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## Steering the county

### Rodgers in thick of effort to create legal department

By SAM STOCKARD

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Nearing the end of his second term on the Rutherford County Commission, Murfreesboro attorney John Rodgers remains in the thick of the action, even though he will not seek re-election in 2010 for a third term.

A longtime member of the commission's Health and Education Committee, he is proud of the progress the county's school system has made over the last seven years.

"We've built a number of schools in that time, and we consistently receive excellent reports from the state on meeting federal and state guidelines on the way we educate our kids," Rodgers said.

And as chairman of the commission's, Steering, Legislative and Governmental Affairs Committee, Rodgers is a key figure in developing an in-house legal department. He sat down last week with The DNJ to discuss commission matters.

Q: The County Commission is going through the process of creating an in-house legal department after years of contracting with Jim Cope and his office. Why do you feel that change is necessary?

Rodgers: The process of transitioning to in-house legal services started about two years ago when we renewed Jim's contract then, and there was a desire on the part of the full commission and certainly on the part of the steering committee to look at the way legal services are provided to us. At that time, we formed the subcommittee to gather information, look at how much we were paying, what the county attorney was responsible for, and bring forward some recommendation to the steering committee to look at.

Over two years, off and on, more so here in the last six months than before, we were gathering that information and looking at the cost versus benefit. I think it started to become clear that in-house was certainly going to be an option for us, and there were many reasons that was going to be option for us, maybe even a preferred option.

We are really excited about the prospect of having someone that is solely dedicated to the business of Rutherford County. When the county was smaller, a part-time county attorney made sense, but now the county has enough legal business to keep not just one county attorney busy full time, but more than that. So it's simply time to put people in place that are dedicated to the county, that we're not competing for time with (other clients), so that was a pretty compelling.

I also felt having in-house legal counsel was going to afford the county more proactivity to review the county business, and that goes from stem to stern, that I would expect an in-house legal counsel would have the ability, the time, the opportunity to be looking at reviewing our policies, our procedures, our manuals, our ordinances, our resolutions and looking at those for problems before they arise. In the past, it seems like the county so often has operated on a reactive-type basis. We recognize problems only when they come up, or are created or we're sued. ...

On the tail end of that are the economics of it. ... Candidly, I don't know that it's going to save the county money. My thought and hope is we can save the county money by transitioning to an in-house legal department. But in the end, if it comes out that it's not a money saver or actually costs us more ... I believe that the benefits of having an in-house legal counsel are tremendous, so even if it costs us ... a little more, I think it'll be worth it.

Q: Do you feel Cope's office has given you all good representation over the years?

Rodgers: Absolutely, and Jim has been a tremendous asset to Rutherford County over the years. This

transition was absolutely no reflection on the quality of legal services he's provided to the county. We have great faith in him, as evidenced by the fact we're continuing our relationship with him right now.

Q: As chairman of the steering committee, you served on a subcommittee with Commissioner Jim Daniel and Mayor Burgess to gather information for making the transition to a full-time legal department. In holding some of those meetings, did you ever get the idea that you might be violating the open meetings act or skirting open meetings?

Rodgers: It never occurred to me that those were meetings that would have been ... and I'm still not convinced that they are subject to the open meetings act. The steering committee believed Jim Daniel and I were a little bit more likely to have specialized knowledge and know what to look for and where to look for it. ... I saw my role as simply gathering that information, getting it together in a form that we could present it to the full steering committee, where the actual debates, as far as public debate goes, could be held.

Q: Did you and Commissioner Daniel help word the legal services agreement that the full commission approved?

Rodgers: Commissioner Daniel and I were more in meetings with the mayor. The agreement itself was drafted, I think, as a joint effort between Jim Cope and Mayor (Ernest) Burgess. Mayor Burgess had presented that agreement to us, and Jim Daniel and I, I know we had comments about it, but the agreement in and of itself was primarily a draft between Mayor Burgess and Jim Cope. But we discussed the legal services agreement before it came to the steering committee. There's no question about that.

Q: If Cope helped write it, in hindsight, do you think that was a wise move?

Rodgers: I don't have any concern about Jim's participation in the agreement itself. I mean that's what agreements are ... a meeting of the minds, two people coming together and forming an agreement, so Jim's participation in forming the agreement was essential. We want and need Jim to continue on in his role as county attorney, and so his assistance in crafting not just two years from now but also continuing on beyond two years was essential.

Q: The county has to ask the state Legislature to amend the private act for this in-house attorney, and the steering committee Monday night modified that act.

