



State of Oklahoma
PARDON AND PAROLE BOARD

PARDON AND PAROLE BOARD
Business Meeting Minutes

Monday, June 8, 2020
9:00 a.m.

MEMBERS PRESENT: Robert Gilliland, Allen McCall, Larry Morris, Kelly Doyle, and Adam Luck. All Board Members appeared remotely via Zoom Webinar as panelist as authorized under HB 661.

MEMBERS ABSENT: None

STAFF: Steven Bickley, Melinda Romero, and Kyle Counts. All staff appeared remotely as panelist via Zoom Webinar.

GUESTS: None

I. Call to Order – Chairman Robert Gilliland

The Business Meeting of the Pardon and Parole Board (PPB) was called to order at 9:00 a.m. by Chairman Robert Gilliland on Monday, June 8, 2020, on the Zoom Webinar ID#93480008040.

A. Roll Call

The members attending as panelists via Zoom Webinar were Robert Gilliland, Allen McCall, Larry Morris, Kelly Doyle, and Adam Luck. The voting order was announced as Larry Morris, Kelly Doyle, Adam Luck, Robert Gilliland, Allen McCall.

B. Pledge of Allegiance

Since the meeting was virtual and no flag was present, there was no Pledge of Allegiance.

C. Assurance of Compliance with Open Meeting Act

General Counsel Kyle Counts provided assurance of compliance with the Open Meeting Act. The business meeting of the Pardon and Parole Board was convened via Zoom Webinar in accordance with the Oklahoma Open Meeting Act as amended under HB 661. This meeting was preceded by advance notice of the date, time, and place filed with the Oklahoma Secretary of State on November 13, 2019. Notice of this meeting was also given at least twenty-four (24) hours in advance of the meeting by posting notice of the date, time, virtual meeting place, and agenda of the meeting at 9:00 AM. on June 4, 2020, on our website, www.ok.gov/ppb. The meeting is in compliance with the Open Meeting Act.

II. Business Meeting

A. Discussion and Possible Action on May Business Meeting Minutes

The May business meeting minutes were provided to the Board for review. Allen McCall made a motion to approve the May business meeting minutes, Larry Morris seconded. The board approved the motion 5-0.

B. Discussion and Possible Action on May Parole Meeting Minutes

The May parole meeting minutes were provided to the Board for review. Allen McCall made a motion to approve the May parole meeting minutes, Chairman Gilliland seconded. The board approved the motion 5-0.

C. Discussion and Possible Action on May Special Meeting Minutes

The May special meeting minutes were provided to the Board for review. Allen McCall made a motion to approve the May parole meeting minutes, Chairman Gilliland seconded. The board approved the motion 5-0.

D. Discussion and Possible Action on Agency Updates

1. Personnel Updates: New Hires and Separations– Deputy Director, Melinda Romero

Deputy Director Romero shared that there have been no new hires or separations since the last Board meeting.

2. Administrative Staff Activities – Deputy Director, Melinda Romero

Deputy Director Romero shared that the agency brought in three temporary staffers with two helping with administrative functions, and one assigned to General Counsel Counts to assist with legal work such as certificate drafting. Deputy Director Romero is in contact with the state's authorized temp agency, Galt, to potentially provide one more temporary employee to help with statistics. The agency is still limiting the office to two administrative staff members at a time for at least a few more weeks. In the field, Deputy Director Romero updated the Board that they are working on July investigative reports, have no medicals for June, and they are still working from home with trips to the facilities 1-2 times a week. Chairman Gilliland confirmed with Deputy Director Romero that there have been no positive cases of COVID-19 within the agency.

3. Legal Update – General Counsel, Kyle Counts

Since last meeting, the Oklahoma Court of Criminal Appeals dismissed the case regarding the Board's ability to pardon deferred sentences. The case on commuting probationary sentences is still pending in district court. General Counsel Counts reported he expects a more substantive update at the next regular meeting. The agency is caught up on all revocation cases. Since the last meeting, 11 revocation hearings were held and seven other inmates waived their right to a hearing – recommendations and certificates were provided to the Governor on all 18 of those. General Counsel Counts and Victims Coordinator Jennifer Pando conducted a webinar training for the District Attorneys and Attorney Generals offices on commutations and victims notifications. This training went very well and General Counsel Counts will be working with Pando to address some of the feedback received. Judge McCall asked if the case that was dismissed belonged to Attorney Michael Risley and why it was dismissed. Michael Risley is the attorney on that case and it was dismissed based on an untimely filing.

4. Director's Update – Executive Director, Steven Bickley

Director Bickley began his update by reporting that the Association of Paroling Authorities International had awarded the Board one of its six annual awards. The Board won the Care Award which rewards best practices in the area of public and state voter education. Chairman

Gilliland commended the work of the agency in receiving the award. Judge McCall thanked the staff for their work. Director Bickley advised that the Board added a new parole denial reason at Vice-chairman Luck's request – F – to be used when there is a forthcoming projected release date. The Board will add this to the website and print new laminated cards. Director Bickley advised that staff is working on Board member Doyle's request to revisit personal appearance scheduling. Additionally, staff is looking into Vice-chairman Luck's request that the agency investigate the 'child abuse' versus 'child neglect' categorization to make sure the Board understands how it goes into the DOC system. Director Bickley reported that another budget cycle has begun, and that Director Bickley and Deputy Director Romero will be working on requests to work on the budget and will report to the Board when they have an update. Chairman Gilliland asked if there were any concerns with the budget, and Director Bickley advised that he needs to spend some time analyzing it but does not expect any issues.

