

Commissioners:

R. JACK MCKERNAN
Chairman

TONY R. MUSSARE
Vice Chairman

RICHARD MIRABITO
Secretary



MATTHEW A. McDERMOTT
*Director of Administration
and Chief Clerk*

J. DAVID SMITH
Solicitor

Telephone (570) 320-2124
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COUNTY of LYCOMING
48 WEST THIRD STREET
WILLIAMSPORT, PA 17701

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**Minutes of the Meeting of
August 29, 2017
Board Room, Executive Plaza
Pine Street, Williamsport**

Commissioner McKernan - Present
Commissioner Mussare - Present
Commissioner Mirabito - Present

Solicitor Smith - Present

1.0 OPERATIONS

1.1 CONVENE COMMISSIONERS MEETING. The meeting was convened at 10:03 a.m.

Bids were opened for the following:

HDPE Pipe & Landfill Gas Well Accessories (4 bidders)

2.0 ACTION ITEMS

2.1 APPROVE CASH REQUIREMENTS REPORT. A motion by Mr. Mirabito and seconded by Mr. Mussare and passed (3-0), approved accounts payable cash requirement report through September 6, 2017, for payment on August 30, 2017.

2.2 APPROVE NUTRIENT SALES AGREEMENT. A motion by Mr. Mirabito and seconded by Mr. Mussare and passed (3-0) approved the Nutrient Credit Sales Agreement between the County of Lycoming and The Pennsylvania Infrastructure Investment Authority.

2.3 APPROVE AMENDMENT 3 TO THE GEO RE-ENTRY SERVICES CONTRACT. After discussion there was no motion to approve Amendment 3 to the GEO Re-Entry Services Contract. This item will be placed on Thursday, August 31, 2017 Agenda.

2.4 APPROVE THE FOLLOWING PERSONNEL ACTIONS: A motion by Mr. Mirabito and seconded by Mr. Mussare and passed (3-0), approved the following personnel actions:

District Attorney – Tyler Bierly as PT replacement Special Detective DUI Center at \$15.64 per hour effective August 1, 2018.

District Attorney – Angel McLaughlin as PT replacement Special Detective DUI Center at \$15.64 per hour effective August 1, 2018.

District Attorney – Kenneth Flewelling as PT replacement Special Detective DUI Center at \$15.64 per hour effective August 1, 2018.

2.5 APPROVE PERSONNEL ACTIONS REPORT FOR AUGUST 2017: A motion by Mr. Mirabito and seconded by Mr. Mussare and passed (3-0) approved the August 2017 personnel actions report.

Mr. McKernan recessed the Commissioners' Meeting at 11:30 a.m.

3.0 SALARY BOARD

3.1 CONVENE SALARY BOARD. Deputy Controller Collins was present.

3.2 APPROVE DISTRICT ATTORNEY LINHARDT'S MOTION FOR APPROVAL OF THREE SPECIAL COUNTY DETECTIVES - A motion by Mr. Linhardt and seconded by Ms. Collins and passed (4-0), approved the three part time replacement special detectives for the DUI Center for the period of August 1, 2017 through December 31, 2018.

3.3 ADJOURN SALARY BOARD. A motion by Mr. Mirabito and seconded by Mr. Mussare and passed (3-0), adjourned the Salary Board at 11:45 a.m.

Mr. McKernan reconvened the Commissioners' Meeting at 11:40 a.m.

6.0 COMMISSIONER COMMENT. The floor was opened to commissioner comment and the following were received:

Commissioner Mirabito started by explaining that there should be no rush to enter into this agreement with the state. He also explained that Lycoming County is under no legal obligation to enter into this agreement.

