

BUDGET, FINANCE AND PERSONNEL COMMITTEE
January 13, 2009
3:50 P.M.

Councilwoman Berz, Chairman, called the meeting of the Budget, Finance and Personnel Committee to order, with Councilmen Benson, Rico, Gaines, Bennett, Robinson, Gilbert and Pierce present. City Attorneys Mike McMahan and Phil Noblett and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Richard Beeland, Dan Johnson, Donna Kelley, Joe Shaw and Daisy Madison.

Chairman Berz stated that before we get started, she would like to say that we had three issues, including the Internal Auditor position; that we had Early Voting for the 2009 Municipal Elections and also the issue of Overtime Pay; that Overtime Pay had been withdrawn from the Agenda. She stated that she wanted to make sure that no one was present who wished to speak to Overtime.

Councilman Pierce asked if the Overtime issue would be brought back up at a later date?

Mr. Johnson responded that they were looking at this issue; that Mayor Littlefield had met with several groups of people and had asked them to come back with information.

Councilman Pierce still questioned if it would be coming back.

Councilman Gilbert stated that the Council needed to get information to make decisions that involve peoples' lives; that when it is a person's life, we need to look into the issue in detail to make a sound decision; that as it is now, we don't have time to do this; that he was not just talking about the overtime issue but things in general; that the Council did not have enough information to make sound decisions; that it did not make sense; that when peoples' livelihoods were involved, we need to look at this closely; that he felt a committee of the Council should come together instead of pushing things too fast.

Councilman Rico asked him how much time he was talking about; that the Council get their information for the following week on Saturday.

Councilman Gilbert stated that this was not enough time.

Councilman Pierce stated that we should consider all Councilpersons' suggestions, and he would support them.

Councilwoman Bennett stated that she felt the same way as Councilman Gilbert felt about some issues; that an item could be put in committee and the Chairman of that committee could invite the necessary people and take the time they deemed to be necessary to make sure the issue is fully discussed; that it is the call of each Councilperson to make this request; that if any Councilperson is uncomfortable, that we go over the agenda before an issue goes to the floor for a vote—that the reason for going over the agenda is to give everyone the time they need; that she agreed that we should be trying to make the efforts to fully discuss issues.

Chairman Berz stated that concerning the overtime issue that was on the agenda, that Councilman Gilbert wants the opportunity to be fully informed and time to study this.

Councilman Gilbert said that he had read the information that Chairman Berz had given the Council at her last meeting concerning the Council Auditor matter; that she had given up her time to study something like this and had given the Council the opportunity to read it and to formulate questions to make sound decisions; that nothing was given the Council to get at a understanding on the overtime issue.

Councilman Rico still maintained that the Council gets the “stuff” for the next week on Saturday.

Councilman Gilbert maintained that there is certain information that the Council has to get, and there was nothing on overtime.

Councilman Rico stated that he took it upon himself to go and ask questions.

Councilman Gilbert stated that there was no time to ask questions.

Chairman Berz stated that as she was understanding Councilman Gilbert, that when something comes to the Council, he wanted back up material like a Cost Benefit Analysis. She asked Ms. Madison if this should come up again, could we get back-up material to the Council a week ahead of time?

Ms. Madison responded that she could write a brief explanation of why Administration wanted this—that they could expand on it.

Chairman Berz stated that she would love that.

Councilman Benson stated that he thought the solution was that it was incumbent on the Staff; that when the Staff has a problem, they need to get it to the Council up front; that we can be pro-active through the Chairman of the committee who will make the judgement.

Chairman Berz stated that Ms. Madison did let her know that overtime was being withdrawn. For the record, she asked Ms. Madison if she could have all the backup to bring this issue forward, and she asked Councilman Gilbert if a week ahead was sufficient time? Councilman Gilbert responded that it should be in most cases.

Councilwoman Bennett pointed out that Councilpersons have a couple of other opportunities to ask questions; that next week's agenda will be discussed at the Council meeting and questions can also be asked at the committee agenda session—it can be brought up at the agenda session or at the end of the Council meeting; that if there are further questions, the matter could be put in committee.

