

**RILEY COUNTY LAW ENFORCEMENT AGENCY  
LAW BOARD MEETING  
City Commission Meeting Room  
1101 Poyntz Avenue  
Manhattan, KS  
June 20, 2011 12:00 p.m.  
Minutes**

**Members Present:**

Karen McCulloh  
Wynn Butler  
Loren Pepperd

Jim Sherow  
John Matta

**Absent:**

Dave Lewis  
Captain Nelson

Barry Wilkerson

**Staff Present:**

Director Schoen  
Captain Hooper  
Captain Grubbs

Assistant Director Doehling  
Captain Hegarty  
Lieutenant Fink

**I. Establish Quorum:** By Chairman McCulloh at 12:00 p.m.

**II. Pledge of Allegiance:** Led by Director Schoen.

**III. Consent Agenda:**

**A.** Approval of Minutes

- a) May 10, 2011 Special Law Board Meeting
- b) May 16, 2011 Law Board Meeting
- c) May 18, 2011 Special Law Board Meeting

**B.** Approve 2011 Expenditures

- a) 2011 Budget Expenditures
- b) Juvenile Transports
- c) Seizure Expenditures

**C.** County Inmate Medical, Facilities, Maintenance & Repairs Expenditures- (*Review*)

Pepperd asked if the Kansas Turnpike Authority offers special rates to government agencies when using the turnpike.

Schoen said he was not aware of any discounted rate offered to government agencies or police departments. However, he would be more than happy to look into the matter further. If such a program does exist, the Department would certainly take advantage of it.

Sherow moved to approve the consent agenda as presented. Matta seconded the motion. The motion passed 5-0.

**IV. General Agenda:**

**D. Additions or Deletions:** Director Schoen requested voucher #11-0008 in the amount of \$2,200.00 to Seaton, Seaton & Gillespie L.L.P., be added to the general agenda.

Sherow moved to have the Chair sign voucher #11-0008 authorizing payment to Seaton, Seaton & Gillespie for the amount indicated. Pepperd seconded the motion. The motion passed 5-0.

**E. Public Comment:** None.

**F. Award Presentation:** Director Schoen presented Records Clerk Sylvia Carter with a Letter of Appreciation for her hard work in identifying an individual attempting to file a false hit and run accident report. Her diligence and attention to detail saved officers hours of investigative work. Had it not been for her attentiveness it is quite possible that the victim of the incident would have faced costly out-of-pocket vehicle repairs.

Director Schoen presented Correction Officer Russ McCormick with a Life Saving Award in recognition of his efforts and dedication to duty while providing critical life saving assistance to an inmate attempting to commit suicide. His attention to detail and subsequent actions resulted in the saving of the inmate's life.

**G. Justice Assistance Formula Grant & Public Hearing:** Sherow moved to open the public hearing for the 2011 Edward Byrne Memorial Justice Assistance Grant. Pepperd seconded the motion. The motion passed 5-0.

The Department is requesting that the Law Board approve an application for grant funds through the 2011 Edward Byrne Memorial Justice Assistance Grant Program. Assistant Director Doehling explained that the grant funds will be used to upgrade, and purchase portable and mobile radios in an effort to meet the Federal Communication Commission (FCC) mandate to become Project 25 (P25) compliant by 2013. Doehling said that over the past few years the Department has applied for the grant on behalf of the County and received significant allocations. This year Riley County has been allocated \$28,656. There is no matching fund requirement for the grant. The 2011 allocations have been made and the application deadline is July 21, 2011.

Pepperd moved to approve the Department's application for grant funds through the 2011 Edward Byrne Justice Assistance Grant Program. Matta seconded the motion. The motion passed 5-0.

Sherow moved to close the public hearing for the 2011 Edward Byrne Memorial Justice Assistance Grant. Pepperd seconded. The motion passed 5-0.

**H. Approval of General Orders:**

- a) GO 2011-004 Salary Program
- b) GO 2011-005 Leave Program
- c) GO 2011-007 Provisions for Clothing and Equipment
- d) GO 2011-012 Grievances
- e) GO 2011-014 Boards and Committees
- f) GO 2011-015 Code of Conduct and Employee Appearance
- g) GO 2011-018 Employee Personnel Records
- h) GO 2011-021 Promotion-Department Responsibilities
- i) GO 2011-022 Promotion Process
- j) GO 2011-023 Promotion-Written Announcement
- k) GO 2011-025 Promotion-Probationary Periods
- l) GO 2011-026 Evaluations-Entry Level Probationary Periods
- m) GO 2011-029 Investigation Time Limits

The Board will continue to see many policy revisions and/or additions as the Department moves items from the Fraternal Order of Police (FOP) contract into policy. Director Schoen stated that Attorney Michael Gillespie has recommended a few minor changes to GO 2011-005 Leave Program, and GO 2011-022 Promotion Process. It is requested that they be pulled from the general agenda. The general orders will be presented to the Board for final approval once the necessary revisions are made.

