

COURT ORDER NO. 2019-074-01-28

**STATE OF TEXAS
COUNTY OF COLLIN**

**COMMISSIONERS' COURT
MEETING MINUTES
DECEMBER 17, 2018**

On Monday, December 17, 2018, the Commissioners' Court of Collin County, Texas, met in Regular Session in the Commissioners' Courtroom, Jack Hatchell Collin County Administration Building, 4th Floor, 2300 Bloomdale Road, City of McKinney, Texas, with the following members present, and participating, to wit:

Judge Keith Self
Commissioner Susan Fletcher, Precinct 1
Commissioner Cheryl Williams, Precinct 2
Commissioner Darrell Hale, Precinct 3
Commissioner Duncan Webb, Precinct 4

Commissioner Fletcher led the Invocation.
Commissioner Williams led the Pledge of Allegiance.
Commissioner Hale led the Pledge of Allegiance to the Texas Flag.

1. Judge Self called to order the meeting of the Collin County Commissioners' Court at 1:30 p.m. and recessed the meeting at 3:34 p.m. The meeting was reconvened at 3:45 p.m. and adjourned at 4:32 p.m.

President Self called to order the meeting of the Collin County Health Care Foundation at 4:32 p.m. and adjourned the meeting at 4:32 p.m.

President Self called to order the meeting of the Collin County Toll Road Authority at 4:32 p.m. and adjourned the meeting at 4:33 p.m.

DECISIONS MANDATED BY LEGAL ENTITIES OUTSIDE OF COMMISSIONERS COURT AUTHORITY:

1. AI-45917 Personnel Appointments, Human Resources.
2. AI-45918 Personnel Changes, Human Resources.

FYI NOTIFICATION

1. AI-34688 Outstanding Agenda Items, Commissioners Court.
2. **Addenda:**
 - a. AI-45897 No. 1 to Janitorial Supplies (IFB No. 2018-251) to make various changes to the Invitation for Bid, Purchasing.

b. **AI-45898** No. 1 to Signs, Sign Materials, & Barriers (IFB No. 2018-260) to make various changes to the Invitation for Bid, Purchasing.

3. **AI-45877** P-Card Disbursements, Auditor.

2. Public Comments.

John Thomas, former Commissioner, Precinct 3, came forward to share a few words on his time on the Commissioners' Court. Mr. Thomas said Collin County is a fine, well-run organization which serves its citizens in an efficient manner. He then praised a number of individuals throughout the County, which included appointed officials, elected officials and staff members, for their knowledge, professionalism and leadership. Mr. Thomas commended the Court. Without a fine Commissioners' Court the County would not be where it is today. All are dedicated to serve the citizens and each brings a passion for their precincts and the County. Mr. Thomas said the 12 years Judge Self has served as County Judge have been years of many changes. Through it all Judge Self has fought to protect the taxpayers and has kept the County advancing effectively and efficiently. He said it was a privilege and honor to serve on the Commissioners' Court. (Time: 1:37 p.m.)

Other public comments were heard under General Discussion Items 5 and 6.

3. Presentation/Recognition:

a. **AI-45818** Certificate of Achievement for Excellence in Financial Reporting from the Government Finance Officers Association presented to the Collin County Auditor's Office by Judge Benjamin Smith, Auditor.

The presentation was postponed to a later Court meeting.

b. **AI-45912** Retirement plaque for Judge Keith Self, Commissioners Court.

Commissioner Fletcher, on behalf of the Commissioners' Court, the County government and its employees and the citizens of the Collin County, presented Judge Self with a proclamation and a retirement plaque celebrating his 12 years of service to Collin County and his over 25 years of service to the Nation.

Gary Jackson, Veteran Services, on behalf of the Veterans County Service Officer Association of Texas, presented Judge Self with an award for his service as well as the Association's Challenge Coin.

Judge Self thanked the citizens for allowing him to serve the County for 12 years and said it has been a true honor. He also thanked the 13 commissioners who have served with him in the 12 years for operating with respect. (Time: 1:52 p.m.)

c. **AI-45899** Retirement plaque for Judge John Payton, Justice of the Peace, Precinct 1.

Paul Raleeh, Justice of the Peace (JP), Precinct 1, along with all the Collin County JPs, presented John Payton, Justice of the Peace, Precinct 3-2, with a retirement plaque in appreciation of his 27 years as a JP for Collin County. Judge Payton stood out among the JPs because of his ability and passion to work with the youth of the County. Judge Payton thanked all who have supported him through the years. (Time: 1:44 p.m.)

4. Consent agenda to approve: Judge Self deleted item 4d1 and asked for comments on the remainder of the consent agenda. Commissioner Webb pulled item 4k3. Hearing no further comments, a motion was made to approve the remainder of the consent agenda. (Time: 1:53 p.m.)