Councilman Gilbert stated that he was new at this, but with peoples' lives involved, we need more time.

Chairman Berz stated that she thought he was saying we don't need to make "locked" in decisions. She thanked him for bringing this up, stating that she appreciated it.

COUNCIL INTERNAL AUDITOR POSITION

Chairman Berz stated that she had handed out information on this matter last week and had heard from none of the Council.

Councilman Benson stated that he and Councilman Rico were not in her meeting—that they were at the Mayor's Press Conference.

Councilman Pierce urged to let Chairman Berz discuss this.

Chairman Berz stated that it was pretty transparent; that Chairman Bennett asked her to research this, going back to its inception and to write up a report; that she had asked the Council to read it and get back in touch with her; that she had met with Stan Sewell, Randy Burns and the City Attorneys and all of the players, going back to the original Court Order; that everyone had received a copy of this, and the process was real transparent. She asked if there were any corrections and wanted to know what the Council's pleasure was?

Councilman Pierce stated that he appreciated what Chairman Berz had done and that it was a good report, but it was what we have known all along, and there was nothing new; that the Council has the responsibility of forming an Auditor position; that we can live up to our obligation or continue to table the issue; that the Council simply has no say over the Mayor and his auditor; that we are responsible in forming an Auditor position, and the question is “Do we do it or Not”? The question would then be “How do we do it”? He continued, stating that he felt we needed to get more professional guidance to set up this position; that he would like to see a Board appointed by the nine Councilmembers with one Councilmember serving on this Board; that we need a professional who is familiar with this to tell us what needs to be audited and how to do it. He stated that we needed to take politics out of this and each Councilmember will appoint someone on this Board, but we would only have one Councilmember on the Board, who would report back to the Council. He stated that this Board would dictate—that this was the only solution he could see to allow us to abide by the Charter.

Councilwoman Bennett stated that she did like the idea of an Audit Committee; that the perception is that the Auditing is a function on the Mayor’s side, and it needs to be a neutral department; that it is reasonable that the Auditor should serve the Mayor but that the Council has other needs; that if we could put this in place neutrally, we could justify having one department for both our needs.

Chairman Berz stated that as she was hearing it, Councilman Pierce was going for Option 2 and Councilwoman Bennett was opting for Option 4.

Councilman Pierce stated that the office does not need to be fully staffed today, but we do need to get an Auditor on board; that this was no reflection on the Mayor, but this will be his last term, and the Council has no oversight and this could get out of control. He noted that he had once asked for a “freeze” to be put in place; that the Council needs oversight of what is going on; that we have been denied this right, and we need it.

Chairman Berz noted that she had outlined several options and was not sure which one the Council preferred.

Councilwoman Gaines stated that Harry Tate was a CPA and was an Auditor, and the position name was changed to Management Analyst when Randy Burns was hired.

Chairman Berz stated that the title had always been Management Analyst—that it was always Management Analyst, which was to be the same position as Internal Auditor; that from the inception it was always advertised as Management Analyst, and she had no idea why.

Councilwoman Gaines stated that we changed the job description; however Chairman Berz indicated that the job description had never been changed, with Councilman Rico stating “then we were in compliance all along”.

Chairman Berz stated that “no”, we were not in compliance; that she had talked to Stan Sewell and the Personnel Dept. and no one could come up with a reason why we had not had this position from the inception, when it was decided that the Council should have the Auditor position in the Statute. In reading the job description on the Management Analyst, any consideration for auditing the executive branch was left out.

Councilwoman Robinson stated that audit is a term of art; that only a CPA can audit; that perhaps the position was written as Management Analyst so that it would not require that a person be a CPA in order to perform the duties—that the person could perform the duties of a management analyst, but they would not have to be a CPA for the position.

Chairman Berz read the language from the original Court Case and its intent, stating that we were out of compliance irregardless of the credentials, and we need to fix it; that we have a couple of options—that Chairman Bennett mentioned one and that Councilman Pierce had mentioned one.

