

**PORTER COUNTY BOARD OF COMMISSIONERS
SPECIAL MEETING
TUESDAY, JUNE 22nd, 2021
10:00 A.M.**

(The entire meeting is available to watch on the Porter County website.)

The Regular meeting of the Porter County Board of Commissioners convened at 10:00 a.m. on Tuesday, June 22nd, 2021 in the Commissioners' Chambers of the Administration Center.

Those present were: Commissioners Jeff Good, Jim Biggs, County Attorney Scott McClure; Executive Administrative Asst. Melanie Massey and Recording Secretary Kathy Merle. Commissioner Laura Blaney was not in attendance.

Call to Order/Pledge

Com. Good, Good morning this is the Porter County Board of Commissioners' Special Meeting, Tuesday, June 22, 2021.

Opioid Litigation – Option to Opt Out of Opioids Settlements under Indiana Code 4-6-15-2. A Resolution to Opt Out of Opioids Settlement Pursuant to Indiana Code 4-6-15-2.

Com. Good, The reason we called this meeting was regarding Opioid Litigation as you can see by the title on the agenda. I will turn it over to Atty. McClure to explain the legality of what is going on.

Atty. McClure, As we are all aware we entered into an agreement with the law firm of Cohen of Malad for the litigation concerning the Opioids in Indiana. We were one of 77 lawsuits that were filed by local units of Indiana Government. In this past legislative session Indiana Code 4-6-15 that would become effective July 1st, 2021 attempts to through this legislation to bring all of this together. The issue is that all local governments are parties to all settlements finalized after March 1st, 2021. Anyone the State itself has not sued by the end of that time period would not be part of the overall split. Originally we entered into this litigation for opioids looking for basically reimbursement for the cost of the opioid epidemic here locally in Porter County. The State had not at that point decided to enter into those lawsuits as a State. These lawsuits have been effectively going on now for several months if not a couple of years. This time around during the State's legislative session they basically said instead of having all of these local units government suing individually we kind of want the State to take control over it. The way that would work however is there are a couple of big pitfalls. The first big pitfall is anyone the State hasn't sued at the this period of time we have to opt in and opt back out, if they haven't sued them already than that would and there was any settlement then that money would not becoming part of what the statutory distribution would look like. In other words Johnson & Johnson is one the manufacturers that has been sued through the local governments, but that individual or company has not been sued by the State yet. If we remain in and do not opt out of this legislation than any settlement that may or may not come from Johnson & Johnson would not be part of any of the funds that the County would receive and that would just go to the State. Even within the manufacturers, providers, the companies that did the distribution that have been sued by the State, the State would control 85% of all opioid settlement funds as follows: 70% to be distributed throughout the State by the FSSA, 50% to 70% is allocated specifically by that State's organization on a regional basis, 15% would go to the State and then the remaining 15% would go to the local governments based solely on population. What we have is 77 different units of government that have opted in originally to the Opioid Litigation individually and separately and we're going along in that normal litigation cycle as those things are happening in federal court as we're waiting for those test cases to finish in Ohio and the bankruptcy landscape to settle out. When the State passed I.C. 4-6-15 basically the State has in the meantime sued a few of these individuals but now all of the big distributors, not all of the actual manufactures and all the way down to the pharmacy level. Now this would take any potential money that Porter County was getting cut out several litigants that may or may not end up having to pay through a settlement or court order, but then it also takes it and spreads it out across the whole State with 15% to local governments based solely on population. There are several reasons to opt out. The legislation was very contested, had lots of input. That is why we have this opt out period. We then have an opt back in period of time 60 days. June 30th was the deadline to opt out. Then we have 60 days to opt back in. It is an odd statutory arrangement given the fact that I'm not exactly sure what changes in the next 60 days at the State level or how that could even change from a legislative issue. However, one of the