Rodgers: Actually, we've asked that the private act from 1957 be rescinded and that a new private act be passed that allows for entering legal service agreements with the county.

Q: I believe the proposed new private act was modified to add the words Rutherford County Board of Commissioners in there as far as who approves the hiring of outside counsel. Why do you feel that was necessary?

Rodgers: The steering committee heard some concerns that had been voiced by individuals following the legal service agreement. One of those concerns was that the Rutherford County Commission had abdicated its authority to pass on who is going to provide legal services, that the mayor would be completely and wholly in charge of that. And, rightfully so, members of the steering committee and probably members of the County Commission were concerned about that and wanted to see something in the new private that assured that the Board of Commissioners would be the ultimate authority on who would approve legal services outside the county attorney.

Q: As chairman of the steering committee, you also led it to recommend that the full commission rescind the vote on the legal services agreement. What was your primary reason for that?

Rodgers: We were a little bit concerned that the legal services agreement could be executed upon the passage of a new private act. If a new private act was passed in January or February, the legal services agreement had been approved in September, so it was sitting out there. It had a date of Nov. 1, but in the back of our minds the steering committee was concerned that because it had already been approved, then it could simply be signed upon the passage of the private act. So we wanted to make sure that that didn't happen. What we want to happen is for the legal services agreement to come back to the steering committee for more discussion. There are, in addition to the concern over who has the authority to confirm legal services outside the county attorney, other issues. Of course, the indemnification issue (protection from damage), the term itself, some of those things I know the steering committee and probably members of the full commission want further debate on.

Q: Do you have concerns with the provision that would allow the county attorney to pick an outside

counsel in consultation with the county mayor?

Rodgers: The short answer is no, I don't. In fact, I think there's going to be circumstances when that's absolutely necessary. But what I certainly understand is the desire for the full commission in some way, shape or form to confirm the hiring of outside counsel. So what I see probably happening is that the mayor would have authority to hire outside counsel in kind of an emergency-type basis, but that even those hirings would subsequently come to the full commission for confirmation or approval.

Q: When you all go into executive session meetings when only the attorney, the county mayor and commission are in there, are you all alerted then that there's probably going to be a need for an outside counsel?

Rodgers: My experience has been limited to the last seven and a half years and, candidly, I don't recall having executive sessions until the last 12 months. And during those executive sessions, the only discussion has involved lawsuits that are in progress. It has not involved discussion about who's going to represent us in a lawsuit. ... We have always, I think, as a full commission, been at least aware of the legal representation that we receive beyond the county attorney. So although one could argue there may be no resolution approving the hiring of a particular individual, the commission has been aware that they existed, so perhaps tacitly authorized their hiring and unemployment.

Q: Do you think the county should be liable in case the county attorney makes a mistake?

Rodgers: That's a tough question, but my answer is probably yes, and here's why. I perceive the county attorney's position as a public official-type position. It would be difficult to hire a county attorney if that individual was out there and every decision that he or she made was risking lawsuits from third parties and in those lawsuits he would be left to fend for himself. Remember that this issue of liability insurance has muddied the water for the indemnification issue. The liability insurance that Jim would have would be only applicable to his client, as malpractice coverage, so Jim only owes a duty of reasonable legal practice of standard of care to his client. And so if he commits malpractice, the only person who could recover under that policy would be the county because the county's his client. Third parties are not going to be able to avail themselves of coverage under his malpractice policy, so literally he would be fending for himself, just like if I was sued as a commissioner. ... And county officials have traditionally been afforded that indemnification (legal protection) from the government. So I perceive Jim's role as a county official and as such would be afforded that protection by the county. There are a lot of other reasons why I feel like it would be appropriate. We've always treated him as an employee. We provide him with staff, two people that are employees. We provide him with benefits, and so treating him like an employee, just like any other employee, the county would defend and indemnify those individuals for acts that are committed in the course and scope of their employment.

Q: Since you all have been providing benefits and staff, do you think the agreement in the past has been too loose and that's another reason to have a new legal services agreement?

Rodgers: There has been no agreement in the past, so to say it's been loose is probably an understatement. We wanted, I think, to better define the roles of the county attorney, so that was one objective, but also the other objective in creating this legal services agreement was to provide the framework for transitioning to in-house legal services.

Q: Let's get on to another topic. You voted against the rezoning for the Bible Park when it came up in 2008. Why?

