

Haywood County "Toeprints"

April 12, 2011

Vol. #2 Issue #14 (Subject: **Fairgrounds Owner/Contractor Agreement, Revaluation**)

www.haywoodtp.net

What's Happening?

The purpose of this newsletter is to inform Haywood County Taxpayers of what transpires at the bi-monthly County Commission Meetings. This newsletter will be written from the perspective of a casual observer, myself. Any opinions expressed will be mine.

My 3 Minute Public Comment, April 4, 2011.

[**Editors Note:** Following my Public Comment and question, responses from **Mark Swanger** [D] and **Chip Killian** [D] are transcribed from the on-line video of the April 4th Commission Meeting].

"No one seems to be able to answer my question about the Architectural Agreement that you signed, Chairman Swanger, between the "Owner" and the Contractor, B. Allen Construction on March 22nd, for the Haywood County Fairgrounds Toilet Facilities & Accessibility Ramp. This is the work that you authorized to be completed on the Haywood County Fairgrounds Arena Building, a structure.

The Agreement lists the "Owner" as Haywood County Government. I came before you on February 21, and asked you the question - "Who owns the Haywood County Fairgrounds Arena Building, Haywood County or the Haywood County Fairgrounds, Inc.?"

During that meeting, you had Chip Killian respond that Haywood County Fairgrounds, Inc., The Fairgrounds Board, a private 501 c3 non-profit corporation, owns the building. Further, it has been stipulated in the following documents, your documents, that the Fairgrounds Board owns the buildings on the Fairgrounds, not the County. These are your documents!

- The minutes for the Commission Meeting for February 21, 2011 when Chip spoke,
- The MOU (Memorandum of Understanding) dated December 20th,
- The pending "Agreement" to purchase the Fairground structures, now posted on my website - www.haywoodtp.net,
- The New and Improved MOU (Amended and Restated Memorandum of Understanding), Attachment 6 on today's agenda, which you will presumably pencil whip your approval,

and finally,

- The Call for Public Hearing calling for piling more debt onto Haywood County's already \$85 Millions dollars of debt, Attachment 5 on today's agenda, which you will presumably pencil whip your approval.

Here we have all of these documents, your documents, which indicate the Fairground Arena Building belongs to the Fairgrounds Board. So, if it walks like a duck, quacks like a duck, one would conclude that it is a duck. Why are you hell bent on claiming that you, Haywood County Government, is the "Owner" on the Agreement between the "Owner" and the Contractor? Why is Dale Burris listed as the "Owner" representative? Why isn't one of the Board Members of the Haywood County Fairground listed as the "Owner" representative, like Mary Ann Enloe, the chairman of the Board?

Rather than passing this question off to either Chip Killian or Leon Killian, who are mired with conflicts of interest in this whole fiasco, as he represents both the County and the Fairground Board, I would appreciate a direct response from you, Chairman Swanger, in answer to this question, if indeed you chose to answer it, as you were the one to sign the Agreement.

I'll restate the question:

Why is Haywood County Government listed as the "Owner" and Dale Burris listed as the "Owner Representative" on the Architect Agreement between the "Owner" and the Contractor for the Fairgrounds Arena Building? Tell me why this is a valid contract."

[Transcription begins here...]

Swanger: ["**Experiencing Audio Difficulties**" message depicted on video while **Swanger** spoke] "... I signed that agreement based on the authority given to me by this board. ..." (or something similar to that)... and then passes the ball over to Killian,

Killian: "Yes, I don't know that I can convince Mr. Miller that it's a valid legal agreement, I don't think I have a duty to do so, but for the benefit of this board, Mr. Chairman, of course, I'm Chip Killian and Leon Killian, that's one in the same, always has been for now, 66 and a half years, and everybody in Haywood County knows that. The last Whereas paragraph in the Amended and Restated MOU states Whereas the Fairgrounds intends to execute such legal documents including but not limited to subordination, non disturbance and attornment agreement, as is required by the lender of the

aforsaid construction funds and as necessary to enable the county to provide a first lien deed of trust to secure such loan. Mr. Miller's correct, the county owns the real estate, the underlying fee simple title, the ... it..., there.... it's a ground lease, the improvements have been constructed by the Fairground Board. This document and such other legal documents, as the county, as the bank might require, would be signed in order for the county to provide a first lean. There is no conflict of interest under the laws, under the rules of ethics, of this state or any other state when two parties both instruct and approve the same lawyer to perform a task that's in both of their best interests."