7.0 PUBLIC COMMENT. The floor was opened to public comment and the following were received:

Dick Nassberg – Former Commissioner Nassberg noted that this area has always been a caring place where the public is willing to help people. However, he noted that with this decision, we need to balance the economic and human effects of

expanding GEO services to state parolees. He is concerned with the unintended consequences of the decision. He said that, if we are entering into a transaction with a profit making entity, we must negotiate because GEO is motivated to make money. He noted that the County is underwriting the overhead in terms of utilities, heat, etc. With GEO receiving \$42 per day per inmate from the State and paying the County \$5, it is “chump” change. He also noted that there is an incentive for GEO to emphasize the State clients because the money is going straight to the bottom line. He compared bringing state parolees into our Re-Entry program to the effects of the “influx” of the 80’s and how it caused neighborhoods to decline and how these types of programs increase the economic burden on taxpayers. In particular, he noted that the people in the program will live in low income neighborhoods and the poorest people in our community will suffer the most from additional burdens. He believes the poorest neighborhoods will get more drug dealers. He suggested GEO put the program in Loyalsock or Hughesville. He noted that the Commissioners’ job is to protect all of the community. He noted that we have come a long way in 20 years, and we should not go backwards.

Todd Lauer – Jersey Shore – Mr. Lauer read material and gave documents to the Commissioners which have been attached to these minutes.

Mayor Campana – The Mayor noted that the city of Williamsport has improved over the last 10 years. He credits strong leadership and encouraged the Commissioners to consider the long term effects of bringing more individuals with adverse problems into our city. He noted that the City has fought half-way houses and drug rehab centers. He believes that the City does not need any people who have adverse problems. He stated that the City cannot afford additional problems.

Scott Metzger – Montoursville – Mr. Metzger said that he is a County employee with over 31 years of experience with in Adult Probation. Mr. Metzger reported that from a probation standpoint GEO is a good program that has had success in reducing recidivism. He also reported that GEO has invested \$100,000 into office space renovations that no one has previously noted and feels that the fact that GEO is a for profit agency should have no effect in making a decision whether or not to proceed. He encouraged the Commissioners to renegotiate the fee from GEO. Mr. Metzger explained that when a state parolee violates it usually results in incarceration at the Lycoming County Prison and then they are usually resentenced to County Probation. He explained that the state parolees who would potentially be accepted into the Lycoming County Re-Entry program are already living in our community.

Dick Nassberg – Former Commissioner Nassberg noted that “numbers can be played with.” He stated that, if someone is arrested and sentenced here, it does not mean they were ever a resident of Lycoming County.

Jennifer Colon – Ms. Colon identified herself as a woman who is in long term recovery. She stated that re-entry is “right, we need it,” but she said that the current

program is missing peer support. She suggested that many of the people who are in recovery and who need jobs could be working in recovery. She noted that there is a huge movement across the country to hire former addicts for recovery. She also said that Lycoming County needs to focus more on putting felons back to work. She reports that there are programs the focus on that particular topic that are successful.

Commissioner Mirabito asked Ms. Colon about the suggestion to hire former addicts and noted that he would like to hold hearings with the recovery community to hear from them what works and what does not work with recovery.

Bonnie Katz – Ms. Katz is a City of Williamsport Council Member and the owner of a business in the downtown. Ms. Katz stated that she opposes accepting state parolee's to our County's Re-Entry program. She noted that safety is a concern and as a business owner she does not want residents of Lycoming County to be afraid to come to the city after dark. She also noted that Williamsport City Police will not be able to keep up with the increasing demands if this programming for state parolees takes place. She noted that she would not want to have it come back where outsiders come to our community from Pittsburgh and Philadelphia.

Mike Boughton – Mr. Boughton is an employee of GEO. He explained that these are folks who are already living here and reporting to the state parole office on Little League Blvd. He noted that there are 22 people in the program.

Commissioner Mussare then questioned David Smith, Solicitor, if GEO was not conducting their business in a county owned property would the county have any authority over whether or not GEO entered into this agreement with the state?

Solicitor Smith: No.

Commissioner Mussare then asked whether the County had the right to tell GEO not to take State inmates into the program.

Solicitor Smith: Yes, because it is outside the scope of the current contract.

Commissioner McKernan questioned Mr. Brown from Firetree if Firetree participates in programming with state parolees and does Firetree have a program in the community like the GEO program?

Mr. Brown from Firetree: Yes.

Commissioner McKernan also reminded the public that the state has "short changed" the county already in its percentage of reimbursement to the county for probation officers.

