

C&BP Transcript 10/17/18

Interview with Cleveland County (NC) County Manager Brian Epley and Staff Attorney Elliott Engstrom. CFO Shane Fox was present, but remained silent throughout

C&BP: We did a series of public records requests. And I do have to say that Elliott and his associate Phyllis were very professional. They really did help us in terms of fulfilling the records request we needed. So, we analyzed Tim Moore's invoices over a period of three years and we were a little surprised about what we found. I'll leave our analysis with you. It totals \$275,000 over three years. And that's \$92,000 a year for a part-time person. I guess my first question is do you have any other part-time staffers that make \$92,000 a year?

Epley: Well, I think part-time is driven based on volume of need, right? So it's a contracted vendor. That's the way I would consider versus...from a management side...When I think part time, I think schedule, structure you come to work from 8 to 12. You're working less than a full-time schedule, right? The county attorney is more of a contracted vendor that's a need-based...when the county is doing, whether real estate transactions or has litigation or general board meetings or general board advisory, he's involved in a lot of different things. So to me what drives that number is much more about volume and need versus classification part time/full-time from a general employment stature. And from comparative purposes I don't know we're happy to go back and look and see what it was with the prior County Attorney, would that be helpful?

C&BP: We have those numbers.

Epley: Oh you have those numbers.

C&BP: And actually that's one of the things I wanted to present to you because when Tim Moore was hired, his cousin at the time, Jason Falls, who is the former chair of the County Board of Supervisors, shepherded that job. He was one of the people on the Commission. He said in the press that this would end up saving the county money. But according to our analysis, it hasn't. According to our analysis, Tim Moore during that period - your legal cost is \$83,000 with more than [was paid to] Bob Yelton over a three year period. That's \$27,000 a year. Now I would bet that you have employees that get \$27,000 a year.

Epley: Plus benefits, probably. There's probably people in this organization that make close to that; that would be on the lower end.

C&BP: Right. We do know that at the time when he was hired, Jeff Richardson, I guess he was your predecessor.

Epley: He was my predecessor and he now works for Albemarle County, Virginia.

C&BP: Oh, very good. So, we know at the time he said that there would be an analysis done to see if this still makes sense for the county. And I am curious, has that analysis ever been done? In other words, Jeff Richardson claimed that this was going to save the county money, and I'm wondering was that analysis ever done?

Epley: I think from my perspective again, I was [CFO] Shane [Fox] before Shane was here and then I was involved in this role. We look at a high level at all contracting vendors, at cost-benefit and breakeven on an ongoing basis. Again, I think the county attorney's role is a little bit different than others because it is such a need-based, and there's a flat retainer, very common model across North Carolina. And then a structured hourly rate based on questions the board may have, things the county maybe went through, economic development projects that they may be working on. I would be interested, I have looked at the data in detail like you have recently. I'll be interested to see year by year, because we did go about 13 months without a staff attorney.

C&BP: I think it was eight months.

Epley: When did you start?

Engstrom: June 1.

C&BP: I think it was about 8 months if counted it correctly. And so even with that vacancy still seems like a lot of money has been spent and not only that, but Tim Moore goes away with \$275,000; \$92,000 a year average. Now we were surprised to learn that when you compare that to what he earns as state representative and even Speaker of the House, he's making more money here as a part-timer than he is at those jobs.

Epley: I'm not sure what...I'm so unplugged from Raleigh and the political realm, I have no clue what they're earning.

C&BP: They don't pay a good base, but they do pay a daily stipend and all the expenses. The State Controller actually put out the figures in 2015 and according to the figures I have - and these are 2015 numbers so probably not exactly right - he made \$84,000 total from the state and that includes reimbursement, and \$92,000 average from Cleveland County. Seems like an awful lot. I just wanted to bring these figures to your attention.

Epley: Would it be helpful, so if you just...would it be helpful for you and obviously...I'd have to get Elliott to help me with it, but if we're able to provide you with - again this isn't a volume bank - just to help analyze part of your numbers. Seems to me what's driving it is the need. So, if we took Mr. Yelton's three-year comparison that you probably looked at and the number of economic development projects, the real estate transactions, we didn't have a paralegal. You know all of some other things and then compare that to the same three-year period, and maybe make it more apples to apples. Do you think that's fair?

C&BP: We're certainly open to whatever analysis you do.

Epley: It would be helpful for us too. We may be able to be more articulate with exactly what you're asking.

C&BP: You know there's another strange thing about these invoices and that is, most invoices that I've seen from attorneys, and I've seen a fair amount, and also most attorneys I've spoken to, they usually list the hours by date, and his invoices don't. They basically they have a monthly

total and then break down the numbers for various projects and he just kind of lists them. He doesn't say like on January 30th, four and a half hours. That was surprising to us that that was the case.