Motion by: Commissioner Susan Fletcher
Second by: Commissioner Cheryl Williams
Vote: 5 – 0 Passed

a. **AI-45867** Disbursements for the period ending December 11, 2018, Auditor.
COURT ORDER NO. 2018-1057-12-17

b. **AI-45868** Indigent Defense Disbursements, Auditor.
COURT ORDER NO. 2018-1058-12-17

c. **AI-45832** Tax refunds totaling \$393,826.52, Tax Assessor/Collector.
COURT ORDER NO. 2018-1059-12-17

d. **Award(s):**

1. **AI-45857** Professional Services, General Civil Engineering Consulting (RFQ No. 2018-359) and further authorize the Purchasing Agent to finalize and execute the Engineering Services Agreement, Engineering.

HELD

2. **AI-45876** Declare GreyHeller, LLC dba Appsian as the sole source provider for Peoplesoft ERP Firewall and grant an exemption from the competitive bid process per V.T.C.A. Local Government Code 262.024(a)(7)(A), approval to award Peoplesoft ERP Firewall (Contract No. 2019-083) to GreyHeller LLC dba Appsian and further authorize the Purchasing Agent to finalize and execute the Software License Agreement, Information Technology.

COURT ORDER NO. 2018-1060-12-17

3. **AI-45893** Insurance, Stop Loss for Medical and Pharmacy (RFP No. 2018-341), Human Resources.

COURT ORDER NO. 2018-1061-12-17

4. **AI-45866** Right Of Way Acquisition Consultant (RFP No. 2018-310) and further authorize the Purchasing Agent to finalize and execute the Right Of Way Acquisition Services Agreement, Special Projects.

COURT ORDER NO. 2018-1062-12-17

e. Agreement(s):

1. **AI-45875** Motor Vehicle License Agreement with Toyota Motor Credit Corporation (TMCC) to establish TMCC with access to Web Dealer for motor vehicle registrations and title transfers, Administrative Services.

COURT ORDER NO. 2018-1063-12-17

2. **AI-45896** Scope and fee from Binkley & Barfield, Inc. for the improvements to Orr Road (CR317) and further authorize the Purchasing Agent to finalize and execute the Engineering Services Agreement, Public Works.

COURT ORDER NO. 2018-1064-12-17

3. **AI-45892** Interlocal Agreement to Facilitate Road Improvements on Orr Road with the Town of Fairview and the North Texas Municipal Water District, Public Works.

COURT ORDER NO. 2018-1065-12-17

4. **AI-45871** Interlocal Cooperation Agreement for Jail Services with Wise County effective October 1, 2018 through and including September 30, 2019, Sheriff.

COURT ORDER NO. 2018-1066-12-17

5. **AI-45904** Interlocal Cooperation Agreement with the Town of Little Elm for Teen Court Services, Teen Court.

COURT ORDER NO. 2018-1067-12-17

6. **Interlocal Agreement(s) for the Provision of Ambulance Services effective November 1, 2018 through and including October 31, 2019, Fire Marshal:**

a. **AI-45879** City of Blue Ridge.

COURT ORDER NO. 2018-1068-12-17

b. **AI-45880** City of Farmersville.

COURT ORDER NO. 2018-1069-12-17

c. **AI-45881** City of Josephine.

COURT ORDER NO. 2018-1070-12-17

d. **AI-45882** City of Lowry Crossing.

COURT ORDER NO. 2018-1071-12-17

e. **AI-45883** City of Melissa.

COURT ORDER NO. 2018-1072-12-17

f. **AI-45884** City of Nevada.

COURT ORDER NO. 2018-1073-12-17

g. **AI-45885** City of Princeton.

COURT ORDER NO. 2018-1074-12-17

f. Amendment(s):

1. **AI-45890** No. 1 to Services, Professional Audit (RFP No. 2016-161) with Pattillo, Brown & Hill, L.L.P. to make various changes to the contract and further authorize the Purchasing Agent to finalize and execute same, Auditor.

COURT ORDER NO. 2018-1075-12-17

g. Contract Renewal(s):

1. **AI-45886** Insurance, Short & Long Term Disability (RFP No. 2014-303) with Aetna Life Insurance Company to extend the contract for one (1) year through and including December 31, 2019, Human Resources.

COURT ORDER NO. 2018-1076-12-17

h. Ratification of the County Administrator's prior approval:

1. **AI-45863** \$18,000,000 to establish and allocate funds for the Tax Note Projects, Budget.

COURT ORDER NO. 2018-1077-12-17

i. Budget adjustment(s)/amendment(s):

1. **AI-45895** \$5,670 to reallocate funds for the Spay/Neuter Program, Development Services.

COURT ORDER NO. 2018-1078-12-17

2. **AI-45859** \$143,848 to pay the Texas Department of Transportation (TxDOT) the remaining balance of the County's 10% Right of Way participation on FM2514 to east of Lavon Pkwy, Engineering.

COURT ORDER NO. 2018-1079-12-17

3. **AI-45865** \$427,382 to budget the Town of Prosper's contribution for the construction of First Street (DNT Intersection Improvements), Engineering.

COURT ORDER NO. 2018-1080-12-17

j. Receive and File, Auditor:

1. **AI-45900** Investment Report (4th Quarter FY 2018).

