

Mickey Powell Government Writing W13

Private meeting with lawyer angers some Boyce council members

By Mickey Powell
The Winchester Star

BOYCE — A recent private meeting between two town officials and a lawyer sparked outrage during a Boyce Town Council work session Tuesday night and prompted three officials to express mistrust in colleagues.

Mayor Richard Kibler and Town Manager David Winsatt participated in a meeting Friday morning with David Griffin, the town's part-time attorney. Minutes taken during the meeting show that various issues and ideas involving municipal government were discussed.

Councilman Floyd Hudson and Councilwoman Whitney Maddox became incensed upon hearing about the meeting. They accused Kibler of trying to withhold information relevant to other council members. However, they didn't accuse the mayor of breaking any laws.

"I didn't know there was a meeting" scheduled with Griffin, Maddox said.

"When the attorney is going to be present and discuss town issues, I want to be involved," said Hudson.

"You're not the only person on this team," Maddox told Kibler, referring to the council.

"There's a lack of transparency," Hudson continued. "How can we ... continue working together" when one official is holding private meetings to discuss town business?

Hudson and Maddox told Winsatt they weren't upset with him for attending the private meeting. Winsatt is a paid employee of the council.

When asked about the meeting, Kibler initially said "it was personal."

"Then you owe the lawyer money," Hudson responded, as opposed to the town, to pay Griffin for his time.

Kibler said he asked Griffin if it would be appropriate for him to make comments as a private citizen — rather than a public official — during a public hearing the council will hold next Tuesday night about street matters. He said he learned that he will have to step down from presiding over the meeting and let Recorder Ruth Hayes take over temporarily.

Hayes' role is similar to a vice mayor's.

Minutes of the meeting don't mention Kibler's question to Griffin.

"It seems the list of items discussed was incomplete," Hudson said.

Kibler said he asked Griffin his question after the meeting officially ended and they were leaving Town Hall.

Regardless, "I don't think it has to be in the minutes ... (for Kibler) just to ask if he could speak as a member of the public," said Councilman Dennis Hall.

Griffin didn't respond to a request for comment on Wednesday before the newspaper's deadline.

Asked by Maddox why he seemed to be withholding information, Kibler indicated concern about she, Hudson and Councilman Zack Hudson being related.

Maddox is Floyd Hudson's daughter. Zack Hudson is Floyd Hudson's second cousin.

Voters elected both Hudsons to the council in November 2019. Maddox was appointed by the council in September 2020 to temporarily fill the seat of former councilwoman Carol Everly, who resigned, until the coming November election.

"Oh boy," Floyd Hudson replied, stretching out those words for emphasis. "Zack, Whitney and I have been accused of inappropriateness on this council. He (Kibler) said he has an issue with us getting together" and discussing town issues.

All three — including Zack Hudson, who didn't actively participate in the discussion — vowed they never have privately discussed town matters as a group. Doing so would be a violation of state open meetings laws because they make up the majority of the five-member council. Therefore, any discussion between them about town matters could be construed as an unadvertised, private meeting of the council. Such a meeting is illegal.

As the council, “we want to do things officially, correctly,” Hayes said. She described the discussion and Kibler’s meeting with Griffin as awkward. Hayes, who is resigning from the council this month because she is moving to Berryville, said she thinks Griffin should appear before the full council to “straighten out some things.” Floyd Hudson pledged to make that happen.

Like many towns and cities, Boyce uses a “weak mayor” system of government. Although the mayor presides over council meetings, his or her position largely is ceremonial. Overall authority rests with the entire council, and no one member has any more real authority than another, according to a website about local government in Virginia.

That is in contrast to the “strong mayor” system in which the mayor serves as the executive branch of local government. In that role, he or she has veto power over council decisions and oversees day-to-day municipal operations. With the system that Boyce uses, the town manager — who works for the council — has daily oversight.

Floyd Hudson demanded an apology from Kibler, who briefly said he was sorry to Maddox and the Hudsons individually.

