

BUDGET, FINANCE AND PERSONNEL COMMITTEE
NOVEMBER 2, 2010
3:35 P.M.

Councilwoman Berz, Chairwoman, called the meeting of the Budget, Finance, and Personnel Committee to order with Councilpersons Ladd, Benson, Gilbert, Scott, Robinson, Murphy, Rico and McGary present. City Attorney Michael McMahan; Management Analyst Randy Burns; and Shirley Crownover, Assistant Clerk to the Council, were also present.

Others present included Dan Johnson, Paul Page, Gary Hilbert, Richard Beeland, Chief Parker, Missy Crutchfield, Jim Templeton, Doug Kelley, Donna Kelley, Greg Haynes, Karen Rennich, Lee Norris, Bill Payne, Steve Leach, Alice Cannelli, Daisy Madison, Chief Dodd and Danny Thornton. Attorney Phil Noblett, Attorney Crystal Freiberg, and Jan Turner joined the meeting later.

On motion of Councilwoman Robinson, seconded by Councilwoman Scott, the minutes of the previous meeting were approved as published.

Chairwoman Berz noted that Councilmembers had received the Council Audit Report of the Be Magazine last week, and there was no discussion because they had just received it. She asked if any further discussion or further action was desired?

Councilwoman Scott referred to the Council's Code of Ethics that was approved in 2007, stating that there did appear to be a discrepancy between a private business on government working time—that there was a conflict of interest; that Ms. Crutchfield made no money on this endeavor, but Councilwoman Scott stated that she did not feel that this was adequate defense; that Ms. Crutchfield is an excellent administrator and an excellent worker, but we should not overlook this. She stated that she knew this had been stressful to Ms. Crutchfield and her fellow worker; that many of the objections that were made were out of her control but that this did not negate the Council's responsibility for this action. She referred to Article 8, Section 2, which states that all elected officials and city employees that violate the Ethics Code are subject to disciplinary action. She stated that she did not feel that Ms. Crutchfield should be terminated but should be censured for her actions—that the Legislative body does have this power.

Chairwoman Berz confirmed that Councilwoman Scott was recommending censure.

Councilman McGary pointed out a similar situation in County government with Mr. Knowles, where he thought this was passed to a regulatory body. Attorney McMahan explained that it was passed to the County Executive. Councilman McGary stated that he thought there was a regulatory body also. Mr. Johnson responded that it was the State Comptroller's Office. Councilman McGary asked if this was something we had to do out of courtesy? Mr. Johnson

stated that he thought it was a requirement. Chairwoman Berz asked if it was a matter of record? Mr. Johnson stated that he thought it was just a matter of information.

Councilman McGary stated that his understanding of this incident was the same as Councilwoman Scott—that no money changed hands, but this did not exclude wrong doing; that she had been asked if there was ever an “intent” for money to change hands, and the answer was “no”; that the question was “Why was it organized this way?” He asked for understanding of the question of “intent”; as to the matter of censure, he questioned if this was the Council’s authority—that he knew the Council could “censure” each other but could we censure other departments? He noted that Roberts Rules of Order says “each other”. Attorney McMahan stated that he did not think the term was mentioned in the Charter.

Councilman Benson stated that when the Council passed the Code of Ethics, it was among ourselves; that we needed to read this carefully; that he did not think Ms. Crutchfield did anything worthy of censorship; that she might have had the potential, but he did not feel right about censure; that something could have happened down the road but right now there was no wrong doing, and he did not feel right about censuring someone who had such a good performance record; that we all could “sin”; that this was a mistake; that she had been burned and had just made a bad judgment, but it was not worthy of censure.

Chairwoman Berz asked if “intent” was required. Attorney McMahan indicated he had not researched this and was she asking if there was an intent to violate a rule? Chairwoman Berz still questioned if “intent” was required.

Councilman Gilbert mentioned that we deal with people who leave employment who have done something wrong and just leave; that he did not think we should criticize Ms. Crutchfield.

Attorney McMahan stated that in Roberts Rules of Order there is no reference to censure.

Chairwoman Berz questioned why the Council put it in their Ethics Rule? Councilman Benson responded that it was just for council people.

Councilman Murphy asked Mr. Burns if it said in his report that Ms. Crutchfield intended to dissolve the LLC—that he thought this was important. Mr. Burns confirmed that the LLC had been dissolved, with Ms. Crutchfield saying “she believed so”. Councilman Murphy stated that the most troubling thing to him was that a lot of businesses don’t make money in the first year, but the business could be ready if Ms. Crutchfield should leave, and it would be something to land into; that Mayors had left the City and been able to do well in businesses before and after, but they were not creating a business entity—that they were successful because of their intelligence, talent and drive; that Ms. Crutchfield could do well for herself with these same attributes.

