

LEGAL AND LEGISLATIVE COMMITTEE
JULY 20, 2010

(Excerpt)

Councilman Murphy, Chair, called the meeting of the Legal and Legislative Committee to order with Councilmen Scott, Rico, Benson, Berz, Gilbert, McGary, Ladd and Robinson present. City Attorney Michael McMahan and Council Clerk Carol O'Neal were also present.

Others present included Mayor Littlefield, Dan Johnson and Richard Beeland.

City Attorney Issue

Councilman McGary asked City Attorney McMahan and Attorney Crystal Freiberg to leave the room prior to this discussion. He stated last week when the vote was taken on the motion to hire independent counsel he voted against the motion at that time as the District Attorney was to look into the matter and has since recused himself. He stated the District Attorney Commission has been made aware and someone else is to be appointed; that the letter has gone out however no one has "taken the bite", yet. He stated each on the Council has their own view; that his concern for this Council is if the issue is drug out we are the ones that do not benefit as we lose out; that he would like to have a Resolution that states within 30 days if no municipality has taken action we as a Council will have an independent attorney give direction to know what method one way or other. He stated doing nothing benefits "dragging it out".

Councilwoman Berz stated as she understands the procedure the matter has been turned over to the District Attorney General Committee in Nashville and they will appoint someone; that whoever they appoint would be totally neutral to this matter. She asked if there was a time line as she has not seen the letter that went out.

Councilman McGary inquired as to whether there is an appointment or do they have an option that someone will be told.

Councilman Murphy responded if no one takes it, it will be assigned.

Councilman McGary inquired as to the period of time.

Councilman Murphy stated as an attorney the likely outcome of any prosecutorial analysis is going to be that they will exercise their discretion to do nothing; that in terms of balancing what the prosecutor's role is in their office, there is not a whole lot to be gained and a lot to be lost. He stated if the history of the thing is suspect it will just be directed to do nothing; that prosecutors do this all the time. He stated they also have the discretion about where to put their emphasis as that is the role of the prosecutor.

Chairman Rico stated Jerry Summers has indicated Mike has not done anything wrong.

Councilman Murphy stated two lawyers stopped him on Sunday to say they were very familiar with what has happened through the years and one used an expletive with reference to what is happening to Mike. He stated they were not very complimentary of the situation; that the other one said this is ridiculous; that both are very well respected members of the Bar.

Councilman Benson expressed agreement with Councilman Murphy noting that he really feels sorry for Mike on this; that he was caught up in something from the very beginning. He stated that he talked to him before the last bunch came in and told him what he thought; that he became part of the solution. He stated he is more aggravated with the DA for not doing anything about Kenardo!

Councilwoman Scott stated the question from the beginning has been have laws been broken and have they been broken by our City Attorney who ought to know what the laws are. She stated whether someone finds criminal intent or has discretion to do something or not does not take away from the fact it seems there are laws and we have not gotten opinions as to “yes” it has and we have not done anything other than get those two opinions and they have voiced there are issues. She stated whether a DA can prove criminal intent seems like a whole separate issue; that there are laws on the books and if they have been broken why does an attorney not know that! She stated that worries her and asked how we get to the point where we know.

Councilwoman Robinson stated we are not the proper court; that we are not the deciders and we are way out of our depth in doing this; that it is something the DA of our county has made and has determined it will be assigned and will come in through a legal or judicial body; that it is not a matter of a legislative body and is not our assignment and if there is a legal question it will be decided at the DA level. She stated it is a practice that came up decades ago, saved the city a lot of money for many decades, the lawyers engaged in city work and apparently there was nothing wrong with it – it was not illegal, unethical, shady or conspiratorial, it was just what it was. She stated until Randy retired it worked fine and then when the change was made and this Mayor had space in the building (across the street) put “questions at work” and it was decided we will do it differently starting now. She stated the change was made and it took a number of months to get the law practice shut down and a new office; that the transition was made and it is her thought we need to stop talking about it as we are calling into question the man’s character and that is wrong and are not going about it in the right way!

Mayor Littlefield stated that he has talked to the DA, talked to the Comptroller as he has known the Comptroller in the past noting that he employed him once when he was a private attorney. He stated it is his thought the real problem is some of the excessive language in the memo; that he does not think anyone believes, including the Comptroller and DA, that there was any criminal intent; that by definition of law such might be something that is needed but does not think anyone anticipates any kind of prosecution or attempt to cover anything. He stated years ago he heard Gene Collins defend this practice and how it was set up; that it has been an issue questioned from time-to-time; that it is unique to have a law practice and both City Attorney. Mayor Littlefield stated the Comptroller said he felt the letter written by another attorney used unfortunate language and regretted the letter went out.

Mayor Littlefield questioned what can we do about it now; that once the “bell has rung” we have to finish it out and does not know what the DA will do with it. He stated the DA has a little problem as his father was a city judge when this was going on and they will have to find a hired party to evaluate it all and come back with a report. He stated he does not think anyone expects anything to happen other than to say if there was a violation the matter is settled and move on, which is what he expects would have happened if the letter had not been inflammatory. He stated during Randy’s time he did not do any other practice; that the associates did private work and Gene did both; that it was less of a problem in recent years and is not a problem matter at all now. He stated this was the thinking that moved him to action as it was felt the city had outgrown the old practice; that we are no longer a small community that could not afford a full time staff and it was time to bring it in-house and make it more convenient as we had the space and since they have been there it has been a real blessing to us not having to go down to the Pioneer Bank building.