Todd Lauer – Jersey Shore – Mr. Lauer gave his opinion that the program was in the best interest of the convict. But, he asked, what about the public? He noted that the \$5 per day per participant is an “outrageous joke” and demeaning to County officials. He said that the only winners were GEO, the State, and the convicts. He said that the public loses monetarily and with public safety. He thinks that GEO has become complacent and that, if GEO thought they did not have the upper hand, they would negotiate a better deal. He said that a rate of 65% or \$27.65 per day is a much better agreement. He said that, if GEO is not in favor of that, let it out to bid or abolish it completely.

John Stahl – Montoursville – Mr. Stahl is a County employee who is assigned to oversee the Re-Entry program. Mr. Stahl noted that in the last two years, Re-entry has been a hot topic. He made the first trip in August 2014 to Luzerne County to observe the program run there by GEO. He noted that the re-entry program here began in September 2014. He noted that GEO is a vendor and the program is the Lycoming County Re-Entry Program. Mr. Stahl reported that initially Re-Entry was all about prison overcrowding. GEO has done exactly what they were contracted to do. They have reduced prison overcrowding. There has not been one male inmate housed out of county in over a year. Re-Entry currently has 94 participants in programming.

Ian Perry – Old Lycoming – Mr. Perry noted that Lycoming County is the largest county in the State. He asked whether the state parolees coming into the city from their home 5 days per week are from all over the State?

Todd Lauer – Jersey Shore – Mr. Lauer asked what “GEO” stands for?

8.0 NEXT REGULARLY SCHEDULED MEETING. Mr. McKernan announced the next regularly scheduled meeting to be held Thursday, August 31, 2017.

9.0 ADJOURN COMMISSIONERS’ MEETING. The meeting was adjourned at 11:51 a.m.

ATTACHMENT A

| 2017 BID TABULATION - HDPE PIPE AND LANDFILL GAS WELL ACCESSORIES | | | | | | | |
|---|--|--------------|----------------------|--------------|------------------|------------|------------|
| BIDDER: | | | | | | | |
| ITEM NO | ITEM DESCRIPTION | Bid Amount | Bid Amount | Bid Amount | Bid Amount | Bid Amount | Bid Amount |
| 1 | SCHEDULE A - Total amount for items 1 through 9 | \$28,583.46 | \$37,925.60 | \$39,299.30 | NA | NA | NA |
| 2 | SCHEDULE A - Government Discount | \$0.00 | \$0.00 | \$0.00 | NA | NA | NA |
| 3 | SCHEDULE A: County of Lycoming would pay this amount | \$28,583.46 | \$37,925.60 | \$39,299.30 | NA | NA | NA |
| 4 | SCHEDULE A - Delivery time | 6 to 8 weeks | 6 to 8 weeks | 4 to 5 weeks | NA | NA | NA |
| 5 | SCHEDULE B - Total amount for items 1 through 3 | NA | NA | \$5,436.00 | \$4,200.00 | \$0.00 | \$0.00 |
| 6 | SCHEDULE B - Government Discount | NA | NA | NA | No Shipping Cost | \$0.00 | \$0.00 |
| 7 | SCHEDULE B: County of Lycoming would pay this amount | NA | NA | \$5,436.00 | \$4,200.00 | \$0.00 | \$0.00 |
| 8 | SCHEDULE B - Delivery time | | 5 to 10 working days | | 7 days | | |

ATTACHMENT B



STATE ETHICS COMMISSION
309 FINANCE BUILDING
P.O. BOX 11470
HARRISBURG, PA 17108-1470
(717) 783-1610
1-800-932-0936

ADVICE OF COUNSEL

August 22, 2017

To the Requester:

Mr. J. David Smith, Esquire
McCormick Law Firm

17-560

Dear Mr. Smith:

This responds to your letter dated July 21, 2017, by which you requested an advisory from the Pennsylvania State Ethics Commission ("Commission").