Mr. Burns noted that she still had a blog. Councilman Murphy indicated that he had no problem with a blog; that he would not want to say that employees could not participate in a blog.

Councilwoman Scott maintained that the Code of Ethics stated clearly that it was talking about elected officials and all employees and therefore sets us a conflict of interest and is a violation, and it says that all who violate are subject; that the fact that the LLC is not profitable does not mean that no value could be obtained; that the formation of an LLC is to publicly recognize a business attempt to be profitable; that she could have filed for a Non-Profit status; that if one is never to see a profit, there is no reason for an LLC; that all we have heard about are for things that could have been done on a city website, but was not; that her suggestion stands for censure.

Councilman McGary stated that there was “the letter of the law” and “the spirit of the law” and questioned if this fit; that he did not want to pull the Knowles’ situation in, but it was clearly an outside business design and the person was operating on government time to make money; that the “intent” was to organize an entity so that her department could create a mechanism for advertising, and her desire was not for financial gain. He stated that something was wrong and noted that Attorney McMahan was not in the room at this time—that there is a full gamut that we can take—suspension and termination.

Mr. Johnson stated that they realized what happened was a mistake; that they knew why she formed the LLC—that it was for protection; that she had been sued, and she was advised to form an LLC—that this was a protection in law; that she made a mistake; that this has been “batted” around in the news media, which was punishment enough; that this is Administration’s responsibility to begin with and Mayor Littlefield has already taken his position; that everything has been handled.

Councilman McGary stated that he would still like an answer to his question.

Councilman Rico stated that he agreed with Councilwoman Scott and with Mr. Johnson; that this is the Mayor’s call for censure; that Ms. Crutchfield does work for him, and he should deal with it.

Councilwoman Ladd stated that she concurred with Councilman Rico; that there has been a violation of policy; that whether money was made or not, it is a violation of policy; that she would only support censure when it is an illegal action that places the city in liability, and she did not see this here; that this is an issue of judgment; that we want department heads who have good judgment; that this is a personnel issue; that she felt like the Mayor should place a letter documenting this in the personnel file of Ms. Crutchfield; that the matter should not be dismissed, but there should be a letter. She reiterated that we wanted good judgment in department heads and this performance issue needed to be addressed; that it was lack of judgment and a note should be made of it; that censure should only be used when there is a risk or liability.

Councilwoman Robinson stated that we needed to look at what had happened and went before to see what this is all about; that this Administrator contracted for services for computer work, which was sort of innovative, and she was overcharged and sued by an unscrupulous person who took advantage of the situation, and she was personally sued; that what happened, she thought in this incident, was that she had been burned bad and was advised to use an LLC; that she thought if she had asked the City Attorney, he would have said “no”, but she consulted with an attorney, and this was her “shield”. She stated that this was a mis-call, and there was no intention to make money, and she did not want to be sued again and have to deal with an unscrupulous person.

Attorney McMahan returned to the meeting with an answer to Councilman McGary. He stated that the unabridged version of Roberts Rules of Order did have a censure. Councilman McGary stated that if she could be subject to disciplinary action, what could the Council impose? Attorney McMahan responded that with six votes, the Council can fire an administrator; that the Charter says all administrators work for the Mayor, and this action would be subject to six votes.

Councilwoman Scott suggested reading the Code.

Chairwoman Berz asked if we were saying that the Council “may” censure, but it has to be one of its members?

Councilman Murphy stated that it is a “given” that we could censure anyone with five votes; that it would take six votes to terminate a department head; that the Council cannot terminate

the City Attorney, the Police Chief or the Fire Chief. He asked Chief Dodd if he had been sued personally, and he responded “yes” about three times. Councilman Murphy noted that department heads could be sued individually all the time—that they held high risk positions and their jobs were not “cushy” “easy” jobs, and he thanked the department heads.

Councilwoman Scott stated that if one read the Code, the ability is there to censure; that she was convinced that it was, and it applies to all and any violations apply; that to terminate, it would have to be based on a majority vote of the Council.

Chairwoman Berz stated that it was very clear that ethical rules apply for council members and city employees. She asked where Councilwoman Scott found that the Council can censure city employees? Councilwoman Scott stated that it was in the Code of Ethics—that we can censure when there is a violation—that it was Article 8.

Councilman McGary went back to Roberts Rules of Order, mentioning that the Mayor had sent an e-mail to Judge Paty, and he questioned how censorship works under Roberts Rules of Order and proceeded to read from Roberts Rules of Order, which he interpreted to mean Council members; that our City Attorney says we have no right and also the MTAS attorney says this—no censure outside our own body.