Kibler later told the councilman, “I am truly sorry, Floyd.”

Afterward, Kibler declined to comment to The Winchester Star on accusations made during the meeting. He said only that “I don’t want my name smeared in the newspaper.”

Kibler was elected mayor in November 2019. In a phone conversation in February, he criticized The Star’s coverage of Boyce council meetings, asserting that “every time you turn around, you’re smearing Boyce,” and “not everything (said during a public meeting) should be printed” in the newspaper.

His comments were made in response to questions about the resignations of three Boyce Planning Commission members following the Feb. 2 council session. At that meeting, council members indicated they might consider ousting commission members and appointing new ones if that panel didn’t make significant progress soon on revising the town zoning ordinance and preparing a capital improvements plan.

Berryville asks lawmakers for mental health system reform

By Mickey Powell
The Winchester Star

BERRYVILLE — Town Council is imploring the General Assembly to reform Virginia’s mental health system so police have to spend less time with patients in crisis.

A letter to that effect, signed by Mayor Jay Arnold, will be sent to lawmakers representing Berryville, including state Sen. Jill Vogel (R-Upperville) and Dels. Wendy Gooditis (D-Boyce) and Dave LaRock (R-Hamilton).

It’s “a top priority” not only for Berryville, but also other communities statewide, the letter asserts.

Staffing shortages and other issues have reduced available bed spaces at state psychiatric hospitals. Five such hospitals, including Western State Hospital in Staunton, have temporarily stopped admitting new patients due to inadequate staffing, rising caseloads and a surge in the number of employees assaulted by patients, according to state Behavioral and Developmental Services Commissioner Allison Land.

Private psychiatric hospitals often refuse to admit patients due to issues such as violent behavior, resulting in police relying more on state hospitals, said Berryville Police Chief Neal White.

If a state bed isn’t available, the mentally ill must remain at a local hospital with police watching over them.

Magistrates can issue temporary detention orders (TDOs) when people are deemed likely to cause substantial harm to themselves or others. The orders enable patients to remain in police custody for up to 96 hours.

“It’s inhumane,” White said, to require a patient to stay in an emergency department cubicle for that long with little to no treatment.

But “we just can’t take a mental health client down to Staunton (the location of Western State Hospital) and drop them off in the parking lot,” he said.

Law enforcement officers and patients “now find themselves lingering in an emergency department ... of a local hospital for days waiting for a mental health bed to become available, without receiving any mental health services, only to be released back into their previous environments because the legally permitted period of involuntary detention has expired,” the council’s letter reads.

“This broken system is placing law-enforcement officers in local emergency departments boarding mental health clients instead of patrolling the streets of our communities, which puts the safety and welfare of the community in jeopardy,” the letter continues. “It also places mental health services out of reach to those clients who so desperately need them during a time of crisis.”

Berryville police have responded to 55 incidents of people having mental health crises so far this year, statistics provided to the council show.

Statistics requested by The Winchester Star show those incidents have taken up 325.75 hours of police time, including 226.75 in “boarding hours” — how White describes time overseeing someone for whom a TDO has been issued.

The police department has spent a total of \$11,982.87 in overtime compensation for officers who’ve had to sit with people.

In comparison, mental health incidents accounted for 142.5 hours of Berryville officers’ time in 2020. There were no boarding hours last year. Still, the department paid \$4,473.11 in overtime expenses, statistics indicate.

“The numbers have been going up and up and up recently,” White said. He speculated that economic hardships and other factors related to the COVID-19 pandemic are somewhat to blame.

A single officer doesn’t have to stay with a person in the hospital for up to 96 hours straight. The officer usually is relieved by another officer at shift change, or soon thereafter. Yet the relieving officer may be someone not scheduled to be on duty, resulting in overtime.

White said the police department hasn’t yet suffered a crisis itself — such as not having enough officers available to respond to a crime — due to staff having to sit with patients in a hospital.

