

Monroe A. Miller, Jr.
19 Big Spruce Lane
Waynesville, NC 28786
August 18, 2011

Teresa Starrs
Executive Assistant to the President
Secretary to the Board of Trustees
Haywood Community College
185 Freedlander Drive
Clyde, NC 28721

Dear Mrs. Starrs,

The purpose of this letter is two fold:

- Request for information regarding FLS presentation yesterday at the meeting of the Committee on Building & Grounds, which I attended, and
- Advise the HCC Board of Trustees regarding a possible conflict of interest between the Haywood County Commissioners and PBC-L architects.

FLS

Casey and John from FLS answered some very minimal questions yesterday during Item VI of the agenda, "FLS Solar Agreement Requirements" [re: recorded]. It was mentioned that a packet of data was supplied to the committee members, and portions were displayed on the video projector.

Can you please e-mail me the contents of the packet, and any and all other information regarding the FLS installation up to this point?

PBC-L

At some point, in the early point of the meeting, the committee was asked to approve a change order presented by a woman representing PBC-L. She had to leave the room to confirm exact amounts, and when she returned, provided an exact dollar amount for the change order. The committee approved the amount, and the next step (other than presenting it to the entire board at the following board meeting), was to present this to the county commissioners for approval.

This appears to me to be one of the Conflicts of Interest of the Decade!

As you may be aware, KMD Construction (contractor for the Old Courthouse renovation) recently won an award from both Haywood County and PBC-L (Pearce, Brinkley, Cease and Lee, P.A.) for the amounts of \$713,057.06 and \$234,425.21, respectively. See the second attachment to this e-mail [also [County Looses \\$713,057.06 in Legal Arbitration Expenses with KMD + Legal Expenses \(nearly \\$1/2 Million\), 8/02/2011. 8/10/2011...](#), www.haywoodtp.net] the American Arbitration Association - Construction Industry Arbitration Tribunal, AAA Case No. 31 110 Y 00196 10.

The arbitrators found that KMD Construction, in part, "...carried its burden of proof on its allegations that PCB-L fell short of the standard of care of an architect under similar circumstances in the community and was professionally negligent in responding to unforeseen project conditions requiring redesign and in PCB-L administration of the KMD construction contract for the Project, financially damaging KMD. This claim of KMD against PCB-L is GRANTED in the amount of \$200,000.00".

The county commissioners, Swanger, Kirkpatrick, Upton, Ensley and Sorrells, are now contemplating a lawsuit against PCB-L [re: County considers options in arbitration award, Discussion with architect is next step, By Vicki Hyatt, Aug 17, 2011, The Mountaineer],

"The commissioners are still considering whether to seek compensation to help defray that cost from the project architect, PCB+L, the entity that advised commissioners to terminate KMD. Among other things, the arbitration board ruled the contractor had been wrongfully terminated.

Kirkpatrick confirmed the board is reviewing all available remedies against the architect and will open discussions with the firm on the issue.

"After that, we will determine whether to proceed with any type of action against them," he added."

So, here we are. On the one hand, the commissioners are about to sue PBC-L because they supposedly gave the commissioners bad advice, yet on the other hand, commissioners are supposed to cheerfully pencil whip an approval on this HCC change order to the architectural firm they are about to sue!

Does anyone see a potential conflict of interest here?

I wouldn't bother getting an opinion from either Chip Killian or Leon Killian, as we also have a potential conflict of interest there also. As it turns out, the county selected partners from Leon Killian's law firm, Nelson Mullins to represent the county in the Cameron Lawsuit. His name was

Reed Hollander
Nelson, Mullins, Riley & Scarborough, LLP
Glen Lake One Suite 200
4140 Parklake Avenue
Raleigh, NC 27612

He lost, and cost the county over a half Million dollars.

Another partner, who has since appeared to start his own law firm, Robert A. Meynardie

EXPERIENCE

- The Meynardie Law Firm, PLLC (2008-Present)
- Nelson Mullins Riley & Scarborough, LLP (2003-2008)

[re: <http://www.mnlaw-nc.com/page6/page12/Bob.html>]

also lost, and cost Haywood County \$713,057.06 + \$578,000 + 241,000 = \$1,532,057.06

[re: "The settlement award doesn't include the \$578,000 in legal fees paid to date or \$241,000 in engineering consultant fees incurred by the county that's over and above the \$7 million project.", [County considers options in arbitration award, Discussion with architect is next step, By Vicki Hyatt, Aug 17, 2011, The Mountaineer](#)].

So these guys from Nelson Mullins who Leon Killian might refer don't seem to have such a good track record in winning cases, but they do have a good record in gobbling up massive amounts of Haywood County Taxpayer dollars.

I wouldn't bother to call on Pat Smathers for advice either, this might be a little over his head.

The one person the Trustee's might consider getting advice from would be Steven Smith, the attorney for KMD [re: Wednesday, 17 August 2011, Haywood must pay up for firing courthouse contractor, Written by Becky Johnson, Smoky Mountain News]. I always prefer going with people that have a winning record.

It would be prudent to carefully monitor future change order requests from PCB-L, as they may looking to re-coop some of their recent loss to their bottom line of **-\$234,425.21**. In addition, since their recent credibility has been compromised by this Arbitration Award, I would also pay special attention to complaints your contractors might have against PCB-L.

Please be kind enough to forward this letter and the Arbitration Award attachment to the HCC Board of Trustee members for their information and consideration. I noticed that Patsy Dowling was present at the Committee on Building & Grounds (not a sworn-in Trustee during that meeting). Please insure she also receives a copy of this letter. Oh, I suppose you could also forward a copy to Rose Johnson.

Sincerely,

Monroe Miller

cc: Bob Morris
see e-mail cc list

bcc:

bcc: via e-mail: