

MORTON COUNTY COMMISSION SPECIAL MEETING
October 19, 2022

The Morton County Commission Special Meeting was called to order on October 19, 2022 at 5:30 PM by Chairman Boehm at the Morton County Courthouse, 210 Second Avenue NW, Mandan, North Dakota. Others present were Commissioners Zachmeier, Leingang, Buckley, Morrell and Auditor Rhone. Also present was Sheriff Kirchmeier.

Buckley moved and Morrell seconded to approve the agenda. All voting aye, motion carried.

Boehm moved and Leingang seconded to reconsider the motion made by Commissioner Zachmeier at the meeting on October 13th to deny the grievance. All voting aye, motion carried.

Zachmeier moved and Morrell seconded to deny the appeal and grievance of employment termination filed by Gabrielle Goter against the Morton County States Attorney's Office due to the following: The Morton County States Attorney is separately elected by the citizens of Morton County as required by NDCC 11-10-02. The Morton County States Attorney has the authority to assign an Assistant States Attorney as he sees appropriate as allowed by NDCC 11-16-02. The Morton County States Attorney authorized the Morton County Auditor's Office and thereby the Morton County Human Resource Director to retain Pemberton Law Office from Fergus Falls, Minnesota to conduct an Independent Fact-Finding Investigative Report regarding the Morton County States Attorney's Office and Gabrielle Goter's employment as required or allowed by NDCC 11-16-08. That Independent Investigative Report was completed to standard. The Morton County States Attorney as separately elected has the authority to discipline employees within the Morton County States Attorney's Office and the Morton County Commission may not restrict or remove a States Attorney's authority to terminate an employee hired by the States Attorney except through personnel policies that do not usurp or significantly interfere with the States Attorney's authority. The Morton County Commission has approved an employee handbook. The employee handbook states employment with Morton County is an "at-will" basis and may be terminated at any time with or without cause and with or without notice. The employee handbook includes provisions dealing with harassment and protection against retaliation and reprisal and says an employee who is found to have knowingly engaged in or knowingly condoned, encouraged, or perpetuated harassment, retaliation, or reprisal shall be subject to disciplinary suspension, demotion, and termination. The employee handbook also includes a provision for disciplinary action and states discipline in the form of a verbal warning may be imposed by the "Department Head/supervisor, ". A States Attorney's failure to take disciplinary action against an employee in the States Attorney's Office may impose potential financial liability on our county; however, there is no authority permitting the County Commission to take disciplinary action up to and including termination against an Assistant Attorney in the States Attorney's Office. The Morton County Commission personnel polices do not give the County Commission authority to impose disciplinary action up to and including termination of an Assistant Attorney in the Morton County States Attorney's Office. The authority for that discipline lies with States Attorney Alan Kopyy and not the Morton County Commission. See North Dakota Supreme Court Decision *Schwartzenger v. McKenzie County Board of Commissioners* (2017 ND 211 and 901 NW 2nd 64). Voting aye: Zachmeier, Morrell, Leingang, Buckley, Boehm. Motion carried.

Zachmeier moved and Morrell seconded to adjourn at 7:02PM. All voting aye, motion carried.

Nathan Boehm, Chairman, Morton County Commission _____

Dawn R Rhone, County Auditor _____