COURT ORDER NO. 2018-1081-12-17

2. **AI-45878** Monthly Financial Reports for September 2018.
COURT ORDER NO. 2018-1082-12-17

k. Miscellaneous

1. **AI-45776** Adoption of the 2019 Investment Policy, Auditor.
COURT ORDER NO. 2018-1083-12-17

2. **AI-45887** Final Plat for Pinkus Addition (Lots 1 and 2, Block A), Engineering.
COURT ORDER NO. 2018-1084-12-17

3. **AI-45783** Final Plat for Providence Point, Phase 1 (Lots 37-103), Engineering.

Commissioner Webb pulled this item because he does not support the County taking on the maintenance of private streets. He asked for the status of the policy change. Tracy Homfeld, Engineering, said Engineering is working with a consultant on the subdivision regulations update, the floodplain regulations update and the county road policy manual update. It will be another couple of months before a draft is presented to the Court to review. With no further discussion, a motion was made to approve the item. (Time: 1:55 p.m.)

Motion by: Commissioner Cheryl Williams
Second by: Commissioner Susan Fletcher
Vote: 4 – 1 Passed
Nay: Commissioner Duncan Webb

COURT ORDER NO. 2018-1085-12-17

4. **AI-45862** Grant an exemption to the bid process per VTCA Local Government Code 262.024(4), a personal or professional service, for Wilkins Finston Friedman Law Group, LLP for legal services and further authorize the Purchasing Agent to finalize and execute the agreement for same, Human Resources.

COURT ORDER NO. 2018-1086-12-17

5. **AI-45919** Personnel Appointments, Human Resources.
COURT ORDER NO. 2018-1087-12-17

6. **AI-45920** Personnel Changes, Human Resources.
COURT ORDER NO. 2018-1088-12-17

GENERAL DISCUSSION

5. AI-45888 Proposed utilization of 2018 County Bond Election proceeds, Engineering.

Clarence Daugherty, Engineering, came forward to present the proposed utilization of 2018 bond election proceeds. It is proposed that bonds be sold in January or February 2019 with proceeds in March or April 2019. Therefore, the first bond funding year would be May 1, 2019 – April 30, 2020. Mr. Daugherty shared a summary of cost estimates of the 2018 bond program by year with \$110 million proposed for the first year.

Proposition A is the largest of the three approved propositions with a five-year total of \$600 million. Engineering is recommending a sale of \$100 million the first year. This would include: the remainder of funding needed for the construction of the first phase of the Outer Loop between the DNT (Dallas North Tollway) and Preston Road; funding needed for acquisition of Outer Loop ROW (Right of Way) between Preston Road and Custer Road; funding for the design of the Outer Loop service road between Preston Road and Custer Road; funding needed for land along US380 between the Denton County line and Coit Road; funding for the environmental analysis and schematic for the Spur 399 Extension around the McKinney Airport to US380; and funding for a location and alignment study for a freeway to relieve the SH78/FM544/Plano Parkway corridor.

Commissioner Webb said instead of using the term “ROW acquisition” when referring to US380 he would like to use the term “land bank”. The intent is to sell it back to TxDOT (Texas Department of Transportation) after it is acquired versus acquiring it as ROW which means the County would have to give the land to TxDOT. Mr. Daugherty agreed and said it will be changed.

Commissioner Hale asked why TxDOT would not be picking up funding for the Spur 399 Extension when they are doing so from the airport to the Outer Loop and to US380. Mr. Daugherty said it is possible TxDOT will take it on as well, it was put in the proposal to make sure it was covered.

It is proposed that funding for Proposition B be considered in four categories: county projects; state projects; city projects; and discretionary. At this time there are three major projects proposed for funding as county projects: ROW funding for Park Blvd., FM2514 to SH78; funding for a corridor study of FM546/CR400, McKinney Airport to CR458/US380; and additional funding for the Frontier Parkway project which is DNT to Preston Road. The total funding for the first year of Proposition B is \$8.5 million.

As for state projects, there are eight listed which the County projects as having the worst congestion by 2020 if not improved by that time. It is proposed that funding be contributed to these state projects which are not fully funded by the state in order to move them to construction as soon as possible.

Projects in order of priority/capacity deficit include: SH5 – Spur 399 to FM546; US380 – Airport to CR458; SH5 – Fairview Parkway to Stacy Road; SH121 – Outer Loop to county line; FM1378 – Lucas Road to FM3286; SH205 – SH78 to county line; FM2551 – FM2514 to FM2170; FM2514 – Lavon Parkway to Brown Street; and FM1461 – SH289 to Lake Forest Drive. Currently, no funding is recommended for SH5 – Fairview Parkway to Stacy Road and FM1378 – Lucas Road to FM3286. These two projects will need to be addressed at some point, but more work will need to be done in order to get all parties in agreement for funding.

Commissioner Williams said SH1378 is a critical roadway which will need to be addressed. It is one of the few farm-to-market roads stretching from the north county line to the south county line. The County does have interest in these projects and will continue to press hard for them to be widened to the appropriate size et cetera.

It is proposed that \$60 million be allocated for city thoroughfare projects and \$10 million held back from allocation for use as discretionary funds.

