

Ravalli County Commissioners Office

From: Ndjlaw@aol.com
Sent: Thursday, April 17, 2014 4:04 PM
To: Ravalli County Commissioners Office
Subject: TODAY'S MEETING RE: VALERIE STAMEY

Commissioners:

I attended and thank you for today's meeting concerning the Stamey affair. I wanted to make a few additions to my public comments. First, I certainly recognize the natural tension between a desire for moving forward with legal action on the one hand, and following your legal counsel's advice that prudence requires further delay on the other. A frustrated private citizen would be in a position to at least obtain a second legal opinion, but, although you have statutory authority to do so, I understand that it would probably not be politically or economically advisable to go in that direction. Moreover, you do not lack confidence in the County Attorney but, rather, as Commissioner Chilcott candidly put it, just don't like his present advice.

Having said that, I remain persuaded that you would do well to put some further questions to Mr. Fulbright with regard to his opinion and intentions. However, Mr. Fulbright is quite correct in remarking on the problem of discussing legal strategy and tactics in public. I suspect that there is a good deal more that he and Mr. Recht could offer with respect to their concerns with going forward against Mrs. Stamey, but it would be not only unwise, but foolish, to furnish those at a public meeting—indeed, one at which Mrs. Stamey herself was present. In that connection, doesn't there exist authority for the Commission to hold an executive, non-public session with the County Attorney where you could have a free and open discussion regarding future legal proceedings against Mrs. Stamey? Of course some might complain, but, as you know, people will complain about something or other no matter what you do or how you go about it.

I believe that a couple of questions remain to be answered by the County Attorney. One would be specifically what further reports or information will be required to make a determination of whether the County Attorney can advise on whether or not to bring an action. Will he be prepared to make that determination once the final audit report is in? If more information or evidence is required, what would that be and who is going about obtaining it? Incidentally, as Mr. Fulbright advised, you most certainly do not want to await an F.B. I. "report." Their business is not to furnish public reports, and they do not do so. If they report to anyone outside the agency itself, it will be to the U.S. Department of Justice.

Another more important question pertains to the analysis presented by Mr. Recht with regard to an action for official misconduct that would permit immediate suspension without pay pending a determination of removal from office. I understood him to opine that it is unclear in the law whether such an action can be brought for non-criminal conduct, such as the failure to perform the duties of office, including failure to file mandatory reports. I have written to you about this before. The plain language of Montana statutes suggest that this can be done, but there is no decisional law either way on the

question. Importantly, that means there is no law that says you may not bring such an action by interpreting the statute to permit it. Mr. Fulbright himself stated that there is nothing to prevent you from making such an allegation, but I did not hear from him or Mr. Recht whether they were prepared to advise that you do so, even after all of the information and evidence required has been secured. In short, perhaps you should, in executive session if necessary, flatly ask the County Attorney whether he has an opinion now, and if not when he will have such an opinion, on the question whether, as a matter of law, he would ever support bringing an action to remove Mrs. Stamey from office for official misconduct that is alleged to be her failure to file the mandatory reports required by law. I had a sense today that his answer may be in the negative. If so, you may as well know that now.

I want to close by addressing another aspect of this, the elephant in the living room in a way, namely the economic realities that a number of Commissioners alluded to today. Leaving Mrs. Stamey on administrative leave until the end of her term of office (assuming she is not elected which is more than a fair bet) will roughly cost something in the neighborhood of \$32,000. That is a lot of money, of course, but I suppose one could argue that it is a small price to pay to be rid of her, so to speak, at least as opposed to the potential costs and risks of an action to suspend her without pay and remove her from office. A separate determination altogether is whether to pursue the fines of \$29,000. Perhaps that is a part of what Mr. Fulbright is suggesting. Our gut tells us that it is wrong to permit Mrs. Stamey to continue to be paid under the circumstances, but perhaps the application of cold logic and reason suggests otherwise. So long as she remains on leave with pay, it is difficult to see what legal damages she could allege in a lawsuit.

Thank you for your continuing effort, and the frustration it brings with it, in dealing with what will undoubtedly go down in the history of this County as The Notorious Stamey Affair, or something like that.

Norman James