issues today that if the Commissioners choose to opt out and proceed on as we had been on the document we have to send pursuant to the statute we have to identify an individual from our office that would be able to speak as to why we were opting out because the Attorney General's office wants to be able to call and actually talk to somebody about why we are doing this. I have gone through all of the power points with actual Council that we have with all of the local governments that are in the same position we're in. I am struggling to see what reason there would be to not opt out at this point in time. If I thought there was a good counter argument the other side I would tell you what that counter argument is because obviously we're taking an option that is in the State statute. I think as far as the money distribution I think that is worrisome. I also think that the potential for losing some of the large manufacturers, in the universe of defendants that are available right now the State doesn't have all of those under lawsuits. That would put those people into a different side of the box that would for....well at this point we don't know but I would assume for the State. Obviously, when they haven't sued and they don't have legislation it's hard to guess what the State would be thinking they were doing with that. That is not taken care of currently in this legislative setup. We entered this lawsuit eyes wide opened not sure where it would take us or what it would ever produce. If it would produce anything, but after that original due diligence we did enter into the opioid litigation. At this point in time I do not have a good reason for us not to opt out considering we are one of the individuals that have been in the process and sued and are in the litigation process. Also, if something changes or opinions change we have 60 days to opt back in. At this point even if this was a 50/50 decision given the fact that we can opt back in I think that given that also it is even more of a. I'm not sure why we would not opt out at this point if we can opt back in. My recommendation after discussions with our Council and review of all of the memos and the statutes and the potential distributions of any potential funds that are out there my recommendation would be to opt out under I.C. 4-6-15.2.

Com. Good, You said there 72....

Atty. McClure, 77.

Com. Good, You're talking about 77 counties out of the 92.

Atty. McClure, No that can be cities too. Cities and towns. It's just not 92 all local cities, towns, and counties 77 lawsuits have been filed by the Indiana local governments. The locals have filed those.

Com. Good, If you basically didn't do anything....

Atty. McClure, You would now share this. The major defendants are Purdue Pharma, Johnson & Johnson, TEVA, DND, 3 major distributors are Murchison, Cardinal Health, AmerisourceBergen, and the pharmacies are CVS, Walgreens, Walmart, Kroger. I believe the Johnson & Johnson is the manufacturer that hasn't been sued by the State at this point in time. Whether it's on the end of who has been sued as far as potential responsible parties, that we have some issues with obviously and then what happens with the money when there is settlements, when there is money that is funded then were into this 70% that has to be distributed throughout the State by FSSA. 15% to the State, 15% to the local governments based upon population. We would obviously be at least one step removed from the regional share of the money that would go to FSSA. We would be obviously sharing in dollars on a population basis whether that was by county, city or whatever so that would have a significant watering down effect of any available funds.

Com. Good, Do you think this because we have a new attorney general?

Atty. McClure, Yes, I think we have a new attorney general came on...that's when the statute and the legislative session all came to a head this time around. It was a lot to try to get in one legislative session.

Com. Good, It's sort of funny because if you recall we were getting hammered a lot to join into this suit and we waited to almost the very end because we knew that....follow the money kind of thing you know?

Atty. McClure, Correct.

Com. Good, So now we are following it again. We are back to where we were before.

Atty. McClure, I think this has been going on now for 2 years.

Com. Biggs, How much has our County invested into this lawsuit up to this point? Does anybody know?

Atty. McClure, Yes I know. Our agreement with our attorneys is on a contingent fee.

Com. Good, There was quite a bit of work that someone put into this to create the damages right?

Atty. McClure, Oh yes.

Com. Good, There was a lot of work that was done. Was it Vicki's office?

Atty. McClure, Yes. From an expense standpoint we don't have any expenses outlaid. From a work standpoint the original discovery that was propounded by the County with most of it coming from the Auditor's office that, the Sheriff's Dept., the Jail, imagine all of the different areas at least conceptually is affected by opioid crisis. There was an extreme amount of work done to get that produced and back for the litigation, but we have written any checks to pay attorney fees or things along those lines.

Com. Good, And I think that is where my rub is because now we sit here and have gone through and did everything like a good student. If they end up settling they are just going to mass distribute it out to probably people who didn't put as much time and effort into it, along with cost.