“Officers are having to work days over days straight,” sometimes seeing vacations cancelled, White said.

“You’re burning the candle at both ends,” he said. “You can’t work in perpetuity without a break ... without safety becoming an issue” due to emotional and physical burnout.

And, “when you have a small (police) force and you’re short” on officers, it makes the problem worse, Arnold said.

Two officer positions currently are vacant within the police department. One is that of an officer who recently resigned to work for the Clarke County Sheriff's Office. The other is a newly-established position.

While a person under a TDO remains at the local hospital, calls continue to be made to private and public psychiatric hospitals until either a bed becomes available somewhere or the order expires and the person is sent home, White said.

"The impact of providing mental health services to those in acute crisis is taking an extreme toll on communities of all sizes across the commonwealth," the council's letter to the lawmakers reads. "We call upon you to advocate for serious and extensive discussions ... in upcoming legislative sessions before any further harm befalls our communities."

Other localities have sent similar letters to lawmakers, White said to his understanding.

Asked if he thinks Berryville's letter will do any good, he declined to speculate.

The General Assembly is "a fickle beast," he said. "I don't attempt to forecast what Richmond will do."

Clarke County offering refunds for lodging taxes paid in error

By Mickey Powell
The Winchester Star

BERRYVILLE — Anyone who stayed overnight at two Berryville lodging providers in recent years may be owed a refund of taxes paid to Clarke County.

The county revenue commissioner's office recently discovered that both Historic Rosemont Manor and the Waypoint House had been erroneously collecting both the county's and town's "transient occupancy taxes," at least since 2018.

Berryville and the county both currently levy a 2% — or two cents per dollar — tax on room charges at motels, bed-and-breakfast inns and similar businesses. The town collects its tax from such businesses within its boundaries. The county collects its tax from businesses in unincorporated areas. It can't legally collect its tax in Berryville because it doesn't have the town council's permission to do so.

Rosemont is off West Main Street, near the town limits and Clarke County High School. Waypoint is on South Church Street.

Commissioner of the Revenue Donna Peake told the Clarke County Board of Supervisors on Tuesday that staff in her office didn't realize the county's tax couldn't be collected in Berryville. They know now, she said, pledging that their mistake "won't happen again."

Peake took some personal responsibility for the error.

"I should have caught it," she told the supervisors during their work session earlier this month. "I just didn't look at the files" closely enough.

The commissioner's office intended to issue refunds of \$17,528.83 to Rosemont and \$2,068.83 to Waypoint. But the money wouldn't have been theirs to keep; it belongs to their customers, Peake said.

One of the lodging providers didn't seem interested in putting forth time and effort to track down past customers and find out whether they want refunds, County Administrator Chris Boies said. In that particular provider's case, he said, refunds probably would be relatively small amounts — just a few dollars.

Instead of paying back money to the businesses, officials now intend to issue refund checks directly to their customers.

Probably by this afternoon, Boies said, a notice will be posted on the commissioner's page of the county's website, www.clarkecountyva.gov. It will inform customers of Rosemont and Waypoint between Jan. 1, 2018, and Dec. 31, 2020, that they may be eligible for a tax refund. They are to email Deputy Commissioner Sue Braithwaite at www.clarkecountyva.gov or call her at (540-955-5108 before July 19 if they're interested in receiving a refund.

Customers will need to provide Braithwaite their current mailing addresses and tell her where and when they stayed. The commissioner's office then will verify that information with the lodging provider. If it's accurate, the county will send refund checks to customers.

That "sounds entirely reasonable," said Berryville District Supervisor Matthew Bass.

Even if customers' refunds are small amounts, "they deserve their money back," Peake said.

The supervisors endorsed posting the notice in a unanimous vote.

Officials indicated they will encourage Rosemont and Waypoint to post similar notices on their websites.

Customers, especially those from outside Clarke County, "may look on their websites (again) before they look at ours," said Millwood District Supervisor Terri Catlett.

Any money not claimed will remain in the county's coffers, officials said.