issue contacted Mr. Irvine and “requested information relative to [his] claim for attorneys’ fees and all supporting documents.

This request was repeated on November 18, 2009.

On November 21, Mr. Irvine responded to the County’s request for information by writing that he would have the time records to us shortly.

On November 24 the County informed Mr. Irvine that the County Attorney’s Office was willing to “entertain discussions to attempt to settle without incurring additional time and expense related to extended litigation” and offering to meet with Mr. Irvine in December of 2008.

On December 16, 2008, Mr. Irvine sent a “summary of time and costs...for the work {his office} performed since the beginning of this case...Show{ing}...fees and costs to January 1, 2008 are \$235,101.00” and agreeing to settle for 80% of that amount if the county would pay those fees by January 1, 2009.

Given the astounding amount of the fee request, the County took pains to review Mr. Irvine’s summary and during that review identified a number of concerns.

On February 27, 2009, the County notified Mr. Irvine of its concerns about the fees and costs submitted by Mr. Irvine citing specific issues and requested Mr. Irvine and his office to “review their attorney’s fees and make such adjustments as they deemed appropriate in this matter, with an eye toward resolution of this matter.”

On April 15, 2009, Mr. Irvine proposed a “counter-counter-offer to settle which leaves {Mr. Irvine’s Office} as unhappy as the commissioners may be {for}...\$211,073.25 plus our costs of \$2,955.39” for a total of \$214,028.64.

That is the offer that is before us today.

In the process of deciding whether or not to accept Mr. Irvine’s offer of settlement, the Commission wrestled with a number of lingering concerns regarding the amount Mr. Irvine seeks in attorney’s fees.

In July of 2002 David Irvine, representing Utahns for Better Dental Health, began preparing an action against Davis County relative to an Initiative Petition about Fluoridation.

In furtherance of this strategy, Mr. Irvine wrote an 8 page letter to the County Attorney discussing his position on the matter. An 8 page letter that took 4.8 hours to research; 16.5 hours to write...that’s 21.3 hours or almost 3 days at \$190/hrly for a total of \$4047.00. For an 8 page letter, that is \$506 dollars a page.

For attending a County Commission Meeting when the Fluoride Initiative was considered he charged...\$912.00.

Once the Fluoride Initiative was placed on the ballot Mr. Irvine and two of his Associates drafted and submitted their Complaint against the County and a Motion for Injunctive Relief. That process that took a combined total of 78.5 hours almost 2 full weeks for which he charged \$13,095.

To get a complaint filed with the Court, the first step in the process, Mr. Irvine wants to be paid \$18,000.

After Davis County responded to the Complaint and Motion, Mr. Irvine and his Associates spent another 44 hours replying to the County’s response. For a total of \$8,578.

A hearing was held to consider the Complaint and Motion. The hearing which lasted a little over two hours, Mr. Irvine and his two associates attended for a total of 8 hours...three attorneys for a two hour hearing for a total charge of \$1,380. A two hour hearing for which they spent 42 hours in preparation, including a “moot trial” for which they want to charge \$7,657...for a 2 hour hearing.

Mr. Irvine prevailed at that hearing. Mr. Irvine was asked to prepare the Court's order, a process which took over 40 hours to complete for a bill of almost \$7,000.

When Mr. Irvine prevailed against the County he wanted to be paid for his work, not by his clients, but by the County.

The case law in operation at that time indicated that Mr. Irvine was not entitled to have his attorney's fees paid by the County and so the County declined.

Mr. Irvine told the County that he would seek his attorney's fees through the appellate process or the County could settle with him for \$45,000.

Because the body of law existent at the time argued against the payment of attorney's fees, the County once again declined to pay Mr. Irvine.

Rather than charging his clients, Utahns for Better Dental Health, for the work that he had done on their behalf, Mr. Irvine then took the steps he deemed appropriate to take his case before the District Court seeking to get paid by the County. That process that took one year, 327 hours of work by Mr. Irvine and \$61,731 in attorney's fees. More money than he billed for prevailing in his case.

When Mr. Irvine was denied his attorney's fees by the District Court he filed and was granted an appeal by the Utah Court of Appeals.

In response, the County contracted with an outside attorney to undertake the County's defense at this appellate level.

The attorney hired by the County provided all the services necessary for the County's defense for a total of \$5,089.76.

Mr. Irvine's bill for the same appeal was \$64,359...12 times as much as what the County's attorney charged.

The issue was remanded to the District Court for a further determination as to whether attorney's fees were warranted, and when the district court again denied Mr. Irvine's attorney's fees based on the then applicable case law, Mr. Irvine filed and was granted an appeal by the Utah Supreme Court.

When faced with an appeal to the Utah Supreme Court, the County again elected to contract with an outside attorney experienced in appellate work before the Supreme Court and paid that attorney \$6,500 for all work performed during this appeal.

Mr. Irvine's bill for the same appeal is \$58,860...for making the same basic argument made before the Court of Appeals.

Mr. Irvine billed \$187,740.50 for the time he spent working on getting paid by the County, instead of by his clients.

When the County was faced with the option of settling this case for \$45,000 or standing firm, the County had to consider the strength of its position and the best strategy in light of the then existing law.

Up until that point in time the Utah Supreme Court had held that the standard of review in determining whether attorney's fees would be granted under the Private Attorney General Doctrine Cases was the highly deferential "Abuse of Discretion Standard."

