

The McMinn County Commissioners met in Special Called Session on Thursday, September 11, 2008, at noon, in the Blue Room of the McMinn County Courthouse.

1. CALL TO ORDER

The meeting was called to order by Chairman Crews.

2. INVOCATION

The Invocation was given by Commissioner Millsaps.

3. PLEDGE TO THE FLAG

The Pledge to the Flag was led by Commissioner Mason.

4. ROLL CALL

Roll Call was taken by Evonne Hoback, McMinn County Clerk, as recorded:

Scott Curtis – Present  
Dale Holbrook – Present  
Jeannie King – Absent  
Roger Masingale – Absent  
Gary Mason – Present  
Jerry Millsaps – Present  
Bob Powers – Present  
Jack Powers – Present  
Tad Simpson – Absent  
Chairman David Crews – Present

5. DISCUSSION OF COLLINS & AIKMAN (C&A) BANKRUPTCY SETTLEMENT

Mr. Gentry said that McMinn County has received an offer of settlement from Collins & Aikman for 2005 County Taxes and Mr. Gentry introduced Mr. David Siklosi, our back-tax attorney, to make a presentation to the Commission on how we got to where we are and the recommendations for settlement. Mr. Gentry added that Mr. Phil Tuggle, McMinn County Trustee, was also here to answer any questions.

Mr. Siklosi explained, as part of the 2005 delinquent tax litigation, the issue involving Collins & Aikman. They had gone into Chapter 11 bankruptcy back in the Spring of 2005. Mr. Siklosi said when he got back from vacation, there was a stack of papers from the Bankruptcy Court and a cover letter saying that McMinn County did not file a claim in our Chapter 11 bankruptcy; therefore, our 2005 taxes are uncollectable and further stated that we needed to release their lien on their property. Mr. Siklosi said that not being able to remember exactly what happened three years earlier when they had filed bankruptcy, he was in a panic. He referred to a closed session of the McMinn County Commission and his recommendation that McMinn County employ special counsel, a bankruptcy expert, Mr. Thomas E. Ray, out of Chattanooga, to help us examine what our options might be.

As they got into it more, Mr. Siklosi said that they became more convinced that the reason he didn't file those claims was because the 2005 taxes were not yet due and in fact could not be paid at the time the bankruptcy was filed. Mr. Siklosi further explained that bankruptcy normally covers only those debts that exist when the debtor files for bankruptcy protection and so their primary defense for not filing a claim was that there was nothing due when they actually filed their bankruptcy in March of 2005 since the taxes would not be

(Cont'd)

Resolution No. 08-090 (Cont'd)

payable until October 2005. Mr. Siklosi said that they are pretty well convinced that that argument alone would prevail and added that their second argument would have been while a Chapter 11 can relieve the debtor of personal liability for a debt, neither Chapter 11, nor Chapter 13, nor Chapter 7 can affect a lien and under TN state law, there is a statute that provides that the taxes are both a personal debt of the debtor and a lien against the property upon which the taxes have been assessed. However, Mr. Siklosi added that Collins & Aikman could argue that even though the taxes were not payable in the Spring of 2005, the TN Statute, which we are relying on, says that the lien takes effect and becomes a debt as of January 1, 2005 and a second argument was that Collins & Aikman claims that they sent us a notification to the courts that they were selling all the assets of Collins & Aikman, free and clear of all liens. Mr. Siklosi said that he never saw such notification, but in any event, it was one more argument that Collins & Aikman feels we had an affirmative duty to come forward at that time.

Mr. Siklosi stated that there are interesting and significant legal arguments on both sides, but he said they have received from Collins & Aikman a settlement offer which consists of the base amount of the taxes on all the five real estate properties and the personal property which is a total of \$214,484.00 and they have agreed to pay one half the interest and one half the penalty which means the offer is \$275,261.74. Mr. Siklosi said that this is an outstanding offer considering that the City of Athens and AUB who filed claims finally settled for the base amount of what they were owed. Mr. Siklosi added that at the closed meeting of the Commission on August 18<sup>th</sup>, it was the consensus that the County should not settle for less than \$214,484.00, the base amount of the taxes. The C&A settlement offer represents a net of \$46,510.74 more than this minimum.

Mr. Siklosi said that Mr. Thomas E. Ray, in his letter to him of September 3, 2008, indicated that his fee at this point is \$6,750.00. Mr. Siklosi also said that his liability insurer was notified immediately and they asked for Mr. Siklosi's authorization to hire the Baker Donelson firm in Chattanooga to make a preliminary investigation to see if, indeed, we might have some defenses in the bankruptcy court. They have reached the same conclusions that Tom Ray did in his outstanding job of documenting all the cases that line upon our side and convinced Collins & Aikman that ultimately, if we have to travel up to Michigan for Bankruptcy Court, that we should prevail on most of our claims.