Chairwoman Berz pointed out that Councilwoman Scott was talking about the Code. Councilman McGary still felt that censure could not be outside the City Council. Councilwoman Scott maintained that there is legislature that allows us to do it; however she noted that there were not five others who had any interest in doing this.

Councilman Rico still maintained that it was not in our jurisdiction—that censure was political and not for a city employee.

Councilman Benson stated that he thought Councilwoman Scott was saying that she did not get a second and wanted to move on.

Chairwoman Berz stated that this was just poor judgment, and we may not have the ability for further action.

Councilwoman Scott stated that this Ordinance was passed in 2007 and asked if we were questioning the legality of the Ordinance? She reiterated that she was not requesting a termination of Ms. Crutchfield, but it was clear that the City Council needs to be clear on what is acceptable and what is unacceptable.

Councilman Rico stated that he agreed, and this was the Mayor's call; that he is Ms. Crutchfield's boss—that there is a separation of powers.

Chairwoman Berz addressed Councilman Murphy and said that perhaps this was a mistake of judgment and was a personnel matter and should be part of her record; that anything further should come from Administration; that we had three different versions of ethics and censure, and this needed to be cleared up and could be done in Councilman Murphy's committee; that this was voted on in 2007, and some of those who voted for it are no longer with us; that we needed to clear this up.

PERSONNEL CODE AMENDMENT

Chairwoman Berz stated that we had an Ordinance on next week's agenda to amend the City Code relative to personnel matters and as we were going through the Code and re-writing and amending, the Ordinance needed to comply with what was voted in. She asked Ms. Kelley to explain this.

Ms. Kelley indicated that this does not deviate from the outline in Ord. 5739 passed in 1980 and Ordinance 8012—that we had had only five amendments in 30 years. She referred to Item (f) that states that employees eligible for post-retirement medical benefits and firefighters or police officers hired on or before March 31, 1986, that are not contributing into Medicare, shall continue to be eligible for the benefits set forth.

Chairwoman Berz stated that this would be voted on next week.

Ms. Kelley went on to mention Section © that states that new hires, rehires, and persons reinstated shall earn personal leave if they receive pay for a minimum of one-half of their initial personal leave accrual period.

Councilman Gilbert asked the situation if a person is found innocent? Ms. Kelley explained that they would accrue personal leave. Attorney McMahan confirmed that this was covered.

Ms. Kelley referred to © (2) that states that the end of the personal leave year shall be defined as the first accrual period in March that includes the last calendar day in February. Ms. Kelley explained that because of the large work force, Human Services can't start their personal leave year at the same time; theirs will begin August 1st. Councilman Gilbert asked if this was PTL time and was told "yes".

Ms. Kelley then spoke of a request at the employee level; that employees had requested that we look at this and take into account the differences in wages between a donor employee and donee employee; the leave will be pro-rated. Councilman Benson stated that he thought this would be hard to administer. Ms. Kelley explained that donors usually give to those that are the most needy and Doug Kelley says that this will not be an administrative burden; that we will have to deviate a little, but it will be okay.

Ms. Kelley then talked about exceptions for the Fire Dept., stating that they would be asking the Council for a companion Ordinance next week; that Firefighters get five additional days now that the lawsuit is over.

Councilman Gilbert stated that they work 216 hrs. and questioned why we were taking away when we do the scheduling, and they have to use their personal time. Ms. Kelley stated that the hours worked is significant. Councilman Gilbert stated that we were taking away "Kelley" days—that we were giving them five but taking away four, and this was a problem. Ms. Kelley did not agree that it was a problem, with Councilman Gilbert maintaining that it was. Ms. Kelley stated that the lawsuit had been completed, and this was how Chief Parker has decided to handle this. Councilman Gilbert wanted to know what standard we were looking at? Chief Parker stated 204 hours, and if they worked over this, we would pay overtime or else not work them over. Councilman Gilbert stated that we were working them over—that they were short three days. Chief Parker maintained that this was on a different standard. Councilman Gilbert stated it is either 204 hours or 212 hours—not 216. Chief Parker explained that it is a matter of staffing, with Councilman Gilbert maintaining that there was still a gap.

Mr. Johnson added that that this is calculated on a seven-day work period; that the Chief has determined this and the hours considered. Councilman Gilbert maintained that the days add up to 216 hours. Chief Parker responded "not necessarily"—that it could be more or less. Councilman Gilbert still maintained that it was 216 hours and not 204 hours. Chief Parker

explained that they don't work over 204 hours—that they are not at the firehall—that if they are, they are paid overtime—that they are not physically working.