Issue: Whether the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 *et seq.*, would impose prohibitions or restrictions upon a County Commissioner for Lycoming County ("County"), Pennsylvania, with regard to participating in the County's decision-making process for selecting the successful respondent to a County Request for Proposals ("RFP") to provide professional services in connection with the operation of a court-affiliated, County-funded day treatment program, where: (1) the County Commissioner is a Member of the Board of Directors of a non-profit corporation named "Firetree Place"; (2) Firetree Place was created with the assistance of a non-profit corporation named "Firetree, Ltd."; (3) Firetree Place and Firetree, Ltd. are separate entities with separate boards of directors, staff, addresses, and missions; (4) Firetree Place did not participate in the County's RFP process with regard to the aforesaid professional services; and (5) Firetree, Ltd. is one of various entities that submitted responses to the County RFP.

Facts: You request an advisory from the Commission on behalf of Rick Mirabito ("Mr. Mirabito"), who is a County Commissioner. You have submitted facts that may be fairly summarized as follows.

In a private capacity, Mr. Mirabito is a Member of the Board of Directors of a non-profit corporation named "Firetree Place," which operates a community center focused on serving the needs of local youth. Firetree Place was created with the assistance of a non-profit corporation named "Firetree, Ltd.," which provides transactional services to individuals within the criminal justice system. You state that Firetree Place and Firetree, Ltd. are separate entities with separate boards of directors, staff, addresses, and missions.

A court-affiliated, County-funded day treatment program (the "Day Treatment Program") was initiated a few years ago and has been operated since its inception by an entity known as GEO Services. GEO Services is an entity separate and distinct from Firetree Place and Firetree, Ltd.

FAX: (717) 787-0806 • Web Site: www.ethics.state.pa.us • e-mail: ethics@state.pa.us

August 29, 2017

When the County issued an RFP to provide professional services in connection with the operation of the Day Treatment Program, various entities, including Firetree, Ltd. and GEO Services, submitted responses to the County RFP. Firetree Place did not participate in the County's RFP process with regard to the aforesaid professional services.

Based upon the above submitted facts, you pose the following questions:

- (1) Whether the Ethics Act would permit Mr. Mirabito to participate in the County's decision-making process for selecting the successful respondent to the County RFP to provide professional services in connection with the operation of the Day Treatment Program; and
- (2) Whether there is some legally improper appearance of impropriety that would arise if Mr. Mirabito would participate in the aforesaid decision-making process.

Discussion: It is initially noted that pursuant to Sections 1107(10) and 1107(11) of the Ethics Act, 65 Pa.C.S. §§ 1107(10), (11), advisories are issued to the requester based upon the facts that the requester has submitted. In issuing the advisory based upon the facts that the requester has submitted, the Commission does not engage in an independent investigation of the facts, nor does it speculate as to facts that have not been submitted. It is the burden of the requester to truthfully disclose all of the material facts relevant to the inquiry. 65 Pa.C.S. §§ 1107(10), (11). An advisory only affords a defense to the extent the requester has truthfully disclosed all of the material facts.

It is further initially noted that, pursuant to the same aforesaid Sections of the Ethics Act, an opinion/advice may be given only as to prospective (future) conduct. To the extent that your inquiry relates to conduct that has already occurred, such past conduct may not be addressed in the context of an advisory opinion. However, to the extent your inquiry relates to future conduct, your inquiry may and shall be addressed.

As a County Commissioner, Mr. Mirabito is a public official subject to the provisions of the Ethics Act.

Sections 1103(a) and 1103(j) of the Ethics Act provide:

§ 1103. Restricted activities

(a) Conflict of interest.--No public official or public employee shall engage in conduct that constitutes a conflict of interest.

(j) Voting conflict.--Where voting conflicts are not otherwise addressed by the Constitution of Pennsylvania or by any law, rule, regulation, order or ordinance, the following procedure shall be employed. Any public official or public employee who in the discharge of his official duties would be required to vote on a matter that would result in a conflict of interest shall abstain from voting and, prior to the vote being taken, publicly announce and disclose the nature of his interest as a public record in a written memorandum filed with the person responsible for recording the minutes of the meeting at which the vote is taken, provided that whenever a governing body would be unable to take any action on a matter before it because the number of members of the body required to abstain from voting under the provisions of this section makes the majority or other legally required vote of

approval unattainable, then such members shall be permitted to vote if disclosures are made as otherwise provided herein. In the case of a three-member governing body of a political subdivision, where one member has abstained from voting as a result of a conflict of interest and the remaining two members of the governing body have cast opposing votes, the member who has abstained shall be permitted to vote to break the tie vote if disclosure is made as otherwise provided herein.

