

SPECIAL MEETING AT 6:00 P.M. TUESDAY

Addition to original minutes

EMS 2016 CONTRACT

EMS attorney, Lisa Rosenberger, was present on behalf of the EMS.

Steve started the meeting by reading the 2016 contract they had the county attorney compose. The contract reads: in part, there shall be at least one full-time paramedic available 24 hours per day. Advanced life support ambulance and paramedics shall not be used, this is something that was added, for non-emergency transports outside of Switzerland County unless a properly equipped emergency life support unit and paramedic are on standby in Switzerland County.

In this current contract quite a few things had not been addressed and this is basically the same contract as in years past. The commissioners know the transports are an important part of EMS's business but they were concerned that if the advanced life support unit was out on a non-emergency run then that would leave the county without that service.

All services will be performed at agreed payment for a normal day-to-day operation, and the Switzerland County EMS reserves the right to bill for any additional services which would be considered to be above and beyond the normal day-to-day. (This is part of the old contract.)

For disasters or emergencies, under sub-paragraph F, the EMS can bill at \$50.00 per hour per ambulance. Fees to be collected per normal billing schedules for Switzerland County EMS responding. Fee collections is the responsibility of the EMS. Documentation of the transport will be performed as normal by the EMS. Exchange of information will follow the HIPPA guidelines.

This agreement shall not be assigned to any other provider of services without written consent of both parties. Detailed financial reporting from the EMS two weeks prior to each new quarter is required by the commissioners for the accounting of each \$110,625.00 quarterly payment. The detail must include the check number, amount, date, and explanation of cost. (This was added to the new contract.) Concerning fees disclosure of any investigation, Switzerland County EMS is required to timely provide the commissioners with any and all information regarding any investigation of the organization, including the initial complaint, complaint information of the investigator(s) and to up-date the information once the results are received.

The Board of Commissioners and the County Council shall each name one voting member to the Board of Directors of the Switzerland County EMS. The Switzerland County Advisory Board of the Switzerland County EMS shall accept the Citizen Advisory Board made up of one appointed representative from each township in the county. The township representative shall be the township trustee or a person appointed annually by the township trustee. The Citizen Advisory Board shall have one vote on the Switzerland County EMS Board and will

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designate one of its members to serve on the Switzerland County EMS Board. The commissioners said that since this is a service for the whole county they thought it a good idea to have representation from the whole county. This stems from the lack of confidence in the organization.

Conflict of interest: No member of the EMS board shall receive any payment from Switzerland County EMS.

Reversion of property: If the contract between the Switzerland County EMS and Switzerland County is terminated for cause, such as failure to comply with the terms of the agreement, Switzerland County EMS is dissolved, or ceases to operate in Switzerland County, then all real and personal property purchased with funds from Switzerland County or purchased by the county and given without consideration to the EMS shall revert to the county and become the sole and exclusive property of the county.

Termination: The Switzerland County Board of Commissioners may terminate the contract for cause quarterly if the contractor fails to cure a breach of this agreement no later than 10 days after being notified of the breach by the county.

No oral modifications; both parties shall recognize this is the written agreement and there will be no verbal modifications thereof.

Lisa responded to the following points.

She pointed out that Switzerland County EMS Incorporation is just a domestic not-for-profit corporation. It is not a municipal corporation so it is not under the laws/rules of which the county is governed. They are basically an independent contractor.

Lisa said, some of the things that were asked for in the contract kind of makes it less than an independent contract. This is kind of the objection to having the voting members. EMS Incorporated, in the contract that they sent to the county, has indicated they would like to have a member of the council as well as the commissioners as a non-voting member of the EMS board. They would be allowed to attend all of the board meetings and even by phone if need be. She felt this would take care of a lot of things that concerned the county. For instance, communication, if there is a person there from the council and commissioners, they will have all of the information and be in on all of the discussions; except maybe the information that is prohibited by HIPPA law.

The board is basically running a business. The business is emergency medical services so she asked how many other contracts/boards have the requirement of voting members from commissioners/council. Josh said the relationship between the county and the EMS is unique compared to any other independent contractor relationship. Lisa asked how so. Josh said because the county does not buy equipment for those other contractors directly. Lisa said that anything that has been purchased previously is now an asset of the EMS.