Pepperd asked if the FOP and legal counsel are given the opportunity to review all general orders prior to being submitted to the Law Board.

Schoen explained that the Department formed a Policy Review Committee as part of the agreement with the FOP when the Law Board elected to opt out from under the provisions of the Public Employee Relations Board (PERB) and Public Employer-Employee Relations Act (PEERA). The FOP has representatives who serve on the Committee. The Committee views all policy changes prior to being submitted to the Board for approval. Schoen agreed that the general orders need to be routed through legal counsel as well. Assistant Director Doehling had already intended to include Gillespie in that process.

Matta moved to approve the general orders as presented, with the exception of GO 2011-005 Leave Program, and GO 2011-022 Promotion Process. Sherow seconded the motion. The motion passed 5-0.

**I. Impact of City Budget Proposal on RCPD Funding:** Director Schoen said that at a recent City Commission Work Session, Commissioners discussed funding of the RCPD budget as it pertained to the City's planning for delinquent property taxes. The issue was once again discussed at the last City Commission Meeting. As part of that discussion, the Commission voiced their desire to approach the Law Board concerning the matter. Schoen said that there is some question on the part of the City as to whether or not they either desire to, or are obligated to reduce the delinquency rate to zero for planning purposes, or whether they are obligated to fund their share (80%) of the RCPD budget.

Schoen said if the decision is made that the City is not responsible for funding 80% of the RCPD budget, the recommendation of City Staff is that the Board either direct RCPD to take the necessary funds out of the Emergency Reserve Fund, or direct Administration to reduce expenditures within individual budget lines. The latter would in essence throw the Board and Administration back into budget discussions.

Sherow said he did not believe it was the City's intent to reduce the property tax delinquency rate to zero. He looked to Assistant City Manager Lauren Palmer for clarification.

**Lauren Palmer, Assistant City Manager:** Palmer explained that a proposal was presented at the City Commission Budget Work Session last week to cut the delinquency rate to zero. The confusion might be that it was part the City's intent to reach the objective of cutting the total mil levy increase in half, but the delinquency rate would be cut to zero.

Sherow said that when the City and County experiences funding shortfalls and revenues are not present they make cuts from what was budgeted. The question is that if the revenues are not there due to delinquencies, should RCPD take the same approach that the City and County does and cut

back on budget expenditures, or is the City and County obligated to pay the full 80/20 split regardless of what happens to their budget.

Schoen asked Gillespie to provide his interpretation of the pertinent statute, 19-4443. Riley County Counselor Clancy Holeman was also present to provide his opinion concerning the language contained in 19-4443. Schoen said that City Attorney William Frost attended the last City Commission Meeting at which time he informed the Commission that he would provide his interpretation of the statute in confidence.

Gillespie explained that the controlling statute is KSA 19-4443 which addresses the City's and County's obligation to fund the RCPD. Most of the focus of discussions publically has been on the tax levy. It is his opinion that the language of 19-4443 is quite clear. The statute states that the City and County shall, once the Law Board certifies a budget, levy a tax on all tangible property within their jurisdiction in an amount sufficient to pay their share. In this case, the City's statutory share is 80% and the County's is 20%. As counsel to the Law Board, it is his opinion that the statutory shares are set, and they are mandatory. If the amount of the tax levied is insufficient for the City or County to cover their respective share, then it is their obligation to make up for the shortfall.

Pepperd asked if the City or County has ever been short in the past and refused to make up for the shortfall.

Gillespie recalled that in 2008 the City informed RCPD by letter that the December payment would not be forthcoming. There was discussion at the Law Board Meeting regarding the matter and the City ultimately made up for the shortfall.

Holeman echoed the comments made by Gillespie. He said from his point of view the language in the statute is fairly clear. It states that each of the governing entities shall levy a tax at a mil rate sufficient to fund their share. There is nothing ambiguous about the language.

Matta pointed out that statute addresses the responsibility of the funding entities. It does not state what would happen should the amount levied prove insufficient.

Holeman said that is correct. It does not explicitly state what would happen if the mil levy rate is insufficient.

Palmer said that within the last 5 years there have been 2 occasions in which the City has had to tap into their general funds to make up delinquency shortfalls for RCPD. The first occurred in 2008 and the second in 2010. In both of those years RCPD generated carryover at the end of the year well in excess of the shortfall amounts.

