

MINUTES
LINCOLN-LANCASTER COUNTY CONSOLIDATION TASK FORCE
COUNTY-CITY BUILDING
555 SOUTH 10TH STREET, ROOM 303
FRIDAY, JULY 26, 2013
8:30 A.M.

Committee Members Present: Ann Post, Chair; Russ Bayer; Dick Campbell; Mike DeKalb; Jan Gauger; Dale Gruntorad; James Jeffers; Jean Lovell; Larry Melichar; Darl Naumann; W. Don Nelson; and Kerry Eagan (Ex-Officio)

Committee Members Absent: Larry Lewis; Amanda McGill; and Trish Owen (Ex-Officio)

Others Present: Karen Amen, Facilitator; Jane Raybould, County Commissioner; Teresa Meier, City Clerk; and Cori Beattie, Lancaster County Clerk's Office

The Chair called the meeting to order at 8:32 a.m.

1 APPROVAL OF MINUTES OF JULY 12, 2013 MEETING

MOTION: Campbell moved and DeKalb seconded approval of the minutes. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lovell, Naumann and Post voted aye. Lewis, McGill, Melichar and Nelson were absent from voting. Motion carried 9-0.

2 AGENDA REVIEW

Post briefly reviewed the agenda. Amen said she would also like members to begin considering at what point recommendations will move forward, i.e., full consensus of the group (100% support) or by a lesser percentage (75%, 66% or 50%).

Nelson arrived at 8:35 a.m.

3 PERSPECTIVE OF JUVENILE COURT JUDGES ON CONSOLIDATION OF CITY-COUNTY JUVENILE COURT ATTORNEYS - Honorable Roger J. Heideman

Honorable Roger J. Heideman, Juvenile Court Judge, began by stating that while the City and County Attorneys both do excellent work, all Juvenile Court Judges agree with the proposal that juvenile filings be handled by the County Attorney. He noted the judges thoughts are not tied to the financial situation but rather the efficiency of the Juvenile Court system.

Melichar arrived at 8:37 a.m.

Heideman provided an overview of Juvenile Court functions. He explained the status offender/abuse-neglect cases have fewer filings but take up the most time.

In response to Gruntorad's inquiry, Heideman said those under age 18 can be charged as a juvenile or as an adult but anyone 18 and older has to be charged as an adult.

Nelson questioned the percentage of juvenile filings that are problematic (i.e., attorney not prepared). Heideman said it would be low. Nelson said he was trying to get a grasp of the problem in relation to the goal of improving the process in order to make a recommendation based on efficiency and or cost effectiveness.

Heideman said in making a decision, it may be helpful to view the adult system versus the juvenile system whereby the latter is primarily intended to rehabilitate. He added the focus of LB561 (change provisions and transfer responsibilities regarding the juvenile justice system) is to transfer rehabilitation efforts from Health & Human Services - Office of Juvenile Services (HHS-OJS) to Juvenile Probation with the goal of achieving better outcomes so fewer juveniles will be seen later in the adult system.

In addition to better outcomes, Lovell said the bottom line is it will be more efficient if the County Attorney handles all juvenile cases. Heideman concurred and added that a significant number of families have cases reviewed by a treatment team and only the County Attorney has access to this information.

DeKalb asked if there is any downside to shifting these cases to the County Attorney. Heideman said he did not see any as the City's misdemeanor filings should all have a companion offense on the State side.

Discussion followed on LB561. Heideman said judges currently have the discretion to place juveniles with Probation or OJS. The previous thought was Probation had limited access to treatment services but under OJS children became State wards and qualified for other services such as Medicaid. He added once a juvenile was placed with OJS, the judges' hands were somewhat tied as far as what they could do in the future. He felt there will be a significant benefit with LB561 as additional funding will be transferred to Probation to help with these efforts. Since Probation Officers are viewed as officers of the court, they will have greater ease in communicating with judges which should provide the ability to act and/or implement additional services and sanctions quicker.

In response to Jeffers' question about the ideal situation, Heideman proposed that the recommendation be for the County Attorney's Office to handle all juvenile filings.

Lovell said she also spoke with County Court Judge Laurie Yardley and others regarding their position on whether adult prosecution should also be combined under the County Attorney. She noted the County Court's position is that doing so would cause a big increase in jury trials. Lovell said the maximum penalty under City ordinance is six months in jail or a \$500 fine. Under the State Constitution, a penalty of that level or lower does not entitle a person to a jury trial.

Nelson questioned whether adults are being denied their constitutional right to a jury trial because they are in the City system. Lovell said right or wrong, fair or unfair, there would be a lot more jury trials. She provided the following example: Driving Under the Influence (DUI) cases have a higher penalty for those whose blood alcohol content tests over .15. Thus, someone who tests .17 would have a better chance of convincing a jury than a judge that their test was under .15.