To clarify, Judge Self said while there is a city category, all the projects listed are in cities and the cities will see the benefit.

In the idea of city funding, which is the portion of this bond program similar to the previous County bond programs, Mr. Daugherty recommended there be two calls for projects: one in the first year and one again in the third year. This sets up the proposed funding for these in the second and fourth years.

Mr. Daugherty said \$2 million is also proposed to sell for Proposition C - Open Space.

For the benefit of the cities, the Court will need to decide the criteria for approving funding to cities for projects. Mr. Daugherty reviewed the assumptions and basis for the 2018 bond program: the funding years will be May 1 – April 30; the first call for projects will be in the summer or fall of 2019; the first actual funding will be in the second year – May 1, 2020; there will be two calls for projects – 2019 and 2021 with funding in the second and fourth years; determine percentage participation; and types of projects – roadway widening, intersection widening and rehabilitation.

Mr. Daugherty then reviewed the criteria. There are seven items Engineering has determined are musts for a project to be considered: 1) be on the county thoroughfare plan; 2) city must have adequate funding with addition of County's contribution to totally fund the project; 3) city must have appropriate approvals to begin or advance the project through the various stages of the project – it must start immediately and must be ready for work to be prosecuted continuously until construction is completed; 4) must have impact broader than just local city value; 5) cities must agree to cooperate in regional issues and priorities; 5) if project assigned does not work out, the funds return to the County for the Court to decide the usage; and 7) a city must not be in litigation with the County.

The next step would be rating the projects on the basis of improving or maintaining mobility. Projects would receive an extra point for solving verifiable safety problems; supplementing/complementing movement on freeways; and/or if there is no freeway or other bond project within city limits.

The last issue is the percentage participation. There has always been a 50/50 split with the cities; however, there has been discussion of the possibility of having a lower percentage participation by the smaller cities. Options proposed include: 1) keep the 50% city match; 2) projects under \$250,000 – 20% city match and over \$250,000 – 50% city match; 3a) based on population – 50% for the top seven cities and 20% for the remainder; or 3b) based on population – 50% for the top six cities and 20% for the remainder. The population totals used to determine the top six/seven were from the COG (Council of Governments).

George Fuller, Mayor of McKinney, first thanked Judge Self on his years of service on behalf of the McKinney City Council. Mr. Fuller spoke on the importance of funding for Spur 399 and FM546. These are regional projects which have great impact on regional mobility. Preliminary modeling by COG stated these projects would produce a reduction in congestion on US380 east of US75 by nearly 40%. This would aid in the safety concerns of US380. The airport is also well served by these projects as it is a regional asset and was recently identified as having a \$212 million annual economic impact on the region. These projects are vital to further development. Mr. Fuller asked the Court to favorably consider these projects. (Time: 2:36 p.m.)

Judge Self asked for discussion on the bond sale as recommended by Engineering. Hearing no discussion, a motion was made to approve the bond sale as recommended. (Time: 2:37 p.m.)

Motion by: Commissioner Duncan Webb
Second by: Commissioner Susan Fletcher
Vote: 5 – 0 Passed

Judge Self asked for discussion on the criteria and/or the percentages. Commissioner Hale said Option 2 and Option 3 were based on his proposal of smaller cities having a harder time getting money together for projects. Showing the difference in the percentages to smaller cities in order to promote multicity projects, which would get funding in place sooner, would be preferable. He recommended going with Option 3b. Commissioner Williams agreed.

Commissioner Webb is in favor of Options 3a or 3b, but he questioned what to do with Wylie. Option 3a has Wylie in the top seven cities and Option 3b does not. The Commissioner is fine with Option 3b as long as the criteria and rating is as proposed. He did suggest a 70/30 split to stretch the \$60 million further. Commissioner Williams agreed with the 70/30 split. She also said there could be three categories in Option 3a/b with population: zero – 50,000 at 20%; 50,000 – 100,000 at 35%; and over 100,000 at 50%.

The Commissioner anticipates Allen will be over 100,000 and Wylie will be over 50,000 by the time funding is ready. Commissioner Webb is fine with this, but is concerned with the fact little cities have big projects and there is only \$60 million. Mr. Daugherty suggested putting a \$10 million cap on projects. Discussion continued.

A motion was made to approve the criteria as proposed. (Time: 2:46 p.m.)

Motion by: Commissioner Duncan Webb
Second by: Commissioner Susan Fletcher
Vote: 5 – 0 Passed

Discussion continued on the participation percentages.

A motion was made to set the participation percentages at: cities with a population over 100,000 – 50/50; any city with a population under 10,000 – 80/20; and every city between – 70/30. (Time: 2:47 p.m.)