She said the City feels it is unreasonable to ask the City to tap its General Fund to make up the delinquencies when they will never see those dollars go back into the General Fund. When the delinquencies eventually come in, years later, they go back to the RCPD fund. Those years where there has been capacity for RCPD to meet all of their obligations of expenses, and still cover the shortfall, why wouldn't the City ask that of them? She understands that in asking the Law Board to give that direction to RCPD Administration, what they are effectively saying is that there will be less carryover generated at the end of each year to be applied to future budgets. It is really a timing issue for the City because they are collecting taxes from the taxpayers, but not spending them until another 2 years later. It is just a question of whether or not they want to artificially inflate the

levy to cover a delinquency for that amount, when arguably they could be making up for the shortfalls just by asking Administration to manage its budget.

Butler asked if the delinquent property taxes, once collected, go back to RCPD.

Palmer said yes. The City budgets for that on an annual basis. There is a certain amount that the City knows will come in each year for previous delinquencies. The City uses that amount each year to offset what the property tax levy will be in any given year. When those funds come back they go to the RCPD Fund.

Schoen wished to clarify. The delinquent taxes that are collected go back to the City's RCPD fund. They do not come to RCPD. In past instances, when delinquent taxes are collected the City has already made the RCPD complete with respect to the budget. The City uses those funds to reduce the ad valorem for out years. While the City labels it the RCPD fund, the money does not come to RCPD until the City uses it to fund the tax levy for the out years.

Palmer said that is correct, but the money does not come back to the General Fund. The City cannot use future year delinquencies to reimburse any shortfalls that they may have paid in the past from the General Fund.

Schoen contacted the Department's financial auditor Carol McCullough CPA of Reese & Novelly, P.A. to find out what options are available for the Department should the City elect not to pay its 80% share of the RCPD budget. McCullough informed Director Schoen that the Department was limited in what they could do. She recommended Schoen speak with Roger Basinger of the Kansas Department of Administration Division of Accounts and Reports.

Schoen spoke with Basinger in an effort to determine if a reserve, separate from that of the current Emergency Reserve Fund could be created for RCPD. If such a reserve could not be created, he wanted to know if it would be appropriate for the Department to dip into the existing Emergency Reserve Fund to cover budget shortfalls from the City or County. It was Basinger's opinion that a separate reserve could not be established because RCPD is not a municipal or county entity. In his estimation the Department is a creation of legislature. The only fund the Department could establish is the Emergency Reserve Fund which is currently in place. Further, Basinger feels it is not appropriate for the Department to use the existing Emergency Reserve Fund for what is deemed daily operating expenses, which is not by definition an emergency.

Schoen asked Basinger for his impression should the City elect not to budget appropriately for the property tax delinquency rate. He responded that the City is obligated to fund 80% of the RCPD budget and the County is obligated to fund 20%. The mil levy is the mechanism by which that occurs.

Sherow asked if there is statutory control over every line item in the Department's budget. He asked if it would be possible to add a line to the budget which could serve as a reserve fund.

Schoen said that statute does not control what lines can be added or subtracted from the budget. Should the City and County decide jointly that they do not want to deal with the property tax delinquency rate they could add a line to the budget to account for the shortfalls. He cautioned that although it is a possibility, the same amount of money would be coming from the taxpayers due to the 80/20 City/County funding split. There are a variety of options available, but all tend to create

more questions than answers. Schoen said he was simply exploring the possibility of setting up an additional reserve fund that would carry over from year to year, one that is separate from the existing Emergency Reserve Fund, According to Basinger, the Department cannot do that.

Butler used the analogy of a leaking boat. The individuals responsible for setting the budget are in a row boat and it is leaking because they budgeted for “x” amount of dollars, and not all of the money is coming in. Those in the boat have to adjust, but RCPD has a life preserver. They do not have to adjust. The crux of the issue is should the police department be in the leaky boat with the City and the County.

Schoen stated that the distinction to be drawn is that RCPD does not have reserves.

Butler said that if revenues are not coming in the city manager might begin looking to reduce expenses with paperclips, staplers or things of that nature. The adjustment seems to rest with the City or the County and not RCPD. It does not appear that adjustments are being made on a regular basis at the police department level. That is the impression he has been given.

Schoen responded that the Department is pretty judicious with funds all year long and it shows up in the form of carryover. The Department does not spend money on items that are not needed. In fact, in some cases they don’t purchase items that are needed. He reiterated that 86% of the RCPD budget is personnel. The Department will work with whatever budget the Board decides on. The Department will do what needs to be done to live within the budget. Given that there was no increase in non-personnel line items last year, and pretty minimal increases this year, to make any cuts to the budget would mean a reduction in personnel. Schoen asserted that Administration does manage the budget pretty tightly.

