

July 26, 2022

The Mahaska County Board of Supervisors met in special session on the above date at 8:00 a.m. in the third-floor conference room of the Mahaska County courthouse. Present were the following board members: Chairman – Mark Groenendyk; Vice chairman – Steve Wanders and Member – Chuck Webb. Also, present were Darin Hite, Mahaska County IT; Lindsey Thomas, Mahaska County Assessor; Connie Van Polen, Mahaska County Treasurer, Connie Blommers, Russ Van Renterghem, Mahaska County Sheriff; Teresa Paige, Mahaska County Deputy Auditor; Michelle Kent, Mahaska County Deputy Auditor; Tracey Ver Steegh, Mahaska County Deputy Auditor; Talisa Voss, Mahaska County Jail Administrator, Ken Allsup, Oskey News via phone, and Jody Van Patten, Mahaska County Auditor.

It was moved by Webb seconded by Wanders to approve the agenda for today's meeting. All present voted aye. Motion carried.

Public Comments: None

It was moved by Webb seconded by Wanders to appoint Jody Van Patten as Mahaska County Auditor to fill the vacancy left by former County Auditor Susan L. Brown due to retirement until November 8, 2022 election and the completion of the canvas of election on November 15, 2022. All present voted aye. Motion carried.

Judge Rose Anne Mefford swore in County Auditor Jody Van Patten.

It was moved by Groenendyk seconded by Wanders to appoint Jody Van Patten as trustee to the Heartland Insurance Risk Pool board of trustees. All present voted aye. Motion carried.

It was moved by Webb seconded by Wanders to approve the minutes from July 18, 2022. All present voted aye. Motion carried.

It was moved by Webb seconded by Wanders to approve the 12-month class C beer permit for Dolgencorp LLC. All present voted aye. Motion carried.

It was moved by Wanders seconded by Webb to approve a FOI request. Wanders – aye, Webb – aye, Groenendyk – abstained.

It was moved by Webb seconded by Wanders to approve Resolution 2022-25 Election Misconduct and Penalties Act. All present voted aye. Motion carried.

RESOLUTION 2022-25

WHEREAS, the Iowa Legislature has passed and Governor Kim Reynolds has signed, on March 8, 2021, an Act entitled the "Election Misconduct and Penalties Act", which is now found in Iowa Code Chapter 39A, Sections 39A.1 through 39A.7, addressed to "election officials", in Section 39A.1, which

include the "county commissioner" of elections and those in the county auditor's office, under Iowa Code Section 331.505, "who are responsible for carrying out functions or duties under chapters 39 through 53" relating to elections; and

WHEREAS, Iowa Code Section 39A.2 through 39A.5, define Election Misconduct in four degrees of criminal offense for acts and omissions of county auditors and the designated deputies and employees acting in the scope of their official duties for claimed election related misconduct; and

WHEREAS, Iowa Code Section 39A.1(2) declares that "(t)he general assembly also recognizes that instances may arise in which technical infractions of chapters 39 through 53 may occur which do not merit any level of criminal sanction" but Iowa Code Section 39A.6(3)(a) empowers the Iowa Secretary of State to issue a "technical infraction" notice to the county auditor, (which the Legislature has not defined and about which the Secretary of State has not promulgated implementing rules), for which "the state commissioner shall also impose a fine not to exceed ten thousand dollars to be deposited in the general fund" with a removal from office if such amount is not challenged or paid after unsuccessful challenge; and

WHEREAS, the County Home Rule power is vested in the County Board of Supervisors, Iowa Code Section 331.301(2), under which the Board may "exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the county and its residents" "except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly", Section 331.301(1), "subject only to limitations expressly imposed by a state law", Section 331.301(3)."• and

WHEREAS, Iowa Code Section 670.8(1) requires that the Board of Supervisors "shall defend its officers and employees, whether elected or appointed and shall save harmless and indemnify the officers and employees against any tort claim or demand whether groundless or otherwise, arising out of an alleged act or omission occurring within the scope of their employment or duties" for "any breach of duty, whether statutory or other duty" under Section