Indeed Justice Durham in Shipman v. Evans wrote "under the abuse of discretion standard, we will not undertake our own assessment of whether plaintiffs vindicated a public policy, nor will we attempt to gauge anew the importance of any vindicated policy, nor will we tackle the question of whether plaintiffs' actions were comparable to those we found in Stewart (Utah Supreme Court Case). Instead we review the trial courts determination that an equitable reward was not merited here only to see if the trial court abused its discretion."

Standing on this solid ground and the trial court determination on two different occasions that attorney's fees were not warranted in this case, the county made the decision to stand firm against Mr. Irvine's demand for attorney's fees.

The Utah State Supreme Court used this case as a vehicle to change its long established standards dealing with Private Attorney General Doctrine Cases. Rather than applying the abuse of discretion standard and relying on the trial courts determination as to whether an equitable reward was warranted, Justice Durham wrote, that the abuse of discretion standard was now unsuitable for Private Attorney General Doctrine cases because the "threshold issues, {being} a rather transcendent, large picture question of public policy, namely whether an important right affecting the public interest has been vindicated is beyond the capacities of District Court judges."

This unexpected and sua sponte abrupt change in established case law, which was not briefed or argued before the court was in this case applied retroactively to this case, and the Court ordered that the County pay Mr. Irvine's attorney's fees, including those accrued during the appeal process and for the District Court to determine how much those fees were.

Given the Court's Order, the issues then became what is an equitable amount to pay in attorney's fees.

This matter can be settled or fought out in court.

Mr. Irvine has offered to settle this issue for the amount before us today.

While many of these concerns argue against settlement, there were other issues that had to be considered by the County Commission include:

- How much the County spent in attorney's fees to litigate the amount of Mr. Irvine's attorney's fees?
- Would Mr. Irvine be awarded attorneys' fees for the work spent litigating the amount of attorney's fees he has already been awarded?
- What the likelihood was that we could get Mr. Irvine's attorney's fees reduced?
- Would Mr. Irvine take this matter to the Appellate Courts if the District Court did not award him as much in attorney's fees as he felt he should receive?
- How likely is it that the Court would add a multiplier to Mr. Irvine's attorney fees, taking them to an even higher amount?
- What is the best use of County funds...taxpayer funds?

With those issues in mind the Members of the Davis County Commission are tasked with making a decision that brings to mind the African proverb "Hard decisions are like a stepchild: if he does not wash his hands, he is called dirty, if he does, he is wasting water."

Chairman Millburn thanked Troy and Craig for their presentations. The commission felt it was important to have the facts be laid out. It is a dilemma and a challenge. The current commission was not there from day one. Steve Rawlings, Davis County Clerk/Auditor and Gerald Hess were asked if they had any comments and they said, "No."

Commissioner Downs said, "It has been a number of years and was on a different watch. The charges are steep if we delay and question. I am inclined to find ways to settle and move on, get it settled and be resolved. Therefore, I make a motion to accept the settlement agreement." Commissioner Petroff seconded the motion.

Commissioner Petroff stated that certain things are unfortunate even in voting in favor leaves us in a horrible situation. He is making an example of us. Fairness in right and wrong is to have it be over and done. No forum for open dialogue.

Chairman Millburn stated his thoughts are on the same lines as others. He struggled for understanding and the amounts Mr. Irvine is seeking. Rules of the game changed at end. Perspective is "County has taken the high road". Law at current time substantiated. Arbitration and mediation were rejected by Mr. Irvine. There are huge discrepancies in billing. The odds faced have left us in a quandary.

Chairman Millburn called for the vote and all voted aye. Agreement #2009-273 is the settlement stipulated and signed in the amount of \$214,028.64.

Steve Rawlings, Davis County Clerk/Auditor stated that since the outcome was not known and the amount was not budgeted in the 2009 budget, there will be a need for a budget change to move money from the Fund Balance back into the 2009 budget. The commissioners agreed the motion also includes the necessary budget change. All voted aye.

Commissioner Downs made a motion to convene the Board of Equalization. Commissioner Petroff seconded the motion. All voted aye.

Ross Bartholomew, Davis County Tax Administration Director, presented the property tax register. Reflected on the registers three Auditor's Corrections for tax abatement and one Assessor's Adjustment for an escapement. There are 18 property tax appeals for approval and 3 denials for 2008. This finishes 2008 except for the 77 awaiting a state tax hearing. There are 814 corrections for 2009. There are 139 property tax appeals for approval and 4 withdrawals for 2009. Commissioner Downs made a motion to approve. Commissioner Petroff seconded the motion. All voted aye.

Commissioner Petroff made a motion to reconvene the regular commission meeting. Commissioner Downs seconded the motion. All voted aye.

Check registers as prepared by the Davis County Clerk/Auditor's Office were presented. Commissioner Petroff made a motion to approve. Commissioner Downs seconded the motion. All voted aye. Documents are on file in the office of the Davis County Clerk/Auditor.

Commission Comments:

All three commissioners said the fair was great. Very positive comments have been received. There will be a report at a later date.

Commissioner Petroff thanked Troy Rawlings, Craig Bott, Jerry Hess, and Steve Rawlings for their work on the settlement agreement.

Troy Rawlings, Davis County Attorney, asked to make an official statement now that the settlement agreement has been approved and will be signed. There are provisions in the agreement that there will be no further press coverage or comments to the media. The Davis County Attorney's Office will live up to that and Troy said that he expects the Commissioners will live up to it as well. We will not litigate through the media. We will not be talking about the settlement agreement. I expect the other side may not live up to the agreement.

No public comments.

Meeting adjourned.

Property Tax
Register
Approved

Check
Registers
Approved