**J. Public Hearing for 2012 Budget:** Gillespie explained that the Board has, for lack of a better term, what is called a supermajority. Many governing bodies are able to take binding action when a majority of a quorum is present. The Law Board statute states that no binding action can be taken other than by a majority of the qualified members. In order for the Board to pass the budget, 4 votes are required.

Sherow moved to open the public hearing for the RCPD 2012 budget. Pepperd seconded the motion. The motion passed 5-0.

**Bob Kruh, Manhattan Resident:** Kruh has been attending Law Board Meetings for a number of years and has followed the proceedings which have been handled well. It is his opinion that the community has a very competent, professional, and talented police force. However, he rarely hears words from the Law Board expressing appreciation for the talent that exists in the staff of RCPD. He stated that public safety has to come first, and everyone is not in the same boat for that purpose.

Kruh said that he appreciates the time the Board has taken to delve into the budget. The Board and Department have spent quite a bit of time discussing what boils down to the matter of a few hundred thousand dollars. Things are not quite in proportion when these kind of microscopic views are taken. Understandably the Commissioners have constituents to look after, which is frequently in order. He simply wished to voice his support, appreciation, and esteem for what he considers to be a well managed police department.

**Brian Swearingen, Vice President of the FOP Lodge #17:** Swearingen asked if RCPD is the only agency that the City is looking at to make up for budgeting shortfalls due to delinquent property taxes, or all agencies that the City funds. The Law Board and Department work have worked very hard and diligently together to produce a reasonable, prudent budget. It appears to him that once members of the Board return to their respective corners (City and County Commission) it is at that time that problems are voiced with the budget, declaring that RCPD spends too much. The Law Board has a say in the budgetary process. Each year RCPD Administration works hard to produce a budget that is prudent. In many instances money is given back each year in the form of carryover. He thanked the Board for their time.

Sherow moved to close the public hearing for the RCPD 2012 budget. Matta seconded the motion. The motion passed 5-0.

**K. Approve 2012 Budget:** Sherow moved to approve RCPD 2012 draft 4a. McCulloh seconded the motion.

Sherow addressed some of the comments made during the public hearing on the RCPD 2012 budget. During initial budget analysis, RCPD Administration and the Board made cuts to the budget. A resolution was reached with regard to consolidated dispatch, which is a costly up front expense to the 2012 budget. He does not believe that any member of the Board has been on record stating they wish to weaken the public safety mission of RCPD. He considers public safety a very high priority. He has been on record noting the professionalism of the employees and staff of RCPD. He has commented on several occasions how well the Department is managed, and how well they perform under very trying situations.

Sherow said that the City is still in the process of putting together their budget. The questions asked by the Law Board are not to be taken as a desire to weaken public safety, or doubt the Departments level of professionalism. That is not the intention of the Board. Given the kind of cuts and trimming that have been done to the budget, he continued to voice his support for draft 4a.

Butler said the question is whether the issue is the mil levy or dollars. From what he has heard, the issue appears to be dollars. If the fire department experiences a budget shortfall it is up to them to adjust their spending.

Matta concurred with Butler. He went on to state that everyone cares about public safety. It is high on everyone's priority list, but it is still something that needs to be looked at. It might appear that the Board is going after nickels and pennies, but it all adds up to a larger amount. He has a lot of respect for Director Schoen and the employees of RCPD. The Department does a fantastic job. It is his belief in the Department that gives him the confidence to challenge some of the budget figures.

Pepperd recalled that he voted against draft 4a at the May 18, 2011 Law Board Meeting. The reason behind his vote was his preference to add personnel over a Cost of Living Allowance (COLA). That remains his position. We have some of the highest unemployment rates across the nation. States, cities, universities and school boards have to make cuts across the board. That is why he is against a COLA at this time.

A roll call vote was taken and the results are as follows:

Sherow: Yes	Butler: No
McCulloh: Yes	Pepperd: No
	Matta: No

Motion failed 2-3.

**L. Executive Session:** At 1:15 p.m. Sherow moved to go into executive session for the purpose of discussing attorney client privilege and non-elected personnel matters not to exceed 15 minutes. Matta seconded the motion. The motion passed 5-0.

At 1:30 p.m. the open meeting reconvened. Sherow moved to resume the open meeting. Matta seconded the motion. The motion passed 5-0.

**M. Affirmation or Revocation of Discipline:** Sherow moved to affirm the Director's disciplinary actions. Pepperd seconded the motion. The motion passed 5-0.

**N. Adjournment:** Sherow moved to adjourn the meeting. Matta seconded the motion. The motion passed 5-0. The June 20, 2011 Law Board Meeting adjourned at 1:30 p.m.