

**MICA KIDD ISLAND FIRE PROTECTION DISTRICT
BOARD OF COMMISSIONERS
SPECIAL MEETING
April 30, 2018 6:00 PM**

PRESENT:

Chairman Mundt - larrysub3mki@aol.com
Commissioner Arhutick - marhutick@gmail.com
Commissioner Hauser - gretchensub2mki@frontier.com
Carmen Saranto - admin@mkifire.com
John Cafferty - District's Attorney

CALL TO ORDER

Meeting was called to order at 6:00 pm.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTARY

None

APPROVAL OF MINUTES FROM THE PRIOR MEETING (S) 00:00:00

Regular Monthly Meeting of April 24, 2018

CARMEN: There are several minor corrections highlighted in grey to the minutes. Page 2 insert "for" midway down, Page 4 at the top insert "is" and at the bottom change "are" for "or", page 6 Commissioner Hauser voted NO, page 7 towards the bottom "reviewed" should have been "review", page 8 at the top insert "next month's agenda".

CHAIRMAN MUNDT moved to approve the minutes as revised. COMMISSIONER HAUSER 2nd: **Motion Carried.**

OLD BUSINESS 00:00:00

a. Revisit Deputy Chief Job Description – ACTION ITEM

JOHN CAFFERTY, Districts Attorney: Following the meeting one of the member and I discussed, while actually all of us at different times have discussed it. One of the members had mentioned that in the heat of the moment he failed to disclose that he had a conflict and is so wished to revisit this item. So as to not participate based upon his conflict. Is that accurate? COMMISSIONER ARHUTICK: It's item "b" not item "a". JOHN CAFFERTY: Ok. COMMISSIONER ARHUTICK: I did not have any problems with "a". "a" is just the job description. JOHN CAFFERTY: So, it would be item "b", you and I had discussed that and I would agree, I concur with your assessment of the situation. COMMISSIONER HAUSER: That's actually how... I agree, I feel the same way that the one that I have a problem with and they do tie into each other of course, ultimately but it was the exempt agreement that I have a problem with as well. COMMISSIONER ARHUTICK: We're still on "a" aren't we? COMMISSIONER MUNDT: I believe so, so is there any other comments with regard to the job description? COMMISSIONER HAUSER: Not on this.

b. Deputy Chief Exempt Employee Agreement – ACTION ITEM 00:01:42

COMMISSIONER ARHUTICK: I'm the one that asked to have that put on. I got to thinking about it and I felt that there could possibly be a conflict of interest on my part and that I should have abstained from the vote.

COMMISSIONER ARHUTICK moved to rescind the employee agreement and then open it up for discussion, CHAIRMAN MUNDT 2nd

Discussion:

COMMISSIONER ARHUTICK: So, I gave you my part of the discussion I should have abstained from the vote. JOHN CAFFERTY: I sent you guys a memo we can discuss it if you want but at this point depending on from what I saw of the last vote it's kind of a nonissue at this point. If you want we can go through and evaluate it but kind of the thrust is in the letter I think. These exempt versus nonexempt are fact specific so it's important to work through that well. At some places a position may be exempt at other places they may not so you would really go through that before you make a final decision, but I don't think there's going to be a decision this evening so I won't spend your time on it tonight. COMMISSIONER MUNDT: Very well. COMMISSIONER HAUSER: Is there anything new, like that memo that you wrote last June 2017. JOHN CAFFERTY: Yes, not the one last Friday? COMMISSIONER HAUSER: No not the letter but the memo about the FLSA rules that said that we couldn't have an exempt. JOHN CAFFERTY: It was a different exemption though as well, you have to remember that. That memo from a year ago was dealing with executive exemption. The exemption that's on for this evening at item, sorry, old business item "b" would be for an administrative exemption so it's a different analysis, the job duties would have to be evaluated and other things. COMMISSIONER HAUSER: Right so things have changed due to that and circumstances. JOHN CAFFERTY: Well, and you got to remember as well but at that time it was a different political environment there were different people in office and the courts are not immune from that. The changes to the law that were pending were stayed because of the lawsuit and have since not moved forward because part of the requirement was an increase in the minimum pay in order to maintain an exemption under the fair labor standards act and I haven't, just because of timing, I haven't really dug down deep to see where the courts are at and where things are going at this point so I mean if you want me to I can but I didn't given what I knew what was likely going to be the outcome of this evening's meeting. I didn't feel that you had task me with doing that now, so I have not done that in great detail. But the law as written would still be the same it's just a question on how the courts are treating that with changes in the political environment. COMMISSIONER HAUSER: So, the letter you wrote us last Friday you said was a brief summary. JOHN CAFFERTY: Brief. COMMISSIONER HAUSER: No, I thought it was pretty substantial really it covered a lot. But it covers the specifics for our situation now. That what you talked about in that letter has to change before in your opinion we could go forward. JOHN CAFFERTY: You would want to get a factual analysis of the position. In talking with the attorneys for Worley they had some recollection of that and where there was a specific individual who had limitations on their duties that were more administrative, more like a clerk/secretary/treasurer position than a working deputy chief type position. So, it's going to depend on what the duties are and if those facts fit within one of those exemptions. COMMISSIONER HAUSER: Right, so they were talking about Worley not about MKI basically. JOHN CAFFERTY: While the attorney that I spoke with at length represented Worley they don't represent ...COMMISSIONER HAUSER: Right. JOHN CAFFERTY: Again, it's a factual analysis you would want to drill... COMMISSIONER HAUSER: Right and that's what I'm trying to get to because I was concerned about this because of what we had gotten from you and extensive conversations about it. Even looking at how we could get full time, you know 2 - full time but we couldn't get that out of 2 - part time, could they be a "full time" we went back and forth with that so I had a lot of concerns due to the facts that we were dealing with and what we had been told about them so moving forward though what I'm trying to get at is that unless it changes from what it is now this exemption does not apply. JOHN CAFFERTY: I don't have all the facts but I would be, if I were going to say based on what I've seen without more I'd say probably not because of what I know about the district where the person in that position has a lot of physical demands including firefighting and oversight of personnel out on-site whereas the administrative exemption is for an office worker and I don't think, well I don't think you have any office workers at this time. You have one part-time, you have Carmen. I'm not saying she's not a worker she's insane maybe but she works quite a bit but as far as the rest of them their job is to leave and go out and respond on-site and so that's part of the challenge of making the administrative exemption it's pretty specific to an office worker. And in talking with Worley's attorneys they had a person in this position that had that administrative exemption based upon, as recollection from several years ago apparently from the attorney, had some physical infirmities where he could not actually go

out and so he really was an office worker he had an injury and so that's how they filled this position in that way as an exempt employee, as administrative because he really was in the office that's what the job was. COMMISSIONER HAUSER: Ok, JOHN CAFFERTY: It can exist but... COMMISSIONER HAUSER: Right, right but moving forward, I'm just you know, I mean you said do we want him to look further into it? I mean it's based on the facts as you know them but do you need more facts too; you know see if it still applies. JOHN CAFFERTY: I mean you've got the job description we can look into it if you want but I didn't want to go out there and spend your money and time basically so I want to make sure that's where you want to go. COMMISSIONER HAUSER: Well I'm not saying, I'm asking the others. CHAIRMAN MUNDT: Well we've got a motion. Motions been made and 2nd I think we should call for a vote and I'll do so.

CHAIRMAN MUNDT called for roll call vote:

CHAIRMAN MUNDT:	Yes
COMMISSIONER ARHUTICK:	Abstained
COMMISSIONER HAUSER:	Yes

Motion Carried

CHAIRMAN MUNDT: Now we can move to your suggestion. I think it's appropriate that we do a factual analysis on the position due to this disparity between our recommendations from one source and the recommendations from another source so I'd like to, if we need to test this I'd like to test this now instead of testing it in the future. JOHN CAFFERTY: And just by way of clarification I don't think there's anything untoward that happened I mean I've been through the minutes and stuff. This is something that they took off the shelf and made sense and here's something you can take a look at. And I believe their decision based upon my conversations that they made at Worley was based upon the analysis by their attorney in that particular case but I don't know that that level of, what I can tell you, didn't happen here because Worley's attorney didn't do the work for this position and nor did I in advance. We could take a look at it I wouldn't expect a whole lot generally from what I've seen I don't see it changing. CHAIRMAN MUNDT: I guess the issue that I would like to see resolved is how is it that we have... You brought up the case for the person they were talking about was actually disabled and can do this. JOHN CAFFERTY: Right. CHAIRMAN MUNDT: Okay maybe that's the answer but in your pursuit, I would ask that you would contact them and find out what the difference is. How is it that they come up with a separate set of facts that we feel suit our situation and they feel suit our situation and yet you disagree. Rather than test this somewhere in a court I'd like you to pursue that and ask them okay how is it that you came to this conclusion. Is that logical? COMMISSIONER HAUSER: And while he is here you know one of the main differences is, glaring difference is the amount of people here employees and volunteers which makes a big difference under the exemption rules. JOHN CAFFERTY: It can and I'm not privy to the number of volunteers and employees that you have or the full number that they have. To the best of my knowledge you have two employees. COMMISSIONER HAUSER: We have two employees and Carmen. 2 ½. JOHN CAFFERTY: Two plus. COMMISSIONER HAUSER: Again, we tried to put together with her and Nancy and get one and that determination was squashed. The other thing that I'm really interested in because all this came up about, due to money is this rule about the partial exemption under that 7K. JOHN CAFFERTY: Correct the adoption you guys made. COMMISSIONER HAUSER: Right, right. CHAIRMAN MUNDT: That's confusing to us as well because Worley operates under one policy and we... JOHN CAFFERTY: Right and you adopt a different one. CHAIRMAN MUNDT: And it's confusing to me and it also may have contributed to the reluctance of some of our prospective employees from accepting a position here based upon how other districts deal with this and how we're dealing with it. Well we may have did ourselves harm. JOHN CAFFERTY: You may very well have. CHAIRMAN MUNDT: And it's a lack of understanding rather than us going to Worley and try to ask them how you operate we operate under a certain circumstance that we thought was appropriate when in fact they didn't turn out well for us and so we need an explanation of how did we go wrong on that issue to. JOHN CAFFERTY: Well, and I mean were limited in our scope of meeting this evening to what's on the agenda and so I mean it's not a huge stretch to say that this is flowing from the exempt agreement and you're administratively giving me guidance on that. COMMISSIONER HAUSER: It's part of the FLSA rules that you gave us. CHAIRMAN MUNDT: It still comes back to How we're going to treat our employees. JOHN CAFFERTY: Right I mean it's a policy decision is what it comes down to. It's an election that you have the ability to make to avoid paying overtime that's available only to

fire and first responders basically. Police have it Fire has it but you don't have to use it's just like, by way of a bad example probably if the County when they went from "for-cause" to "at will" they lost employees why because they don't pay very much and they have no job security. So, the Sheriff's Department has a heightened standard and that creates all sorts of other issues there but I mean you're in a market where if everyone else is going to pay overtime and you found a way to avoid it they're going to go somewhere else because you know... CHAIRMAN MUNDT: Well I guess that's a lack of our understanding. COMMISSIONER HAUSER: And what is the difference between exempt and the 53-hour rule? JOHN CAFFERTY: Over 53 hours you pay overtime. COMMISSIONER HAUSER: Right. JOHN CAFFERTY: Exempt you don't have to. COMMISSIONER HAUSER: Right, but still you're trying to get; not pay overtime in some aspect. JOHN CAFFERTY: It's a budgetary thing absolutely. CHAIRMAN MUNDT: okay well I think we've do want to make a motion on that or can we just proceed with him doing the review? JOHN CAFFERTY: I don't think it needs a motion.

NEW BUSINESS 00:15:00

None

PUBLIC INPUT 00:15:03

None

COMMISSIONERS COMMENTS AND/OR CORRESPONDENCE 00:15:08

None

ADJOURNMENT 00:15:13

CHAIRMAN MUNDT moved to adjourn the meeting; COMMISSIONER HAUSER 2nd: **Motion carried 6:18 P.M.**

Respectfully Submitted,



Exec. Asst. Carmen Saranto

Approved,



Chairman Larry Mundt

Approved,



Commissioner Gretchen Hauser

Approved,

Commissioner Mike Arhutick