Some comments...

[**Editors Note:** For the first time since I have been attending County Commission Meetings since July 2009, there has been an **Audio Malfunction** in the recorded audio of County Commissioners. It occurred during **Swanger's** critical reply to my question, with an on-screen message indicating "**Experiencing Audio Difficulties**".]

The audio is extremely difficult to hear when **Swanger** speaks on the video, and his reply is compiled from the following:

- My recollection of what he said, as I was standing right there at the podium,
- My recorder (weak),
- The County Video (weak).

[**Editor's Note:** In addition, **Swanger** was given an opportunity to make any corrections in an e-mail I sent to him on 4/9/2011. There has been no response from **Swanger**, any other commissioner, or **Chip** (and/or **Leon**) **Killian**.]

Basically, **Swanger** appeared to distribute blame equally among the other commissioners who gave him authority to sign this Agreement. It's analogous to when he was quoted in the Mountaineer Article, by Vicki Hyatt, 2/23/2011 when he said: "**Uneven enforcement is always something of a concern, but what do I do, make a complaint and shut down the one in Asheville?**", referring to the Asheville Fairgrounds. It appears that **Swanger** is telling us that when we see a problem, look the other way. Looks like he is doing the same thing again with his Architecture Agreement response. What Problem?

Moving to **Chip** and/or **Leon Killian's** response...

[**Editors Note:** **Chip's** (**Leon's**) response is so flawed, it deserves to be dissected sentence by sentence. Remember, **Chip** (**Leon**) had practically zero time to gather his thoughts for his reply before **Swanger** punted this little bomb to him. I had specifically requested that **Swanger** reply to my question, and that it **not** be responded to by **Killian**. Normally, all public comments are presented first, then at the

end of the public comment session, the chair (**Swanger**) may or may not choose to address them. **Swanger**, however, immediately began responding to my question while I was still standing at the podium, and then immediately lobbed it to **Killian** for his unprepared response.]

Begin the dissection...

"Yes, I don't know that I can convince Mr. Miller that it's a valid legal agreement, I don't think I have a duty to do so, but for the benefit of this board, Mr. Chairman, of course, I'm Chip Killian and Leon Killian, that's one in the same, always has been for now, 66 and a half years, and everybody in Haywood County knows that. ..."

There are two subjects here. The first, and most important is when **Chip** says "**I don't think I have a duty to do so...**", in response to the question if this is a valid agreement.

What? Here I am, a simple Haywood County Taxpayer, asking what appears to me to be a very logical question, substantiated by a considerable amount of supporting evidence, which should be important to the Taxpayers of Haywood County, and he thinks he doesn't have the duty to answer it? That is a slap in the face of every Haywood County Taxpayer. I'd like to remind **Killian** that he is in an appointed position, and as County Attorney, he is expected to represent the people of Haywood County.

By the way, it is **not** true that everyone in Haywood County knows that **Chip Killian** and **Leon Killian** are the same person. I can't count the number of expressions on peoples faces when I point this out.

"... The last Whereas paragraph in the Amended and Restated MOU states Whereas the Fairgrounds **intends** to execute such legal documents including but not limited to subordination, non disturbance and attornment agreement, as is required by the lender of the aforesaid construction funds and as necessary to enable the county to provide a first lien deed of trust to secure such loan. ..."