Com. Biggs, You're right Jeff. I have a couple of concerns. One is and it's been published a thousand in Northwest Indiana. Porter County has one of the worst opioid problems. No one can explain to me why but we do. We opted to the State's program. We're not going to get any more to fight this than any other place in the State of Indiana that has a like population, which I think is grossly unfair and grossly unproductive as to how you want this money to work for you as a State. You're just throwing it out according to "here is your piece of the pie and here's our piece of the pie". I think that is wrong. These are some horrible companies that have tentacles in State government. Quite honestly I don't feel comfortable in throwing out the work that we've done that has been done on our behalf up to this point. Because of the way that this is laid out, how is that again Scott that some companies wouldn't be part of this lawsuit because of what?

Atty. McClure, They wouldn't be part of this distribution (Inaudible). For instance Johnson & Johnson I don't believe has been sued by the State. When they look into the magic looking glass Johnson & Johnson's share, their damages in this situation across the whole country could be \$5 billion. Of that \$100 million may be for the State of Indiana. Under this statute because they haven't been sued yet by the State we wouldn't be part of those funds.

Com. Good, If the State sued them and won.

Atty. McClure, There are a lot of if's, ands and but's in there. At the end of the day some of the defendants aren't on the playing field yet for the State. Beyond that the defendants that are on the playing field for the State if money is eventually either settled or won at court then it is basically all going to the Family of Social Services Administration (FSSA) that is going to have 70% of this money. They are set up regionally so we would be in the sandbox regionally trying to vie for whatever funds were available for programs. Then also obviously the money would be then utilized by the Family of Social Services Administration in attempting to address what has occurred of the opioid crisis. There are just a lot of variables here. In all honesty when you start mixing litigation with active legislation this is kind of the outcome you end up getting. Where you get things that are just difficult to put into perspective because we did have a new attorney general and then in a very short period of time we this legislative session and then here we go with this. Lots of moving parts and pieces. Obviously from my perspective I'm here to try to give the best information and advice as it relates to Porter County and its citizens. I don't know how remaining in this statue is a win for the citizens of Porter County. There is obviously always risks when we've been through a litigation but to some extent we've minimized our risk of the way we entered the litigation and our agreement with the attorneys that are handling the litigation. We've never looked at this nor have we had any conversations about some magic pot of gold at the end of the rainbow. However, we were attempting to get our potential fair share to address the damages that have occurred and address the issues moving forward.

Com. Biggs, And again it may go unnoticed to the major portion of our population but many of those if not most of those companies that you have named Scott they have large lucrative contracts with the State of Indianan currently. I feel more comfortable keeping it where it's at. I think our risk is less in that it is on contingency. I just don't feel like turning it over to the State of Indiana and hoping they do a great job in the courtroom. If they do win we get 15% of what, because I was in it for my pound of flesh to be honest with you. I'll say it. It is criminal as to what had been going on and it ruined a lot of lives. I see no reason to come off of the road we've been on.

Com. Good, If we don't opt out then we would stay with the State program. If you opt out we would be on our own. If the State does sue more players than that is when....am I describing that right?

Atty. McClure, If we opt out by June 30th that is why we called today's special meeting than we have another 60 days that if something changes and we need to opt back in we can. If the facts or the playing field changes we can opt back in. I think at this point in time....and again I don't want to have conjecture but if from a logical standpoint when you give the local cities, towns and counties the opportunity to opt out. Request the contact information as part of the official document to opt out of the individual to talk to that makes kind of start to think this was to some extent a test of who would opt out and who would stay in. Then what would the next move be for the 60 day period because obviously if you come to the point where you want to opt out I'm not sure what would bring you back in unless there was a change of the underlying factual circumstances. Again, I'm not exactly sure how that change occurs in the next 60 days, but it is out there and a potential and it seems to be set up for something along those lines also. I get the feeling that the two of you are leaning strongly towards opting out. Even if we were somewhat concerned or hesitate on opting out we still have the 60 days to opt back in. We do kind have this 60 day period of time to let the dust settle and see what other cities, towns and counties have processed their....