65 Pa.C.S. §§ 1103(a), (j).

The following terms related to Section 1103(a) are defined in the Ethics Act as follows:

§ 1102. Definitions

"Conflict" or "conflict of interest." Use by a public official or public employee of the authority of his office or employment or any confidential information received through his holding public office or employment for the private pecuniary benefit of himself, a member of his immediate family or a business with which he or a member of his immediate family is associated. The term does not include an action having a de minimis economic impact or which affects to the same degree a class consisting of the general public or a subclass consisting of an industry, occupation or other group which includes the public official or public employee, a member of his immediate family or a business with which he or a member of his immediate family is associated.

"Authority of office or employment." The actual power provided by law, the exercise of which is necessary to the performance of duties and responsibilities unique to a particular public office or position of public employment.

"Business." Any corporation, partnership, sole proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, holding company, joint stock company, receivership, trust or any legal entity organized for profit.

"Business with which he is associated." Any business in which the person or a member of the person's immediate family is a director, officer, owner, employee or has a financial interest.

65 Pa.C.S. § 1102.

Subject to the statutory exclusions to the Ethics Act's definition of the term "conflict" or "conflict of interest," 65 Pa.C.S. § 1102, a public official/public employee is prohibited from using the authority of public office/employment or confidential information received by holding such a public position for the private pecuniary benefit of the public official/public employee himself, any member of his immediate family, or a business with which he or a member of his immediate family is associated.

In each instance of a conflict of interest, the public official/public employee would be required to abstain from participation. The abstention requirement would not be

limited merely to voting, but would extend to any use of authority of office including, but not limited to, discussing, conferring with others, and lobbying for a particular result. Juliante, Order 809. Subject to certain statutory exceptions, in each instance of a voting conflict, Section 1103(j) of the Ethics Act would require the public official/public employee to abstain and to publicly disclose the abstention and reasons for same, both orally and by filing a written memorandum to that effect with the person recording the minutes.

In applying the above provisions of the Ethics Act to the instant matter, you are advised as follows.

Firetree Place is a business with which Mr. Mirabito is associated in his capacity as a Director. Subject to the statutory exclusions to the definition of "conflict" or "conflict of interest" as set forth in Section 1102 of the Ethics Act, 65 Pa.C.S. § 1102, pursuant to Section 1103(a) of the Ethics Act, Mr. Mirabito would have a conflict of interest in his capacity as a County Commissioner in matters that would financially impact him or a business with which he is associated, such as Firetree Place.

Under the submitted facts, Firetree, Ltd. is not a business with which Mr. Mirabito is associated. Therefore, Mr. Mirabito would not have a conflict of interest in his capacity as a County Commissioner in matters that would financially impact Firetree, Ltd. but that would not financially impact him, a member of his immediate family, or a business with which he or a member of his immediate family is associated, such as Firetree Place.

You are advised that absent some basis for a conflict of interest such as a private pecuniary benefit to Mr. Mirabito, a member of his immediate family, or a business with which he or a member of his immediate family is associated, Mr. Mirabito would not have a conflict of interest under Section 1103(a) of the Ethics Act in his capacity as a County Commissioner with regard to participating in the County's decision-making process for selecting the successful respondent to the County RFP to provide professional services in connection with the operation of the Day Treatment Program.

You are further advised that an appearance of impropriety would not be sufficient to establish a violation of the Ethics Act.

The propriety of the proposed conduct has only been addressed under the Ethics Act; the applicability of any other statute, code, ordinance, regulation or other code of conduct other than the Ethics Act has not been considered in that they do not involve an interpretation of the Ethics Act. Specifically not addressed herein is the applicability of the County Code.