Mr. Siklosi presented and explained to the Commission a written "Bottom Line" summary of the Collins & Aikman 2005 County Taxes Settlement Offer and each Commissioner was provided a copy, including the best-case scenario, worst-case scenario, a better-case scenario and the settlement offered by C&A. Mr. Siklosi said that we are making the choice of taking a sure thing of taking the settlement or taking a very big chance. Mr. Siklosi said that the Commission did vote to spend up the \$15,000.00 on legal representation for special counsel, although the County Mayor said that the Commission never voted on an amount; they just voted to hire Tom Ray and \$15,000.00 was an estimated cost. The cost for both bankruptcy attorneys is \$14,247.00, but Mr. Siklosi he realizes that there is a question about who should be paying Baker Donelson their fee of \$7,517.00 even though this could be considered reasonable legal fees by the County Commission. His attempts to get an answer from his insurer have not been successful. Mr. Siklosi added one final point that a delinquent attorney's fee is 10% of the base amount of the tax that is actually collected. In this case, his fee would have been \$21,400.00, but he is waiving this fee because he is grateful for the understanding he has received in this situation. Mr. Siklosi reiterated his opinion that this is a great settlement offer and he hopes that the Commission will accept it and allow for payment of Baker Donelson either directly or through him and added that the County is coming away from this with \$46,510.00 in what he calls interest.

In response to a question from Commissioner Mason, the County Attorney Vance Baker recommends acceptance of the settlement and based on the settlement, he feels it is within the Commission's discretion to pay the entire attorneys fees.

Chairman Crews said he feels the best scenario is that Mr. Siklosi's insurer pay the Baker Donelson's fees since they were hired by them because of Mr. Siklosi's worry over his possible error. He suggested that this be revisited if his insurer will not pay.

In response to a question from Commissioner Jack Powers, the Trustee, Phil Tuggle, made note that Mr. Siklosi had waived his fee. Mr. Gentry added that due to Mr. Siklosi's possible error and his waiver of his fee, if we had been treated the same as the City of Athens by the courts, we just came out \$75,000 to the good.

MOTION made by Commissioner Mason, and seconded by Commissioner Curtis, to approve the following resolution.

Resolution No. 08-090

A RESOLUTION TO ACCEPT DELINQUENT TAX SETTLEMENT OFFER FROM COLLINS AND AIKMAN POST CONSUMMATION TRUST

WHEREAS, the Collins and Aikman Corporation filed chapter 11 bankruptcy in May 2005; and

WHEREAS, due to the bankruptcy, McMinn County is owed back taxes for 2005, including real and personal property taxes, interests, penalty and attorney fees in the amount of \$336,039.47; and

WHEREAS, the Collins and Aikman Post Consummation Trust (the TRUST) recently demanded McMinn County release its lien claiming improper filing of the proof of claim; and

WHEREAS, the McMinn County Commission, meeting in regular session on the 18<sup>th</sup> day of August 2008, hired attorney Tom Ray of Sample, Jennings, Ray and Clem to recover any and all back taxes and associated penalties and fees from the TRUST; and

WHEREAS, the TRUST, via an email, has offered to pay McMinn County \$275,261.74 to resolve this dispute and have the County release its tax lien; and

WHEREAS, Tom Ray, McMinn County Attorney Vance L. Baker and McMinn County Back Tax Attorney David Siklosi, recommend the acceptance of this offer which represents the 100% payment of base taxes and 50% of interests and penalties; and

WHEREAS, McMinn County, wishing to resolve this dispute without facing a prolonged and expensive legal contest in federal court with an unknown outcome, agrees to this settlement offer with the TRUST in the amount of \$275,261.74; and

WHEREAS, McMinn County authorizes to pay the attorney fees of Tom Ray out of the interests and penalty fees generated from the settlement offer as well as the attorney fees of Baker Donelson, in service to David Siklosi, in the event Mr. Siklosi's insurance carrier does not pay the fees.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF McMINN COUNTY, TENNESSEE, MEETING IN CALLED SESSION, THIS THE 11<sup>TH</sup> DAY OF SEPTEMBER, 2008, THAT this Commission does hereby accept the settlement offer for the 2005 taxes from the Collins and Aikman Post Consummation Trust in the amount of \$275,261.74 and FURTHER authorizes the County Mayor, or legal representation, to execute any and all documents necessary to fulfill the intentions of this resolution.

(Orig signed by John M. Gentry)  
McMinn County Mayor

Attest:

(Orig signed by Evonne Hoback)  
County Clerk

Commissioner Holbrook suggested that the County should pay Mr. Tom Ray's bill, but that they should wait on the Baker Donelson's bill until this is sorted out by Mr. Siklosi with his insurance company and stated that he is not committed to paying the Baker Donelson bill with funds from McMinn County.

Motion carried by roll call vote, as recorded:

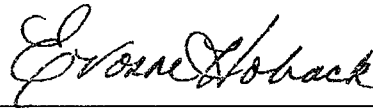
Scott Curtis – Aye  
Dale Holbrook – Nay  
Jeannie King – Absent  
Roger Masingale – Absent  
Gary Mason – Aye  
Roger Millsaps – Aye  
Bob Powers – Aye  
Jack Powers – Aye  
Tad Simpson – Absent  
Chairman David Crews – Aye

6. ANY OTHER BUSINESS THAT MAY LEGALLY COME BEFORE THE COMMISSION

None.

7. ADJOURNMENT

There being no other business, Chairman Crews declared the meeting adjourned at 12:45 pm.



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EVONNE HOBACK  
McMinn County Clerk

Attest:

jb                      9-18-08  
Deputy Clerk              (date)