Bayer asked if someone charged in the City of Lincoln can request a jury trial. Lovell said not if the charge was filed under a City ordinance. Bayer added while that doesn't seem fair, the solution is really outside of the Task Force's charge.

DeKalb said there appears to be a strong consensus to move the juvenile cases under the County Attorney but to perhaps leave adult prosecution as is. Lovell reiterated that there would be consequences in moving the adult cases.

Post inquired whether a jury trial would apply if a County Attorney filed a charge under City ordinance. Lovell said this currently happens and jury trials are not held. It was noted that it may be possible to have a consolidated (cross-deputized) office whereby County Attorneys could prosecute under City ordinance without requiring a jury trial.

4 DISCUSSION OF CRITERIA FOR RECOMMENDATIONS

Amen suggested the focus return to Juvenile Court functions. She distributed a handout addressing suggested criteria for potential recommendations (**Exhibit A**).

Campbell felt one of the overriding goals is to make Lincoln and Lancaster County a better system which may cost more money but be in the best interest of the client (juvenile, law enforcement/public safety, taxpayer, etc).

With regard to operational efficiencies (Exhibit A, #2), Post suggested the definition be "providing the same level of service or greater with the same resources."

Campbell preferred the criteria be ranked 1-10 instead of yes/no.

DeKalb said he envisioned the Task Force coming up with many different recommendations for consideration, ranging from easy to complex with varying degrees of consensus.

After further discussion, and to simplify the process Amen suggested all criteria in Exhibit A be considered when evaluating each recommendation. She also provided her definition of consensus: "Everyone agrees to agree for a set amount of time."

With regard to moving recommendations forward, Amen polled the group as to what percentage of consensus would be desired: 100% (unanimous); 75% and 66% (super majority) or 50% (simple majority).

Campbell said Task Force members always have the right to communicate their opinions directly with the elected officials regardless of their position (majority or minority). Lovell thought a simple majority was adequate with the final report reflecting the actual level of support. Jeffers wanted to see a higher percentage of support. DeKalb felt it is all about openness and transparency regardless of the percentage of support. He, Lovell and Campbell supported moving recommendations forward without a majority vote. Post said the report may not be as effective with recommendations below 51%. Gauger suggested targeting 75% support as the elected officials may not be very impressed with only minority support. Bayer suggested going through the next four months of meetings and then conducting a final vote on everything. Post clarified her position to mean that a recommendation would move forward with a super majority vote while anything less could be included as an appendix to the report.

With regard to the report, Eagan said the task of drafting it will likely fall upon him and it can be as detailed as the Task Force likes. Additionally, he felt describing the process will be very important. If there are big disagreements, the basis for those will want to be spelled out in the report. A strong minority report might also be included. Eagan said, in his experience, most times 100% consensus is reached.

Amen requested the next to last meeting in December be a four-hour session to review and/or modify recommendations. Eagan said he will have the draft report prepared prior to that meeting.

In reference to formulating recommendations, Amen asked Raybould what she felt would be most helpful. Raybould said the Task Force should be able to make whatever recommendations it sees fit. She thought they would carry more weight with greater support, although, if a unanimous recommendation comes forward the elected body could still vote differently. She also felt it was vital to identify a champion to help implement the recommendation(s).

Amen informally polled members with regard to their percentage of preference. The majority voted to require 66%+ support (a super majority) in order to move forward recommendations. Recommendations earning minority support (51%+) would be included in the report appendix.

5 PRELIMINARY RECOMMENDATION ON COUNTY ATTORNEY-CITY ATTORNEY CONSOLIDATION OF JUVENILE COURT FUNCTION

MOTION: Campbell moved and Gauger seconded to recommend that all Juvenile Court action be handled by the County Attorney's Office under an interlocal agreement where the City and County would equally share cost of the caseload being moved.

Eagan sought further clarification noting County Attorney Joe Kelly indicated he would need another attorney to handle this caseload. City Attorney Rod Confer also indicated his staff would not be reduced with this transfer. Campbell said these specifics would have to be determined by the Mayor, City Council and County Board. However, his intent was each would pay half the cost. Lovell thought it was the County Attorney's position that an additional .5 FTE (full-time equivalent) would be needed to cover this caseload. (Note: The County Attorney previously indicated he would be requesting an additional attorney in the 2014-15 budget. This position does not include the .5 FTE.)

Additional discussion pertaining to the wording of the motion occurred. After further consideration, the maker and seconder withdrew the original motion.

Post voiced her concerns with what appeared to be adding staff to the County Attorney's Office. Campbell said bullet points could be included for elected officials to consider such as (1) reduce .5 FTE on City side; or (2) add .5 FTE on the County side. Post said while it would be hard to reduce City staff, she would like it stipulated that current resources be shifted from the City to the County. Eagan said the interlocal agreement could address these specifics. It was also noted that this move would be better for clients, users, courts, etc., and is anticipated to have long-term savings.