Councilman Benson apologized for not reading Chairman Berz’ information before, stating that he had went to the Mayor’s Press Conference when her meeting was being held. He stated that he thought we had yet a 5th Option to comply. He first wanted to say that he thought Stan Sewell had worked fine, mentioning him taking a look at the Purchasing Dept., where he had noted some errors. Councilman Benson stated that he would like to see the Council and the Mayor react together; that information be reported to the Council and let the Mayor work with us; that he thought by doing this, we would be complying with the Charter; that Stan Sewell could come over and answer to the Council.

Councilman Pierce stated that this would not work because Administration would not cooperate; that he thought the Council just had to “bite the bullet” and fulfill our obligation.

Councilman Benson stated that we would be at cross-purposes.

Chairman Berz stated that we needed to give Administration a chance to speak.

Dan Johnson stated that everyone needed to try to look and see what is best for the City of Chattanooga; that we needed to safeguard our assets and the question was “How do we do this?” He explained that the Internal Auditor function has several aspects—that they have to review to assess risks of the operation of the City and see if all policies are in place and being followed. He noted that not a lot of this was being done four years ago. He went on to say that he thought the Internal Auditor function could serve both masters and fulfill the Council’s needs for oversight purposes; that he disagreed with Councilman Pierce’s statement that Administration does not cooperate; that he thought they cooperated extremely well; that we should not use the Internal Auditor as a vehicle to go after anybody—its purpose is to manage.

Chairman Berz stated that Stan Sewell said you can't audit someone who organizationally appoints you; that she was not sure something could be crafted with independence; that if the spirit of the law was fulfilled by having one auditor (Mayor's Auditor)—she questioned how you would audit the Mayor?

Mr. Johnson responded that you could have dual reporting and an Audit Committee in place with outside professional interest that know what they are doing; that the Committee would hire the Internal Auditor and External Auditor.

Councilman Gilbert stated that whomever the Mayor may be, he can fire or hire the Auditor. He questioned what would happen if we got a "crooked" Mayor who could hire whomever he wanted to hire as a sidekick. He questioned why the Council could not have a separate Auditor to allow checks and balances. Her questioned who wrote this Charter; that sometimes we don't know if we have a good Mayor or not because the election is often a popularity contest—that it is the same when the Council runs for office; that we need to have checks and balances, and if we don't, it is not kosher.

Mr. Johnson reminded that the Audit Committee would have the responsibility of hiring the Auditor.

Councilman Gilbert wanted to know who would elect the committee? Mr. Johnson said that the Mayor could have an appointment and the Council could have an appointment and then there would be outside CPA's.

Councilman Pierce reminded that we have two separate forms of government—Administrative and Legislative, which is a separation of power; that the Council, as a group, is given the authority to select their own auditor. He stated that he was not accusing Administration of anything; however they dictate what they want; that they are not willing to give up power and want to keep control; that he would love to work with Administration, but he felt they were too close to this Council; that the Council needs to be doing their job, but they could not breathe without Administration breathing down their necks; that TML had come in and suggested a joint department, and he opposed this because it was not separation of power.

Chairman Berz stated that she saw a short-term and long-term aspect to this; that in the long-term it is a Charter change, which takes two years; that the short-term fix is that we are not in compliance with the letter of the law, and in the short-term, we have to do something; that in the long-term, we could amend the Charter. She reiterated that there were two aspects and right now we are out of compliance, and we need to fix it. She stated that we needed to see what the short-term looks like; that first we could change the job description of the current Management Analyst, which might necessitate expanding his department. Secondly, we could take Councilman Benson's suggestion and have the current Audit Department answer to the Council; that clearly we need to fix this now.

Councilwoman Robinson asked “What if the short-term fix is the long-term fix”? She asked what if we elected by majority vote to hire an Auditor short-term, and it could work for the long-term—that this would be a direct move and would not require a Charter change.

Councilman Pierce stated that he was conservative; however we find money for everything we want—that the money is there, and we need to do what we need to do.

Councilman Benson reminded that there is just so much money.

Councilman Rico agreed that money would be a problem—that this had been going on for twenty years and nothing bad had happened. He suggested waiting to fix this until the economy is better.