Com. Good, So if we opt out we're going to get a phone call?

Atty. McClure, Correct. We will deal with it from there.

Com. Biggs, They are going to have to come back with something that is much much stronger and certainly more fair in my mind at least for me to ever jump on that wagon. The havoc that the opioid problem in this County has left in its wake is indescribable. It truly is indescribable and to say we'll take it from here and some will get sued and some won't get sued and you will get your 15% of it. No thank you.

Com. Good, And then we did all of the work. We were the good county. We give them all of our data and you find out that the majority didn't. How are you basis your settlement? Unless they are working off of samples.

Com. Biggs, If you listen to this and how they want to distribute this money they basically want to take the majority of it and reinvest it into the very things that they have been investing all of this time that has had very little positive affect on solving the problem. That is ridiculous. Absolutely not. You will hand it to the same State agencies to fight the same problem the same way you have up to this point and what do we have to show for it. 80% of the people sitting in our County Jail at any given day of the year is there because of a drug problem. No thank you.

Com. Biggs, moved to approve the Option to Opt out of Opioids Settlements, Com. Good, second, motion carried.

A Resolution Relating to Porter County's Planning for American Rescue Plan Act Grant Awards in Alignment with OCRA's Comprehensive and Continuous Planning Ethos.

Com. Good, This is part of the VLACD?

Atty. McClure, Yes and I will say that Madame Auditor did a lot of heavy lifting and unfortunately had to do a lot of emails and conversations to get it boiled down to exactly what OCRA the State Agency needed as far as this normal grant request due to the American Rescue plan. I just want to thank Vicki for the time and energy that she put in to make sure that the right answer was eventually found. That took way more time than anyone would want to believe. I appreciate her work and her diligence in making sure that that was figured out.

Com. Good, Just to explain that that is for another political subdivision. That is for a conservancy district. They're trying to do an OCRA Grant again, the second year in a row. They didn't get it last year. In order to do the OCRA Grant the County had to do the work to make it all happen. Once again the County gets stuck with all of the work. Right Vicki? I'm expressing your frustration. I'm expressing my frustration for you.

Ms. Urbanik, Thank you.

Atty. McClure, To put it into a little bit more plain English. At the moment we're all trying to figure out what the American Rescue Plan allows you to spend money. The State agency through OCRA that we're letting a sub recipient apply for a \$60,000.00 grant from OCRA our Auditor has to spend 10 days of emails and phone calls to get the right language about the

American Rescue Plan for an OCRA Grant for \$60,000.00 of storm work in the VLACD. It is a big circular issue.

Com. Good, We're just a big umbrella. You just have to show up and be on a couple of calls. There's no work.

Atty. McClure, And but for Vicki the original language did sound as if the American Rescue Plan money was going to pay the match for the \$60,000.00 for the storm water improvement at VLACD, which wasn't VLACD's issue. It is just all of the mass confusion whenever you're dealing with issues right now. I just want to appreciate Vicki.

Com. Good, Yes thank you Vicki. What they are trying to do is the right thing. They are trying to fix some drainage issues that they have had out there forever. That is their responsibility. That is what they are chartered with.

Atty. McClure, They are trying.

Com. Good, They're trying this I think our third attempt at this one. They did it a couple of years ago and they did it last year and now they are doing it again this year.

Atty. McClure, I think they got the first one.

Com. Good, Oh did they? I'm thinking of the OCRA Grant we applied for for South Haven through Portage Township and they didn't get it. That is the one I'm thinking about.

Com. Good, moved to approve the Resolution, Com. Biggs, second, motion carried.

With no further business the meeting was adjourned at 10:28 a.m.

BOARD OF COMMISSIONERS
PORTER COUNTY, INDIANA

Jeffrey J. Good

Laura M. Blaney

Jim Biggs

Attest: _____
Vicki Urbanik, Auditor