III. Discussion and Possible Action on Request for Disqualification of Kelly Doyle and Adam Luck by District Attorney for District 9 – Executive Director, Steven Bickley

Director Bickley addressed Chairman Gilliland concerning the request from the District Attorney for District 9 requesting that the Chairman ask Members Doyle and Luck to recuse themselves from hearing any Payne and Logan County cases and, should they be unwilling to recuse themselves, that the Chairman disqualify Members Doyle and Luck from participating in cases involving Payne and Logan Counties. The District Attorney filed similar requests last month; however, such requests were filed during the Board meeting, well after the deadline for protests thus making the previous requests and protests moot.

As the District Attorney notes, this was a blanket request for either recusal or disqualification. The District Attorney claims that a conflict of interest exists requiring disqualification. It should be noted that the District Attorney does not allege any case-specific conflict of interest in any of the nine cases being protested this month, but only makes general allegations of conflict of interest.

The Chairman requested that General Counsel Counts and Executive Director Bickley analyze the request and advise him on its merits and the appropriate response. The logic behind the request begins by inaccurately asserting that Board Members are employees, which they are not. Next, the request refers to Policy 123 entitled "Ethics and Conflicts of Interest". Policy 123 is applicable and still in force, but the letter references an outdated version of the Policy. The current policy is posted on our website.

Conflicts of Interest under Policy 123 are based upon a self-identification standard. The policy states that: "Any Board member who is aware of a conflict of interest shall recuse himself or herself from a matter pending before the Board if (emphasis added) it would impact the member's impartiality." Under our policy, only individual Board members can raise conflict of interest issues based upon self-reporting that their impartiality has been impacted. Since any recusal or absence of a PPB member is counted as a "no" vote against the offender, the request that the Chairman disqualify two members from hearing cases from Logan and Payne Counties would structurally change the clemency system against offenders from these counties by having their hearings begin with two strikes against them.

Accordingly, under Policy 123, there is no authority or process that would allow the Chair to disqualify a fellow board member due to a perceived COI. If a Board member believes that their impartiality is unaffected or that they can fairly and impartially participate in the hearing, they need not, nor should not, recuse. Policy 123 is written and crafted in a manner to ensure that independent board members duly appointed by either the Governor, the Civil, or the Criminal Court cannot be removed from exercising their conscience and independently voting as they see fit. Only the individual Board member can recuse themselves – no one else has that authority under Policy 123.

In conclusion, the Chair has no authority to unilaterally disqualify duly appointed Board members.

IV. Discussion and Possible Action on Eligibility of Death Row Inmates to Apply for Standard Two Stage Commutation – General Counsel, Kyle Counts

General Counsel Kyle Counts shared that in October of 2019, the Board received an application for commutation from a death row inmate. General Counsel Counts researched the underlying law and attempted to reconcile the chapters of the administrative code addressing the commutation and clemency hearing processes. General Counsel Counts advised that the best course of action is to seek an outside legal opinion that is determinative and binding on the matter. General Counsel Counts requested a motion authorizing him to ask the Attorney General's office the following question: Under the US and Oklahoma Constitutions, Title 57 of the Oklahoma Statutes, and Title 515 of the Oklahoma Administrative Code, is an inmate on death row eligible for consideration under the Board's two-stage commutation process outlined in Chapter 15 of Title 515?

Judge McCall acknowledged that there are competing opinions and his belief that it is best to have an outside agency look at the issue and give an opinion. Chairman Gilliland agreed with Judge McCall's assessment and said the best course of action is to seek an Attorney General's opinion on the question. Judge McCall made a motion to submit to the Attorney General of the State of Oklahoma the question announced by General Counsel on whether death row inmates are eligible for the two-stage commutation process; Chairman Gilliland seconded. Vice-chair Luck asked how long it may take to receive a response and General Counsel Counts advised he does not have a timeline but believes it will be prompt based on executions set to resume soon. Chairman Gilliland suggested that General Counsel and the Director express the urgency of the issue when submitting the request. General Counsel advised he would move quickly but the minutes for the June meeting must be approved before it can be submitted. Judge McCall advised that "death is different" and that based on the seriousness of the death penalty, he believes the Attorney General will move quick to provide an opinion on the Board's question. With no further questions or discussion, Chairman Gilliland called the vote on the motion and it was approved 5-0.

V. Discussion and Possible Action Associated with Clemency Hearing Training Relating to Timelines, Policies, and Procedures – Executive Director, Steven Bickley

Discussion was passed to a future date to allow more time for consideration of the policy and the proposed changes. Chairman Gilliland moved to table agenda item V; Judge McCall seconded. The Board approved the motion 5-0.

VI. New Business Not Known or Which Could Not Have Been Reasonably Foreseen Before the Posting of the Agenda – Chairman Robert Gilliland

There was no new business.

VII. Adjournment of Business Meeting – Chairman Robert Gilliland
The meeting was adjourned at 9:48 a.m.

Respectfully Submitted,



Kyle Counts
General Counsel

The minutes for the June 2020 Pardon and Parole Board Business Meeting were approved by a majority vote on the 26 day of June 2020.