670.1(4); and

WHEREAS, Iowa Code Section 331.324(4) requires that "the board [of supervisors] shall pay a loss for which the officer or employee is found liable beyond the amount of insurance . . . (i)f the liability of a county officer or employee in the performance of official duties is not fully indemnified by insurance" and empowers the Board "to compromise and settle any such claim", and

WHEREAS, the county auditors and their deputies serving within the scope of their employment and duties in connection with the responsibilities they are assigned under the election laws of Iowa are threatened by the increasing animosity, partisanship, and vehemence and vitriol of persons involved in political party politics who can easily make or cause to be made criminal complaint under Sections 39A.2 through 39A.5, or cause action to be brought under Section 39A.6, whether criminal or civil, thus exposing such elected officers and their appointed deputies and employees to criminal proceedings, criminal penalties, attorneys expenses and costs, criminal or civil fines for administrative proceedings, attorneys fees and costs, and removal from office of the Auditor resulting in loss of income for two years all for undefined "technical

infractions",

NOW, THEREFORE, BE IT HEREBY RESOLVED

1. That the Mahaska County Auditor and any deputy auditor or employee who performs election related responsibilities within the scope of criminal offenses and civil infractions, defined by the Election Misconduct and Penalties Act, Iowa Code Sections 39A.1 through 39A.7, shall be provided at county expense,

- (a) In the cases of criminal charges made under Iowa Code Sections 39A.2 through 39A.4, and any charges brought under Iowa Code Chapter 721, as referred to in Section 39A.7, a defense, meaning a lawyer to represent the auditor, deputy auditor, and any employees of the auditor's office so charged criminally, including any appeals to the Iowa Supreme Court.
- (b) If a conviction results under any of the charges referred to in subparagraph (a), above, the person convicted shall not be indemnified for any fine so levied in the criminal judgment.
- (c) Any person so charged as defined in subparagraph (a) shall immediately notify the Board of Supervisors of the pendency of such charges to invoke this Section.

2. That the Mahaska County auditor and any deputy auditor or employee who performs election related responsibilities within the scope of criminal offenses and civil infractions defined by the Election Misconduct and Penalties Act, Iowa Code Sections 39A.1 through 39A.7, shall be provided, at county expense,

(a) in the case of technical violations and infractions under Section 39A.6, defined as civil violations under Section 39A.1, an attorney to represent the auditor, deputy auditor and any employees of the auditor's office cited for any such technical violation or infraction to file an appeal of such allegations or findings pursuant to Chapter 17A as specified by Section 39A.6(3)(b), in lieu of paying the civil fine of not to exceed ten thousand dollars specified by Section 39A.6(3)(a). Such representation shall continue for any of the successive appeals thereafter provided from the findings and conclusions of the Administrative Law Judge with appeals therefrom to the Secretary of State, the Iowa District Court and the Iowa Supreme Court.

(b) On July 8, 2021, the Heartland Risk Pool Board voted unanimously to modify exclusionary coverages of Heartland policies by providing the following coverages for only civil

technical infractions under Iowa Code Section 39A.6:

“_However, we will pay reasonable expenses incurred by the Insured including but not limited to attorney's fees, investigator fees, expert fees, penalties and fines related to civil technical infractions under Iowa Code Section 39A.6 but not for the criminal fines imposed upon conviction under Iowa Code Sections 39A.2 through 29A.5 otherwise excluded under this section, up to a limit of \$400,000 of per claim.”

Chair, Mahaska County Board of Supervisors

Upon roll call vote before the Board on the 26th day of July, 2022

Groenendyk -aye

Wanders - aye

Webb -aye

It was moved by Webb seconded by Wanders to approve the request of the Sheriff to remove jailer Crystal Malloy from the Sheriff Dept. effective August 3, 2022. All present voted aye. Motion carried.

It was moved by Wanders seconded by Webb to approve agreement between Mahaska County, Mahaska Health and Mahaska County Board of Health for public health services and functions in FY23. All present voted aye. Motion carried.

Public Comments: Connie Van Polen, Treasurer stated that Driver's License and Auto will be closed on August 2, 2022 for training

It was moved by Wanders seconded by Webb to adjourn. All present voted aye. Motion carried.

Attest: _____
Jody Van Patten
Mahaska County Auditor

Mark Groenendyk – Chairman
Mahaska County Board of Supervisors

