

J. Kevin Stitt
Governor



Tom Bates
Executive Director

State of Oklahoma
PARDON AND PAROLE BOARD

PARDON AND PAROLE BOARD
Business Meeting Minutes

Monday, March 8, 2021
9:00 a.m.

MEMBERS PRESENT: Adam Luck, Larry Morris, Allen McCall, and Kelly Doyle appeared via Zoom Webinar as authorized under SB 1031.

MEMBERS ABSENT: None

STAFF: Tom Bates, Melinda Romero, Leroy Long, Jennifer Pando, and Kyle Counts. All staff appeared via Zoom Webinar.

GUESTS: None

I. Call to Order – Adam Luck, Acting Chairman

The Business Meeting of the Pardon and Parole Board (PPB) was called to order at 9:00 a.m. by Acting Chairman Adam Luck, on Monday, March 8, 2021.

A. Roll Call

The members attending were Adam Luck, Larry Morris, Allen McCall, and Kelly Doyle. The voting order was announced as Kelly Doyle, Larry Morris, Adam Luck, and Allen McCall.

B. 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 SB 1031. This meeting was preceded by an amended advance notice of the date, time, and place filed with the Oklahoma Secretary of State on November 17, 2020. 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 on March 3, 2021, on our website, www.ok.gov/ppb. The meeting is in compliance with the Open Meeting Act.

II. Business Meeting –Tom Bates, Executive Director, Melinda Romero, Deputy Director, Leroy Long, Field Director, and Kyle Counts, General Counsel

A. Discussion and Possible Action on January Business Meeting Minutes

The January business meeting minutes were provided to the Board for review. Allen McCall made a motion to approve the January business meeting minutes, Larry Morris seconded. The Board approved the motion 4-0.

B. Discussion and Possible Action on January Parole Meeting Minutes

The January parole meeting minutes were provided to the Board for review. Mr. McCall made a motion to approve the January parole meeting minutes, Larry Morris seconded. The Board approved the motion 4-0.

C. Discussion and Possible Action on February Special Meeting Minutes

The February special meeting minutes were provided to the Board for review. Mr. McCall made a motion to approve the February special meeting minutes, Larry Morris seconded. The Board approved the motion 4-0.

D. Discussion and Possible Action on Agency Updates

1. Personnel Updates – New Hires and Separations

Deputy Director Romero reported there were no new hires or separations to report.

2. Field Updates

Mr. Long reported that interviews were being scheduled in the next week to fill the investigator vacancy at Mabel Bassett Correctional Center. Once that is filled, there will be a total of 12 investigators and one supervisor. The PPB is working with the Department of Corrections to schedule around their quarantine procedures, but the field is currently wrapping up the April docket. Mr. McCall asked about the general status surrounding Covid at DOC, and Mr. Long relayed that conditions are improving as vaccinations have increased and briefly described the process for quarantining inmates during intake.

3. Legal Updates

Mr. Counts briefed the Board on revocations, reporting that there have been 33 revocations in 2021, with 11 requesting hearings. Mr. Counts advised that the agency is tracking to determine if certain parole types are being revoked disproportionately and that he would update the Board as needed. Mr. Counts advised that a special meeting would be needed to vote on adopting the agency's proposed rules as they must be submitted for the Governor and Legislature to review by April 1, 2021. Mr. Counts plans to look at policies and procedures at the conclusion of that project in order to improve what is there, but also address issues that come up for which there is not a policy or procedure in place. Mr. Counts suggested that an executive session may be necessary to discuss litigation and investigations affecting the Board. Mr. McCall asked for the effective date for the proposed rules and Mr. Counts advised it would be in July or August.

4. Director's Update

Director Bates advised he would also be brief so that the Board could begin the parole meeting. Director Bates expressed appreciation to the leadership team and staff for their handling of the recent challenges facing the agency. Chairman Luck concurred with that sentiment.

III. New Business Not Known or Which Could Not Have Been Reasonably Foreseen Before the Posting of the Agenda – Adam Luck

Acting Chairman Luck stated that there were matters to be discussed in new business and asked Director Bates to brief the Board. Director Bates advised that two items came up after the posting of the agenda. The first issue concerns recusal requests and the second regards late submissions of supplementary materials for commutation applications. Director Bates asked that

Mr. Counts brief the Board on the agency's conflict of interest (COI) policies before the Board discussed.