Motion by: Commissioner Cheryl Williams
Second by: Commissioner Susan Fletcher
Vote: 5 – 0 Passed

COURT ORDER NO. 2018-1089-12-17

6. AI-45936 Creation of Magistrate positions, County Judge.

Bill Bilyeu, County Administrator, said during the FY2019 budget cycle the Court added staffing for magistration to be done at 9:00 a.m. and 9:00 p.m., 365 days a year. At that time, it was discussed that there is no way to bring additional magistrates to the table for those hours. The position is limited to a sitting judge. The County needed a guarantee someone would be there every time; therefore, the best solution looked to be the creation of a magistrate position/s. Chapter 54 of the Local Government Code shows where other counties have a magistrate. A number of them have judges nominate a magistrate and the Commissioners' Court approve and fund the position or the Commissioners' Court selects and funds it. It is possible there could be a number of part-time magistrates appointed to cover the hours. The statute provides for the magistrates to receive any number of services or duties as long as a judge awards it to them. There is nothing in the provision that mandates any cases or hearings go to the magistrate. The only way a case ends up with a magistrate is if a judge specifically sends it to them.

Currently, Justices of the Peace, Precincts 1 and 3-2 graciously do the 9:00 a.m. and 9:00 p.m. magistration and receive \$30,000 each which is a lot of effort for the money. Breaking it up with multiple magistrates would make it easier. The proposed bill has sections from Chapter 54 as well as a section on who is eligible to magistrate. This was sent to the County's attorney as well as all the judges in Collin County for feedback. Feedback was received. Judge Cynthia Wheless, 417th District Court, asked for juvenile to be pulled completely. She appointed a full-time magistrate which was funded out of the visiting judge line item.

Commissioner Williams said in addition to the twice a day magistration, there are additional court rulings which will impact magistration further and it is anticipated there will be additional bail reform likely to put more demands on magistration. The direction this is moving is to try to get people out of jail faster which will require magistration to be done more rapidly. This will also allow for defendants to challenge their bail settings within 48 hours. The County will have to be able to staff more hours at the jail.

Judge Self said theoretically, with this bill, the Commissioners' Court could fund two full-time positions, put it in the budget and approve it. Mr. Bilyeu could say the County only needs two part-time magistrates and in the same year, if the increase came, he could make the change. Mr. Bilyeu confirmed the theory. Commissioner Williams said the bill allows for a lot of flexibility to meet the potential demands. Commissioner Webb supports the bill as drafted.

Commissioner Fletcher asked if electronic court reporting would be used. Mr. Bilyeu said from the statute he copied from other county bills, if the parties ask for a court reporter to be present, a court reporter would have to be there. If they don't ask for one, then it would be done in some other manner. The Commissioner asked where the bailiff, court coordinator and district attorneys are being staffed from. Mr. Bilyeu said if work is being handled inside the jail, it would operate the same as if a judge asked them to come in to pick a jury by utilizing the staff that court has. If there were to be 40 hours of work it would operate like the auxiliary court.

Commissioner Williams asked what the duties of a magistrate will be. Mr. Bilyeu said the way the bill is proposed, it wouldn't allow the magistrate to run a jury trial, but the magistrate could assist a judge in jury selection and make rulings. Anyone involved in a case assigned to a magistrate has the ability to appeal the ruling back to the sitting judge.

Mitch Little, Frisco, came forward as the President of the Collin County Bar Association to speak against the magistration bill. The magistration process and the magisterial duties are incredibly important to this county, but it is important for the Court to think about the idea of a magistrate separate from a judge or an associate judge. Mr. Little said Judge Self is a magistrate and all judicial officers in the County are as well. The idea of a magistrate or the appointment of one is contained within Chapter 54 of the Local Government Code which the bill seeks to amend. The only magistrates addressed in Chapter 54 are criminal magistrates. This is because this is a criminal idea only. The duties of a magistrate are derived from Article 2 of the Texas Code of Criminal Procedure. A magistrate can set bail and perform duties permitted by statute within Chapter 54. The problem with this bill, as drafted, is it purports to allow a magistrate to function in the role of a judge and preside over civil and family cases. This is not permissible and would require an amendment of a number of other statutes.

It is impossible for a magistrate to perform the roles of a civil hearing officer or a family hearing officer because those roles are reserved for a non-elected office as an associate judge per Chapter 54a of the Local Government Code. Constitutionally, the only people who have the right, by statute or law, to enter a full and final resolution of any case are the elected officials/judges.

Judge Self asked if Mr. Little believes the legislation for the other counties, which the bill was drawn generously from, is probably not legal. Mr. Little explained, the problem is the ability of a magistrate to preside over any matter in a civil or family case that is not appealable. The bill does not provide for the right of an appeal. (Time: 3:03 p.m.)

George Flint, Plano, who is a practicing attorney in Collin and Dallas Counties, came forward to speak against the proposed bill. The bill as written slopes together concepts derived from magistrate procedures in the criminal context and tries to apply it in the associate judge category without calling it an associate judge or authorizing such on the civil category. In looking at a list of statutes authorizing associate judges in the large counties, every one of them have been revoked. This is because they are highly inefficient and expensive for the county paying for it as well as for the litigants. The bill also does not provide the procedures to follow which is a violation of the Open Courts Doctrine. Also the setting up of a public arbitration provision by allowing a magistrate to charge the parties for his/her time is not authorized under the statute and may violate due process under the federal and state constitutions. All of this will be tested by litigants who were unhappy going first to an associate judge/magistrate and then having to try the exact same matter again with the district judge. Those are tried de novo at the district level. Mr. Flint said if the County is inclined to need this bill, the Court limit the bill to jail magistration and strike all other references to civil procedures and any manner of trial where the merits of the case are being decided.