Conclusion: Based upon the submitted facts that: (1) Rick Mirabito ("Mr. Mirabito"), is a County Commissioner for Lycoming County ("County"), Pennsylvania; (2) in a private capacity, Mr. Mirabito is a Member of the Board of Directors of a non-profit corporation named "Firetree Place," which operates a community center focused on serving the needs of local youth; (3) Firetree Place was created with the assistance of a non-profit corporation named "Firetree, Ltd.," which provides transactional services to individuals within the criminal justice system; (4) Firetree Place and Firetree, Ltd. are separate entities with separate boards of directors, staff, addresses, and missions; (5) a court-affiliated, County-funded day treatment program (the "Day Treatment Program") was initiated a few years ago and has been operated since its inception by an entity known as GEO Services; (6) GEO Services is an entity separate and distinct from Firetree Place and Firetree, Ltd.; (7) when the County issued a Request for Proposals ("RFP") to provide professional services in connection with the operation of the Day Treatment Program, various entities, including Firetree, Ltd. and GEO Services, submitted responses to the County RFP; and (8) Firetree Place did not participate in the County's RFP process with regard to the aforesaid professional services, you are advised as follows.

As a County Commissioner, Mr. Mirabito is a public official subject to the provisions of the Public Official and Employee Ethics Act ("Ethics Act"), 65 Pa.C.S. § 1101 et seq. Firetree Place is a business with which Mr. Mirabito is associated in his capacity as a Director. Subject to the statutory exclusions to the definition of "conflict" or "conflict of interest" as set forth in Section 1102 of the Ethics Act, 65 Pa.C.S. § 1102, pursuant to Section 1103(a) of the Ethics Act, Mr. Mirabito would have a conflict of interest in his capacity as a County Commissioner in matters that would financially impact him or a business with which he is associated, such as Firetree Place.

Under the submitted facts, Firetree, Ltd. is not a business with which Mr. Mirabito is associated. Therefore, Mr. Mirabito would not have a conflict of interest in his capacity as a County Commissioner in matters that would financially impact Firetree, Ltd. but that would not financially impact him, a member of his immediate family, or a business with which he or a member of his immediate family is associated, such as Firetree Place.

Absent some basis for a conflict of interest such as a private pecuniary benefit to Mr. Mirabito, a member of his immediate family, or a business with which he or a member of his immediate family is associated, Mr. Mirabito would not have a conflict of interest under Section 1103(a) of the Ethics Act in his capacity as a County Commissioner with regard to participating in the County's decision-making process for selecting the successful respondent to the County RFP to provide professional services in connection with the operation of the Day Treatment Program. Lastly, the propriety of the proposed conduct has only been addressed under the Ethics Act.

Pursuant to Section 1107(11) of the Ethics Act, an Advice is a complete defense in any enforcement proceeding initiated by the Commission, and evidence of good faith conduct in any other civil or criminal proceeding, provided the requester has disclosed truthfully all the material facts and committed the acts complained of in reliance on the Advice given.

This letter is a public record and will be made available as such.

Finally, if you disagree with this Advice or if you have any reason to challenge same, you may appeal the Advice to the full Commission. A personal appearance before the Commission will be scheduled and a formal Opinion will be issued by the Commission.

Any such appeal must be in writing and must be actually received at the Commission within thirty (30) days of the date of this Advice pursuant to 51 Pa. Code § 13.2(h). The appeal may be received at the Commission by hand delivery, United States mail, delivery service, or by FAX transmission (717-787-0806). Failure to file such an appeal at the Commission within thirty (30) days may result in the dismissal of the appeal.

Sincerely,


Robin M. Hittie
Chief Counsel

ATTACHMENT C

GEO
 "Global Excellence Outsourcing"

| Pro | Con |
|--|--|
| Financial input to Lye. Cty. \$5/day | Monetary income is too low No guarantee of daily participation |
| Have ties to community | How solid are these ties (Born + raised or transient ties) Easy to abscond Risk of family disavowment |
| Early release under program (Is good for convict) | Releasing sex offenders, murderers, weapons violations, repeat felons opoid traffickers |
| Cost to participant Drug test, ankle ankle monitor | Releasing opoid traffickers into familiar territory, to deal drugs to pay for programs costs |
| Mz. Stahl's Quote | "Hopefully will allow convicts to finally become positive productive members of society" |
| | NO GUARANTEE OF THIS |