Chairman Berz stated that if the direction is to hire an Auditor, then we need to come up with a Cost Benefit Analysis, which would have to be done by Daisy Madison—that there might be a lot of duties that one person can’t fulfill—that it might be a job for more than one person—that we could say do this, and we don’t care what it will cost, but she thought we needed to be more thoughtful.

Councilman Pierce reminded her that we are obligated by law to do this, and we should not be trying to find a way to get around it.

Chairman Berz maintained that we needed to know if we have funding. Ms. Madison stated that this was a question that was up to the Council—to decide if they could meet the intent of the law by having a joint appointment of the current direction within the Internal Audit Dept.

Councilman Pierce stated that “no”, we could not meet the intent of the law with a joint appointment—that we had been discussing this for six months.

Attorney McMahan felt that a joint appointment could fulfill the intent of the Charter.

Councilwoman Gaines asked if we had to do this today? Councilman Benson responded obviously not, since it had been going on for 20 years. Councilwoman Gaines stated that we talked about this five or six months ago, and we talked about a dual role, saying that we needed at some point to move quickly. She suggested meeting with Bill McGriff of the County and let him share how the dual piece works. She stated that she was not promoting it but thought that we should have Bill McGriff come down—that he would be happy to share with us how the dual session works. She stated that this was just a thought.

Councilman Benson stated that this discussion was in no way a reflection on the job that had been done for the last four years; that we had not had an Internal Auditor for 16 years and now we had a good auditor; however the Council wanted some independence and some autonomy.

Councilman Pierce questioned when the Council started getting reports from Audit? Councilman Benson stated four years ago. Councilman Pierce disagreed, stating that we did not start getting reports until we started these discussions. Councilman Benson still felt we have had good audits for the last four year.

Councilman Pierce questioned if Administration had put a person in place that was irreplaceable; that Stan Sewell had done a good job, but he was hired by Administration and beholden to Administration.

Councilwoman Bennett stated that the Council's authority to audit the executive branch is the missing piece. She stated that she did not think we had to have a separate department here; that we should reserve the right to audit the executive branch if we have need to.

Councilman Pierce still questioned the Council letting Administration hire who they want to for our auditor position.

Councilwoman Bennett stated that the two branches had different jobs—that the Council's job was to “steer the boat” and Administration's job was to “row the boat”; that she was not talking about micro-managing; that the Council sets policy and need to get the information we need to do this; that we could have the right to call upon an Auditor if we need to; that we are getting these reports but questioned how the Council knew if proper changes were being made and she questioned what the Council was doing with the information they are getting now; that we need to monitor how we use the information we are getting and have the ability to audit the executive branch if we need to.

Chairman Berz stated that the purpose of the Auditor is to make sure that the funds the City Council appropriates are used in the right way, and the execution of these funds happen through the Executive Branch; that the Council wants the ability to make sure that when we vote to fund something that the money is spent how the Council authorizes it to be spent; that she felt that this was the intent of the Law and the Court Order. She urged that the Council stay issue focused.

Councilman Rico stated that he was glad that Stan Sewell was not at this meeting to hear Councilman Pierce say that he could not be honest and unbiased—that he did not think Stan was that way and would be offended by what has been said.

Councilman Pierce retorted that he was offended by what Councilman Rico was saying.

Councilman Gilbert stated that he agreed with Councilwoman Bennett; that we don't have to have an Auditor 24 hours a day, but if we need an Auditor, we should have the authority to choose one; that if cost was a factor, this would save money and still get the job done independently.

Attorney McMahan agreed that we would be following the law if the Council “outsourced” this; that this could be explored with Audit Firms.

Councilman Gilbert stated that we do need to get an external auditor to look into this and see what the cost would be.

Councilman Pierce agreed that we needed to get some expert advice to give us the pros and cons of an independent auditor and see what the costs might be; that the committee could do this—that the Council could go to the committee and present what we wanted to them.