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Josh asked Lisa how the voting member clause changed because the county was allowed to have voting members on the board in the past. Josh said it looked like back in 2007, the commissioners were no longer interested in being on that board. Lisa said she thought that 4 or 5 years ago, maybe longer, there was a council member or commission member that was a voting member however at some point there was an attorney that gave them the opinion that was a conflict of interest. So at that point EMS made them non-voting members so they could still come to the meetings. (This was attorney Blondell from Dearborn County.) Lisa agrees with his opinion but assured the commissioners EMS would like to have a council and commission member on the board but in a non-voting capacity.

Lisa said, the thing about the Citizens Advisory Board (CAB), is they already have one. But again she not sure they will want to agree to the commissioners terms of the contract. Josh asked how those members were chosen. Lisa is not sure. Steve asked if they are voting members, Lisa said no. The current members of the CAB are Pat Lanman, Ron Lee, Jill Hutcherson, and Jeff Darling.

Lisa said that after talking with the EMS they would certainly be willing to consider anybody the commissioners would want to put on the CAB. She reiterated the fact that she is representing a corporation. In her opinion this is not really a contract for services but wanting to micro-manage. She said she understood the reasoning behind the contract changes but she thinks that everyone can get to where they want to go by doing some of the things.

She agreed that the contract is about the same as the one that the EMS had prepared but there is nothing in either contract about the CAB. She doesn't know what EMS will say about having 2 representative from the council and commission on there; certainly they would consider it.

Steve said there is a participation issue with board members; the meetings are usually on a Thursday afternoon but it can vary. This presents a problem with the board members that hold full-time jobs. Maybe have meetings in the evenings instead. Lisa does not disagree with this point.

Steve said the commissioners and council feel very strongly about having voting members. Lisa still thinks this is a conflict of interest. Josh said normally he would agree but only in a traditional independent contractor role, this is not that. He said a perfect example being: recently there was a complaint about EMS service. They went to Switzerland County EMS and filed a complaint. They were told to go to the commissioners and follow up. A typical contractor situation would not have that happen. The contractor would take care of their own issues. But instead the person(s) were sent to the council and commissioners. So this shows that it is not a true independent contractor relationship; it's a special circumstance relationship. This is why the contract changes are so important.

Lisa said she understood what he said about how the complaints are handled and that is something that could be addressed. But overall that doesn't change the fact that we have a corporate entity that is contracting with a municipality. If the municipality is going to try to contract themselves to be a part

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of that membership then her opinion is there is a conflict. It's not that EMS does not want the county representation there, because they do. They want to continue performing the services for the county, but doing the business of their corporation, part of that has to be contracting. If you are contracting from both sides how is that not a conflict?

Steve said he understood too, that it would be cleaner, if the county put the service out for bid, and said this is what we are going to pay and this is what we want/need in the way of services. But over the years, the county has paid hundreds of thousands of dollars to the EMS and it is difficult for the county to walk away from that and just say well ok it's all yours, which essentially is what has happened. But you have that clause about becoming non-existent; this could be morphed into different things such as just doing transports, or etc. and hang onto the assets. This is why they feel the county needs to buy into this with some authority rather than just an opinion.

Josh disagrees about this being a conflict-of-interest. He said there has been legislation opened up recently statewide that allows people who are setting on a council for instance, to contract with a fire department that they are a member of. This change to legislation just happened last year. This compares to the situation here.

Steve said just like the board members that the EMS appoints, if you have a couple of those folks who work there too, then isn't that a conflict of interest. Lisa said her understanding is that there are only two that currently would possibly fit this situation and this may change with the upcoming election; and they are only part time. Josh said there is only three on the board, so two out of the three.

Steve said this is not a personal issue, just a discussion about there being a conflict of interest. The folks do a good job.

Lisa said that the EMS has already had one attorney tell them that the voting member issue is a conflict of interest and she agrees. She would probably advise her client, Switzerland County EMS Incorporated, to not sign the contract.