MOTION: Campbell moved and Gauger seconded to recommend that all City and County Juvenile Court functions shall be merged into the County Attorney's Office through an interlocal agreement with the City and County splitting the actual cost of the merger. Bayer, Campbell, DeKalb, Gauger, Gruntorad, Jeffers, Lovell, Melichar, Naumann, Nelson and Post voted aye. Lewis and McGill were absent. Motion carried 11-0.

With regard to adult prosecution, Amen suggested conducting some brief informal discussion since the item was not listed on the agenda.

Nelson said perhaps a subcommittee could come back with more details similar to the Juvenile Court.

Lovell pointed out that County Attorneys prosecuting juvenile cases are typically career positions while others use County Court as a stepping stone to District Court felony trials. City Attorneys in County Court are oftentimes career positions as there is nowhere else for them to move within the office, i.e., they do not prosecute felonies. For these reasons, Lovell said the level of expertise and commitment differs between the two offices.

Eagan said there is statutory authority to transfer employees to the County from the State and its political subdivisions, although, he was unsure if the City would qualify as the latter. Other things to consider are salary and benefits. Eagan noted the salary of a long-term City prosecutor is roughly double that of a County prosecutor. City Attorneys would also have retreat rights within their office.

Campbell felt that the adult side should be left alone at this time. Lovell said more information could be collected for further review. Bayer inquired whether or not the group even wants to pursue this issue. An informal poll was taken with regard to the adult side remaining status quo. It was decided to continue the discussion.

In response to Campbell's inquiry, Nelson said he is concerned with the applicability of traditional, historic, and constitutional protections as they relate to jury trials. He was somewhat uneasy that this has not been thought through and would like more information. Campbell said the practice has been tested and upheld in court. Nelson said he had no doubt about it being legal but rather about it being wise.

Amen asked what additional information the Task Force would like collected pertaining to the adult side with the intent of readdressing the issue at a future meeting. Nelson said it seemed to him that the two systems (City and County) could be merged while still protecting the docket so it is not overwhelmed with new cases.

The following bullet points/concerns were offered:

1. Constitutional right to a jury.
2. Could we merge the systems and not adversely effect County Court dockets?
3. Could we merge all City/County Court systems?
4. Transfer of employees (Is City considered a political subdivision for purposes of transferring employees?)
5. State law change.

Gruntorad left at 10:25 a.m.

Post said instead of having the City and County Attorneys return to a future meeting, perhaps a legal opinion could address whether County Attorneys could be cross-deputized to prosecute under City ordinance. Eagan suggested another County Attorney opinion be requested on whether the City is considered a political subdivision of the State as it relates to the potential transfer of employees to the County. He said he would generate both legal opinion requests.

Bayer left at 10:28 a.m.

- 6 FUTURE MEETINGS:**
 - 1. August 16, 2013 (Police/Sheriff Consolidation Models, Informal Agreements, Public Safety Umbrella Organization)**

2. August 23, 2013 (Preliminary Recommendations on Police/Sheriff Consolidation, Additional Cooperation, Public Safety Umbrella Organization)

Nelson, Lovell and Melichar noted that they cannot attend the August 16th meeting. Beattie offered to provide an audio recording of the meeting on CD for those who will be absent.

Nelson voiced his displeasure with the change in the meeting schedule (originally established as the second and fourth Fridays of the month). Eagan said it was done at the request of Chief Tom Casady.

Campbell said it was his understanding that additional information would be presented on August 16th with follow-up discussion and potential voting on August 23rd. He questioned if there was a reason the public safety presentation couldn't occur on August 23rd. Eagan thought there was a conflict but said he could check. Nelson said he wasn't opposed to even delaying the public safety discussion to November.

Amen said a commitment could be made that no future voting will occur unless the whole Task Force is present. Many felt that was not feasible. Amen said another option would be to get through each "cluster" and then have a four-hour meeting, with everyone present, to vote at that time. Campbell noted it was previously mentioned that today's vote would be revisited at the end of the process which will allow those absent an opportunity to respond.

Gauger suggested that no decisions be made at the August meetings and that those absent be provided a recording of the proceedings for their review. Then the issue could be revisited in September, on the regularly scheduled meeting date, with a possible vote at that time. Nelson agreed to this approach. It was also suggested that those absent today be offered an audio recording of the meeting for their review.

There being no further business, the meeting adjourned at 10:34 a.m.

Submitted by Cori Beattie, Lancaster County Clerk's Office.

Suggested Criteria for potential recommendations	Yes, make this a priority	No, don't use this one
1. Creates quantifiable financial savings		
2. Promotes operational efficiencies		
3. Level of service stays the same or improves		
4. Allows transparency and accountability to the public and to elected officials.		
5. Politically realistic: - There exists (at least some) support from public at large, the department being impacted, and elected officials		
6. Feasible under current state law		
7. There is a "champion" willing to help implement the recommendation.		