Ms. Kelley added that firefighters would not want to be paid one small check at one time and a larger check at the next pay period; that this was formally authorizing equal pay.

Chairwoman Berz stated that we would meet again in two weeks and asked for bullet points to explain all this.

Chief Parker reminded her that this goes for a vote next week. Chairwoman Berz responded that we have a councilperson sitting here who has questions and asked if this piece could be postponed. Councilman Rico suggested that Councilman Gilbert get with Ms. Kelley and Chief Parker during the next week to get his questions answered. Chairwoman Berz stated that this was on next week's agenda; that there are several moving parts, and we need to get this cleared up, which she thought would be fair. She asked if this could be done during the week? Councilman Gilbert stated that he would like to get the information on paper. Chief Parker stated that if they don't physically work, they are not there. Councilman Gilbert questioned why they had to take their personal time? Chief Parker stated that if we work them, we have to pay them.

Councilman Murphy stated that moving from the Fire Dept. to the Police Dept., that some officers are not happy with the FSLA; that it is a scheduling issue. He suggested instead of a 28 work day period, it be 14 days to help them on their overtime; that we might have to pay more overtime; that he did not think this would be large dollars and asked Chief Dodd if we could see if it would work. Chief Dodd stated that there would not be enough personnel to cover shifts; that 14 days does not work and would cost us more overtime. Councilman Murphy stated that he thought mid-night would be the problem. Chief Dodd noted that it takes five people to cover one district, and it would be a nightmare to change it; that they had discussed this, and he was not sure who was calling Councilman Murphy. Councilman Murphy stated that it was an investigator. Chief Dodd stated that they were not losing any pay. Councilman Murphy stated they were taking personal time—that it was not affecting time worked.

Chairwoman Berz stated that they had 20 people representing the Fire and Police Depts., and they went over these issues; that maybe some people did not get the word.

Councilman Rico stated that we can't please every person.

Chairwoman Berz stated that she did not think the Council was ready to vote next week.

Ms. Kelley noted that these Ordinances are being developed separately; that she would hate to hold the first one off.

Chairwoman Berz stated that we could put them on the agenda separately until we can get our questions answered.

FIVE-YEAR OPERATING BUDGET PLAN

Councilman Benson stated that we had a Five-Year Capital Budget Plan to guide us, which was good; that we had no guide with the Operating Budget; that he had watched the Budget Committee work and their work was invaluable. He stated that he did not want to see the Council get in the shape they were in this year in looking at the Operating Budget and was asking the Budget Committee Chairman to work with the Staff to get a Five-Year Operating Plan so that the Council could see what services need to be performed and what the States sales tax will be, and we will have some kind of guidelines.

Chairwoman Berz confirmed that he was asking for a Five-Year Operating Budget.

Ms. Madison stated that actually we already do this.

Councilman Benson stated that he would like for our Chairman of the Budget Committee to get involved; that we know our infrastructure is in bad shape and we have the Capital Budget Plan. Chairwoman Berz stated that also personnel needed to be included. Councilman Benson stated that he had read that the Federal Government is paying less debt service—less than 8 years ago. He asked if our debt service was the same way in the City—that it should be down.

Ms. Madison responded that a lot of factors go into this.

Councilman Benson stated that he was just asking that our Chairman get involved.

Chairwoman Berz asked if the Council was wanting to get budget figures earlier—that if this was what was on their minds; that we got the Mayor's Budget on May 16th, and the Council had six weeks to look at departmental requests. She asked that the Council tell her their thoughts.

Ms. Madison stated that any projections are based on assumptions; that they could not get the figures much sooner than they did already; that they could give the Council a five-year projection based on assumptions.

Chairwoman Berz confirmed that they could give projections based on assumptions—that if we get it by the middle of May, we would be better equipped to make decisions.

Councilman Murphy stated that he understood the motivation, but he thought this would be “make” work to give a five-year assumption; that if Ms. Madison had made assumptions five years ago, she would have been wrong—horribly wrong! He stated that we can’t predict the market or interest rate.

Ms. Madison reiterated that we did a Five-Year Budget.

Councilman Murphy mentioned the recession and car dealerships closing, which left a great hole.

Chairwoman Berz stated that the five-year idea is a good one.

Councilman McGary stated that we as a Council are concerned about budget methods. He asked if there could not be a full discussion about budget options? Chairwoman Berz suggested a February meeting at 2:00 P.M. to discuss how we go about making difficult decisions. She asked if February would be soon enough?