Recall my question - "Tell me why this is a valid contract." I thought that was a simple and direct enough question. The contract was signed on March 22, 2011 by **Mark Swanger**. So why on God's Green Earth does **Killian** reference an MOU [re: www.haywoodtp.net, Attachment 6] in his response that hasn't even been approved by commissioners on today's agenda. In what court of law would Chip Killian not be laughed out of the courtroom as he attempts to convince someone that an agreement that had already been signed will be valid somewhere down the road a little when there is an **intention** to sign another agreement?

“... Mr. Miller’s correct, the county owns the real estate, the underlying fee simple title, the ... it..., there.... it’s a ground lease, the improvements **have been** constructed by the Fairground Board. This document and such other legal documents, as the county, as the bank might require, **would be signed** in order for the county to provide a first lean. ...”

Must have pained **Killian** to say that I was correct. Notice he puts the Fairgrounds Board in past tense when he refers to improvements in the construction? When did it ever change to past tense? Again, another reference to “This document...”, referring to the New and Improved MOU which had not even been approved at that point, and again - “**would be signed...**” referring to an **intent** to sign the 24 page Agreement to purchase the Fairgrounds Buildings [re: www.haywoodtp.net].

Finally,

“... There is no conflict of interest under the laws, under the rules of ethics, of this state or any other state when two parties both instruct and approve the same lawyer to perform a task that’s in both of their best interests.”

The problem, **Chip**, is when there is a potential disagreement between the two parties. On the one hand, you were appointed as County Attorney by the County Commissioners to represent the people of Haywood County, and on the other hand, you also represent the Fairgrounds Board and The County through your law firm, **Nelson, Mullins** [re: **ABUSE OF POWER**, www.haywoodtp.net]. Here is a perfect example of the conflict - “... I don’t know that I can convince Mr. Miller that it’s a valid legal agreement, I don’t think I have a duty to do so, ...”. You are conflicted in answering my simple question, between me, who represent one of many Haywood County Taxpayers, and your two clients, The Fairground Board and The County (i.e. the five county commissioners, the people who appointed you).

By the way, there is no record of any payment from the Fairgrounds Board [re: past two years Fairground Board minutes and financial records, www.haywoodtp.net] to **Killian** for his legal services. Who is paying for your time representing the Fairgrounds Board, Mr. **Killian**? Perhaps you can advise your client, the Fairgrounds Board, to hand over some “New and Improved” Fairground Board minutes and financial records over the past two years reflecting these transactions.

Translation of Swanger and Killian comments.

Swanger looked the other way, and **Killian** confirmed that he was both **Chip Killian** and **Leon Killian**. Otherwise, nothing was said by either that stated why the Architect Agreement was a valid contract.”

Conclusions.

- The Architect Agreement between the “Owner” and the Contractor **must not** be a valid contract.
- I believe we need an appointed County Attorney that **does** feel that it is his duty to answer Taxpayer questions, and again, call for the resignation of **Leon Killian**.

Next, follow the money...

Revaluation.

Floyd Gibson expressed unhappiness during the Public Comment Session regarding his revaluation. His assessment went from \$36K to \$41K for no apparent reason, and he wanted to know why, but got no answer.

There appear to be some major changes in both some individual properties and commercial properties. If yours is one of these unexplained increases (or decreases), you are urged to stand up in front of the county commissioners at the next county commission meeting and express your concerns.

Day Counter for Mountaineer and SMN.

This new feature shows the days since 3/30/2011 since either The Mountaineer or the Smoky Mountain News will have anything to say about the Haywood County Fairgrounds Arena Building Contract fiascos.

- The Mountaineer 13 days
- Smoky Mountain News 13 days

Legend: If any name is in **bold**, it can’t be a good thing. Brackets following a name in **bold** with [D], [R], or [U] denote the individuals party affiliation, **D**emocrat, **R**epublican or **U**naffiliated. re: Haywood County Election Office - all voters 11/18/2010.]

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