Lisa also said that in the contract that EMS has prepared there are places for the council and commissioners to have a non-voting member. Which means they would be able to attend all of the meetings and be in on any discussions. Their business is emergency services and their board is there to make decisions about emergencies services and possibly some financial decisions.

Steve said this is just a conversation back and forth to get opinions and try to move forward.

Lisa said it is her understanding that in regards to the life support ambulance and staff being available all the time, unless they have a life support run, they do have one available as best as they can. They try to have a paramedic on duty 24 hours but there is no way they can afford to have two on duty at all times. So it's not that they don't want to cover Switzerland County, because they do, but

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they have a 35-member volunteer pool they can pull from if need be for other runs.

She said that under Item #3 sub-paragraph E, they may be able to come to some type of agreed language. Steve said that the commissioners meant to not have the life support ambulance and staff to go to Swiss Villa to take a patient to a doctor, or dialysis, or etc.

The original contract pretty much said the county would give EMS \$42,500.00 to provide emergency services. But then everyone wanted to know what the county is getting for the \$400,000.00 additional funds. It's been talked about this additional money as having to be given because of the boat agreement. The commissioners have never seen a boat agreement that states this. It's important that the county has good services, which we do.

But when you are doing a contract and put it up for bid you have to have some criteria that you are going to ask that person to do for a certain amount of money. Lisa said there really is not a lot of difference in what the EMS is asking for and what the county is asking for. The one major thing is the voting and non-voting issue.

Josh said the paramedic requirement comes somewhat from the previously mentioned statute as well and that EMS is working to get a waiver from the Department of Homeland Security for this. Mark asked why the waiver? Josh said the waiver would be because of a funding issue; having one on duty and one on back up is costly.

Lisa asked about the financial reporting; if the commissioners are currently getting a financial report. Josh said yes they are getting a profit and loss statement. She wanted clarification; Josh said something with a little more detail which was provided one time; the 2nd quarter of this last year. Especially concerning where the funding that is being provided by the county is being used. The funding is to be paid after the proper financial information is provided each quarter.

Lisa asked if this is a yearly contract or a quarterly contract; the wording is unclear to her. Josh said it is a quarter by quarter contract. The contract has always given the county the ability to terminate it if some problem isn't resolved in 90 days. She isn't sure what could be cured in a situation like this in 10 days.

Steve said he thought this came into play because of the ongoing issue of the investigation and other unknowns. Some of it has been addressed. The commissioners did not get any report concerning the investigation and were told they would. The only thing they received was what Channel 19 broadcast about it; but this is an issue with the state.

Steve said an issue is that we are trying to work out a contract and then there are some of the folks involved under investigation so that is what drove the quarterly contract because of the state dragging their feet. The county is trying to keep the people protected. The commissioners also realize too that the people

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that work there earn their living there and the commissioners don't take that lightly.

Steve said someone from the state told him that the county had better have a backup plan for services when the investigation all started. Steve told him that the commissioners do have a plan.

Then he spoke about the timely reporting; if there is a problem then the commissioners need to be notified in a timely manner.

Lisa asked how the notification of information should be handled. Josh said he did not find out any of the information about the investigation/complaints until it was breaking over the news. She asked if they just basically wanted notification if there has been any type of complaint or investigation – yes. Not necessarily be discussed at a public meeting. But this is what the quarterly stuff is all about.

Steve asked Lisa if she saw the position that the commissioners/county has been put into because of all of the events that have happened.

Lisa went back to the conflict of interest issue. She said that since the EMS is a corporation they are not bound by the same laws as the county; they don't have to have open door laws, etc. If the employees, who are on the board, ever become full-time then there would be a problem.

Steve asked about the financial audit. In its current state, if the Board of Commissioners contract with Switzerland County EMS to provide medical services, this is by statute. Then the council gives them \$400,000.00 that was never part of the contract. Now EMS is receiving government money and the peoples' money, so in his opinion it should be subject to open-door laws.

