

INTERIM JOINT COMMITTEE ON APPROPRIATIONS AND REVENUE

Budget Review Subcommittee on Justice and Judiciary

Minutes of the 1st Meeting of the 2018 Interim

July 26, 2018

Call to Order and Roll Call

The 1st meeting of the Budget Review Subcommittee on Justice and Judiciary of the Interim Joint Committee on Appropriations and Revenue was held on Thursday, July 26, 2018, at 10:00 AM, in Room 171 of the Capitol Annex. Representative Jason Nemes, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Jason Nemes, Co-Chair; Senators Ray S. Jones II, John Schickel, and Robin L. Webb; Representatives Daniel Elliott, Joseph M. Fischer, Brandon Reed, and Arnold Simpson.

Guests: Mike Harmon, Kentucky Auditor of Public Accounts, Chris Hunt, General Counsel of Public Accounts, and Tiffany Welch, Performance and Evaluations Manager; John D. Minton, Jr., Chief Justice of Kentucky and Laurie K. Dudgeon, Director, Administrative Office of the Courts.

LRC Staff: Zachary Ireland, Savannah Wiley, and Rhonda Schierer.

Auditor Harmon, Mr. Hunt, and Ms. Welch discussed the findings of the Administrative Office of the Courts (AOC) special examination and the Auditor's recommendations.

In response to a question from Senator Schickel, Mr. Harmon clarified that, when he spoke of separations of powers, he was talking about the Kentucky Supreme Court.

In response to a question from Chairman Nemes, Mr. Harmon agreed to provide any policy he had to the legislature regarding smaller expenditures that could be used to promote the state.

In response to a question from Representative Reed, Mr. Harmon stated that a special examination—not a financial audit—was done, but that a yearly financial audit should be performed. He was appreciative that Chief Justice Minton asked the Auditor to conduct an examination.

In response to questions from Chairman Nemes, Mr. Hunt stated that the decision to choose the lease with Justice Wright's son, was done through a discussion of a decision memo that is submitted internally according to AOC policy. This memo was given to the former executive officer, Mr. Brown. Various individuals within AOC including Mr. Brown, Director Dudgeon, the Budget Director, and the Facilities Manager approved the lease according to emails, modifications and amendments, and photographs they were able to obtain. Mr. Hunt stated that AOC's internal process was to start with county facilities to procure private office space they start with county facilities and the lower cost alternative space was one of those county facilities. Based on the documentation in the bid file, there was little information comparing the two office spaces. Mr. Hunt stated that he was not aware of any deliberations to place Justice Wright in the new courthouse in Pikeville.

In response to a question from Senator Webb, Mr. Harmon agreed that if proper documentation of the lease proposals had been kept, with reasons for accepting the higher bid, it could have not been an issue with the auditor's findings.

In response to a question from Representative Elliot, Mr. Harmon stated he was surprised at AOC's opposition to key transparency and accountability recommendations.

In response to a questions from Representative Simpson, Mr. Harmon stated that he believes that the most important recommendation not being acted on yet by AOC is agreeing to an annual financial statement audit. His office has taken it under advisement to audit the Legislative Research Commission and is reflecting on it. The Auditor having first right of refusal is consistent with what it does with counties, but the Auditor does not have enforcement power and can only make recommendations. In this particular case, it made referrals to the Attorney General's office, the IRS, and the Treasury.

In response to a question from Chairman Nemes, Mr. Hunt stated that a financial statement audit will render an opinion about the financial statements that AOC has prepared and indicate whether those can be relied upon by outside parties. This is a formal opinion in that context. It will examine how money was spent and whether it complied with laws, rules, and regulations.

In response to a question from Representative Fischer, Ms. Dudgeon stated that internal AOC auditors periodically audit the Master Commissioner Fund and some Circuit Court Clerk funds, but internal audits were very limited.

In response to a question from Representative Fischer, Ms. Dudgeon stated that there are three credit cards specific to individuals with a certain limit on them.

In response to questions from Chairman Nemes, Mr. Harmon stated that there were other people in the private sales with personal and vehicle sales. Mr. Hunt stated that there

is no policy prohibiting a set the sale price, coordination of sales, and participation. There was an individual who was involved on both sides, and that should not have occurred. That identifies a lack of policy and oversight. Some are minor and some will be paid back, but there is an overall atmosphere that needs to be addressed.

In response to a question from Representative Reed, Mr. Harmon stated that this is AOC's first external exam in 42 years. Without external oversight or strong internal controls, it is easy for people to get off track. This is the first time the AOC has had an examination, and it is not a reflection of a certain AOC administration. The timeframe examined, in most cases, was the two year span from 2015 and 2017.

Chief Justice Minton and Ms. Dudgeon responded to the Auditor's findings.

In response to questions from Representative Simpson, Chief Justice Minton stated that the overall governance of the Judicial Branch has been evolving since the mid 1970s. The Judicial Branch is operated differently because the decision making is through a collaborative process. Six people were elected by the voters in their districts, and he shares a good deal of deliberation and discussion with them to benefit from their wisdom and experience. However, it is ultimately the responsibility of the Chief Justice for AOC to make final decisions. Research indicates that there are 14 states that audit courts in some capacity, eight of which are regular comprehensive court audits; six of those eight have an appointed rather than elected auditor. AOC does not dispute that the auditor has the authority of the financial statements through the Comprehensive Annual Financial Report (AFR). However, establishing a regular audit schedule and making the determination of whom should be engaged to do that audit lies within the business affairs of the Judicial Branch.

In response to questions from Chairman Nemes, Chief Justice Minton stated that this allegation was not based on any party or politics. Ms. Dudgeon stated that there is quite a bit of testimony in a deposition as public record in the Frankfort Circuit Clerk's office that can be reviewed related to current litigation. In response to Chairman Nemes, Ms. Dudgeon stated that Scott Brown was the only one she knew who knew who purchased property and that no property had been requested to be returned to the AOC from Mr. Brown or anyone who bought it. Ms. Dudgeon stated that she signed the lease for Justice Wright's office space after the Budget Director signed it, the Facilities Director recommended it, and AOC's General Council reviewed it. She said it was a legitimate lease. She understood that the only other bidder's space was going to need significant renovation although it was significantly higher. Chief Justice Minton stated that it would be the most efficient, effective, best use of the money to have the Chief Justice in the courthouse where he or she lives, but that has not been a formal policy. Justice Wright could have been placed in the new Pikeville courthouse, but he lives 50 miles from it and staff would have to travel that distance as well. Chief Justice Minton stated that he believes an audit is appropriate but that it should be through bid by an outside group to respect

separation of powers. Any auditor's recommendations will be made public. AOC had 72 hours to respond over the July 4th holiday and did its best to respond and correct some inaccuracies. This should not be viewed as any resistance. AOC agreed with at least 95 percent of the recommendations and acknowledges certain mistakes and obligations. He believes that an annual public report is appropriate.

Ms. Dudgeon stated that the AOC already has an employee ethics policy; the Auditor's recommendations is for more work on the policy.

In response to a question from Representative Reed, Ms. Dudgeon stated that building a true internal auditing function would require a substantial resource investment.

In response to Senator Schickel, Chief Justice Minton stated that, under the Judicial Code, a candidate running for the Supreme Court could indicate whether he or she would require an annual external audit of the Judicial Branch.

There being no further business, the meeting was adjourned at 11:58 AM.