Mayor Littlefield stated that he regrets this for Michael; that he is a person who has never been in the crossfire of politics; that Randy could have taken the hit. He stated everyone he has heard from has stated Mike is one of high integrity; that the DA will find someone among his peers willing to take this and all the material and recommend to us a course of action. He stated he does not expect anything other than to say it was not illegal, but it is history and has been defended for nearly 45 years as being legal by lawyers and embraced by lawyers.

Councilman McGary stated with all respect to what the Comptroller says about the letter is hearsay; that there are two documents, from the Auditor and one from the State Comptroller, and if either wishes to retract they can or the Comptroller can produce a letter; that we have two documents and this is hearsay. He stated the issue in his mind is being muddled and would appreciate clarity per Stan Sewell’s document; that the issue is not the 80 percent we paid for health benefits; that the issue is the \$15,000 that passed through for secretaries; that Randy and his predecessor outsourced that and eliminated the conflict; that this issue is solely about the \$15,000 conflict of interest. He stated this Council has two documents and it is his thought we need to decide one way or the other how to proceed and be done with it; that he is not after a “witch hunt” or an attempt to attack character; that it is about the ethics we are held to and it is that simple. He stated this does not have to be personalized; that the issue for us is we received the memo from Stan, asked for an expert witness in the State Comptroller, got the expert witness and some persons on the Council disagreed – that he thought we were appealing for experts as a means to have as much independent counsel as possible which is now being passed on to the DA who has to now recuse himself and it goes to someone else at this point. He stated it still remains that we as a Council need to determine which way we will go; that it is in our best interest to set time limits to say to the public this is the issue, we know it is an issue but here is what we will do and it gets done. He stated to say wait for the DA, what happens if we do not agree with his findings; that we need to be clear in what we do and put it to rest.

Mayor Littlefield stated the course of action was first presented to the DA; that the DA gave a compromise situation that it be given to a third party who will review it and come back with a report which is really what needs to be done.

Councilman Benson cautioned to let due process proceed at the rate it should; that we have to be careful when we go out of this room and see Mike as he has already told him he is willing to resign right now if we have lost faith in him. He stated if we do nothing he has integrity; that it is his personal thought we need Mike and when he does go he wants it to be the proper way. He stated when we go out of this room he (Mike) will wonder and will not be a bit surprised if he resigns right now!

Mayor Littlefield quickly responded he would not accept it!

Councilman Benson stated he would (resign) if he thought we have lost faith in him; that he personally has not!

Mayor Littlefield stated with the history and knowledge he has he is one of the most respected municipal attorneys in the State; that it is ironic, sad and almost ridiculous he has been sullied with this situation when he helped resolve it willingly after nearly 50 years! He stated he could have said "no" but he said "yes" and noted makes less than most of his peers. He stated as for the \$15,000 any of the other attorneys will tell the Council how they bill for their services.

Councilwoman Berz stated the issue is not whether Mike has done anything wrong but the dragging out of it as we need to have closure. She stated there are two questions: whether the law was broken and if there is criminal intent; that she is not assuming an answer to either one. She stated the issue is exigent circumstance; that we need to get some sort of response; that Councilman Murphy is right if it goes to the Attorney General Committee or some member of that they can choose to do nothing which is the thing that is hurtful to Mike and the situation. She stated it would be wonderful if we can get closure quickly and it has to be from that neutral third party.

Mayor Littlefield stated he does not control the DA; that it is in his hands to find someone who will take a neutral third party and has encouraged him to act expeditiously.

Councilwoman Robinson suggested that the Council be polled. Councilman Murphy clarified if she were suggesting a vote of confidence. Councilwoman Berz countered that the Council should be care of that; that she is interested in clearing up the whole issue.

Councilman McGary stated he wanted to get back to the original position that if we say the DA is going to address it within 30 days it is done; that it should be addressed and move on! He again suggested passing a Resolution if we do not hear in 30 days we would hire independent Counsel and move forward; that we should set a time line on this.

Councilwoman Scott stated she has said from the very beginning we need to have independent Counsel and can be coupled with what Councilman McGary suggested.

Councilwoman Berz stated if the DA comes back and says nothing is wrong that will bring closure.

Mayor Littlefield stated due process is underway.

Councilman Murphy stated the ultimate authority is the DA, not us.

Councilwoman Scott stated this is not a popularity contest; that the question is was a law violated or did the City Attorney violated a law; that it is not ridiculous or anything else.

Councilman Murphy stated if we are talking about prosecutorial positioning there will be a broad range of answers; that there are lawyers out of the Comptroller's office the Comptroller does not agree with; that with 12 lawyers there will be 12 different answers!

Mayor Littlefield stated the law is not always black and white.

Councilwoman Scott asked if anybody knows if the law has been violated, asking if anyone can tell us that.

Mayor Littlefield responded "only a court".

Councilman Benson stated we will eventually know; that we must be patient.

Approval of Minutes

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

The meeting was adjourned.