Judge Self said the two comments make it sound like everything will go back to the judge. There are a lot of things that are not contentious and the worst case scenario can't be assumed. Mr. Flint said there are a number of things decided which are not appealed because the party can't afford to do so, but the bill does not have a provision for a direct rehearing by the district court which is why it lacks due process. If this is built into the bill, the district judge would hear an appealed case from scratch. Mr. Flint said this may not happen every time, but it happens more than people think. This adds another layer of appeal. (Time: 3:11 p.m.)

Jim Piki, McKinney, is against the magistrate bill. He said if an adjudicatory decision is made, the decision must go back to the judge. Under the constitution, the district and county courts have the right to make determinations a fact in law. The proposed statute gives a magistrate, who is not an elected official, the right to make an adjudicatory finding a fact in law. Those are constitutionally reserved for elected officials. Any adjudicative fact in dispute has to be reheard and decided on by an elected official. A party has the right to waive constitutional rights to appeal, but the government does not have the right to take them away from the party by statute or judicial action.

Judge Self asked Mr. Pikel why the party would not have the right to go back to the judge who assigned it to the magistrate. Mr. Pikel said Judge Self stated all parties wouldn't do that. Fiscally it makes sense because not all cases would be tried twice, but adding the extra layer for appeals burdens the population with additional expenses and time they don't have. It has to be assumed that every magistrate's adjudicatory decision has the right to be appealed to the elected official and that all are going to be appealed.

Commissioner Williams said the County is facing increasing demands in the jail to provide justice which is obligatory and asked for suggestions on how to do this without magistrates. Mr. Pikel suggested more Justices of the Peace which are elected officials. The Commissioner said people are being magistrated in jail everyday by people who are not elected officials. Mr. Pikel said it is fine if they are not doing adjudicative decision making. Discussion continued on adjudicative and non-adjudicative decisions.

Judge Self said if the proposed bill is cleaned up and passed, the County would use it for the jail. The way it is written now the judges have total authority on what they will assign a magistrate. Then as the pressure rose on cases there would be maturation to see if it was good for the citizens in the appeal process and was fiscally responsible. Mr. Pikel said judges do not have the constitutional authority to delegate out their responsibilities. A judge cannot assign a nonelected official an adjudicatory hearing. Judge Self asked if Mr. Pikel believes the legislation for the other counties is not legal. Mr. Pikel said the legislation is being trimmed back for the other counties because it went out of control and the appellate court cases struck a lot of it down. The only ones now on the magistrate list on Westlaw, which have magistrates hearing matters, are all non-adjudicative criminal matters.

Commissioner Williams asked if this would be the same for the associate/visiting judges who are hearing cases and rendering final decisions. Mr. Pikel said every party in those cases has the right to strike the associate/visiting judge before they walk into the courtroom. Judge Self said this is not happening a lot. Mr. Pikel said there are many reasons why this isn't happening, but they still have the right. If an associate judge makes a ruling that is adjudicative it has to be able to be reviewed by an elected official.

Commissioner Williams asked what part of the proposed legislation prevents it from going back to the administrative judge. Mr. Pikel said it gives the magistrate the power to make rulings on matters assigned to the magistrate and only lets it be a "may" provision to be reviewed by a district judge. If "may" is changed to "must" be reviewed, unless waived by the parties, the legislation is fine. The problem is delegating ultimate authority to a nonelected official.

Commissioner Webb asked what part of the proposed legislation says a party doesn't have the right to say they do not want to use the magistrate. Mr. Pikel said because this lets the judge assign the parties to the magistrate, they do not have a veto power over the magistrate. Put language in the legislation that once the district judge assigns the case to a magistrate the parties can object, which they can already do with a visiting judge.

Commissioner Webb suggested the proposed legislation be sent to the County's attorney. Discussion continued. (Time: 3:28 p.m.)

Judges Andrea Thompson, 416th District Court, and Emily Miskel, 470th District Court, came forward. Judge Thompson said the legality of the other counties already doing this for magistration is fine; it's when it is conflated with the civil and family language it gets off the rails. If the proposed legislation is written by following along with how the other counties are doing it and if it was criminally magistration only it would alleviate some of the issues. Issues arise when shoehorning other statutes into magistration. A magistrate is totally different than an associate judge.

Judge Miskel first clarified there isn't a juvenile magistrate in Collin County. There is a referee who is appointed under the associate judge language in the existing family code. If an associate judge decides anything having to do with the facts of the case, either party, whoever lost, is entitled to get an automatic do over. When a case is sent to the district judge from the associate judge the party gets a de novo. This means the case starts over with no respect for what was done before. (Time: 3:34 p.m.)

NO ACTION TAKEN

Judge Self recessed the meeting at 3:34 p.m. and reconvened the meeting at 3:45 p.m.