Engstrom: I spot check...they generally correspond...but I never actually, I've worked in nonprofits, public interest and government, so I've never worked in a role...I've never done it. So I don't know that most attorneys do or don't do it one way or the other.

C&BP: Well, I'd hate to classify this most or all or anything, but we've seen...and this does seem a little odd. I guess the other question that I have is; well, there are two other questions. One is, we know [Moore] has talked about his contract with Cleveland County water. And you guys sent me over to Cleveland County water. Well, I did get those figures. And over that same 3-year period of time he made \$77,200...let's say \$77,500, round it off. So together, Tim Moore has earned during that three-year period from Cleveland County taxpayers and ratepayers, \$350,000. My question is, for an avowed small government conservative who believes in the free market and the competitive marketplace, isn't it kind of strange that he's making all of this money off of Cleveland County taxpayers and Cleveland County ratepayers?

Epley: I don't know about Brad's operation, Cleveland County Water. And I also don't align him, the attorney, with his political alignment at all. For us, he's our county attorney. When we need legal advice, we lean on him. When the Board of Commissioners needs legal advice. When we have transactions that require legal representation he's the place where we start. Sometimes he's an adviser, sometimes he's the practitioner. But as far as analyzing his political alignment, I stay so far out of that. It's much more about, is he meeting the demands that I need as County Manager...that my team needs so that we can come to work every day and do our very best work.

Engstrom: Just a thought...is that assume that organizations like Cleveland County and Cleveland County Water want their counsel to be someone in Cleveland County. Don't quote me on this figure, but I think there's about sixty lawyers in Cleveland County. Tim's billing rate is \$250 an hour. If we were going outside Cleveland County to Asheville we'd be at least \$350 an hour, if we were going to Charlotte, we'd be at \$450 an hour. I don't know how many attorneys there are. I don't wanna say Cleveland County attorneys are bad – great lawyers in Cleveland County. I don't know how many there are that are experts in local government.

C&BP: Point well taken. I will say though that we were also a little surprised to see that his rate for Cleveland County Water is \$150 an hour. And he had that contract proceeding Cleveland County. And so when his cousin helped him to get this job he got a \$100 boost over what he was previously making for Cleveland County Water. So let's just say that he would have gotten that same rate, I think that would have saved the county \$7,000. I mean, there's a there's a lot of savings it seems that could be happening but it's Tim Moore, powerful guy.

Epley: So, you know I was the finance director at that point, nothing to do with negotiations, that was a Board of County Manager hire...as it is in all counties in North Carolina...But I want to think that was the same rate of Mr. Yelton.

C&BP: He was \$220.

Epley: And then the other thing, again I hate to comment at all on Brad's operations at Cleveland County Water. But I think Cleveland County the organization was 1,000 employees and \$150 million budget. We're more complex per se than maybe the issues that he's having with Cleveland County Water, the demand may be a little higher. I have never seen the contract with them. We certainly did begin negotiations based on...

C&BP: We have it if you want to look at it. I mean I'm not sure it's relevant.

Epley: I didn't feel like that negotiated rate...pre-audit was the involvement I had...without land... certainly seems at or below market for the types of challenges that we dealt with.

C&BP: Ok, well that's fair enough. I mean, so what I want to do is I want to just leave you with this [hands over one-page analysis] and feel free to poke holes in it. I mean, our team has been over these numbers a dozen times and we're not finance people so you're likely to find a mistake but I'm hoping not. Again I think the overall question that we have is, you know, should a person who is avowedly a small government individual be pulling in all of this money in a county where the median individual income is \$21,000.

Epley: Thank you for leaving this with us...and I hope that we can provide something to you that helps your analysis further develop. And I think that the volume, I think is a really big deal of that, I think that's what drives it. Again, you using the word part time, doesn't really...and again I understand, from my side of the organization, but internally from an operational standpoint, when I think of part time I think of an employee that comes and works less than 40 hours per week, that's a part time employee for someone who doesn't receive benefits, that's a part-time employee. This, the county attorney position, whether it's Mr. Moore, or any County Attorney in North Carolina is a contract position that can come and go at any point in time. There's no job rights to the job...I don't know how much you know about North Carolina local government, but you accrue job rights and so forth, and it's really demand driven, depending on how often your phone rings or email signals, things going on throughout the organization, that's what determines your billable hours.

C&BP: On the other hand, though, you have a staff attorney now. And you have your staff attorney... and you didn't have that when Mr. Moore was hired. And his cousin's argument was that we're going to save money with these two combinations and it just doesn't look like to us that you are. So...

Epley: I think we'll definitely try to follow up and quickly and try to help do what I can.

C&BP: We appreciate you taking the time.