Rodgers: There are multiple reasons ... I can say, generally speaking, I did not believe the Bible Park developers had shown or carried their burden in proving they had complied with the standards of general applicability, which are in our zoning ordinance. Specifically, that the development was not going to have a substantial undue, adverse effect on the surrounding property. I absolutely still believe to this day that not only did they not prove it was going to, but that there was substantial evidence that it was going to have an undue or adverse effect on the surrounding property.

Q: How do you feel, then, about Chancellor Robert Corlew's ruling and then the Appeals Court's recent decision to grant the rezoning and then void the two-thirds provision? In (my) reading some of that, the judges acted like the nine who voted against the rezoning had no valid reasons.

Rodgers: I saw that in some of the opinions. I'm not sure what evidence was presented, but I know in my own mind, I look at what I'm supposed to look at, the standards of general applicability in our zoning ordinance, and I compared that to what the evidence had been and I think that night voiced what I felt like were very good, solid reasons to deny that application. So I obviously am disappointed that the zoning has been allowed, and I still am unsure why those opinions expressed some concern

over lack of reasons to deny the rezoning, because I think they were present and discussed throughout the night.

Q: Do you think the county commissioners have the right to turn down developments if they don't think they fit with existing neighborhoods?

Rodgers: I think that's exactly what the standards of general applicability say. Those are standards I know are also adopted by the city of Murfreesboro and have been tried and true throughout the body of law that exists concerning zoning ordinances. So, short answer is yes, when a proposed development has a substantial undue adverse effect on surrounding property, that is a basis for denying that application. I will say this, I don't think those opinions were focused on the fact that there was a lack of evidence in that regard. The opinions had more to do with the defectiveness of our zoning ordinance, so we kind of set aside all the reasons for the Bible Park having a bad impact on the surrounding neighborhood.

Q: Do you think the full commission will drop the matter or take it to the Supreme Court.

Rodgers: I certainly can't speak for the full commission. In my opinion, we have a ruling from the Court of Appeals right now that says the zoning is granted. I'm disappointed with that but understand the court's position and certainly respect the court's position. We don't have to pay attorneys fee. The end result is that the zoning's been granted. We now have two courts that have ruled against the county. To try a third court, I think our chances are getting slimmer and slimmer, so right now I would probably be content to let that issue rest, but I welcome and look forward to any input from the county mayor, the county attorney and further debate from the full commission.

Q: One step further, since the rezoning is now granted, if the Bible Park were to come back to the full commission, do you think the tax increment financing package would pass? That would require a two-thirds vote, too, I believe.

Rodgers: Ironically, that is the part of the Bible Park proposal that concerned me the least. I understood the county had absolutely no financial liability from the tax-increment financing standpoint. ... They were non-recourse bonds, so the county had absolutely no liability if the Bible Park failed. So that, for me, actually was much, much less of an issue than the fact that this development was really going to eventually impact the surrounding property.

Q: You've announced you're not going to run for re-election next year. Why are you making that decision?

Rodgers: When I was elected seven years ago, my kids were in elementary school and their activities were limited to a few weekend baseball games and soccer games. But now they're in middle school and will soon be transitioning in high school, and they have become a whole lot more active. So I'm looking forward to reclaiming some of that personal time where I can go spend time with them and participate in their activities.

Q: Do issues such as the Bible Park and legal services agreement make it easier for you to say good-bye to the commission?

Rodgers: Actually, they don't. That's what makes the job really, really interesting. I've told people this over and over. That debate we had that night in the courtroom of the old Courthouse was absolutely fascinating because there were people wall to wall in there. There were people hanging over the balcony listening to what was being said on the floor, and that was just a thrilling thing to be part of. It was an agonizing issue to wrestle with, but it was a thrilling process to be part of. So it's surprising, but I will miss those kinds of things.

— Sam Stockard, 615-278-5165

## Additional Facts

About John Rodgers

Who: Rutherford County Commission member; chairman of Steering, Legislative and Governmental Affairs Committee

Age: 43

Background: Born in Illinois, moved to Murfreesboro in 1977

Education: Oakland High School Class of '84; bachelor's degree in economics and computer science, Vanderbilt University, 1988; law degree, Memphis State School of Law, 1991

Career: Practiced law with firm in Memphis for six years; moved back to Murfreesboro in 1997; law firm Kious & Rodgers; chairman of Murfreesboro Board of Zoning Appeals

Family: Wife, Tonja; children, Johnny, 14, Maddie, 12

Church: Methodist

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