Chairman Berz stated that she liked the idea of an Audit Committee; that the Audit Committee could receive concerns we might have and come up with a schedule; that it was not out of the question that this be an “outsourcing” function as opposed to an Auditor's office. She asked if we should go forward and come up with a presentation to help the Council think this through; that Auditors follow procedures (yellow book); that we could have somebody come in and talk about the range of fees.

Councilman Pierce stated that he would like to hear about outsourcing versus in/house and the pros and cons.

Councilwoman Bennett stated that we needed more dialog on how the committee would work.

Chairman Berz suggested having someone like TML come in.

Councilman Pierce stated that he did not always agree with TML nor the person that Councilwoman Gaines was talking about. He added that he wanted a professional.

Chairman Berz stated that she would get on this quickly, with Councilman Pierce stating that this had drug out entirely too long. Chairman Berz stated that she needed direction for her “marching orders”. She asked if everyone was in agreement with this.

Councilman Benson noted that we keep delaying and delaying this, stating that we have to comply with the Code, with Councilman Pierce questioning the option about a joint auditor.

Councilwoman Bennett stated that we wanted to move forward in an intelligent way. She questioned how Randy Burns fits into this. She urged to move forward in a thoughtful way.

Councilman Benson stated that he had no problem with Stan Sewell; that he thought he could answer to both of us.

Councilman Pierce questioned how you can be independent with the Mayor being a part of this?

Mr. Johnson stated that CPA's have to abide by ethics; that they have to follow directions and this is what Mr. Sewell does all the time; that it is done by professional standards; that the auditor is not a "slave" but an independent CPA who makes decisions with ethical requirements to go by.

Councilwoman Bennett stated that the Internal Auditor should be no more under the Council than under the Mayor—that neither party should be directing him; that the information should be objective and no certain body should influence this person; that he should do his job with professional standards.

Chairman Berz stated that she thought Councilwoman Bennett was right about this; that we do have a Law and Charter that says the auditor should be different; that she thought she had heard that we could meet the intent of the law without totally ruling out a joint appointment and we could see a real checks and balances. She stated she thought that would be agreeable with Councilman Pierce.

Councilman Pierce stated not when she said "joint" appointment; that the Council needs to be educated as to what "independent" means—that one person can't serve two masters; that we are the legislative branch and we authorize the money to be spent, and we need someone to look at what Administration is doing. He stated a case in point was when Mayor Littlefield came in and spent \$750,000, and the Council did not know where the money came from; that he did not know and tried to find out—that no one came forward with the question of where the money came from—that it was things like this—where did the money come from? He stated that it would be things like this that the Council's auditor would be looking at. He still questioned how the Auditor could be independent.

Mr. Johnson stated that if the committee hired the Auditor, he would be independent.

Councilman Benson questioned if the committee would be under the Council and not the Mayor? Councilman Pierce added that the Mayor could not be involved.

Mr. Johnson stated that an explanation of what “independent” is would be good.

Chairman Berz stated that in two weeks she would get someone here to explain the concept of independence.

Councilwoman Gaines stated that person should explain independence and also the dual role.

Chairman Berz stated that they would explain the concept of independence.

Councilman Pierce stated that a dual role might be acceptable in other cities but looking at our Charter it would not, and we don’t need to see what a dual role would look like. He agreed that a dual role would be more cost efficient.

Councilwoman Gaines asked if it was not the wish of the Council that the person explain the dual role.

Councilman Benson stated that he knew what independent is, and he did not think we needed to get anyone to explain independence.

Chairman Berz stated that there was another issue to be discussed—early voting.

Councilman Benson suggested that this be discussed in open meeting.

Chairman Berz stated that if we were not touching the issue of voting in this meeting that she would like it moved to the front of the agenda tonight. She stated that she still needed direction about the auditor position.

Councilwoman Bennett stated that she had information on the role of the auditor in government and she could get this information to the Council; that one other discussion needed to be clarified—that we need to look at Best Practices and what is outlined in the Charter may not be the best way to go.

Chairman Berz stated to trust her to bring in an outside firm. Councilman Benson asked her to not spend any money on this; however Councilman Pierce told her to do what she needed to do.

The meeting adjourned at 5:00 P.M.