Councilwoman Scott stated that she thought it was crucial we understand where we are in the year as we go along; that she thought it would help us understand if we get a year-to-date report. She stated that such a report had been provided to her in the past, and it was invaluable. Chairwoman Berz asked if the Budget Dept. could provide the Council with a year-to-date report? Ms. Madison responded that they do quarterly, monthly and even daily reports. Councilwoman Scott questioned if the Council, as a group, would like to have this. Chairwoman Berz noted that this should all be on computer. She asked if this could be handed out in two weeks and if the Council wanted these reports? Councilwoman Scott stated that Randy Burns could make these available; that she did want this, and we should let him know how many want it. Chairwoman Berz agreed that it should be available to all.

SUR-CHARGES ON TICKET SALES

Councilwoman Robinson stated that she would like to talk to the Council about an Ordinance we passed relative to sur-charges on ticket sales at the Memorial Auditorium and the Tivoli. She mentioned the beating that 501.C3's would be taking; that we had imposed sur-charges on non-profits and at the same time had lowered allocations to them—that they were getting hit with sur-charges in two instances. She explained she was talking about when organizations use public facilities that belong to us and have free programs—that the sponsoring organization is charged a \$.50 per ticket charge; that this involves kids graduating from high school and the schools getting a bill for \$.50 a head. She stated that we needed to take a look at this and see the true impact and reconsider this and just collect fees on desirables without hurting organizations. She stated that she would like for us to reconsider this.

Councilman McGary stated that he had a conversation with David Johnson and had received an e-mail; that this was established in 2001, and it was said we may consider gradual increases and this past February Parks and Recreation were asked to raise more money in fees; that \$.50 per ticket generates more revenue; that he had asked what the funds were going for, and we checked off on them in February; that we had another discussion about present fees.

Councilwoman Scott stated that she asked about this at the time as to what this would provide, and she was told “no”; that this was brought to us by department; that if we re-visit fees, she had a list of people who would be interested. She mentioned fees for signs; that if fees have already been assessed, she would not want to look at them again until we look at fees as a whole; that our present Budget set is based on these fees, and if we should do this, we would be opening a large box, and we have to look at the total picture of the Budget.

Chairwoman Berz asked if the consensus was to look at this next Budget year and not in the middle of the year? Councilwoman Scott stated that she thought it would throw a “kink” if we re-visited every fee and rightfully so. Councilman Rico agreed that this would be opening a big can of worms.

Councilwoman Robinson stated that she was talking about the ones which are free and not costing a dime. Mr. Johnson responded that Councilwoman Scott was right—that there had been a city-wide effort to update fees in preparation for this Budget; that we had not tackled this for years, and this effort was for this Budget because of the hard times. He mentioned a

comment made by Governor Bredesen –that people complained about government not operating like a business, and when we operate like a business, they still complain. He explained that it costs us the same amount of money each time we open up a facility—that it is no less for non-profits, and we need to bear this in mind---that it cost as much to open the doors and even this does not cover all our costs but makes it more bearable—that we don't come close to covering costs—that if you do it for one, you have to do it for all, and this is unfortunate.

Councilman Murphy spoke to graduations, stating that the Board of Education is paying to use the facility—that these entities have facilities of their own but are choosing the Memorial Auditorium because it is bigger and probably cheaper than UTC would charge; that the Board of Education can say charge the parents at the door—that that is their decision.

Councilman Benson noted that the Board of Education had paid for this for 30-40 years; that it cost \$600 to rent and this amount was budgeted, and they did it by choice; that he did not think there were any problems with the Board of Education.

Councilwoman Robinson explained that she was just using them as an example; that there is also the Symphony and many can't afford tickets and the performances are free. Councilman Benson stated that they paid for the Memorial Auditorium. Councilwoman Robinson noted that they were paying rent, and there should be no ticket increase at all.

Chairwoman Berz asked if the Council wanted to pursue this further? Councilman Rico stated that we should leave it alone, with Councilwoman Ladd adding “stay the course”.

Councilman Gilbert wanted to thank the Police for answering a call for a home invasion by having a car right there. He stated that it was his understanding we are going to charge \$.25 per mile for use of police cars, and he thought rather than pay this, that they would just park their cars and would not be readily available in the case of something like this home invasion. He stated that he felt we would lose services.

Chairwoman Berz questioned if we wanted to bring this subject up? Councilman Gilbert reiterated that it was \$.25 per mile for police cars. Mr. Johnson noted that outside the city limits it would be \$.35 per mile.

Councilman Benson asked Councilman Gilbert if he knew of some place else to get this money?
Mr. Johnson added that it is already part of our Budget--\$.25 per mile and \$.35 per mile.

This meeting was adjourned at 5:00 P.M.