Lisa reiterated the fact that the EMS is not a municipal corporation. She said the agreement does say that EMS will be audited but not by the State Board of Accounts. The EMS does not fall under the State Board of Accounts jurisdiction. EMS is willing to have an audit every year not one every 2 or 3 years which is typical.

Steve said he doesn't think things are at a stale mate. Josh said, in closing, he would like to say one thing; we keep on talking about the relationship and independent contractor corporation. He just wants to reiterate the fact that he does not see this relationship this way. A few years ago the EMS was coming into the commissioners asking if their employees could be added to the county employee benefits and asking the county to be able to use municipal tags again. The relationship has always been tightly coupled but only when it has benefited one side. What the commissioners are asking for is, that if the relationship is going to continue that way, then the commissioners want some skin in the game. That is all they are requesting with the new contract. Because of the way this relationship has been structured over the past 15 years or so, he sees it as a different kind of relationship, not a true independent contractor.

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Steve said you don't have to go back that far. Like the maintenance issues for instance. It hasn't been but about a couple of years ago when an ambulance went down and Randy See, EMS Director, came and asked for \$8,000.00 to repair an engine. Had it been a clean contract deal he would have been told to figure his problems out on his own.

Steve said it is kind of a community deal too although it may be a private corporation but there are a lot of community ties; volunteers and the boat connection.

Lisa said she understand but she disagrees legally with the fact of the commissioners trying to contract their way into a board seat for an independent contractor. She understands about it being a county thing but legally she said there are problems. What she has been told is that EMS wants the commissioners to be involved but they have a corporate structure, by-laws as to who gets to vote on the board. By this contract the commissioners are basically taking their corporate structure away from them by saying you want their members who are employees be able to vote on who gets to be board members.

Josh said it used to be that the commissioners/council had voting members. Randy See told Josh that this changed a few years back. Lisa said she had not seen this change. But EMS was told by an attorney to make the change. Josh said just to note, the county attorney did not find the conflict of interest problem. Lisa said she has talked to Wil Goering, county attorney, about the contract.

Lisa thinks the corporate structure has to be looked at in the fact that they have members and they have to be able to do something. The reversion clause cannot be in the contract because of the way EMS is structured. If they dissolve and cease to exist then the property would become the county's but not if they don't get to have the contract with the county or the contract is terminated.

Steve said he appreciated Lisa coming. Mark said it is no secret that Switzerland County EMS is currently on probation. He had an article from the Ohio County newspaper. He said it listed what the EMS was audited for and what the conditions are. He asked about the following statement from the paper: During probation Switzerland County EMS is required to seek a certified Indiana supervising hospital. He wanted to know if the EMS has done this yet. Lisa said this is one of the things they are negotiating about. The hospital they have has been certified for 10 years but it is in Carrollton, Kentucky but is probably the closest hospital to our location or some of the locations. The medical director, is licensed in Indiana, and up until the state had made the change this had never been an issue.

Josh asked Lisa to walk them through the appeal process. Is there a time frame? For the state no but the EMS had to ask for a review within 15 days of the state's findings. Lisa said they have mainly just met the deadline for filing for a review. But now they are kind of in formal negotiations as to the whys and so forth; with Homeland Security's legal counsel.

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Steve asked what happens if the state does not approve the medical director or hospital and we are down to not very many days left until the contract is up can EMS function without the director/doctor and/or hospital. Lisa thought the Carroll County Hospital was just recertified. There was not a deadline stated during the probation period. It is unclear as to whether they have to look for one or actually have one to operate.

Steve said there is quite a bit of information, the findings report is 116 pages long. Mark wanted to know why if you have that sort of business, why would you let some of this stuff happen. Lisa said her best answer is that; some of the findings were things that, for lack of better terminology, just kind of the wording of the rule, interpretation.

Carol Ann Sublett, said that if the Ron Lee that is on the CAB is the same Ron Lee as the pastor, then he is not on that board.

Josh asked where this is being left. Steve said after the holidays and everyone is back then everyone can get together again. Lisa said she could get more information to the commissioners concerning the role of the medical director.

Attest: _____
Gayle A. Rayles, Auditor
Switzerland County, Indiana