7. AI-45935 Creation of District Courts, Commissioner, Precinct 3.

Commissioner Hale posed some open questions the Court needs to decide on regarding the creation of additional district courts. The first was what the threshold/trigger point is to request new courts. The second was what method should be used to predict future course of action. The third was if future court need should be based on caseload or population. The fourth was if additional courts should be staggered or start immediately if the need for new courts is determined.

The Commissioner said the aggregate growth rate over 2014-2018 using the trigger of 2,100 cases per year shows the need for 13 courts next year and another court in 2020. The Commissioner looked at an aggregate growth rate from 2006-2018. He also put together two additional models which were close in predictions, but were based on population growth. History of the County's population indicates between 40-45 citizens per case over the past 12 years. Using that approach he threw out the worst and best numbers which gave 41.86 citizens per case. He then divided it into the predicted population. The accuracy of this model is highly dependent upon what the population is predicted to be. Using the average number of cases per year, which is 26,000, shows the County is at approximately 996,000 people. The aggregate growth rate shows the population at over 1 million.

Commissioner Hale explained his process of averaging all models together and made four different trigger points to predict the number of courts needed. The trigger points he used were: 2,174 – the existing average of courts over the past 12 years, 2,100, 2,050, and 2,000. Using last year's data and anticipating no growth the caseload would be 2,240 per court per year for the 11 courts. If there were 12 courts the caseload would be 2053 and if there were 13 courts the caseloads would be 1,896. The Commissioner supports the addition of an additional two courts.

Judge Self referred to the referee for juvenile cases mentioned in Discussion Item 6 and asked where it fits in with the OCA's (Office of Court Administration) number of judicial officers in Collin County as 11.4. Judge Andrea Thompson, 416th District Court, said it is the 0.4 they are attributing to as the auxiliary court and perhaps the juvenile referee as well. Judge Emily Miskel, 470th District Court, said the juvenile referee is appointed under a special section so she is not sure if it is being counted in the 0.4.

Commissioner Fletcher said from 2014-2018 the average caseload growth per year was 6%. She expects the growth to continue. Commissioner Hale said at some point the caseload growth will slow and go back down to match the population growth.

Judge Self shared a slide on case backlog per district court. Judge Miskel said criminal and civil backlog is different and there are different tools to address them. The backlog is lower for civil cases because time limits are now used as a tool in most civil courts. For example, if there are 2,300 cases coming in for the year the time given for each case is cut down in order for all the cases to be heard within the year. If 2,500 come in the next year, the time would be cut down again. If a problem is not addressed quickly, such as in family and CPS (Child Protective Services) cases, it becomes four times as bad to delay the case and snowballs the amount of work. In criminal cases there is much more concern with imposing time limits on people because it affects their liberty and other interests.

Judge Thompson said feedback from Commissioners' Court is needed to measure what the Court will use to determine the appropriate time to add courts. The judges will then adjust accordingly. However, there are only two ways for the judges to manage the volume of cases coming in: 1) put off hearings which creates backlog; or 2) limit the time given to each case.

Judge Self asked if adding magistrates would add to the caseload. Judge Miskel said she is not prepared to present data on this, but based on her experience as an attorney practicing in Dallas County, it would cost the same as an elected official in terms of salary, staff and space. She said the question should be how a magistrate can help in her court. The type of work she would assign to them would be with attorneys, parties, and testimonies. However, a room would be needed where attorneys and parties could have testimony, a court reporter and security.

Commissioner Webb said he is more interested in case backlog to determine the need for more courts rather than population. So cutting time down per case hurts the judges' position. Judge Miskel said in order to provide appropriate justice for the County, she would rather hurt her position to provide people faster access to courts. Discussion continued.

Judge Thompson clarified the decision to cut time down per case is not a favorable practice for the judges, but in order to get through the number of cases it is necessary. Commissioner Hale said if it's predicted, over the next two years, there is a need for two more courts and those two are added immediately the worst thing to happen would be providing better service until the caseload builds back up. Judge Thompson agreed and said by every indicator the County will need 13 courts. The harm of adding the two courts sooner than later would be giving people more time for their cases.

Commissioner Webb supports the addition of two courts and clarified that his decisions, staffingwise, are never based on population. His decisions are strictly based on backlog and service levels. The Commissioner does believe the court backlog shows the need for new courts. Moving forward, however, he would rather see the backlog data. Discussion continued.

Judges Miskel and Thompson thanked the Court for their time, consideration and feedback.

Commissioner Webb again said he supports going to legislature for two courts. Commissioners Fletcher agreed. (Time: 4:18 p.m.)

NO ACTION TAKEN

8. AI-45901 Consolidation of a Secretary position (grade 532) and an Administrative Secretary position (grade 534) for the creation of a Budget Tech position (grade 536) and budget amendment for same, Sheriff.

A motion was made to approve the item. (Time: 4:18 p.m.)