Mr. Counts described the Board's Policy 123 as a self-reporting ethics and COI policy that is publicly posted to the agency's website, and read the language describing what potential conflicts it is intended to address. Mr. Counts advised that the self-reporting nature of the Board's ethics policies is consistent with other Boards that he had researched. Mr. Counts explained that the rationale behind that framework is to promote the independence of each Board member and the overall harmony of the group, as any type of policy allowing forced recusals could allow the majority of the Board to force the recusal of a member in the minority if they disagreed with their voting pattern. Mr. Counts advised he would look at the policy to address any deficiencies. Chairman Luck opened discussion by commenting on the recusal request that prompted the discussion. Chairman Luck reiterated that it is the duty of each Board member to examine whether they have a COI, and that after examination he does not believe he has a COI and will not be recusing from the case in question. Chairman Luck stated that Policy 123 also provides a path for addressing potential COIs if the Board member is uncertain if it justifies recusal, but that he has not taken those steps as he does not believe the communication in question constitutes a COI. Chairman Luck explained that the purpose of the communication was to provide clarity regarding a process that was a first for the state, and that the method in which he made the communication had the greatest chance of reaching the widest audience on that platform. Chairman Luck advised that he did not speak for the Board, but that he believes social media can bring transparency to the agency's work. Chairman Luck opened the topic up for discussion. Mr. McCall explained that there are different standards for conflicts of interests that apply to members of the judiciary than what applies to other public officials, such as state board members. Mr. McCall explained that if a juror recuses then they are replaced, whereas if a Board member recuses from a case then it is effectively a 'no' vote for the person seeking relief because the Board member is not replaced. Mr. McCall explained that he initially considered recusing from Comanche County cases before the Board, but did not believe that was fair because it would be a 'no' vote for all those cases that come before the Board. Mr. McCall concurred with Mr. Counts and Chairman Luck that the Board members do not and should not have the authority to force the recusal of a fellow Board member as it could lead to infighting and prevent the Board from getting its work done. Discussion on this matter concluded and Chairman Luck asked Mr. Counts to address the matter regarding late supplementation of commutation applications.

Mr. Counts explained that this was another area in which the Board does not currently have a rule, policy, or procedure. The application is deemed complete at the time it is docketed and distributed to trial officials. The deadline for delegate letters is the Tuesday prior to a Board meeting, but Mr. Counts explained that this is an inappropriate way to handle supplementation of an application because trial officials have the same deadline, and thus would be unable to respond to any new information provided in the supplementary material. Mr. Counts further advised that the new proposed rules include a section for withdrawing an application, and allowing an applicant to withdraw their application and submit a new one would be the most appropriate way to handle the issue unless a more specific new policy is created to address correspondence from an attorney. Chairman Luck advised that as this is a new type of proceeding, the Board is encountering novel issues and will address those in the future.

Chairman Luck thanked Director Bates and the staff for erring on the side of caution and allowing the Board to have as much information as possible in making their decisions, but that he would not be considering the material submitted late and asked Mr. Counts to brief the Board at the next meeting on policy suggestions regarding the matter. Mr. McCall advised that this was another distinction from the judicial system in which attorneys have strict discovery deadlines. Mr. McCall explained many of the distinctions between a judicial proceeding and the hearing before the Pardon and Parole Board, stating that the Parole Board hearings are not intended or designed to be factual inquiries. Mr. McCall suggested that policies could be drafted to address some of these issues but suggested that the Board should keep in mind the purpose of the hearing. Mr. McCall agreed that it was appropriate to send the Board members the late materials and that each Board member could determine what weight to give to it. Mr. McCall indicated he did not believe the proceeding prompting these discussions was entirely fair to all sides, but believes improvements can be made so that it is not a problem in the long term. Mr. Morris stated that there is an inherent problem with the current rules in that the submission deadline for an attorney is the same for district attorneys who may want to respond. Mr. Morris believes the Board should not be so rigid in its rules that in a case involving matters of life and death, the Board is forbidden from considering any information because of a deadline. Mr. Morris believes that an inmate or a district attorney should be able to request that a hearing be passed, if necessary, if information being provided to the Board members does not meet a deadline. Mr. McCall agreed with Mr. Morris's thoughts and asserted that it was a fixable issue to insure fairness to all sides. The Board concluded discussion on new business.

IV. Adjournment of Business Meeting – Adam Luck

The meeting was adjourned at 9:30 a.m.

Respectfully Submitted,



Kyle Counts
General Counsel

The minutes for the March 2021 Pardon and Parole Board Business Meeting were approved by a majority vote on the 12th day of April 2021.