Motion by: Commissioner Susan Fletcher
Second by: Commissioner Cheryl Williams
Vote: 5 – 0 Passed

COURT ORDER NO. 2018-1090-12-17

9. AI-45833 2019 Employee Reclassifications and Retitles, Human Resources.

Judge Self asked if anyone would like to pull a line item from the reclassification and retitles list. Commissioner Hale pulled line item 13 – the reclassification of a Deputy Sheriff (Public Affairs) to a Sergeant (Public Affairs) which was not recommended by HR. He said there is no fiscal impact with the reclassification. With the reorganization the Sheriff has done, there needs to be a sergeant in charge of the group. Judge Self said there is a fiscal impact in the future.

The pyramid has been steepened by the reorganization in the Sheriff's Office. There are now lieutenants over as few as three deputies. A reorganization should not declare an emergency for this Court because the Sheriff can use his people any way he wants. The Judge said this is a budget item which should be addressed at the next budget.

Commissioner Webb supports the HR recommendations and moved to approve them as a whole. The motion was seconded, but failed to pass. (Time: 4:21 p.m.)

Motion by: Commissioner Duncan Webb

Second by: Judge Keith Self

Vote: 2 – 3 Failed

Nay: Commissioner Susan Fletcher, Commissioner Cheryl Williams and Commissioner Darrell Hale

A motion was made to accept the HR recommendation and to include the reclassification of the Deputy Sheriff (Public Affairs). (Time: 4:22 p.m.)

Motion by: Commissioner Cheryl Williams

Second by: Commissioner Darrell Hale

Vote: 3 – 2 Passed

Nay: Judge Keith Self and Commissioner Duncan Webb

COURT ORDER NO. 2018-1091-12-17

10. AI-45922 Board/Committee Appointments, Commissioners Court:

a. Child Protective Services Board.

b. Planning Board.

Commissioner Webb reappointed Curtis Howard to the Child Protective Services Board. Commissioner Fletcher reappointed Buddy Dean to the Planning Board. A motion was made to approve the appointments. (Time: 4:22 p.m.)

Motion by: Commissioner Duncan Webb

Second by: Judge Keith Self

Vote: 5 – 0 Passed

COURT ORDER NO. 2018-1092-12-17

11. AI-44358 Conference of Urban Counties Update, Commissioner, Precinct 1.

Commissioner Fletcher updated the Court on the CUC (Conference of Urban Counties) meeting. She anticipated a large discussion on the legislative agenda items; however, there were not any detailed discussions. HB (House Bill) 435 filed by Representative Matt Shaheen was mentioned. This bill supports granting counties the authority to judicially designate certain fees and costs as uncollectable.

The CUC will meet again January 9, 2019. At that time new officers will be in place so more discussions will be had on the meat of the legislative agenda.

The Commissioner said there was some discussion on the Governor's revenue cap of 2.5%. It would only exceed 2.5% with critical infrastructure, emergency personnel and public safety. She asked if the language still allowed for a cumulative 2.5% to encourage counties to not hit the 2.5% every time in order to save it for emergencies. It was indicated the language had been taken out, but she has yet to verify it. There was talk of using state population growth rather than individual county population growth as a determining factor for this legislation. This would be a problem for fast growing counties. Sales tax swaps were also mentioned.

Certificates of Obligation and the importance for legislature to understand what they are forcing the counties to do was briefly discussed. Overall the priorities are the unfunded mandates and the property tax caps. She mentioned some concerns she has with limitations regarding municipal utility districts and property tax rates and school tax reform. (Time: 4:27 p.m.)

NO ACTION TAKEN

12. AI-33858 RTC monthly update, Commissioner, Precinct 4.

Commissioner Webb updated the Court on the December 13, 2018, meeting of the RTC (Regional Transportation Council). There were a few items of interest. Approval was made to move forward with nominating US380 as an alternative fuel corridor. Indirect federally funding may be available for this corridor in addition to US75.

The Volkswagen settlement has been finalized and the region received \$33 million of the proceeds. There will be a call for projects on these funds. If the project is a government project, the match will be 80/20 and if it is not government, the match will be 50/50.

Mobility 2045 was approved by the federal government. The three items of interest for the County on Mobility 2045 are: US380 – identified as needing solutions; another north-south mobility corridor which is undetermined; and US75 tech-lane efforts.

The region missed the 2008 ozone standards. As a result the region is classified as serious and nonattainment. The last item was another call for projects which are primarily bike projects with \$5.2 million available. The deadline is March 1, 2019. (Time: 4:31 p.m.)

NO ACTION TAKEN

13. AI-45660 86th Legislative Agenda for 2019, Commissioners Court.

Commissioner Fletcher added HB435 to the list. (Time: 4:31 p.m.)

NO ACTION TAKEN

14. Possible future agenda items by Commissioners Court without discussion.

EXECUTIVE SESSION

The Court did not recess into Executive Session. There being no further business of the Court, Judge Self adjourned the meeting at 4:32 p.m.



Chris Hill, County Judge

Susan Fletcher, Commissioner, Pct. 1

Cheryl Williams, Commissioner, Pct. 2

Darrell Hale, Commissioner, Pct. 3

Duncan Webb, Commissioner, Pct. 4

ATTEST:

Stacey Kemp, Ex-Officio Clerk
Commissioners Court
Collin County, T E X A S